

BLACK'S LAW DICTIONARY®

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

SIXTH EDITION

BY

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PREFACE

This new Sixth Edition starts a second century for Black's Law Dictionary—the standard authority for legal definitions since 1891.

Nearly every area of the law has undergone change and development since publication of the Fifth Edition in 1979. This period has seen particular change and expansion in such areas as tax, finance, commercial transactions, debtor-creditor relations, tort liability, employment, health care, environment, and criminal law. Congress and the states continue to legislate new rights and remedies; the courts continue to define and redefine legal terms; the states are increasingly adopting uniform or model laws and rules; and new causes of action and legal concepts continue unabated.

The vocabulary of the law has likewise continued to change and expand to keep pace. This has necessitated not only a significant expansion of new words and terms for inclusion in this Sixth Edition, but also a reexamination of all existing entries for currentness of legal usage. Indicative of this growth is that this new edition required the addition or revision of over 5,000 legal words and terms. Thousands of other changes were required to update or supplement supporting citations.

As with prior editions, considerable effort has been made in this Sixth Edition to provide more than basic definitions of legal words and terms. In those instances where traditional legal concepts and doctrines have over the years been either superseded, modified or supplemented by court decisions or legislation, such developments and changes are fully reflected. Additionally, because so many areas of law and practice are now governed by uniform or model acts and rules, such major sources of law as the Uniform Commercial Code, Restatements of the Law, Model Penal Code, and Federal Rules are fully reflected. Similarly, the growth and importance of federal laws, with their impact on matters that were traditionally state or local in nature, is evidenced with a considerable number of new entries and citations covering federal acts, agencies, departments and courts. Likewise, the ever expanding importance of financial terminology has necessitated the inclusion of numerous new tax, finance, and accounting terms.

Examples of word usages, with citations, have been added throughout to illustrate how specific terms are used or applied in various legal contexts.

PREFACE

Because of the inter-relationship of so many legal words and terms, the number of internal cross-references has been greatly increased. The number of abbreviation entries has also been substantially expanded, as has the Table of Abbreviations.

A number of changes have been made to the pronunciation guides to make this feature even more helpful. A comprehensive explanation of these guides is set forth on pages vii-xiv with a shorter pronunciation Key appearing on the inside front cover.

New and revised words and terms for this Sixth Edition were prepared by Joseph R. Nolan, Associate Justice, Massachusetts Supreme Judicial Court, and Jacqueline M. Nolan-Haley of Fordham University School of Law. The pronunciation transcription system and guides were prepared by M.J. Connolly, Associate Professor of Linguistics, Boston College. Words and terms of the United Kingdom were revised and updated by Professor Stephen C. Hicks, Suffolk University Law School. Tax and accounting terms were updated and expanded by Martina N. Alibrandi, Certified Public Accountant, Bolton, Massachusetts.

A Final Word of Caution

The language of the law is ever-changing as the courts, Congress, state legislatures, and administrative agencies continue to define, redefine and expand legal words and terms. Furthermore, many legal terms are subject to variations from state to state and again can differ under federal laws. Also, the type of legal issue, dispute, or transaction involved can affect a given definition usage. Accordingly, a legal dictionary should only be used as a "starting point" for definitions. Additional research should follow for state or federal variations, for further or later court interpretations, and for specific applications. Helpful sources for supplemental research are "Words and Phrases" and WESTLAW.

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THE PRONUNCIATION OF LATIN

A majority of the Latin terms in this revised edition of *Black's Law Dictionary*, and also occasional English and foreign terms, have been provided with pronunciation entries. The pronunciations follow a *descriptive* scheme and are based on actual usage rather than on any attempt to *prescribe* a uniform pronunciation. Where alternate pronunciations exist and philologically more 'appropriate' pronunciation generally receives first listing, however. The entries provide an acceptable pronunciation in a transcription system compatible with the major varieties of North American English and extendable to other pronunciations.

Despite its continuing decline as a working language of scholarship and jurisprudence, Latin still supplies a formidable stock of legal terms and phrases. The ability to use a Latin phrase correctly and pronounce it with authority and consistency belongs to the equipment of a well-rounded jurist. Those who actually study Latin today, however, will in all probability learn a pronunciation (either the reformed philological or the Italianate) at variance with the Anglo-Latin system which prevails in legal and medical spheres. Injection of the 'newer' school pronunciations actually serves to increase confusion and uncertainty: Where masculine plural *alumni* and feminine plural *alumnae* were once differentiated in speech as /ə'ləmnay/ and /ə'ləmnay/ respectively, one widespread variant of the philological pronunciation actually *reverses* the opposition with masculine /ə'ləmnay/ and feminine /ə'ləmnay/. The status of *amicus curiae*, traditionally pronounced /ə'máykəs kyúriyiy/, now has variants /ə'míykəs kúriyà/ (adapted philological), /amíykus kúriyè/ (Italianate), and numerous hybrids. A parliamentarian of the old school, perhaps even well versed in Latin, adjourns a meeting *sine die* /sáyniy dáyiy/ only to have a junior colleague suggest that the 'correct' pronunciation is /síyney díyey/.

Strictly speaking, of course, any attempt at 'correct' pronunciations of foreign terms can at best be only weak approximations. The linguistic contortions of a purist attempting to weave foreign sounds and intonations into the texture of an English sentence usually strike us as pedantic or affected. Although Julius Caesar may have pronounced his name something like /yúwliyus káysar/ and later Romans may have called him /chéyzar/, few speakers of English have place for anything other than the Anglo-Latin /júwl(i)yəs síyzar/.

Three major systems of Latin pronunciation, outlined below, coexist in the English-speaking world. Each has its proper cultural and scholarly context. The *reformed* (or *new*, or *philological*, or *Roman*) pronunciation represents a modification to English speech habits of the reconstructed sounds of Latin as it must have been in the classical period. Philologists,

PRONUNCIATION OF LATIN

classical historians, and most teachers of Latin employ this pronunciation in their professional activity. *Anglo-Latin* (or English) pronunciation, the form most commonly encountered in law, medicine, the natural sciences, and in general usage, reflects the centuries of sound change that English has undergone.* Although it may not possess the authenticity of linguistic reconstruction, the Anglo-Latin system enjoys the authority of a persevering and distinct cultural tradition. The *Italianate* pronunciation derives from the pronunciation of Later Latin and is viewed as the standard in Roman Catholicism (including canon law), in music, in art history, and in medieval studies. Thus, a school master may leave the classroom, where he has just taught his pupils Latin imperatives including *venite* 'come' /weníyte/ (reformed philological), go to chapel to rehearse with the choir Psalm 95 in Anglican morning prayer, the *Venite* /vənáytiy/ (Anglo-Latin), and then actually sing the text in a Latin setting as /veyníytey èksultéymus.../ (Italianate). Each pronunciation is correct in its own context.

* There exist, in addition, various *secondary* pronunciations, such as the *continental* one often used by scholars of Middle English literature and history.

OUTLINE OF LATIN PRONUNCIATIONS

Letter	Reformed Philological	Italianate	Anglo-Latin
a	/a/		/a, æ, ey, ə, o/
b	/b/		
c	/k/	/ch/ before /i, e/ /k/ elsewhere	/s, sh, z, k/
d	/d/		
e	/ey, e/		/e, ey, ə, i, iy/
f	/f/		
g	/ŋ/ before n /g/ elsewhere	/j/ before /i, e/ /g/ elsewhere /gn/ pronounced / ny/	/j, g/
h	/h/	/h/ or silent /k/ in <i>nihil, mihi</i>	/h/ or silent
i	/i, iy/		/i, iy, ay, ə/
j	/y/		/j/
k	/k/		
l	/l/		
m	/m/		
n	/n, ŋ/		
o	/o, ow/		/o, a, ə, ow/
p	/p/		
qu	/kw/		
r	/r/		
s	/s/	/z/ between vowels /s/ elsewhere	/s, z, sh, zh/
t(h)	/t/	/ts/ before <i>i</i> plus vowels except after <i>s, t, x</i> /t/ elsewhere	/t, d, sh, ch/ <i>th</i> as /θ/
u	/u, uw, w/	/w/ after <i>q</i> or <i>ng</i> /uw/ elsewhere	/yuw, uw, u, yə, ə, i, w/

OUTLINE OF LATIN PRONUNCIATIONS

Letter	Reformed Philological	Italianate	Anglo-Latin
v	/w/		/v/
x		/ks/ x + /ch/ = /ksh/	/ks, gz, z, s/
y	/i, iy/	/iy/ or Gmn ü	/ay, iy, i, y/
z	/z/	/z, dz/	/z/

Attested forms in Anglo-Latin pronunciation sometimes fail to correspond in qualitative or accentual details with the forms we might expect on an etymological or systematic basis. Thus,

bona fide appears as /bównə fáydíy/ instead of */bónə fídiy/

industry appears as /índəstriy/ instead of */indéstriy/

minor appears as /máynər/ instead of */mínər/, etc.

Numerous developments in the sound system of English have tended to override the expected forms. Analogies with sibling or quasi-sibling forms often keep doublets flourishing side by side:

licet 'it is permitted' as /láysət/ (cf. license) or /lísət/ (cf. *licit*)

debet 'one must' as /díybət/ or /débət/ (cf. debit and credit)

capias 'thou shouldst seize' as /kéypiyəs/ (cf. *cape*) or /káepiyəs/ (cf. *capture*)

Language traditions usually resolve such conflicts in good time, favoring 'usage' over 'correctness', and then promptly create new conflicts.

TRANSCRIPTION SYSTEM

The transcription system employed for these listings is derived from one of the traditional phonemic analyses of American English (Trager-Smith). The values of the symbols vary with context, i.e., their specific pronunciations depend on the nature of the surrounding sounds. The pronunciation habits of a normal speaker of English will, however, in practically all cases supply the accustomed variants for that speaker's usage if the elements presented in the key are substituted in accordance with the sample indications. This system enables the speakers of a range of dialects to use one and the same transcription and yet produce a pronunciation natural to their speech. For this reason, in addition to the considerations given above concerning the treatment of foreign terms in English, sounds foreign to English have been represented by the customary English substitutes. Thus, for example, the voiceless velar fricative of German *Bach* would be rendered with a simple stop /k/ and French front rounded *eu* with /yʷ/. Readers who wish to affect the foreign sounds will find guidance in their own linguistic experience or in the appropriate grammars and dictionaries. Similarly, readers who prefer pronunciations closer to the spelling than those presented here should feel free to substitute their preferences, e.g., restoration of "full" vowels for unaccented /ə/ or even to pronouncing the *t* in *often*. Finally, readers who already feel secure (or even superior) in their own renderings of words and phrases should retain these. The editors will always appreciate information on local variants and will welcome suggestions for improving the transcriptions.

The rubrics (sets of examples) under any given major symbol should always be applied *in order*. The earlier, more specific contexts take preference over the later, 'elsewhere' variant.

The special symbols

/æ/ (ash) /ɔ̃/ (edh) /ə/ (schwa) /ŋ/ (angma) (θ) (theta)

appear respectively after

/a/ /d/ /e/ /n/ /t/

The reader will, of course, be aware that the transcription symbols do not necessarily have the same alphabetic values as in English. Rather, the symbols must be viewed as arbitrary signs, although in many cases their forms will aid the user in remembering and associating the key sounds and symbols.

GUIDE TO PRONUNCIATION SYMBOLS

a

/ay/ as in the bold portions of **aye, eye, I** /áy/ **lie** /láy/
buy, by, bye /báy/ **high** /háy/ **aisle, isle, I'll** /áyl/
idea /aydíyǝ/

/aw/ as in **out** /áwt/ **how** /háw/

/ar/ as in **bark** /bárk/ **car** /kár/

/a/ elsewhere as in **father** /fáðǝr/. In many dialects identical with /o/.

æ

/æ/ as in **cat** /kæt/

b

/b/ as in **bill** /bíl/

ch

/ch/ as in **chill** /chíl/ **church** /chárch/ **nature** /néychǝr/
question /kwés(h)chǝn/

d

/d/ as in **dill** /díl/ **odor** /ówdǝr/.

In many dialects *better*, *bedder* may both appear as /bédǝr/.

ð

/ð/ as in **this** /ðís/ **smooth** /smúwð/ **thou** /ðáw/
not to be confused with /θ/

e

/ey/ as in **they** /ðéy/ **make** /méyk/ **sail, sale** /séyl/ **neigh, nay** /néy/

/ehr/ as in **error** /éhrǝr/ **merry** /méhriy/. In dialects where /ehr/
is not distinct from /er/ the diacritic /h/ may be ignored.

/er/ as in **there, their** /ðǝr/ **air, e'er** /ér/

/e/ elsewhere as in **dell** /dél/ **bet** /bét/

ə

/əhr/ as in **current** /káhránt/. In dialects where /əhr/ is not distinct
from /ǝr/ the diacritic /h/ may be ignored.

/ǝr/ as in **murder** /márdǝr/ **were** /wár/ **mother** /máðǝr/
world /wárlǝd/ **whirr** /wǝr/

/ǝ/ /ǝ/ (with either primary or secondary stress) as in **but, butt** /bát/
blood /blǝd/ **above** /ǝbáv/

/ǝ/ elsewhere (unstressed) as in **sofa** /sówfǝ/ **another** /ǝnáðǝr/

f

/f/ as in **fill, Phil** /fíl/ **rough** /ráf/

GUIDE TO PRONUNCIATION SYMBOLS

g

/g/ always 'hard' as in **gall** /gól/ **Gaul** /gó/ **lag** /læg/

h

/h/ as silent diacritic in combinations /ehr, əhr, ihr, ohr/ and /ch, sh, zh/
otherwise as in **hill** /híl/ **mousehole** /máws-hòwl/

i

/iy/ as in **machine** /məshíyn/ **be, bee, Bea** /bíy/ **each** /íych/
/ihr/ as in **irrigate** /íhrəgeyt/ **spirit** /spíhrət/. In dialects where
/ihr/ is not distinct from /ir/ the diacritic /h/ may be ignored.
/ir/ as in **pier, peer** /pír/ **hear, here** /hír/
/i/ elsewhere as in **sit** /sít/ **pretty** /prítíy/

j

/j/ as in **Jill** /jíl/ **general** /jén(ə)rəl/ **edge** /éj/ **soldier** /sówljər/
carriage /káraj/

k

/k/ as in **kill** /kíl/ **cool** /kúwl/

l

/l/ as in **Lill** /líl/

m

/m/ as in **mill** /míl/

n

/n/ as in **nil** /níl/
/ŋ/ as in **thing** /θíŋ/ **singer** /síŋər/ **finger** /fíŋər/

o

/oy/ as in **boy** /bóy/ **noise** /nóyz/
/ow/ as in **know** /nów/ **sew, so, sow (seed)** /sów/
/ohr/ as in **foreign** /fóhrən/ **borrow** /bóhrow/. In dialects where
/ohr/ is not distinct from /or/ the diacritic /h/ may be ignored.
/or/ as in **bore, boar** /bór/ **course, coarse** /kórs/
/o/ elsewhere as in **rot, wrought** /rót/ **wall** /wól/ **ought, aught** /ót/
law /ló/. Some dialects merge /o/ and /a/ while others treat diph-
thongal spellings as /o/ but others as /a/.

p

/p/ as in **pill** /píl/ **lip** /líp/

r

/r/ as in **rill** /ríl/. See also the coloring function of /r/ in diphthongs
/ar, e(h)r, ə(h)r, i(h)r, o(h)r, ur/.

GUIDE TO PRONUNCIATION SYMBOLS

s

/sh/ as in **shill** /shíl/ **sugar** /shúgər/ **issue** /íshyuw/
/s/ as in **sill** /síl/ **city** /sídiy/

t

/t/ as in **till** /tíl/ **hit** /hít/

θ

/θ/ as in **thin** /θín/ **thought** /θót/ not to be confused with /ð/:
ether /iyθər/
either /iyðər/

u

/uw/ as in **too, two** /túw/ **through, threw** /θrúw/ **crude** /krúwd/
/ur/ as in **jury** /júriy/ **poor** /púr/
/u/ elsewhere as in **put** /pút/ **good** /gúd/ **could** /kúd/

w

/w/ as in **will** /wíl/ **weather** /wédər/. See also the function of /w/
in diphthongs /aw, ow, uw/.

y

/y/ as in **yes** /yés/ **union** /yúwnyən/. See also the function of /y/
in diphthongs /ay, ey, iy, oy/.

z

/zh/ as in **Doctor Zhivago** /dóktər zhəvágow/ **pleasure** /plézhər/
garage /garázh/ (in some dialects /°áj/)
/z/ as in **zoo** /zúw/ **rose, rows (lines)** /rówz/ **Xenophon** /zénəfòn/

▤

primary (strong) stress ▥ secondary (weaker) stress
telegraphic /tèləgráfək/
telegram /tèləgrám/

() 'may include or exclude'; optional elements

e.g. *new* /n(y)úw/ pronounced either /nyúw/ or /núw/
ratio /réysh(iy)ow/ pronounced /réyshiyow/ or /réyshow/

◦

'and the rest that precedes/follows'; replaces identical parts of variant pronunciations

e.g. *alumni* /əlámny/°niy/ = /əlámny/ or /əlámniy/
inter alios /íntər éyl(i)yows/°él°
= /íntər éyl(i)yows/ or /íntər él(i)yows/
habeas corpus /héybiyəs kórpəs/heybiyz°/
= /héybiyəs kórpəs/ or /héybiyz kórpəs/.

**BLACK'S
LAW DICTIONARY[®]**

SIXTH EDITION

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A

A. The first letter in the English and most other alphabets derived from the Roman or Latin alphabet, which was one of several ancient Italian alphabets derived from the Greek, which was an adaptation of the Phoenician. The first letter in the Phoenician alphabet was called *aleph*, meaning "ox", which is also the meaning of the first letter in the Greek alphabet, *alpha*. *Alpha* and the second letter of the Greek alphabet, *beta*, were combined to form "alphabet," which is largely the same in different languages.

A in Latin and law Latin. Anglo-American law abounds in Latin and French words and phrases, and the use of A in these languages is important to the English-speaking lawyer. In Latin "A" was used both as an abbreviation and as a symbol. For example "A" was an abbreviation for "Aulus," a praenomen, or the first of the usual three names of a person by which he was distinguished from others of the same family; also for "ante" in "a.d.," *ante diem* (before the day), and for "anno" (year) in a.u.c., *anno urbis conditae* (the year of the building of the city) and in *anno ab urbe condita* (from the year of the building of the city). As a preposition, the form was either *À*, *AB* or *ABS*. A was used before consonants; ab was usually used before vowels, but sometimes before consonants, whereas abs was used before "c" or "t." The meaning was "from," "away from," "on the side of," "at," "after," "since," "by," "by means of," "out of," "with reference to," "in regard of," "near by," and "along." For example, *A fronte* in front; *ab tergo*, from behind; *a puertitia*, from youth; *ab sole orbe*, from or at sunrise; *ab intestato*, without a will, intestate. In law Latin, "a" means "by," "with," "from," "in," "of," and "on," and AB means "by," "from," and "in".

A in French and law French. In French A is a preposition, the meaning of which largely depends on context. It is usually translated as "into," "at," "to," "in," "by," "of," "with," "on," "from," "for," "under," "till," "within," "between," etc. It also changes into *au* and *aux* when combined with "the." A is also the third person, singular number, present tense, indicative mood of the verb *avoir*, (to have): *Il a* (he has). In law French "a" is used as a preposition meaning "at," "for," "in," "of," "on," "to," and "with."

The word "a" has varying meanings and uses. "A" means "one" or "any," but less emphatically than either. It may mean one where only one is intended, or it may mean any one of a great number. It is placed before nouns of the singular number, denoting an individual object or quality individualized.

The article "a" is not necessarily a singular term; it is often used in the sense of "any" and is then applied to more than one individual object. *Lewis v. Spies*, 43 A.D.2d 714, 350 N.Y.S.2d 14, 17. So under a statute providing that the issuance of "a" certificate to one carrier should not bar a certificate to another over the same route, a certificate could be granted to more than two carriers over the same route. *State ex rel. Crown Coach Co. v. Public Service Commission*, 238 Mo.App. 287, 179 S.W.2d 123, 127. Also, article "a" in statute making it a crime for a person to have in his possession a completed check with intent to defraud includes the plural. *People v. Carter*, 75 C.A.3d 865, 142 Cal.Rptr. 517, 520. But the meaning depends on context. For example, in Workers' Compensation Act, on, or in or about "a" railway, factory, etc., was held not to mean any railway, factory, etc., but *the* railway, factory, etc., of the employer. Where the law required the delivery of a copy of a notice to husband and a copy to wife, the sheriff's return that he had delivered "a copy" to husband and wife was insufficient. *State v. Davis*, Tex.Civ. App., 139 S.W.2d 638, 640.

AAA. Agricultural Adjustment Act; American Accounting Association; American Arbitration Association.

A.A.C. *Anno ante Christum*, the year before Christ.

A.A.C.N. *Anno ante Christum natum*, the year before the birth of Christ.

AALS. Association of American Law Schools.

A aver et tener /èy éyvar et ténər/. L. Fr. (L. Lat. *habendum et tenendum*.) To have and to hold. *A aver et tener a luy et a ses heires, a tous jours*,—to have and to hold to him and his heirs forever.

Ab. The eleventh month of the Jewish civil year, and the fifth of the sacred year. It answers to the moon that begins in July, and consists of thirty days. On the 24th is observed a feast in memory of the abolishment of the Sadducean law, which required sons and daughters to be equal heirs and heiresses of their parents' estates.

Ab, at the beginning of English-Saxon names of places, is generally a contraction of abbot or abbey; whence it is inferred that those places once had an abbey there, or belonged to one elsewhere, as Abingdon in Berkshire.

A.B. Able-bodied seaman. For the requirements of able seaman, see 46 U.S.C.A. § 7306 *et seq.* Also *artium baccalaureus*, bachelor of arts. In England and U.S., generally written B. A. See Able-bodied.

A.B.A. American Bar Association.

Ab; Abr. Abridgment.

Ab abusu ad usum non valet consequentia /æb əbyúwz(y)uw æd yúwzəm non vələt kɒn-səkʷəns(ɪ)yə/. A conclusion as to the use of a thing from its abuse is invalid.

Abacist or abacista /æbəsɪstə/. A caster of accounts, an arithmetician.

Abaction /əbækʃən/. A carrying away by violence.

Ab actis /æb æktəs/. Lat. An officer having charge of *acta*, public records, registers, journals, or minutes. An officer who entered on record the *acta* or proceedings of a court; a clerk of court; a notary or actuary. See "*Acta diurna*". This, and the similarly formed epithets *à cancellis*, *à secretis*, *à libellis*, were also anciently the titles of a chancellor (*cancellarius*) in the early history of that office.

Abactor /æbæktər/. A stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from a person who steals a single animal or beast. Also called *abigeus*, *q.v.*

Ab agendo /æb ejéndow/. Disabled from acting; unable to act; incapacitated for business or transactions of any kind.

A.B.A.J. American Bar Association Journal.

Abalienate /əbéyliənèyt/. To transfer interest or title.

Abalienatio /əbéyliənèysh(ɪ)yow/. In Roman law, the perfect conveyance or transfer of property from one Roman citizen to another. This term gave place to the simple *alienatio*, which is used in the Digest and Institutes, as well as in the feudal law, and from which the English "alienation" has been formed.

Abalienation /əbéyliənèyshən/. In the civil law, a making over of realty, or chattels to another by due course of law.

Abamita /əbémətə/. In the civil law, a great-great-grandfather's sister (*abavi soror*). Called *amita maxima*.

Abandon. To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. To give up or to cease to use. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert. It includes the intention, and also the external act by which it is carried into effect.

Abandoned property. Property over which the owner has given up dominion and control with no intention of recovering it. *See also* Abandonment.

Abandonee. A party to whom a right or property is abandoned or relinquished by another. Term is applied to the insurers of vessels and cargoes.

Abandonment. The surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it. *State v. Bailey,*

97 N.J.Super. 396, 235 A.2d 214, 216. The giving up of a thing absolutely, without reference to any particular person or purpose, as vacating property with the intention of not returning, so that it may be appropriated by the next comer or finder. The voluntary relinquishment of possession of thing by owner with intention of terminating his ownership, but without vesting it in any other person. *Dober v. Ukase Inv. Co.*, 139 Or. 626, 10 P.2d 356, 357. The relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property.

Term includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether one has abandoned his property or rights, the intention is the first and paramount object of inquiry, for there can be no abandonment without the intention to abandon. *Roebuck v. Mecosta County Road Commission*, 59 Mich.App. 128, 229 N.W.2d 343, 345. Generally, "abandonment" can arise from a single act or from a series of acts. *Holly Hill Lumber Co. v. Grooms*, 198 S.C. 118, 16 S.E.2d 816, 821.

Time is not an essential element of act, although the lapse of time may be evidence of an intention to abandon, and where it is accompanied by acts manifesting such an intention, it may be considered in determining whether there has been an abandonment. *Ullman ex rel. Eramo v. Payne*, 127 Conn. 239, 16 A.2d 286, 287.

"Abandonment" differs from surrender in that surrender requires an agreement, and also from forfeiture, in that forfeiture may be against the intention of the party alleged to have forfeited.

See also Desertion; Discharge; Release; Waiver.

Actions, in general. Failure to prosecute or bring action within statutorily prescribed period (*see* Limitations (*Statute of limitations*)); failure to object to or submit jury instructions (Fed.R. Civil P. 51); failure to demand jury trial (Fed.R. Civil P. 38).

Adverse possession. To destroy continuity of adverse claimant's possession, there must be an intent to relinquish claim of ownership as well as an act of relinquishment of possession and mere temporary absence is not sufficient. *Bruch v. Benedict*, 62 Wyo. 213, 165 P.2d 561.

Assignment of error. Failure to object at trial. *Meyer v. Hendrix*, 311 Ill.App. 605, 37 N.E.2d 445, 446. Error not presented in brief. *Rouby v. United States*, C.C.A. Cal., 115 F.2d 49, 50. Error not supported by point, argument or authority. *Cone v. Ariss*, 13 Wash.2d 650, 126 P.2d 591, 593. *See* Fed.R.Civil Proc. 46 (Exceptions unnecessary).

Children. Desertion or willful forsaking. Foregoing parental duties. *Wright v. Fitzgibbons*, 198 Miss. 471, 21 So.2d 709, 710. *See also* Desertion.

Contracts. To constitute "abandonment" by conduct, action relied on must be positive, decisive, unequivocal, and inconsistent with the existence of the contract. Abandonment is a matter of intent, *Lohn v. Fletcher Oil Co.*, 38 Cal.App.2d 26, 100 P.2d 505, 507, and implies not

only nonperformance, but an intent not to perform which may be inferred from acts which necessarily point to actual abandonment.

Copyright. "Abandonment" of a copyright turns on state of mind of copyright proprietor and occurs whenever he engages in some overt action which manifests his purpose to surrender his rights in the work and to allow the public to enjoy it. *Rexnord, Inc. v. Modern Handling Systems, Inc.*, D.C.Del., 379 F.Supp. 1190, 1199.

Criminal acts. "Abandonment" can relieve one of criminal responsibility where criminal enterprise is cut short by change of heart, desertion of criminal purpose, change of behavior, and rising revulsion for harm intended, and must occur before criminal act charged is in the process of consummation or has become so inevitable that it cannot reasonably be delayed. *Pyle v. State, Ind.*, 476 N.E.2d 124, 126. See Model Penal Code § 5.01(4) (renunciation of criminal purpose).

Easements. To establish "abandonment" of an easement created by deed, there must be some conduct on part of owner of servient estate adverse to and inconsistent with existence of easement and continuing for statutory period, or nonuser must be accompanied by unequivocal and decisive acts clearly indicating an intent on part of owner of easement to abandon use of it. Permanent cessation of use or enjoyment with no intention to resume or reclaim. Intention and completed act are both essential. A mere temporary or occasional obstruction or use of an easement by the servient owner is not an "abandonment". *Gerber v. Appel, Mo.App.*, 164 S.W.2d 225, 228.

Ground for divorce. "Abandonment" as cause for divorce must be willful and intentional without intention of returning, and without consent of spouse abandoned. This ground is commonly termed "desertion" in state divorce statutes. See also *Desertion*.

Inventions. The giving up of rights by inventor, as where he surrenders his idea or discovery or relinquishes the intention of perfecting his invention, and so throws it open to the public, or where he negligently postpones the assertion of his claims or fails to apply for a patent, and allows the public to use his invention. *Electric Storage Battery Co. v. Shimadzu, Pa.*, 307 U.S. 5, 613, 616, 59 S.Ct. 675, 681, 83 L.Ed. 1071.

Leases in general. To constitute an "abandonment" of leased premises, there must be an absolute relinquishment of premises by tenant consisting of act and intention.

Mineral leases. "Abandonment" consists of an actual act of relinquishment, accompanied with the intent and purpose permanently to give up a claim and right of property. A distinction exists between "abandonment" and "surrender" which is the relinquishment of a thing or a property right thereto to another, which is not an essential element of abandonment. Distinction also exists between elements of "abandonment" and those of estoppel. Neither formal surrender of oil and gas lease nor release is necessary to effectuate "abandonment; for

example, failing to start work under the lease for more than 40 years, *Chapman v. Continental Oil Co.*, 149 Kan. 822, 89 P.2d 833, 834; breach of implied obligation to proceed with search and development of land with reasonable diligence, *Wood v. Arkansas Fuel Oil Co.*, D.C. Ark., 40 F.Supp. 42, 45; no drilling on leased land for more than two years, and failure to pay rentals, *Rehart v. Klossner*, 48 Cal.App.2d 40, 119 P.2d 145, 147; drawing of casing from well with no intention of replacing it, have all been held to constitute "abandonment". But there must be an intention by lessee to relinquish leased premises, *Carter Oil Co. v. Mitchell, C.C.A.Okl.*, 100 F.2d 945, 950, 951; or an intention not to drill, *Carter Oil Co. v. Mitchell, C.C.A.Okl.*, 100 F.2d 945, 950, 951. And ceasing of operations is not alone sufficient. *Fisher v. Dixon*, 188 Okl. 7, 105 P.2d 776, 777.

Office. Abandonment of a public office is a species of resignation, but differs from resignation in that resignation is a formal relinquishment, while abandonment is a voluntary relinquishment through nonuser. It is not wholly a matter of intention, but may result from the complete abandonment of duties of such a continuance that the law will infer a relinquishment. It must be total, and under such circumstances as clearly to indicate an absolute relinquishment; and whether an officer has abandoned an office depends on his overt acts rather than his declared intention. It implies nonuser, but nonuser does not, of itself constitute abandonment. The failure to perform the duties pertaining to the office must be with actual or imputed intention on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Abandonment may result from an acquiescence by the officer in his wrongful removal or discharge, but, as in other cases of abandonment, the question of intention is involved. *McCall v. Cull*, 51 Ariz. 237, 75 P.2d 696, 698.

Patents. There may be an abandonment of a patent, where the inventor dedicates it to the public use; and this may be shown by his failure to sue infringers, sell licenses, or otherwise make efforts to realize a personal advantage from his patent. *Sandlin v. Johnson, C.C.A. Mo.*, 141 F.2d 660. A person may not be deprived of a patent as a result of the earlier work of another if that work has been abandoned, supplemented, or concealed. 35 U.S.C.A. § 102(g).

Property. "Abandoned property" in a legal sense is that to which owner has relinquished all right, title, claim, and possession, but without vesting it in any other person, and with no intention of not reclaiming it or resuming its ownership, possession or enjoyment in the future. *Com. v. Carter*, 236 Pa.Super. 376, 344 A.2d 899, 901. There must be concurrence of act and intent, that is, the act of leaving the premises or property vacant, so that it may be appropriated by the next comer, and the intention of not returning. Relinquishment of all title, possession, or claim; a virtual intentional throwing away of property. *Ex parte Szczygiel, Sup.*, 51 N.Y.S.2d 699, 702.

Rights in general. The relinquishment of a right. It implies some act of relinquishment done by the owner without regard to any future possession by himself, or by any other person, but with an intention to abandon. See Waiver.

Trademarks and trade names. There must be not only nonuser, but also an intent to abandon and to give up use of trademarks permanently. *Neva-Wet Corporation of America v. Never Wet Processing Corporation*, 277 N.Y. 163, 13 N.E.2d 755, 761.

Water rights. As applied to water rights may be defined to be an intentional relinquishment of a known right. It is not based on a time element, and mere nonuser will not establish "abandonment" for any less time, at least, than statutory period, controlling element in "abandonment" being matter of intent. *Hammond v. Johnson*, 94 Utah 20, 66 P.2d 894, 899. To desert or forsake right. The intent and an actual relinquishment must concur. Concurrence of relinquishment of possession, and intent not to resume it for beneficial use. Neither alone is sufficient. *Osnes Livestock Co. v. Warren*, 103 Mont. 284, 62 P.2d 206, 211.

Abandon, abandum, or abandonum /əbændən(əm)/. Anything sequestered, proscribed, or abandoned. *Abandon, i. e., in bannum res missa*, a thing banned or denounced as forfeited or lost, whence to *abandon, desert, or forsake*, as lost and gone.

Ab ante /əb ɛnti/ . Lat. Before; in advance. Thus, a legislature cannot agree *ab ante* to any modification or amendment to a law which a third person may make.

Ab antecedente /əb ɛntəsiɔdɛnti/ . Lat. Beforehand; in advance.

Ab antiquo /əb ɛntɪkwɔ/ . From old times; from ancient time; of old; of an ancient date. 3 Bl.Comm. 95.

Abarnare /əbarnəri/ . Lat. To discover and disclose to a magistrate any secret crime.

Ab assuetis non fit injuria /əb əswiɪtəs non fit ɪnjuriə/ . From things to which one is accustomed (or in which there has been long acquiescence) no legal injury or wrong arises. If a person neglects to insist on his right, he is deemed to have abandoned it.

Abatable nuisance. A nuisance which is practically susceptible of being suppressed, or extinguished, or rendered harmless, and whose continued existence is not authorized under the law. *Fort Worth & Denver City Ry. Co. v. Muncy*, Tex.Civ.App., 31 S.W.2d 491, 494.

Abatementum /əbɛtəmɛntəm/ . L. Lat. In old English law, an abatement of freehold; an entry upon lands by way of interposition between the death of the ancestor and the entry of the heir.

Abatare /əbətəri/ . To abate.

Abate. To throw down, to beat down, destroy, quash. To do away with or nullify or lessen or diminish. In re *Stevens' Estate*, Cal.App., 150 P.2d 530, 534. To bring entirely down or demolish, to put an end to, to do away

with, to nullify, to make void, *Sparks Milling Co. v. Powell*, 283 Ky. 669, 143 S.W.2d 75, 77. See also *Abatement*; *Abatement of action*.

Abatement. A reduction, a decrease, or a diminution. The suspension or cessation, in whole or in part, of a continuing charge, such as rent.

Legacies. A proportional diminution or reduction of the pecuniary legacies, when the funds or assets out of which such legacies are payable are not sufficient to pay them in full. Uniform Probate Code, § 3-902. See *Ademption, infra*, as to specific legacies and devises.

Nuisance. See *Nuisance*.

Plea in abatement. See *Plea*.

Taxes. Diminution or decrease in the amount of tax imposed. Abatement of taxes relieves property of its share of the burdens of taxation after the assessment has been made and the tax levied. *Sheppard v. Hidalgo County*, 126 Tex. 550, 83 S.W.2d 649, 657.

Abatement of action. Abatement is an entire overthrow or destruction of the suit so that it is quashed and ended. *Carver v. State*, 217 Tenn. 482, 398 S.W.2d 719. See *Dismissal*; *Vacate*.

Pleas in abatement have been abolished by Fed.R. Civil P. 7(c); such being replaced by a motion to dismiss under Rule 41. In certain states however this plea still exists to attack jurisdiction, or service of process, or to allege that a prior action between the same parties concerning the same subject matter is pending.

Abator /əbɛɪtər/ . In real property law, a stranger who, having no right of entry, contrives to get possession of an estate of freehold, to the prejudice of the heir or devisee, before the latter can enter, after the ancestor's death. In the law of torts, one who abates, prostrates, or destroys a nuisance.

Abatuda /əbɛɪwɔdɔ/ . Anything diminished. *Moneta abatuda* is money clipped or diminished in value.

Abavia /əbɛɪviə/ . Lat. In the civil law, a great-great-grandmother.

Abavita /əbɛɪmɛtɔ/ . A great-great-grandfather's sister. This is a misspelling for *abamita (q.v.)*.

Abavunculus /əbɛɪvɔŋkyləs/ . Lat. In the civil law, a great-great-grandmother's brother (*avavioe frater*). Called *avunculus maximus*.

Abavus /əbɛɪvəs/ . Lat. In the civil law, a great-great-grandfather.

Abbacinare /əbɛɪsɛnəri/ . To blind by placing a burning basin or red-hot irons before the eyes. A form of punishment in the Middle Ages. Also spelled "abacinare." The modern Italian is spelled with two b's, and means to blind. Abbacination. Blinding by placing burning basin or red-hot irons before the eyes.

Abbacy /əbɛɪsi/ . The government of a religious house, and the revenues thereof, subject to an abbot, as a bishopric is to a bishop. The rights and privileges of an abbot.

Abbey. A monastery or nunnery for the use of an association of religious persons, having an abbot or abbess to preside over them.

Abbot. A prelate in the 13th century who had had an immemorial right to sit in the national assembly.

Abbot, abbat. The spiritual superior or governor of an abbey. Feminine, *Abbess*.

Abbreviatio placitorum /əbriyviyēysh(i)yow plā-sătōrəm/. An abstract of ancient judicial records, prior to the Year Books.

Abbreviators /əbriyviyētərz/. In ecclesiastical law, officers whose duty it is to assist in drawing up the Pope's briefs, and reducing petitions into proper form to be converted into papal bulls.

Abbrochment, or abbroachment /əbrōwchmənt/. The act of forestalling a market, by buying up at wholesale the merchandise intended to be sold there, for the purpose of selling it at retail. *See* Forestalling the market.

Abbuttals. *See* Abuttals.

ABC test. Unemployment compensation law exclusion tests providing that employer is not covered if individuals he employs are free from his control, the services are performed outside employer's places of business, and employees are customarily engaged in independently established trades or professions are known as the "ABC tests". *Employment Sec. Commission v. Wilson, Alaska, 461 P.2d 425, 427. See* Independent contractor.

ABC transaction. In mining and oil drilling operations, a transfer by which A, the owner, conveys the working interest to B, the operator and developer for cash consideration, reserving a production payment usually larger than the cash consideration paid by B. Later, A sells the reserved production payment to C for cash. The tax advantages of this type of transaction were eliminated by the Tax Reform Act of 1969.

Abdication /əbdəkēyshən/. Renunciation of the privileges and prerogatives of an office. The act of a sovereign in renouncing and relinquishing his government or throne, so that either the throne is left entirely vacant, or is filled by a successor appointed or elected beforehand. Also, where a magistrate or person in office voluntarily renounces or gives it up before the time of service has expired. It differs from resignation, in that resignation is made by one who has received his office from another and restores it into his hands, as an inferior into the hands of a superior; abdication is the relinquishment of an office which has devolved by act of law. It is said to be a renunciation, quitting, and relinquishing, so as to have nothing further to do with a thing, or the doing of such actions as are inconsistent with the holding of it.

Abditorium /əbdətōriyəm/. An abditory or hiding place, to hide and preserve goods, plate or money.

Abduction. The offense of taking away a wife, child, or ward, by fraud and persuasion, or open violence. Model Penal Code, § 212.4.

To take away surreptitiously by force in kidnapping. The unlawful taking or detention of any female for purposes of marriage, concubinage, or prostitution. In many states this offense is created by statute and in most cases applies to females under a given age. By statute in some states, abduction includes the withdrawal of a husband from his wife, as where another woman alienates his affection and entices him away and causes him to abandon his wife.

Restraint of victim becomes "abduction" when it is done with intent to prevent liberation of victim. *Padgett v. State, Tex.App. 4 Dist., 683 S.W.2d 453, 457.*

See also Alienation of affections; Kidnapping.

Abearance /əbérəns/. Behavior; as a recognizance to be of good abearance signifies to be of good behavior.

Ab epistolis /əb iypístələs/. Lat. An officer having charge of the correspondence (*epistolæ*) of his superior or sovereign; a secretary.

Aberemurder /əbərmərdər/. (From Sax. *abere*, apparent, notorious; and *mord*, murder.) Plain or downright murder, as distinguished from the less heinous crime of manslaughter, or chance medley.

Abesse /əbésiy/. Lat. In the civil law, to be absent; to be away from a place. Said of a person who was *extra continentia urbis*, (beyond the suburbs of the city.)

Abet. To encourage, incite, or set another on to commit a crime. This word is usually applied to aiding in the commission of a crime. To abet another to commit a murder is to command, procure, counsel, encourage, induce, or assist. *Wyatt v. U. S., 388 F.2d 395, 400 (10 Cir.)*. To facilitate the commission of a crime, promote its accomplishment, or help in advancing or bringing it about. *State v. Lord, 42 N.M. 638, 84 P.2d 80, 86.*

In relation to charge of aiding and abetting, term includes knowledge of the perpetrator's wrongful purpose, and encouragement, promotion or counsel of another in the commission of the criminal offense. *State v. J-R Distributors, Inc., 82 Wash.2d 584, 512 P.2d 1049, 1055.*

A French word combined of two words "a" and "bet-er"—to bait or excite an animal.

See also Abettor; Accomplice; Aid and abet.

Abetment. Act of encouraging, inciting or aiding another.

Abettator /əbətétər/. L. Lat. In old English law, an abettor. *See* Abettor.

Abettor /əbétər/. An instigator, or setter on; one who promotes or procures a crime to be committed. *Handy v. State, 326 A.2d 189.* One who commands, advises, instigates, or encourages another to commit a crime. A person who, being present, incites another to commit a crime, and thus becomes a principal. To be an "abettor" accused must have instigated or advised commission of crime or been present for purpose of assisting in its commission; he must share criminal intent with which crime was committed. *People v. Francis, 71 C.2d*

66, 75 Cal.Rptr. 199, 203, 450 P.2d 591. *See also* Accessory; Accomplice; Aider and abettor.

Ab extra /æb ɛkstrə/. Lat. *Extra*, beyond, without. From without.

Abeyance /əbéyans/. Lapse in succession during which there is no person in whom title is vested. In the law of estates, the condition of a freehold when there is no person in being in whom it is vested. In such cases the freehold has been said to be *in nubibus* (in the clouds), *in pendenti* (in suspension); and *in gremio legis* (in the bosom of the law). Where there is a tenant of the freehold, the remainder or reversion in fee may exist for a time without any particular owner, in which case it is said to be in abeyance. A condition of being undetermined or in state of suspension or inactivity. Sales to third parties, of property acquired by county at tax sale, being held in "abeyance", means that certain rights or conditions are in expectancy. *Willard v. Ward County*, 72 N.D. 291, 6 N.W.2d 566, 568.

Abiaticus, or aviaticus /əviyétyəkəs/. L. Lat. In feudal law, a son's son; a grandson in the male line.

Abide. To accept the consequences of; to rest satisfied with; to wait for. With reference to an order, judgment, or decree of a court, to perform, to execute.

Abide by. To adhere to, to obey, to accept the consequences of. *Detroit Fidelity & Surety Co. v. U. S.*, C.C.A.Ohio, 36 F.2d 682, 683.

To stand to, acquiesce in, conform to. To accept as valid, and to take consequences of; as to abide by a decision. *Kovach v. Maddux*, D.C.Tenn., 238 F.Supp. 835, 842.

Abiding conviction. A definite conviction of guilt derived from a thorough examination of the whole case. Used commonly to instruct juries on the frame of mind required for guilt proved beyond a reasonable doubt. *Hopt v. Utah*, 120 U.S. 439, 7 S.Ct. 614, 30 L.Ed. 708. A settled or fixed conviction. *People v. Castro*, 68 Cal. App.2d 491, 157 P.2d 25, 30.

Abigeatores /əbij(iy)ətóriyz/. *See* Abigeus.

Abigeatus /əbijiyétyəs/. Lat. In the civil law, the offense of stealing or driving away cattle. *See* Abigeus.

Abigei /əbijiyay/. *See* Abigeus.

Abigere /əbijəriy/. Lat. In the civil law, to drive away. Applied to those who drove away animals with the intention of stealing them. Applied, also, formerly to the similar offense of cattle stealing on the borders between England and Scotland. *See* Abigeus.

To drive out; to expel by force; to produce abortion.

Abigeus /əbijiyəs/. Lat. (Pl., *abigei*, or more rarely *abigeatores*.) In the civil law, a stealer of cattle; one who drove or drew away (*subtraxit*) cattle from their pastures, as horses or oxen from the herds, and made booty of them, and who followed this as a business or trade. The term was applied also to those who drove away the smaller animals, as swine, sheep, and goats. In the latter case, it depended on the number taken,

whether the offender was *fur* (a common thief) or *abigeus*. But the taking of a single horse or ox seems to have constituted the crime of *abigeatus*. And those who frequently did this were clearly *abigei*, though they took but an animal or two at a time. 4 Bl.Comm. 239.

Ability. Capacity to perform an act or service; e. g. to support spouse and family. Financial ability is usually construed as referring to pecuniary ability. *See also* Able to earn; Capacity; Incapacity.

Ab inconvenienti /æb inkənviyniyéntay/. From hardship, or inconvenience. An argument founded upon the hardship of the case, and the inconvenience or disastrous consequences to which a different course of reasoning would lead.

Ab initio /æb inish(iy)ow/. Lat. From the beginning; from the first act; from the inception. An agreement is said to be "void ab initio" if it has at no time had any legal validity. A party may be said to be a trespasser, an estate said to be good, an agreement or deed said to be void, or a marriage or act said to be unlawful, *ab initio*. Contrasted in this sense with *ex post facto*, or with *postea*.

Ab initio mundi /æb inish(iy)ow mánday/. Lat. From the beginning of the world. *Ab initio mundi usque ad hodiernum diem*, from the beginning of the world to this day.

Ab intestat. Intestate.

Ab intestato /æb instestétyow/. Lat. In the civil law, from an intestate; from the intestate; in case of intestacy. *Hæreditas ab intestato*, an inheritance derived from an intestate. *Successio ab intestato*, succession to an intestate, or in case of intestacy. This answers to the descent or inheritance of real estate at common law. 2 Bl.Comm. 490, 516. "Heir *ab intestato*." The phrase "*ab intestato*" is generally used as the opposite or alternative of *ex testamento*, (from, by, or under a will.) *Vel ex testamento, vel ab intestato [hæreditates] pertinent*,—inheritances are derived either from a will or from an intestate (one who dies without a will).

Ab invito /æb inváytow/. Unwillingly. Against one's will. By or from an unwilling party. A transfer ab invito is a compulsory transfer. *See* In invitum; Invito.

Ab irato /æb ayrétyow/. Lat. By one who is angry. A devise or gift made by a man adversely to the interest of his heirs, on account of anger or hatred against them, is said to be made *ab irato*. A suit to set aside such a will is called an action *ab irato*.

Abishering, or abishersing /əbishər(s)ij/. Quit of amercements. It originally signified a forfeiture or amercement, and is more properly called *mishering*, *mishersing*, or *miskering*, according to certain writers. It has since been termed a liberty of freedom, because, wherever this word is used in a grant, the persons to whom the grant is made have the forfeitures and amercements of all others, and are themselves free from the control of any within their fee.

Abjudicatio /æbjudəkéysh(iy)ow/. In old English law, the depriving of a thing by the judgment of a court; a putting out of court; the same as *forisjudicatio*, for judgment, for judgment. A removal from court.

Used to indicate an adverse decision in a writ of right: Thus, the land is said to be *abjudged* from one of the parties and his heirs.

Abjuration /æbjərəyʃən/. A renunciation or abandonment by or upon oath. The renunciation under oath of one's citizenship or some other right or privilege. *See also* Abjure.

Abjuration of the realm /æbjərəyʃən əv ðə rélm/. In ancient English law, a renunciation of one's country, a species of self-imposed banishment, under an oath never to return to the kingdom unless by permission.

Abjure. To renounce, or abandon, by or upon oath. *See* Abjuration.

Able. *See* Ability.

Able-bodied. As used in a statute relating to service in the militia, this term does not imply an absolute freedom from all physical ailment. It imports an absence of those palpable and visible defects which evidently incapacitate the person from performing the ordinary duties of a soldier. *See also* Able seaman.

Ablegati /æbləgéytay/. Papal ambassadors of the second rank, who are sent to a country where there is not a nuncio, with a less extensive commission than that of a nuncio. This title is equivalent to *envoy*.

Able seaman. A grade of merchant seamen. *See* 46 U.S.C.A. § 7306 et seq.

Able to earn. Ability to obtain and hold employment means that the person referred to is either able or unable to perform the usual duties of whatever employment may be under consideration, in the manner that such duties are customarily performed by the average person engaged in such employment. *Kinyon v. Kinyon*, 230 Mo.App. 623, 71 S.W.2d 78, 82. *See also* Disability; Gainful employment or occupation.

Able to purchase. "Ability" in sales contracts, dependent on ability to purchase, usually means financial ability. *Anderson v. Craig*, 111 Mont. 182, 108 P.2d 205, 206. Purchaser must have financial ability and legal capacity to acquire land. *Campbell v. Hood*, Tex.Com.App., 35 S.W.2d 93, 95. Purchaser is able to purchase, as respects broker's right to commission, if he is financially able to command the necessary funds to close the deal within the time required. *Hersh v. Garau*, 218 Cal. 460, 23 P.2d 1022. *See* Financially able.

Ablocatio /æblowkékéysh(iy)ow/. A letting out to hire, or leasing for money. Sometimes used in the English form "ablocation."

Abmatertera /æbmətártərə/. Lat. In the civil law, a great-great-grandmother's sister (*abavice soror*). Called *matertera maxima*.

Abnepos /æbnépo(w)s/. Lat. A great-great-grandson. The grandson of a grandson or granddaughter.

Abneptis /æbnéptəs/. Lat. A great-great-granddaughter. The granddaughter of a grandson or granddaughter.

Abode. One's home; habitation; place of dwelling; or residence. Ordinarily means "domicile." Living place impermanent in character. *Fowler v. Fowler*, 156 Fla. 316, 22 So.2d 817, 818. The place where a person dwells. In *re Erickson*, 18 N.J.Misc. 5, 10 A.2d 142, 146. Residence of a legal voter. *Pope v. Board of Election Com'rs*, 370 Ill. 196, 18 N.E.2d 214, 216. Fixed place of residence for the time being. *Augustus Co.*, for Use of *Bourgeois v. Manzella*, 19 N.J.Misc. 29, 17 A.2d 68, 70. For service of process, one's fixed place of residence for the time being; his "usual place of abode." *Fed.R. Civil P. 4. Kurilla v. Roth*, 132 N.J.L. 213, 38 A.2d 862, 864. *See* Domicile; Residence.

General abode. See Residence.

Abogado /ävowgádow/. Sp. An advocate. *See* Bozero.

Ab olim /æb ówlm/. Of old.

Abolish. To do away with wholly; to annul; to repeal; to rescind; to abrogate; to dispense with. Put an end to. *Stretch v. Murphy*, 166 Or. 439, 112 P.2d 1018, 1021. Imports absolute destruction having its root in the Latin word "abolere," meaning to destroy utterly. Applies particularly to things of a permanent nature, such as institutions, usages, customs, as the abolition of slavery.

Abolishment. *See* Abolish.

Abolition. The destruction, annihilation, abrogation, or extinguishment of anything. *See* Abolish.

In the Civil, French and German law, abolition is used nearly synonymously with pardon, remission, grace.

A bon droit /éy bôn dróyt/. With good reason; justly; rightfully.

Aboriginal title /æbərɪjənəl táytəl/. Such title provides original natives of United States exclusive right to occupy lands and waters used by them and their ancestors before United States asserted sovereignty over such areas. *Yankton Sioux Tribe of Indians v. State of S.D.*, C.A.S.D., 796 F.2d 241, 243.

Abortee /æbórtiý/. The woman upon whom an abortion is performed.

Abortifacient /æbórtáféysh(iy)ənt/. Drug or medicine capable of, or used for, producing abortion.

Abortion. The spontaneous or artificially induced expulsion of an embryo or fetus. As used in legal context, usually refers to induced abortion. For the law relating to abortion see *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147; *Webster v. Reproductive Health Services*, 109 S.Ct. 3040, 106 L.Ed.2d 410. *See also* Viability; Viable child.

Abortionist. One who performs abortions.

Abortus /æbórtəs/. Lat. An aborted fetus.

About. Near in time, quantity, number, quality, or degree. Substantially, approximately, almost, or nearly. *Odom v. Langston*, 351 Mo. 609, 173 S.W.2d 826, 829.

When used with reference to time, the term is of flexible significance, varying with the circumstances and the connection in which it is employed. But its use does not necessarily render time immaterial, nor make a contract one terminable at will. In a charter party, "about to sail" means just ready to sail. With relation to quantity, the term suggests only an estimate of probable amount. Its import is that the actual quantity is a near approximation to that mentioned, and it has the effect of providing against accidental variations. *Norrington v. Wright*, 115 U.S. 188, 6 S.Ct. 12, 29 L.Ed. 366. It may be given practically the same effect as the phrase more or less. Synonymous with "on" or "upon," as in offense of carrying concealed weapons. Near by, close at hand, convenient of access. *Brown v. U. S.*, 30 F.2d 474, 475, 58 App.D.C. 311. As to number, it merely implies an estimate of a particular lot or class and not a warranty. In connection with distance or locality, the term is of relative significance, varying with the circumstances.

Aboutissement /abúwtismón/. Fr. An abuttal or abutment.

Above. Higher; superior. As, court above; plaintiff or defendant above. *Above all incumbances* means in excess thereof. Principal, as distinguished from what is auxiliary or instrumental.

Abpatruus /æbpátruwəs/. Lat. A great-great-uncle; or, a great-great-grandfather's brother (*abavi frater*). It sometimes means uncle, and sometimes great-uncle.

Abridge. To reduce or contract; to diminish or curtail. Usually spoken of written language. See *Abridgment*.

Copyright law. To epitomize; to reduce; to contract. It implies preserving the substance, the essence, of a work, in language suited to such a purpose. In making extracts there is no condensation of the author's language, and hence no abridgment. To abridge requires the exercise of the mind; it is not copying. Between a compilation and an abridgment there is a clear distinction. A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of one author.

Abridgment. Condensation; contraction. An epitome or compendium of another and larger work, wherein the principal ideas of the larger work are summarily contained. Abridgments of the law are brief digests of the law, arranged alphabetically. In this context, the term "digest" (*q.v.*) has generally supplanted that of "abridgment." See also *Abstract*; *Headnote*; *Syllabus*.

As used in First Amendment (U.S.Const.) means neither more nor less than what it ordinarily means; abridgement occurs when legislative act either suppresses or substantially interferes with free speech. *Keene v. Meese*, D.C.Cal., 619 F.Supp. 1111, 1123.

Abridgment of damages. The right of the court to reduce the damages in certain cases. See *Remittitur*.

Abroad. In English chancery law, beyond the seas.

Abrogate /æbrəgeyt/. To annul, cancel, revoke, repeal, or destroy. To annul or repeal an order or rule issued by a subordinate authority; to repeal a former law by legislative act, or by usage.

Abrogation /æbrəgeýshən/. The destruction or annulling of a former law, by an act of the legislative power, by constitutional authority, or by usage. It stands opposed to *rogation*; and is distinguished from *derogation*, which implies the taking away only some part of a law; from *subrogation*, which denotes the substitution of a clause; from *dispensation*, which only sets it aside in a particular instance; and from *antiquation*, which is the refusing to pass a law. Implied abrogation takes place when the new law contains provisions which are positively contrary to former laws, without expressly abrogating such laws; and also when the order of things for which the law has been made no longer exists. *Ex parte Lum Poy*, D.C.Wash., 23 F.2d 690.

For "Express abrogation," see that title. See also *Annul*; *Repeal*.

Abscond /æbskónd/. To go in a clandestine manner out of the jurisdiction of the courts, or to lie concealed, in order to avoid their process. To hide, conceal, or absent oneself clandestinely, with the intent to avoid legal process. Postponing limitations. *Keck v. Pickens*, 207 Ark. 757, 182 S.W.2d 873, 875. Fleeing from arresting or prosecuting officers of the state. See *Fugitive*.

Absconding debtor. One who absconds from his creditors to avoid payment of debts. A debtor who has intentionally concealed himself from his creditors, or withdrawn himself from the reach of their suits, with intent to frustrate their just demands. Such act was formerly an "Act of bankruptcy" (*q.v.*).

Absence. The state of being absent, removed, or away from one's domicile, or usual place of residence. Not present at particular time; opposite of appearance at a specified time. See also *Seven years' absence*.

Absent. Being away from; at a distance from; not in company with.

Absente /æbséntiy/. Lat. Being absent; often used in the old reports of one of the judges not present at the hearing of a cause.

Absente reo /æbséntiy riýow/. The defendant being absent.

Absentee. One who is absent from his usual place of residence or domicile.

Absentee landlord. Lessor of real property (normally the owner) who does not live on the premises.

Absentee voting. Participation (usually by mail) in elections by qualified voters who, because of serious illness, military service, or absence because of travel or other reasons, are unable to appear at the polls in person on election day. See also *Proxy* with respect to absent voting by stockholder.

Absentem accipere debemus eum qui non est eo loci in quo petitur /æbséntəm æksípəriy dəbíyməs iyəm kwáy nón est iyow lówsay in kwów pétətər/. We ought

to consider him absent who is not in the place where he is demanded (or sought).

Absentia ejus qui reipublica causa abest, neque ei neque alii damnosa esse debet /æbséns(h)iy)ə íyjas kwáy ríyaypáblásiy kózə æbést, néykwiý iyay néykwiý æliýay dæmnówsə ésiy díybət/. The absence of him who is away in behalf of the republic (on business of the state) ought not to be prejudicial either to him or to another.

Absoile, assoil, assoile /əsóyl/. To pardon; to deliver from excommunication.

Absoluta sententia expositore non indiget /æbsəl(y)úwtə sánténsh(iy)ə ekspozətóriy non índajət/. An absolute sentence or proposition (one that is plain without any scruple, or absolute without any saving) needs not an expositor.

Absolute. Complete; perfect; final; without any condition or incumbrance; as an absolute bond (*simplex obligatio*) in distinction from a conditional bond. Unconditional; complete and perfect in itself; without relation to or dependence on other things or persons.

Free from conditions, limitations or qualifications, not dependent, or modified or affected by circumstances; that is, without any condition or restrictive provisions. *Button v. Day*, 205 Va. 629, 139 S.E.2d 91, 100.

As to *absolute* Conveyance; Covenant; Delivery; Divorce; Estate; Gift; Guaranty; Interest; Legacy; Nuisance; Nullity; Obligation; Property; Right; Rule; Sale; Title, see those titles.

Absolute deed. A document of conveyance without restriction or defeasance; generally used in contradistinction to mortgage deed. *See* Deed.

Absolute law. The true and proper law of nature, immutable in the abstract or in principle, in theory, but not in application; for very often the object, the reason, situation, and other circumstances, may vary its exercise and obligation. *See also* Natural law.

Absolute liability. Responsibility without fault or negligence. *Rylands v. Fletcher*, 3 H.L. 330; *Clark-Aiken Co. v. Cromwell-Wright Co., Inc.* (Mass.), 323 N.E.2d 876. *See* Strict liability.

Absolutely. Completely; wholly; without qualification; without reference or relation to, or dependence upon, any other person, thing, or event. Thus, *absolutely void* means utterly void; that which the law or nature of things forbids to be enforced at all. *Absolutely necessary* may be used to make the idea of necessity more emphatic. Independently or unconditionally, wholly or positively. *Collins v. Hartford Accident & Indemnity Co.*, 178 Va. 501, 17 S.E.2d 413, 418.

Absolution. In *Canon Law*, a juridical act whereby the clergy declare that the sins of such as are penitent are remitted. Among Protestants it is chiefly used for a sentence by which a person who stands excommunicated is released or freed from that punishment.

In the *Civil Law*, a sentence whereby a party accused is declared innocent of the crime laid to his charge.

In *French Law*, the dismissal of an accusation.

Absolutism /æbsəl(y)úwtízəm/. In politics, a system of government in which public power is vested in some person or persons, unchecked and uncontrolled by any law, institution, constitutional device, or coordinate body. A government which is run by a dictator whose power is without restriction and without any checks or balances.

Absolve. To set free, or release, as from obligation, debt, or responsibility. *State ex rel. St. Louis Car Co. v. Hughes*, 348 Mo. 125, 152 S.W.2d 193, 194. *See also* Amnesty; Pardon; Release.

Absorption /æbzórps(h)ən/. Act or process of absorbing. Term used in collective bargaining agreements to provide seniority for union members if employer's business is merged with another. *Humphrey v. Moore, Ky.*, 375 U.S. 335, 84 S.Ct. 363, 369. Partial or complete payment of freight charges by seller or freight carrier. Costs not passed on to customer.

Absque /æbskwíy/. Without. Occurs in phrases taken from the Latin; such as those immediately following.

Absque aliquo inde redendo /æbskwíy ælækwow índiy rədéndow/. Lat. Without reserving any rent therefrom; without rendering anything therefrom. A term used of a free grant by the crown.

Absque consideratione curiæ /æbskwíy kənsidəreýshiyówniy kyúriýiy/. In old practice, without the consideration of the court; without judgment.

Absque dubio /æbskwíy d(y)úwbíyow/. Lat. Without doubt.

Absque hoc /æbskwíy hók/. Without this. These are technical words of denial, used in pleading at common law by way of special traverse, to introduce the negative part of the plea, following the affirmative part or inducement. *See also* Traverse.

Absque impetitione vasti /æbskwíy ímpətishiyówniy véystay/. Without impeachment of waste; without accountability for waste; without liability to suit for waste. A clause anciently often inserted in leases (as the equivalent English phrase sometimes is) signifying that the tenant or lessee shall not be liable to suit (*impetito*) or challenged, or called to account, for committing waste. *See* Waste.

Absque tali causa /æbskwíy téylay kózə/. Lat. Without such cause. A form of replication, now obsolete, in an action *ex delicto* which works a general denial of the whole matter of the defendant's plea of *de injuria*.

Abstention doctrine. Doctrine of "abstention" permits a federal court, in the exercise of its discretion, to relinquish jurisdiction where necessary to avoid needless conflict with the administration by a state of its own affairs. *Surowitz v. New York City Emp. Retirement System, D.C.N.Y.*, 376 F.Supp. 369, 376; *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct.

643, 85 L.Ed. 971. *See also* Equitable abstention doctrine; Pullman abstention.

Abstinence. Refraining completely from indulgence in some act such as eating or drinking, unlike temperance which presupposes moderate indulgence. *Mayfield v. Fidelity & Casualty Co. of N. Y.*, 16 C.A.2d 611, 61 P.2d 83.

Abstract /əbstrækt/, *n.* A lesser quantity containing the virtue and force of a greater quantity; an abridgment. A transcript is generally defined as a copy, and is more comprehensive than an abstract. Summary or epitome, or that which comprises or concentrates in itself the essential qualities of a larger thing or of several things. *Robbins Inv. Co. v. Robbins*, 49 Cal. App.2d 446, 122 P.2d 91, 92. *See* Abridge; Abridgment; Digest; Headnote; Syllabus.

Abstract /əbstrækt/, *v.* To take or withdraw from; as, to abstract the funds of a bank. To remove or separate. To summarize or abridge.

Abstraction. Taking from with intent to injure or defraud. "Wrongful abstraction" is unauthorized and illegal taking or withdrawing of funds, etc., and appropriation thereof to taker's benefit. *Pacific Coast Adjustment Bureau v. Indemnity Ins. Co. of North America*, 115 Cal.App. 583, 2 P.2d 218, 219.

Abstract of a fine. In old English conveyancing, one of the parts of a fine, being an abstract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. 2 Bl.Comm. 351. More commonly called the "note" of the fine. *See* Fine; Concord.

Abstract of record. A complete history in short, abbreviated form of the case as found in the record, complete enough to show the appellate court that the questions presented for review have been properly reserved. Synopsis or summary of facts, rather than table of contents of transcript. Abbreviated accurate and authentic history of (e.g. trial court) proceedings. *Brown v. Reichmann*, 237 Mo.App. 136, 164 S.W.2d 201, 207.

Abstract of title. A condensed history of the title to land, consisting of a synopsis or summary of the material or operative portion of all the conveyances, of whatever kind or nature, which in any manner affect said land, or any estate or interest therein, together with a statement of all liens, charges, or liabilities to which the same may be subject, and of which it is in any way material for purchasers to be apprised. An epitome of the record evidence of title, including maps, plats, and other aids. *Commissioners' Court of Madison County v. Wallace*, 118 Tex. 279, 15 S.W.2d 535, 536. An epitome of the conveyances, transfers, and other facts relied on as evidence of title, together with all such facts appearing of record as may impair the title. *State ex rel. Freeman v. Abstracters Board of Examiners*, 99 Mont. 564, 45 P.2d 668, 670. Memorandum or concise statement in orderly form of the substance of documents or facts appearing on public records which affect title to

real property. *State ex rel. Doria v. Ferguson*, 145 Ohio St. 12, 60 N.E.2d 476, 478. *See also* Torrens title system.

Abstract question. One which does not rest upon existing facts or rights. *Morris Plan Bank of Fort Worth v. Ogden*, Tex.Civ.App., 144 S.W.2d 998, 1004. Hypothetical question. *See also* Hypothetical question; Moot.

Absurdity. Anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion. Obviously and flatly opposed to the manifest truth; inconsistent with the plain dictates of common sense; logically contradictory; nonsensical; ridiculous.

Abundans cautela non nocet /əbʊndənz kɔtiylə nɒn nɔsət/. Abundant or extreme caution does no harm. This principle is generally applied to the construction of instruments in which superfluous words have been inserted more clearly to express the intention.

Ab urbe condita /əb ʊrbiy kɔnditə/. From the founding of the city. *See* A.U.C.

Abus de confiance /əbyʊw də kɔnfijɔns əbyʊws də kənfáyəns/. Fraudulently misusing or spending to anybody's prejudice goods, cash, bills, documents, or contracts handed over for a special object.

Abuse /əbyʊws/, *n.* Everything which is contrary to good order established by usage. Departure from reasonable use; immoderate or improper use. Physical or mental maltreatment. Misuse. Deception.

To wrong in speech, reproach coarsely, disparage, revile, and malign. *State v. Neubauer*, 2 Conn.Cir. 169, 197 A.2d 93, 96. *See* Defamation.

Child abuse. *See* Child abuse.

Civil law. The destruction of the substance of a thing in using it. *See* Abuse, *v.*

Corporate franchise or entity. The abuse or misuse of its franchises by a corporation signifies any positive act in violation of the charter and in derogation of public right, willfully done or caused to be done. The use of rights or franchises as a pretext for wrongs and injuries to the public.

Discretion. "Abuse of discretion" is synonymous with a failure to exercise a sound, reasonable, and legal discretion. It is a strict legal term indicating that appellate court is of opinion that there was commission of an error of law by the trial court. It does not imply intentional wrong or bad faith, or misconduct, nor any reflection on the judge but means the clearly erroneous conclusion and judgment—one is that clearly against logic and effect of such facts as are presented in support of the application or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing; an improvident exercise of discretion; an error of law. *State v. Draper*, 83 Utah 115, 27 P.2d 39; *Ex parte Jones*, 246 Ala. 433, 20 So.2d 859, 862. A discretion exercised to an end or purpose not justified by and clearly against reason and evidence. Unreasonable departure from considered precedents and settled judicial custom, constituting error of law. *Beck v. Wings Field*,

Inc., C.C.A.Pa., 122 F.2d 114, 116, 117. A judgment or decision by an administrative agency or judge which has no foundation in fact or in law. "Abuse of discretion" by trial court is any unreasonable, unconscionable and arbitrary action taken without proper consideration of facts and law pertaining to matter submitted. *Harvey v. State*, Okl.Cr., 458 P.2d 336, 338.

Drug abuse. See that title.

Female child. An injury to the genital organs in an attempt at carnal knowledge, falling short of actual penetration. *Lee v. State*, 246 Ala. 69, 18 So.2d 706, 707. But, according to other authorities, "abuse" is here equivalent to ravishment or rape. Any injury to private parts of girl constitutes "abuse" within meaning of criminal statute proscribing abuse of girl under age of 12 years in attempt to have carnal knowledge of her; mere hurting of private parts of girl, even though they are not bruised, cut, lacerated or torn, is sufficient. *Ard v. State*, 57 Ala.App. 250, 327 So.2d 745, 747. See also *Carnal abuse*; *Child abuse*.

Police officer. As used in statute prohibiting one from obstructing, resisting, or abusing an officer, word "abuses" means to wrong in speech, reproach coarsely, disparage, revile, or malign an officer who is performing his duty. *State v. Neubauer*, 2 Conn.Cir. 169, 197 A.2d 93.

Power. Use of one who possesses it in a manner contrary to law. Improper use of power, distinguished from usurpation of power which presupposes exercise of power not vested in the offender. *Swenson v. Cahoon*, 111 Fla. 788, 152 So. 203, 204.

Process. The gist of an action for "abuse of process" is improper use or perversion of process after it has been issued. *Publix Drug Co. v. Breyer Ice Cream Co.*, 347 Pa. 346, 32 A.2d 413, 415. A malicious abuse of legal process occurs where the party employs it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it. 500 West 174 St. v. *Vasquez*, 67 Misc.2d 993, 325 N.Y.S.2d 256, 258. Thus, where the purpose of a prosecution for issuance of a check without funds was to collect a debt, the prosecution is an abuse of criminal process. Regular and legitimate use of process, although with a bad intention, is not a malicious "abuse of process." *Priest v. Union Agency*, 174 Tenn. 304, 125 S.W.2d 142, 143. Action for "abuse of process" is distinguished from action for "malicious prosecution," in that action for abuse of process rests upon improper use of regularly issued process, while "malicious prosecution" has reference to wrong in issuance of process. *Lobel v. Trade Bank of New York*, 132 Misc. 643, 229 N.Y.S. 778, 781.

Fundamental elements of this tort are an ulterior purpose, and a willful act in the use of process not proper in the regular conduct of the proceeding. *Barquis v. Merchants Collection Ass'n of Oakland, Inc.*, Cal., 7 C.3d 94, 101 Cal.Rptr. 745, 752, 496 P.2d 817.

See also *Malicious abuse of legal process*; *Malicious use of process*.

Abuse /əbyúwz/, *v.* To make excessive or improper use of a thing, or to employ it in a manner contrary to the natural or legal rules for its use. To make an extravagant or excessive use, as to abuse one's authority.

Abused and neglected children. Those who are suffering serious physical or emotional injury inflicted on them, including malnutrition. See *Abuse (Female child)*; *Child abuse*.

Abusive. Tending to deceive; practicing abuse; prone to ill-treat by coarse, insulting words or harmful acts. Using ill treatment; injurious, improper, hurtful, offensive, reproachful.

Abut. To reach; to touch. To touch at the end; be contiguous; join at a border or boundary; terminate on; end at; border on; reach or touch with an end. The term "abutting" implies a closer proximity than the term "adjacent." No intervening land.

Abuttals /əbútəlz/. The buttings or boundings of lands, showing to what other lands, highways, or places they belong or are abutting. It has been used to express the end boundary lines as distinguished from those on the sides, as "buttals and sidings".

Abutter. One whose property abuts, is contiguous, or joins at a border or boundary, as where no other land, road, or street intervenes.

Abutting owner. An owner of land which abuts or adjoins. The term usually implies that the relative parts actually adjoin, but is sometimes loosely used without implying more than close proximity. See *Abut*; *Adjoining owners*.

A.C. Anno Christi, the year of Christ.

A/C Abbreviation used by accountants and bookkeepers meaning "account." As used in a check, it has been held not a direction to the bank to credit the amount of the check to the person named, but rather a memorandum to identify the transaction in which the check was issued.

Academic. Pertaining to college, university, or preparatory school. *Sisters of Mercy v. Town of Hooksett*, 93 N.H. 301, 42 A.2d 222, 225. A question or issue which is not relevant to case or is premature or hypothetical. In re *Battell's Will*, 286 N.Y. 97, 35 N.E.2d 913. See *Academic question*.

Academic freedom. Right to teach as one sees fit, but not necessarily the right to teach evil. *Kay v. Bd. of Higher Education of City of N. Y.*, 173 Misc. 943, 18 N.Y.S.2d 821, 829. The term encompasses much more than teaching-related speech rights of teachers. *Cary v. Board of Ed. of Adams-Arapahoe School Dist.* 28-J, Aurora, Colo., C.A.Colo., 598 F.2d 535.

Academic question. An issue which does not require answer or adjudication by court because it is not necessary to case. A hypothetical or moot question. In re *Electrolux Corp.*, 288 N.Y. 440, 43 N.E.2d 480. See *Hypothetical question*.

Academy. An institution of higher learning. An association of experts in some particular branch of art, literature, law, or science (e.g. American Academy of Matrimonial Lawyers). In its original meaning, an association formed for mutual improvement, or for the advancement of science or art; in later use, a species of educational institution, of a level between the elementary school and the college. U. S. ex rel. *Jacovides v. Day*, C.C.A.N.Y., 32 F.2d 542, 544; *Sisters of Mercy v. Town of Hooksett*, 93 N.H. 301, 42 A.2d 222, 225. In current usage, term commonly refers to private high school or one of the service academies (e. g. Air Force Academy). See *School*.

A cælo usque ad centrum /èy síyloŵ áskwiý æd séntɾəm/. From the heavens to the center of the earth. Or more fully, *Cujus est solum ejus est usque ad cælum et ad inferos*. The owner of the soil owns to the heavens and also to the lowest depths. Or, *Cujus est solum est usque ad cælum*,—the owner of the soil owns to the heavens. This doctrine has, however, been abrogated; the flight of airplanes and oil and gas regulations have qualified the owner's dominion not only in the heavens but in the lowest depths. See *Air rights*.

A cancellando /èy kãnsələndow/. From cancelling. 3 Bl.Comm. 46.

A cancellis /èy kãnsələs/. The Chancellor.

A cancellis curiæ explodi /èy kãnsələs kyúriyý òksplóŵday/. To be expelled from the bar of the court.

Acapte /ækæpt/. In French feudal law, a species of relief; a seignorial right due on every change of a tenant. A feudal right which formerly prevailed in Languedoc and Guyenne, being attached to that species of heritable estates which were granted on the contract of *emphyteusis*.

A causa de cy /ey kózə də síy/. For this reason.

Accedas ad curiam /ækseydəs æd kyúriyəm/. (Lat. That you go to court.) An original writ out of chancery directed to the sheriff, for the purpose of removing a replevin suit from a Court Baron or a hundred court to one of the superior courts of law. It directs the sheriff to go to the lower court, and enroll the proceedings and send up the record. 3 Bl.Comm. 34.

Accede. To consent; agree.

Accelerated Cost Recovery System. (ACRS). An accounting method whereby the cost of a fixed asset is written off for tax purposes over a prescribed period of time. Instituted by the Economic Recovery Tax Act of 1981, and modified by Tax Reform Act of 1986, the system places assets into one of various recovery periods and prescribes the applicable percentage of cost that can be deducted each year. I.R.C. § 168. See also *Asset Depreciation Range*.

Accelerated depreciation. Various methods of depreciation that yield larger deductions in the earlier years of the life of an asset than the straight-line method. Examples include the double declining-balance and the

sum of the years' digits methods of depreciation. See *Accelerated Cost Recovery System; Depreciation*.

Acceleration. The shortening of the time for the vesting in possession of an expectant interest. Hastening of the enjoyment of an estate which was otherwise postponed to a later period. *Blackwell v. Virginia Trust Co.*, 177 Va. 299, 14 S.E.2d 301, 304. If the life estate fails for any reason the remainder is "accelerated". *Elliott v. Brintlinger*, 376 Ill. 147, 33 N.E.2d 199, 201.

Doctrine of "acceleration", as applied to law of property, refers to hastening of owner of future interests toward status of present possession or enjoyment by reason of failure of preceding estate. *Aberg v. First Nat. Bank in Dallas, Tex.Civ.App.*, 450 S.W.2d 403, 408. A remedy used where there has been an anticipatory repudiation or a possibility of a future breach. *Rose City Transit Co. v. City of Portland*, 18 Or.App. 369, 525 P.2d 1325, 1353.

Acceleration clause. A provision or clause in a mortgage, note, bond, deed of trust, or other credit agreement, that requires the maker, drawer or other obligor to pay part or all of the balance sooner than the date or dates specified for payment upon the occurrence of some event or circumstance described in the contract. Such clause operates when there has been a default such as nonpayment of principal, interest, or failure to pay insurance premiums. *General Motors Acceptance Corp. v. Shuey*, 243 Ky. 74, 47 S.W.2d 968. U.C.C. § 1-208 provides that if the provision for acceleration is "at will" such demand must be made only under a "good faith" belief that the prospect of payment is impaired.

Acceleration of remainders. Hastening of owner of remainder interest in property toward status of present possession or enjoyment by reason of failure preceding estate. *Aberg v. First Nat'l Bank in Dallas, Tex.Civ. App.*, 450 S.W.2d 403, 408.

Acceleration premium. Increased rate of pay for increased production.

Accept. To receive with approval or satisfaction; to receive with intent to retain. *Morris v. State*, 102 Ark. 513, 145 S.W. 213, 214. Admit and agree to; accede to or consent to; receive with approval; adopt; agree to. *Rocha v. Hulen*, 6 Cal.App.2d 245, 44 P.2d 478, 482, 483. Means something more than to receive, meaning to adopt, to agree to carry out provisions, to keep and retain.

In the capacity of drawee of a bill, means to recognize the draft, and engage to pay it when due. See *Acceptance*.

Acceptance. The taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made. The act of a person to whom a thing is offered or tendered by another, whereby he receives the thing with the intention of retaining it, such intention being evidenced by a sufficient act. *Aetna Inv. Corporation v. Chandler Landscape & Floral Co.*, 227 Mo.App. 17, 50 S.W.2d 195, 197.

The exercise of power conferred by an offer by performance of some act. In re Larney's Estate, 148 Misc. 871, 266 N.Y.S. 564.

Commercial paper. Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification. U.C.C. § 3-410. Certification of a check is acceptance. U.C.C. § 3-411. A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored. U.C.C. § 3-410(2). See also Acceptor; Banker's acceptance; Honor.

Contracts. Compliance by offeree with terms and conditions of offer constitute an "acceptance". Davis & Clanton v. C. I. T. Corporation, 190 S.C. 151, 2 S.E.2d 382, 383. A manifestation of assent to terms thereof made by offeree in a manner invited or required by offer. K-Line Builders, Inc. v. First Federal Sa. & Loan Ass'n, App., 139 Ariz. 209, 677 P.2d 1317, 1320. The offeree's notification or expression to the offeror that he or she agrees to be bound by the terms of the offeror's proposal. A contract is thereby created. The trend is to allow acceptance by any means that will reasonably notify the offeror of the acceptance. See also Confirmation; Offer and acceptance.

Insurance. In a contract of insurance, the "acceptance" occurs when insurer agrees to accept application and to issue policy. Acacia Mut. Life Ass'n v. Berry, 54 Ariz. 208, 94 P.2d 770, 772. Delay or inaction on the part of an insurer cannot constitute an "acceptance". French American Banking Corporation v. Fireman's Fund Ins. Co., D.C.N.Y., 43 F.Supp. 494, 498. More than mere mental resolution or determination on part of insurer to accept application is required; such must be communicated to applicant. Limbaugh v. Monarch Life Ins. Co., Springfield, Mass., Mo.App., 84 S.W.2d 208, 212. Term as applied to policy means assent, acquiescence or agreement to terms and conditions of policy. Baker v. St. Paul Fire & Marine Ins. Co., Mo.App., 427 S.W.2d 281, 291.

Sale of goods. U.C.C. § 2-606 provides three ways a buyer can accept goods: (1) by signifying to the seller that the goods are conforming or that he will accept them in spite of their nonconformity, (2) by failing to make an effective rejection, and (3) by doing an act inconsistent with the seller's ownership. Acceptance of a part of any commercial unit is acceptance of that entire unit.

Types of acceptance.

Conditional. An engagement to pay the draft or accept the offer on the happening of a condition. A "conditional acceptance" is in effect a statement that the offeree is willing to enter into a bargain differing in some respects from that proposed in the original offer. The conditional acceptance is, therefore, itself a counter offer.

Express. An undertaking in direct and express terms to perform the terms of the contract, pay the bill, draft, etc.; an absolute acceptance.

Implied. An undertaking to pay the draft inferred from acts of the drawee of a character which fairly warrant such an inference. In case of a bilateral contract, "acceptance" of an offer need not be expressed, but may be shown by any words or acts indicating the offeree's assent to the proposed bargain.

Qualified. One either conditional or partial, and which introduces a variation in the sum, mode, or place of payment. In contract law, an acceptance based on a variation of the terms of the offer and hence a counter-offer. In negotiable instruments, a variation in the terms of the instrument by the acceptor.

Acceptance au besoin /əkseptóns òw bəzváen/. Fr. Acceptance in case of need. An acceptance by one whom a bill is drawn *au besoin*, that is, in case of refusal or failure of the drawee to accept.

Acceptare /əkseptéeriy/. Lat. To accept; to assent; to assent to a promise made by another.

Accepteur par intervention /əkseptýúr par àntərvonsyówn/. In French law, acceptor of a bill of honor.

Acceptilation /əkseptəléyshən/. In the civil and Scotch law, release made by a creditor to his debtor of his debt, without receiving any consideration. It is a species of donation, but not subject to the forms of the latter, and is valid unless in fraud of creditors. The verbal extinction of a verbal contract, with a declaration that the debt has been paid when it has not; or the acceptance of something merely imaginary in satisfaction of a verbal contract.

Acceptor. The person (the drawee) who accepts a draft and who engages to be primarily responsible for its payment. One who engages that he will pay the draft according to its tenor at the time of his engagement or as completed pursuant to authority on incomplete instruments. U.C.C. § 3-413.

Acceptor supra protest /əksépter s(y)úwprə prówtèst/. One who accepts a bill which has been protested, for the honor of the drawer or any one of the indorsers.

Access. Freedom of approach or communication; or the means, power, or opportunity of approaching, communicating, or passing to and from. Sometimes importing the occurrence of sexual intercourse, Jackson v. Jackson, 182 Okl. 74, 76 P.2d 1062, 1066; otherwise as importing opportunity of communication for that purpose as between husband and wife.

In real property law, the term "access" denotes the right vested in the owner of land which adjoins a road or other highway to go and return from his own land to the highway without obstruction. "Access" to property does not necessarily carry with it possession. People v. Brenneuer, 101 Misc. 156, 166 N.Y.S. 801, 806. See Access, easement of.

For purposes of establishing element of access by defendant in copyright infringement action, "access" is

ordinarily defined as opportunity to copy. *Musto v. Meyer*, D.C.N.Y., 434 F.Supp. 32, 34.

Multiple access. The defense of several lovers in paternity actions. *Yarmark v. Strickland*, 193 So.2d 212.

Public records. The right of access to public records includes not only a legal right of access but a reasonable opportunity to avail oneself of the same. See Freedom of Information Act.

Accessory. See Accessory.

Access, easement of /'i:zmənt əv 'æksəs/. An easement of access is the right which an abutting owner has of ingress to and egress from his premises, in addition to the public easement in the street.

Accessio /'æksəʃ(i)əw/. In Roman law, an increase or addition; that which lies next to a thing, and is supplementary and necessary to the principal thing; that which arises or is produced from the principal thing; an "accessory obligation" (*q.v.*). One of the modes of acquiring property, being the extension of ownership over that which grows from, or is united to, an article which one already possesses.

Accessio includes both accession and accretion as used in the common law. See Adjunction.

Accession. Coming into possession of a right or office; increase; augmentation; addition.

The right to all which one's own property produces, whether that property be movable or immovable; and the right to that which is united to it by accession, either naturally or artificially. The right to own things that become a part of something already owned; *e.g.* riparian owners' right to abandoned river beds and rights of alluvion by accretion and reliction. *Manry v. Robison*, 122 Tex. 213, 56 S.W.2d 438, 443, 444. See Accretion.

A principle derived from the civil law, by which the owner of property becomes entitled to all which it produces, and to all that is added or united to it, either naturally or artificially, (that is, by the labor or skill of another) even where such addition extends to a change of form or materials; and by which, on the other hand, the possessor of property becomes entitled to it, as against the original owner, where the addition made to it by his skill and labor is of greater value than the property itself, or where the change effected in its form is so great as to render it impossible to restore it to its original shape.

Generally, "accession" signifies acquisition of title to personal property by bestowing labor on it which converts it into an entirely different thing or by incorporation of property into a union with other property. *IDS Leasing Corp. v. Leasing Associates, Inc.*, Tex.Civ. App., 590 S.W.2d 607, 609.

The commencement or inauguration of a sovereign's reign.

International law. The absolute or conditional acceptance by one or several nations of a treaty already concluded between other sovereignties. It may be of two

kinds: *First*, the formal entrance of a third nation into a treaty so that such nation becomes a party to it; and this can only be with the consent of the original parties. *Second*, a nation may accede to a treaty between other nations solely for the purpose of guarantee, in which case, though a party, it is affected by the treaty only as a guarantor. See Adhesion.

Accessions. Goods which are installed in or affixed to other goods. U.C.C. § 9-314(1). See also Fixture.

Accessorium non ducit, sed sequitur suum principale /'æksəsəriyəm nɒn dyúwsət sed sékwətər syúwəm prinsəpéyli/. That which is the accessory or incident does not lead, but follows, its principal.

Accessorius sequitur naturam sui principalis /'æksəsəriyəs sékwədər neytýrəm syúway prinsəpéyləs/. An accessory follows the nature of his principal. One who is accessory to a crime cannot be guilty of a higher degree of crime than his principal.

Accessory. Anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it as an incident, or as subordinate to it, or which belongs to or with it. Adjunct or accompaniment. *Louis Werner Saw Mill Co. v. White*, 205 La. 242, 17 So.2d 264, 270. A thing of subordinate importance. Aiding or contributing in secondary way or assisting in or contributing to as a subordinate. *Gilfoil v. Greenspon*, La.App., 216 So.2d 829, 831.

Criminal law. Contributing to or aiding in the commission of a crime. One who, without being present at the commission of a felonious offense, becomes guilty of such offense, not as a chief actor, but as a participator, as by command, advice, instigation, or concealment; either before or after the fact or commission; a *particeps criminis*. Model Penal Code, § 2.06.

One who is not the chief actor in the offense, nor present at its performance, but in some way concerned therein, either *before* or *after* the act committed. One who aids, abets, commands, or counsels another in the commission of a crime. See also Abettor; Aid and abet; Accomplice.

Accessory after the fact. A person who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon, in order to enable him to escape from punishment, or the like. *Robinson v. State*, 5 Md.App. 723, 249 A.2d 504, 507; 18 U.S.C.A. § 3. See also Harbor; Obstructing justice.

Accessory before the fact. One who orders, counsels, encourages, or otherwise aids and abets another to commit a felony and who is not present at the commission of the offense. *Com. v. Leach*, 455 Pa. 448, 317 A.2d 293, 294. The primary distinction between the accessory before the fact and the principal in the second degree is presence. Virtually all states have now expressly abrogated the distinction between principals and accessories before the fact; the latter now being classified as principals.

Accessory during the fact. One who stands by without interfering or giving such help as may be in his power to prevent the commission of a criminal offense.

Accessory building. Structures used for benefit of main building; *e.g.* tool shed. Out-buildings.

Accessory contract. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others; such as suretyship, mortgage, and pledge.

Accessory obligation. An obligation which is incidental to another or principal obligation; *e.g.* the obligation of a surety.

Accessory use. With reference to zoning law, an "accessory use" in its ordinary signification is a use which is dependent on or pertains to principal or main use. *Town of Foxborough v. Bay State Harness Horse Racing & Breeding Ass'n, Inc., Mass.App., 366 N.E.2d 773, 777.* A use which is subordinate to, clearly incidental to, customary in connection with, and ordinarily located on same lot with, principal use. *Board of County Com'rs of Boulder County v. Thompson, 177 Colo. 277, 493 P.2d 1358, 1360.*

Access to counsel. Right of one to consult with his attorney as guaranteed by the 6th Amendment, U.S. Const. *Geders v. U. S., 425 U.S. 80, 96 S.Ct. 1330, 47 L.Ed.2d 592.* See also Counsel, right to.

Access to courts. Right of person to require fair hearing from judiciary. *Gilmore v. Lynch, D.C.Cal., 319 F.Supp. 105, 110.*

Accident. The word "accident" is derived from the Latin verb "accidere" signifying "fall upon, befall, happen, chance." In an etymological sense anything that happens may be said to be an accident and in this sense, the word has been defined as befalling a change; a happening; an incident; an occurrence or event. In its most commonly accepted meaning, or in its ordinary or popular sense, the word may be defined as meaning: a fortuitous circumstance, event, or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an unusual, fortuitous, unexpected, unforeseen or unlooked for event, happening or occurrence; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; chance or contingency; fortune; mishap; some sudden and unexpected event taking place without expectation, upon the instant, rather than something which continues, progresses or develops; something happening by chance; something unforeseen, unexpected, unusual, extraordinary or phenomenal, taking place not according to the usual course of things or events, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence. The word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occur-

rence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events. An event that takes place without one's foresight or expectation; an undesigned, sudden, and unexpected event. *Kochring Co. v. American Auto. Ins. Co., C.A.Wis., 353 F.2d 993, 996.* See also Act of God; Casualty; Inevitable accident; Unavoidable accident.

Its synonyms are chance, contingency, mishap, mischance, misfortune, disaster, calamity, catastrophe.

Automobiles. The word as used in automobile liability policy requiring notice of any "accident" to be given to the insurer as a condition precedent to liability means an untoward and unforeseen occurrence in the operation of the automobile which results in injury to the person or property of another. *Ohio Casualty Ins. Co. v. Marr, C.C.A.Okl., 98 F.2d 973, 975.* The word "accident", requiring operator of vehicle to stop immediately in case of accident, contemplates any situation occurring on the highway wherein driver so operates his automobile as to cause injury to the property or person of another using the same highway. See also Hit and run accident.

Insurance contract. An accident within accident insurance policies is an event happening without any human agency, or, if happening through such agency, an event which, under circumstances, is unusual and not expected by the person to whom it happens. A more comprehensive term than "negligence," and in its common signification the word means an unexpected happening without intention or design.

Maritime law. "Accidents of navigation" or "accidents of the sea" are such as are peculiar to the sea or to usual navigation or the action of the elements, which do not happen by the intervention of man, and are not to be avoided by the exercise of proper prudence, foresight, and skill. *The G. R. Booth, 171 U.S. 450, 19 S.Ct. 9, 43 L.Ed. 234.* See also Perils of the sea.

Unavoidable accident. One which is not occasioned in any degree, either directly or remotely, by the want of such care and prudence as the law holds every man bound to exercise. *Vincent v. Johnson, Tex.Civ.App., 117 S.W.2d 135.* One which could not have been prevented by exercise of due care by both parties under circumstances prevailing. *Woodiwiss v. Rise, 3 Wash. App. 5, 471 P.2d 124, 126.* One which occurs while all persons concerned are exercising ordinary care, which is not caused by fault of any of persons and which could not have been prevented by any means suggested by common prudence. *Cavanaugh v. Jepson, Iowa, 167 N.W.2d 616, 623.* See Restatement, Second, Torts § 8. See also Unavoidable accident.

Workers' compensation acts. Within meaning of Worker's Compensation Act is any unforeseen, untoward happening which was not to be reasonably anticipated. *A.P. Green Refractories Co. v. Workmen's Compensation Appeal Bd., 8 Pa.Cmwlth. 172, 301 A.2d 914, 917.* As referred to in Act is an unlooked for and untoward event which is not expected or designed by injured employee; a result produced by a fortuitous cause. *Reams v.*

Burlington Industries, 42 N.C.App. 54, 255 S.E.2d 586, 587.

Accident policy. Type of business and personal insurance coverage that insures against loss resulting directly from bodily injuries effected during the term of the policy solely through accidental means.

Accidental. Happening by chance, or unexpectedly; taking place not according to usual course of things; casual; fortuitous. *Norris v. New York Life Ins. Co.*, C.C.A.Md., 49 F.2d 62, 63; *Murphy v. Travelers Ins. Co.*, 141 Neb. 41, 2 N.W.2d 576, 578, 579. *See also* Accident.

Accidental cause. That which produces result which is not foreseen; producing an unexpected effect. *Fernandez v. Flint Bd. of Ed.*, C.A.Mich., 283 F.2d 906, 908. *See also* Accidental.

Accidental death. One caused by unexpected or unintended means. *Sanders v. Metropolitan Life Ins. Co.*, 104 Utah 75, 138 P.2d 239.

Accidental death benefit. Provision in insurance policy encompassing death caused by sudden, unexpected, external force. *Maneval v. Lutheran Bros.*, Del.Super., 281 A.2d 502, 506.

Accidental killing. One resulting from an act which is lawful and lawfully done under a reasonable belief that no harm is possible; distinguished from "involuntary manslaughter," which is the result of an unlawful act, or of a lawful act done in an unlawful way.

Accidental means. Injury resulting from unintended, unforeseeable, and unexpected cause.

Accidental vein. *See* Vein.

Accident proneness. Tendency towards being involved in or contributing to accidents.

Accidere /æksidəri/. Lat. To fall; fall in; come to hand; happen. Judgment is sometimes given against an executor or administrator to be satisfied out of assets *quando acciderint*; i.e., when they shall come to hand.

Accion /æksiyówn/. In Spanish law, a right of action; also the method of judicial procedure for the recovery of property or a debt.

Accipere quid ut justitiam facias, non est tam accipere quam extorquere /æksípəriy kwíd ðt jəstishiyəm féyshiyəs, nòn est tэм æksípəriy kwэм ekstórkwəriy/. To accept anything as a reward for doing justice is rather extorting than accepting.

Accipitare /æksipətəriy/. To pay relief to lords of manors. *Capitali domino accipitare*, i.e., to pay a relief, homage, or obedience to the chief lord on becoming his vassal.

Accola /ækələ/. *Civil law.* One who inhabits or occupies land near a place, as one who dwells by a river, or on the bank of a river.

Feudal law. A husbandman; an agricultural tenant; a tenant of a manor. A name given to a class of villeins in Italy.

Accomenda /ækəméndə/. In maritime law, a contract between the owner of goods and the master of a ship, by which the former intrusts the property to the latter to be sold by him on their joint account. In such case, two contracts take place: First, the contract called *mandatum*, by which the owner of the property gives the master power to dispose of it; and the contract of partnership, in virtue of which the profits are to be divided between them. One party runs the risk of losing his capital; the other, his labor. If the sale produces no more than first cost, the owner takes all the proceeds. It is only the profits which are to be divided.

Accommodated party. One to whom the credit of the accommodation party is loaned, and is not necessarily the payee, since the inquiry always is as to whom did the maker of the paper loan his credit as a matter of fact; not third person who may receive advantage. *See also* Accommodation party.

Accommodation /ækómədəyshən/. An arrangement or engagement made as a favor to another, not upon a consideration received. Something done to oblige, usually spoken of a loan of money or commercial paper; also a friendly agreement or composition of differences. The word implies no consideration. While a party's intent may be to aid a maker of note by lending his credit, if he seeks to accomplish thereby legitimate objects of his own, and not simply to aid maker, the act is not for accommodation. *See* Accommodation maker.

Accommodation bill or note. *See* Accommodation paper.

Accommodation indorsement. *See* Indorsement.

Accommodation indorser. A party who places his name to a note without consideration for purpose of benefiting or accommodating some other party. U.C.C. § 3-415. *See also* Indorsement.

Accommodation lands. Land bought by a builder or speculator, who erects houses thereon, and then leases portions thereof upon an improved ground-rent.

Accommodation line. Insurance policies accepted by insurer because agent or brokers account in general is satisfactory, even though specific policy would otherwise likely not be acceptable.

Accommodation loan. Loan furnished as an act of friendship or assistance without tangible or full consideration; money or credit extended for such reasons.

Accommodation maker. One who puts his name to a note without any consideration with the intention of lending his credit to the accommodated party. In re Chamberlain's Estate, Cal.App., 109 P.2d 449, 454. U.C.C. § 3-415. *See also* Accommodation party.

Accommodation note. One to which accommodating party has put his name, without consideration, to accommodate some other party, who is to issue it and is expected to pay it. U.C.C. § 3-415.

Accommodation paper. An accommodation bill or note is one to which the accommodating party, be he acceptor, drawer, or indorser, has put his name, without

consideration, for the purpose of benefiting or accommodating some other party who desires to raise money on it, and is to provide for the bill when due. *Hickox v. Hickox*, Tex.Civ.App., 151 S.W.2d 913, 917. Such must be executed for the purpose of loaning credit, and incidental benefit to party is insufficient. *Morrison v. Painter*, Mo.App., 170 S.W.2d 965, 970.

Accommodation party. One who signs commercial paper in any capacity for purpose of lending his name (*i.e.* credit) to another party to instrument. U.C.C. § 3-415. Such party is a surety.

Accommodation road. A road opened for benefit of certain individuals to go from and to their homes, for service of their lands, and for use of some estates exclusively. *See also* Easement.

Accommodatum /əkōmōdētəm/. The same as **Commodatum** (*q.v.*).

Accompany. To go along with. To go with or attend as a companion or associate. To occur in association with. *United States v. Lee*, C.C.A.Wis., 131 F.2d 464, 466. The word has been defined judicially in cases involving varied facts; thus, an automobile driver under sixteen is not accompanied by an adult person unless the latter exercises supervision over the driver; an unlicensed driver is not accompanied by a licensed driver unless the latter is near enough to render advice and assistance.

Accomplice /əkōmpləs/. One who knowingly, voluntarily and with common intent unites with the principal offender in the commission of a crime. *Smith v. State*, Tenn.Cr.App., 525 S.W.2d 674, 676; Model Penal Code, § 2.06(3). One who is in some way concerned or associated in commission of crime; partaker of guilt; one who aids or assists, or is an accessory. *McLendon v. U. S.*, C.C.A.Mo., 19 F.2d 465, 466. Equally concerned in the commission of crime. *Fryman v. Commonwealth*, 289 Ky. 540, 159 S.W.2d 426, 429. One who is guilty of complicity in crime charged, either by being present and aiding or abetting in it, or having advised and encouraged it, though absent from place when it was committed, though mere presence, acquiescence, or silence, in the absence of a duty to act, is not enough, no matter how reprehensible it may be, to constitute one an accomplice. One is liable as an accomplice to the crime of another if he gave assistance or encouragement or failed to perform a legal duty to prevent it with the intent thereby to promote or facilitate commission of the crime. *See also* Abet; Aid and abet; Accessory.

Accomplice liability. Criminal responsibility of one who acts with another before, during or after the perpetration of a crime. Model Penal Code, § 2.06.

Accomplice witness. A person who either as principal, accomplice, or accessory, was connected with crime by unlawful act or omission on his part, transpiring either before, at time of, or after commission of offense, and whether or not he was present and participated in crime. *Johnson v. State*, Tex.Cr.App., 502 S.W.2d 761, 763.

Accord, n. An agreement between two persons, one of whom has a right of action against the other, to settle the dispute. In a debtor/creditor relationship, an agreement between the parties to settle a dispute for some partial payment. It is called an accord because the creditor has a right of action against the debtor.

A satisfaction agreed upon between the party injuring and the party injured which, when performed, is a bar to all actions upon this account. An accord being a contract, the requirements of mutual assent and consideration must be met. *Buob v. Feenaughty Machinery Co.*, 191 Wash. 477, 71 P.2d 559, 564. An agreement whereby one of parties undertakes to give or perform, and other to accept, in satisfaction of liquidated or disputed claim arising in either contract or tort something different or less from what he is or considers himself entitled to; and "satisfaction" is execution or performance of agreement. *Harris, Upham & Co., Inc. v. Ballantyne*, Tex.Civ.App., 538 S.W.2d 153, 158. It may arise both where the demand itself is unliquidated or in dispute, and where the amount and nature of the demand is undisputed, and it is agreed to give and take less than the demand. *See* Accord and satisfaction; Compromise and settlement; Executory accord; Satisfaction.

Accord, v. In practice, to agree or concur, as one judge with another. In agreement with. *See* Concur; Concurring opinion.

Accordance. Agreement; harmony; concord; conformity. *City and County of San Francisco v. Boyd*, 22 Cal.2d 685, 140 P.2d 666, 668.

Accord and satisfaction. A method of discharging a claim whereby the parties agree to give and accept something in settlement of the claim and perform the agreement, the "accord" being the agreement and the "satisfaction" its execution or performance, and it is a new contract substituted for an old contract which is thereby discharged, or for an obligation or cause of action which is settled, and must have all of the elements of a valid contract. *Holm v. Hansen*, Iowa, 248 N.W.2d 503, 506. An executory bilateral contract of "accord" is an agreement embodying a promise, express or implied, to accept at some future time a stipulated performance in satisfaction or discharge in whole or in part of any present claim, cause of action or obligation, and a promise express or implied to render such performance. Such arises where parties, by a subsequent agreement, have satisfied the former one, and the latter agreement has been executed. The execution of a new agreement may itself amount to a satisfaction, where it is so expressly agreed by the parties; and without such agreement, if the new promise is founded on a new consideration, in which case the taking of the new consideration amounts to the satisfaction of the former contract.

Accord and satisfaction may also arise in a criminal case. *See e.g.* Mass.Gen.L. c. 276, § 55.

In some jurisdictions, novation is a species of accord and satisfaction.

See Compromise and settlement; Novation; Satisfaction; Settlement.

Affirmative defense. A defense which must be pleaded affirmatively in the defendant's answer. Fed.R.Civ.P. 8(c).

Accordant /əkórdənt/. Fr. and Eng. Agreeing; concurring.

Accord executory. A bilateral agreement of settlement which has not yet been performed (satisfied). Restatement, Second, Contracts, § 281.

Accouchement /ækúwshmán/. The act of a woman in giving birth to a child. The fact of the accouchement, which may be proved by the direct testimony of one who was present, as a physician or midwife, is often important evidence in proving parentage.

Account. A detailed statement of the mutual demands in the nature of debit and credit between parties, arising out of contracts or some fiduciary relation. A statement in writing, of debits and credits, or of receipts and payments; a list of items of debits and credits, with their respective dates. A statement of pecuniary transactions; a record or course of business dealings between parties; a list or statement of monetary transactions, such as payments, losses, sales, debits, credits, accounts payable, accounts receivable, etc., in most cases showing a balance or result of comparison between items of an opposite nature.

See also Aging of accounts; Blocked account; Charge account; Community account; Custody account; Contra account; Escrow account; Impound account; Intermediate account; Liquidated account; Leger; Long account; Margin account; Nominal account; Stated account; Statement of account. For Open account, see Open.

Account annexed. Form of simplified statement used in pleading a common count (e.g. money had and received) impliedly authorized for use under Fed.R.Civil P. 8(a)(2).

Account balance. Difference between debit and credit sides of an account.

Account debtor. Person who is obligated on an account, chattel paper or general intangible. U.C.C. § 9-105(1)(a).

Account payable. A debt, owed by an enterprise, that arises in the normal course of business dealings and has not been replaced by a note payable of a debtor. For example, bills for materials received but not yet paid. Contract obligations owing by a person on open account. State Tax Commission v. Shattuck, 44 Ariz. 379, 38 P.2d 631, 639. A liability representing an amount owed to a creditor, usually arising from purchase of merchandise or materials and supplies; not necessarily due or past due.

Account receivable. A debt, owed to an enterprise, that arises in the normal course of business dealings and is not supported by negotiable paper. For example, the charge accounts of a department store. But income due from investments (unless investments are the business

itself) is not usually shown in accounts receivable. A claim against a debtor usually arising from sales or services rendered; not necessarily due or past due. For accounts receivable insurance, see Insurance.

Account rendered. An account made out by the creditor, and presented to the debtor for his examination and acceptance. When accepted, it becomes an account stated.

Account settled. One in which the balance has been in fact paid, thereby differing from an account stated.

Account stated. An agreed balance between parties to a settlement. Eng v. Stein, 123 Ariz. 343, 599 P.2d 796, 800.

Adjunct account. An account that accumulates additions to another account.

Bank account. See Bank.

Book account. See Book.

Closed account. An account to which no further additions can be made on either side, but which remains still open for adjustment and set-off, which distinguishes it from an account stated.

Commercial transactions. In the check collection process, "any account with a bank and includes a checking, time, interest or savings account." U.C.C. § 4-104(1)(a). In secured transactions law, "any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance," including ordinary accounts receivable and rights under a ship charter, U.C.C. § 9-106, and also the right to proceeds of a letter of credit. U.C.C. § 5-116(2).

Contra account. An account which serves to reduce the gross valuation of an asset, also known as a valuation allowance. For example, accumulated depreciation serves as a valuation allowance for machinery and equipment. Contrast with *adjunct account*, above.

Current account. An open or running or unsettled account between two parties; the antithesis of an account stated.

Mutual accounts. Accounts comprising mutual credits between the parties; or an existing credit on one side which constitutes a ground for credit on the other, or where there is an understanding that mutual debts shall be a satisfaction or set-off *pro tanto* between the parties. A "mutual account" arises when there are items debited and credited on both sides of the account which indicate mutual transactions between the parties. State for Use and Benefit of State Hospital v. Hintz, N.D., 281 N.W.2d 564, 567.

Open account. An account which has not been finally settled or closed, but is still running or open to future adjustment or liquidation. Open account, in legal as well as in ordinary language, means an indebtedness subject to future adjustment, and which may be reduced or modified by proof.

Account, or account render. "Account," sometimes called "account render," was a form of action at common law against a person who by reason of some fiduciary relation (as guardian, bailiff, receiver, etc.) was bound to render an account to another, but refused to do so. *Peoples Finance & Thrift Co. of Visalia v. Bowman*, 58 Cal.App.2d 729, 137 P.2d 729, 731.

Accountability. State of being responsible or answerable. *See also* Liability.

Accountable. Subject to pay; responsible; liable.

Accountable receipt. An instrument acknowledging the receipt of money or personal property, coupled with an obligation.

Accountant. Person who works in field of accounting and is skilled in keeping books or accounts; in designing and controlling systems of account; in giving tax advice and preparing tax returns.

An accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized. Bankruptcy Code, § 101.

Certified Public Accountant (CPA). An accountant who has satisfied the statutory and administrative requirements of his or her jurisdiction to be registered or licensed as a public accountant. In addition to passing the Uniform CPA Examination administered by the AICPA, the CPA must meet certain business experience, educational and moral requirements that differ from jurisdiction to jurisdiction. *See also* Auditor.

Cost accountant. *See* Cost.

Accountant privilege. Protection afforded to client from disclosure by accountant of materials submitted to or prepared by accountant.

Accountants, chartered. Persons skilled in the keeping and examination of accounts, who are employed for the purpose of examining and certifying to the correctness of accounts of corporations and others. British Commonwealth equivalent of Certified Public Accountant.

Accountant's lien. Possessory right of accountant to papers prepared by him and held until payment is made for his services.

Account book. A book kept by a merchant, trader, professional, or other person, in which are entered from time to time the transactions of his trade, business, or profession. Entries made therein are admissible in evidence as exception to hearsay rule under certain conditions. Fed.Evid.R. 803.

Account computatio. As term is used in proceedings of courts of law or equity, is some matter of debt and credit, or demand in nature thereof. *Coleman v. Kansas City*, 351 Mo. 254, 173 S.W.2d 572, 576.

Account for. To pay over to the person entitled thereto. *U. S. v. Rehwald*, D.C.Cal., 44 F.2d 663. To furnish substantial reasons or convincing explanation, make clear or reveal basic causes. *People v. Weger*, 251 C.A.2d 584, 59 Cal.Rptr. 661, 668.

Accounting. An act or a system of making up or settling accounts, consisting of a statement of account with debits and credits arising from relationship of parties. *State ex rel. King v. Harvey*, Miss., 214 So.2d 817, 819. Rendition of an account, either voluntarily or by order of a court. In the latter case, it imports a rendition of a judgment for the balance ascertained to be due. The term may include payment of the amount due.

In partnership law, is equitable proceeding for a complete settlement of all partnership affairs.

The methods under which income and expenses are determined for tax purposes. Major accounting methods are the cash basis and the accrual basis. Special methods are available for the reporting of gain on installment sales, recognition of income on construction projects (*i.e.*, the completed-contract and percentage-of-completion methods), and the valuation of inventories (*i.e.* last-in first-out and first-in first-out). The various types of accounting methods appear below:

Accrual method. A method of keeping accounts which shows expenses incurred and income earned for a given period, although such expenses and income may not have been actually paid or received. Right to receive and not the actual receipt determines inclusion of amount in gross income. When right to receive an amount becomes fixed, right accrues. Obligations payable to or by taxpayer are treated as if discharged when incurred. *H. Liebes & Co. v. Commissioner of Internal Revenue*, C.C.A.9, 90 F.2d 932, 936. Entries are made of credits and debits when liability arises, whether received or disbursed. *Insurance Finance Corporation v. Commissioner of Internal Revenue*, C.C.A.3, 84 F.2d 382. *See also* Accrual basis; *Accrue (Taxation)*.

Cash method. The practice of recording income and expense only when cash is received or paid out; used in contradistinction to accrual method. *See* Cash basis accounting.

Completed contract method. A method of reporting profit or loss on certain long-term contracts. Under this method of accounting, gross income and expenses are recognized in the tax year in which the contract is completed. This method should be used only when the conditions or terms of the contract do not permit use of the percent of completion method.

Cost method. The practice of recording the value of assets in terms of their cost. *See also* Cost (*Cost accounting*).

Fair value method. Valuation of assets at present value, meaning same as actual value or market value. *Kerr v. Clinchfield Coal Corp.*, 169 Va. 149, 192 S.E. 741, 744.

Flow through method. Type of calculation of depreciation used by regulated utilities for income tax purposes. *Federal Power Commission v. Memphis Light, Gas, & Water Division*, 411 U.S. 458, 93 S.Ct. 1723, 36 L.Ed.2d 426.

Installment method. Procedure applied in reflecting collection of sales price in installments.

Price level accounting. Modern method of valuing assets in a financial statement which requires use of gross national product to reflect current values. *See also* Change in accounting method.

See also Generally Accepted Accounting Principles; Generally Accepted Auditing Standards; Installment method; Interim statements; Percentage of completion method; Purchase method of accounting; T-Account; Trial (*Trial balance*).

Accounting for profits. Action for equitable relief against one in a fiduciary relation to recover profits taken in breach of relation.

Accounting period. The period of time, usually a year, used by a taxpayer in the determination of income and related tax liability. Unless a fiscal year is chosen, taxpayers must determine and pay their income tax liability by using the calendar year (*i.e.*, January 1 through December 31) as the period of measurement. An example of a fiscal year is July 1 through June 30. A change in accounting periods (*e.g.*, from a calendar year to a fiscal year) generally requires the consent of the Internal Revenue Service. Some new taxpayers, such as a newly formed corporation, are free to select either an initial calendar or a fiscal year without the consent of the Internal Revenue Service. *See* Annual accounting period; Fiscal year.

Accounting Research Bulletin (ARB). Statement on recommended accounting procedures issued by the American Institute of Certified Public Accountants' Committee on Accounting Procedure.

Accounting Series Release (ASR). The official pronouncements issued by the Securities and Exchange Commission to clarify accounting and auditing procedures to be followed in reports filed with the SEC.

Account in trust. Account established by an individual to be held in trust for the benefit of another.

Account party. The customer in a letter of credit transaction. Synonymous also with "applicant."

Account payable. *See* Account.

Account receivable. *See* Account.

Accounts receivable insurance. Insurance against loss due to inability to collect outstanding accounts receivable because of damage to or destruction of records.

Account stated. An agreed balance between parties to a settlement. *Eng v. Stein*, 123 Ariz. 343, 599 P.2d 796, 800. *See also* Account.

Accouple. /əkópəl/. To unite; to marry. *Ne unques accouple* /niy ʔnkwiyz əkópəl/ never married.

Accredit /əkredət/. To give official authorization or status. To recognize as having sufficient academic standards to qualify graduates for higher education or for professional practice. In international law: (1) To acknowledge; to receive as an envoy in his public character, and give him credit and rank accordingly. (2) To send with credentials as an envoy. This latter use is now the accepted one.

Accredited law school. Law school which has been approved by the state and the Association of American Law Schools and/or the American Bar Association. In certain states (*e.g.* Calif.) a law school might be accredited by the state, but not by either the AALS or ABA. In most states only graduates of AALS or ABA accredited law schools are permitted to take the state bar exam.

Accredited representative. As respects service of process, representative having general authority to act.

Accredulitare /əkredýlətériy/. Lat. To purge an offense by oath.

Accretion /əkriyshən/. The act of growing to a thing; usually applied to the gradual and imperceptible accumulation of land by natural causes, as out of the sea or a river.

Civil law. The right of heirs or legatees to unite or aggregate with their shares or portions of the estate the portion of any co-heir or legatee who refuses to accept it, fails to comply with a condition, becomes incapacitated to inherit, or dies before, the testator.

Land. Addition of portions of soil, by gradual deposition through the operation of natural causes, to that already in possession of owner. *Willett v. Miller*, 176 Okl. 278, 55 P.2d 90, 92. Accretion of land is of two kinds: By *alluvion*, *i.e.*, by the washing up of sand or soil, so as to form firm ground; or by *dereliction*, as when the sea shrinks below the usual water-mark. The term "alluvion" is applied to deposit itself, while "accretion" denotes the act. However, the terms are frequently used synonymously. Land uncovered by gradual subsidence of water is not an "accretion" but a "reliction".

Trust property. Receipts other than those ordinarily considered as income.

See Accrue; Alluvion; Avulsion; Reliction.

Accroach. To encroach; to exercise power without authority.

Accrocher /ækrowshéy/. Fr. To delay; retard; put off. *Accrocher un proces*, to stay the proceedings in a suit.

Accrual accounting. *See* Accounting.

Accrual basis. A method of accounting that reflects expenses incurred and income earned for any one tax year. In contrast to the cash basis of accounting, expenses do not have to be paid to be deductible nor does income have to be received to be taxable. Unearned income (*e.g.*, prepaid interest and rent) generally is taxed in the year of receipt regardless of the method of accounting used by the taxpayer. *See* Accounting.

Accrual, clause of. *See* Accruer, clause of.

Accrual method of accounting. *See* Accounting.

Accrue /əkrúw/. Derived from the Latin, "ad" and "creso," to grow to. In past tense, in sense of due and payable; vested. It means to increase; to augment; to come to by way of increase; to be added as an increase, profit, or damage. Acquired; falling due; made or executed; matured; occurred; received; vested; was created; was incurred. *H. Liebes & Co. v. Commissioner*

of Internal Revenue, C.C.A.9, 90 F.2d 932, 936. To attach itself to, as a subordinate or accessory claim or demand arises out of, and is joined to, its principal. *Lifson v. Commissioner of Internal Revenue*, C.C.A.8, 98 F.2d 508.

The term is also used of independent or original demands, meaning to arise, to happen, to come into force or existence; to vest, as in the phrase, "The right of action did not *accrue* within six years." *Amy v. Dubuque*, 98 U.S. 470, 476, 25 L.Ed. 228. To become a present right or demand; to come to pass. *See also* Vested.

Cause of action. A cause of action "accrues" when a suit may be maintained thereon, and the law in this regard differs from state-to-state and by nature of action (e.g. type of breach of contract, tort, etc.). *Dillon v. Board of Pension Com'rs of City of Los Angeles*, 18 Cal.2d 427, 116 P.2d 37, 39. For example, cause of action might "accrue" on date that damage is sustained and not date when causes are set in motion which ultimately produce injury, *City of Philadelphia v. Lieberman*, C.C.A.Pa., 112 F.2d 424, 428; on date of injury, *Fredericks v. Town of Dover*, 125 N.J.L. 288, 15 A.2d 784, 787; when actual damage has resulted, *National Lead Co. v. City of New York*, C.C.A.N.Y., 43 F.2d 914, 916; as soon as contract is breached, *Wichita Nat. Bank v. United States Fidelity & Guaranty Co.*, Tex.Civ.App., 147 S.W.2d 295, 297; in legal malpractice action, when the client knows or should know of attorneys error, *Hendrickson v. Sears*, 365 Mass. 83, 310 N.E.2d 131. The point in time at which a cause of action "accrues" is important for purposes of running of statute of limitations.

Taxation. Income "accrues" to taxpayer when there arises to him a fixed or unconditional right to receive it. *Franklin County Distilling Co. v. Commissioner of Internal Revenue*, C.C.A.6, 125 F.2d 800, 804, 805. But not unless there is a reasonable expectancy that the right will be converted into money or its equivalent. *Swastika Oil & Gas Co. v. Commissioner of Internal Revenue*, C.C.A.6, 123 F.2d 382, 384. Where taxpayer makes returns on accrual basis, item "accrues" when all events occur which fix amount payable and determine liability of taxpayer. *Hudson Motor Car Co. v. U. S.*, Ct.Cl., 3 F.Supp. 834, 847. Tax "accrues" for deduction when all events have occurred which fix amount of tax and determine liability of taxpayer for it, although there has not yet been assessment or maturity. *Elmhirst v. Dugan*, D.C.N.Y., 14 F.Supp. 782, 784.

Accrued alimony. Alimony which is due but not yet paid.

Accrued compensation. Compensation earned but not yet paid.

Accrued depreciation. Formerly called accumulated depreciation. An accumulation of charges made over a period of time for the replacement of a fixed asset. The portion of the useful service life which for tax and financial statement purposes has expired. *State ex rel. City of St. Louis v. Public Service Commission*, 341 Mo. 920, 110 S.W.2d 749, 768. A loss which is not restored

by current maintenance, and which is due to all factors involved causing ultimate retirement of the property, including wear, tear, decay, and inadequacy. *Iowa-Illinois Gas & Electric Co. v. Iowa City*, 255 Iowa 1341, 124 N.W.2d 840, 845. *See also* Depreciation (*Accumulated depreciation*).

Accrued dividend. A share of net earnings declared but not yet paid as a dividend.

Accrued expense. Expense incurred but not yet billed for nor paid.

Accrued income. Income which is earned but not yet billed and receivable. In re *Schlinger's Will*, 48 Misc.2d 345, 438, 265 N.Y.S.2d 32, 35.

Accrued interest. Interest that has been earned but is not yet received nor receivable.

Accrued liability. An obligation or debt which is properly chargeable in a given accounting period but which is not yet paid or payable.

Accrued right. A matured cause of action, as legal authority to demand redress. *See* Accrue (*Cause of action*).

Accrued salary. Compensation to employee which is incurred by an employer but not yet payable.

Accrued taxes. Taxes which are properly incurred in a given accounting period but not yet paid or payable.

Accruer (or accrual), clause of. An express clause, frequently occurring in the case of gifts by deed or will to persons as tenants in common, providing that upon the death of one or more of the beneficiaries his or their shares shall go to the survivor or survivors. The share of the decedent is then said to *accrue* to the others.

Accruing /əkrúwɪŋ/. Inchoate; in process of maturing. That which will or may, at a future time, ripen into a vested right, an available demand, or an existing cause of action. Arising by way of increase or augmentation. *Globe Indemnity Co. v. Bruce*, C.C.A.Okl., 81 F.2d 143, 153.

Accounting. Allocation of income and expense, which has been earned or incurred but not yet collected or paid out, to the accounting period in which the income is earned or expense incurred.

Accruing costs. Costs and expenses incurred after judgment.

Accruing interest. Running or accumulating interest, as distinguished from accrued or matured interest. Interest accumulating daily on the principal debt but not yet paid and payable.

Accruing right. One that is increasing, enlarging, or augmenting.

Acct. Abbreviation for "account", of such universal and immemorial use that the courts will take judicial notice of its meaning.

Accumulated depreciation. *See* Accrued depreciation.

Accumulated dividend. Dividend due shareholder which has not been paid. *See* Accumulative dividends; Dividend (*Cumulative*).

Accumulated earnings credit. A deduction allowed in arriving at accumulated taxable income for purposes of determining the accumulated earnings tax. *See* Accumulated earnings tax; Accumulated taxable income.

Accumulated earnings tax. A special tax imposed on corporations that accumulate (rather than distribute via dividends) their earnings beyond the reasonable needs of the business. The accumulated earnings tax is imposed on accumulated taxable income in addition to the corporate income tax. I.R.C. § 531 et seq. *See also* Accumulated taxable income; Excess profits tax.

Accumulated legacy. Portion of distributable estate not yet paid to legatees or donees.

Accumulated profits. Earned surplus or undivided profits. *Flint v. Commissioner of Corporations and Taxation*, 312 Mass. 204, 43 N.E.2d 789, 791, 792. Such include profits earned and invested. *Commissioner of Corporations and Taxation v. Filoon*, 310 Mass. 374, 38 N.E.2d 693, 698, 700.

Accumulated surplus. In statutes relative to the taxation of corporations, this term refers to the fund which the company has in excess of its capital and liabilities. *See* Retained earnings.

Accumulated taxable income. The base upon which the accumulated earnings tax is imposed. Basically, it is the taxable income of the corporation as adjusted for certain items (e.g., the Federal income tax, excess charitable contributions, the dividends received deduction) less the dividends paid deduction and the accumulated earnings credit. I.R.C. § 535. *See* Accumulated earnings tax.

Accumulations /əkyūmysléyshənz/. Increase by continuous or repeated additions, or, if taken literally, means either profit accruing on sale of principal assets, or increase derived from their investment, or both. Adding of interest or income of a fund to principal pursuant to provisions of a will or deed, preventing its being expended. When an executor or other trustee masses the rents, dividends, and other income which he receives, treats it as a capital, invests it, makes a new capital of the income derived therefrom, invests that, and so on, he is said to accumulate the fund, and the capital and accrued income thus procured constitute *accumulations*.

Accumulations, rule against. A rule rendering an accumulation of income beyond the period of perpetuities void.

Accumulation trust. A trust in which the trustee is directed to accumulate income for a period of time before distribution.

Accumulative. That which accumulates, or is heaped up; additional. Said of several things joined together, or of one thing added to another.

Accumulative dividends. Same as cumulative dividends; characteristic of preferred stockholders' agreement by which they receive their agreed dividends before common stockholders. Dividends which accumulate from year to year when not paid. *See* Dividend (*Cumulative*).

Accumulative judgment. Where a person has already been convicted and sentenced, and a second or additional judgment is passed against him, the execution of which is postponed until the completion of the first sentence, such second judgment is said to be *accumulative*. *See also* Accumulative sentence.

Accumulative legacy. A second, double or additional legacy; a legacy given in addition to another given by the same instrument, or by another instrument. *See also* Legacy.

Accumulative sentence. A sentence, additional to others, imposed on a defendant who has been convicted upon an indictment containing several counts, each of such counts charging a distinct offense, or who is under conviction at the same time for several distinct offenses; one of such sentences to begin at the expiration of another. Consecutive sentences. *See* Sentence.

Accusation /əkyəzéyshən/. A formal charge against a person, to the effect that he is guilty of a punishable offense, laid before a court or magistrate having jurisdiction to inquire into the alleged crime. *See* Accuse; Indictment; Information.

Accusatory body. Body such as grand jury whose duty is to hear evidence to determine whether a person should be accused (charged) of a crime; to be distinguished from a traverse or petit jury which is charged with duty of determining guilt or innocence.

Accusatory instrument. A document in which an accusation of crime is set forth like an indictment, information or complaint.

Accusatory part. The "accusatory part" of an indictment is that part where the offense is named.

Accusatory pleading. An indictment or complaint in which a person is accused of crime and on which the government tries such person. Fed.R.Crim.P. 3.

Accusatory procedure. System of American jurisprudence in which the government accuses and bears the burden of proving the guilt of a person for a crime; to be distinguished from inquisitorial system. *Rogers v. Richmond*, 365 U.S. 534, 81 S.Ct. 735, 5 L.Ed.2d 760.

Accusatory stage. That stage of criminal proceedings at which right to counsel accrues to accused; such matures when officers have arrested accused, and officers have undertaken process of interrogations that lends itself to eliciting incriminating statements. *People v. Bilderbach*, 62 C.2d 757, 44 Cal.Rptr. 313, 315, 401 P.2d 921.

Accuse. To bring a formal charge against a person, to the effect that he is guilty of a crime or punishable offense, before a court or magistrate having jurisdiction

to inquire into the alleged crime. *See also* Indictment; Information.

Accused. The generic name for the defendant in a criminal case. Person becomes "accused" within meaning of guarantee of speedy trial only at point at which either formal indictment or information has been returned against him, or when he becomes subject to actual restraints on his liberty imposed by arrest, whichever first occurs. *State v. Almeida*, 54 Haw. 443, 509 P.2d 549, 551.

Accuser. The person by whom an accusation is made (e.g. State or United States in criminal proceedings). A person who signs and swears to charges, directs charges be brought, or has interest other than official in prosecution of accused. *U.S. v. Orsic*, AFCMR, 8 M.J. 657, 658.

Accustomed. Habitual; often used; synonymous with usual or customary.

A ce /à sô/. For this purpose.

A cel jour /ə sél zhúr/. At this day.

Acequia /əsiykwiyə/. A ditch, channel, or canal, through which water, diverted from its natural course, is conducted, for use in irrigation or other purposes; public ditches.

Ac etiam /æk éshiyəm/. (Lat. And also.) The introduction of the statement of the real cause of action, used formerly in those cases where it was necessary to allege a fictitious cause of action to give the court jurisdiction, and also the real cause in compliance with the statutes. It is sometimes written *acetiam*. *See* Bill of Middlesex under Bill, definition 2.

Achieve subject matter. The English equivalent for patentability. *Mesta Mach. Co. v. Federal Machine & Welder Co.*, C.C.A.Pa., 110 F.2d 479, 480.

Acid ratio test. Method of financial analysis involving ratio of cash and receivables to current liabilities. Sum of cash, marketable securities, and receivables divided by current liabilities. Also called the "quick ratio."

Acknowledge. To own, avow, or admit; to confess; to recognize one's acts, and assume the responsibility therefor.

Acknowledgment. To "acknowledge" is to admit, affirm, declare, testify, avow, confess, or own as genuine. *Favello v. Bank of America Nat. Trust & Savings Ass'n*, 24 Cal.App.2d 342, 74 P.2d 1057, 1058. Admission or affirmation of obligation or responsibility. *Weyerhaeuser Timber Co. v. Marshall*, C.C.A.Wash., 102 F.2d 78, 81. Most states have adopted the Uniform Acknowledgment Act. *See also* Receipt.

Debt. The debtor's acknowledgment of the creditor's demand or right of action that will revive the enforceability of a debt barred by the statute of limitations. Part payment of obligation which tolls statute of limitations is a form of "acknowledgment of debt". In *Badger's Estate*, 156 Kan. 734, 137 P.2d 198, 205.

Instruments. Formal declaration before authorized official, by person who executed instrument, that it is his

free act and deed. The certificate of the officer on such instrument that it has been so acknowledged. *See also* Attestation clause; Certificate of acknowledgment; Jurat; Notary public; Verification.

Paternity. An avowal or admission that the child is one's own. Recognition of a parental relation, either by a written agreement, verbal declarations or statements, by the life, acts, and conduct of the parties, or any other satisfactory evidence that the relation was recognized and admitted.

A.C.L.U. American Civil Liberties Union.

A communi observantia non est recedendum /èy kəmyúwnay obzərvəns(h)iyə nón est riyəsədéndəm/. From common observance there should be no departure; there must be no departure from common usage. A maxim formerly applied to the practice of the courts, to the ancient and established forms of pleading and conveyancing, and to professional usage generally. Lord Coke applies it to common professional opinion.

A confectione /èy kənfèkshiyówniy/. From the making.

A confectione præsentium /èy kənfèkshiyówniy prəzəns(h)iyəm/. From the making of the indentures.

A consiliis /èy kənsilyəs/. (Lat. *consilium*, advice.) Of counsel; a counsellor. The term is used in the civil law by some writers instead of a *responsis*.

A contrario sensu /èy kəntre'riyow sénsiyuw/. On the other hand; in the opposite sense.

Acquainted. Having personal, familiar, knowledge of a person, event, or thing. "Acquaintance" expresses less than familiarity; familiarity less than intimacy. Acquaintance springs from occasional intercourse, familiarity from daily intercourse, intimacy from unreserved intercourse. *Atkins Corporation v. Tourny*, 6 Cal.2d 206, 57 P.2d 480, 483. To be "personally acquainted with," and to "know personally," are equivalent terms, *Kelly v. Calhoun*, 95 U.S. 710, 24 L.Ed. 544. When used with reference to a paper to which a certificate or affidavit is attached, it indicates a substantial knowledge of the subject-matter thereof.

Acquereur /ækə'rar/. In French and Canadian law, one who acquires title, particularly to immovable property, by purchase.

Acquest /ækwést/. An estate acquired newly, or by purchase.

Acquêts /ákéy/. In the civil law, property which has been acquired by purchase, gift, or otherwise than by succession. Immovable property which has been acquired otherwise than by succession. Profits or gains of property, as between husband and wife. Civil Code La. art. 2338. The profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the joint industry of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even though the purchase be only in

the name of one of the two, and not of both. See Community property; Conquêts.

Acquiesce /ækwiýés/. To give an implied consent to a transaction, to the accrual of a right, or to any act, by one's mere silence, or without express assent or acknowledgment.

Acquiescence /ækwiýésəns/. Conduct recognizing the existence of a transaction, and intended, in some extent at least, to carry the transaction, or permit it to be carried, into effect. It is some act, not deliberately intended to ratify a former transaction known to be voidable, but recognizing the transaction as existing, and intended, in some extent at least, to carry it into effect, and to obtain or claim the benefits resulting from it, and thus differs from "confirmation," which implies a deliberate act, intended to renew and ratify a transaction known to be voidable. *De Boe v. Prentice Packing & Storage Co.*, 172 Wash. 514, 20 P.2d 1107, 1110. Passive compliance or satisfaction; distinguished from avowed consent on the one hand, and, on the other, from opposition or open discontent. *Paul v. Western Distributing Co.*, 142 Kan. 816, 52 P.2d 379, 387. Conduct from which assent may be reasonably inferred. *Frank v. Wilson & Co.*, 24 Del.Ch. 237, 9 A.2d 82, 86. Equivalent to assent inferred from silence with knowledge or from encouragement and presupposes knowledge and assent. Imports tacit consent, concurrence, acceptance or assent. *Natural Soda Products Co. v. City of Los Angeles*, Cal. App., 132 P.2d 553, 563. A silent appearance of consent. Failure to make any objections. Submission to an act of which one had knowledge. Exists where a person knows or ought to know that he is entitled to enforce his right or to impeach a transaction, and neglects to do so for such a length of time as would imply that he intended to waive or abandon his right. *Yench v. Stockmar*, C.A. Colo., 483 F.2d 820, 834.

It is to be distinguished from avowed consent, on the one hand, and from open discontent or opposition, on the other.

Acquiescence and *laches* are cognate but not equivalent terms. The former is a submission to, or resting satisfied with, an existing state of things, while *laches* implies a neglect to do that which the party ought to do for his own benefit or protection. Hence *laches* may be evidence of acquiescence. *Laches* imports a merely passive assent, while *acquiescence* implies active assent. In *re Wilbur's Estate*, 334 Pa. 45, 5 A.2d 325, 331. "Acquiescence" relates to inaction during performance of an act while "laches" relates to delay after act is done.

See also Admission; Confession; Estoppel; Nonacquiescence; Ratification.

Administrative agencies. An administrative agency's policy of agreeing to be bound by judicial precedent which is contrary to the agency's interpretation of its organic statute. Compare Nonacquiescence.

Acquiescence, estoppel by. Acquiescence is a species of estoppel. An estoppel arises where party aware of his rights sees other party acting upon mistaken notion of his rights. Injury accruing from one's acquiescence in

another's action to his prejudice creates "estoppel". *Lebold v. Inland Steel Co.*, C.C.A.Ill., 125 F.2d 369, 375. Passive conduct on the part of one who has knowledge of the facts may be basis of estoppel. *Winslow v. Burns*, 47 N.M. 29, 132 P.2d 1048, 1050. It must appear that party to be estopped was bound in equity and good conscience to speak and that party claiming estoppel relied upon acquiescence and was misled thereby to change his position to his prejudice. *Sherlock v. Greaves*, 106 Mont. 206, 76 P.2d 87, 91. See also Estoppel.

Acquietandis plegiis /ækwiýətándəs plíjyíýəs/. A writ of justices, formerly lying for the surety against a creditor who refuses to acquit him after the debt has been satisfied.

Acquire. To gain by any means, usually by one's own exertions; to get as one's own; to obtain by search, endeavor, investment, practice, or purchase; receive or gain in whatever manner; come to have. In law of contracts and of descents, to become owner of property; to make property one's own. To gain ownership of. *Commissioner of Insurance v. Broad Street Mut. Casualty Ins. Co.*, 312 Mass. 261, 44 N.E.2d 683, 684. The act of getting or obtaining something which may be already in existence, or may be brought into existence through means employed to acquire it. *Ronnow v. City of Las Vegas*, 57 Nev. 332, 65 P.2d 133, 140. Sometimes used in the sense of "procure." It does not necessarily mean that title has passed. Includes taking by devise. U. S. v. *Merriam*, 263 U.S. 179, 44 S.Ct. 69, 70, 68 L.Ed. 240. See also Accession; Acquisition; Purchase.

Acquired rights. Those which one does not naturally enjoy, but which are owing to his or her own procurement, as sovereignty, or the right of commanding, or the right of property.

Acquired surplus. Surplus arising from changes of the capital structure of one or more businesses; e.g. from the purchase of one business by another business.

Acquisition /ækwəzishən/. The act of becoming the owner of certain property; the act by which one acquires or procures the property in anything. State ex rel. *Fisher v. Sherman*, 135 Ohio St. 458, 21 N.E.2d 467, 470. Used also of the thing acquired. Taking with, or against, consent. *Scribner v. Wikstrom*, 93 N.H. 17, 34 A.2d 658, 660. Term refers especially to a material possession obtained by any means. *Jones v. State*, 126 Tex.Cr.R. 469, 72 S.W.2d 260, 263.

See Accession; Acquire; Purchase; Tender offer.

Derivative acquisitions are those which are procured from others. Goods and chattels may change owners by act of law in the cases of forfeiture, succession, marriage, judgment, insolvency, and intestacy; or by act of the parties, as by gift or sale.

Original acquisition is that by which a man secures a property in a thing which is not at the time he acquires it, and in its then existing condition, the property of any other individual. It may result from occupancy; accession; intellectual labor—namely, for inventions, which are secured by patent rights; and for the authorship of

books, maps, and charts, which is protected by copyrights.

An acquisition may result from the act of the party himself, or those who are in his power acting for him, as his children while minors.

Acquisitive offenses. A generic term to describe all forms of larceny and offenses against the title or possession of property.

Acquit /əkwi:t/. To set free, release or discharge as from an obligation, burden or accusation. To absolve one from an obligation or a liability; or to legally certify the innocence of one charged with crime. *See also* Acquittal.

Acquittal. *See* Absolution.

Acquittal /əkwi:təl/. *Contracts.* A release, absolution, or discharge from an obligation, liability, or engagement.

Criminal law. The legal and formal certification of the innocence of a person who has been charged with crime; a deliverance or setting free a person from a charge of guilt; finding of not guilty. Also, one legally acquitted by a judgment rendered otherwise than in pursuance of a verdict, as where he is discharged by a magistrate because of the insufficiency of the evidence, or the indictment is dismissed by the court or a *nol. pros.* entered. Or, it may occur even though the question of guilt or innocence has never been submitted to a jury, as where a defendant, having been held under an indictment or information, is discharged because not brought to trial within the time provided by statute.

Acquittals in fact are those which take place when the jury, upon trial, finds a verdict of not guilty.

Acquittals in law are those which take place by mere operation of law; as where a man has been charged merely as an accessory, and the principal has been acquitted.

See Autrefois acquit; Jeopardy; Nolle prosequi; Verdict.

Feudal law. The obligation on the part of a mesne lord to protect his tenant from any claims, entries or molestations by lords paramount arising out of the services due to them by the mesne lord.

Acquittance /əkwi:təns/. A written discharge, whereby one is freed from an obligation to pay money or perform a duty. This word, though perhaps not strictly speaking synonymous with "receipt," includes it. A receipt is one form of an acquittance; a discharge is another. A receipt in full is an acquittance, and a receipt for a part of a demand or obligation is an acquittance *pro tanto*.

Acquitted /əkwi:təd/. Released; absolved; purged of an accusation. Judicially discharged from accusation; released from debt, etc. Includes both civil and criminal prosecutions. *See* Acquittal.

Acre. A quantity of land containing 160 square rods, 4,840 square yards, or 43,560 square feet of land, in whatever shape. *See* Land measure.

Net acre. The amount of actual acreage that may be used for building lots after installation of streets, sidewalks, etc.

Acre foot. 325,850 gallons, or the amount of water which will cover one acre one foot in depth.

Acre right. Formerly the share of a citizen of a New England town in the common lands. The value of the acre right was a fixed quantity in each town, but varied in different towns. A 10-acre lot or right in a certain town was equivalent to 113 acres of upland and 12 acres of meadow, and a certain exact proportion was maintained between the acre right and salable lands.

Across. From side to side. Transverse to the length of. It may mean "over," or "upon and along," or "upon," or "within".

ACRS. *See* Accelerated Cost Recovery System.

Act, n. Denotes external manifestation of actor's will. Restatement, Second, Torts § 2. Expression of will or purpose, carrying idea of performance; primarily that which is done or doing; exercise of power, or effect of which power exerted is cause; a performance; a deed. In its most general sense, this noun signifies something done voluntarily by a person; the exercise of an individual's power; an effect produced in the external world by an exercise of the power of a person objectively, prompted by intention, and proximately caused by a motion of the will. In a more technical sense, it means something done voluntarily by a person, and of such a nature that certain legal consequences attach to it. Thus a grantor acknowledges the conveyance to be his "act and deed," the terms being synonymous. It may denote something done by an individual, as a private citizen, or as an officer; or by a body of men, as a legislature, a council, or a court of justice; including not merely physical acts, but also decrees, edicts, laws, judgments, resolves, awards, and determinations. Some general laws made by the Congress of the United States are styled joint resolutions, and these have the same force and effect as those styled acts.

Acts under private signature are those which have been made by private individuals under their hands.

Criminal act. External manifestation of one's will which is prerequisite to criminal responsibility. There can be no crime without some act, affirmative or negative. An omission or failure to act may constitute an act for purpose of criminal law.

Legislative act. An alternative name for statutory law. A bill which has been enacted by legislature into law. When introduced into the first house of the legislature, a piece of proposed legislation is known as a bill. When passed to the next house, it may then be referred to as an act. After enactment the terms "law" and "act" may be used interchangeably. An act has the same legislative force as a joint resolution but is technically distinguishable, being of a different form and introduced with the words "Be it enacted" instead of "Be it resolved."

Acts are either public or private. Public acts (also called general acts, or general statutes, or statutes at

large) are those which relate to the community generally, or establish a universal rule for the governance of the whole body politic. Private acts (formerly called special), are those which relate either to particular persons (personal acts) or to particular places (local acts), or which operate only upon specified individuals or their private concerns. *Unity v. Burrage*, 103 U.S. 447, 454, 26 L.Ed. 465. Public acts are those which concern the whole community and of which courts of law are bound to take judicial notice.

A "special" or "private" act is one operating only on particular persons and private concerns. A "local act" is one applicable only to a particular part of the legislative jurisdiction.

See also Governmental act; Legislation; Legislative act; Statute.

Private acts are those made by private persons as registers in relation to their receipts and expenditures, schedules, acquittances, and the like.

Public acts are those which have a public authority, and which have been made before public officers, are authorized by a public seal, have been made public by the authority of a magistrate, or which have been extracted and been properly authenticated from public records.

Acta diurna /æktə dayǝrnə/. Lat. In the Roman law, daily acts or chronicles; the public registers or journals of the daily proceedings of the senate, assemblies of the people, courts of justice, etc. Supposed to have resembled a modern newspaper.

Acta exteriora indicant interiora secreta /æktə ekstiriyórə indækənt intiriyórə səkriytə/. External acts indicate undisclosed thoughts.

Acta in uno iudicio non probant in alio nisi inter easdem personas /æktə in yúwnow juwdishiyow non prówbənt in éyliyow náysay intər iyéysdəm pərsównəs/. Things done in one action cannot be taken as evidence in another, unless it be between the same parties.

Acta publica /æktə pówbləkə/. Lat. Things of general knowledge and concern; matters transacted before certain public officers.

Acte /ækt/ákt/. In French law, denotes a document, or formal, solemn writing, embodying a legal attestation that something has been done, corresponding to one sense or use of the English word "act."

Actes de naissance are the certificates of birth, and must contain the day, hour, and place of birth, together with the sex and intended christian name of the child, and the names of the parents and of the witnesses. *Actes de mariage* are the marriage certificates, and contain names, professions, ages, and places of birth and domicile of the two persons marrying, and of their parents; also the consent of these latter, and the mutual agreements of the intended husband and wife to take each other for better and worse, together with the usual attestations. *Actes de décès* are the certificates of death, which are required to be drawn up before any one may be buried. *Les actes de l'état civil* are public documents.

Acte authentique /ákt òtontiyk/. A deed executed with certain prescribed formalities, in the presence of a notary, mayor, *greffier*, *huissier*, or other functionary qualified to act in the place in which it is drawn up.

Acte de francisation /ákt də fránkəzasyówn/. The certificate of registration of a ship, by virtue of which its French nationality is established.

Acte d'héritier /ákt dəyrətyéy/. Act of inheritance. Any action or fact on the part of an heir which manifests his intention to accept the succession; the acceptance may be express or tacit.

Acte extrajudiciaire /ákt ètrəjuwdisksiyéy/. A document served by a *huissier*, at the demand of one party upon another party, without legal proceedings.

Acting. Doing duty for another. Officiating or holding a temporary rank or position or performing services temporarily; as, an acting captain, manager, president. *Pellecchia v. Mattia*, 121 N.J.L. 21, 1 A.2d 28. Performing; operating.

Acting executor. One who assumes to act as executor for a decedent, not being the executor legally appointed or the executor in fact.

Acting officer. Term is used to designate, not an appointed incumbent, but merely a *locum tenens*, who is performing the duties of an office to which he himself does not claim title.

Acting within scope of employment. See Scope of employment.

Act in pais /ákt in péy(s)/. An act done out of court, and not a matter of record. A deed or an assurance transacted between two or more private persons in the country, that is, according to the old common law, upon the very spot to be transferred, is matter *in pais*.

Actio /ækshiyow/. Lat. In the civil law, an action or suit; a right or cause of action. Term means both the proceeding to enforce a right in a court and the right itself which is sought to be enforced.

Actio ad exhibendum /ækshiyow æd ègzibéndəm/. An action for the purpose of compelling a defendant to exhibit a thing or title in his power. It was preparatory to another action, which was always a real action in the sense of the Roman law; that is, for the recovery of a thing, whether it was movable or immovable.

Actio æstimatoria; actio quanti minoris /ækshiyow iystəmətóriyə ækshiyow kwóntay mənóras/. In the criminal law, two names of an action which lay in behalf of a buyer to reduce the contract price proportionately to the defects of the object, not to cancel the sale; the *judex* had power, however, to cancel the sale.

Actio arbitraria /ækshiyow àrbətrériyə/. Action depending on the discretion of the judge. In this, unless defendant would make amends to plaintiff as dictated by the judge in his discretion, he was liable to be condemned.

Actio bonæ fidei /ækshiyow bówniy fáydíyay/. An action of good faith. A class of actions in which the judge

- might at the trial *ex officio* take into account any equitable circumstances that were presented to him affecting either of the parties to the action.
- Actio calumniæ** /ækshiyow kəlómniyiv/. An action to restrain defendant from prosecuting a groundless proceeding or trumped-up charge against plaintiff. An action for malicious prosecution.
- Actio civilis** /ækshiyow sívələs/. In the common law, a civil action, as distinguished from a criminal action.
- Actio commodati** /ækshiyow kòmədəytay/. Inclusion of several actions appropriate to enforce the obligations of a borrower or a lender.
- Actio commodati contraria** /ækshiyow kòmədəytay kəntreiyə/. An action by the borrower against the lender, to compel the execution of the contract.
- Actio commodati directa** /ækshiyow kòmədəytay dərəkətə/. An action by a lender against a borrower, the principal object of which is to obtain a restitution of the thing lent.
- Actio communi dividundo** /ækshiyow kəmyúwnay divədándow/. An action to procure a judicial division of joint property. It was analogous in its object to proceedings for partition in modern law.
- Actio condictio indebitati** /ækshiyow kəndishiyow indébətəytay/. An action by which the plaintiff recovers the amount of a sum of money or other thing he paid by mistake.
- Actio confessoria** /ækshiyow kənfəsóriyə/. An affirmative petitory action for the recognition and enforcement of a servitude. So called because based on plaintiff's affirmative allegation of a right in defendant's land. Distinguished from an *actio negatoria*, which was brought to repel a claim of defendant to a servitude in plaintiff's land.
- Actio contrario** /ækshiyow kəntreiyow/. Counter action or cross action.
- Actio criminalis** /ækshiyow krímənəyləs/. Criminal action.
- Actio damni injuria** /ækshiyow dámnay injúriyə/. The name of a general class of actions for damages, including many species of suits for losses caused by wrongful or negligent acts. The term is about equivalent to our "action for damages."
- Actio de dolo malo** /ækshiyow diy dówlow mələw/. An action of fraud; an action which lay for a defrauded person against the defrauder and his heirs, who had been enriched by the fraud, to obtain the restitution of the thing of which he had been fraudulently deprived, with all its accessions (*cum omni causa*;) or, where this was not practicable, for compensation in damages.
- Actio de peculio** /ækshiyow diy pəkýúwliyw/. An action concerning or against the *peculium*, or separate property of a party.
- Actio de pecunia constituta** /ækshiyow diy pəkýúwniyə kənstətyúwdə/. An action for money engaged to be paid; an action which lay against any person who had engaged to pay money for himself, or for another without any formal stipulation.
- Actio depositi contraria** /ækshiyow dəpózətay kəntreiyə/. An action which the depositary has against the depositor, to compel him to fulfil his engagement towards him.
- Actio depositi directa** /ækshiyow dəpózətay dərəkətə/. An action which is brought by the depositor against the depositary, in order to get back the thing deposited.
- Actio de tigno juncto** /ækshiyow diy tignow jəŋktow/. An action by the owner of material built by another into his building.
- Actio directa** /ækshiyow dərəkətə/. A direct action; an action founded on strict law, and conducted according to fixed forms; an action founded on certain legal obligations which from their origin were accurately defined and recognized as actionable. See *Actio utilis*.
- Actio empti** /ækshiyow ém(p)tay/. An action employed in behalf of a buyer to compel a seller to perform his obligations or pay compensation; also to enforce any special agreements by him, embodied in a contract of sale. See *Specific performance*.
- Actio ex conducto** /ækshiyow èks kəndáktow/. An action which the bailor of a thing for hire may bring against the bailee, in order to compel him to redeliver the thing hired.
- Actio ex contractu** /ækshiyow èks kəntreáktuw/. In the civil and common law, an action of contract; an action arising out of, or founded on, contract. 3 Bl. Comm. 117.
- Actio ex delicto** /ækshiyow èks dəlíktow/. In the civil and common law, an action of tort; an action arising out of fault, misconduct, or malfeasance. 3 Bl. Comm. 117. *Ex maleficio* is the more common expression of the civil law; which is adopted by Bracton.
- Actio exercitoria** /ækshiyow egzərsətóriyə/. An action against the *exercitor* or employer of a vessel.
- Actio ex locato** /ækshiyow èks lowkétow/. An action upon letting; an action which the person who let a thing for hire to another might have against the hirer.
- Actio ex stipulatu** /ækshiyow èks stípyələtyuw/. An action brought to enforce a stipulation.
- Actio familiæ erciscundæ** /ækshiyow fəmilíyiy ərsiskándiy/. An action for the partition of an inheritance.
- Actio furti** /ækshiyow fərtay/. An action of theft; an action founded upon theft. This could be brought only for the penalty attached to the offense, and not to recover the thing stolen, for which other actions were provided. An appeal of larceny. The old process by which a thief can be pursued and the goods vindicated.
- Actio honoraria** /ækshiyow (h)onərəriyə/. An honorary, or prætorian action. *Actiones honorariæ* are those forms of remedies which were gradually introduced by the prætors and ædiles, by virtue of their equitable powers, in order to prevent the failure of justice which too often resulted from the employment of the *actiones*

civiles. These were found so beneficial in practice that they eventually supplanted the old remedies, of which in the time of Justinian hardly a trace remained.

Actio in factum /ækshiyow in fæktəm/. An action adapted to the particular case, having an analogy to some *actio in jus*, the latter being founded on some subsisting acknowledged law. The origin of these actions is similar to that of actions on the case at common law.

Actio in personam /ækshiyow in pərsónəm/. In the civil law, an action against the person, founded on a personal liability; an action seeking redress for the violation of a *jus in personam* or right available against a particular individual. See *In personam*.

Actio in rem /ækshiyow in rém/. In the civil and common law, an action for a thing; an action for the recovery of a thing possessed by another. An action for the enforcement of a right (or for redress for its invasion) which was originally available against all the world, and not in any special sense against the individual sued, until he violated it. See *In rem*.

Actio judicati /ækshiyow jūwdakéytay/. In the civil law, an action instituted after four months had elapsed after the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards; and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and if, at the end of two months, the debt was not paid, the land was sold.

Actio legis aquilæ /ækshiyow líjyəs əkwíliyy/. An action under the Aquilian law; an action to recover damages for maliciously or injuriously killing or wounding the slave or beast of another, or injuring in any way a thing belonging to another. Otherwise called *damni injuriæ actio*.

Actio mandati /ækshiyow mændéytay/. In the civil law, term included actions to enforce contracts of mandate or obligations arising out of them.

Actio mixta /ækshiyow míkstə/. A mixed action, an action brought for the recovery of a thing, or compensation for damages, and also for the payment of a penalty; partaking of the nature both of an *actio in rem* and *in personam*.

Action. Conduct; behavior; something done; the condition of acting; an act or series of acts.

Term in its usual legal sense means a lawsuit brought in a court; a formal complaint within the jurisdiction of a court of law. *Pathman Const. Co. v. Knox County Hospital Ass'n, Ind.App., 326 N.E.2d 844, 853*. The legal and formal demand of one's right from another person or party made and insisted on in a court of justice. An ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. It includes all the formal proceedings in a court of justice attendant upon the demand of a right made by one person of another in

such court, including an adjudication upon the right and its enforcement or denial by the court.

See also *Case (Cases and Controversies)*; Cause of action; Civil action; Collusive action; Counterclaim; Controversy; Cross-claim; Direct action; Forms of action; Penal action; Petitory action; Plenary action; Proceeding; Suit; Transitory action.

Merger of law and equity. In the federal courts, and most state courts, there is only one form of action—civil action—which embraces all actions formerly denominated suits in equity and actions at law. While there has been a merger of law and equity for procedural purposes, substantive principles of equity still govern. *Fed.R.Civ.P. 2*.

Types of action. Such term was formerly used to describe action for damages as distinguished from suit in equity for equitable relief. This distinction however has been abolished under *Fed. Rules of Civil Procedure* and in those states which have adopted court rules tracking the *Federal Rules*. *Fed.R.Civ.P. 2*.

Action for death. See *Wrongful death action*.

Action in equity. Action in which person seeks equitable relief as distinguished from damages; e.g. injunction or specific performance of real estate agreement. Term has been abolished by *Fed. Rules of Civil Procedure (Rule 2)* in favor of single form of action—civil action—which embraces both law and equity actions.

Action in personam. See *In personam*.

Action in rem. See *In rem*.

Action on account. An action of assumpsit or debt for recovery of money only for services performed, property sold and delivered, money loaned, or damages for the non-performance of simple contracts, express or implied, when the rights of the parties will be adequately conserved by the payment and receipt of money. *Northwest Foundry & Furnace Co. v. Willamette Mfg. & Supply Co., Inc., 268 Or. 343, 521 P.2d 545, 549*.

Action quasi in rem. See *In rem*.

Civil actions are such as lie in behalf of persons to enforce their rights or obtain redress of wrongs in their relation to individuals. *Fed.R.Civ.P. 2*.

Class actions. See *Class or representative action*; *Derivative action*.

Common law actions are such as will lie, on the particular facts, at common law, without the aid of a statute. Actions are called, in common-law practice, *ex contractu* when they arise out of a contract, and *ex delicto* when they arise out of a tort. If a cause of action arises from a breach of promise, the action is "ex contractu", and, if it arises from breach of duty growing out of contract, it is "ex delicto".

Criminal actions are such as are instituted by the sovereign power (i.e. government), for the purpose of punishing or preventing offenses against the public.

Local action. See *Local actions*.

Mixed actions partake of twofold nature of real and personal actions, having for their object the demand

and restitution of real property and also personal damages for a wrong sustained. In the civil law, an action in which some specific thing was demanded, and also some personal obligation claimed to be performed; or, in other words, an action which proceeded both *in rem* and *in personam*.

Penal actions are such as are brought, either by federal, state, or local authorities or by an individual under permission of a statute, to enforce a penalty imposed by law for the commission of a prohibited act. See Criminal.

Personal action. In civil law, an action *in personam* seeks to enforce an obligation imposed on the defendant by his contract or delict; that is, it is the contention that he is bound to transfer some dominion or to perform some service or to repair some loss. In common law, an action brought for the recovery of some debt or for damages for some personal injury, in contradistinction to the old real actions, which related to real property only. An action which can be brought only by the person himself who is injured, and not by his representatives. See *In personam*.

Popular actions, in English usage, were those actions which were given upon the breach of a penal statute, and which any man that will may sue on account of the king and himself, as the statute allowed and the case required. Because the action was not given to one especially, but generally to any that would prosecute, it was called "action popular;" and, from the words used in the process (*qui tam pro domino rege sequitur quam pro se ipso*, who sues as well for the king as for himself) it was called a *qui tam* action.

Real actions. At common law, one brought for the specific recovery of lands, tenements, or hereditaments. They are *droitural* when they are based upon the right of property, and *possessory* when based upon the right of possession. They are either writs of right; writs of entry upon disseisin (which lie in the per, the per et cui, or the post), intrusion, or alienation; writs ancestral possessory, as mort d'ancestor, aiel, besaiel, cossinage, or nuper obiit. The former class was divided into *droitural*, founded upon demandant's own seisin, and *ancestral droitural* upon the demandant's claim in respect of a mere right descended to him from an ancestor. Possessory actions were divided in the same way—as to the demandant's own seisin and as to that of his ancestor. Among the civilians, real actions, otherwise called "vindications," were those in which a man demanded something that was his own. They were founded on dominion, or *jus in re*. The real actions of the Roman law were not, like the real actions of the common law, confined to real estate, but they included personal, as well as real, property. See *In rem*. **Statutory actions** are such as can only be based upon the particular statutes creating them. Contrast *Common law actions*, above.

Transitory actions are those founded upon a cause of action not necessarily referring to or arising in any particular locality. Their characteristic feature is that the right of action follows the person of the defendant.

Actions are "transitory" when the transactions relied on might have taken place anywhere, and are "local" when they could not occur except in some particular place; the distinction being in the nature of the subject of the injury, and not in the means used or the place at which the cause of action arises. The test of whether an action is local or transitory is whether the injury is done to a subject-matter which, in its nature, could not arise beyond the locality of its situation, in contradistinction to the subject causing the injury. Actions triable where defendant resides are termed "transitory" and those triable where the subject-matter is situated are termed "local."

Actionable. That for which an action will lie, furnishing legal ground for an action. See Cause of action; Justiciable controversy.

Actionable fraud. Deception practiced in order to induce another to part with property or surrender some legal right. A false representation made with an intention to deceive; such may be committed by stating what is known to be false or by professing knowledge of the truth of a statement which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive. To constitute "actionable fraud," it must appear that defendant made a material representation; that it was false; that when he made it he knew it was false, or made it recklessly without any knowledge of its truth and as a positive assertion; that he made it with intention that it should be acted on by plaintiff; that plaintiff acted in reliance on it; and that plaintiff thereby suffered injury. *Vertes v. GAC Properties, Inc.*, D.C.Fla., 337 F.Supp. 256, 266. Essential elements are representation, falsity, scienter, deception, reliance and injury. See Fraud.

Actionable misrepresentation. A false statement respecting a fact material to the contract and which is influential in procuring it. See Fraud; Misrepresentation.

Actionable negligence. The breach or nonperformance of a legal duty, through neglect or carelessness, resulting in damage or injury to another. It is failure of duty, omission of something which ought to have been done, or doing of something which ought not to have been done, or which reasonable man, guided by considerations which ordinarily regulate conduct of human affairs, would or would not do. Essential elements are failure to exercise due care, injury, or damage, and proximate cause. See Negligence.

Actionable nuisance. Anything wrongfully done or permitted which injures or annoys another in the enjoyment of his legal rights. *Miller v. City of Dayton*, 70 Ohio App. 173, 41 N.E.2d 728, 730. Anything injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property. See Nuisance.

Actionable per quod. Words actionable only on allegation and proof of special damage. *Knapp v. Post Printing & Publishing Co.*, 111 Colo. 492, 144 P.2d 981, 984.

Words not actionable *per se* upon their face, but only in consequence of extrinsic facts showing circumstances under which they were said or the damages resulting to slandered party therefrom. Not injurious on their face in their usual and natural signification, but only so in consequence of extrinsic facts and requiring innuendo. See Libelous *per quod*.

Actionable per se. Words in themselves libelous or slanderous. *Knapp v. Post Printing & Publishing Co.*, 111 Colo. 492, 144 P.2d 981, 984. Words which law presumes must actually, proximately and necessarily damage defendant for which general damages are recoverable and whose injurious character is a fact of common notoriety, established by the general consent of men, necessarily importing damage. Actions based on such words require no proof of damages. Words actionable *per se* include imputation of crime, a loathsome disease, unchastity, or words affecting plaintiff's business, trade, profession, office or calling. See Libelous *per se*.

Actionable tort. A tort for which a cause of action exists. To constitute an "actionable tort," there must be a legal duty, imposed by statute or otherwise, owing by defendant to the one injured, and in the absence of such duty damage caused is "injury without wrong" or "damnum absque injuria." *Coleman v. California Yearly Meeting of Friends Church*, 27 Cal.App.2d 579, 81 P.2d 469, 470. See Tort.

Actionable words. In law of libel and slander, such words as naturally imply damage. See Libel; Slander.

Actionable wrong. A tort committed when a responsible person has neglected to use a reasonable degree of care for protection of another person from such injury as under existing circumstances should reasonably have been foreseen as a proximate consequence of that negligence.

Actionare /æksh(iy)ənəriy/. L. Lat. (From *actio*, an action.) To bring an action; to prosecute; or sue.

Actionary /ækshən(ə)riy/. A foreign commercial term for the proprietor of an *action* or share of a public company's stock; a stockholder.

Actio negatoria (or negativa) /ækshiyow nĕgətóriyə /'nĕgətáyvə/. An action brought to repel a claim of the defendant to a servitude in the plaintiff's land. See Actio confessoria.

Actio negotiorum gestorum /ækshiyow nĕgòwshiyórəm jĕstórəm/. Included actions between principal and agent and other parties to an engagement, whereby one person undertook the transaction of business for another.

Actiones legis /ækshiyówniyz liyĕs/. In the Roman law, legal or lawful action; actions of or at law (*legitimæ actiones*).

Actiones nominatae /ækshiyówniyz nòmenétiy/. (Lat. named actions). In the English chancery, writs for which there were precedents. The statute of Westminster,

2, c. 24, gave chancery authority to form new writs *in consimili casu*; hence the action on the case.

Action ex contractu /ækshən ěks kəntráktyuw/. An action for breach of promise set forth in a contract, express or implied. *McCullough v. The American Workmen*, 200 S.C. 84, 20 S.E.2d 640.

Action ex delicto /ækshən ěks dĕlíktow/. An action arising from a breach of duty growing out of contract.

Action for accounting. Action in equity based on inadequacy of legal remedy and particularly applicable to mutual and complicated accounts and where confidential or fiduciary relationship exists. Action to adjust mutual accounts and to strike a balance.

Action for money had and received. Action in assumpsit based upon promise to repay implied by law, and in respect of limitation is a stated or liquidated account. Action brought where one person has received money or its equivalent under such circumstances that in equity and good conscience he ought not to retain it and in justice it belongs to another. *Interstate Life & Accident Co. v. Cook*, 19 Tenn.App. 290, 86 S.W.2d 887, 891.

Action for poinding /ækshən fɔr pɪndɪŋ/. An action by a creditor to obtain a sequestration of the rents of land and the goods of his debtor for the satisfaction of his debt, or to enforce a distress.

Action in personam /ækshən in pĕrsónəm/. See In personam.

Action in rem /ækshən in rém/. See In rem.

Action of assize /ækshən əv əsáyz/. A real action at common law which proved the title of the demandant, merely by showing his ancestor's possession.

Action of assumpsit /ækshən əv əsɔmpst/. See Assumpsit.

Action of book debt. A form of common law action for the recovery of claims, such as are usually evidenced by a book-account.

Action of contract. An action brought to enforce rights whereof the contract is the evidence, and usually the sufficient evidence.

Action of writ. A (now obsolete) phrase in common law pleading used when a defendant plead some matter by which he showed that the plaintiff had no cause to have the writ sued upon, although it may be that he was entitled to another writ or action for the same matter.

Actio non /ækshiyow nón/. In the common law pleading, the Latin name of that part of a special plea which follows next after the statement of appearance and defense, and declares that the plaintiff "ought not to have or maintain his aforesaid action thereof against" the defendant (in Latin, *actionem non habere debet*).

Actio non accrevit infra sex annos /ækshiyow nón əkríyvət ínfɾə séks ənɔws/. The name of the plea of the statute of limitations, when the defendant alleges that the plaintiff's action has not accrued within six years.

Actio non datur non damnificato /ækshiyow nòn déytər nòn dæmnáfékéytow/. An action is not given to one who is not injured.

Actio non facit reum, nisi mens sit rea /ækshiyow nòn féysət ríyəm, náysay ménz sit ríyə/. An act does not make one guilty, unless the intention be bad.

Action on the case. A common law species of personal action of formerly extensive application, otherwise called "trespass on the case," or simply "case," from the circumstance of the plaintiff's whole *case* or *cause of complaint* being set forth at length in the original writ by which formerly it was always commenced. In its most comprehensive signification it includes *assumpsit* as well as an action in form *ex delicto*; though when it is mentioned it is usually understood to mean an action in form *ex delicto*. It is founded on the common law or upon acts of Parliament, and lies generally to recover damages for torts not committed with force, actual or implied; or having been occasioned by force where the matter affected was not tangible, or the injury was not immediate but consequential; or where the interest in the property was only in reversion, in all of which cases trespass is not sustainable. In the progress of judicial contestation it was discovered that there was a mass of tortious wrongs unattended by direct and immediate force, or where the force, though direct, was not expended on an existing right of present enjoyment, for which the then known forms of action furnished no redress. The action on the case was instituted to meet this want. And wrongs which will maintain an action on the case are frequently committed in the nonobservance of duties, which are but the implication of contract obligation, duties of requisite skill, fidelity, diligence, and a proper regard for the rights of others, implied in every obligation to serve another. If the cause of action arises from a breach of promise, the action is "ex contractu"; but if the cause of action arises from a breach of duty growing out of the contract, it is in form *ex delicto* and case. When there is a contract, either express or implied, from which a common-law duty results, an action on the case lies for the breach of that duty. Such form of action no longer exists under Code and Rule pleading. See *Assumpsit*.

Actio non ulterius /ækshiyow nòn èltíriyəs/. In English pleading, a name given to the distinctive clause in the plea to the *further maintenance* of the action, introduced in place of the plea *puis darrein continuance*; the averment being that the plaintiff ought not *further (ulterius)* to have or maintain his action.

Actio noxalis /ækshiyow nokséyləs/. In civil law, a noxal action; an action which lay against a master for a crime committed or injury done by his slave; and in which the master had the alternative either to pay for the damage done or to deliver up the slave to the complaining party. So called from *noxā*, the offense or injury committed.

Action quasi in rem /ækshən kwéysay in rém/. An action brought against persons which only seeks to subject the interest in certain property of those persons to

discharge of claims asserted and judgment therein is only conclusive between parties and their privies. *Tobin v. McClellan*, 225 Ind. 335, 75 N.E.2d 149, 151. See *In rem*; *Quasi in rem jurisdiction*.

Action redhibitory /ækshən rəd(h)íbit(ə)riy/. See *Redhibitory action*.

Action to quiet title. One in which plaintiff asserts his own estate and declares generally that defendant claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on defendant to set forth the nature of his claim, so that it may be determined by decree. It differs from a "suit to remove a cloud," in that plaintiff therein declares on his own title, and also avers the source and nature of defendant's claim, points out its defect, and prays that it may be declared void as a cloud on plaintiff's estate. It embraces every sort of a claim whereby the plaintiff might be deprived of his property or his title clouded or its value depreciated, or whereby the plaintiff might be incommoded or damnified by assertion of an outstanding title already held or to grow out of the adverse pretension. *Bank of American Nat. Trust & Savings Ass'n v. Town of Atherton*, 60 Cal.App.2d 268, 140 P.2d 678, 680. See *Cloud on title*.

Actionum genera maxime sunt servanda /ækshiyównəm jénərə máksəmiy sənt sərvádə/. The kinds of actions are especially to be preserved.

Actio perpetua /ækshiyow pərpéchuwə/. An action without limitation period.

Actio personalis /ækshiyow pərsənéyləs/. In the civil and common law, a personal action. See *In personam*.

Actio personalis moritur cum persona /ækshiyow pərsənéyləs mórətər kəm pərsówney/. A personal right of action dies with the person. The maxim was originally applied to almost every form of action, whether arising out of contract or tort, but the common law was modified by the Statute of 4 Edward the III. *Momand v. Twentieth-Century Fox Film Corporation*, D.C.Okl., 37 F.Supp. 649, 652.

Actio pignoratitia /ækshiyow pignəreytishiyə/. An action of pledge; an action founded on the contract of pledge (*pignus*).

Actio pœnalis /ækshiyow piynéyləs/. Called also *actio ex delicto*. An action in which a penalty was recovered of the delinquent.

Actiones pœnales and *actiones mixtæ* comprehended cases of injuries, for which the civil law permitted redress by private action, but which modern civilization universally regards as crimes; that is, offenses against society at large, and punished by proceedings in the name of the state alone. Thus, theft, receiving stolen goods, robbery, malicious mischief, and the murder or negligent homicide of a slave (in which case an injury to property was involved), gave rise to private actions for damages against the delinquent.

Actio pœnalis in hæredem non datur, nisi forte ex damno locupletior hæres factus sit /ækshiyow

piynéylæs in hæríydæm nòn déytar náysay fórtiy èks dæmnow lówkæplíyshær híriyz fáektæs sit/. A penal action is not given against an heir, unless, indeed, such heir is benefited by the wrong.

Actio præjudicialis /ækshiyow priyjuwdishiyéylæs/. A preliminary or preparatory action. An action instituted for the determination of some preliminary matter on which other litigated matters depend, or for the determination of some point or question arising in another or principal action; and so called from its being *determined before* (*prius*, or *præ judicari*).

Actio præscriptis verbis /ækshiyow præskríptæs vérbæs/. A form of action which derived its force from continued usage or the *responsa prudentium*, and was founded on the unwritten law. The distinction between this action and an *actio in factum* is said to be, that the latter was founded not on usage or the unwritten law, but by analogy to or on the equity of some subsisting law.

Actio prætoria /ækshiyow prætóriyæ/. A prætorian action; one introduced by the prætor, as distinguished from the more ancient *actio civilis* (*q.v.*).

Actio pro socio /ækshiyow pròw sówshiyow/. An action of partnership. An action brought by one partner against his associates to compel them to carry out the terms of the partnership agreement.

Actio publiciana /ækshiyow pæblíshiyéynæ/. An action which lay for one who had lost a thing of which he had *bona fide* obtained possession, before he had gained a property in it, in order to have it restored, under color that he had obtained a property in it by prescription. It was an honorary action, and derived its name from the prætor Publicius, by whose edict it was first given.

Actio quælibet in sua via /ækshiyow kwíylæbèt in syúwæ váyæ/. Every action proceeds in its own way.

Actio quod jussu /ækshiyow kwòd jásyuw/. An action given against a master, founded on some business done by his slave, acting under his *order* (*jussu*).

Actio quod metus causa /ækshiyow kwòd métæs kózæ/. An action granted to one who had been compelled by unlawful force, or fear (*metus causa*) that was not groundless (*metus probabilis* or *justus*) to deliver, sell, or promise a thing to another.

Actio realis /ækshiyow riyéylæs/. A real action. The proper term in the civil law was *rei vindicatio*.

Actio redhibitoria /ækshiyow ræd(h)íbatóriyæ/. An action to cancel a sale in consequence of defects in the thing sold. It was prosecuted to compel complete restitution to the seller of the thing sold, with its produce and accessories, and to give the buyer back the price, with interest, as an equivalent for the restitution of the produce. See Redhibitory action.

Actio rerum amotarum /ækshiyow ríráw èymow-téræw/. An action for things removed; an action which, in cases of divorce, lay for a husband against a wife, to recover things carried away by the latter, in contemplation of such divorce. It also lay for the wife against the husband in such cases.

Actio rescissoria /ækshiyow rèsæsóriyæ/. An action for restoring plaintiff to a right or title which he has lost by prescription, in a case where the equities are such that he should be relieved from the operation of the prescription. An action to rescind a prescriptive title by one who was entitled to exemption from the prescription law, as a minor, etc.

Actio serviana /ækshiyow sêrvíyéynæ/. An action which lay for the lessor of a farm, or rural estate, to recover the goods of the lessee or farmer, which were pledged or bound for the rent.

Actio stricti juris /ækshiyow stríktay juræs/. An action of strict right. The class of civil law personal actions, which were adjudged only by the strict law, and in which the judge was limited to the precise language of the formula, and had no discretionary power to regard the *bona fides* of the transaction.

Actio temporalis /ækshiyow tæmporéylæs/. An action which must be brought within a limited time. See Limitation.

Actio tutelæ /ækshiyow t(y)uwtyílyy/. Action founded on the duties or obligations arising on the relation analogous to that of guardian and ward.

Actio utilis /ækshiyow yúwtælæs/. In the civil law, a beneficial action or equitable action. An action founded on equity instead of strict law, and available for those who had equitable rights or the beneficial ownership of property. Actions are divided into *actiones directæ* or *utiles*. The former are founded on certain legal obligations which from their origin were accurately defined and recognized as actionable. The latter were formed analogically in imitation of the former. They were permitted in legal obligations for which the *actiones directæ* were not originally intended, but which resembled the legal obligations which formed the basis of the direct action.

Actio venditi /ækshiyow véndétay/. An action employed in behalf of a seller, to compel a buyer to pay the price, or perform any special obligations embodied in a contract of sale. See Specific performance.

Actio vi bonorum raptorum /ækshiyow váy bow-nóræw ræptóræw/. An action for goods taken by force; a species of mixed action, which lay for a party whose goods or movables (*bona*) had been taken from him by force (*vi*), to recover the things so taken, together with a penalty of triple the value. Bracton describes it as lying *de rebus mobilibus vi ablati sive robbati* (for movable things taken away by force, or robbed).

Actio vulgaris /ækshiyow válgéræs/. A legal action; a common action. Sometimes used for *actio directa*.

Active. That is in action; that demands action; actually subsisting; the opposite of passive. An active debt is one which draws interest. An active trust is a confidence connected with a duty. An active use is a present legal estate.

Active concealment. Term implies a purpose or design to conceal accomplished by words or acts, while passive

concealment consists in mere silence where there is a duty to speak. *Vendt v. Duenke*, Mo.App., 210 S.W.2d 692, 699. Concealment becomes a fraud where it is effected by misleading and deceptive talk, acts, or conduct, where it is accompanied by misrepresentations, or where, in addition to a party's silence, there is any statement, word, or act on his part which tends affirmatively to a suppression of the truth. Such conduct is designated active concealment. *Equitable Life Ins. Co. of Iowa v. Halsey, Stuart & Co.*, C.C.A.Ill., 112 F.2d 302, 309.

Active negligence. A term of extensive meaning embracing many occurrences that would fall short of willful wrongdoing, or of crass negligence, for example, all inadvertent acts causing injury to others, resulting from failure to exercise ordinary care; likewise, all acts the effects of which are misjudged or unforeseen, through want of proper attention, or reflection, and hence the term covers the acts of willful wrongdoing and also those which are not of that character. *Cohen v. Noel*, Tenn.App., 104 S.W.2d 1001, 1005.

Active negligence denotes some positive act or some failure in duty of operation which is equivalent of a positive act and is omission of due care and affirmative action by person in control, or negligence occurring in connection with activities conducted on the premises. *Pachowitz v. Milwaukee & Suburban Transport Corp.*, 56 Wis.2d 383, 202 N.W.2d 268, 275. Difference between "active" and "passive" negligence is that one is only passively negligent if he merely fails to act in fulfillment of duty of care which law imposes upon him, while one is actively negligent if he participates in some manner in conduct or omission which caused injury. *King v. Timber Structures, Inc. of Cal.*, 240 C.A.2d 178, 49 Cal.Rptr. 414, 417.

See also Negligence.

Active participant. Any person who engages in conduct, either by act or omission, which is an essential element of the crime. *State v. Greene*, Mo.App., 655 S.W.2d 714, 717.

Active trust. *See Trust.*

Activity. An occupation or pursuit in which person is active. *State ex rel. Agard v. Riederer*, Mo., 448 S.W.2d 577, 582.

Act malum in se /ækt mələm in siy/. *See Malum in se.*

Act malum prohibitum /ækt mələm prəhibətəm/. *See Malum prohibitum.*

Act of attainder. A legislative act, attainting a person. *See Attainder.*

Act of bankruptcy. Term used under former federal Bankruptcy Act (§ 3), to refer to any act which rendered a person liable to be proceeded against involuntarily as a bankrupt, or for which he could be adjudged bankrupt. The new Bankruptcy Code (1979) no longer provides for specific acts of bankruptcy, but rather provides for involuntary bankruptcy when the debtor, in general, is not paying his debts as they become due. Bankruptcy Code, § 303. *See Bankruptcy Code; Bankruptcy proceedings.*

Act of Elizabeth. *See Act of supremacy.*

Act of God. An act occasioned exclusively by forces of nature without the interference of any human agency. A misadventure or casualty is said to be caused by the "act of God," when it happens by the direct, immediate, and exclusive operation of the forces of nature, uncontrolled and uninfluenced by the power of man, and without human intervention, and is of such a character that it could not have been prevented or escaped from by any amount of foresight or prudence, or by any reasonable degree of care or diligence, or by the aid of any appliances which the situation of the party might reasonably require him to use. Any accident produced by any physical cause which is irresistible, such as lightning, tempests, perils of the seas, tornados, earthquakes. *Middaugh v. U.S.*, D.C.Wyo., 293 F.Supp. 977, 980. *See Inevitable accident; Perils of the sea; Vis major.*

Act of grace. The term is often used to designate a general act of parliament, originating with the crown, such as has often been passed at the commencement of a new reign, or the coming of age or marriage of a sovereign, or at the close of a period of civil troubles, declaring pardon or amnesty to numerous offenders. *See also Days of grace; Grace period.*

Act of insolvency. *See Act of bankruptcy.*

Act of law. The operation of fixed legal rules upon given facts or occurrences, producing consequences independent of the design or will of the parties concerned; as distinguished from "act of parties." Also an act performed by judicial authority which prevents or precludes a party from fulfilling a contract or other engagement. *See Act in pais.*

Act of nature. *See Act of God.*

Act of parliament. A statute; a law made by the British sovereign, with the advice and consent of the lords and the commons, in parliament assembled. Acts of parliament form the *leges scriptæ*, i.e., the written laws of the kingdom. Such acts are of three kinds: public, local or special, private or personal. The validity of a statute cannot be questioned in court.

Act of providence. An accident against which ordinary skill and foresight could not guard. Equivalent to "act of God" (*q.v.*).

Act of sale. An official record of a sale of property, made by a notary who writes down the agreement of the parties as stated by them, and which is then signed by the parties and attested by witnesses.

Act of settlement. The English statute (12 & 13 Wm. III, c. 2) limiting the crown to the Princess Sophia of Hanover, and to the heirs of her body being Protestants. 1 Bl.Comm. 128. One clause of it made the tenure of judges' office for life or good behavior independent of the crown.

Act of state. An act done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him. An act of state cannot be ques-

tioned or made the subject of legal proceedings in a court of law. See Act of state doctrine.

Act of state doctrine. The judicially created act of state doctrine precludes the courts of this country from inquiring into the validity of governmental acts of a recognized foreign sovereign committed within its own territory. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804; *Ricaud v. American Metal Co.*, 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733; *Oetjen v. Central Leather Co.*, 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726; *F. Palicio y Compania, S. A. v. Brush*, 256 F.Supp. 481 aff'd, 375 F.2d 1011 (2d Cir.), cert. denied, 389 U.S. 830, 88 S.Ct. 95, 19 L.Ed.2d 88.

Act of supremacy. An act of 26 Hen. VIII, c. 1, and also 1 Eliz., c. 1, which recognized the king as the only supreme head on earth of the Church of England having full power to correct all errors, heresies, abuses, offenses, contempts and enormities. The oath, taken under the act, denies to the Pope any other authority than that of the Bishop of Rome.

Act of uniformity. The English statute of 13 & 14 Car. II, c. 4, enacting that the book of common prayer, as then recently revised, should be used in every parish church and other place of public worship, and otherwise ordaining a uniformity in religious services, etc.

Acton Burnel, statute of. In English law, a statute, otherwise called *Statutum Mercatorum* or *de Mercatoribus*, the statute of the merchants, made at a parliament held at the castle or village of Acton Burnel in Shropshire, in the 11th year of the reign of Edward I. It was a statute for the collection of debts, the earliest of its class, being enacted in 1283. A further statute for the same object, and known as *De Mercatoribus*, was enacted 13 Edw. I, (c. 3). See Statute (*Statute merchant*).

Act on petition. A form of summary proceeding formerly in use in the high court of admiralty, in England, in which the parties stated their respective cases briefly, and supported their statements by affidavit.

Actor. One who acts. The term is used in the Restatement of Torts, Second, to designate either the person whose conduct is in question as subjecting him to liability toward another, or as precluding him from recovering against another whose tortious conduct is a legal cause of the actor's injury. Sec. 2.

Old European law. A patron, proctor, advocate, or pleader; one who acted for another in legal matters; one who represented a party and managed his cause. An attorney, bailiff, or steward; one who managed or acted for another. The Scotch "doer" is the literal translation.

Roman law. One who acted for another; one who attended to another's business; a manager or agent. A slave who attended to, transacted, or superintended his master's business or affairs, received and paid out moneys, and kept accounts. The word has a variety of closely-related meanings, very nearly corresponding with manager. Thus, *actor dominæ*, manager of his master's farm; *actor ecclesiæ*, manager of church proper-

ty; *actores provinciarum*, tax-gatherers, treasurers, and managers of the public debt.

Actor ecclesiæ.—An advocate for a church; one who protects the temporal interests of a church. *Actor villæ* was the steward or head-bailiff of a town or village.

Plaintiff or complainant. In a civil or private action the plaintiff was often called by the Romans "*petitor*;" in a public action (*causa publica*) he was called "*accusator*." The defendant was called "*reus*," both in private and public causes. This term, however, might signify either party, as might be concluded from the word itself. In a private action, the defendant was often called "*adversarius*," but either party might be called so.

Also, the term is used of a party who, for the time being, sustains the burden of proof, or has the initiative in the suit.

Actore non probante reus absolvitur /æktóriy non probántiy riyəs æbðólvətər/. When the plaintiff does not prove his case the defendant is acquitted (or absolved).

Actori incumbit onus probandi /æktóray iŋkəmbət ównəs prəbénday/. The burden of proof rests on the plaintiff (or on the party who advances a proposition affirmatively.)

Actor qui contra regulam quid adduxit, non est audiendus /æktòr kwày kóntərə régyələm kwid əðáksət, nón èst òdiyéndəs/. A plaintiff (or pleader) is not to be heard who has advanced anything against authority (or against the rule).

Actor sequitur forum rei /æktòr sékwətər fóram riyay/. According as *rei* is intended as the genitive of *res*, a thing, or *reus*, a defendant, this phrase means: The plaintiff follows the forum of the property in suit, or the forum of the defendant's residence.

Actrix /æktriiks/. Lat. A female actor; a female plaintiff.

Acts of court. Legal memoranda made in the admiralty courts in England, in the nature of pleas.

Acts of possession. To constitute adverse possession, acts of possession must be: (1) hostile or adverse, (2) actual, (3) visible, notorious, and exclusive, (4) continuous, and (5) under claim of ownership. *Bilyeu v. Plant*, 75 Ill.App.2d 109, 220 N.E.2d 513. See Adverse possession.

Actual. Real; substantial; existing presently in fact; having a valid objective existence as opposed to that which is merely theoretical or possible. Opposed to potential, possible, virtual, theoretical, hypothetical, or nominal. Something real, in opposition to constructive or speculative; something existing in act. It is used as a legal term in contradistinction to virtual or constructive as of possession or occupation. *Actually* is opposed to seemingly, pretendedly, or feignedly, as *actually engaged in farming* means really, truly in fact. As to *actual Bias; Damages; Delivery; Fraud; Malice; Notice; Occu-*

pation; Ouster; Possession; Residence; Seisin; Total loss, see those titles.

Actual authority. The power of an agent to bind its principal where such power derives either from express or implied agreement between the principal and the agent. *HyKen v. Travelers Ins. Co.*, Mo.App., 678 S.W.2d 454, 457. In the law of agency, such authority as a principal intentionally confers on the agent, or intentionally or by want of ordinary care allows the agent to believe himself to possess. *National Cash Register Co. v. Wichita Frozen Food Lockers*, Tex.Civ.App., 172 S.W.2d 781, 787. Includes both express and implied authority.

Actual bias. See *Bias*.

Actual cash value. The fair or reasonable cash price for which the property could be sold in the market in the ordinary course of business, and not at forced sale. The price it will bring in a fair market after reasonable efforts to find a purchaser who will give the highest price. What property is worth in money, allowing for depreciation. Ordinarily, "actual cash value", "fair market value", and "market value" are synonymous terms. See *Actual value*; *Cash value*; *Fair market value*; *Fair value*.

Actual change of possession. In statutes of frauds, an open, visible and unequivocal change of possession, manifested by the usual outward signs, as distinguished from a merely formal or constructive change.

Actual controversy. Declaratory judgment may be rendered only in cases of "actual controversy" defined as concrete cases touching legal relations of parties having adverse legal interests and susceptible of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the alleged facts. *Dr. Beck & Co. G.M.B.H. v. General Elec. Co.*, D.C.N.Y., 210 F.Supp. 86, 89. See also *Cases and controversies*; *Declaratory Judgment Act.*

Actual cost. The actual price paid for goods by a party, in the case of a real *bona fide* purchase, which may not necessarily be the market value of the goods. It is a general or descriptive term which may have varying meanings according to the circumstances in which it is used. It imports the exact sum expended or loss sustained rather than the average or proportional part of the cost. Its meaning may be restricted to materials, labor, and overhead or extended to other items.

Actual damages. Compensation for actual injuries or loss. *Chappell v. City of Springfield, Mo.*, 423 S.W.2d 810, 814. Term used to denote the type of damage award as well as the nature of injury for which recovery is allowed; thus, actual damages flowing from injury in fact are to be distinguished from damages which are nominal, exemplary or punitive. *Razor v. Retail Credit Co.*, 87 Wash.2d 516, 554 P.2d 1041, 1049. "Actual damages" are synonymous with compensatory damages. *Weider v. Hoffman*, D.C.Pa., 238 F.Supp. 437, 445. See also *Damages*.

Actual delivery. See *Delivery*.

Actual eviction. An actual expulsion of the tenant out of all or some part of the demised premises. A physical ouster or dispossession from the very thing granted or some substantial part thereof. *Cauley v. Northern Trust Co.*, 315 Ill.App. 307, 43 N.E.2d 147, 155, 315. See *Constructive eviction*; *Eviction*; *Forcible entry and detainer*; *Summary (Summary process)*.

Actual fraud. See *Fraud*.

Actual loss. One resulting from the real and substantial destruction of the property insured.

Actual malice. See *Malice*.

Actual market value. In custom laws, the price at which merchandise is freely offered for sale to all purchasers; the price which the manufacturer or owner would have received for merchandise, sold in the ordinary course of trade in the usual wholesale quantities. See also, *Market volume*.

Actual notice. See *Notice*.

Actual possession. See *Possession*.

Actual practice. Active, open and notorious engagement in business, vocation or profession as opposed to casual or clandestine practice. *State ex rel. Laughlin v. Washington State Bar Ass'n*, 26 Wash.2d 914, 176 P.2d 301, 309.

Actual physical control. Such control within statute providing that it is unlawful and punishable by law for any person under influence of intoxicating liquor to be in actual physical control of any motor vehicle within state means existing or present bodily restraint, directing influence, domination, or regulation of any automobile while under the influence of intoxicating liquor. *Bearden v. State*, Okl.Cr., 430 P.2d 844, 847.

Actual residence. The abode, where one actually lives, not mere naked legal residence. *In re McGrath*, 243 App.Div. 803, 278 N.Y.S. 135. See *Domicile*; *Residence*.

Actual trust. See *Trust*.

Actual use. Term "actual use" in automobile liability policy providing coverage for nonowned automobile if the actual operation or actual use of automobile by relative of insured is with permission of owner means present or active use or a use existing in fact or reality as distinguished from an imputed or constructive use. *United Services Auto. Ass'n v. United States Fire Ins. Co.*, 36 C.A.3d 765, 111 Cal.Rptr. 595, 598.

Actual value. Actual value to be awarded in condemnation proceeding is price that would probably result from negotiations between willing seller and willing buyer. "Actual value," "market value," "fair market value," "just compensation" and the like may be used as convertible terms. "Saleable value," "actual value," "cash value," and other like terms used in directions to tax assessing officers, all mean generally the same thing. *In re Lang Body Co.*, C.C.A.Ohio, 92 F.2d 338, 340. See also *Market value*.

Actual violence. An assault with actual violence is an assault with physical force put in action, exerted upon

the person assailed. The term violence is synonymous with physical force, and the two are used interchangeably in relation to assaults.

Actuarial table /ækchuwériyəl téybəl/. A form of organized statistical data which indicates the life expectancy of a person and which is admissible in evidence through an expert witness. *Leave v. Boston Elevated Railway*, 306 Mass. 391, 397, 28 N.E.2d 483. Such tables are used by insurance companies in determining premiums. *See also* American experience table of mortality; Life tables; Mortality tables.

Actuarius /ækchuwériyəs/. In Roman law, a notary or clerk. One who drew the acts or statutes, or who wrote in brief the public acts. An officer who had charge of the public baths; an officer who received the money for the soldiers, and distributed it among them; a notary. *See also* Actor.

Actuary /ækchuweriy/. A statistician who computes insurance and pension rates and premiums on the basis of experience tables (*e.g.* life expectancy and mortality tables).

Actum /æktəm/. Lat. A deed; something done.

Actus /æktəs/. In the civil law, an act or action. *Non tantum verbis, sed etiam actu*; not only by words, but also by act.

A species of right of way, consisting in the right of driving cattle, or a carriage, over the land subject to the servitude. It is sometimes translated a "road," and included the kind of way termed "*iter*," or path.

In old English law, an act of parliament; a statute. A distinction, however, was sometimes made between *actus* and *statutum*. *Actus parliamenti* was an act made by the lords and commons; and it became *statutum*, when it received the king's consent.

Actus curiæ neminem gravabit /æktəs kyúriyiy némənəm grævéybət/. An act of the court shall prejudice no man. Where a delay in an action is the act of the court, neither party shall suffer for it.

Actus Dei nemini est damnosus /æktəs díyay némənay èst dæmnówsəs/. The act of God is hurtful to no one. That is, a person cannot be prejudiced or held responsible for an accident occurring without his fault and attributable to the "act of God." *See* Act of God.

Actus Dei nemini facit injuriam /æktəs díyay némənay féysət ənjúriyəm/. The act of God does injury to no one. 2 Bl.Comm. 122. A thing which is inevitable by the act of God, which no industry can avoid, nor policy prevent, will not be construed to the prejudice of any person in whom there was no laches.

Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertiæ personæ, vel ex contingenti, revocari non potest /æktəs inséptəs, kyúwjes pærféksh(iy)ow péndət èks vólántétyiy társhiyiy pærsówniy, vél èks kóntinjén-tay, revəkéray nòn pówtést/. An act already begun, the completion of which depends on the will of the parties,

may be revoked; but if it depend on the will of a third person, or on a contingency, it cannot be revoked.

Actus judicarius coram non judice irritus habetur, de ministeriali autem a quocunque provenit ratum esto /æktəs jədishiyériyəs kórəm nòn júwdəsiy íhrətəs həbíytər, díy mínəstíríyéláy ótəm èy kwókwəŋkwíy prəvíynət réydm əstow/. A judicial act by a judge without jurisdiction is void; but a ministerial act, from whomsoever proceeding, may be ratified.

Actus legis nemini est damnosus /æktəs líyjes némənay èst dæmnówsəs/. The act of the law is hurtful to no one. An act in law shall prejudice no man.

Actus legis nemini facit injuriam /æktəs líyjes némənay féysət ənjúriyəm/. The act of the law does injury to no one.

Actus legitimi non recipiunt modum /æktəs lejítəmay nòn rəsípiyənt mówdəm/. Acts required to be done by law do not admit of qualification.

Actus me invito factus non est meus actus /æktəs miy ənváytow fáktəs nòn èst miyəs æktəs/. An act done by me, against my will, is not my act.

Actus non facit reum, nisi mens sit rea /æktəs nòn féysət riýəm, náysay ménz sit riýə/. An act does not make [the doer of it] guilty, unless the mind be guilty; that is, unless the intention be criminal. The intent and the act must both concur to constitute the crime.

Actus repugnus non potest in esse produci /æktəs rəpəgnəs nòn pówtést in ésiy prəd(y)úwsay/. A repugnant act cannot be brought into being, *i.e.*, cannot be made effectual.

Actus reus /æktəs riýəs/. The "guilty act." A wrongful deed which renders the actor criminally liable if combined with mens rea. The *actus reus* is the physical aspect of a crime, whereas the *mens rea* (guilty mind) involves the intent factor.

Actus servi in iis quibus opera ejus communiter adhibita est, actus domini habetur /æktəs sərvey in áyəs kwíbəš ówpərə iyjəs kəmyúwnətər ədhíbətə èst æktəs dómənay həbíytər/. The act of a servant in those things in which he is usually employed, is considered the act of his master.

A cueillette /à kəyé/. In French law, in relation to the contract of affreightment, signifies when the cargo is taken on condition that the master succeeds in completing his cargo from other sources.

Ad /əd/. Lat. At; by; for; near; on account of; to; until; upon; with relation to or concerning.

A.D. An abbreviation of Anno Domini meaning in the year of our Lord.

Ad abundantiore[m] cautelam /əd əbəndənsiyórəm kótíyləm/. Lat. For more abundant caution. Otherwise expressed, *ad cautelam ex superabundanti*.

Ad admittendum clericum /əd ədmíténdəm klérəkəm/. For the admitting of the clerk. A writ in the nature of an execution, commanding the bishop to admit his clerk, upon the success of the latter in a *quare impedit*.

Ad aliud examen /æd éyliyəd əgzéymən/. To another tribunal; belonging to another court, cognizance, or jurisdiction.

Ad alium diem /æd éyliyəm dáyəm/. At another day. A common phrase in the old reports.

Adamson Act. Act of Congress (1916) establishing the 8 hour workday. 45 U.S.C.A. § 45.

Adapted. Capable of use. Indicates that the object referred to has been made suitable; has been made to conform to; has been made fit by alteration. *Raynor v. United States*, C.C.A.Ind., 89 F.2d 469, 471.

Adaptation right. In copyright law, the exclusive right of the holder of a copyright to prepare "derivative works" based on the copyrighted item.

Ad assisas capiendas /æd əsáyzəs kəpiyəndəs/. To take assises; to take or hold the assises. 3 Bl.Comm. 185, 352. *Ad assisam capiendam*; to take an assise.

A dato /èy déydow/. From the date. *See* A dato.

A datu /èy déyduw/. Law Latin. From the date. *See* A dato.

Ad audiendam considerationem curiæ /æd òdiyéndəm kənsidəreyshiyónəm kyúriyiy/. To hear the judgment of the court.

Ad audiendum et determinandum /æd òdiyéndəm et dətərmənəndəm/. To hear and determine. 4 Bl.Comm. 278.

Ad barram /æd bārəm/. To the bar; at the bar.

Ad barram evocatus /æd bārəm iyvowkéytəs/. Called to the bar.

Ad campi partem /æd kəmpay pártəm/. For a share of the field or land, for champert.

Ad captum vulgi /æd kəptəm vəljay/. Adapted to the common understanding.

Ad coelum doctrine /æd sýləm dóktrən/. A person owns the space above his real estate to the extent that no one may acquire a right to such air space that will limit the owner's enjoyment of it. This doctrine has been rejected by most courts. *U. S. v. Causby*, 328 U.S. 256, 66 S.Ct. 1062, 90 L.Ed. 1206. Literally, to heaven. *See* Air rights.

Ad colligendum /æd kòlajéndəm/. For collecting; as an administrator or trustee *ad colligendum*.

Ad colligendum bona defuncti /æd kòlajéndəm bównə dəfəŋktay/. For collecting the goods of the deceased. *See* Administration of estates.

Ad communem legem /æd kəmyúwnəm liyjəm/. At common law, the name of a writ of entry (now obsolete) brought by the reversioners after the death of the life tenant, for the recovery of lands wrongfully alienated by him.

Ad commune nocumentum /æd kəmyúwniy nòk-yəméntəm/. To the common nuisance.

Ad comparendum /æd kòmpərəndəm/. To appear. *Ad comparendum, et ad standum juri*, to appear and to stand to the law, or abide the judgment of the court.

Ad computum reddendum /æd kəmpyúwtəm rədéndəm/. To render an account.

Adcordabilis denarii /æ(d)kordéybələs dənəriyay/. Money paid by a vassal to his lord upon the selling or exchanging of a feud.

Ad culpam /æd kəlpəm/. Until misbehavior.

Ad curiam /æd kyúriyəm/. At a court. To court.

Ad curiam vocare /æd kyúriyəm vovkériy/. To summon to court.

Ad custagia /æd kəstéyj(i)yə/. At the costs.

Ad custum /æd kástəm/. At the cost. 1 Bl.Comm. 314.

Add. To unite; attach; annex; join. *See also* Addition; Additional.

Ad damnum /æ(d) dámnəm/. In pleading, "To the damage." The technical name of that clause of the writ, declaration, or, more commonly, the complaint, which contains a statement of the plaintiff's money loss, or the damages which he claims. *Fed.R.Civil P. 8(a)*.

Such clause informs an adversary of the maximum amount of the claim asserted without being proof of actual injury or of liability. *Natale v. Great Atlantic & Pacific Tea Co.*, 8 App.Div. 781, 186 N.Y.S.2d 795, 796.

Added substance. Test for determining whether substance is an "added substance" within meaning of Federal Food, Drug, and Cosmetic Act is whether it occurs naturally in the food. *Millet, Pit & Seed Co., Inc. v. U.S.*, D.C.Tenn., 436 F.Supp. 84, 87. *See also* Foreign substance.

Ad defendendum /æ(d) dəfendéndəm/. To defend. 1 Bl.Comm. 227.

Addendum /ədéndəm/. A thing that is added or to be added; a list or section consisting of added material.

Addicere /ədísəriy/. Lat. In the civil law, to adjudge or condemn; to assign, allot, or deliver; to sell. In the Roman law, *addico* was one of the three words used to express the extent of the civil jurisdiction of the prætors.

Addict. Any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such narcotic drugs as to have lost the power of self-control with reference to his addiction. 21 U.S.C.A. § 802. *People v. McKibben*, 24 Ill.App.3d 692, 321 N.E.2d 362, 364.

Addictio /ədíkshiyow/. In the Roman law, the giving up to a creditor of his debtor's person by a magistrate; also the transfer of the (deceased) debtor's goods to one who assumes his liabilities.

Addictive drugs. Any drug, natural or synthetic, which causes periodic or chronic intoxication by its repeated consumption.

Ad diem /æ(d) dáyəm/. At a day; at the day. *Ad alium diem*, at another day. *Ad certum diem*, at a certain day. *Solvit ad diem*, he paid at or on the day.

Addition. Implies physical contact, something added to another. Structure physically attached to or connected with building itself. *Mack v. Eyssell*, 332 Mo. 671, 59 S.W.2d 1049. Extension; increase; augmentation. *Meyering v. Miller*, 330 Mo. 885, 51 S.W.2d 65, 66. That which has become united with or a part of. *See* Appurtenance; Fixture.

In insurance law, the word "addition", as applied to buildings usually means a part added or joined to a main building; though the term has also been held to apply to buildings appurtenant to some other building though not actually in physical contact therewith.

At common law, whatever was added to a man's name by way of title or description. In English law, there were four kinds of *additions*,—additions of *estate*, such as yeoman, gentleman, esquire; additions of *degree*, or names of dignity, as knight, earl, marquis, duke; additions of *trade*, mystery, or occupation, as scrivener, painter, mason, carpenter; and additions of *place* of residence as London, Chester, etc.

Additional. This term embraces the idea of joining or uniting one thing to another, so as thereby to form one aggregate. *Ex parte Boddie*, 200 S.C. 379, 21 S.E.2d 4, 8.

Additional burden. *See* Eminent domain.

Aditionales /ædish(iy)ənéyliyz/. In the law of contracts, additional terms or propositions to be added to a former agreement.

Additional extended coverage. Insurance policy indorsement covering dwellings; covering water damage from plumbing and heating systems, vandalism and malicious mischief, glass breakage, falling trees, ice, snow, etc.

Additional instructions. Charge by judge to jury beyond the original instructions. Frequently required when the jury returns from deliberations with a question concerning the evidence, point of law, or some portion of the original charge.

Additional insurance. Insurance which is added to an existing policy.

Additional insured. Person(s) covered by policy in addition to the named insured; *e.g.* in an automobile liability policy, the "named insured" is usually the purchaser or the owner of the insurance policy, while an "additional insured" or an "insured" is one who is not specifically identified by name in the policy, but enjoys status of an insured under the named insured's policy, for example, as result of being the operator of the named insured's automobile. *De Simone v. Nationwide Mut. Ins. Co.*, 149 N.J.Super. 376, 373 A.2d 1025, 1027.

Additional legacy. *See* Legacy.

Additional servitude. The imposition of a new and additional easement or servitude on land originally taken by eminent domain proceedings. A use of a different

character, for which owner of property is entitled to compensation.

Additional work. Of nature involved in modifications and changes, not independent project. *Maryland Casualty Co. v. City of South Norfolk, C.C.A.Va.*, 54 F.2d 1032, 1037. Work which results from a change or alteration in plans concerning work which has to be done under a contract, while "extra work" relates to work which is not included within the contract itself. *De Martini v. Elade Realty Corp., Co.Ct.*, 52 N.Y.S.2d 487, 489.

Additio probat minoritatem /ədish(iy)ow prówbət mənörətéytəm/. An addition [to a name] proves or shows minority or inferiority. That is, if it be said that a man has a fee tail, it is less than if he has the fee.

Additur /ædətər/. The power of trial court to assess damages or increase amount of an inadequate award made by jury verdict, as condition of denial of motion for new trial, with consent of defendant whether or not plaintiff consents to such action. *Dorsey et al. v. Barba et al., Cal.App.*, 226 P.2d 677. This is not allowed in the Federal system. *Dimick v. Schiedt*, 293 U.S. 474, 55 S.Ct. 296, 79 L.Ed. 603. *Compare* Remittitur.

Add on clause. A clause in an installment sales contract that makes earlier purchases with that firm security for new purchases.

Add on interest. Method of charging interest usually in the financing of certain major types of consumer goods and generally not in real estate financing. Interest is computed on the total amount borrowed and added to the principal. Each payment is then deducted from this total amount.

Addone, addonne /ədówniy/. L. Fr. Given to.

Address. Place where mail or other communications will reach person. *Munson v. Bay State Dredging & Contracting Co.*, 314 Mass. 485, 50 N.E.2d 633, 636. Generally a place of business or residence; though it need not be.

Bill of address. Provision in Massachusetts Constitution which provides that judges are subject to removal upon the *address* of a majority of both houses of the legislature with approval of the Governor and the Executive Council.

Equity pleading. Part of a bill wherein is given the appropriate and technical description of the court in which the bill is filed. *See* Caption.

Address to the crown. In England when the royal speech has been read in Parliament, an address in answer thereto is moved in both houses. Two members are selected in each house by the administration for moving and seconding the address. Since the commencement of the session 1890-1891, it has been a single resolution expressing their thanks to the sovereign for his gracious speech.

Adduce. To present, bring forward, offer, introduce. Used particularly with reference to evidence.

Ad ea quæ frequentius accidunt jura adaptantur /æd iyə kwiy frəkwenʃ(iy)əs æksədənt jūrə ædəptəntər/. Laws are adapted to those cases which most frequently occur.

Adeem /ədiym/. To take away, recall, or revoke. To satisfy a legacy by some gift or substituted disposition, made by the testator, in advance. *Woodburn Lodge No. 102, I. O. O. F. v. Wilson*, 148 Or. 150, 34 P.2d 611, 614. See *Ademption*.

Ad effectum /æd əfektəm/. To the effect, or end. *Ad effectum sequentem*, to the effect following.

Adeling, or atheling /æd(ə)liŋ/. Noble; excellent. A title of honor among the Anglo-Saxons, properly belonging to the king's children.

Ademptio /ædəm(p)sh(iy)ow/. Lat. In the civil law, a revocation of a legacy; an *ademption*. Where it was expressly transferred from one person to another, it was called *translatio*.

Ademption /ədəm(p)shən/. Extinction or withdrawal of legacy by testator's act equivalent to revocation or indicating intention to revoke. *Tagnon's Adm'x v. Tagnon*, 253 Ky. 374, 69 S.W.2d 714.

Testator's giving to a legatee that which he has provided in his will, or his disposing of that part of his estate so bequeathed in such manner as to make it impossible to carry out the will. *Hurley v. Schuler*, 296 Ky. 118, 176 S.W.2d 275, 276. Revocation, recalling, or cancellation of a legacy, according to the apparent intention of the testator, implied by the law from acts done by him in his life, though such acts do not amount to an express revocation of it.

To take away, recall, revoke, or to satisfy legacy by some gift or substituted disposition, made by testator, in advance. In *re Burnett's Estate*, 49 N.J.Super. 439, 140 A.2d 242, 244.

The act by which the testator pays to his legatee, in his life-time, a general legacy which by his will he had proposed to give him at his death; and the act by which a specific legacy has become inoperative on account of the testator having parted with the subject. *Dillender v. Wilson*, 228 Ky. 758, 16 S.W.2d 173, 174.

See *Advancement*.

Adeo /ædiyow/. Lat. So, as. *Adeo plene et integre*, as fully and entirely.

Adequate. Sufficient; commensurate; equally efficient; equal to what is required; suitable to the case or occasion; satisfactory. Equal to some given occasion or work. *Nissen v. Miller*, 44 N.M. 487, 105 P.2d 324, 326.

Adequate care. Such care as a man of ordinary prudence would himself take under similar circumstances to avoid accident; care proportionate to the risk to be incurred. See also *Care*.

Adequate cause. Sufficient cause for a particular purpose.

In criminal law, adequate cause for the passion which reduces a homicide committed under its influence from the grade of murder to manslaughter, means such cause

as would commonly produce a degree of anger, rage, resentment, or terror, in a person of ordinary temper, sufficient to render the mind incapable of cool reflection. Insulting words or gestures, or an assault and battery so slight as to show no intention to inflict pain or injury, or an injury to property unaccompanied by violence are not adequate causes. *Berry v. State*, 143 Tex.Cr.R. 67, 157 S.W.2d 650, 652. See *Adequate provocation*; *Cause*; *Probable cause*.

Adequate compensation. Just value of property taken under power of eminent domain, payable in money, as guaranteed by 5th Amendment. Market value of property when taken. It may include interest and may include the cost or value of the property to the owner for the purposes for which he designed it. Such only as puts injured party in as good a condition as he would have been in if injury had not been inflicted. *Town of Winchester v. Cox*, 129 Conn. 106, 26 A.2d 592, 597. See also *Fair market value*; *Just compensation*.

Adequate consideration. Such as is equal, or reasonably proportioned, to the value of that for which it is given. That which is not so disproportionate as to shock our sense of that morality and fair dealing which should always characterize transactions between man and man. Fair and reasonable under circumstances. Reasonably just and equitable. See *Consideration*; *Fair consideration*; *Fair market value*; *Fair value*; *Just compensation*.

Adequate notice. Notice reasonably calculated to apprise a person of an action, proceeding, or motion. Notice sufficient to permit an objection or defense. *U. S. v. San Juan Lumber Co.*, D.C.Colo., 313 F.Supp. 703, 709. Notice reasonably calculated, in all circumstances of given proceeding, to apprise all interested parties of action and opportunity to present their objections. *U.S. v. San Juan Lumber Co.*, D.C.Colo., 313 F.Supp. 703, 709. See *Notice*.

Adequate preparation. Embraces full consultation with accused, interviews with witnesses, study of facts and law, and determination of character of defense to be made and policy to be followed during trial. *Nelson v. Commonwealth*, 295 Ky. 641, 175 S.W.2d 132, 133.

Adequate protection. Phrase used in several sections of the Bankruptcy Code to describe protection afforded to holders of secured claims. It is meant to preserve secured creditor's position at the time of bankruptcy. In *re Jamaica House, Inc.*, *Bkrcty.Vt.*, 31 B.R. 192, 195. More specifically, the lack of adequate protection of the creditor's interest in its collateral is a basis for relief from stay under Code § 362(d)(1); adequate protection is also the standard for creditor protection from sale or use or encumbrance of the collateral under Code sections 363 and 364. While adequate protection is not statutorily defined, section 361 sets out examples of adequate protection. See *In re Cooley*, *Bkrcty.Pa.*, 37 B.R. 590, 592.

Adequate provocation. An adequate provocation to cause a sudden transport of passion that may suspend the exercise of judgment and exclude premeditation and a previously formed design is one that is calculated to

excite such anger as might obscure the reason or dominate the volition of an ordinary reasonable man. *See Adequate cause.*

Adequate remedy at law. For purposes of rule that a litigant who fails to avail himself of a remedy provided by law and who is subsequently barred from pursuing that remedy because of his own lack of diligence cannot rely on the absence of a remedy at law as a basis for equitable jurisdiction, is one which is as complete, practical and as efficient to the ends of justice and its prompt administration as a remedy in equity, and which is obtainable as of right. *In re Wife, K., Del.Ch., 297 A.2d 424, 426.*

As preventing relief by injunction, means a remedy which is plain and complete and as practical and efficient to ends of justice and its prompt administration as a remedy in equity, and although an injunction will issue when legal remedy is inadequate, injunction should not be granted where complainant has an adequate remedy at law. *Hancock v. Bradshaw, Tex.Civ. App., 350 S.W.2d 955, 957.*

A remedy that affords complete relief with reference to the particular matter in controversy, and is appropriate to the circumstances of the case. Such must reach end intended, and actually compel performance of duty in question. *Simpson v. Williams Rural High School Dist., Tex.Civ.App., 153 S.W.2d 852, 856.*

Adessee /ædəsiy/. In the civil law, to be present; the opposite of *abesse*.

Ademissu /ædyúw/. Without day, as when a matter is finally dismissed by the court. *Alez adeu, go without day. See Adieu.*

Ad eversionem juris nostri /æd əvərz(h)iyównəm júrés nóstray/. To the overthrow of our right.

Ad excambium /æd ekskæmbiyəm/. For exchange; for compensation.

Ad exhæredationem /æd eks-hirədeyshiyównəm/. To the disherison, or disinheriting; to the injury of the inheritance. 3 Bl.Comm. 288. Formal words in the old writ of waste, which calls upon the tenant to appear and show cause why he hath committed waste and destruction in the place named, *ad exhæredationem*, etc.

Ad exitum /æd égzədəm/. At issue; at the end (of the pleadings).

Ad faciendum /æd feyshiyéndəm/. To do. *Ad faciendum, subjiendum et recipiendum*; to do, submit to, and receive. *Ad faciendam juratam illam*; to make up that jury.

Ad feodi firmam /æd fyúwday fərməm/. To fee farm.

Ad fidem /æd fáydəm/. In allegiance. Subjects born *ad fidem* are those born in allegiance.

Ad filum aquæ /æd fáyləm ákwiy/. To the thread of the water; to the central line, or middle of the stream. *Usque ad filum aquæ*, as far as the thread of the stream. A phrase of which *ad medium filum aquæ (q.v.)* is another form, and etymologically more exact.

Ad filum viæ /æd fáyləm váiy/. To the middle of the way; to the central line of the road.

Ad finem /æd fáynəm/. Abbreviated *ad fin.* To the end. It is used in citations to books, as a direction to read from the place designated to the end of the chapter, section, etc. *Ad finem litis*, at the end of the suit.

Ad firmam /æd fərməm/. To farm. Derived from an old Saxon word denoting rent. *Ad firmam noctis* was a fine or penalty equal in amount to the estimated cost of entertaining the king for one night. *Ad feodi firmam*, to fee farm.

Ad fundandam jurisdictionem /æd fəndándəm júrésdikshiyównəm/. To make the basis of jurisdiction.

Ad gaolas deliberandas /æd jeyləs dəlibərándəs/. To deliver the gaols; to empty the gaols. *Ad gaolam deliberandam*; to deliver the gaol; to make gaol delivery.

Ad gravamen /æd grævéymən/. To the grievance, injury, or oppression.

Adhering. Joining, leagued with, cleaving to; as, "adhering to the enemies of the United States." "Adhering" consists in giving to the United States the loyalty due from a citizen. *United States v. Stephan, D.C.Mich., 50 F.Supp. 738, 741.* Any intentional act furthering hostile designs of enemies of the United States, or an act which intentionally strengthens or tends to strengthen enemies of the United States, or which weakens or tends to weaken power of the United States to resist and attack such enemies, constitutes "adhering" to such enemies. *United States v. Haupt, D.C.Ill., 47 F.Supp. 836, 839.*

Adhesion. Agreement to join; adherence. The entrance of another nation into an existing treaty with respect only to a part of the principles laid down or the stipulations agreed to. Properly speaking, by adhesion the third nation becomes a party only to such parts as are specifically agreed to, and by accession it accepts and is bound by the whole treaty. *See Accession.*

Adhesion contract. Standardized contract form offered to consumers of goods and services on essentially "take it or leave it" basis without affording consumer realistic opportunity to bargain and under such conditions that consumer cannot obtain desired product or services except by acquiescing in form contract. Distinctive feature of adhesion contract is that weaker party has no realistic choice as to its terms. *Cubic Corp. v. Marty, 4 Dist., 185 C.A.3d 438, 229 Cal.Rptr. 828, 833; Standard Oil Co. of Calif. v. Perkins, C.A.Or., 347 F.2d 379, 383.* Recognizing that these contracts are not the result of traditionally "bargained" contracts, the trend is to relieve parties from onerous conditions imposed by such contracts. However, not every such contract is unconscionable. *Lechmere Tire and Sales Co. v. Burwick, 360 Mass. 713, 720, 721, 277 N.E.2d 503.*

Adhibere /ædhəbéry/. In the civil law, to apply; to employ; to exercise; to use. *Adhibere diligentiam*, to use care. *Adhibere vim*, to employ force.

Ad hoc /æd hó(w)k/. For this; for this special purpose. An attorney ad hoc, or a guardian or curator ad hoc, is one appointed for a special purpose, generally to represent the client or infant in the particular action in which the appointment is made.

Ad hoc arbitration. Submission of a particular issue to arbitration.

Ad hominem /æd hómənəm/. To the person. A term used in logic with reference to a personal argument.

Ad hunc diem /æd (h)ʊŋk dáyəm/. At this day.

ADL. That amount of a particular chemical which Environmental Protection Agency considers safe for human ingestion every day for seventy years with no ill effects. Oregon Environmental Council v. Kunzman, D.Or., 636 F.Supp. 632, 637.

Ad idem /æd áydəm/. To the same point, or effect. *Ad idem facit*, it makes to or goes to establish the same point.

A die confectionis /èy dáyiy kənfèkshiyównəs/. From the day of the making.

A die datus /èy dáyiy déytəs/. From the day of the date. Used in leases to determine the time or running of the estate, and when so used includes the day of the date.

Adieu /ædyúw/. L. Fr. Without day. A common term in the Year Books, implying final dismissal from court.

A digniori fieri debet denominatio /èy digniyóray fáyəray débət dənómənéysh(iy)ow/. Denomination ought to be from the more worthy. The description (of a place) should be taken from the more worthy subject (as from a will).

A digniori fieri debet denominatio et resolutio /èy digniyóray fáyəray débət dənómənéysh(iy)ow et rəzəl(y)uwsh(iy)ow/. The title and exposition of a thing ought to be derived from, or given, or made with reference to, the more worthy degree, quality, or species of it.

Ad inde /æd índiy/. Thereunto. *Ad inde requisitus*, thereunto required.

Ad infinitum /æd infináyətəm/. Without limit; to an infinite extent; indefinitely.

Ad inquirendum /æd iŋkwərəndəm/. To inquire; a writ of inquiry; a judicial writ, commanding inquiry to be made of anything relating to a cause pending in court.

Ad instantiam /æd instəنش(iy)əm/. At the instance. *Ad instantiam partis*, at the instance of a party.

Ad interim /æd intərəm/. In the meantime. An officer *ad interim* is one appointed to fill a temporary vacancy, or to discharge the duties of the office during the absence or temporary incapacity of its regular incumbent.

Adiratus /ædəréytəs/. Lost; strayed; a price or value set upon things stolen or lost, as a recompense to the owner.

Adjacent. Lying near or close to; sometimes, contiguous; neighboring. *Adjacent* implies that the two ob-

jects are not widely separated, though they may not actually touch, *Harrison v. Guilford County*, 218 N.C. 718, 12 S.E.2d 269, while *adjoining* imports that they are so joined or united to each other that no third object intervenes. *Wolfe v. Hurley*, D.C.La., 46 F.2d 515, 521. See *Adjoining*.

Adjective law. The aggregate of rules of procedure or practice. Also called adjectival law, as opposed to that body of law which the courts are established to administer (called "substantive law"), it means the rules according to which the substantive law is administered; e.g. Rules of Civil Procedure. That part of the law which provides a method for enforcing or maintaining rights, or obtaining redress for their invasion. *Maurizi v. Western Coal & Mining Co.*, 321 Mo. 378, 11 S.W.2d 268, 272. Pertains to and prescribes practice, method, procedure or legal machinery by which substantive law is enforced or made effective. *Ambrose v. State Dept. of Public Health and Welfare*, Mo.App., 319 S.W.2d 271, 274. See also *Procedural law*, *Compare Substantive law*.

Adjoining. The word in its etymological sense means touching or contiguous, as distinguished from lying near to or adjacent. To be in contact with; to abut upon. *State ex rel. Boynton v. Bunton*, 141 Kan. 103, 40 P.2d 326, 328. And the same meaning has been given to it when used in statutes. See *Adjacent*.

Adjoining owners. Those persons who own land touching the subject land and who, as a result, have right to notice of proceedings concerning the subject real estate as, for example, in zoning and licensing matters. *Bayport Civic Ass'n v. Koehler*, Sup., 138 N.Y.S.2d 524, 530. See *Abutting owner*.

Adjourn /əjərn/. To put off; defer; recess; postpone. To postpone action of a convened court or legislative body until another time specified, or indefinitely; the latter being usually called to adjourn *sine die*. To suspend or recess during a meeting, legislature or assembly, which continues in session. Suspending business for a time, delaying. See *Adjournment*.

Adjournamentum est ad diem dicere seu diem dare /əjərnəməntəm èst ə(d) dáyəm dísərey syuw dáyəm dérey/. An adjournment is to appoint a day or give a day. Hence the formula "*eat sine die*."

Adjournatur /əjərnéyðər/. L. Lat. It is adjourned. A word with which the old reports very frequently concluded a case.

A continuation of the same meeting, and at such adjourned meeting the governing body can do any act which might have been done if no adjournment had taken place, and limitations imposed on governing body as regards action at original meeting obtain at adjourned meeting. One ordered by board at regular meeting, and which is to convene after termination of such regular meeting and prior to next regular meeting. *Byrd v. Byrd*, 193 Miss. 249, 8 So.2d 510, 513.

Adjourned summons. A summons taken out in the chambers of a judge, and afterwards taken into court to be argued by counsel.

Adjourned term. In practice, a continuance, by adjournment, of a regular term. Distinguished from an "additional term," which is a distinct term. A continuation of a previous or regular term. The same term prolonged, wherein power of court over business which has been done, and the entries made at the regular term, continues.

Adjournment. A putting off or postponing of business or of a session until another time or place. The act of a court, legislative body, public meeting, or officer, by which the session or assembly is dissolved, either temporarily or finally, and the business in hand dismissed from consideration, either definitely or for an interval. If the adjournment is final, it is said to be *sine die*. See also *Recess*.

Adjournment day. A further day appointed by the judges at the regular sittings at *nisi prius* to try issue of fact not then ready for trial.

Adjournment day in error. In old English practice, a day appointed some days before the end of the term at which matters left undone on the affirmance day are finished.

Adjournment in eyre /əjɔːnmənt in ɛr/. In English law, the appointment of a day when the justices in eyre mean to sit again.

Adjournment sine die /əjɔːnmənt saɪni dɛi/ "si-ney di-ey". An adjournment without setting a time for another meeting or session. See *Sine die*.

Adjudge /əjɔːj/. To pass on judicially, to decide, settle, or decree, or to sentence or condemn. *People v. Rave*, 364 Ill. 72, 3 N.E.2d 972, 975. Judgment of a court of competent jurisdiction; equivalent of convicted and sentenced. Implies a judicial determination of a fact, and the entry of a judgment. See also *Adjudication*; *Judgment*.

Adjudicate /əjɔːdɪkɛɪt/. To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense. *United States v. Irwin*, 127 U.S. 125, 8 S.Ct. 1033, 32 L.Ed. 99.

Adjudicated rights. Rights which have been recognized in a judicial or administrative proceeding.

Adjudicatee /əjɔːdɪkɛɪtɪ/. In French and civil law, the purchaser at a judicial sale.

Adjudicatio /əjɔːdɪkɛɪʃ(i)ow/. In the civil law, an adjudication. The judgment of the court that the subject matter is the property of one of the litigants; confirmation of title by judgment.

Adjudication /əjɔːdɪkɛɪʃən/. The legal process of resolving a dispute. The formal giving or pronouncing a judgment or decree in a court proceeding; also the judgment or decision given. The entry of a decree by a court in respect to the parties in a case. *Samuel Goldwyn, Inc. v. United Artists Corporation*, C.C.A.Del., 113 F.2d 703, 706. It implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved. *Genzer v. Phillip*, Tex.Civ.App., 134 S.W.2d 730, 732. The equivalent of a "determination." *Campbell v. Wyoming*

Development Co., 55 Wyo. 347, 100 P.2d 124, 132. It contemplates that the claims of all the parties thereto have been considered and set at rest. *Miller v. Scobie*, 152 Fla. 328, 11 So.2d 892, 894. See *Administrative adjudication*; *Judgment*.

Adjudicative claims arbitration. This form of dispute resolution is concerned primarily with tort and other claims involving small amounts as distinguished from the traditional categories of arbitration in the fields of labor, commerce and international trade. Designed to relieve courts of burden of handling such cases.

Adjudicative facts. Factual matters concerning the parties to an administrative proceeding as contrasted with legislative facts which are general and usually do not touch individual questions of particular parties to a proceeding. Facts which concern a person's motives and intent, as contrasted with general policy issues. *U. S. v. Bishop Processing Co.*, D.C.Md., 287 F.Supp. 624, 633. Those facts that must be found beyond a reasonable doubt by trier of fact before there can be a conviction. *Sundberg v. State*, Alaska App., 667 P.2d 1268, 1271.

"Adjudicative facts," of which trial court may take notice if fact is not subject to reasonable dispute, are those to which law is applied in process of adjudication; they are facts that, in jury case, normally go to jury. *Grason Elec. Co. v. Sacramento Mun. Utility Dist.*, D.C. Cal., 571 F.Supp. 1504, 1521.

Adjudicatory action. Administrative actions are "adjudicatory" in character when they culminate in final determination affecting personal or property rights. *Allegheny Ludlum Steel Corp. v. Pennsylvania Public Utility Com'n*, 501 Pa. 71, 459 A.2d 1218, 1221. See also *Adjudicatory hearing*; *Adjudicatory process*.

Adjudicatory hearing. A proceeding before an administrative agency in which the rights and duties of particular persons are adjudicated after notice and opportunity to be heard.

Adjudicatory proceeding. See *Adjudicatory action*; *Adjudicatory hearing*; *Adjudicatory process*.

Adjudicatory process. Method of adjudicating factual disputes; used generally in reference to administrative proceedings in contrast to judicial proceedings.

Adjudicataire /əjɔːdɪkɛɪtʃər/. In Canadian law, a purchaser at a sheriff's sale.

Ad iudicium /æd juwdɪʃ(i)əm/. To judgment; to court. *Ad iudicium provocare*; to summon to court; to commence an action; a term of the Roman law.

Adjunct /əjɔːŋkt/. Something added to another, but in a subordinate, auxiliary, or dependent position. See also *Appurtenance*.

One associated with another in a subordinate or an auxiliary manner; an associate.

Adjunction /əjɔːŋ(k)ʃən/. Adding, affixing or attaching to another. Act of adjoining. In civil law, the attachment or union permanently of a thing belonging to one person to that belonging to another. The common law implicitly adopts the civil law doctrines. See *Accession*.

Adjunctum accessorium /əjŋktəm əksəsóriəm/. An accessory or appurtenance.

Ad jungendum auxilium /æ(d) jənjéndəm ogzil(i)yəm/. To join in aid. *See* Aid prayer.

Ad jura regis /æ(d) júra ríjəs/. To the rights of the king; a writ which was brought by the king's clerk, presented to a living against those who endeavored to eject him, to the prejudice of the king's title.

Adjuration /æjərəyʃən/. A swearing or binding upon oath.

Adjust. To settle or arrange; to free from differences or discrepancies. To bring to satisfactory state so that parties are agreed, as to adjust amount of loss by fire or controversy regarding property or estate. To bring to proper relations; to settle. To determine and apportion an amount due. Accounts are adjusted when they are settled and a balance is struck. Term is sometimes used in the sense of pay, when used in reference to a liquidated claim. *Combination Oil & Gas Co. v. Brady*, Tex.Civ.App., 96 S.W.2d 415, 416. Determination of amount to be paid to insured by insurer to cover loss or damage sustained. *See* Adjuster; Adjustment; Settlement.

Adjustable-rate mortgage (ARM). *See* Mortgage.

Adjusted basis. The cost or other basis of property reduced by depreciation allowed or allowable and increased by capital improvements. *See* Basis.

Adjusted cost basis. For income tax purposes, original cost plus additions to capital less depreciation results in the "adjusted cost basis." *Herder v. Helvering*, 70 U.S. App.D.C. 287, 106 F.2d 153, 162.

Adjusted gross estate. The gross estate less I.R.C. §§ 2053 and 2054 expenses equals the adjusted gross estate. Generally, I.R.C. §§ 2053 and 2054 expenses include administration expenses, debts of the decedent, and losses incurred during the settlement of the estate. Fifty percent of the adjusted gross estate measures the maximum amount of the marital deduction allowed for death tax purposes. *See* Administration expense; Gross estate; Marital deduction.

Adjusted gross income. A tax determination peculiar to individual taxpayers. Generally, it represents gross income less business expenses, expenses attributable to the production of rent or royalty income, the allowed capital loss deduction, and certain personal expenses. *See also* Gross income.

Adjusted ordinary gross income. A determination peculiar to the personal holding company tax imposed by I.R.C. § 541. Adjusted ordinary gross income is the corporation's gross income less capital gains, § 1231 gains, and certain expenses. I.R.C. § 543(b)(2). *See also* Personal holding company income.

Adjuster. One appointed to adjust a matter; to ascertain or arrange or settle. One who makes any adjustment or settlement, or who determines the amount of a claim, as a claim against an insurance company. A representative of the insurer who seeks to determine the

extent of the firm's liability for loss when a claim is submitted. A person who acts for the insurance company or the insured in the determination and settlement of claims. "Public" adjusters represent claimants only in presenting their claims to insurer. "Average" adjusters specialize in adjusting marine losses. *See* Claim adjuster; Claimant adjuster; Independent adjuster.

Adjusting entry. An accounting entry made at the end of an accounting period to record previously unrecognized revenue and expenses and changes in assets and liabilities. An adjusting entry can also occur as a result of an error made in a prior period, requiring an adjusting or correcting entry in the current period.

Adjustment. An arrangement; a settlement. In the law of insurance, the adjustment of a loss is the ascertainment of its amount and the ratable distribution of it among those liable to pay it. The settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay.

In tax practice, the correction of erroneous determination of deficiency. *Hopper v. Government of Virgin Islands*, C.A. Virgin Islands, 550 F.2d 844, 847.

Adjustment board. *See* Board of adjustment.

Adjustment bond. *See* Bond.

Adjustment securities. Stocks and bonds which are issued during a corporate reorganization.

Adjutant general /æjədən(t) jén(ə)rəl/. An officer in charge of the National Guard of one of the States. The administrative head of a military unit having a general staff.

Adjuvari quippe nos, non decipi, beneficio oportet /æjuwvéray kwípiy nóws, non désəpay, bənefish(i)yəw əpórtət/. We ought to be favored, not injured by that which is intended for our benefit. (The species of bailment called "loan" must be to the advantage of the borrower, not to his detriment.)

Ad largum /æd lárɡəm/. At large; as, title at large; assize at large. Also at liberty; free, or unconfined. *Ire ad largum*, to go at large. A special verdict was formerly called a verdict at large.

Adlegiare /ædlijiyériy/. To purge one's self of a crime by oath.

Ad libitum /æd libítəm/. At pleasure. 3 Bl.Comm. 292.

Ad litem /æd láytəm/. For the suit; for the purposes of the suit; pending the suit. A guardian *ad litem* is a guardian appointed to prosecute or defend a suit on behalf of a party incapacitated by infancy or otherwise.

Ad lucrandum vel perdendum /æd l(y)uwkrændəm vél pərdéndəm/. For gain or loss. Emphatic words in the old warrants of attorney. Sometimes expressed in English, "to lose and gain."

Ad majorem cautelam /æd məjórəm kotíyləm/. For greater security.

Admanuensis /ædmənyuwénsəs/. A person who swore by laying his hands on the book.

Ad manum /æd méynəm/. At hand; ready for use. *Et querens sectam habeat ad manum*; and the plaintiff immediately have his suit ready.

Admeasurement /ædmézhərmənt/. Ascertainment by measure; measuring out; assignment or apportionment by measure, that is, by fixed quantity or value, by certain limits, or in definite and fixed proportions.

Admeasurement of dower. A common law remedy which lay for the heir on reaching his majority to rectify an assignment of dower made during his minority, by which the doweress had received more than she was legally entitled to.

Admeasurement of pasture. In English law, a writ which lay between those that had common of pasture appendant, or by vicinage, in cases where any one or more of them surcharged the common with more cattle than they ought. This remedy has long been abolished in England and in the United States.

Admeasurement, writ of. A common law remedy which lay against persons who usurped more than their share, in the two following cases: Admeasurement of dower, and admeasurement of pasture.

Ad medium filum aquæ /æd miydiyəm fáyləm ékwiy/. To the middle thread of the stream. *See* Ad filum aquæ.

Ad medium filum viæ /æd miydiyəm fáyləm váiy/. To the middle thread of the way.

Ad melius inquirendum /æd miyliyəs inkwərəndəm/. A writ directed to a coroner commanding him to hold a second inquest.

Admensuratio /ædmənsyərəysh(iy)ow/. In old English law, admeasurement.

Adminicle /ædmínəkəl/. Used as an English word in the statute of 1 Edw. IV, c. 1, in the sense of aid, or support. In civil law, imperfect proof. *See* Adminiculum.

Adminicular /ædmənikyələr/. Auxiliary or subordinate to. "The murder would be *adminicular* to the robbery" (*i. e.*, committed to accomplish it).

Adminicular evidence /ædmənikyələr évidəns/. Auxiliary or supplementary evidence; such as is presented for the purpose of explaining and completing other evidence. (Chiefly used in ecclesiastical law.)

Adminiculate /ædmənikyəleyt/. To give adminicular evidence.

Adminiculator /ædmənikyəleytər/. An officer in the Roman Catholic Church who administered to the wants of widows, orphans, and afflicted persons.

Adminiculum /ædmənikyələm/. Lat. An adminicle; a prop or support; an accessory thing. An aid or support to something else, whether a right or the evidence of one. It is principally used to designate evidence adduced in aid or support of other evidence, which without it is imperfect.

Administer. To manage or conduct. *Glocksens v. Holmes*, 299 Ky. 626, 186 S.W.2d 634, 637. To discharge the duties of an office; to take charge of business; to manage affairs; to serve in the conduct of affairs, in the application of things to their uses; to settle and distribute the estate of a decedent. Also, to give, as an oath; to direct or cause to be taken.

To "administer" a decree is to execute it, to enforce its provisions, to resolve conflicts as to its meaning, to construe and to interpret its language. *U. S. v. Hennen*, D.C.Nev., 300 F.Supp. 256, 263.

To "administer" trusts is to manage, direct or superintend affairs of such trusts. *Wisconsin Dept. of Taxation v. Pabst*, 15 Wis.2d 195, 112 N.W.2d 161, 164, 165.

To apply, as medicine or a remedy; to give, as a dose of something beneficial or suitable. *Barfield v. State*, 71 Okl.Cr. 195, 110 P.2d 316, 317. To cause or procure a person to take some drug or other substance into his or her system; to direct and cause a medicine, poison, or drug to be taken into the system.

Administration. Management or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like. In public law, the administration of government means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organs or agencies. Direction or oversight of any office, service, or employment. *Greene v. Wheeler*, C.C.A.Wis., 29 F.2d 468, 469. The term "administration" is also conventionally applied to the whole class of public functionaries, or those in charge of the management of the executive department.

Administration expense. Administrative expenses imply disbursements incidental to the management of the estate which are deductible in computing estate taxes. Deductions are allowed for such expenses or claims only to the extent that they "are allowable by the laws of the jurisdiction" under which the estate is being administered. I.R.C. § 2053.

Administration letters. The instrument by which an administrator or administratrix is authorized by the probate court, surrogate, or other proper officer, to have the charge and administration of the goods and property of an intestate. *See* Administrator.

Administration of estates. The management and settlement of the estate of an intestate decedent, or of a testator who has no executor, performed under the supervision of a court, by a person duly qualified and legally appointed, and usually involving: (1) the collection of the decedent's assets; (2) payment of debts and claims against the estate; (3) payment of estate taxes; (4) distribution of the remainder of the estate among those entitled thereto. The administration of an estate runs from the date of an individual's death until all assets have been distributed and liabilities paid. Such administration is conducted by an administrator or an executor. *See* Administrator; Letters of administration.

Administration of estates is principally of the following kinds:

Ad colligendum bona defuneti. To collect the goods of the deceased. Special letters of administration granted to one or more persons, authorizing them to collect and preserve the goods of the deceased.

Ad prosequendum. An administrator appointed to prosecute or defend a certain action (e.g. wrongful death) or actions in which the estate is concerned.

Ancillary administration is auxiliary and subordinate to the administration at the place of the decedent's domicile; it may be taken out in any foreign state or country where assets are locally situated, and is merely for the purpose of collecting such assets and paying debts there.

Cum testamento annexo (CTA). Administration with the will annexed. Administration granted in cases where a testator makes a will without naming any executors; or where the executors who are named in the will are incompetent to act, are deceased, or refuse to act.

De bonis non (DBN). Administration granted for the purpose of administering such of the goods of a deceased person as were not administered by the former executor or administrator.

De bonis non cum testamento annexo (DBNCTA). That which is granted when an executor dies leaving a part of the estate unadministered.

Durante absentia. That which is granted during the absence of the executor and until he has proved the will.

Durante minori ætate. Exists where an infant is made executor, in which case administration with will annexed is granted to another during the minority of such executor, and until he shall attain his lawful age to act.

Foreign administration. That which is exercised by virtue of authority properly conferred by a foreign power.

General administration. The grant of authority to administer upon the entire estate of a decedent, without restriction or limitation, whether under the intestate laws or with the will annexed.

Pendente lite. Administration granted during the pendency of a suit touching the validity of a will.

Public administration is such as is conducted (in some jurisdictions) by an officer called the public administrator, who is appointed to administer in cases where the intestate has left no person entitled to apply for letters.

Special administration. Authority to administer upon some few particular effects of a decedent, as opposed to authority to administer his whole estate.

Administrative. Connotes of or pertains to administration, especially management, as by managing or conducting, directing, or superintending, the execution, application or conduct of persons or things. *Fluet v. McCabe*, 299 Mass. 173, 12 N.E.2d 89, 93. Particularly, having the character of executive or ministerial action. *Mauritz v. Schwind*, Tex.Civ.App., 101 S.W.2d 1085, 1090. In this sense, administrative functions or acts are distinguished from such as are judicial. *People ex rel. Van Sickle v. Austin*, 20 App.Div. 1, 46 N.Y.S. 526.

Administrative acts. Those acts which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body or such as are devolved upon it by the organic law of its existence. *Ex parte McDonough*, 27 Cal.App.2d 155, 80 P.2d 485, 487.

Administrative adjudication. The process by which an administrative agency issues an order, such order being affirmative, negative, injunctive or declaratory in form. *Adm. Procedure Act*, 5 U.S.C.A. § 551.

Administrative agency. A governmental body charged with administering and implementing particular legislation. Examples are worker's compensation commissions, Federal Trade Commission, Hastings Mfg. Co. v. Federal Trade Commission, C.C.A.6th, 153 F.2d 253, certiorari denied 328 U.S. 853, 66 S.Ct. 1344, 90 L.Ed. 1626; tax commissions, *First State Bank of Mountainair v. State Tax Commission*, 40 N.M. 319, 59 P.2d 667; public service commissions, *New York Cent. R. Co. v. Public Service Commission*, 212 Ind. 329, 7 N.E.2d 957; and the like. In addition to "agency", such governmental bodies may be called commissions, corporations (e.g. F.D.I.C.), boards, departments, or divisions.

The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense. 18 U.S.C.A. § 1.

Administrative authority. The power of an agency or its head to carry out the terms of the law creating the agency as well as to make regulations for the conduct of business before the agency; distinguishable from legislative authority to make laws.

Administrative board. This term is very broad and includes bodies exercising varied functions, some of which involve orders made or other acts done *ex parte* or without full hearing as to the operative facts, while others are done only after such a notice and hearing, and the functions of the former kind are plainly "administrative" and those of the latter are "quasi judicial." *Beaverdale Memorial Park v. Danaher*, 127 Conn. 175, 15 A.2d 17, 21. Administrative boards differ from "courts" in that boards frequently represent public interests entrusted to boards, whereas courts are concerned with litigating rights of parties with adverse interests. *Rommell v. Walsh*, 127 Conn. 16, 15 A.2d 6, 9.

Administrative collateral estoppel. Principles of this estoppel doctrine apply when agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which parties have had adequate opportunity to litigate; threshold inquiry is whether earlier proceeding is essential equivalent of judicial proceeding. *City Wide Learning Center, Inc. v. William C. Smith & Co., Inc.*, D.C.App., 488 A.2d 1310, 1313.

Administrative crime. An offense consisting of a violation of an administrative rule or regulation and carrying with it a criminal sanction.

Administrative determination. See Administrative adjudication.

Administrative deviation. Departure from the administrative provisions of a trust by the trustee acting alone or with prior approval of the court. *Anderson v. Ryland*, 232 Ark. 335, 336 S.W.2d 52.

Administrative discretion. Term means that the doing of acts or things required to be done may rest, in part at least, upon considerations not entirely susceptible of proof or disproof and at times which considering the circumstances and subject-matter cannot be supplied by the Legislature, and a statute confers such discretion when it refers a commission or office to beliefs, expectations, or tendencies instead of facts for the exercise of the powers conferred. *Culver v. Smith*, Tex.Civ.App., 74 S.W.2d 754, 757.

Administrative exhaustion. See Exhaustion of administrative remedies.

Administrative hearing. An oral proceeding before an administrative agency consisting of argument or trial or both. Procedural rules are more relaxed at such hearings as contrasted with civil or criminal trials; e.g. rules governing admissibility of evidence are usually quite liberal. See also Hearing.

Administrative interpretation. Meaning given to a law or regulation by an administrative agency.

Administrative law. Body of law created by administrative agencies in the form of rules, regulations, orders, and decisions to carry out regulatory powers and duties of such agencies.

Administrative law judge. One who presides at an administrative hearing, with power to administer oaths, take testimony, rule on questions of evidence, regulate course of proceedings, and make agency determinations of fact. Formerly called "hearing officer" or "hearing examiner". Adm. Procedure Act, 5 U.S.C.A. § 556.

Administrative office of United States courts. Created by the Administrative Office Act of 1939, it is responsible for administration of the Federal court system, as a whole, including the collection of statistics on court business, supervision of administrative personnel in the courts and conducting of financial and management audits of courts.

Administrative officer. Politically, and as used in constitutional law, an officer of the executive department of government, and generally one of inferior rank; legally, a ministerial or executive officer, as distinguished from a judicial officer.

Administrative order. The final disposition of a matter before an administrative agency; product of an administrative adjudication. Such order may be declaratory or it may contain an affirmative or negative command. Adm. Procedure Act, 5 U.S.C.A. § 554.

A regulation issued by an administrative agency interpreting or applying the provisions of a statute. Administrative acts having force of law, designed to clarify or implement a law or policy.

Administrative procedure. Methods and processes before administrative agencies as distinguished from judicial procedure which applies to courts. Procedural rules and regulations of most federal agencies are set forth in the Code of Federal Regulations. See also Administrative Procedure Act.

Administrative Procedure Act. *Federal.* Law enacted in 1946 (60 Stat. 237, 5 U.S.C.A.) governing practice and proceedings before federal administrative agencies.

State. Individual states have enacted variations of the federal Act, e.g. M.G.L.A. (Mass.) c. 30A. Such acts govern proceedings before state administrative agencies.

Administrative process. In general, the procedure used before administrative agencies; in particular, the means of summoning witnesses before such agencies, e.g. subpoena.

Administrative remedy. Procedure for allowing person to assert a right to some kind of relief before an administrative agency. *Daniels v. U.S.*, C.A.Cal., 372 F.2d 407, 414. Non-judicial remedy provided by agency, board, commission, or the like. In most instances, all administrative remedies must have been exhausted before a court will take jurisdiction of a case; e.g. U.S. District Courts will not consider a social security case unless all hearing, appeal, etc. remedies before the Social Security Administration have been exhausted.

Administrative review. Generally refers to judicial review of administrative proceedings; may also embrace appellate review within the administrative agency itself. Adm. Procedure Act, 5 U.S.C.A. § 557.

Administrative rule. Agency statement of general applicability and continuing effect that interprets law or policy or describes agency's requirements. *Matter of 1982 Final Reconciliation Adjustment for Jersey Shore Medical Center*, 209 N.J.Super. 79, 506 A.2d 1269, 1272.

Administrative rule-making. Power of an administrative agency to make rules and regulations for proceedings before it. Adm. Procedure Act, 5 U.S.C.A. § 553.

Administrative tribunal. A particular administrative agency before which a matter may be heard or tried as distinguished from a judicial forum.

Administrator(-trix). A person appointed by the court to administer (i.e., manage or take charge of) the assets and liabilities of a decedent (i.e., the deceased). Such person may be a male (i.e., administrator) or a female (i.e., administratrix). If the person performing these probate services is named by the decedent's will, he is designated as the executor, or she the executrix, of the estate. See also Executor.

An instrumentality established by law for performing the acts necessary for transfer of effects left by deceased to those who succeed to their ownership. *Behnke v. Geib*, D.C.Md., 169 F.Supp. 647, 650.

Domestic. One appointed at the place of the domicile of the decedent; distinguished from a foreign or an ancillary administrator.

Foreign. One appointed or qualified under the laws of a foreign state or country, where the decedent was domiciled.

Public. An official provided for by statute in some states to administer upon the property of intestates in certain cases.

Administrator ad litem /ædminəstréytər æd láytəm/. A special administrator appointed by court to supply a necessary party to an action in which deceased or his estate is interested.

Administrator cum testamento annexo (C.T.A.) /ædminəstréytər kəm testəméntow ənéksoʊ/. See Cum testamento annexo.

Administrator de bonis non (D.B.N.) /ædminəstréytər diy bównəs nòn/. "Administrators de bonis non administratis" are, as the term signifies, persons appointed by the court of probate to administer on the effects of a decedent which have not been included in a former administration.

Administrator pendente lite /ædminəstréytər pèndén-tyé láytiy/. A temporary administrator appointed before an adjudication of intestacy has been made for purpose of preserving assets of the estate.

Administrator with will annexed. One appointed administrator of deceased's estate after executors named in will have refused or are unable to act.

Administratrix /ædminəstréytræks/. A female who administers, or to whom letters of administration have been granted.

Admiralitas /ædmərəléltæs/. L. Lat. Admiralty; the admiralty, or court of admiralty. In European law, an association of private armed vessels for mutual protection and defense against pirates and enemies.

Admiralty. See Maritime.

Admiralty court. A court exercising jurisdiction over all maritime contracts, torts, injuries, or offenses. Federal district courts have jurisdiction over admiralty and maritime actions. 28 U.S.C.A. § 1333. Procedure in such actions is governed by the Fed.R. Civil P. and Supp. Admiralty Rules. See also Saving to suitors clause with respect to admiralty actions in state courts.

Admiralty, First Lord of the. In England, formerly the normal head of the executive department of state which presided over the naval forces of the kingdom was the lord high admiral, but in practice the functions of the great office were discharged by several Lords Commissioners, of whom one, being the chief, was called the "First Lord," and was a member of the Cabinet. He was assisted by other lords, called Sea Lords, and by various secretaries.

Admiralty law. The terms "admiralty" and "maritime" law are virtually synonymous. See Maritime law.

Admissible. Pertinent and proper to be considered in reaching a decision. Used with reference to the issues to be decided in any judicial proceeding.

Admissible evidence. As applied to evidence, the term means that the evidence introduced is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced at trial. To be "admissible" evidence must be relevant, and, inter alia, to be "relevant" it must tend to establish material proposition. *Smith v. State, Alaska*, 431 P.2d 507, 509. Admissibility of evidence in federal courts is governed by Federal Rules of Evidence. Many states have similar evidence rules for their trial courts. See Evidence; Limited admissibility; Relevant evidence.

Admission. *Admission temporaire.* Admission of goods into country duty-free for processing and eventual export.

Bail. The order of a competent court or magistrate that a person accused of crime be discharged from actual custody upon the taking of bail.

Evidence. Ruling by trial judge that trier of fact, judge or jury, may consider testimony or document or other thing (real evidence) in determining ultimate question. See Evidence.

Admissions. Confessions, concessions or voluntary acknowledgments made by a party of the existence of certain facts. More accurately regarded, they are statements by a party, or some one identified with him in legal interest, of the existence of a fact which is relevant to the cause of his adversary.

A voluntary acknowledgement made by a party of the existence of the truth of certain facts which are inconsistent with his claims in an action. *Vockie v. General Motors Corp., Chevrolet Division, D.C.Pa.*, 66 F.R.D. 57, 60. An admission is not limited to words, but may also include the demeanor, conduct and acts of the person charged with a crime. *People v. Baldi*, 80 Misc.2d 118, 362 N.Y.S.2d 927, 933.

Admissions against interest. A statement made by one of the parties to an action which amounts to a prior acknowledgment by him that one of the material facts relevant to the issues is not as he now claims. *Nagel v. Hopingardner, Tex.Civ.App.*, 464 S.W.2d 472, 476. Any statements made by or attributable to a party to an action, which constitute admissions against his interest and tend to establish or disprove any material fact in the case. *Kellner v. Whaley*, 148 Neb. 259, 27 N.W.2d 183, 189.

Admissions by party-opponent. A statement is not hearsay if the statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity, or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. Fed.Evid.R. 801(d)(2).

Admissions by silence. If a statement is made by another person in the presence of a party to the action, containing assertions of facts which, if untrue, the party would under all the circumstances naturally be expected to deny, his failure to speak has traditionally been receivable against him as an admission. Failure of one not under arrest to respond by denial to accusation of crime, or element of crime, may be construed as admission of guilt if such person understood accusation and could have responded. *See also* Estoppel; Silence.

Adoptive admission. Action by a party in which he approves statement of one for whom he is responsible thereby accepting truth of statement. Silence, actions, or statements which manifest assent to the statements of another person. Such may be received into evidence as admissions of the defendant if it can be shown that the defendant adopted the statements as his own. *See* Fed.Evid.R. 801(d)(2)(B).

Criminal admissions. A statement by accused, direct or implied, of facts pertinent to issue, and tending, in connection with proof of other facts, to prove his guilt. *State v. Johnson*, 277 Minn. 368, 152 N.W.2d 768, 773. The avowal of a fact or of circumstances from which guilt may be inferred, but only tending to prove the offense charged, and not amounting to a confession of guilt. A statement by defendant of fact or facts pertinent to issues tending, in connection with proof of other facts or circumstances, to prove guilt, but which is, of itself, insufficient to authorize conviction. Does not include statements which are part of the *res gestae*. *State v. Clark*, 102 Mont. 432, 58 P.2d 276, 278.

Discovery practice. Requests for admissions in civil actions are governed by Fed.R. Civil P. 36. Any matter admitted under Rule 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission. *See* Request (*Request for admission*); Stipulation.

Distinguished from confession. A confession is a statement admitting or acknowledging all facts necessary for conviction of the crime. An admission, on the other hand, is an acknowledgment of a fact or facts tending to prove guilt which falls short of an acknowledgment of all essential elements of the crime. *Gladden v. Unsworth*, 9th Cir., 396 F.2d 373, 375 n. 2; *People v. Fitzgerald*, 56 Cal.2d 855, 861, 17 Cal.Rptr. 129, 132, 366 P.2d 481, 484. The term "admission" is usually applied to civil transactions and to those matters of fact in criminal cases which do not involve criminal intent, while the term "confession" is generally restricted to acknowledgments of guilt. *People v. Sourisseau*, 62 Cal.App.2d 917, 145 P.2d 916, 923.

Extrajudicial admissions. Those made outside of court.

Implied admissions are those which result from some act or failure to act of the party; *e.g.* part payment of a debt is an admission of liability to pay debt.

Incidental admissions are those made in some other connection, or involved in the admission of some other fact.

Judicial admissions are those made in court by a person's attorney for the purpose of being used as a substitute for the regular legal evidence of the facts at the trial. A formal waiver of proof that relieves opposing party from making proof of admitted fact and bars party who made admission from disputing it. *E-Text Dairy Queen, Inc. v. Adair*, Tex.Civ.App., 566 S.W.2d 37, 39. Such as are made voluntarily by a party, which appear of record in the proceedings of the court. Formal acts done by a party or his attorney in court on the trial of a cause for the purpose of dispensing with proof by the opposing party of some fact claimed by the latter to be true. *Hofer v. Bituminous Gas. Corp.*, 260 Iowa 81, 148 N.W.2d 485, 486.

Pleading. The acknowledgment or recognition by one party of the truth of some matter alleged by the opposite party, made in a pleading, the effect of which is to narrow the area of facts or allegations required to be proved by evidence. Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Fed.R. Civil P. 8(d).

Quasi admission. *See* that title.

Request for admission. *See* Request.

Tacit admissions. *See* Tacit admissions.

Admissions tax. Form of tax imposed as part of price of being admitted to a particular function or event.

Admission to sufficient facts. Also called "submission to a finding", means an admission to facts sufficient to warrant a finding of guilty. *Com. v. Duquette*, 386 Mass. 834, 438 N.E.2d 334, 338.

Admit. *See* Admission; Admissions.

Admittance. In English law, the act of giving possession of a copyhold estate. It is of three kinds: (1) Upon a voluntary grant by the lord, where the land has escheated or reverted to him. (2) Upon surrender by the former tenant. (3) Upon descent, where the heir is tenant on his ancestor's death. Copyholds were abolished by Part V of Law of Property Act 1922. Abolition took effect Jan. 1, 1926. *See also*, Copyhold; Surrender.

Admittendo clerico /ædmətəndow klérəkow/. An old English writ issuing to the bishop to establish the right of the Crown to make a presentation to a benefice. A writ of execution upon a right of presentation to a benefice being recovered in *quare impedit*, addressed to the bishop or his metropolitan, requiring him to admit and institute the clerk or presentee of the plaintiff.

Admittendo in socium /ædmətəndow in sówshiyəm/. An old English writ for associating certain persons, as knights and other gentlemen of the county, to justices of assize on the circuit.

Admixture /ædmiks(h)chər/. A substance formed by mixing; state of being mixed; act of mixing.

Admonish /ædmónəsh/. To caution or advise. To counsel against wrong practices, or to warn against danger of an offense. *See* Admonition.

Admonition /ædmənɪʃən/. Any authoritative oral communication or statement by way of advice or caution by the court to the jury respecting their duty or conduct as jurors, the admissibility or nonadmissibility of evidence, or the purpose for which any evidence admitted may be considered by them. Reprimand or cautionary statement addressed to counsel by judge.

In English law, a reprimand from a judge to a person accused, on being discharged, warning him of the consequences of his conduct, and intimating to him that, should he be guilty of the same fault for which he has been admonished, he will be punished with greater severity. The admonition was authorized as a species of punishment for slight misdemeanors. In ecclesiastical law, this is the lightest form of punishment.

Admonitio trina /ædmənɪʃiəw tráynə/. The threefold warning given to a prisoner who stood mute, before he was subjected to *peine forte et dure* (q.v.). 4 Bl.Comm. 325.

Ad mordendum assuetus /æd mɔrdəndəm əswiýtəs/. Accustomed to bite. A material averment in declarations for damage done by a dog to persons or animals.

Admortization /ædmɔrtəzýshən/. In feudal customs, the reduction of property of lands or tenements to mortmain.

Adnepos /ædnəpɔws/. The son of a great-great-grandson.

Adneptis /ædnéptəs/. The daughter of a great-great-granddaughter.

Adnichiled /ædníkəld/. Annulled, canceled, made void.

Adnihilare /ædnây(h)əlériy/. In old English law, to annul; to make void; to reduce to nothing; to treat as nothing; to hold as or for nought.

Ad nocumentum /æd nõkyéméntəm/. To the nuisance, or annoyance; to the hurt or injury. *Ad nocumentum liberi tenementi sui*, to the nuisance of his freehold. Formal words in the old assise of nuisance. 3 Bl.Comm. 221.

Adnotatio /ædnɔwtéysh(iy)ow/. In the civil law, the subscription of a name or signature to an instrument. A rescript (q.v.) of the prince or emperor, signed with his own hand, or sign-manual. In the imperial law, casual homicide was excused by the indulgence of the emperor, signed with his own sign-manual, *annotatione principis*. 4 Bl.Comm. 187.

Ad officium justiciariorum spectat, unicuique coram eis placitanti justitiam exhibere /æd əfɪʃ(iy)əm jəstɪʃiəriyórəm spékətət yũwnək(yuw)áykwiy kórəm iyəs pləsətántay jəstɪʃ(iy)əm eksəbíriy/. It is the duty of justices to administer justice to every one pleading before them.

Adolescence. That age which follows puberty and precedes the age of majority.

Ad omissa vel male appretiata /æd əmísə vel məliy əpriysh(iy)éyts/. With relation to omissions or wrong interpretations.

Adopt. To accept, appropriate, choose, or select. To make that one's own (property or act) which was not so originally. To accept, consent to, and put into effective operation; as in the case of a constitution, constitutional amendment, ordinance, court rule, or by-law.

Adoption. Legal process pursuant to state statute in which a child's legal rights and duties toward his natural parents are terminated and similar rights and duties toward his adoptive parents are substituted. To take into one's family the child of another and give him or her the rights, privileges, and duties of a child and heir. The procedure is entirely statutory and has no historical basis in common law. Most adoptions are through agency placements. See Adoption by estoppel; De facto adoption; Equitable adoption; Placement; Private placement (*Adoption*).

A contract principle by which a person agrees to assume a contract previously made for his or her benefit. An adoption speaks only from the time such person agrees, in contrast to a "ratification" which relates back to the time the original contract was made. In corporation law, the concept is applied when a newly formed corporation accepts a preincorporation contract made for its benefit by a promoter.

Adoption by estoppel. Equitable adoption of a child by promises and acts which preclude such person and his estate from denying adopted status to child. *Heien v. Crabtree, Tex.*, 369 S.W.2d 28, 30. See also Equitable adoption.

Adoption by reference. Statement in writing by which another statement in a separate writing is incorporated by reference. Statement in pleading may be adopted by reference in a different part of same pleading or in another pleading or motion. Fed.R. Civil P. 10(c).

Adoptive act. An act of legislation which comes into operation within a limited area upon being adopted, in manner prescribed therein, by the inhabitants of that area.

Ad opus /æd ówpəs/. To the work.

Ad ostendendum /æd ósténdéndəm/. To show. Formal words in old writs.

Ad ostium ecclesie /æd óstiyəm əklízyiy/. At the door of the church. One of the five species of dower formerly recognized by the English law. 2 Bl.Comm. 132.

Ad pios usus /æd páyɔws yúwzəs/. Lat. For pious (religious or charitable) uses or purposes. Used with reference to gifts and bequests.

Ad prosequendam /æd prósəkúwéndəm/. To prosecute.

Ad proximum antecedens fiat relatio nisi impediatur sententia /æd próksəməm əntəsiydenz fáyət rəláysh(iy)ow náysay ímpiydíyétər sénténsh(iy)ə/. Relative words refer to the nearest antecedent, unless it be prevented by the context. *Brown v. Brown, Del.*, 3 Terry 157, 29 A.2d 149, 153.

Ad punctum temporis /æd pŏŋktəm témpərəs/. At the point of time.

Ad quærimonium /æd kwirəmówniyəm/. On complaint of.

Ad quæstionem facti non respondent iudices; ad quæstionem juris non respondent juratores /æd kwès(h)chiyównəm fáktay nón rəspóndənt júwdəsiyz; æd kwès(h)chiyównəm júrás nón rəspóndənt júrstóriyz/. Means that juries must answer to questions of fact and judges to questions of law. Ex parte United States, C.C.A.Wis., 101 F.2d 870, 874.

Ad quæstiones legis iudices, et non juratores, respondent /æd kwès(h)chiyówniyz líyjəs júwdəsiyz, et nón júrstóriyz, rəspóndənt/. Judges, and not jurors, decide questions of law.

Ad quem /æd kwém/. To which. A term used in the computation of time or distance, as correlative to a *quo*; denotes the end or terminal point. See A quo.

The *terminus a quo* is the point of beginning or departure; the *terminus ad quem*, the end of the period or point of arrival.

Ad quæstiones facti non respondent iudices; ad quæstiones legis non respondent juratores /æd kwès(h)chiyówniyz fáktay nón rəspóndənt júwdəsiyz; æd kwès(h)chiyówniyz líyjəs nón rəspóndənt júrstóriyz/. Judges do not answer questions of fact; juries do not answer questions of law.

Ad quieto /ædkwayiytow/. Payment.

Ad quod curia concordavit /æd kwòd kýuriyə kòŋkərdéyvat/. To which the court agreed.

Ad quod damnum /æd kwò(d) dámnəm/. The name of a writ formerly issuing from the English chancery, commanding the sheriff to make inquiry "to what damage" a specified act, if done, will tend.

It is a writ which ought to be sued before the king grants certain liberties, as a fair, market or such like, which may be prejudicial to others, and thereby it should be inquired whether it will be a prejudice to grant them, and to whom it will be prejudicial, and what prejudice will come thereby.

There is also another writ of *ad quod damnum*, if any one will turn a common highway and lay out another way as beneficial.

A "writ of ad quod damnum" is of ancient origin, and could be issued as a writ of right when landowner was dissatisfied with assessment of damages by condemnation commission. Lewis v. Du Pont, Del.Super., 2 Terry 347, 22 A.2d 832, 834.

Ad quod non fuit responsum /æd kwòd nón fyúwtə rəspónsəm/. To which there was no answer. A phrase used in old reports, where a point advanced in argument by one party was not denied by the other; or where a point or argument of counsel was not met or noticed by the court; or where an objection was met by the court, and not replied to by the counsel who raised it.

A.D.R. See Alternative dispute resolution; Asset Depreciation Range.

Ad rationem ponere /æd røyshiyównəm pównəriy/. To cite a person to appear. A technical expression in the old records of the Exchequer, signifying, to put to the bar and interrogate as to a charge made; to arraign on a trial.

Ad recognoscendum /æd riykognəsəndəm/. To recognize. Formal words in old writs.

Adrectare /ædrektəriy/. To set right, satisfy, or make amends.

Ad recte docendum oportet, primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet /æd réktey dowsəndəm owpórtət, práyməm ínkwáyəriy nómnə, kwáyə rírəm kògnishiyow èy nəmínəbəs rírəm dəpəndət/. In order rightly to comprehend a thing, inquire first into the names, for a right knowledge of things depends upon their names.

Ad rectum /æd réktəm/. To right. To do right. To meet an accusation. To answer the demands of the law. *Habeant eos ad rectum*. They shall render themselves to answer the law, or to make satisfaction.

Ad reparationem et sustentationem /æd rèpəreyshiyównəm et səsəntəyshiyównəm/. For repairing and keeping in suitable condition.

Ad respondendum /æd rəspóndəndəm/. For answering; to make answer. Words used in certain writs employed for bringing a person before the court to make answer in defense in a proceeding, as in *habeas corpus ad respondendum* and *capias ad respondendum, q.v.*

Adrhãmire /ædrəmáryiy/. In old European law, to undertake, declare, or promise solemnly; to pledge; to pledge one's self to make oath.

Adrogation /ædrowgéyshən/. In the civil law, the adoption of one who was *impubes*; that is, if a male, under fourteen years of age; if a female, under twelve.

Ads. An abbreviation for *ad sectam (q.v.)*, meaning "at the suit of."

Ad satisfaciendum /æd sətəsəfyshiyéndəm/. To satisfy. The emphatic words of the writ of *capias ad satisfaciendum*, which requires the sheriff to *take* the person of the defendant *to satisfy* the plaintiff's claim.

Adscendentes /ædsəndəntiyz/. Lat. In the civil law, ascendants.

Adscripti /ædskríptay/. See Adscriptus.

Adscripti glebæ /ædskríptay glíybyi/. Slaves who served the master of the soil, who were annexed to the land, and passed with it when it was conveyed.

Adscriptitii /ædskríptishiyay/. Lat. A species of serfs or slaves. Those persons who were enrolled and liable to be drafted as legionary soldiers.

Adscriptus /ædskríptəs/. In the civil law, added, annexed, or bound by or in writing; enrolled, registered; united, joined, annexed, bound to, generally. *Servus colonæ adscriptus*, a slave annexed to an estate as a cultivator. *Fundus adscriptus*, an estate bound to, or burdened with a duty.

Ad sectam /æd séktəm/. At the suit of. Commonly abbreviated to *ads*. Used in entering and indexing the names of cases, where it is desired that the name of the defendant should come first. Thus, "B. *ads*. A." indicates that B. is defendant in an action brought by A., and the title so written would be an inversion of the more usual form "A. v. B."

Adsessores /ædsəsóriyz/. Side judges. Assistants or advisers of the regular magistrates, or appointed as their substitutes in certain cases. *See* Assessor.

Adstipulator /ædstipyələytər/. In Roman law, an accessory party to a promise, who received the same promise as his principal did, and could equally receive and exact payment; or he only stipulated for a part of that for which the principal stipulated, and then his rights were coextensive with the amount of his own stipulation. One who supplied the place of a procurator at a time when the law refused to allow stipulations to be made by procurator.

Ad terminum annorum /æd tórmənəm ənórəm/. For a term of years.

Ad terminum qui præterit /æd tórmənəm kwáy prédərət/. For a term which has passed. Words in the Latin form of the writ of entry employed at common law to recover, on behalf of a landlord, possession of premises from a tenant holding over after the expiration of the term for which they were demised.

Ad testificandum /æd tɛstəfəkændəm/. To testify. Type of writ of habeas corpus used to bring prisoner to court to testify. *See* Habeas corpus.

Ad tristem partem strenua est suspicio /æd trístəm pártəm strényuwə ést səspsísh(iy)ow/. Suspicion lies heavy on the unfortunate side.

Ad tunc et ibidem /æd tánk et əbáydəm/"íbadəm/. In pleading, the Latin name of that clause of an indictment containing the statement of the subject-matter "then and there being found."

Adult. One who has attained the legal age of majority; generally 18 years. At civil law, a male who had attained the age of 14; a female who had attained the age of 12. *See* Legal age; Majority.

Adulter /ədáltər/. One who corrupts; one who seduces another man's wife. *Adulter solidorum*. A corruptor of metals; a counterfeiter.

Adultera /ədáltərə/. In the civil law, an adulteress; a woman guilty of adultery.

Adulteration. The act of corrupting or debasing. The act of mixing something impure or spurious with something pure or genuine, or an inferior article with a superior one of the same kind. The term is generally applied to the act of mixing up with food or drink intended to be sold other matters of an inferior quality, and usually of a more or less deleterious quality. The act, process or omission to act by which food becomes impure and unfit for consumption. Such is prohibited and regulated by federal and state statutes and agencies.

See Food and Drug Administration; Food, Drug and Cosmetic Act; Foreign substance.

Adulterator /ədáltərəydər/. A corrupter. In the civil law, a forger; a counterfeiter.

Adulteratores monetæ /ədáltarətóriyz mənáytiy/. Counterfeiters of money.

Adulterine /ədáltərən/. Begotten in an adulterous intercourse. Those are not deemed adulterine who are begotten of a woman openly married through ignorance of a former wife being alive. In the Roman and canon law, adulterine bastards were distinguished from such as were the issue of two unmarried persons, and the former were treated with more severity, not being allowed the *status* of natural children, and being ineligible to holy orders.

Adulterine guilds. Traders acting as a corporation without a charter, and paying a fine annually for permission to exercise their usurped privileges.

Adulterium /ədáltíriyəm/. A fine anciently imposed for the commission of adultery.

Adultery /ədáltəriy/. Voluntary sexual intercourse of a married person with a person other than the offender's husband or wife, or by a person with a person who is married to another. *See e.g.* Wisc.St. 944.16. This crime, which is variously defined and punished by state statutes, is seldom prosecuted. *See also* Illicit cohabitation.

Open and notorious adultery. To constitute living in open and notorious adultery, the parties must reside together publicly in the face of society, as if conjugal relations existed between them, and their so living and the fact that they are not husband and wife must be known in the community.

Ad ultimam vim terminorum /æd últəməm vím tərənórəm/. To the most extended import of the terms; in a sense as universal as the terms will reach.

Ad usum et commodum /æd yúsəm et kómədəm/. To the use and benefit.

Ad valentiam /æd vələnsh(iy)əm/. To the value. *See* Ad valorem tax.

Ad valorem tax /æd vəlórəm/. According to value. A tax imposed on the value of property. The more common ad valorem tax is that imposed by states, counties, and cities on real estate. Ad valorem taxes, can, however, be imposed upon personal property; *e.g.*, a motor vehicle tax may be imposed upon the value of an automobile and is therefore deductible as a tax. A tax levied on property or an article of commerce in proportion to its value, as determined by assessment or appraisal. *Callaway v. City of Overland Park*, 211 Kan. 646, 508 P.2d 902, 907.

Duties are either *ad valorem* or *specific*; the former when the duty is laid in the form of a percentage on the value of the property; the latter where it is imposed as a fixed sum on each article of a class without regard to its value.

Advance. To move something forward in position, time or place. To pay money or render other value before it is due; to furnish something before an equivalent is received; to loan; to furnish capital in aid of a projected enterprise, in expectation of return from it. To supply beforehand; to furnish on credit or before goods are delivered or work done; to furnish as a part of a stock or fund; to pay money before it is due; to furnish money for a specific purpose understood between the parties, the money or sum equivalent to be returned; to furnish money or goods for others in expectation of reimbursement.

Money or commodities furnished on credit. A loan, or gift or money advanced to be repaid conditionally; may be equivalent to "pay." See also Advances.

Advance bill. Bill of exchange drawn before shipment of goods.

Advancement. Money or property given by a parent to his child or, sometimes, presumptive heir, or expended by the former for the latter's benefit, by way of anticipation of the share which the child will inherit in the parent's estate and intended to be deducted therefrom. It is the latter circumstance which differentiates an advancement from a gift or a loan.

Advance payment. Payments made in anticipation of a contingent or fixed future liability or obligation.

Advances. Moneys paid before or in advance of the proper time of payment; money or commodities furnished on credit; a loan or gift, or money advanced to be repaid conditionally. Payments advanced to the owner of property by a factor or broker on the price of goods which the latter has in his hands, or is to receive, for sale. See also Advance.

Advance sheets. Pamphlets (published weekly for National Reporter System) containing the most recently reported opinions of specific courts (e.g. Federal Reporter) or the courts of several jurisdictions (e.g. Pacific Reporter). The volume and page numbers usually are the same as in the subsequently bound volumes of the respective reporter series, which cover several numbered issues of the advance sheets.

Advantagium. In old pleading, an advantage.

Advena /ædvənə/. In Roman law, one of foreign birth, who has left his own country and settled elsewhere, and who has not acquired citizenship in his new locality; often called *albanus*.

Advent. A period of time recognized by the English common and ecclesiastical law, beginning on the Sunday that falls either upon St. Andrew's day, being the 30th of November, or the next to it, and continuing to Christmas day.

Adventitious /ædvəntɪʃəs/. That which comes incidentally, fortuitously, or out of the regular course.

Adventitious /ædvəntɪʃ(i)əs/. Lat. Fortuitous; incidental; coming from an unusual source. *Adventitia bona* are goods which fall to a man otherwise than by

inheritance. *Adventitia dos* is a dowry or portion given by some friend other than the parent.

Ad ventrem inspiciendum /æd véntɹəm inspɪʃ-iyéndəm/. To inspect the womb. A writ for the summoning of a jury of matrons (*q.v.*) to determine the question of pregnancy.

Adventura /ædvəntjūrə/. An adventure. Flotsam, jetsam, and lagon are styled *adventuræ maris* (adventures of the sea).

Adventure. A hazardous and striking enterprise. A bold undertaking accompanied by possible hazards, risks and unforeseen events.

A common word in marine insurance policies, used as synonymous, or nearly so, with "perils." A shipment of goods in charge of an agent to be disposed of for the best price obtainable.

Adventure, bill of. In commercial law, a writing signed by a merchant, stating that the property in goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce.

Gross adventure. In maritime law, a loan on bottomry. So named because the lender, in case of a loss, or expense incurred for the common safety, must contribute to the gross or general average.

Joint adventure. A commercial or maritime enterprise undertaken by several persons jointly; a limited partnership,—not limited in the statutory sense as to the liability of the partners, but as to its scope and duration. An association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge. A special combination of two or more persons, where, in some specific adventure, a profit is jointly sought, without any actual partnership or corporate designation. See also Joint venture.

Adventurer. One who undertakes uncertain or hazardous actions or enterprises. It is also used to denote one who seeks to advance his own interests by unscrupulous designs on the credulity of others.

Adversary counsel. Such counsel, as required to be appointed in commitment proceedings has the same functions, duties and responsibilities as one would have if one retained by the person involved as his or her own attorney, and such duties include preserving the confidences and secrets of the client, exercising independent professional judgment on behalf of the client, representing the client competently, and representing client zealously within the bounds of the law. State ex rel. Memmel v. Mundy, 75 Wis.2d 276, 249 N.W.2d 573, 577.

Adversary proceeding. One having opposing parties; contested, as distinguished from an ex parte hearing or proceeding. One of which the party seeking relief has given legal notice to the other party, and afforded the latter an opportunity to contest it. See also Case. Compare Ex parte.

Adversary system. The jurisprudential network of laws, rules and procedures characterized by opposing parties who contend against each other for a result favorable to themselves. In such system, the judge acts as an independent magistrate rather than prosecutor; distinguished from inquisitorial system.

Adverse. Opposed; contrary; in resistance or opposition to a claim, application, or proceeding. Having opposing interests; having interests for the preservation of which opposition is essential.

Use of land is "adverse", as against owner, if it is not made in subordination to him, is open and notorious and is not wrongful as to him; "adverse" means that one making use shall not recognize in those as against whom it is claimed to be adverse an authority either to prevent or to permit its continuance, and refers to nonrecognition of such authority at time use is made. *Benson v. Fekete, Mo., 424 S.W.2d 729, 738.*

As to *adverse* Enjoyment; User; Verdict; Witness, see those titles.

Adverse claim. An alleged right of one person asserted against the interest of another person.

Adverse enjoyment. See Adverse possession.

Adverse interest. The "adverse interest" of a witness, so as to permit cross-examination by the party calling him, must be so involved in the event of the suit that a legal right or liability will be acquired, lost, or materially affected by the judgment, and must be such as would be promoted by the success of the adversary of the party calling him. See also Adverse witness.

Adverse interest rule. Failure of a party to produce a witness who is within his power to produce and who would naturally have been produced by him, which failure permits inference that evidence of witness would be unfavorable to party's cause. *New England Whalers Hockey Club v. Nair, 1 Conn.App. 680, 474 A.2d 810, 814.*

Adverse opinion. An accounting term used in connection with the issuance of audited financial statements. An adverse opinion states that the entity's financial statements do not present fairly the financial position, results of operations, and changes in financial position in conformity with generally accepted accounting principles (GAAP).

An explanation of the departure from GAAP must be included in the opinion. See *Opinion (Accounting)* for "qualified," "unqualified," and "disclaimer" opinions.

Adverse party. A party to an action whose interests are opposed to or opposite the interests of another party to the action.

Appeal. An "adverse party" entitled to notice of appeal is every party whose interest in relation to the judgment or decree appealed from is in conflict with the modification or reversal sought by the appeal. Such term includes the following: Every party interested in sustaining the judgment or decree. All parties appearing against losing party unless reversal of case will not be to

party's detriment. Any party who would be prejudicially affected by a modification or reversal of the judgment appealed from. One who has interest in opposing object sought to be accomplished by appeal. Party to record, whose interest in subject-matter of appeal is adverse to reversal or modification of judgment or order appealed from.

Discovery. When the parties exchange pleadings, one asserting a claim for relief against the other, the parties are "adverse," within rule allowing written interrogatories to be served upon any adverse party. *Carey v. Schuldt, D.C.La., 42 F.R.D. 390, 393, 394, 395.*

Adverse possession. A method of acquisition of title to real property by possession for a statutory period under certain conditions. *Lowery v. Garfield County, 122 Mont. 571, 208 P.2d 478, 486.* It has been described as the statutory method of acquiring title to land by limitation. *Field v. Sosby, Tex.Civ.App., 226 S.W.2d 484, 486.*

Because of the statute of limitations on the bringing of actions for the recovery of land, title can be acquired to real property by adverse possession. In order to establish title in this manner, there must be proof of nonpermissive use which is actual, open, notorious, exclusive and adverse for the statutorily prescribed period. *Ryan v. Stavros, 348 Mass. 251, 203 N.E.2d 85.* State statutes differ with respect to the required length of possession from an upper limit of 20 years to a lower one of 5 years, with even more extreme time periods covering certain special cases. There may be different periods of time even within a single state, depending on whether or not the adverse possessor has color of title and/or whether or not taxes have been paid. In some cases a longer possession is required against public entities than against individuals.

Adverse possession depends on intent of occupant to claim and hold real property in opposition to all the world, *Sertic v. Roberts, 171 Or. 121, 136 P.2d 248;* and also embodies the idea that owner or persons interested in property have knowledge of the assertion of ownership by the occupant, *Field v. Sosby, Tex.Civ.App., 226 S.W.2d 484, 486.*

Adverse possession consists of actual possession with intent to hold solely for possessor to exclusion of others and is denoted by exercise of acts of dominion over land including making of ordinary use and taking of ordinary profits of which land is susceptible in its present state. *U. S. v. Chatham, D.C.N.C., 208 F.Supp. 220, 226.*

See also Constructive adverse possession; Hostile; Possession (*Hostile possession; Open possession*); Notorious possession; Prescription; Tacking.

Adverse use. Use without license or permission; an element necessary to acquire title or easement by prescription. *Shuggars v. Brake, 248 Md. 38, 234 A.2d 752.*

Adverse witness. A witness who gives evidence on a material matter prejudicial to the party then examining him. Commonly used to describe a witness whose testimony is prejudicial or unfavorable to the party who called him and as a result, such witness may be impeached. *Foremost Dairies Inc. of South v. Cutler, Fla.*

App., 212 So.2d 37, 40, 41. *See also* Adverse interest; Hostile or adverse witness.

Adversus /ædvɜrsəs/. In the civil law, against (*contra*). *Adversus bonos mores*, against good morals.

Adversus extraneos vitiosa possessio prodesse solet /ædvɜrsəs ekstréniyows vishiyówzə pəzesh(iy)ow prɔwdéshiy sówlát/. Prior possession is a good title of ownership against all who cannot show a better.

Advertise. To advise, announce, apprise, command, give notice of, inform, make known, publish. To call a matter to the public attention by any means whatsoever. Any oral, written, or graphic statement made by the seller in any manner in connection with the solicitation of business and includes, without limitation because of enumeration, statements and representations made in a newspaper or other publication or on radio or television or contained in any notice, handbill, sign, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any merchandise. As distinguished from other forms of communication means to call a matter to the public attention. *Freeman v. Greenbriar Homes, Inc.*, Tex.App.—Dallas, 715 S.W.2d 394, 397. False and deceptive advertising is regulated by the Federal Trade Commission and similar state agencies. *See also* Printers Ink Statute.

Comparative advertising. Advertising that specifically compares the advertised brand with other brands of the same product.

Competitive advertising. Advertising that contains basically little information and is used only to allow a producer to maintain a share of the market for that product.

Informative advertising. Advertising that gives information about the suitability and quality of products. To be contrasted with competitive advertising.

Advertisement. Notice given in a manner designed to attract public attention. *Edwards v. Lubbock County*, Tex.Civ.App., 33 S.W.2d 482, 484. Information communicated to the public, or to an individual concerned, as by handbills, newspaper, television, billboards, radio. *First Nat. Corporation v. Perrine*, 99 Mont. 454, 43 P.2d 1073, 1077.

Advice. View; opinion; information; the counsel given by lawyers to their clients; an opinion expressed as to wisdom of future conduct. *Hughes v. Van Bruggen*, 44 N.M. 534, 105 P.2d 494, 496. *See also* Advise.

The instruction usually given by one merchant or banker to another by letter, informing him of shipments made to him, or of bills or drafts drawn on him, with particulars of date, or sight, the sum, and the payee. Bills presented for acceptance or payment are frequently dishonored for *want of advice*.

Advice of counsel. A defense used in actions for malicious prosecution which requires a finding that defendant presented all facts to his counsel and that he honestly followed counsel's advice. *Boylan v. Tracy*, 254 Mass. 105, 108, 149 N.E. 674.

Advice of credit. Notice by an advising bank of the issuance of a letter of credit.

Ad vim majorem vel ad casus fortuitus non tenetur quis, nisi sua culpa intervenerit /æd vím majóram vèl æd kéysəs fərt(y)úwətəs nòn təniytar kwis, náysay s(y)úwə kəlpə intərvəniɾat/. No one is held to answer for the effects of a superior force, or of accidents, unless his own fault has contributed.

Advise /ædvəzériy/ or **advise** /ædvəzəray/. Lat. To consult, deliberate, consider, advise; to be advised. Occurring in the phrase *curia advisari vult* (*q.v.*), (usually abbreviated *cur. adv. vult*, or *C.A.V.*), the court wishes to be advised, or to consider the matter.

Advise. To give an opinion or counsel, or recommend a plan or course of action; also to give notice. To encourage, inform, or acquaint. It is different in meaning from "instruct" or "persuade." *Hughes v. Van Bruggen*, 44 N.M. 534, 105 P.2d 494, 497. Where a statute authorizes the trial court to *advise* the jury to acquit, the court has no power to *instruct* the jury to acquit. The court can only counsel, and the jury are not bound by the advice. "Advise" imports that it is discretionary or optional with the person addressed whether he will act on such advice or not.

Advised. Prepared to give judgment, after examination and deliberation. *E.g.* "The court took time to be advised."

Advisedly. With deliberation; intentionally.

Advisement. Consideration; deliberation; consultation. The consultation of a court, after the argument of a cause by counsel, and before delivering their opinion. *In re Hohorst*, 150 U.S. 653, 14 S.Ct. 221, 37 L.Ed. 1211.

Advising bank. A bank which gives notification of the issuance of a [letter of] credit by another bank. U.C.C. § 5-103(1)(e).

Advisory. Counselling, suggesting, or advising, but not imperative or conclusive. A verdict on an issue out of chancery is advisory.

Advisory counsel. Attorney retained to give advice as contrasted with trial counsel.

Advisory jury. In actions in Federal Court in which there is no jury trial as of right, court may try case with an advisory jury and its verdict is not binding on court. Fed.R.Civ.P. 39(c). *See also* Jury.

Advisory opinion. Such may be rendered by a court at the request of the government or an interested party indicating how the court would rule on a matter should adversary litigation develop. An advisory opinion is thus an interpretation of the law without binding effect. While the International Court of Justice and some state courts will render advisory opinions the federal courts will not; their jurisdiction being restricted to cases or controversies. *Compare* Declaratory judgment. *See also* Case.

Advisory trial. *See* Advisory jury.

Advisory verdict. *See* Advisory jury.

Ad vitam /æd vâytəm/. For life. *In feodo, vel ad vitam*; in fee, or for life.

Ad vitam aut culpam /æd vâytəm ôt kôlpəm/. For life or until fault. Words descriptive of a tenure of office "for life or good behavior," equivalent to *quamdiu bene se gesserit*.

Advocacy /ædvəkæsiy/. The act of pleading for, supporting, or recommending active espousal. *Gitlow v. People of State of New York*, 268 U.S. 652, 45 S.Ct. 625, 626, 69 L.Ed. 1138.

Advocare /ædvəkəriy/. Lat. To defend; to call to one's aid; to vouch; to warrant.

Advocassie /ædvəkæsiy/. L. Fr. The office of an advocate; advocacy.

Advocata /ædvəkétə/. In old English law, a patroness; a woman who had the right of presenting to a church.

Advocate /ædvəkét/, *v.* To speak in favor of or defend by argument. To support, vindicate, or recommend publicly.

Advocate /ædvəkət/, *n.* One who assists, defends, or pleads for another. One who renders legal advice and aid and pleads the cause of another before a court or a tribunal, a counselor. A person learned in the law, and duly admitted to practice, who assists his client with advice, and pleads for him in open court. An assistant; adviser; a pleader of causes.

Advocati /ædvəkétay/. Lat. In Roman law, patrons; pleaders; speakers.

Advocatia /ædvəkéysh(iy)ə/. In the civil law, the quality, function, privilege, or territorial jurisdiction of an advocate. The functions, duty, or privilege of an advocate.

Advocati ecclesiæ /ædvəkétay æklízyiy/. Advocates of the church. A term used in the ecclesiastical law to denote the patrons of churches who presented to the living on an avoidance. This term was also applied to those who were retained to argue the cases of the church. These were of two sorts: those retained as pleaders to argue the cases of the church and attend to its law-matters; and advocates, or patrons of the advowson.

Advocati fisci /ædvəkétay fisay/. In civil law, those chosen by the emperor to argue his cause whenever a question arose affecting his revenues. 3 Bl.Comm. 27. Advocates of the fisc, or revenue; fiscal advocates (*qui causam fisci egissent*). Answering, in some measure, to the king's counsel in English law.

Advocating overthrow of government. Such conduct is a federal crime. 18 U.S.C.A. §§ 2384, 2385.

Advocatione decimarum /ædvøkéyshiyówniy dèsmérəm/. A writ which lay for tithes, demanding the fourth part or upwards, that belonged to any church.

Advocator /ædvøkétər/. In old practice, one who called on or vouched another to warrant a title; a voucher. *Advocatus*; the person called on, or vouched; a vouchee.

Advocatus /ædvøkéytəs/. A pleader; a narrator. In the civil law, an advocate; one who managed or assisted in managing another's cause before a judicial tribunal. Called also "*patronus*." But distinguished from *causidicus*.

Advocatus diaboli /ædvøkéytəs dayəbəlay/. In ecclesiastical law, the devil's advocate; the advocate who argues against the canonization of a saint.

Advocatus est, ad quem pertinet jus advocacionis alicujus ecclesiæ, ut ad ecclesiam, nomine proprio, non alieno, possit præsentare /ædvøkéytəs ést, æd kwém pòrtənət jəs ædvøkéyshiyównəs æliykýúwçəs æklízyiy, é æd æklízyiyəm, nóməniy prówpriyow, non æliyíynow, pòsət prezəntəriy/. A patron is he to whom appertains the right of presentation to a church, in such a manner that he may present to such a church in his own name, and not in the name of another.

Ad voluntatem /æd vòlántéytəm/. At will. *Ad voluntatem domini*, at the will of the lord.

Advoutrer /ædváwtrər/. In old English law, an adulterer.

Advoutry /ædvávtriy/. In old English law, adultery between parties both of whom were married. Or the offense by an adulteress of continuing to live with the man with whom she committed the adultery. Sometimes spelled "advowtry." See *Advoutrer*.

Advowee, or avowee /æ(d)vawíy/. The person or patron who has a right to present to a benefice.

Advowee paramount. The sovereign, or highest patron.

Advowson /ædváwzən/. In English ecclesiastical law, the right of presentation to a church or ecclesiastical benefice; the right of presenting a fit person to the bishop, to be by him admitted and instituted to a certain benefice within the diocese, which has become vacant. The person enjoying this right is called the "patron" (*patronus*) of the church, and was formerly termed "*advocatus*," the advocate or defender, or in English, "*advowee*." When there is no patron, or he neglects to exercise his right within six months, it is called a *lapse*, and a title is given to the ordinary to collate to a church: when a presentation is made by one who has no right, it is called a *usurpation*.

Advowsons are of different kinds:

Advowson appendant is an advowson annexed to a manor, and passing with it, as incident or appendant to it, by a grant of the manor only, without adding any other words. 2 Bl.Comm. 22.

Advowson collative. Where the bishop happens himself to be the patron, in which case (presentation being impossible, or unnecessary) he does by one act, which is termed "*collation*," or conferring the benefice, all that is usually done by the separate acts of presentation and institution. 2 Bl.Comm. 22, 23.

Advowson donative exists where the patron has the right to put his clerk in possession by his mere gift, or deed of donation, without any presentation to the bish-

op, or institution by him. Donative benefices were converted into *presentative* by the Benefices Act of 1898.

Advowson in gross is an advowson separated from the manor, and annexed to the person. 2 Bl.Comm. 22.

Advowson presentative is the usual kind of advowson, where the patron has the right of *presentation* to the bishop, or ordinary, and moreover to demand of him to institute his clerk, if he finds him canonically qualified. 2 Bl.Comm. 22.

Advowtry /ædváwtriy/. See Advowtry.

Ad waractum /æd wæréktəm/. To fallow.

Ædes /iydiyʒ/. Lat. In the civil law, a house, dwelling, temple, place of habitation, whether in the city or country. In the country everything upon the surface of the soil passed under the term "*ædes*."

Ædificare /iydáfakériy/. Lat. In civil and old English law, to make or build a house; to erect a building.

Ædificare in tuo proprio solo non licet quod alteri noceat /iydáfakériy in t(y)úwow prówpriow sówlow nòn láysæt kwòd æltaray nósiyæt/. To build upon your own land what may injure another is not lawful. A proprietor of land has no right to erect an edifice on his own ground, interfering with the due enjoyment of adjoining premises, as by overhanging them, or by throwing water from the roof and eaves upon them, or by obstructing ancient lights and windows.

Ædificatum solo solo cedit /iydáfakéyrtəm sówlow sólow síydət/. What is built upon land belongs to or goes with land.

Ædificia solo cedunt /iydáfish(iy)ə sówlow síydənt/. Buildings belong to [go with] the soil.

Ædilitum edictum /iydíltəm iydíktəm/. In the Roman law, the *Ædilitian Edict*. An edict providing remedies for frauds in sales, the execution of which belonged to the curule *ædiles*. That provision by which the buyer of a diseased or imperfect slave, horse, or other animal was relieved at the expense of the vendor who had sold him as sound knowing him to be imperfect.

Æfesn. In old English law, the remuneration to the proprietor of a domain for the privilege of feeding swine under the oaks and beeches of his woods.

Ægroto /iygrówtow/. Lat. Being sick or indisposed. A term used in some of the older reports.

Ægylde. Uncompensated, unpaid for, unavenged. From the participle of exclusion, *a*, *æ*, or *ex*, (Goth.) and *gild*, payment, requital.

Æl /éyl/. A Norman French term signifying "grandfather." It is also spelled "*aieul*" and "*ayle*."

Æquior est dispositio legis quam hominis /iykwíoyor èst dispəzish(iy)ow líyʒəs kwəm hómənas/. The disposition of the law is more equitable than that of man.

Æquitas /iykwətəs/. In the civil law, equity, as opposed to *strictum* or *summum jus* (*q.v.*). Otherwise called *æquum*, *æquum bonum*, *æquum et bonum*, *æquum et justum*. See *Æquum et bonum est lex legum*.

Æquitas agit in personam /iykwətəs éyʒət in pərsónwəm/. Equity acts upon the person.

Æquitas est correctio legis generaliter lata, qua parte deficit /iykwətəs èst kərəksh(iy)ow líyʒəs jənərəylətər léytiy, kwéy pártiy dífəsət/. Equity is the correction of that wherein the law, by reason of its generality, is deficient.

Æquitas est correctio quædam legi adhibita, quia ab eâ abest aliquid propter generalem sine exceptione comprehensionem /iykwətəs èst kərəksh(iy)ow kwíydəm líyʒay æd(h)íbətə, kwáyə æb iyə ábèst ælækwəd próptər jənərəyləm sáyniy eksəpshiyówniy kòmprəhənsiyównəm/. Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it.

Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed solum in verâ ratione consistens /iykwətəs èst pərféktə kwíydəm réyshiyow kwíy jəs skríptəm intərpətéyrtər et eméndət; nálə skríptyúre kòmprəhénsə, sed sówlm in vírə réyshiyówniy kənsistənz/. Equity is a certain perfect reason, which interprets and amends the written law, comprehended in no writing, but consisting in right reason alone.

Æquitas est quasi æqualitas /iykwətəs èst kwéysay iykwólətəs/. Equity is as it were equality; equity is a species of equality or equalization.

Æquitas ignorantia opitulatur, oscitantia non item /iykwətəs ignərənshiyiy owpityéléyrtər, ɔsətənsihiyiy nòn áytəm/. Equity assists ignorance, but not carelessness.

Æquitas non facit jus, sed juri auxiliatur /iykwətəs nòn féysət jəs, sèd júráy ogziliyéyrtər/. Equity does not make law, but assists law.

Æquitas nunquam contravenit legis /iykwətəs nónkwəm kóntрэvínyət líyʒəs/. Equity never counteracts the laws.

Æquitas sequitur legem /iykwətəs sékwətər líyʒəm/. Equity follows the law.

Æquitas supervacua odit /iykwətəs súwpərvékýuwa ówdət/. Equity abhors superfluous things.

Æquitas uxoris, liberis, creditoribus maxime favet /iykwətəs əxóriybəs, líbərəs, kredətóriybəs mák-səmiy féyvət/. Equity favors wives and children, creditors most of all.

Æquum et bonum est lex legum /iykwəm ət bównəm èst léks líyʒəm/. What is equitable and good is the law of laws.

Æquus /iykwəs/. Lat. Equal; even. A provision in a will for the division of the residuary estate *ex æquus* among the legatees means equally or evenly.

Æra, or era /írə/. A fixed point of chronological time, whence any number of years is counted; thus, the Christian era began at the birth of Christ, and the Mohammedan era at the flight of Mohammed from

Mecca to Medina. The derivation of the word has been much contested.

Erarium /irériyám/. Lat. In the Roman law, the treasury (*fiscus*).

Es /iyz/. Lat. In the Roman law, money (literally, brass); metallic money in general, including gold.

Aes alienum /iyz æliýíynám/. A civil law term signifying a debt. Literally translated, the money of another. The civil law considered borrowed money as the property of another, as distinguished from *æs suum*, one's own money.

Æsnecia /iysniýsh(iy)ə/. In old English law, Esnecy; the right or privilege of the eldest born.

Æsnecius /iysniýshiyəs/. See Anecius; *Æsnecia*.

Æs suum /iys s(y)úwám/. One's own money. In the Roman law, debt; a debt; that which others owe to us (*quod alii nobis debent*).

Aesthetic /æθétik/. Relating to that which is beautiful or in good taste.

Aesthetic value. The artistic worth of something as contrasted with its practical value.

Æstimatio capitis /èstáméysh(iy)ow kápétəs/. Lat. The value of a head. In Saxon law, the estimation or valuation of the head; the price or value of a man. The price to be paid for taking the life of a human being. By the laws of Athelstan, the life of every man not excepting that of the king himself was estimated at a certain price, which was called the *were*, or *æstimatio capitis*.

Æstimatio præteriti delicti ex postremo facto nunquam crescit /èstáméysh(iy)ow prætérétay dälíktay èks powstriymow fáktow nájkwám krésət/. The weight of a past offense is never increased by a subsequent fact.

Ætas /iytəs/. Lat. In the civil law, age.

Ætas infantia (also written *infantili*) **proxima** /iytəs infánshiyiy próksámə/. The age next to infancy; the first half of the period of childhood (*pueritia*), extending from seven years to ten and a half. 4 Bl.Comm. 22. See Age.

Ætas legitima /iytəs læjítámə/. Lawful age. See Legal age; Majority.

Ætas perfecta /iytəs pərféktə/. Complete age; full age.

Ætas prima /iytəs práymə/. The first age; infancy (*infantia*).

Ætas pubertati proxima /iytəs pyúwbértéyay próksámə/. The age next to puberty; the last half of the period of childhood (*pueritia*), extending from ten and a half years to fourteen, in which there might or might not be criminal responsibility according to natural capacity or incapacity. 4 Bl.Comm. 22. See Age.

Ætate probanda /iytétiyi prowbándə/. A writ (now obsolete) which inquired whether the king's tenant holding in chief by chivalry was of full age to receive his lands. It was directed to the escheater of the county.

Ætheling /iyðəliŋ/. In Saxon law, a noble; generally a prince of the blood.

A.F.D.C. Aid to Families with Dependent Children.

Affair. (Fr.) A law suit.

Affairs. An inclusive term, bringing within its scope and meaning anything that a person may do. Walker v. United States, C.C.A.Mo., 93 F.2d 383, 391. A person's concerns in trade or property; business. That which is done or to be done. General operations carried on by an employer. Gocs v. Thomas E. Coale Coal Co., 142 Pa.Super. 479, 16 A.2d 720, 723. See also Statement of affairs.

Affect. To act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things. To lay hold of or attack (as a disease does); to act, or produce an effect or result upon; to impress or influence (the mind or feelings); to touch.

Affecting commerce. Any activity which touches or concerns business or industry, favorably or burdensomely; commonly used within context of Labor Management Relations Act regarding a labor dispute which burdens commerce. U. S. v. Ricciardi, C.A.N.Y., 357 F.2d 91, 95.

The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. National Labor Relations Act, § 2(7); 29 U.S.C.A. § 152.

The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce. Labor Management Relations Act, § 501(1); 29 U.S.C.A. § 142.

Affection. The making over, pawning, or mortgaging of a thing to assure the payment of a sum of money, or the discharge of some other duty or service. In a medical sense, an abnormal bodily condition.

Affectio tua nomen imponit operi tuo /áféksh(iy)ow t(y)úwə nówmən impównət ówparay t(y)úwow/. Your disposition (or motive, intention) gives name (or character) to your work or act.

Affectus /áféktəs/. Disposition; intention, impulse or affection of the mind. One of the causes for a challenge of a juror is *propter affectum*, on account of a suspicion of bias or favor. 3 Bl.Comm. 363.

Affectus punitur licet non sequatur effectus /áféktəs pyuwnáyter láysət nòn səkweýter éféktəs/. The intention is punished although the intended result does not follow.

Affeer /əfir/. To assess, liquidate, appraise, fix in amount.

Affeerors /əfirərz/. In common law, persons who, in court-leets, upon oath, settled and moderated the fines and amerements imposed on those who had committed offenses arbitrarily punishable, or that had no express

penalty appointed by statute. They were also appointed to moderate fines, etc., in courts-baron.

Affermer /æfərméy/. L. Fr. To let to farm. Also to make sure, to establish or confirm.

Affiance. To assure by pledge. An agreement by which a man and woman promise that they will marry each other.

Affiant /əfáyənt/. The person who makes and subscribes an affidavit. The word is used, in this sense, interchangeably with "deponent." But the latter term should be reserved as the designation of one who makes a deposition.

Affidare /æfədériy/. At common law, to swear faith to; to pledge one's faith or do fealty by making oath. Used of the mutual relation arising between landlord and tenant. 1 Bl.Comm. 367. Affidavit is of kindred meaning.

Affidari /æfədéray/. To be mustered and enrolled for soldiers upon an oath of fidelity.

Affidatio /æfədéysh(iy)ow/. At common law, a swearing of the oath of fidelity or of fealty to one's lord, under whose protection the quasi-vassal has voluntarily come.

Affidatio dominorum /æfədéysh(iy)ow dômənórəm/. An oath taken by the lords in parliament.

Affidatus /æfədéytəs/. At common law one who was not a vassal, but who for the sake of protection had connected himself with one more powerful.

Affidavit /æfədéyvət/. A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. *State v. Knight*, 219 Kan. 863, 549 P.2d 1397, 1401. *See also* Certification; Jurat; Verification.

Affidavit of defense. An affidavit stating that the defendant has a good defense to the plaintiff's action on the merits; *e.g.* affidavit filed with motion for summary judgment. Fed.R. Civil P. 56(e).

Affidavit of inquiry. By court rule in certain states, substituted service of process may be had on absent defendants if it appears by affidavit of plaintiff's attorney, or other person having knowledge of the facts, that defendant cannot, after diligent inquiry, be served within the state.

Affidavit of merits. One setting forth that the defendant has a meritorious defense (substantial and not technical) and stating the facts constituting the same. *See* Affidavit of defense.

Affidavit of notice. A sworn statement that affiant has given proper notice of hearing to other parties to action.

Affidavit of service. An affidavit intended to certify the service of a writ, notice, summons, or other document or process. In federal courts, if service is made by a person other than a United States Marshall or his deputy, he shall make affidavit thereof. Fed.R. Civil P. 4(g).

Affidavit to hold to bail. An affidavit required in many cases before the defendant in a civil action may be arrested. Such an affidavit must contain a statement, clearly and certainly expressed, by someone acquainted with the fact, of an indebtedness from the defendant to the plaintiff, and must show a distinct cause of action.

Affilare /əfiliyériy/. L. Lat. To put on record; to file or affile. *Affiletur*, let it be filed. *De recordo affilatum*, affiled of record.

Affile /əfáy/. A term employed in old practice, signifying to put on file. In modern usage it is contracted to *file*.

Affiliate /əfiliyeyt/. Signifies a condition of being united; being in close connection, allied, associated, or attached as a member or branch.

Affiliate company. Company effectively controlled by another company. A branch, division, or subsidiary. Under Investment Company Act (15 U.S.C.A. § 80a-2), company in which there is ownership (direct or indirect) of 5 percent or more of the voting stock.

Corporations which are related as parent and subsidiary, characterized by identity of ownership of capital stock. *Northeastern Consol. Co. C. v. U. S., C.A.III.*, 406 F.2d 76, 79. *See also* Holding company.

Affiliation. Act or condition of being affiliated, allied, or associated with another person, body, or organization. Imports less than membership in an organization, but more than sympathy, and a working alliance to bring to fruition the proscribed program of a proscribed organization, as distinguished from mere co-operation with a proscribed organization in lawful activities, is essential. *Bridges v. Wixon, Cal.*, 326 U.S. 135, 65 S.Ct. 1443, 1447, 89 L.Ed. 2103. It includes an element of dependability upon which the organization can rely which, though not equivalent to membership duty, rests upon course of conduct that could not be abruptly ended without giving at least reasonable cause for charge of breach of good faith. *U. S. ex rel. Kettunen v. Reimer, C.C.A.N.Y.*, 79 F.2d 315, 317. *See also* Association.

The act of imputing or determining the paternity of a child born out of wedlock, and the obligation to maintain it. *See* Paternity suit or action.

Affines /əfáyniyz/. In the civil law, connections by marriage, whether of the persons or their relatives. Neighbors, who own or occupy adjoining lands. From this word is derived affinity, denoting relationship by marriage. The singular, *affinis*, is used in a variety of related significations—a boundary; a partaker or sharer, *affinis culpæ* (an aider or one who has knowledge of a crime).

Affinitas /əfinətəs/. Lat. In the civil law, affinity; relationship by marriage.

Affinitas affinitatis /əfinətəs əfinətéytəs/. Remote relationship by marriage. That connection between parties arising from marriage which is neither consanguinity nor affinity. This term signifies the connection between the kinsmen of the two persons married, as, for example, the husband's brother and the wife's sister.

Affinity /əfɪnətɪ/. A close agreement; relation; spiritual relation or attraction held to exist between certain persons. *State ex inf. Norman v. Ellis*, 325 Mo. 154, 28 S.W.2d 363, 367. Relation which one spouse because of marriage has to blood relatives of the other. *State v. Hooper*, 140 Kan. 481, 37 P.2d 52.

The connection existing, in consequence of marriage, between each of the married persons and the kindred of the other. *Kest v. Lewis*, 169 Ohio St. 317, 159 N.E.2d 449, 450.

Degrees of relationship by affinity are computed as are degrees of relationship by consanguinity. The doctrine of affinity grew out of the canonical maxim that marriage makes husband and wife one. The husband has the same relation, by affinity, to his wife's blood relatives as she has to them by consanguinity and vice versa. *State v. Hooper*, 140 Kan. 481, 37 P.2d 52.

Affinity is distinguished into three kinds: (1) *Direct*, or that subsisting between the husband and his wife's relations by blood, or between the wife and the husband's relations by blood; (2) *secondary*, or that which subsists between the husband and his wife's relations by marriage; (3) *collateral*, or that which subsists between the husband and the relations of his wife's relations.

In a larger sense, consanguinity or kindred.

Quasi affinity. In the civil law, the affinity which exists between two persons, one of whom has been betrothed to a kinsman of the other, but who have never been married.

Affirm. To ratify, uphold, approve, make firm, confirm, establish, reassert. To make affirmation; to make a solemn and formal declaration or asseveration that an affidavit is true, that the witness will tell the truth, etc., this being substituted for an oath in certain cases. Also, to give testimony on affirmation. *See* Affidavit; Jurat; Verification.

Judgment. In the practice of appellate courts, to *affirm* a judgment, decree, or order, is to declare that it is valid and right and must stand as rendered below; to ratify and reassert it; to concur in its correctness and confirm its efficacy. If the appellate court *remanded* the case, it would be sending it back to the lower court with instructions to correct the irregularities specified in the appellate opinion. If the appellate court *reversed* the court below, it would have changed the result reached below.

Pleading. To allege or aver a matter of fact; to state it affirmatively. The opposite of deny or traverse.

Affirmance. The confirming, or ratifying of a former law, or judgment. The confirmation and ratification by an appellate court of a judgment, order, or decree of a lower court brought before it for review. *See* Affirm.

The ratification or confirmation of a voidable contract or act by the party who is to be bound thereby. The term is in accuracy to be distinguished from *ratification*, which is a recognition of the validity or binding force as against the party ratifying, of some act performed by another person; and from *confirmation*, which would seem to apply more properly to cases where a doubtful

authority has been exercised by another in behalf of the person ratifying; but these distinctions are not generally observed.

Affirmance day general. In the English court of exchequer, a day appointed by the judges of the common pleas, and barons of the exchequer, to be held a few days after the beginning of every term for the general affirmation or reversal of judgments.

Affirmant /əfɜrmənt/. A person who testifies on affirmation, or who affirms instead of taking an oath. Used in affidavits and depositions which are *affirmed*, instead of sworn to in place of the word "deponent." *See also* Affirmation; Jurat; Verification.

Affirmanti, non neganti incumbit probatio /əfɜrməntay, nɔn nəgəntay ɪnkəmbət prɔwbéysh(iy)ow/. The [burden of] proof lies upon him who affirms, not upon one who denies.

Affirmantis est probare /əfɜrməntəs èst prɔwbériy/. He who affirms must prove.

Affirmation. A solemn and formal declaration or asseveration that an affidavit is true, that the witness will tell the truth, etc.; this being substituted for an oath in certain cases. A solemn religious asseveration in the nature of an oath. *See also* Confirmation; Jurat; Oath; Verification.

Affirmation of fact. A statement concerning a subject-matter of a transaction which might otherwise be only an expression of opinion but which is affirmed as an existing fact material to the transaction, and reasonably induces the other party to consider and rely upon it, as a fact.

Affirmatio unius exclusio est alterius /əfɜrméysh(iy)ow yuwnáyəs èksklúwzhiyow èst oltiriyəs/. The affirmance of one thing is the exclusion of the other.

Affirmative. That which declares positively; that which avers a fact to be true; that which establishes; the opposite of negative.

As to *affirmative* Plea; Proof; Warranty, see those titles.

Affirmative action programs. Employment programs required by federal statutes and regulations designed to remedy discriminatory practices in hiring minority group members; *i.e.* positive steps designed to eliminate existing and continuing discrimination, to remedy lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination; commonly based on population percentages of minority groups in a particular area. Factors considered are race, color, sex, creed and age. *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U.S. 240, 59 S.Ct. 490, 497, 83 L.Ed. 627; *National Labor Relations Board v. Leviton Mfg. Co.*, C.C.A.2, 111 F.2d 619, 621.

Affirmative charge. The general "affirmative charge" is an instruction to the jury that, whatever the evidence

may be, defendant cannot be convicted under the count in the indictment to which the charge is directed.

Affirmative defense. In pleading, matter asserted by defendant which, assuming the complaint to be true, constitutes a defense to it. A response to a plaintiff's claim which attacks the plaintiff's *legal* right to bring an action, as opposed to attacking the truth of claim. Under the Fed. Rules of Civil Procedure, and also under most state Rules, all affirmative defenses must be raised in the responsive pleading (answer); such defenses include accord and satisfaction, assumption of risk, contributory negligence, duress, statute of limitations, estoppel, etc. See Fed.R. Civil P. 8(c).

Affirmative defenses in criminal cases include insanity, intoxication, self-defense, automatism, coercion, alibi, and duress. See *e.g.* Model Penal Code § 3.01 (justification as affirmative defense).

Affirmative easement. An easement which gives to the owner of the dominant tenement the right to use the servient tenement, or to do some act thereon which would otherwise be unlawful. *Clements v. Taylor*, Tex. Civ.App., 184 S.W.2d 485, 487.

Affirmative pregnant. In common law pleading, an affirmative allegation implying some negative in favor of the adverse party.

Affirmative proof. Such evidence of the truth of matters asserted as tends to establish them, regardless of character of evidence offered.

Affirmative relief. Relief, benefit, or compensation which may be due and granted to defendant. Relief for which defendant might maintain an action independently of plaintiff's claim and on which he might proceed to recovery, although plaintiff abandoned his cause of action or failed to establish it. Specific performance (*q.v.*) is a type of affirmative relief that may be granted to plaintiff.

Affirmative statute. A statute couched in affirmative or mandatory terms. One which directs the doing of an act, or declares what shall be done; as a *negative* statute is one which prohibits a thing from being done, or declares what shall not be done.

Affirmative warranty. See *Warranty*.

Affix. Fix or fasten in any way; to attach physically. To attach to, inscribe, or impress upon, as a signature, a seal, a trade-mark. To attach, add to, or fasten upon, permanently, as in the case of fixtures annexed to real estate. A thing is deemed to be affixed to land when it is attached to it by the roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. See *Fixture*.

Affixing. Securely attached.

Affixus /əfiksəs/. In the civil law, affixed, fixed, or fastened to.

Affliction. A distress of mind or body; that which causes continuing anguish or suffering.

Afforare /æfərəriy/. To set a price or value on a thing.

Afforatus /æfərəytəs/. Appraised or valued, as things vendible in a market.

Afforce /əfɔrs/. To add to; to increase; to strengthen; to add force to.

Afforce the assize /əfɔrs ðiy əsáy/. In old English practice, a method of securing a verdict, where the jury disagreed, either by confining them without meat and drink, or, more anciently, by adding other jurors to the panel, to a limited extent, until twelve could be found who were unanimous.

Afforciamentum /æfɔrshəməntəm/. In old English law, a fortress or stronghold, or other fortification. The calling of a court upon a solemn or extraordinary occasion.

Afforest /əfɔrəst/. To convert land into a forest in the legal sense of the word.

Afforestation /æfɔrəstéyshən/. The turning of a part of a country into forest or woodland or subjecting it to forest law, *q.v.*

Affouage /əfuwázh/. In French law, the right of the inhabitants of a commune or section of a commune to take from the forest the fire-wood which is necessary for their use.

Affranchir /əfrɔnshír/. L. Fr. To set free.

Affranchise /əfránchayz/. To liberate; to make free.

Affray. A public offense at common law, it is the mutual combat of two or more persons in a public place to the terror of the people. *Matter of Drakeford*, 32 N.C.App. 113, 230 S.E.2d 779, 782. It differs from a riot or duel in not being premeditated. *Payne v. State*, Ala.Cr.App., 391 So.2d 140. See also *Disorderly conduct*; *Duel*; *Fight*; *Riot*.

Affreachmentum /əfrɛktəməntəm/. Affreightment; a contract for the hire of a vessel.

Affreightment /əfrɛytmənt/. A contract of affreightment is a contract with a ship-owner to hire his ship, or part of it, for the carriage of goods. *The Fred Smartley, Jr.*, C.C.A.Va., 100 F.2d 971, 973. Such a contract generally takes the form either of a charter-party or of a bill of lading.

Affretement /əfrɛtmón/. Fr. In French law, the hiring of a vessel; affreightment (*q.v.*). Called also *nolisement*.

Affri /æfray/. In old English law, plow cattle, bullocks or plow horses. *Affri*, or *afri carucæ*; beasts of the plow.

Affront /əfránt/. An insult or indignity; assault, insolence.

A fine force /ey fayn fɔrs/. Of pure necessity.

A.F.L. American Federation of Labor. Merged with CIO (Congress of Industrial Organizations) in 1955.

A force /ey fórs/. Of necessity.

A force et armis /ey fórs et ármás/. With force and arms.

Aforementioned. See *Aforesaid*.

Aforesaid. Before, or already said, mentioned, or recited; premised. Preceding; opposite of following.

Aforethought. In criminal law, deliberate; planned; premeditated; prepenne. As used in the definition of murder in the first degree, means thought of beforehand and for any length of time, however short, before the doing of the act, and is synonymous with premeditation. See *Malice aforethought*; *Premeditation*.

A forfait et sans garantie /à forféy èy sòn gàròntíy/. In French law, a formula used in indorsing commercial paper, and equivalent to "without recourse."

A fortiori /èy forshiyóray/. With stronger reason; much more. A term used in logic to denote an argument to the effect that because one ascertained fact exists, therefore another, which is included in it, or analogous to it, and which is less improbable, unusual, or surprising, must also exist.

After. Later, succeeding, subsequent to, inferior in point of time or of priority or preference. Subsequent in time to. *Cheney v. National Surety Corporation*, 256 A.D. 1041, 10 N.Y.S.2d 706. On and after. *New York Trust Co. v. Portland Ry. Co.*, 197 A.D. 422, 189 N.Y.S. 346, 348.

After-acquired. Acquired after a particular date or event. Thus, a judgment is a lien on after-acquired realty, *i.e.*, land acquired by the debtor after entry of the judgment.

After acquired property. Property of debtor which is acquired after security transaction covering property already owned is perfected. Property acquired after the date of the agreement usually becomes additional security for payment of the indebtedness if an after-acquired property provision is included in the agreement. See *UCC § 9-204*, and *After acquired property clause, infra*. May also refer to property acquired by testator after execution of will.

In bankruptcy law, with certain exceptions, the bankruptcy estate includes any interest in property that the estate acquires after commencement of the case. *Bankruptcy Code § 541(a)*.

After acquired property clause. A clause in a mortgage providing that any property acquired by the borrower after the date of the loan and mortgage will automatically become additional security for the loan.

After acquired title. Doctrine under which title acquired by grantor who previously attempted to convey title to land which he did not in fact own, inures automatically to benefit of prior grantees. *Morris v. Futscha*, 194 Okl. 224, 148 P.2d 986, 987. The doctrine provides that, although the sale of another's property is null, the purchaser is entitled to the benefit of any title subsequently acquired by the seller. *Acree v. Shell Oil*

Co., D.C.La., 548 F.Supp. 1150, 1156. See *Estoppel (Estoppel by deed)*.

After born child. Refers to child born after execution of will or to child born after time in which class gift closes. Generally, birth of child after father has executed his will does not revoke will. See *En ventre sa mere*; *Heirs*; *Posthumous child*.

After born heirs. A person entitled to property born after the death of the ancestor intestate. See *Descent*; *Heirs*.

After-discovered. Discovered or made known after a particular date or event.

After-discovered evidence. See *Evidence*.

After-market. Term describing the market for a security after it has been initially sold by the issuer through underwriters.

Afternoon. May mean the whole time from noon to midnight (*e.g.* *U.C.C. § 4-104(1)(b)*), or it may mean the earlier part of that time as distinguished from evening, or may mean that part of day between noon and evening.

After sight. This term as used in a bill payable so many days after sight, means after legal sight; that is, after legal presentment for acceptance. The mere fact of having seen the bill or known of its existence does not constitute legal "sight."

After the fact. Subsequent to an event from which time is reckoned, *e.g.* accessory after fact is one who harbors, conceals or aids in concealment of the principal felon after the felony has been committed.

Afterthought. A thought composed after the event and with deliberation.

Afterward, afterwards. Subsequent in point of time; synonymous with "thereafter."

Against. Adverse to; contrary. In *re Dean's Estate*, 350 Mo. 494, 166 S.W.2d 529, 533. Signifies discord or conflict; opposed to; without the consent of; in conflict with. Sometimes meaning "upon," which is almost, if not altogether, synonymous with word "on." *Northern Pac. Ry. Co. v. Gas Development Co.*, 103 Mont. 214, 62 P.2d 204, 205.

Against interest. Commonly used to describe a declaration or admission by one, the content of which is adverse to his position, interest or title; *e.g.*, an exception to hearsay rule is a declaration by one against his pecuniary or proprietary interest at the time when it was made. *Fed.Evid.Rule 804*. See also *Admission*; *Declaration (Declarations against interest)*.

Against public interest. An agreement or act which is or has been declared to be adverse to the general good or public welfare; such that a judge may on his own declare void. See *Public interest*.

Against the evidence. See *Against the weight of the evidence*.

Against the form of the statute. Technical words which must be used in framing an indictment for a breach of the statute prohibiting the act complained of. The Latin phrase is *contra formam statuti, q.v.*

Against the law. A decision is "against the law" for purposes of a motion for new trial where the evidence is insufficient in law and without conflict on any material point. In *re Marriage of Beilock*, 81 C.A.3d 713, 146 Cal.Rptr. 675, 684. Such exists when there is a failure to find on material issue, or when findings are irreconcilable or where evidence is insufficient in law and without conflict on any material point. *Schmeltzer v. Gregory*, 266 C.A.2d 420, 72 Cal.Rptr. 194, 196.

Against the peace. A technical phrase used in alleging a breach of the peace.

Against the weight of the evidence. Contrary to the evidence. *Russell v. Pilger*, 113 Vt. 537, 37 A.2d 403, 411. A finding is "against the manifest weight of the evidence" if an opposite conclusion is clearly evident. *Burke v. Board of Review*, 2 Dist., 132 Ill.App.3d 1094, 87 Ill.Dec. 823, 477 N.E.2d 1351, 1356. For judgement to be considered such, it must appear that conclusions opposite to those reached by the trier of fact are clearly evident. *Wood v. Illinois Liquor Control Commission*, 55 Ill.App.3d 228, 13 Ill.Dec. 443, 371 N.E.2d 138, 140. If a verdict is against the weight of the evidence, a new trial may be granted under Fed.R.Civ.P. 59(a). See also Directed verdict; Non obstante verdicto; Weight of evidence.

Against the will. Technical words used in framing an indictment for robbery from the person, rape and some other offenses. See also Coercion; Duress; Force.

Agalma /əgálmə/. An impression or image of anything on a seal.

Agard /əgárd/. L. Fr. An award. *Nul fait agard* /nól féyt agárd/; no award made.

Agarder /əgardéy/. L. Fr. To award, adjudge, or determine; to sentence, or condemn.

Age. The length of time during which a person has lived. The time at which one attains full personal rights and capacities. In law the term signifies those periods in the lives of persons of both sexes which enable them to do certain acts which, before they had arrived at those periods, they were prohibited from doing. See *e.g.* Age of consent; Age of majority; Legal age; Majority.

As used in particular statutes, the term implies disability and, by definition, has been applied to all minors under a certain age and to others disabled by old age. *Hampton v. Ewert*, C.C.A.Okl., 22 F.2d 81, 87.

Age discrimination act. Federal legislation prohibiting unfair and discriminatory treatment in employment on the basis of age. The Act generally covers individuals at least 40 years of age. Age Discrimination in Employment Act of 1967, as amended. 29 U.S.C.A. § 621 et seq.

Aged person. One advanced in years; refers to his or her chronological, not mental age.

Agency. A relationship between two persons, by agreement or otherwise, where one (the agent) may act on behalf of the other (the principal) and bind the principal by words and actions. Relation in which one person acts for or represents another by latter's authority, either in the relationship of principal and agent, master and servant, or employer or proprietor and independent contractor. *Gorton v. Doty*, 57 Idaho 792, 69 P.2d 136, 139. It also designates a place at which business of company or individual is transacted by an agent. *Johnson Freight Lines v. Davis*, 170 Tenn. 177, 93 S.W.2d 637, 639. The relation created by express or implied contract or by law, whereby one party delegates the transaction of some lawful business with more or less discretionary power to another, who undertakes to manage the affair and render to him an account thereof. *State ex rel. Cities Service Gas Co. v. Public Service Commission*, 337 Mo. 809, 85 S.W.2d 890, 894. Or relationship where one person confides the management of some affair, to be transacted on his account, to other party. Or where one party is authorized to do certain acts for, or in relation to the rights or property of the other. But means more than tacit permission, and involves request, instruction, or command. *Klee v. U. S.*, C.C.A.Wash., 53 F.2d 58, 61. The consensual relation existing between two persons, by virtue of which one is subject to other's control. *Tarver, Steele & Co. v. Pendleton Gin Co.*, Tex.Civ.App., 25 S.W.2d 156, 159.

Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act. Restatement, Second, Agency § 1.

See also Agent; Authority.

Actual agency. Exists where the agent is really employed by the principal.

Administrative agency. See Administrative agency.

Agency by estoppel. One created by operation of law and established by proof of such acts of the principal as reasonably lead third person to the conclusion of its existence. Arises where principal, by negligence in failing to supervise agent's affairs, allows agent to exercise powers not granted to him, thus justifying others in believing agent possesses requisite authority.

Deed of agency. A revocable and voluntary trust for payment of debts.

Del credere. Type of agency in which agent is entrusted with goods, documents or securities and in which he is given broad authority to collect from the buyer and in some cases has been held responsible for the buyer's solvency.

Exclusive agency. An agreement by owner that during life of contract he will not sell property to a purchaser procured by another agent, which agreement does not preclude owner himself from selling to a purchaser of his own procuring, while a contract giving a broker "exclusive sale" is more than such exclusive agency, and is an agreement by the owner that he will not sell the

property during the life of the contract to any purchaser not procured by the broker in question. *See also* Exclusive agency.

Executive agency. *See* that title.

General agency. That which exists when there is a delegation to do all acts connected with a particular trade, business or employment. It implies authority on the part of the agent to act without restriction or qualification in all matters relating to the business of his principal.

Implied agency. One created by act of parties and deduced from proof of other facts. It is an actual agency, proved by deductions or inferences from other facts, and third party need have no knowledge of the principal's acts, nor have relied on them.

One which occurs when agent and principal have no express understanding as to agent's appointment but their conduct suggests agency arrangement, and finding of implied agency depends on facts and circumstances for which principal is responsible which imply that principal intended to create agency. *Stram v. Miller*, Mo.App., 663 S.W.2d 269, 274.

Intervening agency. *See* that title.

Ostensible agency. One which exists where the principal intentionally or by want of ordinary care causes a third person to believe another to be his agent who is not really employed by him. *See also* Agency by estoppel, above.

Special agency. One in which the agent is authorized to conduct a single transaction or a series of transactions not involving a continuity of service.

Universal agency. One in which agent is empowered to conduct every transaction lawfully delegable by principal to agent.

Agency by operation of law. *See* Agency by estoppel under Agency, *supra*.

Agency coupled with an interest. A relationship known to the law of agency wherein the agent has an interest in the property or subject matter in which he is dealing. This special type of agency relationship will not terminate automatically upon the death of the principal.

Interest in continued existence of power or authority to act with reference to business, where secured by contract and based on consideration moving from agent to principal looking to exercise of power as means of reimbursement, creates agency coupled with an interest. Agent must have an interest or estate in the thing to be disposed of or managed under the power.

Agency in fact. An agency relationship established by agreement of principal and agent as distinguished from one imposed by law; *e.g.* agency by estoppel.

Agency of the United States. A department, division, or administration within the federal government.

Agency relationship. An employment for purpose of representation in establishing legal relations between principal and third persons. *See* Agency; Agent.

Agency shop. A union-security device whereby, in order to continue employment, any nonunion member employee is required to pay to the Union sums equivalent to those paid by union members, either in an amount equal to both union dues and initiation fees, or in an amount equal to dues alone. *Ficek v. International Broth. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local # 647, N.D., 219 N.W.2d 860, 862.* *See also* Open shop.

Agenda. Memoranda of things to be done, as items of business or discussion to be brought up at a meeting; a program consisting of such items.

Agnesia /'ɛjənɪz(i)ə/. Impotentia generandi; sexual impotence; incapacity for reproduction, existing in either sex, whether arising from structural or other causes.

Agentfrida. In Saxon law, the true master or owner of a thing.

Agenthina. In Saxon law, a guest at an inn, who, having stayed there for three nights, was then accounted one of the family.

Agents /'ɛjənz/. Lat. An agent, a conductor, or manager of affairs. Distinguished from *factor*, a workman. A plaintiff.

Agent. A person authorized by another (principal) to act for or in place of him; one intrusted with another's business. *Humphries v. Going*, D.C.N.C., 59 F.R.D. 583, 587. One who represents and acts for another under the contract or relation of agency (*q.v.*). A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third persons. One who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the latter, and to render an account of it. One who acts for or in place of another by authority from him; a substitute, a deputy, appointed by principal with power to do the things which principal may do. One who deals not only with things, as does a servant, but with persons, using his own discretion as to means, and frequently establishing contractual relations between his principal and third persons.

One authorized to transact all business of principal, or all of principal's business of some particular kind, or all business at some particular place. *Farm Bureau Mut. Ins. Co. v. Coffin*, 136 Ind.App. 12, 186 N.E.2d 180, 182.

See also Agency; Bargaining agent; Corporate agent; Foreign agent; Forwarding agent; Innocent agent; Servant; Soliciting agent; Subagent; Transfer agent.

Apparent agent or ostensible agent. One whom the principal, either intentionally or by want of ordinary care, induces third persons to believe to be his agent, though he has not, either expressly or by implication, conferred authority on him. A person who, whether or not authorized, reasonably appears to third person, be-

cause of manifestations of another, to be authorized to act as agent for such other. Restatement, Second, Agency § 8.

Bargaining agent. See Bargaining agent.

Co-agent. One who shares authority to act for the principal with another agent and who is so authorized by the principal.

Diplomatic agent. One representing government in dealings with foreign government.

Dual agent. See *Co-agent*, above.

Exclusive agent. The only agent permitted to act for principal in a particular territory or matter, though the principal may act for himself; *i.e.* exclusive sales territory given to agent does not bar principal from selling in this territory. *Stahlman v. Nat'l Lead Co.*, C.A.Miss., 318 F.2d 388, 393.

Foreign agent. See Foreign agent.

General agency business. One not engaged as agent for single firm or person, but holding himself out to public as being engaged in business of being agent. *Comer v. State Tax Commission of New Mexico*, 41 N.M. 403, 69 P.2d 936.

General agent. One who is authorized to act for his principal in all matters concerning particular business or employment of particular nature. *Morpul Research Corp. v. Westover Hardware, Inc.*, 263 N.C. 718, 140 S.E.2d 416, 418. Compare *Special agent*, below.

High managerial agent. An officer of a corporation or any other agent in a position of comparable authority with respect to formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

Independent agent. One who is an independent contractor exercising his own judgment and subject to the one who hired him only for the result of the work performed. *Donroy, Limited v. U. S.*, C.A.Cal., 301 F.2d 200, 206.

Insurance agent. See Insurance.

Local agent. One appointed to act as the representative of a corporation and transact its business generally (or business of a particular character) at a given place or within a defined district.

Managing agent. A person who is invested with general power, involving the exercise of judgment and discretion, as distinguished from an ordinary agent or employee, who acts in an inferior capacity, and under the direction and control of superior authority, both in regard to the extent of the work and the manner of executing the same. One who has exclusive supervision and control of some department of a corporation's business, the management of which requires of such person the exercise of independent judgment and discretion, and the exercise of such authority that it may be fairly said that service of summons upon him will result in notice to the corporation.

Mercantile agents. Agents employed for the sale of goods or merchandise are called "mercantile agents," and are of two principal classes,—brokers and factors (*q. v.*); a factor is sometimes called a "commission agent," or "commission merchant."

Private agent. An agent acting for an individual in his private affairs; as distinguished from a *public agent*, who represents the government in some administrative capacity.

Public agent. An agent of the public, the state, or the government; a person appointed to act for the public in some matter pertaining to the administration of government or the public business. *Whiteside v. United States*, 93 U.S. 247, 23 L.Ed. 882.

Real-estate agent. Person whose business it is to sell, or offer for sale, real estate for others, or to rent houses, stores, or other buildings, or real estate, or to collect rent for others.

Special agent. One employed to conduct a particular transaction or piece of business for his principal or authorized to perform a specified act. An agent authorized to conduct a single transaction or a series of transactions not involving continuity of service. *Rowen & Blair Electric Co. v. Flushing Operating Corp.*, 66 Mich.App. 480, 239 N.W.2d 633, 638. Compare *Special agent*, above.

Subagent. One authorized by agent to help perform functions for principal. Generally, absent express or implied authority, an agent has no authority to appoint a subagent. The subagent is subject to control by both agent and principal. Restatement, Second, Agency § 5.

Superior agent. See *High managerial agent*, above.

Transfer agent. Any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. Securities Exchange Act of 1934, § 3, 15 U.S.C.A. § 78c.

Undercover agent. See that title.

Universal agent. See *Universal agency* under topic Agency.

Agentes et consentientes pari poena plectentur /əjéntiɪz ət kənsənsiɪjéntiɪz pɛraɪ piɪnə plɛktɛntər/. Acting and consenting parties are liable to the same punishment.

Agent provocateur /éjənt prəvøkət(y)úr/. A spy; a secret agent hired to penetrate an organization to gather evidence against its members or to incite trouble.

Agent's lien. The legal right agreed in advance to payment from a principal for services rendered by an agent.

Age of consent. Age at which persons may marry without parental approval. Age at which a female is legally capable of agreeing to sexual intercourse and below which age the male commits statutory rape if he has sexual intercourse with her. *See also* Legal age; Majority; Statutory rape.

Age of majority. Age at which a person may contract *sui juris*; now 18 in most jurisdictions. Sometimes referred to as full age; legal age; majority; adulthood. Age at which one may execute a valid will or vote; age at which payments for support by parents may generally be terminated. *See also* Legal age; Majority.

Age of reason. Age at which a child is deemed to be capable of acting responsibly; commonly the age of 7. In general, one between the ages of 7 and 14 is rebuttably presumed to be incapable of committing a crime. Below the age of 7 a child is conclusively presumed to be incapable of committing crime. *See* Infancy.

Ager /éyjár/. Lat. A field; land generally. A portion of land enclosed by definite boundaries.

Aggravate. *See* Aggravation.

Aggravated arson. *See* Arson.

Aggravated assault. A person is guilty of aggravated assault if he: attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or, attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon. Model Penal Code, § 211.1(2). In all jurisdictions statutes punish such aggravated assaults as assault with intent to murder (or rob or kill or rape) and assault with a dangerous (or deadly) weapon more severely than "simple" assaults. *See also* Assault.

Aggravated battery. Unlawful application of force to another characterized by unusual or serious consequences or attending circumstances such as a dangerous weapon. This offense was unknown at common law. *See* Aggravated assault.

Aggravated robbery. *See* Robbery.

Aggravating circumstances. *See* Aggravation.

Aggravation. Any circumstance attending the commission of a crime or tort which increases its guilt or enormity or adds to its injurious consequences, but which is above and beyond the essential constituents of the crime or tort itself. *People v. Robinson*, 416 N.E.2d 793, 799. *See e.g.* Aggravated assault.

Aggregate. Entire number, sum, mass, or quantity of something; total amount; complete whole. One provision under will may be the aggregate if there are no more units to fall into that class. Composed of several; consisting of many persons united together; a combined whole. *See also* Joinder.

Aggregate corporation. *See* Corporation.

Aggregate income. Total income of husband and wife who file a joint tax return.

Aggregate theory of partnership. A partnership is the totality of persons engaged in a business and not an entity in itself as in the case of a corporation.

Aggregatio mentium /ægrægéysh(iy)ow ménsh(iy)əm/. The meeting of minds. The moment when a contract is complete. A supposed derivation of the word "agreement," (*q.v.*)

Aggregation /ægrægéyshan/. The combination of two or more elements in patent claims, each of which is unrelated, and each of which performs separately and without cooperation, where combination does not define a composite integrated mechanism. *Bowser, Inc. v. U. S.*, 388 F.2d 346, 351, 181 Ct.Cl. 834. Term means that the elements of a claimed combination are incapable of co-operation to produce a unitary result, and in its true sense does not need prior art patents to support it.

Aggregation doctrine. Rule which precludes totalling of claims for Federal jurisdictional amount purposes. *Georgia Ass'n of Independent Ins. Agents v. Travelers Indem. Co.*, D.C.Ga., 313 F.Supp. 841, 842.

Aggressor. One who first employs hostile force. *Penn v. Henderson*, 174 Or. 1, 146 P.2d 760, 766. The party who first offers violence or offense. He who begins a quarrel or dispute, either by threatening or striking another, that justifies like response.

Aggressor corporation. A corporation that attempts to obtain control of a publicly held corporation, often by a direct cash tender or public exchange offer to shareholders, but also possibly by way of merger, which requires agreement or assent of the target's management. *See* Leveraged buyout; Tender offer.

Aggrieved. Having suffered loss or injury; damaged; injured.

Aggrieved party. One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation. *See* Party; Standing.

Bankruptcy. A party is "aggrieved," within meaning of Bankruptcy Code, if his property may be diminished, his burden increased, or his rights detrimentally affected by order sought to be reviewed. *Klein v. Rancho Montana De Oro, Inc.*, C.A.Cal., 263 F.2d 764, 771.

Aggrieved person. *See* Aggrieved party.

Agiler /əjáylar/. In Saxon law, an observer or informer.

Agillarius /æjálériyəs/. L. Lat. In old English law, a hayward, herdward, or keeper of the herd of cattle in a common field.

Aging of accounts. Arranging the accounts (such as receivables or payables) in chronological order and grouping the accounts by intervals, such as accounts outstanding less than 30 days, 30 to 60 days, and so on. The process of classifying accounts receivable by the

time elapsed since the claim came into existence for the purpose of estimating the balance of uncollectible accounts as of a given date.

Agio /əjyow/. In commercial law, a term used to express the difference in point of value between metallic and paper money, or between one sort of metallic money and another.

Agiotage /əzh(i)yotəzh/. A speculation on the rise and fall of the public debt, or the public funds. The speculator is called "agioteur."

Agist /əjist/. An ancient law term meant to take in and give feed to the cattle of strangers in the king's forest, and to collect the money due for the same to the king's use.

Agister /əjistər/. A person engaged in the business of pasturing of livestock as a bailee in consideration of an agreed price to be paid by owner of cattle. *Walker v. Nelson*, 137 Colo. 519, 327 P.2d 285, 287.

Agistment /əjistmənt/. A particular kind of bailment under which a person, for consideration, takes animals for care and pasturing on his land, and the person who cares for the animals has an "agister's lien" on the animals for that care. *Hatley v. West*, 74 Wash.2d 409, 445 P.2d 208, 209; A contract whereby a person, called an agister, has control of animals and retains possession of land. *Cox v. Pithoud*, 221 C.A.2d 571, 34 Cal.Rptr. 582, 583.

There is also agistment of *sea-banks*, where lands are charged with a tribute to keep out the sea; and *terræ agistatæ* are lands whose owners must keep up the sea-banks.

In *canon law*, a composition or mean rate at which some right or due might be reckoned.

Tithe of agistment was a small tithe paid to the rector or vicar on cattle or other produce of grass lands. It was paid by the occupier of the land and not by the person who put in his cattle to graze.

Agistor /əjistər/. See *Agister*; *Agistment*.

Agitator /əjətətər/. One who stirs up; excites; ruffles; perturbs. One who incessantly advocates a social change.

Agnates /əgneys/əgnéyiyz/. In the law of descents, relations by the father, or on the father's side. This word is used in the Scotch law, and by some writers as an English word, corresponding with the Latin *agnati* (*q.v.*).

Agnati /əgnéyiy/. In Roman law, the term included all the cognates who trace their connection exclusively through males. A table of *cognates* is formed by taking each lineal ancestor in turn and including all his descendants of both sexes in the tabular view. If, then, in tracing the various branches of such a genealogical table or tree, we stop whenever we come to the name of a female, and pursue that particular branch or ramification no further, all who remain after the descendants of women have been excluded are *agnates*, and their connection together is agnatic relationship. All persons are

agnatically connected together who are under the same *patria potestas*, or who have been under it, or who might have been under it if their lineal ancestor had lived long enough to exercise his empire.

The *agnate family* consisted of all persons living at the same time, who would have been subject to the *patri potestas* of a common ancestor, if his life had been continued to their time.

Cognates were all persons who could trace their blood to a single ancestor or ancestress, and agnates were those cognates who traced their connection exclusively through males. Between *agnati* and *cognati* there is this difference: that, under the name of *agnati*, *cognati* are included, but not *è converso*; for instance, a father's brother, that is, a paternal uncle, is both *agnatus* and *cognatus*, but a mother's brother, that is, a maternal uncle, is a *cognatus* but not *agnatus*.

Agnatic /əgnætək/. [From *agnati*, *q.v.*] Derived from or through males. 2 Bl.Comm. 236.

Agnatio /əgnéyish(i)yow/. In the civil law, relationship on the fathers' side; the relationship of *agnati*; agnation. *Agnatio a patre est*.

Agnation /əgnéyishən/. Kinship by the father's side. See *Agnates*; *Agnati*.

Agnomen /əgnówmən/. Lat. An additional name or title; a nickname. A name or title which a man gets by some action or peculiarity; the last of the four names sometimes given a Roman. Thus, *Scipio Africanus* (the African) from his African victories. See *Nomen*.

Agnomination /əgnómənéyishən/. A surname; an additional name or title; agnomen.

Agony. Extreme physical pain or mental distress.

Agraphia /agrəfijə/. See *Aphasia*.

Agrarian /əgréyian/. Relating to land, or to a division or distribution of land; as an agrarian law.

Agrarian laws. In Roman law, laws for the distribution among the people, by public authority, of the lands constituting the public domain, usually territory conquered from an enemy. In common parlance the term is frequently applied to laws which have for their object the more equal division or distribution of landed property; laws for subdividing large properties and increasing the number of landholders.

Agrarium. A tax upon or tribute payable out of land.

A gratia /èy gréyish(i)yə/. By grace; not of right.

Agreementum /əgriyəméntəm/. In old English law, agreement; an agreement.

Agree. To concur; come into harmony; give mutual assent; unite in mental action; exchange promises; make an agreement; arrange; to settle. Concur or acquiesce in; approve or adopt. *Agreed or agreed to*, are frequently used (like *accord*), to show the concurrence or harmony of cases; e.g. *Agreed per curiam*. Usually implies some contractual undertaking. To grant or covenant, as when a grantor agrees that no building shall

be erected on an adjoining lot; or a mortgagor agrees to cause all taxes to be paid. *See* Agreement; Contract.

Agreed. Settled or established by agreement. Commonly synonymous with "contracted."

Agreed amount clause. Provision in insurance policy that the insured will carry a stated amount of insurance coverage.

Agreed case. *See* Case agreed on under Case.

Agreed judgment. *See* Judgment.

Agreed price. The consideration for sale of goods arrived at by mutual agreement as contrasted with "open price". U.C.C. § 2-305.

Agreed statement of facts. A statement of facts, agreed on by the parties as true and correct, to be submitted to a court for a ruling on the law of the case. *United States Trust Co. v. New Mexico*, 183 U.S. 535, 22 S.Ct. 172, 46 L.Ed. 315. *See* Case agreed on under Case. *See also* Declaratory judgment; Stipulation.

Agreed statement on appeal. Narrative statement of facts in case which may be filed on appeal in lieu of report of proceedings below. It is required that all parties agree to content of narrative.

Agreed value. The worth or value of property upon which persons agree beforehand as in a partnership contract in which the parties agree on the value of a partner's interest in a specified amount. *Walraven v. Ramsay*, 335 Mich. 331, 55 N.W.2d 853, 856.

Agreement. A meeting of two or more minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition. In law, a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances. The consent of two or more persons concurring respecting the transmission of some property, right, or benefits, with the view of contracting an obligation, a mutual obligation.

A manifestation of mutual assent on the part of two or more persons as to the substance of a contract. *Restatement, Second, Contracts*, § 3.

The act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering their rights and obligations. The union of two or more minds in a thing done or to be done; a mutual assent to do a thing. A compact between parties who are thereby subjected to the obligation or to whom the contemplated right is thereby secured.

Although often used as synonymous with "contract", agreement is a broader term; e.g. an agreement might lack an essential element of a contract. The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. U.C.C. § 1-201(c); *Uniform Consumer Credit Code*, § 1.301(3).

The writing or instrument which is evidence of an agreement.

See also Binding agreement; Compact; Consent; Contract; Covenant; International agreements; Meeting of minds.

Classification

Conditional agreements. The operation and effect of such depend upon the existence of a supposed state of facts, or the performance of a condition, or the happening of a contingency.

Executed agreements. Such have reference to past events, or which are at once closed and where nothing further remains to be done by the parties.

Executory agreements. Such agreements as are to be performed in the future. They are commonly preliminary to other more formal or important contracts or deeds, and are usually evidenced by memoranda, parol promises, etc.

Express agreements. Those in which the terms and stipulations are specifically declared and avowed by the parties at the time of making the agreement.

Implied agreement. (1) Implied in fact. One inferred from the acts or conduct of the parties, instead of being expressed by them in written or spoken words. (2) Implied in law; more aptly termed a constructive or quasi contract. One where, by fiction of law, a promise is imputed to perform a legal duty, as to repay money obtained by fraud or duress. *Baltimore Mail S. S. Co. v. U. S.*, C.C.A.Md., 76 F.2d 582, 585. One inferred by the law where the conduct of the parties with reference to the subject-matter is such as to induce the belief that they intended to do that which their acts indicate they have done. *Baltimore & O. R. Co. v. U. S.*, 261 U.S. 592, 43 S.Ct. 425, 67 L.Ed. 816.

Parol agreements. At common law, such as are either by word of mouth or are committed to writing, but are not under seal. The common law draws only one great line, between things under seal and not under seal.

Agreement for insurance. An agreement often made in short terms preliminary to the filling out and delivery of a policy with specific stipulations. *See also* Binder.

Agreement not to be performed within a year. An agreement that necessarily must require more than year for performance. Incapable of performance within one year. *Street v. Maddux, Marshall, Moss & Mallory*, 58 App.D.C. 42, 24 F.2d 617, 619.

Agreement of sale; agreement to sell. An agreement of sale may imply not merely an obligation to sell, but an obligation on the part of the other party to purchase, while an agreement to sell is simply an obligation on the part of the vendor or promisor to complete his promise of sale. *Treat v. White*, 181 U.S. 264, 21 S.Ct. 611, 45 L.Ed. 853. It is a contract to be performed in future, and, if fulfilled, results in a sale; it is preliminary to sale and is not the actual sale.

Agreer /əˈɡreɪy/. Fr. In French marine law, to rig or equip a vessel.

Agrez /əgréy/. Fr. In French marine law, the rigging or tackle of a vessel.

Agri /ægrây/. Arable lands in common fields.

Agricultural. Pertaining to, or dealing with, agriculture; also, characterized by or engaged in farming as the leading pursuit. *Oak Woods Cemetery Ass'n v. Murphy*, 383 Ill. 301, 50 N.E.2d 582, 587. See Farming operation; Farming products; Farming purposes; Husbandry.

Agricultural commodities. Generally synonymous with agricultural or farm products, and not including agricultural implements. *Bowles v. Rock*, D.C.Neb., 55 F.Supp. 865, 868. See Commodities.

Agricultural employment. Synonymous with farm labor, including all farm work and work incidental thereto.

Agricultural labor. Services performed on farm, for owner or tenant. *California Employment Commission v. Butte Candy Rice Growers Ass'n*, 25 Cal.2d 624, 154 P.2d 892, 894. Broader in meaning than farming or farm labor and includes one engaged in horticulture, *St. Louis Rose Co. v. Unemployment Compensation Commission*, 348 Mo. 1153, 159 S.W.2d 249, 250, crop dusting, *Florek v. Sparks Flying Service, Inc.*, 83 Idaho 160, 359 P.2d 511, 514, and similar services, *Latimer v. United States*, D.C.Cal., 52 F.Supp. 228, 234, 235, 236, 237. As is excepted from the Unemployment Compensation Law, is a broad term and includes farming in all of its incidents, such as gardening, horticulture, viticulture, dairying, poultry, bee raising, and ranching, and refers to the field or farm with all its wants, appointments and products. *Pioneer Potato Co. v. Division of Employment Sec. Dept. of Labor and Industry*, 31 N.J. Super. 553, 107 A.2d 519, 520, 521.

Agricultural lien. A statutory lien to secure money or supplies advanced to an agriculturist to be expended or employed in the making of a crop and attaching to that crop only.

Agricultural product. Things which have a situs of their production upon the farm and which are brought into condition for uses of society by labor of those engaged in agricultural pursuits as contradistinguished from manufacturing or other industrial pursuits. That which is the direct result of husbandry and the cultivation of the soil. The product in its natural unmanufactured condition.

Agriculture. The science or art of cultivating the soil, harvesting crops, and raising livestock and also as the science or art of the production of plants and animals useful to man and in varying degrees the preparation of such products for man's use and their disposal. *Miller v. Dixon*, 176 Neb. 659, 127 N.W.2d 203, 206.

Agri limitati /ægrây limatáyday/. In civil law, lands whose boundaries are strictly limited by the lines of government surveys.

In Roman law, lands belonging to the state by right of conquest, and granted or sold in plots.

Aguilar-Spinelli test /àgiylár sponéliy/. The "Aguilar-Spinelli" test requires that search warrant affidavits disclose both the underlying circumstances necessary to enable the magistrate independently to judge the validity of the informant's conclusion and make some showing of reliability of the informant. *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723; *Spinelli v. U.S.*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637.

Ahupuaa. With exceptions, in ancient Hawaii, division of land known as "ahupuaa" generally ran from sea to mountains, enabling chief and people to obtain fish and seaweed from ocean and fuel, canoe timber and mountain birds and right-of-way to obtain these things. *Palama v. Sheehan*, 50 Hawaii 298, 440 P.2d 95, 97.

AICPA. American Institute of Certified Public Accountants.

Aid. To support, help, assist or strengthen. Act in cooperation with; supplement the efforts of others. *State v. Upton*, Iowa, 167 N.W.2d 625, 628.

Distinguished from abet. "Aid" within aider and abettor statute means to help, to assist, or to strengthen while "abet" means to counsel, to encourage, to incite or to assist in commission of criminal act. *State v. Trocadero*, 36 Ohio App.2d 1, 301 N.E.2d 898, 902.

Aid and abet. Help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or encourage, counsel, or incite as to its commission. *State v. Fetters*, Iowa, 202 N.W.2d 84, 90. It comprehends all assistance rendered by words, acts, encouragement, support, or presence, actual or constructive, to render assistance if necessary. See Abet; Abettor; Accessory; Accomplice; Aider and abettor; Harbor.

Aid and comfort. Help; support; assistance; counsel; encouragement. As an element in the crime of treason (Constitution of the United States, Art. III, § 3), the giving of "aid and comfort" to the enemy may consist in a mere attempt. It is not essential to constitute the giving of aid and comfort that the enterprise commenced should be successful and actually render assistance. An act which intentionally strengthens or tends to strengthen enemies of the United States, or which weakens or tends to weaken power of the United States to resist and attack such enemies. Any intentional act furthering hostile designs of enemies of the United States. *United States v. Haupt*, D.C.Ill., 47 F.Supp. 836, 839.

Aid bond. See Bond.

Aider and abettor. One who assists another in the accomplishment of a common design or purpose; he must be aware of, and consent, to such design or purpose. *Peats v. State*, 213 Ind. 560, 12 N.E.2d 270, 277. One who advises, counsels, procures, or encourages another to commit a crime, himself being guilty of some overt act or advocacy or encouragement of his principal, actually or constructively present when crime is committed, and participating in commission thereof by some act, deed, word, or gesture, *Turner v. Commonwealth*, 268 Ky. 311, 104 S.W.2d 1085, and sharing the criminal

intent of the principal. One who assists another to commit a crime; may be a principal, if present, or an accessory before or after fact of crime. The crime must usually be a felony because all parties to misdemeanor are generally principals. *See also* Abettor.

Aider by verdict. The healing or remission, by a verdict rendered, of a defect or error in pleading which might have been objected to before verdict. The presumption of the proof of all facts necessary to the verdict as it stands, coming to the aid of a record in which such facts are not distinctly alleged. Amendment of pleadings to conform to the evidence is provided for by Fed.R.Civil P. 15.

Aiding and abetting. *See* Aid and abet.

Aiding and abetting. Assisting in or otherwise facilitating the commission of a crime. *See* Aider and abettor.

Aiding an escape. Any overt act, intended and useful to assist attempted or completed departure of prisoner from lawful custody before his discharge by due process of law. *See e.g.* Model Pen.Code § 242.6. *See* Accessory (*Accessory after the fact*); Obstructing justice.

Aid of the king. In old English law, the king's tenant prayed this, when rent was demanded of him by others.

Aid prayer. In English practice, a proceeding formerly made use of, by way of petition in court, praying in aid of the tenant for life, etc., from the reversioner or remainderman, when the title to the inheritance was in question. It was a plea in suspension of the action. 3 Bl.Comm. 300.

Aids. In feudal law, originally mere benevolences granted by a tenant to his lord, in times of distress; but at length the lords claimed them as of right. They were principally three: (1) To ransom the lord's person, if taken prisoner; (2) to make the lord's eldest son and heir apparent a knight; (3) to give a suitable portion to the lord's eldest daughter on her. A *reasonable aid* was a duty claimed by the lord of the fee of his tenants, holding by knight service, to marry his daughter, etc. Abolished by Tenures Abolition Act of 1660.

Also, extraordinary grants to the Crown by the house of commons, which were the origin of the modern system of taxation. 2 Bl.Comm. 63, 64.

AIDS. Acquired Immune Deficiency Syndrome. A virus which attacks a person's immune system and damages his or her ability to fight other diseases. Without a functioning immune system to ward off other germs, person becomes vulnerable to becoming infected by bacteria, fungi, and other viruses and malignancies which may cause life-threatening illness, such as pneumonia, meningitis and cancer.

Aid societies. *See* Benefit societies.

Aiel (spelled also Ayel, Aile, Ayle, and Aieul) /iy(ə)l/. L. Fr. A grandfather.

A writ which lay where the grandfather was seized in his demesne as of fee of any lands or tenements in fee simple the day that he died, and a stranger abated or

entered the same day and dispossessed the heir. 3 Bl.Comm. 186.

Aielesse /iy(ə)lés/. A Norman French term signifying "grandmother".

Aile /iyəl/. A corruption of the French work aieul, grandfather. *See* Aiel.

Ailment. Commonly means indisposition of body or mind; a slight illness. Mutual Life Ins. Co. of New York v. Burton, 167 Tenn. 606, 72 S.W. 778, 781. In life insurance application, term does not include mere temporary indisposition, which though requiring medical treatment is readily remediable, *Zogg v. Bankers' Life Co. of Des Moines, Iowa, C.C.A.W.Va.*, 62 F.2d 575, 578; nor passing disorders which could not properly be called diseases.

Aim a weapon. To point it intentionally. "Aim" denotes direction toward some minute point in an object, while "point" implies direction toward the whole object.

Ainesse /èynés/. In French feudal law, the right or privilege of the eldest born; primogeniture; esnecy.

Airbill. A document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill. U.C.C. § 1-201(6).

Air piracy. Any seizure or exercise of control, by force or violence or threat of force or violence and with wrongful intent, of any aircraft in flight in air commerce. 49 U.S.C.A. § 1472(i).

Air rights. The right to use all or a portion of the air space above real estate. Such right is vested by grant; *e.g.* fee simple, lease, or other conveyance. While commercial airlines have a right to fly over one's land, if such "flight paths" interfere with the owners use of such land, the owner is entitled to recover the extent of actual damage suffered by him. *United States v. Causby*, 328 U.S. 256, 66 S.Ct. 1062, 90 L.Ed. 1206. On the other hand, the owner of the land is precluded by state and federal laws from polluting the air.

Aisiamentum (spelled also *Esamentum, Aisementum*) /èyshiyəméntəm/. In old English law, an easement.

Aisne or eigne /éyn/. In old English law, the eldest or first born.

A issue. At issue.

Ajournment /əzhurnmón/. In French law, the document pursuant to which an action or suit is commenced, equivalent to the writ of summons in England. Actions, however, are in some cases commenced by *requête* or petition.

A jure suo cadunt /èy júriy s(y)úwow kədànt/. They (for example, persons abandoning chattels) lose their right.

A justitia (quasi a quodam fonte) omnia jura emanant /èy jəstish(iy)ə (kwéyzy ey kwóndəm fóntiy) ómniyə júré émánànt/. From justice, as a fountain, all rights flow.

A.k.a. Also known as. *See* Alias.

Akin /əkín/. In old English law, of kin. "Next-a-kin."
See Next of kin.

Al. L. Fr. At the; to the. *Al barre*; at the bar. *Al huis d'esglise*; at the church door.

A la grande grevaunce /à lə grónd grévón(t)s/. To the great grievance.

A large /à lárzh/. Free; at large.

Alarm list. The list of persons liable to military watches, who were at the same time exempt from trainings and musters. Const.Mass. c. 11, § 1, art. 10; Pub. St.Mass.1882, p. 1287.

A latere /èy létèriy/. Lat. Collateral. Used in this sense in speaking of the succession to property. From, on, or at the side; collaterally. *A latere ascendit (jus)*. The right ascends collaterally. Justices of the *Curia Regis* are described as *a latere regis residentes*, sitting at the side of the King.

In the Civil Law, a synonym for *e transverso*, across.

Applied also to a process or proceeding, meaning out of the regular or lawful course; incidentally or casually.

From the side of; denoting closeness of intimacy or connection, as a court held before auditors *specialiter a latere regis destinatis*.

Apostolic; having full powers to represent the Pope as if he were present.

Albacea /àlbəséyə/. In Spanish law, an executor or administrator; one who is charged with fulfilling and executing that which is directed by the testator in his testament or other last disposition.

Alba firma /àlbə fármə/. In old English law, white rent; rent payable in silver or white money, as distinguished from that which was anciently paid in corn or provisions, called black mail, or black rent; *reditus nigri*.

Albanagium /àlbənèjjiyəm/. In old French law, the state of alienage; of being a foreigner or alien.

Albanus /àlbéynəs/. In old French law, a stranger, alien, or foreigner.

Albinatus /àlbənèytəs/. In old French law, the state or condition of an alien or foreigner.

Albinatus jus /àlbənédəs jəs/. In old French law, the *droit d'aubaine* in France, whereby the king, at an alien's death, was entitled to all his property, unless he had peculiar exemption. Repealed in 1791.

Album breve /àlbəm briyviy/. A blank writ; a writ with a blank or omission in it.

Albus liber /àlbəs láybər/. The white book; an ancient book containing a compilation of the law and customs of the city of London.

Alcaide /àlkayidey/. Jailer, warden, governor of a fortress.

Alcoholic liquors. "Alcoholic, spirituous and malt liquors" mean intoxicating liquors which can be used as a beverage, and which, when drunk to excess, will produce

intoxication. *F. W. Woolworth Co. v. State*, 72 Okl.Cr. 125, 113 P.2d 399, 403.

Alcoholism. The pathological effect (as distinguished from physiological effect) of excessive indulgence in intoxicating liquors. *See also* Chronic alcoholism; Intoxication.

Alderman. Municipal officer; member of the legislative body of a municipality. Often called a councilman.

Aldermannus /àldèrménəs/ól°. L. Lat. An alderman.

Aldermannus civitatis vel burgi /àldèrménəs sivètèytəs vèl bójjày/. In old English law, alderman of a city or borough, from which the modern office of alderman has been derived.

Aldermannus hundredi seu wapentachii /àldèrménəs hándrèdày syúw wópèntèykiyay/. Alderman of a hundred or wapentake.

Aldermannus regis /àldèrménəs riyjəs/. Alderman of the king. So called, either because he received his appointment from the king or because he gave the judgment of the king in the premises allotted to him.

Aldermannus totius anglia /àldèrménəs towshiyəs àngliiyi/. Alderman of all England. An officer among the Anglo-Saxons; similar to the chief justiciary of England in later times.

Alea /éyliyə/. Lat. In the civil law, a game of chance or hazard. The chance of gain or loss in a contract.

Aleator /éyliyéytər/. Lat. (From *alea*, *q.v.*, meaning dice). In the civil law, a gamester; one who plays at games of hazard.

Aleatory contract /éyliyətòriy kóntrækt/. A mutual agreement, of which the effects, with respect both to the advantages and losses, whether to all the parties or to some of them, depend on an uncertain event. *Restatement of Contracts*, § 291.

Contracts in which promise by one party is conditioned on fortuitous event. *Southern Surety Co. v. Mac-Millan Co.*, C.C.A.Okla., 58 F.2d 541, 549. A contract, the obligation and performance of which depend upon an uncertain event, such as insurance, engagements to pay annuities, and the like. A contract is aleatory or hazardous when the performance of that which is one of its objects depends on an uncertain event. It is certain when the thing to be done is supposed to depend on the will of the party, or when in the usual course of events it must happen in the manner stipulated.

Aleatory promise. A promise, the performance of which is by its own terms subject to happening of uncertain and fortuitous event or upon some fact existence or past occurrence of which is also uncertain and undetermined. *Tyree v. Stone*, 62 Wash.2d 694, 384 P.2d 626, 629.

Aleatory transaction. An event dependent on a fortuitous or uncertain happening. *See* Aleatory contract.

Aler a dieu /àléy àdyúw/. L. Fr. In old practice, to be dismissed from court; to go quit. Literally, "to go to God."

Aler sans jour /əléy sən júr/. In old practice, a phrase used to indicate the final dismissal of a case from court without continuance. "To go without day."

Ale silver. A rent or tribute paid annually to the lord mayor of London, by those who sell ale within the liberty of the city.

Aleu /ə(y)úw/. Fr. In French feudal law, an allodial estate, as distinguished from a feudal estate or benefice.

Alfet /ælfət/. A cauldron into which boiling water was poured, in which a criminal plunged his arm up to the elbow, and there held it for some time, as an ordeal.

Alford plea. Name derived from *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970), in which Supreme Court held that a guilty plea which represented a voluntary and intelligent choice among alternatives available to defendant, especially where he was represented by competent counsel, was not compelled within the meaning of the Fifth Amendment merely because the plea was entered to avoid the possibility of the death penalty. The Supreme Court also held that where strong evidence of actual guilt substantially negated defendant's claim of innocence and provided strong factual basis for the guilty plea, and the state had a strong case of first-degree murder, so that defendant, advised by competent counsel, intelligently concluded that he should plead guilty to second-degree murder rather than be tried for first-degree murder, the court committed no constitutional error in accepting guilty plea despite defendant's claim of innocence.

Alfred's code /ælfɾədz kówd/. See *Dombec, domboc*.

Algarum maris /ælgérəm márés/. Probably a corruption of *Laganum maris*, *lagan* being a right, in the middle ages, like *jetsam* and *flotsam*, by which goods thrown from a vessel in distress became the property of the king, or the lord on whose shores they were stranded.

A.L.I. American Law Institute.

Alia /æliyə/éyl(i)yə/. Lat. Other things.

Alia enormia /æliyə ənórmiyə/. Other wrongs. The name given to a general allegation of injuries caused by the defendant with which the plaintiff in an action of trespass under the common-law practice concluded his declaration.

Aliamenta /æli(i)yəméntə/. In old English law, a liberty of passage, open way, water-course, etc., for the tenant's accommodation.

Alias /éyliyəs/. Term used to indicate another name by which a person is known. Short for "alias dictus"; otherwise known as (a. k. a.). When used in connection with a description of a person, it indicates that he has used or been known by another name. *John v. Tribune Co.*, 24 Ill.2d 437, 181 N.E.2d 105, 107. See also *Fictitious name*; *Name*.

Alias dictus /éyliyəs díktəs/. "Otherwise called." (Shorter and more usual form, *alias*). Known by both those names, and is called one or the other. *People v.*

Mellon, 171 Misc. 171, 11 N.Y.S.2d 786, 790. A fictitious name assumed by a person is colloquially termed an "alias". *State v. Neal*, 231 La. 1048, 93 So.2d 554, 556. See also *Alias*.

Alias execution. One issued after first has been returned without having accomplished its purpose. *Richards-Conover Hardware Co. v. Sharp*, 150 Kan. 506, 95 P.2d 360, 364. A second writ of execution issued to enforce a judgment that was not fully satisfied by the sheriff acting under the first or original writ. See also *Alias process*.

Alias process. A second or further writ, summons, execution or subpoena, used when the first or earlier process has for any reason failed to accomplish its purpose.

Alias subpoena /éyliyəs səpiynə/. One issued after the first has been returned without having accomplished its purpose. *Richards-Conover Hardware Co. v. Sharp*, 150 Kan. 506, 95 P.2d 360, 364.

Alias summons. A summons issued when original has not produced its effect because defective in form or manner of service, and when issued, supersedes the first writ.

Alias tax warrant. One issued after the first has been returned without having accomplished its purpose. *Richards-Conover Hardware Co. v. Sharp*, 150 Kan. 506, 95 P.2d 360, 364.

Alias writ. A second or further writ. One issued in a case after another of the same substance has previously been issued; see e.g. *Alias summons*. *Ditmar v. Beckham*, Tex.Civ.App., 77 S.W.2d 893, 894.

Alias writ of execution. See *Alias execution*.

A libellis /èy ləbélas/. L. Lat. An officer who had charge of the *libelli* or petitions addressed to the sovereign. A name sometimes given to a chancellor (*cancelarius*) in the early history of that office.

Alibi /ælbəy/. A defense that places the defendant at the relevant time of crime in a different place than the scene involved and so removed therefrom as to render it impossible for him to be the guilty party. *Com. v. Warrington*, 230 Pa.Super. 332, 326 A.2d 427, 429. Notice of intention to offer a defense of alibi is governed in federal courts by Fed.R.Crim.P. 12.1.

Alien, n. /éyl(i)yən/. A foreign born person who has not qualified as a citizen of the country; but an alien is a person within the meaning of the Fourteenth Amendment due process clause of the U.S. Constitution to same extent as a citizen. *Galvan v. Press*, 347 U.S. 522, 74 S.Ct. 737, 742, 98 L.Ed. 911. Any person not a citizen or national of the United States. 8 U.S.C.A. § 1101. See also *Resident alien*.

Alien or aliene, v. To transfer or make over to another; to convey or transfer the property of a thing from one person to another; to alienate. Usually applied to the transfer of lands and tenements. See *Alienation*.

Alienability. The quality or attribute of being transferrable; *e.g.*, interest in property.

Alienability of future interests. The right of an owner of an interest which vests in possession or enjoyment in the future to transfer such interest beforehand.

Alienable /éyl(i)yənəbəl/. Proper to be the subject of alienation or transfer.

Alienable constitutional rights. Right to a trial by jury, to counsel, and not to incriminate one's self, and related matters are "alienable constitutional rights" which may be waived whenever assertable. *Weck v. District Court of Second Judicial Dist.*, 158 Colo. 521, 408 P.2d 987, 990. *See also* Inalienable rights.

Alienage /éyl(i)yənəj/. The condition or state of an alien.

Alien amy. In international law, alien friend. An alien who is the subject or citizen of a foreign government at peace with our own.

Alien and sedition laws. Acts of Congress of July 6 and July 14, 1798, which made it a criminal offense to utter or publish any false, scandalous and malicious writings against the federal government with intent to defame it, or bring it into contempt or disrepute or to excite hatred of people or stir up sedition against it. These short-lived acts tightened residency requirements for citizenships, granted presidential powers to deport and jail aliens, and provided penalties for seditious writings or speech critical of the government. *See also* Sedition.

Aliena negotia exacto officio geruntur /əliyiyno nəgəwshiə egzæktəw əfɪʃ(i)əw jərəntər/. The business of another is to be conducted with particular attention.

Alienate /éyl(i)yənət/. To convey; to transfer the title to property. *Alien* is very commonly used in the same sense. *See* Alienation.

Alienation /éyl(i)yənəyʃən/. In real property law, the transfer of the property and possession of lands, tenements, or other things, from one person to another. The term is particularly applied to absolute conveyances of real property. The voluntary and complete transfer from one person to another. Disposition by will. Every mode of passing realty by the act of the party, as distinguished from passing it by the operation of law. *See also* Restraint on alienation.

Alienation clause. A provision in a document giving a person the right to transfer or forbidding him from transferring the property which is the subject of the document. Provision in fire insurance policy voiding such policy upon transfer of ownership by insured.

Alienation in mortmain. *See* Amortization; Mortmain.

Alienation of affections. Action of "alienation of affections" is a tort based upon willful and malicious interference with marriage relation by third party, without justification or excuse. *Donnell v. Donnell*, 220 Tenn. 169, 415 S.W.2d 127, 132. The elements constituting the

cause of action are wrongful conduct of defendant, plaintiff's loss of affection or consortium of spouse and causal connection between such conduct and such loss. *Kundert v. Johnson*, 268 Wis. 484, 68 N.W.2d 42. Certain states have abolished the right to bring an alienation of affections action. *See* Consortium; Heart balm statutes.

Alienation office. In English practice, an office for the recovery of fines levied upon writs of covenant and entries.

Alienatio rei præfertur juri accrescendi /əyliyənéyʃiəw riəy priəfərtər juraɪ ækrəséndəy/. Alienation is favored by the law rather than accumulation.

Alien corporation. A corporation organized under the laws of a foreign country irrespective of where it operates.

Alienee /éyl(i)yəníy/. One to whom an alienation, conveyance, or transfer of property is made. *See* Alienor.

Alien enemy. In international law, an alien who is the subject or citizen of some hostile nation or power. A person who, by reason of owing a permanent or temporary allegiance to a hostile power, becomes, in time of war, impressed with the character of an enemy. Subjects of a foreign nation at war with United States. *Caparell v. Goodbody*, 132 N.J.Eq. 559, 29 A.2d 563, 569.

Alien friend. Subjects of a foreign state at peace with the United States. *Caparell v. Goodbody*, 132 N.J.Eq. 559, 29 A.2d 563, 569, 570. *See also* Ally.

Alienigena /əyliyənáyjənə/. One of foreign birth; an alien.

Alieni generis /əyliyiynay jénərəs/. Lat. Of another kind.

Alieni juris /əyliyiynay jürəs/. Lat. Under the control, or subject to the authority, of another person; *e.g.*, an infant who is under the authority of his father or guardian. The term is contrasted with *Sui Juris* (*q.v.*).

Alien immigrant. One who has come into the country from a foreign country and has not yet been naturalized. *See* Alien.

Alienism /éyl(i)yənizəm/. The state, condition, or character of an alien.

Alienist /éyl(i)yəníst/. A seldom used term meaning one who has specialized in the study of mental diseases. Persons qualified by experience, knowledge, and previous opportunities to express opinion as to defendant's mental condition at a particular time. *People v. Norton*, 138 Cal.App. 70, 31 P.2d 809, 810.

Alien nee. An alien born, *i.e.*, a person who has been born an alien.

Alienor /éyl(i)yənər/. He who makes a grant, transfer of title, conveyance, or alienation. Correlative of *alienee*.

Alien Registration Act. Act of Congress (1940) which requires annual registration of all aliens over the age of 13. 8 U.S.C.A. §§ 1201(b), 1301, 1302.

Alienus /æliyiynəs/. Lat. Another's; belonging to another; the property of another. *Alienus homo*, another's man, or slave. *Aliena res*, another's property.

Alignment. The act of laying out or adjusting a line. The state of being so laid out or adjusted. The ground plan of a railway or other road or work as distinguished from its profile or gradients. An adjustment to a line.

Alike. Similar to another. The term is not synonymous with "identical," which means "exactly the same."

Alimenta /æléméntə/. Lat. In the civil law, aliments; things necessary to sustain life; means of support, including food (*cibaria*), clothing (*vestitus*) and habitation (*habitatio*).

Alimony /æləməniy/. Comes from Latin "alimonia" meaning sustenance, and means, therefore, the sustenance or support of the wife by her divorced husband and stems from the common-law right of the wife to support by her husband. Allowances which husband or wife by court order pays other spouse for maintenance while they are separated, or after they are divorced (permanent alimony), or temporarily, pending a suit for divorce (pendente lite). Generally, it is restricted to money unless otherwise authorized by statute. But it may be an allowance out of the spouse's estate. *LaChance v. LaChance*, Md.App., 346 A.2d 676, 679, 680. Generally, alimony is separable from a binding property settlement agreement. *Beard v. Worrell*, 212 S.E.2d 598, 158 W.Va. 248. State statutes which provide for payment of alimony only to the wife have been held to be unconstitutional. *Orr v. Orr*, 99 S.Ct. 1102. See also Gross alimony; Lump-sum alimony; Palimony; Periodic alimony; Permanent alimony; Rehabilitation (*Alimony*); Trust (*Alimony trust*).

Alimony in gross, or in a lump sum, is in the nature of a final property settlement, and hence in some jurisdictions is not included in the term "alimony," which in its strict or technical sense contemplates money payments at regular intervals. Refers to those alimony arrangements where entire award is a vested and determined amount and not subject to change. *Imbrie v. Imbrie*, 94 Ill.App.2d 60, 236 N.E.2d 381, 383.

Alimony pendente lite (*temporary alimony*). An allowance made pending a suit for divorce or separate maintenance including a reasonable allowance for preparation of the suit as well as for support. *Davis v. Davis*, 15 Wash.2d 297, 130 P.2d 355, 359. See also Allowance pendente lite.

Permanent alimony. A provision for the support and maintenance of a wife during her lifetime.

Tax treatment. Alimony and separate maintenance payments are includible in the gross income of the recipient and are deductible by the payor. The payments must be periodic and made in discharge of a legal obligation arising from a marital or family relationship. Child support and voluntary payments are not treated as alimony. I.R.C. §§ 62(10), 71, 215.

Alimony trust. See Trust.

A l'impossible nul n'est tenu /à læmpoziybłə núl néy tenyúw/. No one is bound to do the impossible.

Alio intuitu /æliyow int(y)úwətuw/. Lat. In a different view; under a different aspect. With another view or object; with respect to another case or condition.

Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur /æləkwəd kənsiyədətər niy injúriyə rəmániyət impyúwnətə, kwəd æliyəs nòn kənsiyədəriytər/. Something is (will be) conceded, to prevent a wrong remaining unredressed, which otherwise would not be conceded.

Aliquid possessionis et nihil juris /æləkwəd pə-zəshiyównəs èt náyəl júrəs/. Somewhat of possession, and nothing of right (but no right).

Aliquis non debet esse judex in propria causa, quia non potest esse judex et pars /æləkwəs nòn débət ésiy júwdeks in prówpriyə kóza, kwáya nòn pòwtast ésiy júwdeks èt párz/. A person ought not to be judge in his own cause, because he cannot act as judge and party.

Aliquot /æləkwət/. Strictly speaking, means contained in something else an exact number of times. But as applied to resulting trusts, "aliquot" is treated as meaning fractional, and means any definite interest.

Aliquot part rule. A rule which requires that a person intend to acquire a fractional part of the ownership of property before the court can declare a resulting trust in his favor.

Aliter /ælətər/. Otherwise; as otherwise held or decided.

Aliud est celare, aliud tacere /æliyəd èst səlériy, æliyəd təsériy/. To conceal is one thing; to be silent is another.

Aliud est possidere, aliud esse in possessione /æliyəd èst pòsədíriy, æliyəd ésiy in pəzəshiyówniy/. It is one thing to possess; it is another to be in possession.

Aliud est vendere, aliud vendenti consentire /æliyəd èst vëndəriy, æliyəd vendéntay kònsəntáyriy/. To sell is one thing; to consent to a sale (seller) is another thing.

Aliud examen /æliyəd əgzéymən/. A different or foreign mode of trial.

Aliunde /èyliyəndiy/. Lat. From another source; from elsewhere; from outside.

Evidence aliunde. Evidence from outside, from another source. In certain cases a written instrument may be explained by evidence *aliunde*, that is, by evidence drawn from sources exterior to the instrument itself, e.g., the testimony of a witness to conversations, admissions, or preliminary negotiations. Evidence *aliunde* (i.e., from outside the will) may be received to explain an ambiguity in a will. See Parol evidence.

Aliunde rule /èyliyəndiy rúw/. A verdict may not be impeached by evidence of juror unless foundation for introduction thereof is first made by competent evidence *aliunde*, or from some other source. *State v. Adams*, 141 Ohio St. 423, 48 N.E.2d 861, 863.

Alius /æliyas/. Lat. Other. The neuter form is *aliud*, something else; another thing.

Alive. As respects birth, it means that child has an independent life of its own for some period, even momentarily, after birth; evidenced by respiration or other indications of life, such as beating of heart and pulsation of arteries (Hydrostatic test); or heart tones in response to artificial respiration, or pulsation of umbilical cord after being severed. *See also* Born alive; Child; Life; Live; Viable child.

In respect of estate matters, a child *en ventre sa mere* is "born" and "alive" for all purposes for his benefit. In *Re Holthausen's Will*, 175 Misc. 1022, 26 N.Y.S.2d 140, 143.

ALJ. *See* Administrative Law Judge.

All. Means the whole of—used with a singular noun or pronoun, and referring to amount, quantity, extent, duration, quality, or degree. The whole number or sum of—used collectively, with a plural noun or pronoun expressing an aggregate. Every member of individual component of; each one of—used with a plural noun. In this sense, all is used generically and distributively. "All" refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves. *State v. Hallenberg-Wagner Motor Co.*, 341 Mo. 771, 108 S.W.2d 398, 401. *See* Both.

All and singular. All without exception. A comprehensive term often employed in conveyances, wills, and the like, which includes the aggregate or whole and also each of the separate items or components.

All cases at law. Within constitutional guaranty of jury trial, refers to common law actions as distinguished from causes in equity and certain other proceedings. *Breimhorst v. Beckman*, 239 Minn. 409, 35 N.W.2d 719, 734.

Allegans contraria non est audiendus /ælagənz kəntreəriə nən est ðdiyəndəs/. On alleging contrary or contradictory things (whose statements contradict each other) is not to be heard. Applied to the statements of a witness.

Allegans suam turpitudinem non est audiendus /ælagənz s(y)uwəm tərptəyúwdənəm nən est ðdiyəndəs/. One who alleges his own infamy is not to be heard.

Allegari non debuit quod probatum non relevat /ælagəray nən déb(y)uwət kwəd prəbéytəm nən réləvæt/. That ought not to be alleged which, if proved, is not relevant.

Allegata /ælagéytə/. In Roman law, a word which the emperors formerly signed at the bottom of their rescripts and constitutions; under other instruments they usually wrote *signata* or *testata*.

Allegata et probata /ælagéytə èt prəwbéytə/. Lat. Things alleged and proved. The allegations made by a party to a suit, and the proof adduced in their support.

Allegatio contra factum non est admittenda /ælagéysh(i)yow kóntrə fáktəm nən est ədməténda/. An

allegation contrary to the deed (or fact) is not admissible.

Allegation. The assertion, claim, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove. *See e.g.* Fed.R. Civil P. 8. *See also* Charge; Claim; Complaint.

A material allegation in a pleading is one essential to the claim or defense.

In ecclesiastical law, the statement of the facts intended to be relied on in support of the contested suit.

Allegation of fact. Generally, narration of transaction by stating details according to their legal effect, and statement of right or liability flowing from certain facts is conclusion of law.

Allegation of faculties. A statement made by the wife of the property of her husband, in order to obtain alimony. *See* Faculties.

Allege /əléj/. To state, recite, claim, assert, or charge; to make an allegation. *See* Allegation.

Alleged. Stated; recited; claimed; asserted; charged.

Allegiance /əliyjəns/. Obligation of fidelity and obedience to government in consideration for protection that government gives. *U. S. v. Kuhn*, D.C.N.Y., 49 F.Supp. 407, 414. *See also* Oath of allegiance or loyalty.

Acquired allegiance, is that binding a naturalized citizen.

Local or actual allegiance, is that measure of obedience due from a subject of one government to another government, within whose territory he is temporarily resident. From this are excepted foreign sovereigns and their representatives, naval and armed forces when permitted to remain in or pass through the country or its waters.

Natural allegiance. In English law, that kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth, which is intrinsic and perpetual, and cannot be divested by any act of their own. In American law, the allegiance due from citizens of the United States to their native country, and also from naturalized citizens, and which cannot be renounced without the permission of government, to be declared by law.

Allegiare /əliyjyeriy/. To defend and clear one's self; to wage one's own law. An archaic word which simply means to define or justify by due course of law.

Alleging diminution /əléjij dimən(y)úwshən/. The allegation in an appellate court, of some error in a subordinate part of the *nisi prius* record. *See* Diminution.

Allen charge. An instruction advising deadlocked jurors to have deference for each other's views, that they should listen, with a disposition to be convinced, to each other's argument; deriving its name from the case of *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528, wherein the instruction was approved. *Green v. U. S.*, C.A.Fla., 309 F.2d 852. Various called dynamite charge, shotgun instruction, third degree instruction. The Allen charge is prohibited in certain states;

e.g. California, *People v. Gainer*, 19 Cal.3d 835, 566 P.2d 997, 139 Cal.Rptr. 861; and while permissible in others, its use must be carefully examined by trial judge to determine its total effect on jury reaching verdict. *Brown v. State*, Del., 369 A.2d 682, 684.

Allergy. A susceptibility to disease. *Vogt v. Ford Motor Co.*, Mo.App., 138 S.W.2d 684, 688. The condition of being hypersensitive to something.

All events test. For accrual method taxpayers, income is earned when: (1) all the events have occurred which fix the right to receive the income and (2) the amount can be determined with reasonable accuracy. Accrual of income cannot be postponed simply because a portion of the income may have to be returned in a subsequent period.

Under this test an accrual basis taxpayer may deduct taxes or any other expense items if all the events fixing the fact of, and amount of, taxpayer's liability have transpired though not paid, and this requires that each taxable year must be treated as a separate unit, and all items of gross income and deductions must be reflected in terms of their posture at close of such year. *Dravo Corp. v. U.S.*, 348 F.2d 542, 545, 172 Ct.Cl. 200.

Alleviare /əli:vivyeriy/. L. Lat. In old records, to levy or pay an accustomed fine or composition; to redeem by such payment.

All faults. A sale of goods with "all faults" covers, in the absence of fraud on the part of the vendor, all such faults and defects as are not inconsistent with the identity of the goods as the goods described. U.C.C. § 2-316. *See As is.*

All fours. Two cases or decisions which are alike in all material respects, and precisely similar in all the circumstances affecting their determination, are said to be or to run on "all fours."

Alliance. The relation or union between persons or families contracted by intermarriage; affinity. State of being allied.

In international law, a union, association or confederation of two or more states or nations, formed by league or treaty, for the joint prosecution of a war (offensive alliance), or for their mutual assistance and protection in repelling hostile attacks (defensive alliance). The league or treaty by which the association is formed. The act of confederating, by league or treaty, for the purposes mentioned.

The term is also used in a wider sense, embracing unions for objects of common interest to the contracting parties, as the "Holy Alliance" entered into in 1815 by Prussia, Austria and Russia for the purpose of counteracting the revolutionary movement in the interest of political liberalism.

Allision. The running of one vessel into or against another, as distinguished from a collision, *i. e.*, the running of two vessels against each other. But this distinction is not very carefully observed.

Allocable /ələkəbəl/. Synonymous with "distributable".

In analyzing accounts, the breaking down of a lump sum charged or credited to one account into several parts to be charged or credited to other accounts.

Allocable share of income. Certain entities receive conduit treatment under the Federal income tax law. This means the earned income or loss is not taxed to the entity, but such amounts are allocated to the owners or beneficiaries thereof, regardless of the magnitude or timing of corresponding distributions. The portion of the entity's income that is taxed to the owner or beneficiary is the allocable share of the entity's income or loss for the period. Such allocations are determined by (1) the partnership agreement relative to the partners, (2) a weighted-average stock ownership computation relative to shareholders of an S corporation, and (3) the controlling will or trust instrument relative to the beneficiaries of an estate or trust.

Allocation. Assignment or allotment. *Jacobson v. Bowles*, D.C.Tex., 53 F.Supp. 532, 534.

In taxation, the assignment of income for various tax purposes. A multistate corporation's nonbusiness income usually is allocated to the state where the nonbusiness assets are located; it is not apportioned with the rest of the entity's income. The income and expense items of an estate or trust are allocated between income and corpus components. Specific items of income, expense, gain, loss, and credit can be allocated to specific partners or shareholders in an S corporation, if a substantial economic nontax purpose for the allocation is established.

Allocacione facienda /ələkəyshiyówniy fəshiyénda/.

In old English practice, a writ for allowing to an accountant such sums of money as he hath lawfully expended in his office; directed to the lord treasurer and barons of the exchequer upon application made.

Allocation of dividends. In trust accounting, cash dividends are credited or allocated to income; whereas, generally, stock dividends are credited to principal and the basis of the stock on which the dividend has been paid is changed in the portfolio. If the cash dividend is a liquidating dividend, it is commonly allocated to principal.

Allocation of income. When two or more businesses are controlled by the same interests, the Commissioner of Internal Revenue may allocate or distribute income to prevent tax evasion. I.R.C. § 482. In trust accounting, the process by which income is distributed as between principal and income.

Allocation of principal and income. *See* Allocation of dividends; Allocation of income.

Allocatur /ələkéytər/. Lat. It is allowed. A word formerly used to denote that a writ or order was allowed. A word denoting the allowance by a master or prothonotary of a bill referred for his consideration, whether touching costs, damages, or matter of account. *A special allocatur* is the special allowance of a writ

(particularly a writ of error) which is required in some particular cases.

Allocatur exigent /æləkéytər égzajənt/. A species of writ anciently issued in outlawry proceedings, on the return of the original writ of exigent. *See* Exigent.

Allocution /æləkyúwshən/. Formality of court's inquiry of defendant as to whether he has any legal cause to show why judgment should not be pronounced against him on verdict of conviction; or, whether he would like to make statement on his behalf and present any information in mitigation of sentence (see e.g. Fed.R.Crim.P. 32(a)). *State v. Pruitt, Mo., 169 S.W.2d 399, 400.*

Allocutus /æləkyúwtəs/. *See* Allocution.

Allodarii /ælədériyay/. Owners of allodial lands. Owners of estates as large as a subject may have.

Allodial /əlówdiyəl/. Free; not holden of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal. *See also* Ownership.

Allodium /əlówdiyəm/. Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens. An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof.

Allograph /æləgrəf/. A writing or signature made for a person by another; opposed to autograph.

Allonge /əlónj/. A piece of paper annexed to a negotiable instrument or promissory note, on which to write endorsements for which there is no room on the instrument itself. Such must be so firmly affixed thereto as to become a part thereof. U.C.C. § 3-202(2).

Allot /əlót/. To apportion, distribute; to divide property previously held in common among those entitled, assigning to each his ratable portion, to be held in severalty. To set apart specific property, a share of a fund, etc., to a distinct party. In the law of corporations, to allot shares, debentures, etc., is to appropriate them to the applicants or persons who have applied for them.

Allotted land. *See* Allotment.

Allotment. A share or portion; that which is allotted; apportionment; division; the distribution of shares in a public undertaking or corporation. Partition; the distribution of land under an inclosure act.

The term ordinarily and commonly used to describe land held by Indians after allotment, and before the issuance of the patent in fee that deprives the land of its character as Indian country. A term of art in Indian law, describing either a parcel of land owned by the United States in trust for an Indian, i.e., a "trust allotment," or owned by an Indian subject to a restriction on alienation in favor of the United States or its officials, i.e., a "restricted fee allotment." *Bear v. U.S., D.C.Neb., 611 F.Supp. 589, 599.* In Indian law, means a selection of specific land awarded to an individual allottee from a common holding. *Affiliated Ute Citizens of Utah v. U.S., U.S. Utah, 406 U.S. 128, 92 S.Ct. 1456, 1466, 31 L.Ed.2d 741. See* Allottee.

Allotment certificate. A document issued to an applicant for shares in a company or public loan announcing the number of shares allotted or assigned and the amounts and due dates of the calls or different payments to be made on the same.

Allotment note. In English law, a writing by a seaman, made on an approved form, whereby he makes an assignment of part of his wages in favor of his wife, father or mother, grandfather or grandmother, brother or sister. Governed by Merchant Shipping Act, 1970, § 13(1).

Allotment system. Designates the practice in England of dividing land in small portions for cultivation by agricultural laborers, gardeners and others. *See also* Allotment.

Allotment warden. By the English general inclosure act, 1845, § 108, when an allotment for the laboring poor of a district had been made on an inclosure under the act, the land so allotted was to be under the management of the incumbent and church warden of the parish, and two other persons elected by the parish, and they were to be styled "the allotment wardens" of the parish.

Allottee. One to whom an allotment is made; who receives a ratable share under an allotment. A person to whom land under an inclosure act or shares in a corporation or public undertaking are allotted.

Allow. The word has no rigid or precise meaning, its import varying according to circumstances or context in connection with which it is used. It may mean to bestow or assign to any one as his right or due. To approve of, accept as true, admit, concede, adopt, or fix. To grant something as a deduction or an addition; to abate or deduct; as, to allow a sum for leakage. *Pittsburgh Brewing Co. v. Commissioner of Internal Revenue, C.C.A.3, 107 F.2d 155, 156.* To sanction, either directly or indirectly, as opposed to merely suffering a thing to be done; to acquiesce in; to suffer; to tolerate. *See also* Acquiescence; Consent.

Allowance. A deduction, an average payment, a portion assigned or allowed; the act of allowing. For Family, see that title.

Allowance pendente lite /əláwəns pendéntiy láytiy/. The court ordered provision for a spouse and children during the pendency of a divorce or separate support proceeding. *See also* Alimony.

Allowed claim. Against an estate it is a debt or charge which is valid in law and entitled to enforcement. *Commissioner of Internal Revenue v. Lyne, C.C.A.1, 90 F.2d 745, 747.*

Allounour /əlóynər/. L. Fr. One who conceals, steals, or carries off a thing privately. *See* Eloigne.

All the estate. The name given in England to the short clause in a conveyance or other assurance which purports to convey "all the estate, right, title, interest, claim, and demand" of the grantor, lessor, etc., in the property dealt with.

Alluvio maris /əl(y)úwviyow mərəs/. Lat. In the civil and old English law, the washing up of the sea; the soil

thus formed; formation of soil or land from the sea; maritime increase.

Alluvion /ə(ly)úwviyən/. That increase of the earth on a shore or bank of a stream or the sea, by the force of the water washing up sand or soil so as to form firm ground, as by a current or by waves, which is so gradual that no one can judge how much is added at each moment of time. *Garrett v. State*, 118 N.J.Super. 594, 289 A.2d 542, 545. "Accretion" denotes the act. However, the terms are frequently used synonymously. Avulsion is sudden and perceptible. *See* Accretion; Avulsion. *Compare* Reliction.

All Writs Act. *See* Writ.

Ally. A nation which has entered into an alliance with another nation. A citizen or subject of one of two or more allied nations.

Almaria /ælmériə/. The archives, or, as they are sometimes styled, muniments of a church or library.

Almesfeoh /á(ł)lmzfiy/. In Saxon law, alms-fee; alms-money. Otherwise called "Peter-pence."

Almoyn /ælmóyn/. Alms; a tenure of lands by divine service. *See* Frankalmoign.

Almoner /ælmənər/. One charged with the distribution of alms. The office was first instituted in religious houses and although formerly one of importance is now in England almost a sinecure.

Alms. Charitable donations. Any species of relief bestowed upon the poor. That which is given by public authority for the relief of the poor.

Alms fee. Peter-pence (or Peter's pence), which see.

Almshouse. A house for the publicly or privately supported paupers of a city or county; may also be termed a "mission". In England an almshouse is not synonymous with a workhouse or poorhouse, being supported by private endowment.

Alnager /ælnəjər/ or **ulnager** /ólnəjər/. A sworn officer of the king whose duty it was to look to the assise of woolen cloth made throughout the land, and to the putting on the seals for that purpose ordained, for which he collected a duty called "alnage."

Alod, alode, alodes, alodis /æləd/. L. Lat. In feudal law, old forms of *alodium* or *allodium* (*q.v.*). A term used in opposition to *feodum* or *fief*, which means property, the use of which was bestowed upon another by the proprietor, on condition that the grantee should perform certain services for the grantor, and upon the failure of which the property should revert to the original possessor.

Alodiarii. *See* Allodarii.

Alone. Apart from others; singly; sole.

Along. Lengthwise of, implying motion or at or near, distinguished from across. By, on, up to, or over, according to the subject-matter and context. The term does not necessarily mean touching at all points; nor does it necessarily imply contact.

A lour foy /ə lár fwá/. In their allegiance.

Also. Besides; as well; in addition; likewise; in like manner; similarly; too; withal. Some other thing; including; further; furthermore; in the same manner; moreover; nearly the same as the word "and" or "likewise."

A.L.T.A. American Land Title Association.

Alta proditio /æltə prɔwdishiyow/. L. Lat. In old English law, high treason. 4 Bl.Comm. 75. *See* Treason.

Altarage /ólt(ə)rəj/. In ecclesiastical law, offerings made on the altar; all profits which accrue to the priest by means of the altar.

Alta via /æltə váyə/. L. Lat. In old English law, a highway; the highway. *Alta via regia*; the king's highway; "the king's high street."

Alter. To make a change in; to modify; to vary in some degree; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. To change partially. To change in one or more respects, but without destruction of existence or identity of the thing changed; to increase or diminish. *See* Alteration; Amend; Change.

Alteration. Variation; changing; making different. A change of a thing from one form or state to another; making a thing different from what it was without destroying its identity. *See* Alter.

An act done upon an instrument by which its meaning or language is changed. Language different in legal effect, or change in rights, interests, or obligations of parties. It introduces some change into instrument's terms, meaning, language, or details. The term is not properly applied to any change which involves the substitution of a practically new document. An alteration is said to be *material* when it affects, or may possibly affect, the rights of the persons interested in the document. U.C.C. § 3-407. *See also* Fraudulent alteration; Material alteration; Mutilation; Spoliation.

Alteration of contract. A change in the provisions of a contract. If alteration is material, it extinguishes the right of the party who alters it and discharges the other party. The test of whether it is material is whether the rights of the obligee would be varied as to the party making the alteration or to a third party. Restatement of Contracts, § 434.

Alteration of trust. An act by settlor of trust changing the terms of the trust, generally pursuant to a power to alter and amend within the original trust instrument.

Altercation. Warm contentions in words. Dispute or controversy carried on with heat or anger. *Ivory v. State*, 128 Tex.Cr.R. 408, 81 S.W.2d 696, 698.

Alter ego /óltər iygow/. Second self. Under doctrine of "alter ego", court merely disregards corporate entity and holds individual responsible for acts knowingly and intentionally done in the name of corporation. *Ivy v. Plyler*, 246 Cal.App.2d 678, 54 Cal.Rptr. 894, 897. To establish the "alter ego" doctrine, it must be shown that

the stockholders disregarded the entity of the corporation, made corporation a mere conduit for the transaction of their own private business, and that the separate individualities of the corporation and its stockholders in fact ceased to exist. *Sefton v. San Diego Trust & Savings Bank*, Cal.App., 106 P.2d 974, 984. The doctrine of "alter ego" does not create assets for or in corporation, but it simply fastens liability on the individual who uses the corporation merely as an instrumentality in conducting his own personal business, and that liability springs from fraud perpetrated not on the corporation, but on third persons dealing with corporation. *Garvin v. Matthews*, 193 Wash. 152, 74 P.2d 990, 992. *See also* Instrumentality rule.

Alterius circumventio alii non præbet actionem /æltiriýæs sårkæmvénsh(i)yow æliyay nõn priybæt ækshiyównæm/. The deceiving of one person does not afford an action to another.

Alternat /óltárnæt/. A usage among diplomats by which the rank and places of different powers, who have the same right and pretensions to precedence, are changed from time to time, either in a certain regular order or one determined by lot. In drawing up treaties and conventions, for example, it is the usage of certain powers to alternate, both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place.

Alternate legacy. *See* Legacy.

Alternate valuation date. Property passing from a person by death may be valued for estate tax purposes as of the date of death or the alternate valuation date. The alternate valuation date is six months from the date of death or the date the property is disposed of by the estate, whichever comes first. The use of the alternate valuation date requires an affirmative election on the part of the executor or administrator of the estate. I.R.C. §§ 1014(a), 2032.

Alternatim /óltárnéytæm/. Lat. Interchangeably.

Alternativa petitio non est audienda /óltárnátáyvæ pètish(i)yow nõn est òdiyéndæ/. An alternative petition or demand is not to be heard.

Alternative. One or the other of two things; giving an option or choice; allowing a choice between two or more things or acts to be done.

Alternative contract. A contract whose terms allow of performance by the doing of either one of several acts at the election of the party from whom performance is due.

Alternative dispute resolution. Term refers to procedures for settling disputes by means other than litigation; e.g., by arbitration, mediation, mini-trials. Such procedures, which are usually less costly and more expeditious, are increasingly being used in commercial and labor disputes, divorce actions, in resolving motor vehicle and medical malpractice tort claims, and in other disputes that would likely otherwise involve court litigation. *See also* Arbitration; Mediation; Mini-trial; Trial (*Summary jury trial*).

Alternative judgment. *See* Judgment.

Alternative minimum tax (AMT). The tax imposed on individuals, estates, trusts, and, for tax years beginning after 1986, corporations. The tax is designed to ensure that all taxpayers pay at least a minimum amount of taxes. The AMT rate is a fixed percentage of alternative minimum taxable income. I.R.C. §§ 55-59.

Alternative obligation. An obligation allowing the obligor to choose which of two things he will do, the performance of either of which will satisfy the instrument. A promise to deliver a certain thing or to pay a specified sum of money is an example of this kind of obligation.

Alternative pleading. A form of pleading which was formerly prohibited but now recognized under Federal and state Rules of Civ.Proc. by which the pleader sets forth two or more statements by way of claim or defense which are not necessarily consistent with each other. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. *See* Fed.R.Civil P. 8(e)(2).

Alternative relief. Under Fed.Rules Civ.Proc. 8(a) the party seeking a judgment may demand it in the alternative, or in various forms, e.g. demand for a money judgment and for equitable relief.

Alternative remainders. Remainders in which disposition of property is made in alternative, one to take effect only in case the other does not, and in substitution of it.

Alternative remedies. *See* Alternative relief.

Alternative writ. A common law writ commanding the person against whom it is issued to do a specified thing, or show cause to the court why he should not be compelled to do it. Under the common-law practice, the first *mandamus* is an alternative writ; but in modern practice this writ is often dispensed with and its place is taken by an order to show cause. *See* Mandamus.

Alterum non lædere /óltæræm nõn liydæriy/. Not to injure another. This maxim, and two others, *honeste vivere*, and *suum cuique tribuere*, (q.v.) are considered by Justinian as fundamental principles upon which all the rules of law are based.

Alteruter /òltæryúwtær/. Lat. One of two; either.

Altius non tollendi /ælish(i)yæs nõn tæléndây/. In the civil law, a servitude due by the owner of a house, by which he is restrained from building beyond a certain height.

Altius tollendi /ælish(i)yæs tæléndây/. In the civil law, a servitude which consists in the right, to him who is entitled to it, to build his house as high as he may think proper. In general, however, every one enjoys this privilege, unless he is restrained by some contrary title.

Alto et basso /æltow æt básow/. High and low. This phrase is applied to an agreement made between two

contending parties to submit all matters in dispute, *alto et basso*, to arbitration.

Altum mare /æltəm məriy/. L. Lat. In old English law, the high sea, or seas. The deep sea. *Super altum mare*, on the high seas.

A lui et a ses heritiers pour toujours /a lwiy ey a séyz eriytyéy pur tuwzhúr/. To him and to his heirs forever.

Alveus /ælvíyəs/. The bed or channel through which the stream flows when it runs within its ordinary channel. *Alveus derelictus*, a deserted channel.

A.M. *Ante meridiem*, before noon. Only the abbreviation is ordinarily used. Also *artium magister*, master of arts. Also *annus mirabilis*, the wonderful year—1666, the year of the defeat of the Dutch fleet and of the great London fire. Also *anno mundi*, in the year of the world; that is, when the creation of the world is said to have taken place, 4004 B. C.

A.M.A. American Medical Association.

A ma intent /a ma æntón/. On my action.

Amalgamation /æmælgəməyʃən/. Union of different races, or diverse elements, societies, unions, associations, or corporations, so as to form a homogeneous whole or new body; interfusion; intermarriage; consolidation; merger; coalescence; as, the amalgamation of stock.

Amalphitan code or table /æmælfədən kowd/*téybəl/. A collection of sea-laws, compiled about the end of the eleventh century, by the people of Amalphi. It consists of the laws on maritime subjects, which were or had been in force in countries bordering on the Mediterranean; and was for a long time received as authority in those countries. It became a part of the law of the sea. *See Code.*

A manibus /èy mánibəs/. Lat. Royal scribe. *See Amnuensis.*

Amanuensis /æmənuywénsəs/. One who writes on behalf of another that which he dictates.

A manu servus /èy mǎ(y)uw sǎrvəs/. Lat. A handservant; a scribe; a secretary.

Ambactus /æmbáktəs/. A messenger; a servant sent about; one whose services his master hired out.

Ambasciator /æmbəʃiyéytər/. A person sent about in the service of another; a person sent on a service. A word of frequent occurrence in the writers of the middle ages.

Ambassador. A public officer clothed with high diplomatic powers, commissioned by a government to transact the international business of his government with a foreign government.

An Ambassador of the United States is the personal representative of the President and reports to the President through the Secretary of State. Ambassadors have full responsibility for implementing the U.S. foreign policy by any and all U.S. Government personnel within their country of assignment, except those under military commands. Their responsibilities include negotiating

agreements between the United States and the host country, explaining and disseminating official U.S. policy, and maintaining cordial relations with that country's government and people. 22 U.S.C.A. § 3942.

A distinction was formerly made between Ambassadors *Extraordinary*, who were sent to conduct special business or to remain for an indeterminate period, and Ambassadors *Ordinary*, who were sent on permanent missions; but this distinction is no longer observed.

See also Diplomatic agent.

Ambidexter /æmbədəkstər/. Skillful with both hands; one who plays on both sides. Applied anciently to an attorney who took pay from both sides, and subsequently to a juror guilty of the same offense.

Ambigua responsio contra proferentem est accipienda /æmbígyuwə rəspónsh(i)yow kóntrə prǒfərəntəm ést əksipiyéndə/. An ambiguous answer is to be taken against (is not to be construed in favor of) him who offers it.

Ambiguus casibus semper præsimitur pro rege /æmbígyuwəs kéyzəbəs sémpər prǎz(y)úwmətər prǒw rijiy/. In doubtful cases, the presumption always is in behalf of the crown.

Ambiguitas /æmbəgyúwətəs/. Lat. From *ambiguus*, doubtful, uncertain, obscure. Ambiguity; uncertainty of meaning.

Ambiguitas latens, a latent ambiguity; *ambiguitas patens*, a patent ambiguity. *See* Ambiguity.

Ambiguitas contra stipulatorem est /æmbəgyúwətəs kóntrə stípyəlytórəm ést/. Doubtful words will be construed most strongly against the party using them.

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur /æmbəgyúwətəs vǎrbórəm léytənz vǎhrəfəkéyʃiyówniy səpliytər, nǎm kwód əks fákt(y)uw óhrətər æmbígyuwəm vǎhrəfəkéyʃiyówniy fáktay tólətər/. A latent ambiguity in the language may be removed by evidence; for whatever ambiguity arises from an extrinsic fact may be explained by extrinsic evidence. Said to be "an unprofitable subtlety; inadequate and uninformative."

Ambiguitas verborum patens nulla verificatione excluditur /æmbəgyúwətəs vǎrbórəm péytənz nələ vǎhrəfəkéyʃiyówniy eklúwdətər/. A patent ambiguity cannot be cleared up by extrinsic evidence (or is never holpen by averment).

Ambiguity /æmbəgyúwətiy/. Doubtfulness; doubleness of meaning. Duplicity, indistinctness, or uncertainty of meaning of an expression used in a written instrument. Want of clearness or definiteness; difficult to comprehend or distinguish; of doubtful import. For Extrinsic ambiguity, see that title.

Ambiguity exists if reasonable persons can find different meanings in a statute, document, etc., *Laskaris v. City of Wisconsin Dells, Inc.*, App., 389 N.W.2d 67, 70, 131 Wis.2d 525; when good arguments can be made for either of two contrary positions as to a meaning of a

term in a document, *Atlas Ready-Mix of Minot, Inc. v. White Properties, Inc.*, N.D., 306 N.W.2d 212, 220; when application of pertinent rules of interpretation to an instrument as a whole fails to make certain which one of two or more meanings is conveyed by the words employed by the parties, *Wood v. Hatcher*, 199 Kan. 238, 428 P.2d 799, 803.

Language in contract is "ambiguous" when it is reasonably capable of being understood in more than one sense. *City of Sioux Falls v. Henry Carlson Co., Inc.*, S.D., 258 N.W.2d 676, 679. Test for determining whether a contract is "ambiguous" is whether reasonable persons would find the contract subject to more than one interpretation. *Tastee-Freez Leasing Corp. v. Milwid*, Ind.App., 365 N.E.2d 1388, 1390.

Ambiguity of language is to be distinguished from unintelligibility and inaccuracy, for words cannot be said to be ambiguous unless their signification seems doubtful and uncertain to persons of competent skill and knowledge to understand them. It does not include uncertainty arising from the use of peculiar words, or of common words in a peculiar sense. It is *latent* where the language employed is clear and intelligible and suggests but a single meaning, but some extrinsic fact or extraneous evidence creates a necessity for interpretation or a choice among two or more possible meanings, as where a description apparently plain and unambiguous is shown to fit different pieces of property. *Logue v. Von Almen*, 379 Ill. 208, 40 N.E.2d 73, 82. A *patent* ambiguity is that which appears on the face of the instrument, and arises from the defective, obscure, or insensible language used.

Ambiguity upon the factum. An ambiguity in relation to the very foundation of the instrument itself, as distinguished from an ambiguity in regard to the construction of its terms. The term is applied, for instance, to a doubt as to whether a testator meant a particular clause to be a part of the will, or whether it was introduced with his knowledge, or whether a codicil was meant to republish a former will, or whether the residuary clause was accidentally omitted.

Ambiguous. See *Ambiguity*.

Ambiguum pactum contra venditorem interpretandum est /*æmbigywəm pæktəm kóntrə vëndatōrəm intərpætændəm ést/*. An ambiguous contract is to be interpreted against the seller.

Ambiguum placitum interpretari debet contra profertem /*æmbigywəm plæsətəm intərpætéráy débət kóntrə prǒfǒrétəm/*. An ambiguous plea ought to be interpreted against the party pleading it.

Ambit. A boundary line, as going around a place; an exterior or inclosing line or limit. The limits or circumference of a power or jurisdiction; the line circumscribing any subject-matter.

Ambitus /*æmbətəs/*. The procuring of a public office by money or gifts; the unlawful buying and selling of a public office.

Amblotic /*æmblótək/*. Having the power to cause abortion; anything used to produce abortion.

Ambulance chaser. A popular name for one who solicits negligence cases for an attorney for a fee or in consideration of a percentage of the recovery. Also, a term descriptive of the practice of some attorneys, on hearing of a personal injury which may have been caused by the negligence or wrongful act of another, of at once seeking out the injured person with a view to securing authority to bring action on account of the injury. Laymen's acquainting themselves with occurrence of accidents and approaching injured persons or their representatives with a view toward soliciting employment for an attorney in the litigation arising from the accident. See also *Runner*.

Ambulatoria est voluntas defuncti usque ad vitæ supremum exitum /*æmbyələtóriyə ést volántəs dəfəŋktay əskwiy əd váytiy s(y)əpriyməm égzitəm/*. The will of a deceased person was ambulatory until the latest moment of life.

Ambulatory. Lat. *ambulare*, to walk about. Movable; revocable; subject to change; capable of alteration.

Ambulatoria voluntas (a changeable will) denotes the power which a testator possesses of altering his will during his life-time.

Courts. The court of king's bench in England was formerly called an ambulatory court, because it followed the king's person, and was held sometimes in one place and sometimes in another. So, in France, the supreme court or parliament was originally ambulatory. 3 Bl. Comm. 38, 39, 41.

Ambulatory disposition. A judgment, decree, or sentence which is subject to change, amendment or revocation.

Ambush. To lie in wait, to surprise, to place in ambush.

A me /*èy mīy/*. Lat. *ego*, I. A term in feudal grants denoting direct tenure of the superior lord. Unjustly detaining from me. He is said to withhold *a me* (from me) who has obtained possession of my property unjustly. To pay *a me*, is to pay from my money.

Ameliorating waste /*əmiyl(i)yərəytɪŋ wéyst/*. An act of lessee, though technically constituting waste, yet in fact resulting in improving instead of doing injury to land. Generally, equity will not enjoin such waste.

Ameliorations /*əmiyl(i)yərəyʃhənz/*. Betterments; improvements.

Amenable /*əmiynəbəl/°mén°/*. Subject to answer to the law; accountable; responsible; liable to punishment.

Also means tractable, that may be easily led or governed; formerly applied to a wife who was governable by her husband.

Amend. To improve. To change for the better by removing defects or faults. To change, correct, revise. *Texas Co. v. Fort*, 168 Tenn. 679, 80 S.W.2d 658, 660. See *Amendment*.

Amende honorable /ə'mɒnd ɒnərəbəl/. An apology. In old English law, it was a penalty imposed upon a person by way of disgrace or infamy, as a punishment for any offense, or for the purpose of making reparation for any injury done to another, as the walking into church in a white sheet, with a rope about the neck and a torch in the hand, and begging the pardon of God, or the king, or any private individual, for some delinquency. A punishment somewhat similar to this, which bore the same name, was common in France for offenses against public decency or morality. It was abolished by the law of the 25th of September, 1791. In 1826 it was re-introduced in cases of sacrilege and was finally abolished in 1830.

Amendment. To change or modify for the better. To alter by modification, deletion, or addition.

Practice and pleading. The correction of an error committed in any process, pleading, or proceeding at law, or in equity, and which is done either as of course, or by the consent of parties, or upon motion to the court in which the proceeding is pending. Under Fed.R.Civil P., any change in pleadings, though not necessarily a correction, which a party may accomplish once as a matter of course at any time before a responsive pleading has been served. Such amendment may be necessary to cause pleadings to conform to evidence. Rule 15(a), (b). The amendment relates back to the original pleading if the subject of it arose out of the transaction set forth or attempted to be set forth in the original pleading. Fed. R.Civil P. 15(c). *Compare* Supplemental pleading.

Amendment of judgment. A judgment may be altered or amended for appropriate reasons on motion if served within ten days after entry of judgment. Fed.R.Civ.P. 59(e). See also Rule 60 (Relief from judgment or order).

Amendment of trust. An addition which alters the original terms of a trust, the power to accomplish which may be reserved by the settlor in the original trust instrument.

Amendment on court's own motion. A change or addition to a pleading or other document accomplished by the judge without a prior motion of a party.

Amends. A satisfaction given by a wrongdoer to the party injured, for a wrong committed.

Amenity /ə'mɛnɪti/. In real property law, such circumstances, in regard to situation, view, location, access to a water course, or the like, as enhance the pleasantness or desirability of the property for purposes of residence, or contribute to the pleasure and enjoyment of the occupants, rather than to their indispensable needs. Extras or intangible items often associated with property. They may be tangible. Often amenities in a condominium include swimming pools, landscaping, and tennis courts.

In the law of *easements*, an "amenity" consists in restraining the owner from doing that on his property which, but for the grant or covenant, he might otherwise lawfully have done. Sometimes called a "negative easement" as distinguished from that class of easements which compel the owner to suffer something to be done

on his property by another. *Equitable Life Assur. Soc. v. Brennan*, 30 Abb.N.C. 260, 24 N.Y.S. 784, 788. A restrictive covenant. *South Buffalo Stores v. W. T. Grant Co.*, 153 Misc. 76, 274 N.Y.S. 549, 555.

Amens /éymenz/. See *Demens*.

A mensa et thoro /èy mɛnsə et θórow/. Lat. From table and bed, but more commonly translated, from bed and board. A kind of divorce, which is rather a separation of the parties by law, than a dissolution of the marriage. See *Separation*.

Amentia. Insanity; idiocy. See *Insanity*.

Amerce /ə'mɜrs/. To impose an amercement or fine; to publish by a fine or penalty.

Amercement /ə'mɜrsmɛnt/. A money penalty in the nature of a fine imposed upon an officer for some misconduct or neglect of duty. *Sherman v. Upton, Inc.*, S.D., 242 N.W.2d 666, 667. At common law, it was assessed by the peers of the delinquent, or the affeerors, or imposed arbitrarily at the discretion of the court or the lord.

Early common law required complainant who lost his suit to pay his opponent "wer," monetary penalty which varied with the complainant's status, but after Norman conquest, wer gave way to "amercement," a more flexible sanction paid to court, the amount of which, at least in theory, varied according to the wrongfulness of complainant's conduct. *Friedman v. Dozorc*, 412 Mich. 1, 312 N.W.2d 585, 595.

American. Of or pertaining to the United States.

American Arbitration Association. National organization of arbitrators from whose panel arbitrators are selected for labor and commercial disputes. The Association has produced a Code of Ethics and Procedural Standards for use and guidance of arbitrators. See *Arbitration*.

American Bar Association. A National association of lawyers, a primary purpose of which is the improvement of lawyers' services and the administration of justice. Membership in the ABA is open to any lawyer who is in good standing in his or her state.

American Bar Foundation. An outgrowth of the American Bar Association involved with sponsoring and funding projects in legal research, education and social studies.

American clause. In marine insurance, a proviso in a policy to the effect that, in case of any subsequent insurance, the insurer shall nevertheless be answerable for the full extent of the sum subscribed by him, without right to claim contribution from subsequent underwriters.

American digest system. See *Digest*.

American experience table of mortality. A series of tables dealing with life insurance, costs and values, varying according to the age of the insured, the period during which the policy has been in force, and the term of the particular policy.

American Federation of Labor. An affiliation of labor unions.

American Law Institute. Group of American legal scholars who are responsible for the Restatements in the various disciplines of the law and who, jointly with the National Conference of Commissioners on Uniform State Laws, prepare some of the Uniform State Laws, e.g. Uniform Commercial Code. See Restatement of Law.

American rule. The traditional "American Rule" is that attorney fees are not awardable to the winning party (i.e. each litigant must pay his own attorney fees) unless statutorily or contractually authorized; however exceptions exist in that an award may be made to successful party if the opponent has acted in bad faith, vexatiously, wantonly or for oppressive reasons or if the litigation confers a substantial benefit on the members of an ascertainable class and the court's subject matter jurisdiction makes possible an award that will operate to spread the costs proportionately among them. Huecker v. Milburn, C.A.Ky., 538 F.2d 1241, 1245. In addition a court may in its discretion award attorney fees in civil rights actions to the prevailing defendant if the action was frivolous, unreasonable or without foundation. Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 98 S.Ct. 694. Also, a number of federal statutes make provision for awards of attorney fees to prevailing plaintiffs in actions involving violations of various federal laws (e.g., Fair Labor Standards Act, § 16, 29 U.S.C.A. § 216(b)). See also Equal Access to Justice Act.

Ameublissement /əmyùwbləsmón/. In French law, a species of agreement which by a fiction gives to immovable goods the quality of movable.

Ami; amy. A friend; as *alien ami*, an alien belonging to a nation at peace with us; *prochein ami*, a next friend suing or defending for an infant, married woman, etc.

Amiables compositeurs. See Amicable compounders.

Amicable. Friendly; mutually forbearing. Agreed or assented to by parties having conflicting interests or a dispute; as opposed to hostile or adversary.

Amicable action. An action brought and carried on by the mutual consent and arrangement of the parties, to obtain judgment of court on a doubtful question of law, the facts being usually settled by agreement. See Case (*Case agreed on*); Declaratory judgment.

Amicable compounders. In Louisiana law and practice, amicable compounders are arbitrators authorized to abate something of the strictness of the law in favor of natural equity.

Amicable scire facias to revive a judgment /æmækəbəl sáryiy féyshiyəs/. A written agreement, signed by the person to be bound by the revival, in the nature of a writ of scire facias with a confession of judgment thereon, which must be duly docketed, but which requires no judicial action on the part of the court, and which has the force and effect of a judgment rendered upon an adverse or contested writ of scire facias.

Amicus curiæ /əməykəs kyúriiy/əmiykəs kyúriiyay/. Means, literally, friend of the court. A person with strong interest in or views on the subject matter of an action, but not a party to the action, may petition the court for permission to file a brief, ostensibly on behalf of a party but actually to suggest a rationale consistent with its own views. Such amicus curiæ briefs are commonly filed in appeals concerning matters of a broad public interest; e.g. civil rights cases. Such may be filed by private persons or the government. In appeals to the U.S. courts of appeals, such brief may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is presented by the United States or an officer or agency thereof. Fed.R.App.P. 29. See also Sup.Ct.Rule 37.

Amita /əmətə/. Lat. An aunt on the father's side. *Amita magna*. A great-aunt on the father's side. *Amita major*. A great-great-aunt on the father's side. *Amita maxima*. A great-great-great-aunt, or a great-great-grandfather's sister.

Amitinus /əmətáynəs/. The child of a brother or sister; a cousin; one who has the same grandfather, but different father and mother.

Amittere /əmitəriy/. Lat. In the civil and old English law, to lose. Hence the old Scotch "amitt."

Amittere curiam /əmitəriy kyúriyam/. To lose the court; to be deprived of the privilege of attending the court.

Amittere legem terræ /əmitəriy liyjəm tériy/. To lose the protection afforded by the law of the land.

Amittere liberam legem /əmitəriy libərəm liyjəm/. In old English law, to lose one's frank-law. A term having the same meaning as *amittere legem terræ*, (q.v.). He who lost his law lost the protection extended by the law to a free man, and became subject to the same law as thralls or serfs attached to the land. To lose the privilege of giving evidence under oath in any court; to become infamous, and incapable of giving evidence. If either party in a wager of battle cried "craven" he was condemned *amittere liberam legem*; 3 Bl.Comm. 340.

Amnesia. Loss of memory as a result of organic trauma, delirium lesions of the diencephalon area of the brain, hysteria or epilepsy. Functionally, identity loss can represent a means of coping with neurotic conflict. Three types of amnesia are: anterograde (inability to retain new impressions; may be a feature of senility); retrograde (failure to recall prior experiences); lacunar (loss of memory for certain periods of life). Such condition is not generally sufficient for lack of competency to stand trial. U. S. ex rel. Parsons v. Anderson, 354 F.Supp. 1060, 1071-1072, aff'd 481 F.2d 94.

Amnesty /əmnəstiy/. A sovereign act of forgiveness for past acts, granted by a government to all persons (or to certain classes of persons) who have been guilty of crime or delict, generally political offenses,—treason, sedition, rebellion, draft evasion,—and often conditioned upon

their return to obedience and duty within a prescribed time. The 1986 Immigration Reform and Control Act provided amnesty for many undocumented aliens already present in the country.

Included in the concept of pardon is "amnesty," which is similar in all respects to a full pardon, insofar as when it is granted both the crime and punishment are abrogated; however, unlike pardons, an amnesty usually refers to a class of individuals irrespective of individual situations. *State v. Morris*, 55 Ohio St.2d 101, 9 O.O.3d 92, 378 N.E.2d 708, 711.

A declaration of the person or persons who have newly acquired or recovered the sovereign power in a nation, by which they pardon all persons who composed, supported, or obeyed the government which has been overthrown.

Amnesty is the abolition and forgetfulness of the offense; pardon is forgiveness. *Knote v. U. S.*, 95 U.S. 149, 152, 24 L.Ed. 442. The first is usually addressed to crimes against the sovereignty of the nation, to political offenses; the second condones infractions of the peace of the nation. *Burdick v. United States*, 236 U.S. 79, 35 S.Ct. 267, 271, 59 L.Ed. 476.

Compare Pardon; Parole.

Express amnesty is one granted in direct terms.

Implied amnesty is one which results when a treaty of peace is made between contending parties.

Amobarbital /ə'mowbərbətəl/. Nonproprietary name for isosamyl-ethylbarbituric acid.

Among. Mingled with or in the same group or class. Intermingled with. In company or association with. In shares to each of, *e.g.* divided "among" the heirs. In or through the midst of.

Amortization /ə'mörtəzəyʃən/. In accounting, the allocation (and charge to expense) of the cost or other basis of an intangible asset over its estimated useful life. Intangible assets which have an indefinite life (*e.g.*, goodwill) are not amortizable. Examples of amortizable intangibles include organization costs, patents, copyrights and leasehold interests. A reduction in a debt or fund by periodic payments covering interest and part of principal, distinguished from: (1) depreciation, which is an allocation of the original cost of an asset computed from physical wear and tear as well as the passage of time, and (2) depletion, which is a reduction in the book value of a resource (such as minerals) resulting from conversion into a salable product. The operation of paying off bonds, stock, a mortgage, or other indebtedness, commonly of a state or corporation, by installments, or by a sinking fund. An "amortization plan" for the payment of an indebtedness is one where there are partial payments of the principal, and accrued interest, at stated periods for a definite time, at the expiration of which the entire indebtedness will be extinguished. *Compare* Depreciation.

Amortization reserve. An account created for book-keeping purposes to extinguish an obligation gradually over a period of time.

Amortized mortgage. Repayment of a mortgage over regular specified time intervals, with equal payments. This would reduce the principal, after any monies owing for interest are applied.

Negative amortization. This occurs when monthly payments are not large enough to cover all of the interest cost of an adjustable rate mortgage. The interest rate that isn't covered is added to the loan's principal, which then could increase to more than the amount borrowed.

Amortization schedule. A schedule of periodic payments of interest and principal owed on a debt obligation.

Amotio /ə'mówsh(i)yow/. In the civil law, a moving or taking away. "The slightest *amotio* is sufficient to constitute theft, if the *animus furandi* be clearly established." *See* Amotion.

Amotion /ə'mówshən/. A putting or turning out, as the eviction of a tenant or a removal from office. Dispossession of lands. Ouster is an *amotion* of possession. A moving or carrying away; the wrongful taking of personal chattels.

In corporation law, the common law procedure by which a director may be removed for cause by the shareholders.

Amount. The whole effect, substance, quantity, import, result, or significance. The sum of principal and interest. *See also* Sum certain.

Amount covered. In insurance, the amount that is insured, and for which underwriters are liable for loss under a policy of insurance.

Amount in controversy. The damages claimed or relief demanded by injured party in dispute; the amount claimed or sued for in litigation. *Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co.*, 239 U.S. 121, 36 S.Ct. 30, 60 L.Ed. 174; *Wabash Ry. Co. v. Vanlandingham*, C.C.A.Mo., 53 F.2d 51. Amount of alleged damages required for diversity jurisdiction in Federal courts. 28 U.S.C.A. § 1332. *See* Jurisdictional amount.

Amount of loss. In insurance, the diminution, destruction, or defeat of the value of, or of the charge upon, the insured subject to the assured, by the direct consequence of the operation of the risk insured against, according to its value in the policy, or in contribution for loss, so far as its value is covered by the insurance. *See* Damages.

Amount realized. The amount received by a taxpayer upon the sale or exchange of property. The measure of the amount received is the sum of the cash and the fair market value of any property or services received, plus any related debt assumed by the buyer. Determining the amount realized is the starting point for arriving at realized gain or loss. The amount realized is defined in I.R.C. § 1001(b) and accompanying Regulations. *See* Realized gain or loss; Recognized gain or loss.

Amount to. To reach in the aggregate; to rise to or reach by accumulation of particular sums or quantities.

Amove. To remove from a post or station.

Amoveas manus /əymówviyəs mánəs/. Lat. That you remove your hands. In old English law, after office found, the king was entitled to the things forfeited, either lands or personal property; the remedy for a person aggrieved was by "petition," or "*monstrans de droit*," or "*traverses*," to establish his superior right. Thereupon a writ issued, *quod manus domini regis amoveantur*.

Amparo /æmpárow/. In Spanish-American law, a document issued to a claimant of land as a protection to him, until a survey can be ordered, and the title of possession issued by an authorized commissioner.

Amphetamine /æmfétəmiyn/æmfétəmən/. A drug which stimulates the central nervous system. Com. v. Crockett, 229 Pa.Super. 80, 323 A.2d 257, 259. "Methedrine" is its trade name. Colorless, volatile, mobile liquid, inhalation of which vapor causes shrinking of nasal mucosa in head colds, sinusitis and hay fever.

Ampliation /æmpliyéyshən/. In *civil law*, a deferring of judgment until a cause be further examined. An order for the rehearing of a cause on a day appointed, for the sake of more ample information.

In *French law*, a duplicate of an acquittance or other instrument. A notary's copy of acts passed before him, delivered to the parties.

Amplius /æmpliyəs/. In the Roman law, more; further; more time. A word which the prætor pronounced in cases where there was any obscurity in a cause, and the *judices* were uncertain whether to condemn or acquit; by which the case was deferred to a day named.

Amputation of right hand. An ancient punishment for a blow given in a superior court; or for assaulting a judge sitting in the court.

AMT. See Alternative minimum tax.

Amtrak. National Railroad Passenger Corporation.

A multo fortiori /èy máltow forshiyóray/. By far the stronger reason.

Amusement. Pastime; diversion; enjoyment. A pleasurable occupation of the senses, or that which furnishes it. Young v. Board of Trustees of Broadwater County High School, 90 Mont. 576, 4 P.2d 725, 726. See also Enjoyment.

Amusement tax. A government levy imposed on tickets sold to places of amusement, sporting events, etc.; expressed as a percentage of the price of the ticket. See also Luxury tax.

Amy. See Ami; Prochein ami.

An. The English indefinite article, equivalent to "one" or "any"; seldom used to denote plurality.

Anacrisis /ænəkráyəs/. In the civil law, an investigation of truth, interrogation of witnesses, and inquiry made into any fact, especially by torture.

Analogous /ənélégəs/. Derived from the Greek ana, up, and logos, ratio. Means bearing some resemblance or likeness that permits one to draw an analogy.

Analogy. Identity or similarity of proportion, where there is no precedent in point. In cases on the same subject, lawyers have recourse to cases on a different subject-matter, but governed by the same general principle. This is reasoning by analogy. The similitude of relations which exist between things compared.

Analytical jurisprudence. A theory and system of jurisprudence wrought out neither by inquiring for ethical principles or the dictates of the sentiments of justice nor by the rules which may be actually in force, but by analyzing, classifying and comparing various legal conceptions. See Jurisprudence.

Anaphrodisia /ænəfrədíz(h)iyə/. Impotentia cœundi; frigidity; incapacity for sexual intercourse existing in either man or woman, and in the latter case sometimes called "dyspareunia."

Anarchist. One who professes and advocates the doctrines of anarchy, *q.v.* In the immigration statutes, it includes, not only persons who advocate the overthrow of organized government by force, but also those who believe in the absence of government as a political ideal, and seek the same end through propaganda.

Anarchy. Absence of government; state of society where there is no law or supreme power; lawlessness or political disorder; destructive of and confusion in government. At its best it pertains to a society made orderly by good manners rather than law, in which each person produces according to his powers and receives according to his needs, and at its worst, the word pertains to a terroristic resistance of all present government and social order. For "criminal anarchy," see Criminal.

Anathema /ənəθəmə/. An ecclesiastical punishment by which a person is separated from the body of the church, and forbidden all intercourse with the members of the same. It differs from excommunication, which simply forbids the person excommunicated from going into the church receiving Communion.

Anathematize /ənəθəmətayz/. To pronounce anathema upon; to pronounce accursed by ecclesiastical authority. See Anathema.

Anatocism /ənətəsizəm/. In the civil law, repeated or doubled interest; compound interest; usury.

Anatomical gift. Testamentary donation of a vital organ, or organs, generally for purpose of medical research or transplant. Most states have adopted the Uniform Anatomical Gift Act which authorizes the gift of all or part of a human body after death for specified purposes.

Ancestor. One from whom a person lineally descended or may be descended; a progenitor. A former possessor; the person last seised. A deceased person from whom another has inherited land. Embraces both collaterals and lineals. Correlative of "heir."

Ancestral /ənséstrəl/. Relating to ancestors, or to what has been done by them; as *homage ancestral (q.v.)*. Derived from ancestors.

Ancestral estates are such as are transmitted by descent, and not by purchase; or such as are acquired either by descent or by operation of law. Realty which came to the intestate by descent or devise from a dead ancestor or by deed of actual gift from a living one, there being no other consideration than that of blood. Real estate coming to distributee by descent, gift, or devise from any kinsman. Allotments to members of Indian tribes or their heirs have been treated as an ancestral estate. *McDougal v. McKay*, 237 U.S. 372, 35 S.Ct. 605, 607, 59 L.Ed. 1001.

Ancestry. Line of descent; persons comprising such. Term which embraces the study of the antecedents of humans and animals; pedigree. May be proved by general reputation.

Anchorage. In English law, a duty paid by the owners of ships for the use of the port or harbor where they cast anchor.

Ancient. Old; that which has existed from an indefinitely early period, or which by age alone has acquired certain rights or privileges accorded in view of long continuance.

Ancient deed. A deed 30 [or 20] years old and shown to come from a proper custody and having nothing suspicious about it. *See* Ancient writings.

Ancient demesne. Manors which in the time of William the Conqueror were in the hands of the crown, and are so recorded in the Domesday Book. Also, in old English law, a species of copyhold, which differs, however, from common copyholds in certain privileges, but yet must be conveyed by surrender, according to the custom of the manor. There are three sorts: (1) Where the lands are held freely by the king's grant; (2) customary freeholds, which are held of a manor in ancient demesne, but not at the lord's will, although they are conveyed by surrender, or deed and admittance; (3) lands held by copy of court-roll at the lord's will, denominated copyholds of base tenure.

Ancient documents. *See* Ancient writings.

Ancient lights. *See* Lights, ancient.

Ancient readings. Readings or lectures upon the ancient English statutes, formerly regarded as of great authority in law.

Ancient records. *See* Ancient writings.

Ancient rent. The rent reserved at the time the lease was made, if the building was not then under lease.

Ancients /éynshants/. In English law, gentlemen of the inns of court and chancery. In Gray's Inn the society consists of benchers, ancients, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, those who had passed their readings used to be termed "ancients." The Inns of Chancery consist of ancients and students or clerks; from the ancients a principal or treasurer is chosen yearly.

Ancient serjeant. In English law, the eldest of the queen's serjeants. The last holder of the office died in 1866. *See* Serjeant at law.

Ancient street. The doctrine is not based upon fact that streets have existed for a long time, but is invoked when it appears that common grantor owning land comprising street in question as well as property in question and other lots has given deeds to lots bounding them by street, thereby not only dedicating the street to public use but at same time creating private easements in the street, which cannot be taken without compensation. *Dwornick v. State*, 251 A.D. 675, 297 N.Y.S. 409, 411.

Ancient wall. A wall built to be used, and in fact used, as a party-wall, for more than twenty years, by the express permission and continuous acquiescence of the owners of the land on which it stands. *Schneider v. 44-84 Realty Corporation*, 169 Misc. 249, 7 N.Y.S.2d 305, 309.

Ancient water course. A water course is "ancient" if the channel through which it naturally runs has existed from time immemorial independent of the quantity of water which it discharges. *Earl v. De Hart*, 12 N.J.Eq. 280.

Ancient writings. Documents bearing on their face every evidence of age and authenticity, of age of 30 [or 20] years, and coming from a natural and reasonable official custody. *Hartzell v. U. S., C.C.A.Iowa*, 72 F.2d 569, 579. These are presumed to be genuine without express proof, when coming from the proper custody.

Under Federal Rules of Evidence, a document is admissible if it is in such condition as to create no suspicion as to its authenticity, was in a place where it, if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. *Fed.Evid.R.* 901(b)(8).

Ancienty /éynshantiy/. Eldership; seniority. Used in the statute of Ireland, 14 Hen. VIII.

Ancilla /ænsilə/. Lat. A handmaid, an auxiliary, a subordinate.

Ancillary /ænsələriy/. Aiding; attendant upon; describing a proceeding attendant upon or which aids another proceeding considered as principal. Auxiliary or subordinate.

Ancillary administration. Administration of estate in state where decedent has property and which is other than where decedent was domiciled. *First Nat. Bank v. Blessing*, 231 Mo.App. 288, 98 S.W.2d 149, 151. Administration or probate taken out in a second or subsequent jurisdiction to collect assets or to commence litigation on behalf of the estate in that jurisdiction. Ancillary administration of estates is usually governed by state statutes. *See e.g., Uniform Probate Code*, § 4-101 et seq.

Ancillary attachment. One sued out in aid of an action already brought; its only office being to hold the property attached under it for the satisfaction of the plaintiff's demand.

Ancillary bill or suit. One growing out of and auxiliary to another action or suit, either at law or in equity, such as a bill for discovery, or a proceeding for the enforcement of a judgment, or to set aside fraudulent transfers of property. One growing out of a prior suit in the same court, dependent upon and instituted for the purpose either of impeaching or enforcing the judgment or decree in a prior suit. *Caspers v. Watson, C.C.A.III., 132 F.2d 614, 615.*

Ancillary claim. Term "ancillary" denotes any claim that reasonably may be said to be collateral to, dependent upon, or otherwise auxiliary to a claim asserted within federal jurisdiction in action. *Hartley Pen Co. v. Lindy Pen Co., D.C.Cal., 16 F.R.D. 141, 154.* Claim is "ancillary" when it bears a logical relationship to the aggregate core of operative facts which constitutes main claim over which court had independent basis of federal jurisdiction. *Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank, C.A.Tex., 515 F.2d 1200, 1205.* See also *Counterclaim (Compulsory counterclaim).*

Ancillary jurisdiction. Power of court to adjudicate and determine matters incidental to the exercise of its primary jurisdiction of an action.

Under "ancillary jurisdiction doctrine" federal district court acquires jurisdiction of case or controversy as an entirety and may, as incident to disposition of matter properly before it, possess jurisdiction to decide other matters raised by case, though district court could not have taken cognizance of them if they had been independently presented. *Ortman v. Stanray Corp., C.A.III., 371 F.2d 154, 157.* Such jurisdiction of federal court generally involves either proceedings which are concerned with pleadings, processes, records or judgments of court in principal case or proceedings which affect property already in court's custody. *Cooperative Transit Co. v. West Penn. Electric Co., C.C.A.W.Va., 132 F.2d 720, 723.*

Ancillary legislation. Legislative enactment which is auxiliary to or in aid of other and principal legislation.

Ancillary proceeding. One growing out of or auxiliary to another action or suit, or which is subordinate to or in aid of a primary action, either at law or in equity. *Register v. Stone's Independent Oil Distributors, 122 Ga.App. 335, 177 S.E.2d 92, 94.* In state courts, a procedural undertaking in aid of the principal action; for example, a bill for discovery in aid of a lawsuit or a garnishment proceeding.

Ancillary process. Any process which is in aid of or incidental to the principal suit or action; e.g. attachment. See *Ancillary proceeding.*

Ancillary receiver. One appointed in aid of, and in subordination to, a foreign receiver for purpose of collecting and taking charge of assets, as of insolvent corporation, in the jurisdiction where he is appointed.

Ancipitis usus /ænsipətəs yuwzəs/. Lat. In international law, of doubtful use; the use of which is doubtful; that may be used for a civil or peaceful, as well as military or warlike, purpose.

And. A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. Added to; together with; joined with; as well as; including. Sometimes construed as "or." *Land & Lake Ass'n v. Conklin, 182 A.D. 546, 170 N.Y.S. 427, 428.*

It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter. While it is said that there is no exact synonym of the word in English, it has been defined to mean "along with", "also", "and also", "as well as", "besides", "together with". *Oliver v. Oliver, 286 Ky. 6, 149 S.W.2d 540, 542.*

"And/or" means either or both of. *Poucher v. State, 287 Ala. 731, 240 So.2d 695, 695.* When expression "and/or" is used, that word may be taken as will best effect the purpose of the parties as gathered from the contract taken as a whole, or, in other words, as will best accord with the equity of the situation. *Bobrow v. U. S. Casualty Co., 231 A.D. 91, 246 N.Y.S. 363, 367.*

Androgynus /ændrɔːdʒənəs/. A hermaphrodite.

Androlepsy /ændrɔːləpsɪj/. The taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former.

Andromania /ændrɔːməniə/. Nymphomania.

Androphomania /ændrɔːfɒnəməniə/. Homicidal insanity.

Anecius /əniʃh(ij)əs/. Lat. Spelled also *œsnecius, enitius, œneas, eneyus*, Fr. *aisne*. The eldest-born; the first-born; senior, as contrasted with the *puis-né* (younger).

An et jour /ɔn ey zʒur/. Fr. Year and day; a year and a day.

Aneurism, or aneurysm. A sac formed by the dilatation of the weakened walls of an artery, usually resulting in a soft pulsating tumor.

Anew. To try a case or issue "anew" or "de novo" implies that the case or issue has been heard before. See *De novo*.

Angaria /æŋgəriə/. A term used in the Roman law to denote a forced or compulsory service exacted by the government for public purposes; as a forced rendition of labor or goods for the public service; in particular, the right of a public officer to require the service of vehicles or ships.

In *feudal law*, any troublesome or vexatious personal service paid by the tenant or villein to his lord.

In *maritime law*, a forced service (*onus*) imposed on a vessel for public purposes; an impressment of a vessel. See *Angary*, right of.

Angary, right of. In international law, formerly the right (*jus angariæ*) claimed by a belligerent to seize merchant vessels in the harbors of the belligerent and to compel them, on payment of freight, to transport troops and supplies to a designated port.

The right of a belligerent to appropriate, either for use, or for destruction in case of necessity, neutral property temporarily located in his own territory or in that of the other belligerent. The property may be of any description whatever, provided the appropriation of it be for military or naval purposes.

Angel. An ancient English coin, of the value of ten shillings sterling.

Angild /ængild/. In Saxon law, the single value of a man or other thing; a single werigild (*q.v.*); the compensation of a thing according to its single value or estimation. The double gild or compensation was called "*twigild*," the triple, "*trigild*," etc. See *Angylde*.

When a crime was committed, before the Conquest, the angild was the money compensation that the person who had been wronged was entitled to receive.

Anglescheria /ænglæshiriya/. In old English law, Englishery; the fact of being an Englishman.

Angliæ jura in omni casu libertatis dant favorem /ængliyy júra in ómniy kényzuw libértéytas dánt fávórəm/. The laws of England in every case of liberty are favorable (favor liberty in all cases).

Anglice /ænglæsiy/. In English, a term formerly used in pleading when a thing is described both in Latin and English, inserted immediately after the Latin and as an introduction of the English translation.

Anglo-Indian. An Englishman domiciled in the Indian territory of the British crown.

Anglo-Saxon law. English law derived from those people who conquered Britain in the 5th and 6th centuries and who dominated England until the Norman Conquest.

Anguish. Extreme pain of body or mind; excruciating distress. *Carson v. Thompson*, Mo.App., 161 S.W.2d 995, 1000. Agony, but, as used in law, particularly mental suffering or distress of great intensity. It is not synonymous with inconvenience, annoyance, or harassment.

Angylde. In Saxon law, the rate fixed by law at which certain injuries to person or property were to be paid for; in injuries to the person, it seems to be equivalent to the "were," i.e., the price at which every man was valued. It seems also to have been the fixed price at which cattle and other goods were received as currency, and to have been much higher than the market price, or *ceapgild*. See *Angild*.

Anhote. In old English law, a single tribute or tax, paid according to the custom of the country as scot and lot.

Aniens, or anient. Null, void, of no force or effect. See *Anniented*.

Animal. Non-human, animate being which is endowed with the power of voluntary motion. Animal life other than man. *Bernardine v. City of New York*, 182 Misc. 609, 44 N.Y.S.2d 881, 883.

Domestic animals are tame as distinguished from wild; living in or near the habitations of man or by habit or special training in association with man.

Domitæ are those which have been tamed by man; domestic.

Fera naturæ are those which still retain their wild nature.

Mansuetæ naturæ are those gentle or tame by nature, such as sheep and cows.

Wild animals are those whose habitat is generally the woods or wilds; undomesticated; untamed.

Animals of a base nature. Animals in which a right of property may be acquired by reclaiming them from wildness, but which, at common law, by reason of their base nature, are not regarded as possible subjects of a larceny. Some animals which are now usually tamed come within this class, as dogs and cats; and others which, though wild by nature and often reclaimed by art and industry, clearly fall within the same rule, as bears, foxes, apes, monkeys, ferrets, and the like.

Animo /énəməw/. Lat. With intention, disposition, design, will. *Quo animo*, with what intention. *Animo cancellandi*, with intention to cancel. *Furandi*, with intention to steal. 4 Bl.Comm. 230. *Lucrandi*, with intention to gain or profit. *Manendi*, with intention to remain. *Morandi*, with intention to stay, or delay. *Republicandi*, with intention to republish. *Revertendi*, with intention to return. 2 Bl.Comm. 392. *Revocandi*, with intention to revoke. *Testandi*, with intention to make a will. See *Animus* and the titles which follow it.

Animo et corpore /énəməw et kórpəriy/. By the mind, and by the body; by the intention and by the physical act.

Animo et facto /énəməw et fáktow/. To effect a change of domicile there must be "animo et facto" that is, an intention to make the new place one's abode coupled with an actual transfer of bodily presence from one place to another. *Com. ex rel. McVay v. McVay*, 177 Pa.Super. 623, 112 A.2d 649, 652.

Animo felonico /énəməw fəlónəkow/. With felonious intent.

Animus /énəməs/. Lat. Mind; soul; intention; disposition; design; will; that which informs the body. *Animo* (*q.v.*), with the intention or design. These terms are derived from the civil law.

Animus ad se omne jus ducit /énəməs æd siy ómniy jas d(y)úwsət/. It is to the intention that all law applies. Law always regards the intention.

Animus cancellandi /énəməs kənsələnday/. The intention of destroying or canceling (applied to wills).

Animus capiendi /ánəməs kəpiyénday/. The intention to take or capture.

Animus dedicandi /ánəməs dedəkénday/. The intention of donating or dedicating.

Animus defamandi /ánəməs dɛfáménday/. The intention of defaming.

Animus derelinquendi /ánəməs diyrələŋkwénday/. The intention of abandoning.

Animus differendi /ánəməs diférénday/. The intention of obtaining delay.

Animus donandi /ánəməs downénday/. The intention of giving. Expressive of the intent to give which is necessary to constitute a gift.

Animus et factum /ánəməs et fáktəm/. To constitute a change of domicile, there must be an "animus et factum"; the "factum" being a transfer of the bodily presence, and the "animus" the intention of residing permanently or for indefinite period. *See Animus manendi.*

Animus et factus /ánəməs et fáktəs/. Intention and act; will and deed. Used to denote those acts which become effective only when accompanied by a particular intention.

Animus furandi /ánəməs fyərənday/. Intent to steal, or feloniously to deprive the owner permanently of his property, an essential element of the crime of larceny. *State v. Hudson, W.Va., 206 S.E.2d 415, 419.*

Animus hominis est anima scripti /ánəməs hómənəs ɛst ánəmə skriptay/. The intention of the party is the soul of the instrument. In order to give life or effect to an instrument, it is essential to look to the intention of the individual who executed it.

Animus lucrandi /ánəməs l(y)uwkrénday/. The intention to make a gain or profit.

Animus malus /ánəməs mæləs/. Evil motive; the central element of the malice which justifies an award of punitive damages. *Seimon v. Southern Pac. Transp., 67 C.A.3d 600, 136 Cal.Rptr. 787, 791.*

Animus manendi /ánəməs mənénday/. The intention of remaining; intention to establish a permanent residence. This is the point to be settled in determining the domicile or residence of a party. *See Animus et factum.*

Animus morandi /ánəməs mərənday/. The intention to remain, or to delay.

Animus possidendi /ánəməs pòwzəsénday/. The intention of possessing.

Animus quo /ánəməs kwów/. The intent with which.

Animus recipiendi /ánəməs rəsiپیénday/. The intention of receiving.

Animus recuperandi /ánəməs rək(y)uwɛpərənday/. The intention of recovering.

Animus republicandi /ánəməs rəpəbləkénday/. The intention to republish.

Animus restituendi /ánəməs rəstityuwénday/. The intention of restoring.

Animus revertendi /ánəməs riyvərténday/. The intention of returning.

Animus revocandi /ánəməs rəvowkénday/. The intention to revoke.

Animus signandi /ánəməs signénday/'saynénday/. Intention to sign instrument as and for a will. *Hamlet v. Hamlet, 183 Va. 453, 32 S.E.2d 729, 732.*

Animus testandi /ánəməs tɛsténday/. Intention or purpose to make will. Also expressed as *animus testandi*.

An, jour, et waste. In feudal law, year, day, and waste. A forfeiture of the lands to the crown incurred by the felony of the tenant, after which time the land escheats to the lord. *See Year (Year, day, and waste).*

Ann. (or An.). *Abr.* Annual; Annotated.

Annates /áneyts/ánəts/. In ecclesiastical law, first-fruits paid out of spiritual benefices to the Pope, so called because the value of one year's profit was taken as their rate.

Annex /ənɛks/. Derived from the Latin "annectere," meaning to tie or bind to. To attach, and often, specifically, to subjoin. To add to; to unite. The word expresses the idea of joining a smaller or subordinate thing with another, larger, or of higher importance. To consolidate, as school districts. To make an integral part of something larger.

It implies physical connection or physically joined to, yet physical connection may be dispensed with, and things may be annexed without being in actual contact, when reasonably practicable. *Elliott Common School Dist. No. 48 v. County Board of School Trustees, Tex.Civ. App., 76 S.W.2d 786, 789.* Something appended to, as a supplementary structure or wing. *See also* Appendant.

Annexation. The act of attaching, adding, joining, or uniting one thing to another; generally spoken of the connection of a smaller or subordinate thing with a larger or principal thing. Term is usually applied with respect to land or fixtures, as: the acquisition of territory or land by a nation, state or municipality; the legal incorporation of a town or city into another town or city.

The attaching an illustrative or auxiliary document to a deposition, pleading, deed, etc., may be called "annexing" it. *See* Exhibit.

In the law relating to fixtures, *actual annexation* includes every movement by which a chattel is joined or united to the property; *constructive annexation* is the union of such things as have been holden parcel of the realty, but which are not actually annexed, fixed, or fastened to the property. *See also* Fixture.

Anniented /əniyəntəd/. Made null, abrogated, frustrated, or brought to nothing.

Anniversary. An annual day, recurring each year on the same date; commonly to commemorate an important event. In old-ecclesiastical law, a day set apart in memory of a deceased person. Also called "year day" or "mind day."

Anniversary date. As applied to insurance policy, means yearly recurring date of the initial issuance date.

Anno domini /ə'noʊ dómə'neɪ/. In the year of the Lord. Commonly abbreviated A.D. The computation of time, according to the Christian era, dates from the birth of Christ.

Annona civiles /ə'nównəɪ sɪvəlɪəz/. A species of yearly rents issuing out of certain lands, and payable to certain monasteries.

Annotatio /ə'nówtéysh(ɪ)ow/. In the civil law, the sign-manual of the emperor; a rescript of the emperor, signed with his own hand. It is distinguished both from a rescript and pragmatic sanction.

Annotate; Annotated. See Annotation.

Annotation /ə'nótéyshən/. A remark, note, case summary, or commentary on some passage of a book, statutory provision, court decision, or the like, intended to illustrate or explain its meaning. See also Digest; Headnote.

Civil law. An imperial rescript (see Rescript) signed by the emperor. The answers of the prince to questions put to him by private persons respecting some doubtful point of law. Also summoning an absentee, and, as well the designation of a place of deportation.

Statutory. Brief summaries of the law and facts of cases interpreting or applying statutes passed by Congress or state legislatures which are included (normally following text of statute) in annotated statutes or codes.

Announced. A decision is "announced," preventing nonsuit, when court's conclusion on issue tried is made known from bench or by any publication, oral or written, even if judgment has not been rendered.

Annoy. To disturb or irritate, especially by continued or repeated acts; to weary or trouble; to irk; to offend. *People v. Moore*, 137 C.A.2d 197, 290 P.2d 40, 41. See also Annoyance.

Annoyance. Discomfort; vexation. Not generally synonymous with anguish, inconvenience, or harassment. Such may result from either physical or mental conditions. It includes feeling of imposition and oppression. See also Harassment; Nuisance.

Annual /ə'nyuəl/. Of or pertaining to year; returning every year; coming or happening yearly. Occurring or recurring once in each year; continuing for the period of a year; accruing within the space of a year; relating to or covering the events or affairs of a year. Once a year, without signifying what time in year. See Annually.

Annual accounting period. In determining a taxpayer's income tax liability, only those transactions taking place during a particular tax year are taken into consideration. For reporting and payment purposes, therefore, the tax life of taxpayers is divided into equal annual accounting periods. See Accounting period.

Annual assay. An annual trial of the gold and silver coins of the United States, to ascertain whether the

standard fineness and weight of the coinage is maintained. 31 U.S.C.A. § 363.

Annual average earnings. Term used in worker's compensation law to describe a claimant's income both from seasonal and nonseasonal employment, but for inclusion the nonseasonal income is limited to employment of the same class as the seasonal.

Annual depreciation. The annual loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. The annual loss in service value not restored by current maintenance and incurred in connection with the consumption or prospective retirement of property in the course of service from causes known to be in current operation, and whose effect can be forecast with a reasonable approach to accuracy. *State v. Hampton Water Works Co.*, 91 N.H. 278, 18 A.2d 765, 770. See Depreciation.

Annual exclusion. The amount each year which can be excluded in computing the gift tax on the donor without using the lifetime exemption.

Annually. In annual order or succession; yearly, every year, year by year. At end of each and every year during a period of time. Imposed once a year, computed by the year. Yearly or once a year, but does not in itself signify what time in year. *Phillips Petroleum Co. v. Harnly*, Tex.Civ.App., 348 S.W.2d 856, 860.

Annual meeting. The meeting of stockholders each year called to elect officers and directors, to ratify actions of officers and directors and to vote on corporate matters which come before it. Generally, articles of organization or by-laws fix a date for such meeting each year. Annual meetings are required of publicly held corporations.

Annual percentage rate. The actual cost of borrowing money, expressed in form of annual interest rate to make it easy for one to compare cost of borrowing money among several lenders or sellers on credit. Full disclosure of interest rate and other charges is required by the Truth-in-Lending Act (*q.v.*). Commonly abbreviated APR.

Annual permit. Yearly requirement in certain states for domestic corporations to do business in state. The fee is set according to the capitalization of the corporation.

Annual report. A report for stockholders and other interested parties prepared by corporation once a year; includes a balance sheet, an income statement, a statement of changes in financial position, a reconciliation of changes in owners' equity accounts, a summary of significant accounting principles, other explanatory notes, the auditor's report, and often comments from management about the year's business and prospects for the next year. By law, any public corporation that holds an annual stockholders meeting is required to issue an annual report. See also 10-K.

Annual statement. See Annual report.

Annual value. The net yearly income derivable from a given piece of property. Its fair rental value for one year, deducting costs and expenses; the value of its use for a year.

Annua nec debitum iudex non separat ipsum /ənyuwə nek débətəm jūwdeks nòn sèpərat ípsəm/. A judge (or court) does not divide annuities nor debt. Debt and annuity cannot be divided or apportioned by a court.

Annua pensione /ənyuwə pènshiyówniy/. An ancient writ to provide the king's chaplain, if he had no preference, with a pension.

Annuitant. The party entitled to receive payments from an annuity contract. *See also* Annuity.

Annuity /ən(y)úwətiy/. A right to receive fixed, periodic payments, either for life or for a term of years. *Moore v. O'Cheskey*, App., 87 N.M. 66, 529 P.2d 292, 293. A fixed sum payable to a person at specified intervals for a specific period of time or for life. Payments represent a partial return of capital and a return (interest) on the capital investment. Therefore, an exclusion ratio must generally be used to compute the amount of nontaxable income. Special rules apply to employee retirement plan annuities.

The payment or receipt of a series of equal amounts of money per period for a specified amount of time. In an *ordinary annuity*, payments are made at the end of each period; in an *annuity due*, payments are made at the beginning.

Annuity bond. A bond without a maturity date, that is, perpetually paying interest.

Annuity certain. Payable for specified period; no matter the time of death of the annuitant.

Annuity trust. *See* that title.

Cash refund annuity. Policy which provides for the lump sum payment at the death of the annuitant of the difference between the total received and the price paid.

Contingent annuity. Funded annuity with payments to commence on the happening of an uncertain event; *e.g.* death of named person other than annuitant. An annuity whose number of payments depends upon the outcome of an event whose timing is uncertain at the time the annuity is set up.

Deferred annuity. Payments begin at some specified future date provided the beneficiary is alive at such date. *See also* Deferred annuity contract.

Fixed annuity. Annuity that guarantees fixed payments, either for life or for a specified period, to annuitant.

Group annuity contract. A contract to make periodic payments to a member of a group covered by such contract. The usual type is a pension plan providing annuities upon retirement for individual employees under a master contract.

Joint and survivorship annuity. An annuity which is payable to the named annuitants during the period of

their joint lives, with the annuity to continue to the survivor when the first annuitant dies.

Joint annuity. An annuity which is paid to the two named persons until the first one dies, at which time the annuity ceases.

Life annuity. Provides for payment of income to annuitant only during his lifetime; even though death is premature.

Private annuity. A contract for periodic payments to the annuitant from private as distinguished from public or life insurance company.

Refund annuity. Annuitant is assured a specified annual sum during his life, with the further assurance that in the event of his premature death there will be paid to his estate an additional amount which represents the difference between the purchase price and the amount paid out during annuitant's life.

Retirement annuity. Policy in which payments to annuitant commence at some future date; *e.g.* after retirement. If annuitant dies in interval or surrender is desired, an agreed upon amount is refunded to annuitant's estate.

Straight annuity. A contract usually by an insurance company to make periodic payments at monthly or yearly intervals; distinguishable from life insurance contract which looks to longevity, while annuity looks to transiency. *Helvering v. LeGierse*, 312 U.S. 531, 541, 61 S.Ct. 646, 85 L.Ed. 996. Straight annuity contract calls for a fixed amount of payment as distinguished from the variable annuity.

Straight life annuity. *See* *Life annuity*; *Straight annuity*, above.

Survivorship annuity. *See* *Joint and survivorship annuity*, above.

Variable annuity. A contract calling for payments to the annuitant in varying amounts depending on the success of the investment policy of the insurance company; unlike a straight annuity which requires the payment of a fixed amount. Purpose of this type of annuity is to offset deflated value of dollar caused by inflation.

Annuity policy. An insurance policy providing for monthly or periodic payments to insured to begin at fixed date and continue through insured's life. *Hamilton v. Penn Mut. Life Ins. Co.*, 196 Miss. 345, 17 So.2d 278, 280.

Annuity trust. A form of trust calling for payment of a fixed amount of income regardless of the amount of principal. *In re McQueen's Will*, 65 N.Y.S.2d 201, 205. *See also* Trust (*Annuity trust*).

Annul /ənól/. To reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with. To cancel; destroy; abrogate. To annul a judgment or judicial proceeding is to deprive it of all force and operation, either *ab initio* or prospectively as to future transactions.

Annulment. To nullify, to abolish, to make void by competent authority. An "annulment" differs from a divorce in that a divorce terminates a legal status, whereas an annulment establishes that a marital status never existed. *Whealton v. Whealton*, 67 Cal.2d 656, 63 Cal.Rptr. 291, 294, 432 P.2d 979. Grounds and procedures for annulment of marriage are governed by state statutes.

Annum /ænəm/. Year.

Annum, diem, et vastum /ænəm, dáyəm, ət véystəm/. See Year, day, and waste.

Annus /ænəs/. Lat. In civil and old English law, a year; the period of three hundred and sixty-five days. See Annual.

Annus, dies, et vastum /ænəs, dáyiz, ət véystəm/. In old English law, year, day, and waste. See (Year, day, and waste).

Annus est mora motus quo suum planeta pervolvat circulum /ænəs èst mórə mówtəs kwòw s(y)úwəm pláneytə pərvólvət s(ý)əlm/. A year is the duration of the motion by which a planet revolves through its orbit.

Annus et dies /ænəs ət dáyiz/. A year and a day.

Annus inceptus pro completo habetur /ænəs ənséptəs pròw kəmplýtow həbýtər/. A year begun is held as completed.

Annus luctus /ænəs lówktəs/. The year of mourning. It was a rule among the Romans, and also the Danes and Saxons, that widows should not marry *infra annum luctus* (within the year of mourning).

Annus utilis /ænəs yúwtələs/. A year made up of available or serviceable days. In the plural, *anni utiles* signifies the years during which a right can be exercised or a prescription grow. In prescription, the period of incapacity of a minor, etc., was not counted; it was no part of the *anni utiles*.

Annuus reditus /ænəs rédtəts/. A yearly rent; annuity. 2 Bl.Comm. 41.

Anomalous /ənomələs/. Deviating from common rule, method, or type. Irregular; exceptional; abnormal; unusual.

Anomalous indorser /ənomələs əndórsər/. A stranger to a note, who indorses it after its execution and delivery but before maturity, and before it has been indorsed by the payee.

Anomalous plea /ənomələs plý/. One which is partly affirmative and partly negative.

Anon., An., A /ənon/. Abbreviations for anonymous.

A non posse ad non esse sequitur argumentum necesse negative, licet non affirmative /éy nòn pósiy əd nòn ésiy sékwəstər ərgyəméntəm nəsəsériyiy nэгətáyviy, láysət nòn əfərmətáyviy/. A literal translation—From impossibility to non-existence the inference follows necessarily in the negative, though not in the affirmative—is as ambiguous as the original. It could

be translated thus: The negative inference of non-existence necessarily follows from impossibility of existence, but the affirmative inference of existence cannot be drawn from mere possibility.

Anonymous. Nameless; lacking a name or names; e.g. a publication, article, or the like, without any designation of authorship; an unsigned letter; a tip from an unknown service.

Another. Additional. Distinct or different.

Another action pending. See Autre action pendant.

Annoyance /ənoýzəns/. Annoyance; nuisance.

Ansel, ansul, or auncel /ónsəl/. In old English law, an ancient mode of weighing by hanging scales or hooks at either end of a beam or staff, which, being lifted with one's finger or hand by the middle, showed the equality or difference between the weight at one end and the thing weighed at the other.

Answer. As a verb, the word denotes an assumption of liability, as to "answer" for the debt or default of another.

Discovery. A person who fails to answer, or answers evasively or incompletely, deposition or interrogatory questions, may be compelled to do so under Fed.R. Civil P. 37.

Frivolous answer. See Sham answer, below.

Irrelevant answer. One that has no substantial relation to the controversy; distinguishable from a sham answer. Such may be ordered stricken under Fed.R. Civil P. 12(f).

Pleading. The response of a defendant to the plaintiff's complaint, denying in part or in whole the allegations made by the plaintiff. A pleading by which defendant endeavors to resist the plaintiff's demand by an allegation of facts, either denying allegations of plaintiff's complaint or confessing them and alleging new matter in avoidance, which defendant alleges should prevent recovery on facts alleged by plaintiff. In pleading, under the Codes and Rules of Civil Procedure, the answer is the formal written statement made by a defendant setting forth the grounds of his defense; corresponding to what in actions under the common-law practice is called the "plea." See Fed.R. Civil P. 8 and 12.

Under Fed.R.Civil P. 12, a person may use an answer to set up all defenses, but he also has the option to use a motion to assert certain defenses.

See also Affirmative defense; Defense; Denial; Supplemental answer.

In chancery pleading, the term denotes a defense in writing, made by a defendant to the allegations contained in a bill or information filed by the plaintiff against him.

Sham answer. One sufficient on its face but so clearly false that it presents no real issue to be tried. One good in form, but false in fact and not pleaded in good faith. A frivolous answer, on the other hand, is one which on its face sets up no defense, although it may be true in fact. On motion of a party, the court may order strick-

en from the pleading any insufficient defense. Fed.R. Civil P. 12(f).

Answerable. See Liability.

Antapocha /æntæpøkə/. In the Roman law, a transcript or counterpart of the instrument called "*apocha*" (*q.v.*), signed by the debtor and delivered to the creditor.

Ante. Lat. Before. Usually employed in old pleadings as expressive of time, as *præ* (before) was of place, and *coram* (before) of person.

Occurring in a report or a text-book, it is used to refer the reader to a previous part of the book. Synonymous to "*supra*"; opposite of "*post*" or "*infra*."

Antea /æntiə/. Lat. Formerly; heretofore.

Antecedent/æntəsɪdənt/. Prior in point of time.

Antecedent claim. A preexisting claim. In law of negotiable instruments, a holder takes for value if he takes the instrument for an antecedent claim against any person whether or not the claim is due. U.C.C. § 3-303(b).

Antecedent creditors. Those whose debts are created before the debtor makes a transfer not lodged for record.

Antecedent debt. In contract law, that which may or may not furnish consideration for a new contract to pay. A negotiable instrument given for an antecedent debt is supported by adequate consideration. U.C.C. § 3-408.

In former bankruptcy law, a debt which was incurred before four months prior to filing of bankruptcy petition and hence not a preference. Bankruptcy Act (1898), § 60a.

Antecessor /æntəsésər/. An ancestor (*q.v.*).

Antedate. To affix an earlier date; to date an instrument as of a time before the time it was written. Such does not affect the negotiability of the instrument. U.C.C. § 3-114.

Ante exhibitionem billæ /ænti eksəbɪʃiəwɪnəm bɪlij/. Before the exhibition of the bill. Before suit begun.

Ante-factum /ænti-fæktəm/ or **ante-gestum** /ænti-jéstəm/. Done before. A Roman law term for a previous act, or thing done before.

Antejuramentum /ænti-jurəméntəm/. In Saxon law, a preliminary or preparatory oath (called also "*præjuramentum*," and "*juramentum calumniæ*," (*q.v.*), which both the accuser and accused were required to make before any trial or purgation; the accuser swearing that he would prosecute the criminal, and the accused making oath on the very day that he was to undergo the ordeal that he was innocent of the crime with which he was charged.

Ante litem motam /ænti láytəm mówtəm/. At time when declarant had no motive to distort truth. Before suit brought, before controversy instituted. Also, before the controversy arose.

Ante mortem interest /ænti mɔrtəm ínt(ə)rɛst/. Interests existing only prior to, and not after, transferor's death.

Antenati /æntiɲéytaj/. See *Ante natus*.

Ante natus /ænti ɲéytəs/. Born before. A person born before another person or before a particular event. The term is particularly applied to one born in a country before a revolution, change of government or dynasty, or other political event, such that the question of his rights, *status*, or allegiance will depend upon the date of his birth with reference to such event. In England, the term commonly denotes one born before the act of union with Scotland; in America, one born before the declaration of independence. Its opposite is *post natus*, one born after the event.

Antenuptial /æntiɲápshəl/. Made or done before a marriage.

Antenuptial agreement. An agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage. Uniform Premarital Agreement Act, § 1. Antenuptial agreements are generally entered into by people about to enter marriage in an attempt to resolve issues of support, distribution of wealth and division of property in the event of the death of either or the failure of the proposed marriage resulting in either separation or divorce. The Uniform Act, which has been adopted by a number of states, sets forth the formalities of execution, amendment or revocation (any of which do not require consideration for enforcement), the matters that can be contracted for, enforcement, etc.

Antenuptial gift. A transfer of property from one party to the marriage to the other before the marriage without consideration.

Antenuptial settlements. See Antenuptial agreement; Palimony.

Antenuptial will. A will executed by a person prior to his marriage. Such will is generally deemed revoked unless it appears on the face of the will that it is in contemplation of marriage.

Anthropometry /ænθrəpómətri/. In criminal law and medical jurisprudence, the measurement of the human body. A system of measuring the dimensions of the human body, both absolutely and in their proportion to each other, the facial, cranial, and other angles, the shape and size of the skull, etc., for purposes of comparison with corresponding measurements of other individuals, and serving for the identification of the subject in cases of doubtful or disputed identity. It was largely adopted after its introduction in France in 1883, but fell into disfavor as being costly and as liable to error. It has given place to the "finger print" system devised by Francis Galton and to such identification procedures as DNA testing. See Bertillon System; DNA identification.

Antichresis /æntəkriɪzəs/. In the civil law, a species of mortgage, or pledge of immovables. An agreement by which the debtor gives to the creditor the income from the property which he has pledged, in lieu of the interest on his debt. In the French law, if the income was more than the interest, the debtor was entitled to de-

mand an account of the income, and might claim any excess.

By the law of Louisiana, there are two kinds of pledges,—the pawn and the antichresis. A pawn relates to movables, and the antichresis to immovables. The antichresis must be reduced to writing; and the creditor thereby acquires the right to the fruits, etc., of the immovables, deducting yearly their proceeds from the interest, in the first place, and afterwards from the principal of his debt. He is bound to pay taxes on the property, and keep it in repair, unless the contrary is agreed. The creditor does not become the proprietor of the property by failure to pay at the agreed time, and any clause to that effect is void. He can only sue the debtor, and obtain sentence for sale of the property. The possession of the property is, however, by the contract, transferred to the creditor. La.Civil Code Arts. 3176-3181. The "antichresis" is an antiquated contract, and has been resorted to in Louisiana in but a few instances.

Anticipation. Act of doing or taking a thing before its proper time. To do, take up, or deal with, before another; to preclude or prevent by prior action; to be before in doing.

In conveyancing, the act of assigning, charging, or otherwise dealing with income before it becomes due.

In patent law, an invention is anticipated by prior art when the invention is not new or lacks novelty over that art. *Topliff v. Topliff*, 145 U.S. 156, 12 S.Ct. 825, 36 L.Ed. 658. Defense of "anticipation" in suit for patent infringement is made out when, except for insubstantial differences, the prior patent contains all of the same elements operating in the same fashion to perform an identical function. *Ropat Corp. v. West Bend Co.*, D.C. Ill., 382 F.Supp. 1030, 1036. Unless all of same elements are found in exactly same situation and are united in same way to perform identical function in a single prior art reference, there is no "anticipation" which will invalidate that patent. *Ceramic Tilers Supply, Inc. v. Tile Council of America, Inc.*, C.A.Cal., 378 F.2d 283, 284.

In law of negligence, "anticipation" is not confined to expectation. It means probability, not possibility, as applied to duty to anticipate consequences of conduct attacked as negligent. *Empire Dist. Electric Co. v. Harris*, C.C.A.Mo., 82 F.2d 48, 52.

Anticipation note. Discount or rebate for prepayment.

Anticipatory assignment of income. See Assignment (*Assignment of income*).

Anticipatory breach of contract. The assertion by a party to a contract that he or she will not perform a future obligation as required by the contract. Such occurs when a party to an executory contract manifests a definite and unequivocal intent prior to time fixed in contract that it will not render its performance under the contract when that time arrives, and in such a case the other party may treat the contract as ended. *Leazzo v. Dunham*, 95 Ill.App.3d 847, 51 Ill.Dec. 437, 440, 420 N.E.2d 851, 854.

The right of one party to a contract to sue for breach before the date set for performance when the other party conveys his intention not to perform (U.C.C. § 2-610), though the repudiating party may retract his repudiation prior to date for performance if the other party has not acted on the repudiation (U.C.C. § 2-611). Some jurisdictions require the aggrieved party to wait for the date for performance before commencing suit.

Anticipatory nuisance. The right in equity to prevent a condition from becoming a nuisance by injunction or other order of the court.

Anticipatory offense. A crime which has as its object a further crime, such as an attempt, a conspiracy, a solicitation, all of which are crimes in themselves.

Anticipatory repudiation. See Anticipatory breach of contract.

Anticipatory search warrant. A warrant based upon an affidavit showing probable cause that at some future time, but not presently, certain evidence of crime will be located at specified place; such warrant is to be distinguished from a premature search.

Anti-deficiency legislation. Statutes which are enacted to provide revenue when a budget deficiency is created.

Anti-dilution provision. A provision appearing in convertible securities to guarantee that the conversion privilege is not affected by share reclassifications, share splits, share dividends, or similar transactions that may increase the number of outstanding shares without increasing the corporate capital.

Anti-Dumping Act. See Dumping Act.

Anti-dumping duty. Tariff, purpose of which is to prevent imports of goods for sale at a lower price than that charged in the country of origin. See Dumping Act.

Antigraphus /əntɪgrəfəs/. In Roman law, an officer whose duty it was to take care of tax money. A comptroller.

Antigraphy. A copy or counterpart of a deed.

Anti-lapse statute. Legislation enacted in most jurisdictions to provide for the testamentary passing of property to heirs and next of kin of the designated legatee or devisee if he dies before the testator, thus preventing a lapse of the legacy and the passing of such property through intestacy to the heirs and next of kin of the testator.

Anti manifesto. A term used in international law to denote a proclamation or manifesto published by one of two belligerent powers, alleging reasons why the war is defensive on its part.

Antinomia /əntənómɪə/. In Roman law, a real or apparent contradiction or inconsistency in the laws. Conflicting laws or provisions of law; inconsistent or conflicting decisions or cases.

Antinomy /əntɪnəmɪ/. A term used in logic and law to denote a real or apparent inconsistency or conflict be-

tween two authorities or propositions; same as *antimonia* (q.v.).

Antiqua custuma /æntáykwə kást(y)əmə/. In old English law, an export duty on wool, woollens, and leather, imposed during the reign of Edw. I. It was so called by way of distinction from an increased duty on the same articles, payable by foreign merchants, which was imposed at a later period of the same reign and was called "*custuma nova*."

Antiquare /æntákwériy/. In Roman law, to restore a former law or practice; to reject or vote against a new law; to prefer the old law. Those who voted against a proposed law wrote on their ballots the letter "A," the initial of *antiquo*, I am for the old law.

Antiqua statuta /æntáykwə státyúwtə/. Also called "*Vetera Statuta*." English statutes from the time of Richard I to Edward III. See *Nova statuta*.

Antiquum dominicum /æntáykwəm dæmínəkəm/. In old English law, ancient demesne.

Anti-Racketeering Act. Federal act prohibiting robbery, extortion, or other unlawful interference with interstate commerce. See *Hobbs Act*.

Antithetarius /æntəθtériyəs/. In old English law, a man who endeavors to discharge himself of the crime of which he is accused, by retorting the charge on the accuser. He differs from an approver in this: that the latter does not charge the accuser, but others.

Antitrust acts. Federal and state statutes to protect trade and commerce from unlawful restraints, price discriminations, price fixing, and monopolies. Most states have anti-trust acts patterned on the federal acts. The principal federal antitrust acts are: Sherman Act (1890); Clayton Act (1914); Federal Trade Commission Act (1914); Robinson-Patman Act (1936). See *Boycott*; *Combination in restraint of trade*; *Hart-Scott-Rodino Antitrust Improvement Act*; *Per se violations*; *Price-fixing*; *Restraint of trade*; *Rule (Rule of reason)*.

Antitrust Civil Process Act. Federal statute permitting antitrust action by way of a petition in U.S. District Court for an order for enforcement of law. 15 U.S.C.A. § 1314.

Antitrust injury. Such injury, which must be established in order to have standing to bring antitrust claim under Clayton Act, is injury the antitrust laws were designed to prevent and that flows from that which makes a defendant's acts unlawful. The injury should reflect the anticompetitive effect either of the violation or of anticompetitive acts made possible by the violation. *RJM Sales & Marketing, Inc. v. Banfi Products Corp.*, D.C.Minn., 546 F.Supp. 1368, 1379.

Anxiety. An unpleasant affective state with the expectation but not the certainty of something happening; sometimes manifested as a sense of fear, poorly understood by the subject, which arises without justifiable cause; anxious state may have overtones of "impending" danger rather than present danger.

Any. Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity. *Federal Deposit Ins. Corporation v. Winton*, C.C.A.Tenn., 131 F.2d 780, 782. One or some (indefinitely). *Slegel v. Slegel*, 135 N.J.Eq. 5, 37 A.2d 57, 58. "Any" does not necessarily mean only one person, but may have reference to more than one or to many. *Doherty v. King*, Tex.Civ.App., 183 S.W.2d 1004, 1007.

Word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute. *Donohue v. Zoning Bd. of Appeals of Town of Norwalk*, 155 Conn. 550, 235 A.2d 643, 646, 647.

It is often synonymous with "either", "every", or "all". Its generality may be restricted by the context; thus, the giving of a right to do some act "at any time" is commonly construed as meaning within a reasonable time; and the words "any other" following the enumeration of particular classes are to be read as "other such like," and include only others of like kind or character.

A.O.C. *Anno orbis conditi*, the year of the creation of the world.

A.P.A. Administrative Procedure Act.

A pais. To the country; at issue.

Apanage /æpənáj/. In old French law, a provision of lands or feudal superiorities assigned by the kings of France for the maintenance of their younger sons. An allowance assigned to a prince of the reigning house for his proper maintenance out of the public treasury.

Apartment house. A building arranged in several suites of connecting rooms, each suite designed for independent housekeeping, but with certain mechanical conveniences, such as heat, light, or elevator services, in common to all persons occupying the building. A building containing multiple residential rental units. Sometimes called a flat or flat house.

Apatisatio /əpätəzézsh(iy)ow/. An agreement or compact.

A.P.C. Alien Property Custodian.

A.P.C.N. *Anno post Christum natum*, the year after the birth of Christ.

Aperta brevia /əpártə briyviyə/. Open, unsealed writs.

Apertum factum /əpártəm fáktəm/. An overt act.

Apertura testamenti /əpártiyúra tístəmentay/. In the civil law, a form of proving a will, by the witnesses acknowledging before a magistrate their having sealed it.

Apex. The summit or highest point of anything; the top; e.g., in mining law, "apex of a vein." See *Larkin v. Upton*, 144 U.S. 19, 12 S.Ct. 614, 36 L.Ed. 330. An "apex" is all that portion of a terminal edge of a mineral vein from which the vein has extension downward in the direction of the dip. *Stewart Mining Co. v. Ontario Mining Co.*, 237 U.S. 350, 35 S.Ct. 610, 614, 59 L.Ed. 989. Or it is the juncture of two dipping limbs of a fissure

vein. *Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co.*, 247 U.S. 450, 38 S.Ct. 574, 576, 62 L.Ed. 1207. See *Apex rule*.

Apex juris /éypéks júrés/. The summit of the law; a legal subtlety; a nice or cunning point of law; close technicality; a rule of law carried to an extreme point, either of severity or refinement. A term used to denote a stricter application of the rules of law than is indicated by the phrase *summum jus* (q.v.).

Apex rule. In mining law, the mineral laws of the United States give to the locator of a mining claim on the public domain the whole of every vein the apex of which lies within his surface exterior boundaries, or within perpendicular planes drawn downward indefinitely on the planes of those boundaries; and he may follow a vein which thus apexes within his boundaries, on its dip, although it may so far depart from the perpendicular in its course downward as to extend outside the vertical side-lines of his location; but he may not go beyond his end-lines or vertical planes drawn downward therefrom. This is called the apex rule. 30 U.S.C.A. § 26.

Aphasia /áféyzh(iy)ə/. Loss of the faculty or power of articulate speech. A condition in which the patient, while retaining intelligence and understanding and with the organs of speech unimpaired, is unable (in "motor aphasia") to utter articulate words, or unable to vocalize the particular word which is in his mind and which he wishes to use, or utters words different from those he believes himself to be speaking, or (in "sensory aphasia" or apraxia) is unable to understand spoken or written language. *Sensory aphasia* includes *word blindness* and *word deafness*, visual and auditory aphasia. *Motor aphasia* often includes *agraphia*, or the inability to write words of the desired meaning. The seat of the disease is in the brain, but it is not a form of insanity.

Aphonia /áfówniyə/. Loss of the power of articulate speech in consequence of defective conditions of some of the vocal organs. It may be incomplete, in which case the patient can whisper. It is to be distinguished from congenital inability to speak, and from temporary loss of voice through extreme hoarseness or minor affections of the vocal cords, as also from aphasia, the latter being a disease of the brain without impairment of the organs of speech.

Apices juris non sunt jura [jus] /éypəsiyz júrés nón sánt júə ('jəs)/. Extremities, or mere subtleties of law are not rules of law [are not law]. Legal principles must not be carried to their extreme consequences, without regard for equity and good sense. See *Apex juris*.

Apices litigandi /éypəsiyz lidəgənday/. Extremely fine points, or subtleties of litigation. Nearly equivalent to the modern phrase "sharp practice." "It is unconscionable in a defendant to take advantage of the *apices litigandi*, to turn a plaintiff around and make him pay costs when his demand is just." Per Lord Mansfield, in 3 Burr. 1243.

A piratis aut latronibus capti liberi permanent /éy paréytəs ót lətrównəbəs káptay libəray pármənənt/. Persons taken by pirates or robbers remain free.

A piratis et latronibus capta dominum non mutant /éy paréytəs èt lətrównəbəs káptə dāmíniyəm nòn myúwtənt/. Capture by pirates and robbers does not change title. No right to booty vests in piratical captors; no right can be derived from them by recaptors to the prejudice of the original owners.

Apocha (also *Apoca*) /əpəkə/. Lat. In the civil law, a writing acknowledging payments; acquittance. It differs from acceptance in this: that acceptance imports a complete discharge of the former obligation whether payment be made or not; *apocha*, discharge only upon payment being made. See *Antapocha*.

Apochæ oneratoriæ /əpəkəiy ònəreytóriyiy/. In old commercial law, bills of lading.

Apocrisarius /əpəkrísəriyəs/. In civil law, a messenger; an ambassador.

In ecclesiastical law, one who answers for another. An officer whose duty was to carry to the emperor messages relating to ecclesiastical matters, and to take back his answer to the petitioners. An officer who gave advice on questions of ecclesiastical law. An ambassador or legate of a pope or bishop. A messenger sent to transact ecclesiastical business and report to his superior; an officer who had charge of the treasury of a monastic edifice; an officer who took charge of opening and closing the doors.

Apocrisarius cancellarius /əpəkrísəriyəs kənsəlériyəs/. In the civil law, an officer who took charge of the royal seal and signed royal dispatches. Called, also, *secretarius*, *consiliarius* (from his giving advice); *referendarius*; a *consiliis* (from his acting as counsellor); a *responsis*, or *responsalis*.

Apographia /əpəgrəfiyə/. In civil law, an examination and enumeration of things possessed; an inventory.

Apostacy (also spelled *Apostasy*). The total renunciation of Christianity, by embracing either a false religion or no religion at all. In old English law, this offense could take place only in such as had once professed the Christian religion. 4 Bl.Comm. 43.

Apostata /əpəstéytə/. In civil and old English law, an apostate; a deserter from the faith; one who has renounced the Christian faith; apostate.

Apostata capiendo /əpəstéytə kəpiyéndow/. An obsolete English writ which issued against an apostate, or one who had violated the rules of his religious order. It was addressed to the sheriff, and commanded him to deliver the defendant into the custody of the abbot or prior.

A posteriori /éy postiríyóray/. Lat. From the effect to the cause; from what comes after. A term used in logic to denote an argument founded on experiment or observation, or one which, taking ascertained facts as an effect, proceeds by synthesis and induction to demonstrate their cause.

Apostille, or appostille /əpóstəl/. L. Fr. An addition; a marginal note or observation. A standard certification provided under the Hague Convention of 1961 for purpose of authenticating documents for use in foreign countries.

Apostles. In English admiralty practice, a term borrowed from the civil law, denoting brief dismissory letters granted to a party who appeals from an inferior to a superior court, embodying a statement of the case and a declaration that the record will be transmitted.

Apostoli /əpóstəlɔ̃/. In civil law, certificates of the inferior judge from whom a cause is removed, directed to the superior. *See* Apostles.

Apostolus /əpóstələs/. A messenger; an ambassador, legate, or nuncio.

Apotheca /əpəθɪkə/. In the civil law, a repository; a place of deposit, as of wine, oil, books, etc.

Apparator /əpərəytər/. A furnisher or provider. Formerly the sheriff, in England, had charge of certain county affairs and disbursements, in which capacity he was called "*apparator comitatus*" (apparator for the county), and received therefor a considerable emolument.

Apparent. That which is obvious, evident, or manifest; what appears, or has been made manifest. That which appears to the eye or mind; open to view; plain; patent. In respect to facts involved in an appeal or writ of error, that which is stated in the record. *See also* Appear on face.

Apparent agency. *See* Agency.

Apparent authority. In the law of agency, such authority as the principal knowingly or negligently permits the agent to assume, or which he holds the agent out as possessing. Such authority as he appears to have by reason of the actual authority which he has. Such authority as a reasonably prudent man, using diligence and discretion, in view of the principal's conduct, would naturally suppose the agent to possess. *Finnegan Constr. Co. v. Robino-Ladd Co.*, 354 A.2d 142, 144. Such authority as a principal intentionally or by want of ordinary care causes or allows third person to believe that agent possesses. *Lewis v. Michigan Milers Mut. Ins. Co.*, 154 Conn. 660, 228 A.2d 803, 806. It includes the power to do whatever is usually done and necessary to be done in order to carry into effect the principal power conferred.

The power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons. *Restatement, Second, Agency* § 8.

Apparent danger. As used with reference to the doctrine of self-defense in homicide, means such overt actual demonstration, by conduct and acts, of a design to take life or do some great personal injury, as would make the killing apparently necessary to self-preservation. *See* Self defense.

Apparent defects. Those defects in goods which can be discovered by simple inspection; *see* U.C.C. § 2-605.

Also, may refer to title defects which appear on the record. *See* Patent; Patent defect.

Apparent easement. *See* Easement.

Apparent heir. One whose right of inheritance is infeasible, provided he outlives the ancestor. To be contrasted with presumptive heir whose claim to inheritance is defeated on the birth of an heir closer in relationship to the ancestor, though at a given point in time the heir presumptive is entitled to the inheritance.

Apparent necessity. *See* Apparent danger.

Apparitor /əpərətər/. In old English law, an officer or messenger employed to serve the process of the spiritual courts and summon offenders.

In the civil law, an officer who waited upon a magistrate or superior officer, and executed his commands.

Apparlement /əpɑrl(ə)mənt/. In old English law, resemblance; likelihood; as apparlement of war.

Apparura /əpərəurə/. In old English law, the apparura were furniture, implements, tackle, or apparel.

App. Ct. Appellate Court.

Appeal. Resort to a superior (*i.e.* appellate) court to review the decision of an inferior (*i.e.* trial) court or administrative agency. A complaint to a higher tribunal of an error or injustice committed by a lower tribunal, in which the error or injustice is sought to be corrected or reversed. *Board of Ed. of Cleveland City School Dist. v. Cuyahoga County Bd. of Revision*, 34 Ohio St.2d 231, 298 N.E.2d 125, 128. There are two stages of appeal in the federal and many state court systems; to wit, appeal from trial court to intermediate appellate court and then to Supreme Court. There may also be several levels of appeal within an administrative agency; *e.g.* appeal from decision of Administrative Law Judge to Appeals Council in social security case. In addition, an appeal may be taken from an administrative agency to a trial court (*e.g.* from Appeals Council in social security case to U.S. district court). Also, an appeal may be as of right (*e.g.* from trial court to intermediate appellate court) or only at the discretion of the appellate court (*e.g.* by writ of certiorari to U.S. Supreme Court). Provision may also exist for joint or consolidated appeals (*e.g.* Fed.R.App.P. 3) and for cross appeals (where both parties to a judgment appeal therefrom).

Appeal was also the name formerly given to the proceeding in English law where a person, indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed*, or accused others, his accomplices in the same crime, in order to obtain his pardon. In this case he was called an "approver" or "prover," and the party appealed or accused, the "appellee."

See also Consolidated appeal; Courts of Appeals, U.S.; Cross appeal; Interlocutory appeal; Interlocutory Appeals Act; Limited appeal.

Appealable order. A decree or order which is sufficiently final to be entitled to appellate review, as con-

trasted with an interlocutory order which generally is not appealable until the case has been tried and judgment entered, *e.g.* a denial of motion for summary judgment is not appealable but the allowance of such motion is a final judgment and hence appealable. Fed.R. Civil P. 56.

Appeal bond. The court in its discretion may require the appellant to file a bond or provide other security to ensure payment of costs on appeal. See *e.g.*, Fed.R. App.P. 7.

Appeal in forma pauperis /əpiyl in fórmə pópærəs/. A privilege given indigent person to prosecute an appeal, otherwise and independently allowable, without payment of fees and costs incident to such prosecution. See *e.g.* Fed.R.App.P. 24.

Appeal record. See Record (*Record on appeal*).

Appeals council. Body to which appeal is taken from finding and ruling of administrative law judge in social security matters. 42 U.S.C.A. § 405(b).

Appeals courts. See Appellate court; Court of Appeals, U.S.; Court of Customs and Patent Appeals; Court of Military Appeals; Supreme court.

Appear. To be properly before a court; as a fact or matter of which it can take notice. To be in evidence; to be proved. Coming into court by a party to a suit, whether plaintiff or defendant. See Appearance.

Appear on face. That which is clear and apparent from a reading of the document. A defect in process or venue which can be gleaned from examining the pleadings and which does not require going outside the record. See also Apparent.

Appearance. A coming into court as party to a suit, either in person or by attorney, whether as plaintiff or defendant. The formal proceeding by which a defendant submits himself to the jurisdiction of the court. The voluntary submission to a court's jurisdiction.

In civil actions the parties do not normally actually appear in person, but rather through their attorneys (who enter their appearance by filing written pleadings, or a formal written entry of appearance). Also, at many stages of criminal proceedings, particularly involving minor offenses, the defendant's attorney appears on his behalf. See *e.g.*, Fed.R.Crim.P. 43.

An appearance may be either *general* or *special*; the former is a simple and unqualified or unrestricted submission to the jurisdiction of the court, the latter a submission to the jurisdiction for some specific purpose only, not for all the purposes of the suit. A special appearance is for the purpose of testing or objecting to the sufficiency of service or the jurisdiction of the court over defendant without submitting to such jurisdiction; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction of court. *Insurance Co. of North America v. Kunin*, 175 Neb. 260, 121 N.W.2d 372, 375, 376.

See also General appearance; Notice to appear.

Appearance by attorney. An act of an attorney in prosecuting an action on behalf of his client. Document filed in court in which attorney sets forth fact that he is representing a party to the action.

Appearance docket. A docket kept by the clerk of the court in which appearances are entered, containing also a brief abstract of all the proceedings in the cause.

Common law classifications. At common law an appearance could be either *compulsory* or *voluntary*, the former where it was compelled by process served on the party, the latter where it was entered by his own will or consent, without the service of process, though process may be outstanding. Also, *optional* when entered by a person who intervened in the action to protect his own interests, though not joined as a party; *conditional*, when coupled with conditions as to its becoming or being taken as a general appearance; *gratis*, when made by a party to the action, but before the service of any process or legal notice to appear; *de bene esse*, when made provisionally or to remain good only upon a future contingency; or when designed to permit a party to a proceeding to refuse to submit his person to the jurisdiction of the court unless it was finally determined that he had forever waived that right; *subsequent*, when made by a defendant after an appearance had already been entered for him by the plaintiff; *corporal*, when the person was physically present in court.

Initial appearance. A court proceeding for a defendant charged with a felony, during which the judge advises the defendant of the charges against him and of his rights, decides upon bail and/or other conditions of release, and sets the date for a preliminary hearing. See *e.g.* Fed.R.Crim.P. 5.

Notice of appearance. A notice given by defendant to a plaintiff that he appears in the action in person or by attorney.

Appearance doctrine. This doctrine is a special rule designed to afford a right of self-defense to defendant based upon which "appears" to the defendant to be a situation which justifies use of force in self-defense. *State v. Ferguson*, Mo.App., 581 S.W.2d 132, 136. See Self-defense.

Appellant. The party who takes an appeal from one court or jurisdiction to another. Used broadly or non-technically, the term includes one who sues out a writ of error.

Appellate. Pertaining to or having cognizance of appeals and other proceedings for the judicial review of adjudications. The term has a general meaning, and it has a specific meaning indicating the distinction between original jurisdiction and appellate jurisdiction. *Woodruff v. Bell*, 143 Kan. 110, 53 P.2d 498, 499.

Appellate court. A court having jurisdiction of appeal and review; a court to which causes are removable by appeal, certiorari, error or report. A reviewing court, and, except in special cases where original jurisdiction is conferred, not a "trial court" or court of first instance.

See *e.g.* Court of Appeals; Court of Customs and Patent Appeals; Court of Military Appeals; Supreme court.

Appellate division. An intermediate appellate court for hearing civil appeals. See *e.g.*, Mass.G.L. c. 231, § 108. Also, in Mass., a three judge panel to consider appeals of sentences for felonies. Mass.G.L. c. 278, §§ 28A, 28B. In New York, an intermediate appellate court which also has the power to make rules and regulations governing the administration of the courts. *Seidenberg v. County Court of Rockland County*, 34 N.Y.2d 499, 358 N.Y.S.2d 416, 315 N.E.2d 475. See N.Y.Judiciary Law, Article 4, § 70-109. In New Jersey, most civil appeals are to the Appellate Division of the Superior Court.

Appellate jurisdiction. The power vested in an appellate court to review and revise the judicial action of an inferior court, evidenced by an appealable order or an appealable judgment rendered by such court. *Trengen v. Mongeon*, N.D., 200 N.W.2d 50, 53. The power and authority to take cognizance of a cause and proceed to its determination, not in its initial stages (*i.e.* original jurisdiction) but only after it has been finally decided by an inferior court, *i.e.*, the power of review and determination on appeal, writ of error, certiorari, or other similar process. Jurisdiction on appeal; jurisdiction to revise or correct the proceedings in a cause already instituted and acted upon by an inferior court, or by a tribunal having the attributes of a court. Limits of appellate jurisdiction are governed by statutes (*e.g.* 28 U.S.C.A. § 1291 et seq.) or constitutions.

Appellate review. Examination of lower court proceeding by an appellate court brought about by appeal, bill of exceptions, report or certiorari. Such may also embrace review of administrative board's decision by an inferior court; *e.g.* review by federal district court of social security administration decision.

Appellate rules. Rules governing procedure in taking appeals and in practicing before appellate courts; *e.g.* Federal Rules of Appellate Procedure; Massachusetts Rules of Appellate Procedure. See Federal Rules of Appellate Procedure.

Appellatio /æpələyʃh(iy)ow/. Lat. An appeal.

Appellator /æpələytər/. An old law term having the same meaning as "appellant" (*q.v.*).

In the civil law, the term was applied to the judge ad quem, or to whom an appeal was taken.

Appellee. The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment. Sometimes also called the "respondent." It should be noted that a party's status as appellant or appellee does not necessarily bear any relation to his status as plaintiff or defendant in the lower court.

Appello /æpələw/. Lat. In the civil law, "I appeal." The form of making an appeal *apud acta*.

Appellor /æpələr/. In old English law, a criminal who accused his accomplices, or who challenged a jury. See Approver.

Append. To add or attach. See Appendix.

Appendage. Something added as an accessory to or the subordinate part of another thing. See Appendant; Appendix.

Appendant. A thing annexed to or belonging to another thing and passing with it. Something added or attached.

At common law, a thing of inheritance belonging to another inheritance which is more worthy; as an advowson, common, etc., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, etc. It differs from appurtenance, in that appendant must ever be by prescription, *i.e.*, a personal usage for a considerable time, while an appurtenance may be created at this day; for if a grant be made to a man and his heirs, of common in such a moor for his beasts levant or couchant upon his manor, the commons are appurtenant to the manor, and the grant will pass them.

See also Appendix; Appurtenance; Appurtenant.

Appenditia /æpəndish(iy)ə/. The appendages or appurtenances of an estate or house, dwelling, etc.; thus, *penthouses* are the *appenditia domus*.

Appendix. Supplementary materials added to appellate brief; *e.g.* record on appeal. In federal appellate procedure, the appellant is required to file an appendix to the briefs which shall contain the following: (1) the relevant portions of the pleadings, charge, findings or opinion; (2) the judgment, order or decision in question; and (3) any other parts of the record to which the parties wish to direct the particular attention of the court. Fed.R. App.P. 30.

Appensura /æpens(y)úrə/. Payment of money by weight instead of by count.

Appertain. To belong to; to have relation to; to be appurtenant to. See Appurtenance; Appurtenant.

Appertaining. Connected with in use or occupancy.

Applicable. Fit, suitable, pertinent, related to, or appropriate; capable of being applied.

Applicable local law. Term used to determine the persons who come within the term heirs and is the law which would be used to ascertain the heirs of the designated ancestor if he had owned the property and had died intestate. Restatement of Law of Property, § 305, Comment e.

Applicant. An applicant, as for letters of administration, is one who is entitled thereto, and who files a petition asking that letters be granted. For purposes of letters of credit, the customer in the credit transaction. Synonymous also with "account party."

Appicare /æpləkəriy/. Lat. In old English law, to fasten to; to moor (a vessel). Anciently rendered, "to apply."

Applicatio est vita regulæ /æpləkəriy(iy)ow èst váyta régyəly/. Application is the life of a rule.

Application. A putting to, placing before, preferring a request or petition to or before a person. The act of

making a request for something. A petition. The use or disposition made of a thing. A bringing together, in order to ascertain some relation or establish some connection; as the *application* of a rule or principle to a case or fact. An appeal or petition, especially as written or presented; a putting to, placing before; preferring a request or petition to or before a person; the act of making a request for something. *Sparacino v. Ferona*, 9 Ill.App.2d 422, 133 N.E.2d 753, 755. *See also*, Apply; Motion; Petition.

Insurance. The preliminary request, declaration, or statement made by a party applying for an insurance policy, such as one on his life, or against fire.

Payments. Appropriation of a payment to some particular debt; or the determination to which of several demands a general payment made by a debtor to his creditor shall be applied.

Purchase money. The disposition made of the funds received by a trustee on a sale of real estate held under the trust.

Application of rules. Refers to area of practice governed by rules of procedure and not left to common law or statutory law.

Apply. To make a formal request or petition, usually in writing, to a court, officer, board, or company, for the granting of some favor, or of some rule or order, which is within his or their power or discretion. For example, to apply for an injunction, for a pardon, for a policy of insurance, or for a receiver. *See* Application; Petition.

To use or employ for a particular purpose; to appropriate and devote to a particular use, object, demand, or subject-matter. Thus, to apply payments to the reduction of interest. *See* Appropriate.

To put, use, or refer, as suitable or relative; to coordinate language with a particular subject-matter; as to apply the words of a statute to a particular state of facts.

The word "apply" is used in connection with statutes in two senses. When construing a statute, in describing the class of persons, things, or functions which are within its scope; as that the statute does not "apply" to transactions in interstate commerce. When discussing the use made of a statute, in referring to the process by which the statute is made operative; as where the jury is told to "apply" the statute of limitation if they find that the cause of action arose before a given date.

Appoint. To designate, choose, select, assign, ordain, prescribe, constitute, or nominate. To allot or set apart. To assign authority to a particular use, task, position, or office.

Term is used where exclusive power and authority is given to one person, officer, or body to name persons to hold certain offices. It is usually distinguished from "elect," meaning to choose by a vote of the qualified voters of the city; though this distinction is not invariably observed.

See also Appointment.

Appointee. A person who is appointed or selected for a particular purpose; as the appointee under a power of appointment is the person who is to receive the benefit of the power.

Appointment. The designation of a person, by the person or persons having authority therefor, to discharge the duties of some office or trust. In *re Nicholson's Estate*, 104 Colo. 561, 93 P.2d 880, 884. *See* Illusory appointment; Power of appointment.

The exercise of a right to designate the person or persons who are to take the use of real estate. The act of a person in directing the disposition of property, by limiting a use, or by substituting a new use for a former one, in pursuance of a power granted to him for that purpose by a preceding deed, called a "power of appointment"; also the deed or other instrument by which he so conveys. Where the power embraces several permitted objects, and the appointment is made to one or more of them, excluding others, it is called "exclusive."

Appointment may signify an appropriation of money to a specific purpose. It may also mean the arranging of a meeting.

Office or public function. The selection or designation of a person, by the person or persons having authority therefor, to fill an office or public function and discharge the duties of the same. The term "appointment" is to be distinguished from "election." "Election" to office usually refers to vote of people, whereas "appointment" relates to designation by some individual or group. *Board of Education of Boyle County v. McChesney*, 235 Ky. 692, 32 S.W.2d 26, 27.

Appointment, power of. *See* Power of appointment.

Appointor. The person who appoints, or executes a power of appointment; as *appointee* is the person to whom or in whose favor an appointment is made. One authorized by the donor, under the statute of uses, to execute a power.

Apport. L. Fr. In old English law, tax; tallage; tribute; imposition; payment; charge; expenses.

Apportion. To divide and distribute proportionally.

Apportionment /əpɔːrshənmənt/. The process by which legislative seats are distributed among units entitled to representation. Determination of the number of representatives which a State, county, or other subdivision may send to a legislative body. The U.S. Constitution provides for a census every ten years, on the basis of which Congress apportions representatives according to population; but each State must have at least one representative. "Districting" is the establishment of the precise geographical boundaries of each such unit or constituency. *Seaman v. Fedourich*, 16 N.Y.2d 94, 262 N.Y.S.2d 444, 209 N.E.2d 778, 779. Apportionment by state statute which denies the rule of one-man, one-vote is violative of equal protection of laws. *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663. *See also* Legislative apportionment; Reapportionment.

The allocation of a charge or cost such as real estate taxes between two parties, often in the same ratio as the

respective times that the parties are in possession or ownership of property during the fiscal period for which the charge is made or assessed.

Contracts. The allowance, in case of a severable contract, partially performed, of a part of the entire consideration proportioned to the degree in which the contract was carried out.

Corporate shares. The *pro tanto* division among the subscribers of the shares allowed to be issued by the charter, where more than the limited number have been subscribed for.

Estate taxes. Unless the will otherwise provides, taxes shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in the Probate Code, the method described in the will controls. Uniform Probate Code, § 3-916(b).

Incumbrances. Where several persons are interested in an estate, apportionment, as between them, is the determination of the respective amounts which they shall contribute towards the removal of the incumbrance.

Liability. Legal responsibility of parties to a transaction or tort may be distributed or apportioned among them by statute or by agreement. *See* Comparative negligence; Contribution.

Rent. The allotment of shares in a rent to each of several parties owning it. The determination of the amount of rent to be paid when the tenancy is terminated at some period other than one of the regular intervals for the payment of rent.

Representatives. The determination upon each decennial census of the number of representatives in congress which each state shall elect, the calculation being based upon the population. *See* U.S.Const., Art. 1, § 2; Amend. 14, § 2.

Taxes. The apportionment of a tax consists in a selection of the subjects to be taxed, and in laying down the rule by which to measure the contribution which each of these subjects shall make to the tax.

The assignment of the business income of a multistate corporation to specific states for income taxation. Usually, the apportionment procedure accounts for the property, payroll, and sales activity levels of the various states, and a proportionate assignment of the entity's total income is made thereby, using a three-factor apportionment formula. These activities indicate the commercial domicile of the corporation, relative to that income. Some states exclude nonbusiness income from the apportionment procedure; they *allocate* nonbusiness income to the states where the nonbusiness assets are located.

Apportionment clause. Insurance policy clause which distributes insurance in proportion to the total coverage.

Apports en nature /əpɔːrts ɒn nətʃər/. In French law, that which a partner brings into the partnership other than cash; for instance, securities, realty or personalty, cattle, stock, or even his personal ability and knowledge.

Apportum /əpɔːrtəm/. In old English law, the revenue, profit, or emolument which a thing brings to the owner. Commonly applied to a corody or pension.

Apposer /əpɔːzər/. In old English law, an officer in the exchequer, clothed with the duty of examining the sheriffs in respect of their accounts. Usually called the "foreign apposer." The office is now abolished.

Appostille, or apostille /əpɔːstəl/. In French law, an addition or annotation made in the margin of a writing.

Appraisal. A valuation or an estimation of value of property by disinterested persons of suitable qualifications. The process of ascertaining a value of an asset or liability that involves expert opinion rather than explicit market transactions. *See also* Appraise.

In corporate law, a limited statutory right granted to minority shareholders who object to certain fundamental transactions such as mergers. In an appraisal proceeding a court determines the appraised value of their shares and the corporation pays such appraised value to the shareholder in cash. The Revised Model Business Corporation Act uses the term "dissenters' rights to obtain payment for their shares" to describe this right. An appraisal right exists only to the extent specifically provided by statute. *See* Appraisal remedy.

Appraisal clause. Clause in insurance policy providing that the insurer has the right to demand an appraisal of the loss or damage.

Appraisal remedy. The dissenting shareholder's appraisal remedy is essentially a statutory creation to enable shareholders who object to certain extraordinary matters to dissent and to require the corporation to buy their shares at the value immediately prior to the approval of such matter and thus to withdraw from the corporation. In different jurisdictions, the appraisal remedy often applies to sales of substantially all corporate assets other than in the regular course of business, mergers, and consolidations, more rarely to certain amendments of the articles of incorporation or miscellaneous matters, but usually not to dissolution. The appraisal remedy is often limited to shareholders of record entitled to vote on the matter.

Appraisal rights. *See* Appraisal remedy.

Appraise. To fix or set a price or value upon; to fix and state the true value of a thing, and, usually, in writing. To value property at what it is worth. To "appraise" money means to count. *See also* Appraisal.

Appraisement. A just and true valuation of property. A valuation set upon property under judicial or legislative authority. A valuation or estimation of the value of property. *See also* Appraisal.

Appraiser. A person selected or appointed by competent authority or interested party to make an appraisal; to ascertain and state the true value of goods or real estate. Frequently appointed in probate and condemnation proceedings; also used by condemnation authorities, banks and real estate companies to ascertain market value of real property.

Appreciable. Capable of being estimated, weighed, judged of, or recognized by the mind. Capable of being perceived or recognized by the senses. Perceptible but not a synonym of substantial.

Appreciate. To estimate justly; to set a price or value on. When used with reference to the nature and effect of an act, "appreciate" may be synonymous with "know" or "understand" or "realize."

Appreciation in value. Increase in the market value of an asset (e.g., real estate) over its value at some earlier time. May be due from inflation and/or increased market demand for asset.

Apprehend. To take hold of, whether with the mind (as to conceive, believe, fear, dread, understand, be conscious or sensible of), or actually and bodily (as to seize or arrest a person). *See Arrest.*

Apprehensio /æprəhəns(i)ow/. Lat. In the civil and old English law, a taking hold of a person or thing; apprehension; the seizure or capture of a person.

One of the varieties or subordinate forms of *occupatio*, or the mode of acquiring title to things not belonging to any one.

Apprehension. The seizure, taking, or arrest of a person on a criminal charge. *See Arrest.*

Civil law. A physical or corporal act (*corpus*), on the part of one who intends to acquire possession of a thing, by which he brings himself into such a relation to the thing that he may subject it to his exclusive control; or by which he obtains the physical ability to exercise his power over the thing whenever he pleases. One of the requisites to the acquisition of judicial possession, and by which, when accompanied by intention, (*animus*) possession is acquired.

Apprendre. A fee or profit taken or received.

Apprentice en la ley /əprɛntəs ɔn lə léy/. An ancient name for students at law, and afterwards applied to counsellors, *apprentici ad barras*, from which comes the more modern word "barrister." In some of the ancient law-writers the terms apprentice and barrister are synonymous.

Apprenticeship. An apprentice is a person who agrees to work for an employer for a specified time for the purpose of learning the craft, trade or profession in which the employer agrees to instruct him. In a more popular sense the term is used to convey the idea of a learner in any field of employment or business. The requirements of an apprenticeship contract both as to contents and manner of execution are prescribed by statute in a number of states. *See also* Articles of apprenticeship.

The term during which an apprentice is to serve; the *status* of an apprentice; the relation subsisting between an apprentice and his master.

Apprenticius ad legem /əprɛntɪʃiəs æd li:yjəm/. An apprentice to the law; a law student; a counsellor below the degree of serjeant. *See* Apprentice en la ley.

Approach. To come nearer in place or time.

An access or a way, passage, or avenue by which a place may be approached. *Clutts v. Jefferson County Bd. of Zoning Adjustment*, 282 Ala. 204, 210 So.2d 679, 684.

Approaches. A way, passage, street, or avenue by which a place or building can be approached; an access.

Approach, right of. In international maritime law, the right of a ship of war, upon the high sea, to draw near to another vessel for the purpose of ascertaining the nationality of the latter. *The Marianna Flora*, 24 U.S. 1, 11 Wheat. 1, 6 L.Ed. 405. At present the right of approach has no existence apart from the right of visit.

Approbation /əprəbɛyʃən/. Denotes approval and generally includes commendation. Application of *N. Y. Soul Clinic*, 208 Misc. 612, 144 N.Y.S.2d 543, 545.

Appropriate. To make a thing one's own; to make a thing the subject of property; to exercise dominion over an object to the extent, and for the purpose, of making it subserve one's own proper use or pleasure. To prescribe a particular use for particular moneys; to designate or destine a fund or property for a distinct use, or for the payment of a particular demand. Also used in the sense of distribute. In this sense it may denote the act of an executor or administrator who distributes the estate of his decedent among the legatees, heirs, or others entitled, in pursuance of his duties and according to their respective rights. *See* Appropriation; Expropriation.

Appropriated surplus. In accounting, portion of surplus set aside for specific purpose other than for existing liability.

Appropriation. The act of appropriating or setting apart; prescribing the destination of a thing; designating the use or application of a fund. *McKenzie Const. Co. v. City of San Antonio*, Tex.Civ.App., 50 S.W.2d 349, 352. In tort law, the act of making a thing one's own or exercising or making use of an object to subserve one's own interest. When the act is wrongful, a tort is committed.

In governmental accounting, an expenditure authorized for a specified amount, purpose, and time.

See also Appropriate; Misappropriation.

Appropriation of land. The act of selecting, devoting, or setting apart land for a particular use or purpose, as where land is appropriated for public buildings, military reservations, or other public uses. Taking of private property for public use in the exercise of the power of eminent domain. In this sense it may refer merely to physical occupation and contemplate payment prior thereto, in contra-distinction to "taking," referring to a legal taking and presupposing payment after damages

are due. *See* Condemnation; Eminent domain; Expropriation.

Appropriation of payments. The application of a payment to the discharge of a particular debt. Thus, if a creditor has two distinct debts due to him from his debtor, and the latter makes a general payment on account, without specifying at the time to which debt he intends the payment to apply, it is optional for the creditor to *appropriate* (apply) the payment to either of the two debts he pleases.

Appropriation of water. An appropriation of water flowing on the public domain consists in the capture, impounding, or diversion of it from its natural course or channel and its actual application to some beneficial use private or personal to the appropriator, to the entire exclusion (or exclusion to the extent of the water appropriated) of all other persons. To constitute a valid appropriation, there must be an intent to apply the water to some beneficial use existing at the time or contemplated in the future, a diversion from the natural channel by means of a ditch or canal, or some other open physical act of taking possession of the water, and an actual application of it within a reasonable time to some useful or beneficial purpose. *In re Manse Spring and Its Tributaries*, Nye County, 60 Nev. 262, 108 P.2d 311, 314; *State of Neb. v. State of Wyo.*, 325 U.S. 589, 65 S.Ct. 1332, 1349, 89 L.Ed. 1815. It follows water to its original source whether through surface or subterranean streams or through percolation, *Justesen v. Olsen*, 86 Utah 158, 40 P.2d 802, 809; and entitles appropriator to continuing right to use water to extent of appropriation, but not beyond that reasonably required and actually used. *State of Arizona v. State of California*, Ariz. & Cal., 298 U.S. 558, 56 S.Ct. 848, 852, 80 L.Ed. 1331.

Public law. The act by which the legislative department of government designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, or to some individual purchase or expense. Authority given by legislature to proper officers to apply distinctly specified sum from designated fund out of treasury in given year for specified object or demand against state. *State ex rel. Murray v. Carter*, 167 Okl. 473, 30 P.2d 700, 702.

The legislative designation of a certain amount of money as being set apart, allotted, or assigned for a specific purpose. Purpose of a *general* appropriation bill is to fund programs that have been separately authorized by other legislation. *Colorado General Assembly v. Lamm*, Colo., 704 P.2d 1371, 1382. A *specific* appropriation is an act of the legislature by which a named sum of money has been set apart in the treasury, and devoted to the payment of a particular demand.

Appropriation bill. A measure before a legislative body authorizing the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure. Appropriation bills in Congress must originate in the House. U.S.Const. Art. I, Sec. 7. *See also* Appropriation (*Public law*).

Appropriator. One who makes an appropriation; as, an appropriator of water.

Approval. The act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another. "Approval" implies knowledge and exercise of discretion after knowledge. *McCarten v. Sanderson*, 111 Mont. 407, 109 P.2d 1108, 1112. The act of a judge or magistrate in sanctioning and accepting as satisfactory a bond, security, or other instrument which is required by law to pass his inspection and receive his approbation before it becomes operative. *See* Affirm; Approve; Assent; Condonation; Confirmation; Connivance; Consent; Ratification. For *sale on approval*, *see* Sale.

Approval sales. A buyer may, by agreement, accept goods on approval, and title does not pass until he has indicated his approval. Approval is a condition precedent to passing of title and risk. U.C.C. § 2-326.

Approve. To be satisfied with; to confirm, ratify, sanction, or consent to some act or thing done by another. To sanction officially; to ratify; to confirm; to pronounce good; think or judge well of; admit the propriety or excellence of; be pleased with. Distinguishable from "authorize," meaning to permit a thing to be done in future. To take to one's proper and separate use. To improve; to enhance the value or profits of anything. To inclose and cultivate common or waste land. *See also* Approval; Confirmation; Ratification.

Approved indorsed notes. Notes indorsed by another person than the maker, for additional security, the indorser being satisfactory to the payee. *See* Accommodation paper; Accommodation party.

Approved list. *See*, Legal list.

Improvement. In English law, the improvement or partial enclosure of a common. The profits arising from the improvement of land approved. Now requires consent of the government by Law of Property Act, 1925, § 194.

In old English law, a practice of criminal prosecutions by which a person accused of treason or felony was permitted to exonerate himself by accusing others and escaping prosecution himself. The custom existed only in capital cases, and consisted in the accused, called "approver", being arraigned and permitted to confess before plea and appeal or accuse another as his accomplice of the same crime in order to obtain his pardon. *See* Approver.

Approver. L. Fr. To approve or prove; to vouch.

In old English law, an accomplice in crime who accused others of the same offense, and was admitted as a witness at the discretion of the court to give evidence against his companions in guilt. He was vulgarly called "King's Evidence." One who confessed himself guilty of felony and accused others of the same crime to save himself from punishment. If he failed to convict those he accused he was at once hung. *See also* Antithetarius.

At common law, one who brought formal charges against and privately prosecuted one's accomplices. *Oliver v. State*, 454 A.2d 856, 863, 53 Md.App. 490.

In old English law, certain men sent into the several counties to increase the farms (rents) of hundreds and wapentakes, which formerly were let at a certain value to the sheriff. *See* Hundred; Wapentake.

Approximate. Used in the sense of an estimate merely, meaning more or less, but about and near the amount, quantity, or distance specified. Near to; about; a little more or less; close. "Approximately" is very nearly synonymous with "proximately", meaning very nearly, but not absolutely.

Approximation. Equitable doctrine by which precise terms of charitable trust can be varied under certain circumstances. Applicable to charitable trusts and employed only where on failure of trust the court finds a general charitable intent. Under this doctrine, the general intent of the donor is carried out as nearly as may be even if the particular method pointed out by him cannot be followed. *Harris v. Attorney General*, 31 Conn.Sup. 93, 324 A.2d 279, 283. *See* Cy-Pres.

Appruare /æpruwéyri/. To take to one's use or profit.

Appurtenance /əpártənəns/. That which belongs to something else; an adjunct; an appendage. Something annexed to another thing more worthy as principal, and which passes as incident to it, as a right of way or other easement to land; an outhouse, barn, garden, or orchard, to a house or messuage. *Joplin Waterworks Co. v. Jasper County*, 327 Mo. 964, 38 S.W.2d 1068, 1076. An article adapted to the use of the property to which it is connected, and which was intended to be a permanent accession to the freehold. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or watercourse, or of a passage for light, air, or heat from or across the land of another. *See also* Appendant.

Appurtenant. Belonging to; accessory or incident to; adjunct, appended, or annexed to; answering to *accessorium* in the civil law. Employed in leases for the purpose of including any easements or servitudes used or enjoyed with the demised premises. A thing is "appurtenant" to something else when it stands in relation of an incident to a principal and is necessarily connected with the use and enjoyment of the latter. A thing is deemed to be incidental or *appurtenant* to land when it is by right used with the land for its benefit, as in the case of a way, or water-course, or of a passage for light, air, or heat from or across the land of another. *See also* Easement.

APR. *See* Annual percentage rate.

A.P.R.C. *Anno post Romam conditam*, year after the foundation of Roman.

A prendre /à prándər/. L. Fr. To take; to seize. *Bref à prendre la terre*, a writ to take the land. A right to take something out of the soil of another is a profit à *prendre*, or a right coupled with a profit. Distinguished from an easement. Sometimes written as one word, *apprendre*, *apprender*. *See* Profit (*Profit à prendre*).

A priori /èy prayóray/. Lat. From the cause to the effect; from what goes before. A term used in logic to denote an argument founded on analogy, or abstract considerations, or one which, positing a general principle or admitted truth as a cause, proceeds to deduce from it the effects which must necessarily follow.

A provisione viri /èy prövizhiyówniy vihray/. By the provision of man.

Apt. Fit; suitable; appropriate.

Apta viro /éptə vírow/. Fit for a husband; marriageable; a woman who has reached marriageable years.

Apt words. Words proper to produce the legal effect for which they are intended; sound technical phrases.

Apud acta /épd əktə/. Among the acts; among the recorded proceedings. In the civil law, this phrase is applied to appeals taken orally, in the presence of the judge, at the time of judgment or sentence. *Credit Co., Ltd., v. Arkansas Cent. Ry. Co.*, 128 U.S. 258, 9 S.Ct. 107, 108, 32 L.Ed. 448.

Aqua /ékwə/. In the civil and old English law, water; sometimes a stream or water-course.

Aqua aestiva /ékwə íystivə/. In Roman law, summer water; water that was used in summer only.

Aqua cedit solo /ékwə síydot sówlow/. Water follows the land. A sale of land will pass the water which covers it. 2 Bl.Comm. 18.

Aqua currens /ékwə káhrenz/. Running water.

Aqua currit et debet currere, ut currere solebat /ékwə kóhrət èt débət kóhrəriy, ùt kóhrəriy sówliybət/. Water runs, and ought to run, as it has used to run. A running stream should be left to flow in its natural channel, without alteration or diversion; that water is the common and equal property of every one through whose domain it flows.

Aqua dulcis, or frigida /ékwə dóləs/'frískə/. Fresh water.

Aqua ductus /ékwiy dóktəs/. In the civil law, a servitude which consists in the right to carry water by means of pipes or conduits over or through the estate of another.

Aqua haustus /ékwiy hóstəs/. In the civil law, a servitude which consists in the right to draw water from the fountain, pool, or spring of another.

Aqua immittendæ /ékwiy iməténdiy/. A civil law easement or servitude, consisting in the right of one whose house is surrounded with other buildings to cast waste water upon the adjacent roofs or yards. Similar to the common law easement of drip.

Aqua fontanea /ékwə fontéyniyə/. Spring water.

Aquagium /əkwéyjiəm/. A canal, ditch, or water course running through marshy grounds. A mark or gauge placed in or on the banks of a running stream, to indicate the height of the water, was called "*aquagaugium*."

Aqua profluens /ækwə prófluwenz/. Flowing or running water.

Aqua quotidiana /ækwə kwowtidíyénə/. In Roman law, daily water; water that might be drawn at all times of the year (*qua quis quotidie possit uti, si vellet*).

Aqua salsa /ækwə sálsə/. Salt water.

Aquatic rights. Rights which individuals have to the use of the sea and rivers, for the purpose of fishing and navigation, and also to the soil in the sea and rivers. See Riparian rights; Water (*Water rights*).

Aquilian law. See Lex Aquilia.

A quo /èy kwów/. Lat. From which. A court *a quo* (also written "a qua") is a court from which a cause has been removed. The judge *a quo* is the judge in such court. A term used, with the correlative *ad quem* (to which), in expressing the computation of time, and also of distance in space. Thus, *dies a quo*, the day from which and *dies ad quem*, the day to which, a period of time is computed. So, *terminus a quo*, the point or limit from which, and *terminus ad quem*, the point or limit to which, a distance or passage in space is reckoned.

A quo invito aliquid exigi potest /èy kwów inváyto w ælækwəd égzəjáj pówtəst/. From whom something may be exacted against his will.

A.R. Anno Regni. In the year of the reign; as A. R. V. R. 22, (*Anno Regni Victoriae Reginae vicesimo secundo*) in the twenty-second year of the reign of Queen Victoria.

Arabant /ərəybənt/. They plowed. A term of feudal law, applied to those who held by the tenure of plowing and tilling the lord's lands within the manor.

Arable land /árəbəl lænd/. That which is fit for plowing or tillage, and thus is distinguishable from swamp land, which is land that is too wet for cultivation.

Araho. In feudal law, to make oath in the church or some other holy place. All oaths were made in the church upon the relics of saints, according to the Riparian laws.

Aralia /ərəyliyə/. Plowlands. Land fit for the plow. Denoting the character of land, rather than its condition.

Arator /ərəytər/. A plowman; a farmer of arable land.

Aratrum terræ /ərəytrəm tériy/. In old English law, a plow of land; a plowland; as much land as could be tilled with one plow (or by a single "arator" or plowman).

Aratura terræ /ərətyúrə tériy/. The plowing of land by the tenant, or vassal, in the service of his lord.

Araturia /ərət(y)úriyə/. Land suitable for the plow; arable land.

ARB. See Accounting Research Bulletin.

Arbiter /ərbətər/. A person chosen to decide a controversy; an arbitrator, referee. A person bound to decide according to the rules of law and equity, as distinguished from an arbitrator, who may proceed wholly at

his own discretion, so that it be according to the judgment of a sound man. See Arbitrator.

In the Roman law, a judge invested with a discretionary power. A person appointed by the prætor to examine and decide that class of causes or actions termed *bonæ fidei*, "and who had the power of judging according to the principles of equity, (*ex æquo et bono*) distinguished from the *judex*, (*q.v.*) who was bound to decide according to strict law.

Arbitrage /ərbətrəj/. The simultaneous purchase in one market and sale in another of a security or commodity in hope of making a profit on price differences in the different markets. See Arbitration of exchange; Arbitrators. For *Arbitrage bond*, see Bond.

Arbitrators /ərbətrèyjerz/zhərz/. Market investors who take off-setting positions in the same or similar securities in order to profit from small price variations. An arbitrator, for example, may buy shares on the Pacific Coast Exchange and simultaneously sell the same shares on the New York Stock Exchange if any price discrepancy occurs between the quotations in the two markets. By taking advantage of momentary disparities in prices between markets, arbitrators perform the economic function of making those markets more efficient.

Arbitrament /ərbitrəmənt/. The award or decision of arbitrators upon a matter of dispute, which has been submitted to them.

Arbitrament and award /ərbitrəmənt ənd əwórd/. A plea to an action brought for the same cause which had been submitted to arbitration and on which an award had been made.

Arbitramentum æquum tribuit cuique suum /ərbitrəməntəm íkwəm tribuwət káykwiy s(y)úwəm/. A just arbitration renders to every one his own.

Arbitrarily. See Arbitrary.

Arbitrariness. Conduct or acts based alone upon one's will, and not upon any course of reasoning and exercise of judgment. *Garman v. Myers*, 183 Okl. 141, 80 P.2d 624, 626.

Arbitrary. In an unreasonable manner, as fixed or done capriciously or at pleasure. Without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic; *Corneil v. Swisher County, Tex.Civ.App.*, 78 S.W.2d 1072, 1074. Without fair, solid, and substantial cause; that is, without cause based upon the law, *U. S. v. Lotempio, D.C. N.Y.*, 58 F.2d 358, 359; not governed by any fixed rules or standard. Willful and unreasoning action, without consideration and regard for facts and circumstances presented. In *re West Laramie, Wyo.*, 457 P.2d 498, 502. Ordinarily, "arbitrary" is synonymous with bad faith or failure to exercise honest judgment and an arbitrary act would be one performed without adequate determination of principle and one not founded in nature of

things. Huey v. Davis, Tex.Civ.App., 556 S.W.2d 860, 865.

Arbitrary and capricious. Characterization of a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or law or without determining principle. Elwood Investors Co. v. Behme, 79 Misc.2d 910, 361 N.Y.S.2d 488, 492. *See also*, Rational basis test.

Arbitrary power. Power to act according to one's own will; especially applicable to power conferred on an administrative officer, who is not furnished any adequate determining principle. Fox Film Corporation v. Trumbull, D.C.Conn., 7 F.2d 715, 727.

Arbitrary punishment. That punishment which is left to the decision of the judge, in distinction from those defined by statute. *See* Sentence.

Arbitration /'arbətreyshən/. A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard. Where arbitration is voluntary, the disputing parties select the arbitrator who has the power to render a binding decision.

An arrangement for taking and abiding by the judgment of selected persons in some disputed matter, instead of carrying it to established tribunals of justice, and is intended to avoid the formalities, the delay, the expense and vexation of ordinary litigation. Wauregan Mills Inc. v. Textile Workers Union of America, A.F.L.-C.I.O., 21 Conn.Sup. 134, 146 A.2d 592, 595. Such arbitration provisions are common in union collective bargaining agreements.

The majority of the states have adopted the Uniform Arbitration Act.

Agreements to arbitrate have been declared to be valid and fully enforceable by statute. 9 U.S.C.A. § 2.

An organization that provides arbitration services is the American Arbitration Association (*q.v.*).

See also Alternative dispute resolution; Conciliation; Mediation; Mediation and Conciliation Service; Reference.

Compulsory arbitration is that which occurs when the consent of one of the parties is enforced by statutory provisions. Examples of such are state statutes requiring compulsory arbitration of labor disputes involving public employees. *See* Arbitration clause.

Final offer arbitration. In this type of arbitration, the arbitrator must choose the final offer of either one party or the other and is, therefore, not permitted to compromise.

Interest and grievance arbitration distinguished. Interest arbitration involves settlement of terms of a contract between the parties as contrasted with grievance arbitration which concerns the violation or interpretation of an existing contract. School Committee of Boston et al. v. Boston Teachers Union etc., 363 N.E.2d 485.

Voluntary arbitration is by mutual and free consent of the parties.

Arbitration Acts. Federal and state laws which provide for submission of disputes to process of arbitration, including labor grievances and disputes of public employees. An example of a federal Act is Title 9, U.S.C.A. § 1 *et seq.* which governs settlement of disputes involved in maritime transactions and commerce under federal statutes. Most states have arbitration acts, many of which are patterned on the Uniform Arbitration Act. The purpose of such acts, in general, is to validate arbitration agreements, make the arbitration process effective, provide necessary safeguards, and provide an efficient procedure when judicial assistance is necessary.

Arbitration and award. An affirmative defense to the effect that the subject matter of the action has been settled by a prior arbitration. Fed.R. Civil P. 8(c).

Arbitration board. A panel of arbitrators appointed to hear and decide a dispute according to rules of arbitration. *See e.g.* American Arbitration Association.

Arbitration clause. A clause inserted in a contract providing for compulsory arbitration in case of dispute as to rights or liabilities under such contract; *e.g.* disputes arising under union collective bargaining agreement, or disputes between consumer and retailer or manufacturer. The purpose of such clause is to avoid having to litigate disputes that might arise.

Arbitration of exchange. This takes place where a merchant pays his debts in one country by a bill of exchange upon another. The business of buying and selling exchange (bills of exchange) between two or more countries or markets, and particularly where the profits of such business are to be derived from a calculation of the relative value of exchange in the two countries or markets, and by taking advantage of the fact that the rate of exchange may be higher in the one place than in the other at the same time. *See* Arbitrage.

Arbitrator. A neutral person either chosen by the parties to a dispute or appointed by a court, to hear the parties claims and render a decision. Many arbitrators are members of the American Arbitration Association. *See also* Referee; Umpire.

Arbitrium /'arbitriyəm/. The decision of an arbiter, or arbitrator; an award; a judgment.

Arbitrium est iudicium /'arbitriyəm èst juwdishiyəm/. An award is a judgment.

Arbitrium est iudicium boni viri, secundum æquum et bonum /'arbitriyəm èst juwdishiyəm bównay v́aray, səkándəm iykwəm èt bównəm/. An award is the judgment of a good man, according to justice.

Arbor civilis /'arbər sívələs/. A genealogical tree.

Arbor consanguinitatis /'arbər kònsængwiniytétəs/. A table, formed in the shape of a tree, showing the genealogy of a family; *e.g.* the *arbor civilis* of the civilians and canonists.

Arbor finalis /'arbər fánéyləs/. In old English law, a boundary tree; a tree used for making a boundary line.

- Arcana imperii** /arkéynə impíriyà/. State secrets. 1 Bl.Comm. 337.
- Arcarius** /arkériyəs/. In civil and old English law, a treasurer; a keeper of public money.
- Archaionomia** /arkiyənówmiyə/. A collection of Saxon laws, published during the reign of Queen Elizabeth, in the Saxon language, with a Latin version by Lambard.
- Archdeaconry** /archdíykənriy/. A division of a diocese, and the circuit of an archdeacon's jurisdiction.
- Archdeacon's court.** In English ecclesiastical law, a court held before a judge appointed by the archdeacon, and called his official. Its jurisdiction comprised the granting of probates and administrations, and ecclesiastical causes in general, arising within the archdeaconry. It was the most inferior court in the whole ecclesiastical polity of England. Appeal was to the bishops' courts.
- Archery.** In feudal law, a service of keeping a bow for the lord's use in the defense of his castle.
- Arches Court** /árchəz kórt/. In English ecclesiastical law, a court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the "Dean of the Arches", because his court was anciently held in the church of Saint Mary-le-Bow (*Sancta Maria de Arcubus*), so named from the steeple, which is raised upon pillars built archwise. The court was afterwards held in the hall belonging to the College of Civilians, commonly called "Doctors' Commons". It is now held in Westminster Hall. Its proper jurisdiction is only over the thirteen peculiar parishes belonging to the archbishop in London, but, the office of Dean of the Arches having been for a long time united with that of the archbishop's principal official, the Judge of the Arches, in right of such added office, it receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province. Many original suits are also brought before him from which the inferior judge has waived jurisdiction. From the Court of Arches an appeal lies to the Judicial Committee of the Privy Council.
- Archetype** /árkətəyp/. The original from which a copy is made.
- Archicapellanus** /árkiykəpələynəs/. L. Lat. In old European law, a chief or high chancellor (*summus cancellarius*).
- Architect's lien.** A lien on real estate created by statute in favor of the architect who drew the plans and supervised the construction of the real estate for purpose of insuring payment of his fee.
- Archives.** Place where old books, manuscripts, records, etc. are kept.
- Archivist** /árkəvist/. Custodian of archives.
- Arcifinious** /ársəfíniyəs/. (Lat. *arcifinius* or *arcifinalis*; Fr. *arcifinie*). Pertaining to landed estates having natural boundaries, such as woods, mountains, or rivers. The owners of such estates, unlike the owners of "agri limitati" (*q.v.*), have the right of alluvion. Also, having a frontier forming a natural defense.
- Arcta et salva custodia** /árktə èt sàlvə kəstówdiýə/. Lat. In strict (or close) and safe custody or keeping. When a defendant is arrested on a *capias ad satisfaciendum* (*ca.sq.*), he is to be kept *arcta et salva custodi*. 3 Bl.Comm. 415.
- Ardent spirits.** Synonymous with distilled or spirituous liquors and, sometimes, with intoxicating liquors generally, though the term is properly applied only to liquors obtained by distillation, such as rum, whiskey, brandy, and gin. *Sarlls v. U. S.*, 152 U.S. 570, 572, 14 S.Ct. 720, 38 L.Ed. 556.
- Ardour** /árdər/. In old English law, an incendiary; a house burner. An arsonist.
- Area.** A surface, a territory, a region. Any plane surface, also the inclosed space on which a building stands. A particular extent of space or surface or one serving a special purpose. In the civil law, a vacant space in a city; a place not built upon. For "common area", see Common.
- Area bargaining.** Negotiation of collective bargaining agreement between a union and more than one employer within a given geographical area.
- Area variance.** In zoning law, a variance which authorizes deviations from restrictions upon construction and placement of buildings and structures which are employed to serve permitted statutory use. *Biens v. City of Dayton*, 29 Or.App. 761, 566 P.2d 904, 919. See also *Variance (Zoning)*.
- Area wide bargaining.** See *Area bargaining*.
- A remenaunt** /à rəmèynənt/. Forever.
- A rendre** /à rándər/. Fr. To render, to yield. That which is to be rendered, yielded, or paid. *Profits à rendre* comprehend rents and services.
- Arentare** /ərentériy/. Lat. To rent; to let out at a certain rent. *Arentatio*. A renting.
- Areopagite** /əriyópəgayt/. In ancient Greek law, a lawyer or chief judge of the Areopagus in capital matters in Athens; a tribunal so called after a hill or slight eminence, in a street of that city dedicated to Mars, where the court was held in which those judges were wont to sit.
- Arere** /əri/. L. Fr. Behind; in arrear; back; again.
- A rescriptis valet argumentum** /èy rəskriptəs vələt arguywémentəm/. An argument from rescripts [*i.e.* original writs in the register] is valid.
- A responsis** /èy rəspónsəs/. L. Lat. In ecclesiastical law, one whose office it was to give or convey answers; otherwise termed *responsalis*, and *apocrisarius*. One who, being consulted on ecclesiastical matters, gave answers, counsel, or advice; otherwise termed a *consiliis*.
- Aretro** /èyriytrow/. In arrear; behind. Also written a *retro*.
- Arg.** An abbreviation of *arguendo*.
- Argent.** In heraldry, silver.

Argentarius /'arjəntəriyəs/ (*pl.*, **argentarii** /'arjəntəriyây/). In the Roman law, a money lender or broker; a dealer in money; a banker. *Argentarium*, the instrument of the loan, similar to the modern word "bond" or "note."

Argentarius miles /'arjəntəriyəs máyliyz/. A money porter in the English exchequer, who carried the money from the lower to the upper exchequer to be examined and tested.

Argenteus /arjəntiyəs/. An old French coin, similar to the English shilling.

Argentum /arjəntəm/. Silver; money.

Argentum album /arjəntəm əlbəm/. Bullion; uncoined silver; common silver coin; silver coin worn smooth.

Argentum dei /arjəntəm díyay/. God's money; God's penny; money given as earnest in making a bargain.

Arguendo /'argyuwéndow/. In arguing; in the course of the argument. A statement or observation made by a judge or attorney as a matter of argument or hypothetical illustration, is said to be made *arguendo*, or in the abbreviated form, *arg*.

Argument. An effort to establish belief by a course of reasoning. In rhetoric and logic, an inference drawn from premises, the truth of which is indisputable, or at least highly probable. *See also* Oral argument.

Argument by counsel. Remarks addressed by attorney to judge or jury on the merits of case or on points of law. Oral presentation to appellate court in which attorney's brief is argued; generally limited in time, order, and content by court rule (see *e.g.* Fed.R.App.P. 34). *See* Opening statement of counsel.

Argument to jury. Closing remarks of attorney to jury in which he strives to persuade jury of merits of case; generally limited in time by rules of court. The argument is not evidence. *See also* Closing argument.

Argumentative. Characterized by argument; controversial; given to debate or dispute. A pleading is so called in which the statement on which the pleader relies is implied instead of being expressed, or where it contains, in addition to proper statements of facts, reasoning or arguments upon those facts and their relation to the matter in dispute, such as should be reserved for presentation at the trial.

Argumentative instruction. A jury instruction which singles out or unduly emphasizes a particular issue, theory, or defense, or one which tends to invade the province of the jury with regard to the weight, probative effect, or sufficiency of the evidence or the inferences to be drawn therefrom.

Argumentative question. A faulty form of examination of witness by propounding a question which suggests answer in a manner favorable to party who advances the question or which contains a statement in place of a question. *See* Leading question.

Argumentum ab auctoritate est fortissimum in lege /'argyáméntəm əb októrtétyi èst fortísəməm in líjjiy/.

An argument from authority is the strongest in the law. "The book cases are the best proof of what the law is."

Argumentum ab impossibili valet in lege /'argyáméntəm əb imposibəlay vələt in líjjiy/. An argument drawn from an impossibility is forcible in law.

Argumentum ab inconvenienti /'argyáméntəm əb iŋkənviniyéntay/. An argument arising from the inconvenience which the proposed construction of the law would create.

Where the constitutionality of a statute is concerned, it is only when the question is close and doubtful that this doctrine will be applied and consideration taken of the consequences of declaring the statute unconstitutional. *Calhoun County v. Early County*, 205 Ga. 169, 52 S.E.2d 854; *Smith v. City Council of Augusta*, 203 Ga. 511, 47 S.E.2d 582, 587.

Argumentum ab inconvenienti est validum in lege; quia lex non permittit aliquod inconueniens /'argyáméntəm əb iŋkənviniyéntay èst vələdəm in líjjiy; kwáyə léks non pərmítət əlkwəd iŋkənviniyenz/. An argument drawn from what is inconvenient is good in law, because the law will not permit any inconvenience.

Argumentum ab inconvenienti plurimum valet [est validum] in lege /'argyáméntəm əb iŋkənviniyéntay pl(y)úrəməm vələt in líjjiy/'èst vələdəm"/. An argument drawn from inconvenience is of the greatest weight [is forcible] in law. If there be in any deed or instrument equivocal expressions, and great inconvenience must necessarily follow from one construction, it is strong to show that such construction is not according to the true intention of the grantor; but where there is no equivocal expression in the instrument, and the words used admit only of one meaning, arguments of inconvenience prove only want of foresight in the grantor.

Argumentum a communiter accidentibus in jure frequens est /'argyáméntəm əy kəmyúwnətər əksədéntəbəs in júriy friykwenz èst/. An argument drawn from things commonly happening is frequent in law.

Argumentum a divisione est fortissimum in jure /'argyáméntəm əy divizhiyówniy èst fortísəməm in júriy/. An argument from division [of the subject] is of the greatest force in law.

Argumentum a majori ad minus negative non valet; valet e converso /'argyáméntəm əy majóray əd máynəs negətáyviy nòn vələt; vələt iy kənvərsow/. An argument from the greater to the less is of no force negatively; affirmatively (or conversely) it is.

Argumentum a simili valet in lege /'argyáméntəm əy síməlay vələt in líjjiy/. An argument from a like case (from analogy) is good in law.

Aribannum /'ærbənnəm/. In feudal law, a fine for not setting out to join the army in obedience to the summons of the king.

Arierban, or **arriere-ban** /'æriyéy bənn/. An edict of the ancient kings of France and Germany, commanding all their vassals, the noblesse, and the vassals' vassals,

to enter the army, or forfeit their estates on refusal. See *Arrier ban*.

Arimanni /*ärəmáney*/. A mediæval term for a class of agricultural owners of small allodial farms, which they cultivated in connection with larger farms belonging to their lords, paying rent and service for the latter, and being under the protection of their superiors. Military tenants holding lands from the emperor.

Arise. To spring up, originate, to come into being or notice; to become operative, sensible, visible, or audible; to present itself. *Bergin v. Temple*, 111 Mont. 539, 111 P.2d 286, 289, 290.

A cause of action or suit "arises", so as to start running of limitation, when party has a right to apply to proper tribunal for relief, *Washington Security Co. v. State*, 9 Wash.2d 197, 114 P.2d 965, 967; and it arises at time when and place where act is unlawfully omitted or committed. *State ex rel. Birnamwood Oil Co. v. Shaughnessy*, 243 Wis. 306, 10 N.W.2d 292, 295. See *Limitation (Statute of limitations)*.

Arise under. An action "arises under" the laws of the United States, for purposes of federal question jurisdiction, if, and only if, the complaint seeks a remedy expressly granted by a federal statute or if resolution of the issue requires construction of the statute or if the statute embodies a distinct policy which requires that federal legal principles control its disposition. *Comtronics, Inc. v. Puerto Rico Tel. Co., D.C.Puerto Rico*, 409 F.Supp. 800, 813.

A case "arises" under the Constitution or a law of the United States, so as to be within the jurisdiction of a federal court, whenever its correct decision depends on the construction of either. *Blease v. Safety Transit Co., C.C.A.S.C.*, 50 F.2d 852, 854.

Arising out of and in the course of own employment. Workers' compensation acts provide for compensating an employee whose injury is one "arising out of and in the course of the employment." These words describe an injury directly and naturally resulting in a risk reasonably incident to the employment. *Trudenich v. Marshall, D.C.Wash.*, 34 F.Supp. 486, 488. They mean that there must be some causal connection between the conditions under which the employee worked and the injury which he received.

The words "arising out of employment" refer to the origin of the cause of the injury, while "course of employment" refers to the time, place, and circumstances under which the injury occurred. An injury arises "out of" employment if it arises out of nature, conditions, obligations and incidents of the employment. *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497, 501.

See also *Course of employment*; *In the course of employment*.

Aristocracy. A government in which a class of persons, believed to be superior, rules supreme. A form of government which is lodged in a minority consisting of those believed to be best qualified; a privileged class of

the people; nobles, dignitaries, people of wealth and station.

Aristo-democracy. A form of government where the power is divided between the nobles (or the more powerful) and the people.

ARM. Adjustable Rate Mortgage. See *Mortgage*.

Arma /*ármə*/. Lat. Arms; weapons, offensive and defensive; armor; arms or cognizances of families.

Arma dare /*ármə dériy*/. To dub or make a knight.

Arma in armatos sumere jura sinunt /*ármə in arméy-tos s(y)úwməriy júrə sáynt*/. The laws permit the taking up of arms against armed persons.

Arma moluta /*ármə məl(y)úwtə*/. Sharp weapons that cut, in contradistinction to such as are blunt, which only break or bruise.

Arma reversata /*ármə riyvərséyətə*/. Reversed arms, a punishment for a traitor or felon.

Armata vis /*arméyətə vis*/. In the civil law, armed force.

Armed. Furnished or equipped with weapons of offense or defense. *People ex rel. Griffin v. Hunt*, 150 Misc. 163, 270 N.Y.S. 248, 254.

Armed neutrality. An attitude of neutrality between belligerents which the neutral state is prepared to maintain by armed force if necessary.

Armed peace. A situation in which two or more nations, while actually at peace with each other, are armed for possible or probable hostilities.

Armed robbery. An aggravated form of robbery in which the defendant is armed with a dangerous weapon, though it is not necessary to prove that he used the weapon to effectuate the robbery. The taking of property from person or presence of another by use of force or by threatening use of force while armed with a dangerous weapon. *People v. Redding*, 43 Ill.App. 1024, 2 Ill.Dec. 784, 357 N.E.2d 1227, 1230.

Armiger /*árməjər*/. An armor-bearer; an esquire. A title in old English law of dignity belonging to gentlemen authorized to bear arms. In its earlier meaning, a servant who carried the arms of a knight. A tenant by scutage; a servant or valet; applied, also, to the higher servants in convents.

Arming one's self. Equipping one's self with a weapon or weapons.

Armiscara /*árməskérə*/. An ancient mode of punishment, which was to carry a saddle at the back as a token of subjection.

Armistice. A suspending or cessation of hostilities between belligerent nations or forces for a considerable time. An armistice differs from a mere "suspension of arms" (*q.v.*) in that the latter is concluded for very brief periods and for local military purposes only, whereas an armistice not only covers a longer period, but is agreed upon for political purposes. It is said to be *general* if it relates to the whole area of the war, and *partial* if it relates to only a portion of that area. *Partial armistices*

are sometimes called *truces* (*q.v.*) but there is no hard and fast distinction.

Arm of the sea. A portion of the sea projecting inland, in which the tide ebbs and flows. It is considered as extending as far into the interior of a country as the water of fresh rivers is propelled backwards by the ingress of the tide. *See* *Fauces terræ*.

Armorial bearings /*armóriyæl bériŋz*/. In English law, a device depicted on the (now imaginary) shield of one of the nobility, of which gentry is the lowest degree. The criterion of nobility is the bearing of arms, or armorial bearings, received from ancestry.

Armorum appellatione, non solum scuta et gladii et galeæ, sed et fustes et lapides continentur /*armóram æpələyshiýówniy, nòn sówłəm sk(y)úwtə èt gládiyay et gáliiy, sèd et fístiyz et ləpədiyaz kontənéntər*/. Under the name of arms are included, not only shields and swords and helmets, but also clubs and stones.

Armory. A building where arms, ammunition, and instruments of war are stored.

Arms. Anything that a man wears for his defense, or takes in his hands as a weapon. *See also* *Bear arms*.

Arms, law of. Agreements (as established *e.g.* by Geneva Convention) which give precepts and rules concerning conditions of war; *e.g.* treatment of prisoners, wounded, etc.

Arm's length transaction. Said of a transaction negotiated by unrelated parties, each acting in his or her own self interest; the basis for a fair market value determination. A transaction in good faith in the ordinary course of business by parties with independent interests. Commonly applied in areas of taxation when there are dealings between related corporations, *e.g.* parent and subsidiary. *Inecto, Inc. v. Higgins, D.C.N.Y., 21 F.Supp. 418.* The standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction. For example, if a corporation sells property to its sole shareholder for \$10,000, in testing whether \$10,000 is an "arm's length" price it must be ascertained for how much the corporation could have sold the property to a disinterested third party in a bargained transaction.

Arms, right to. Right guaranteed by Second Amendment, U.S. Constitution, to keep and bear arms. This right does not, however, permit a person to carry gun in violation of state or federal gun law. *Com. v. Jackson, Mass., 344 N.E.2d 166.*

Army. Armed forces of a nation intended for military service on land.

Regular army. The permanent military establishment, which is maintained both in peace and war according to law. *Compare* *Militia*.

Around. In the vicinity of; near or close-by.

Arpen, arpent, arpennus. A civil and French measure of land equal to about an acre.

Arpentator /*àrpəntéytər*/. A measurer or surveyor of land.

Arra /*árə*/. In the civil law, earnest; earnest-money; evidence of a completed bargain. Used of a contract of marriage, as well as any other. Spelled, also, *Arrha, Arrhæ, Arræ*. *Cf.* *Arles*.

Arraign /*əhréyn*/. In old English law, to order; or set in order; to conduct in an orderly manner; to prepare for trial. *To arraign an assise* was to cause the tenant to be called to make the plaint, and to set the cause in such order as the tenant might be enforced to answer thereunto. *See* *Arraignment*.

Arraignment /*əhréynmənt*/. Procedure whereby the accused is brought before the court to plead to the criminal charge against him in the indictment or information. The charge is read to him and he is asked to plead "guilty" or "not guilty" or, where permitted, "nolo contendere." *State v. McCotter, 288 N.C. 227, 217 S.E.2d 525, 529.*

Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead. *Fed.R.Crim.P. 10.*

See also *Information; Preliminary hearing; Plea.*

Arraigns, clerk of. In old English law, an assistant to the clerk of assise.

Arrangement with creditors. A plan of a debtor for the settlement, satisfaction, or extension of the time of payment of his debts. Chapter 11 of the federal Bankruptcy Code provides for a device whereby, under the protection and supervision of the court, a financially troubled business may work out an agreement with its creditors under a reorganization plan permitting it to stay in business, rather than going bankrupt. Arrangements of individual debtors with their creditors are provided for under Chapter 13 of the Code. *See also* *Bankruptcy proceedings (Business reorganizations; Wage earner's plan); Composition with creditors.*

Array /*əhréy*/. The whole body of persons summoned to serve as jurors, from which the final trial jury is selected. Also, the list of jurors impaneled. *See* *Jury panel*.

Arrears, arrearages. Money which is overdue and unpaid; *e.g.* overdue mortgage or rent payments.

Term used to describe cumulative preferred stock dividends that have not been declared on time.

Arrent /*əhrént*/. In old English law, to let or demise at a fixed rent. Particularly used with reference to the public domain or crown lands; as where a license was granted to inclose land in a forest with a low hedge and a ditch, under a yearly rent, or where an encroachment, originally a purpresture, was allowed to remain on the fixing and payment of a suitable compensation to the public for its maintenance.

Arrest. To deprive a person of his liberty by legal authority. Taking, under real or assumed authority,

custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand. *State v. Ferraro*, 81 N.J.Super. 213, 195 A.2d 227; *People v. Wipfler*, 37 Ill.App.3d 400, 346 N.E.2d 41, 44.

Arrest involves the authority to arrest, the assertion of that authority with the intent to effect an arrest, and the restraint of the person to be arrested. *Village of Hoffman Estates v. Union Oil Co. of California*, 13 Ill.Dec. 277, 370 N.E.2d 1304, 1308. All that is required for an "arrest" is some act by officer indicating his intention to detain or take person into custody and thereby subject that person to the actual control and will of the officer; no formal declaration of arrest is required. *Com. v. Brown*, 230 Pa.Super. 214, 326 A.2d 906, 907.

See also Booking; Citizen's arrest; Custodial arrest; False arrest; Lawful arrest; Probable cause; Reasonable grounds; Warrantless arrest.

Citizen's arrest. See Citizen's arrest.

Civil arrest. The apprehension of a person by virtue of a lawful authority to answer the demand against him in a civil action. Also includes arrest of a ship or cargo in maritime in rem actions. *Fed.R. Civil P.*, Supp. Admir.R. C(3), D.

Parol arrest. One ordered by a judge or magistrate from the bench, without written complaint or other proceedings, of a person who is present before him, and which is executed on the spot; as in case of breach of the peace in open court.

Privilege from arrest. See Privilege.

Rearrest. Right of officer to take without warrant one who has escaped after arrest, or violated parole, or failed to respond to bond for appearance.

Warrantless arrest. Seizure of a person without warrant but based on probable cause that he has committed felony. May also be made for commission of misdemeanor amounting to breach of peace in presence of officer. *Wong Sun v. U. S.*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441.

Warrant of arrest. See Warrant.

Arrestandis bonis ne dissipantur /æ̀rəstændəs bównəs níy dəsəpəntər/. In old English law, a writ which lay for a person whose cattle or goods were taken by another, who during a contest was likely to make away with them, and who had not the ability to render satisfaction.

Arrestando ipsum qui pecuniam recepit /æ̀rəstəndow ípsow kwáy pəkyúwniyəm rəsíypət/. In old English law, a writ which issued for apprehending a person who had taken the ken's prest money to serve in the wars, and then hid himself in order to avoid going.

Arrestatio /æ̀rəstéysh(iy)ow/. In old English law, an arrest (*q.v.*).

Arresto facto super bonis mercatorum alienigenorum /əhrəstow fəktow s(y)úwpər bównəs mərktórum əliiyənəjənórəm/. In old English law, a writ against the goods of aliens found within this kingdom, in recom-

pense of goods taken from a denizen in a foreign country, after denial of restitution. The ancient civilians called it "*clarigatio*," but by the moderns it is termed "*reprisalia*."

Arrest of inquest. Pleading in arrest of taking the inquest upon a former issue, and showing cause why an inquest should not be taken.

Arrest of judgment. The act of staying a judgment, or refusing to render judgment in an action at law and in criminal cases, after verdict, for some matter intrinsic appearing on the face of the record, which would render the judgment, if given, erroneous or reversible. The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. *Fed.R.Crim.P.* 34.

Arrest record. Official form completed by police department when a person is arrested. Also, cumulative record of instances in which a person has been arrested, commonly maintained by probation office and useful to judge in setting sentences for second, third, etc. offenders.

Arrest warrant. See Warrant.

Arret /arét/aréy/. Fr. A judgment, sentence, or decree of a court of competent jurisdiction. The term is derived from the French law, and is used in Canada and Louisiana.

Saisie arrêt is an attachment of property in the hands of a third person.

Arretted /əhrétəd/. Convened before a judge and charged with a crime.

Arrhabo /əhréybow/. In the civil law, earnest money given to bind a bargain.

Arrhæ /əriy/. In the civil law, money or other valuable things given by the buyer to the seller, for the purpose of evidencing the contract; earnest money. See *Arra*; *Pot-de-vin*.

Arrhæ sponsalitiæ were the earnest or present given by one betrothed to the other at the betrothal.

Arriage and carriage /ə̀rəj ən kə̀rəj/. In English and Scotch law, indefinite services formerly demandable from tenants, but prohibited by statute.

Arrier ban /ə̀ri(y)ər bæn/. In feudal law, a second summons to join the lord, addressed to those who had neglected the first. A summons of the inferiors or vassals of the lord. See *Arierban*.

Arriere fief, or fee /ə̀ri(y)ər fiy(f)/. In feudal law, a fief or fee dependent on a superior one; an inferior fief granted by a vassal of the king, out of the fief held by him.

Arriere vassal /ə̀ri(y)ər vəsəl/. In feudal law, the vassal of a vassal.

Arrival. To come to, or reach, a particular place. The attainment of an end or state. The act of arriving.

In marine insurance, arrival of a vessel means an arrival for purposes of business, requiring an entry and clearance and stay at the port so long as to require some of the acts connected with business, and not merely touching at a port for advices, or to ascertain the state of the market, or being driven in by an adverse wind and sailing again as soon as it changes. *F. S. Royster Guano Co. v. U. S.*, C.C.A.Va., 18 F.2d 469, 470.

Arrogation. In the civil law, the adoption of a person who was of full age or *sui juris*.

Arsæ et pensatæ /ársiy èt pənsétyiy/. Burnt and weighed. A term formerly applied to money tested or assayed by fire and by weighing.

Arsenals /ársənalz/. Store-houses for arms; dock-yards, magazines, and other military stores.

Arser in le main /arséy òn lə mén/. Fr. Burning in the hand. The punishment by burning or branding the left thumb of lay offenders who claimed and were allowed the benefit of clergy, so as to distinguish them in case they made a second claim of clergy.

Arson. At common law, the malicious burning of the house of another. This definition, however, has been broadened by state statutes and criminal codes. For example, the Model Penal Code, § 220.1(1), provides that a person is guilty of arson, a felony of the second degree, if he starts a fire or causes an explosion with the purpose of: (a) destroying a building or occupied structure of another; or (b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss. Other statutes include the destruction of property by other means; *e.g.*, explosion.

In several states, this crime is divided into arson in the first, second, and third degrees, the first degree including the burning of an inhabited dwelling-house in the nighttime; the second degree, the burning (at night) of a building other than a dwelling-house, but so situated with reference to a dwelling-house as to endanger it; the third degree, the burning of any building or structure not the subject of arson in the first or second degree, or the burning of property, his own or another's with intent to defraud or prejudice an insurer thereof. *See Aggravated arson, below.*

Aggravated arson. The burning or blowing up of property when the actor foresees or anticipates the presence of persons at site, or in such close proximity thereto, so that their lives might be endangered by the act. *State v. Bonfanti*, 254 La. 877, 227 So.2d 916, 918.

Arson clause. Clause in insurance policy voiding coverage if fire is set under direction or by insured.

Arsura /ars(y)úrə/. The trial of money by heating it after it was coined. The loss of weight occasioned by this process. A pound was said to *burn* so many pence (*tot ardere denarios*) as it lost by the fire. The term is now obsolete.

Art. Systematic application of knowledge or skill in effecting a desired result; also an employment, occupa-

tion or business requiring such knowledge or skill; a craft, as industrial arts.

In the law of patents, this term means a useful art or manufacture which is beneficial and which is described with exactness in its mode of operation. Such an art can be protected only in the mode and to the extent thus described. It is synonymous with process or method when used to produce a useful result, and may be either a force applied, a mode of application, or the specific treatment of a specific object, and must produce physical effects. *Emmett v. Metals Processing Corporation, C.C. A.Ariz.*, 118 F.2d 796, 798.

In seduction cases, "art" means the skillful and systematic arrangement of means for the attainment of a desired end.

Arteriosclerosis. Abnormal thickening and hardening of the arteries.

Artesian basin. A body of water more or less compact, moving through soils with more or less resistance.

Arthel, ardhel, or arddelio. In old English law, to avouch; as if a man were taken with stolen goods in his possession he was allowed a lawful *arthel*, *i.e.*, vouchee, to clear him of the felony.

Article. A separate and distinct part of an instrument or writing; one of several things presented as connected or forming a whole. A particular object or substance, a material thing or a class of things. Material or tangible object. *See Articles.*

In English ecclesiastical law, a complaint exhibited in the ecclesiastical court by way of libel. The different parts of a libel, responsive allegation, or counter allegation in the ecclesiastical courts.

Articled clerk. In English law, a clerk bound to serve in the office of a solicitor in consideration of being instructed in the profession. This is the general acceptance of the term; but it is said to be equally applicable to other trades and professions.

Articles. A connected series of propositions; a system of rules. The subdivisions of a document, code, book, etc. A specification of distinct matters agreed upon or established by authority or requiring judicial action.

A statute; as having its provisions articulately expressed under distinct heads.

A system of rules established by legal authority; as *articles of war*, *articles of the navy*, *articles of faith*. (*See infra.*)

A contractual document executed between parties, containing stipulations or terms of agreement; as *articles of agreement*, *articles of partnership*.

A naval term meaning employment contract. *South Chicago Coal & Dock Co. v. Bassett, C.C.A.Ill.*, 104 F.2d 522, 526.

In chancery practice, a formal written statement of objections filed by a party, after depositions have been taken, showing ground for discrediting the witnesses.

In ecclesiastical law, a complaint in the form of a libel exhibited to an ecclesiastical court. *See Article.*

Articles of agreement. A written memorandum of the terms of an agreement. *See* Memorandum.

Articles of amendment. Terms and conditions of corporate management enacted subsequent to articles of incorporation. *See* Articles of incorporation.

Articles of apprenticeship. Written agreement between master and minor under which minor agrees to work for master for stated period of time in return for instruction in a trade by the master.

Articles of association. Basic instrument filed with the appropriate governmental agency (*e.g.* Sec. of State) on the incorporation of a business. It sets forth the purposes of the corporation, its duration, the rights and liabilities of shareholders and directors, classes of stock, etc. Such document is referred to as "articles of incorporation" in many states. Certificate (similar to one of incorporation) used by non-stock companies such as charitable and mutual corporations. Articles of association are to be distinguished from a charter, in that the latter is a grant of power from the sovereign or the legislature. *See* Articles of incorporation; Articles of partnership; Certificate of incorporation.

Articles of Confederation. The name of the instrument embodying the compact made between the thirteen original states of the Union, operative from March 1, 1781 to March 4, 1789, before the adoption of the present Constitution.

Articles of dissolution. Document required to be filed with secretary of state (or other designated official) after corporation has settled all its debts and distributed all of its net assets prior to dissolution. *See, e.g.,* Rev. Model Bus. Corp. Act § 14.03.

Articles of faith. In English law, the system of faith of the Church of England, more commonly known as the "Thirty-Nine Articles." Drafted in 1562.

Articles of impeachment. A formal written allegation of the causes for impeachment; answering the same office as an indictment in an ordinary criminal proceeding. *See* Impeachment.

Articles of incorporation. The basic instrument filed with the appropriate governmental agency (*e.g.,* Sec. of State) on the incorporation of a business; sometimes also called "certificate of incorporation," "articles of organization," "articles of association," or other similar name. The contents thereof are prescribed in the general incorporation statutes (but commonly include the corporation's name, period of existence, purpose and power, authorized number of shares, classes of stock, and other conditions of operation). *See e.g.,* Rev. Model Bus. Corp. Act § 2.02. In many jurisdictions official forms are prescribed. In most jurisdictions, corporate existence begins with the filing, usually with the secretary of state, of the articles or certificate of incorporation. In some jurisdictions, duplicate articles of incorporation are filed, and corporate existence begins with the issue of a formal certificate appended thereto called a "certificate of incorporation." Various conditions

precedent to doing business might also be imposed. *See* Articles of association; Certificate of incorporation.

Articles of merger, consolidation, or share exchange. Document filed with Secretary of State setting forth terms and conditions of merger consolidation, or share exchange. *See e.g.,* Rev. Model Bus. Corp. Act § 11.05.

Articles of partnership. A written agreement by which the parties enter into a partnership upon the terms and conditions therein stipulated.

Articles of the clergy. The title of a statute passed in the ninth year of Edward II for the purpose of adjusting and settling the great questions of cognizance then existing between the ecclesiastical and temporal courts.

Articles of the Navy. Articles (statutes) for the government of the Navy.

Articles of the peace. In English law, a complaint made or exhibited to a court by a person who makes oath that he is in fear of death or bodily harm from some one who has threatened or attempted to do him injury. The court may thereupon order the person complained of to find sureties for the peace, and, in default, may commit him to prison. This is known as "being bound over to keep the peace". Such articles were formerly issued in the High Court; but since 1938 the procedure has only been available in courts of summary jurisdiction. Now covered by Magistrates' Courts Act, 1980, §§ 115, 116.

Articles of union. In English law, articles agreed to, A.D. 1707, by the parliaments of England and Scotland, for the union of the two kingdoms. They were twenty-five in number.

Articles of war. Codes framed for the government of a nation's army or navy; *e.g.* Code of Military Justice.

Articulated pleading. The stating in separate paragraphs, separately numbered, of each material fact of the petition, complaint, answer, etc. *See e.g.* Fed. R. Civil P. 10(b).

Articulately /artikyələtli/. Article by article; by distinct clauses or articles; by separate propositions.

Articuli /artikyəlay/. Lat. Articles; items or heads. A term applied to some old English statutes, and occasionally to treatises.

Articuli cleri /artikyəlay kliray/. "Articles of the clergy" (*q.v.*). *See* Circumspecte agatis.

Articuli de moneta /artikyəlay diy məniytə/. Articles concerning money, or the currency. The title of a statute passed in the twentieth year of Edward I.

Articuli magnæ chartæ /artikyəlay məgni kárti/. The preliminary articles, forty-nine in number, upon which the *Magna Charta* was founded.

Articuli super chartas /artikyəlay sy)úwpər kártəs/. Articles upon the charters. The title of a statute passed in the twenty-eighth year of Edward I, st. 3, confirming or enlarging many particulars in *Magna Charta*, and the *Charta de Foresta*, and appointing a method for enforce-

ing the observance of them, and for the punishment of offenders.

Articulo mortis /artikyəlow mōrtəs/. (Or more commonly *in articulo mortis*.) At the point of death; in the article of death, which means at the moment of death; in the last struggle or agony.

Artifice /ártəfəs/. An ingenious contrivance or device of some kind, and, when used in a bad sense, it corresponds with trick or fraud. It implies craftiness and deceit, and imports some element of moral obliquity. *See also* Scheme or artifice to defraud; Sham.

Artificer /artifəsər/. One who buys goods in order to reduce them, by his own art or industry, into other forms, and then to sell them.

One who is actually and personally engaged or employed to do work of a mechanical or physical character, not including one who takes contracts for labor to be performed by others, *i.e.* a mechanic or workman as contrasted from the employer of such. One who is master of his art, and whose employment consists chiefly in manual labor. A craftsman; an artisan.

Artificial. As opposed to "natural", means created or produced by man. California Casualty Indemnity Exchange v. Industrial Accident Commission of California, 13 Cal.2d 529, 90 P.2d 289. Created by art, or by law; existing only by force of or in contemplation of law. Humanly contrived. A will or contract is described as "artificially" drawn if it is couched in apt and technical phrases and exhibits a scientific arrangement.

Artificial force. In patent law, a natural force so transformed in character or energies by human power as to possess new capabilities of action; this transformation of a natural force into a force practically new involves a true inventive act.

Artificial insemination. Method by which a female is impregnated through injection of semen from a donor other than her husband; and other than through sexual intercourse.

Artificially developed water. Artificially developed water, to which one may acquire right superior to adjudicated rights of earlier appropriators of natural waters of stream into which he turns it, is water produced and contributed by him, which would not have reached stream if left to flow in accordance with natural laws. *In re Nix*, 96 Colo. 540, 45 P.2d 176, 178.

Artificial persons. Persons created and devised by human laws for the purposes of society and government, as distinguished from natural persons. Corporations are examples of artificial persons.

Artificial presumptions. Also called "legal presumptions;" those which derive their force and effect from the law, rather than their natural tendency to produce belief. *See* Presumption.

Artificial succession. The succession between predecessors and successors in a corporation aggregate or sole.

Artificial water course. *See* Water course.

Artisan. One skilled in some kind of trade, craft, or art requiring manual dexterity; *e.g.* a carpenter, plumber, tailor, mechanic.

Artisan's lien. A possessory lien given to a person who has made improvements and added value to another person's personal property as security for payment for services performed. The statutory right of an artisan to keep possession of the object that he has worked on until he has been paid for such labor.

Art, words of. Words used in a technical sense; words scientifically fit to carry the sense assigned them.

A rubro ad nigrum /əy rūwbrow æd náygrəm/. Lat. From the red to the black; from the rubric or title of a statute (which, anciently, was in *red* letters), to its body, which was in the ordinary *black*.

Arura /ərúərə/. An old English law term, signifying a day's work in plowing.

AS or A/S or A/s. Account sales; also after sight, at sight.

As. Lat. In the Roman and civil law, a pound weight; and a coin originally weighing a pound, (called also "*libra*") divided into twelve parts, called "*uncia*". The parts were reckoned as follows: *uncia*, 1 ounce; *sextans*, 2 ounces; *triens*, 3 ounces; *quadrans*, 4 ounces; *quincunx*, 5 ounces; *semis*, 6 ounces; *sextunx*, 7 ounces; *bes*, 8 ounces; *dodrans*, 9 ounces; *dextans*, 10 ounces; *deunx*, 11 ounces. Frequently applied in the civil law to inheritances; the whole inheritance being termed "as", and its several proportionate parts "*sextans*", "*quadrans*", etc. The term "as", and the multiples of its *uncia*, were also used to denote the rates of interest. 2 Bl.Comm. 462, note *m*.

Any integral sum, subject to division in certain proportions.

As. Used as an adverb, etc., means like, similar to, of the same kind, in the same manner, in the manner in which. It may also have the meaning of because, since, or it being the case that; in the character or under the name of with significance of in degree; to that extent; so far.

As against; as between. These words contrast the relative position of two persons, with a tacit reference to a different relationship between one of them and a third person. For instance, the temporary bailee of a chattel is entitled to it *as between* himself and a stranger, or *as against* a stranger; reference being made by this form of words to the rights of the bailor.

A savoir. To wit.

Ascend. To go up; to pass up or upwards; to go or pass in the ascending line.

Ascendants. Persons with whom one is related in the ascending line; one's parents, grandparents, great-grandparents, etc.

Ascent. Passage upward; the transmission of an estate from the ancestor to the heir in the ascending line.

Ascertain. To fix; to render certain or definite; to estimate and determine; to clear of doubt or obscurity. To insure as a certainty. To find out by investigation, *U. S. v. Carver*, 260 U.S. 482, 43 S.Ct. 181, 182, 67 L.Ed. 361. Sometimes it means to "assess"; or to "hear, try, and determine".

Ascertained as aforesaid. Manner theretofore prescribed.

Ascriptitious (or ascripticius) /æskriptiʃ(i)əs/. In Roman law, a foreigner who had been registered and naturalized in the colony in which he resided.

Asexualization. See Vasectomy.

Aside. On one side; apart. To set aside; to annul; to make void.

As is. A sale of goods by sample "as is" requires that the goods be of the kind and quality represented, even though they be in a damaged condition. U.C.C. § 2-313. Use of expression in sales agreement that goods are sold "as is" implies that buyer takes the entire risk as to the quality of the goods involved and he must trust to his own inspection. Implied and express warranties are excluded in sales of goods "as is". U.C.C. § 2-316.

Ask. Demand, request, solicit, petition, appeal, apply for, move for, pray for.

Asking price. The price at which a seller lists his property for sale. Generally connotes a willingness to sell for less than the listed or asking price. May be applied to both real and personal property for sale though more commonly used in sales of real estate.

As per. A term which is not susceptible of literal translation, but which is commonly understood to mean, "in accordance with", or "in accordance with the terms of", or "as by the contract authorized".

Aspersions /æspɔːrʒənz/. Term may mean the making of calumnious report or may mean nothing more than criticism or censure.

Asphyxia /æsfiksɪə/. Apparent death, suspended animation, in living organism due to deficiency of oxygen and excess of carbon dioxide in the blood.

Asphyxia carbonica /æsfiksɪə kɑːbɒnəkə/. A suffocation from inhalation of coal gas, water gas, or carbon monoxide.

Asphyxiation /æsfiksɪjəʃən/. A state of asphyxia.

Asportation /æspɔːtəʃən/. The removal of things from one place to another. The carrying away of something; in kidnapping, the carrying away of the victim; in larceny, the carrying away of the victim's property. The carrying away of goods; one of the circumstances requisite to constitute the offense of larceny. The distance away which the property must be moved to constitute the crime need not be substantial; a slight distance will do. *Smith v. United States*, C.A.Nev., 291 F.2d 220. But the entire property must be moved.

Asportation was an essential element of common-law kidnapping.

Asportavit /æspɔːtəvət/. He carried away. Sometimes used as a noun to denote a carrying away. An "asportavit of personal chattels".

ASPR. Armed Services Procurement Regulations. See also Federal Acquisition Regulations.

ASR. Accounting Series Release.

Assart /əsɑːt/. In English law, the offense committed in the forest, by pulling up the trees by the roots that are thickets and coverts for deer, and making the ground plain as arable land. It differs from waste, in that waste is the cutting down of coverts which may grow again, whereas assart is the plucking them up by the roots and utterly destroying them, so that they can never afterward grow. This is not an offense if done with license to convert forest into tillage ground.

Assart rents. Rents paid to the Crown for assorted lands.

Assassination /əsəsəneɪʃən/. Murder committed, usually, though not necessarily, for hire, without direct provocation or cause of resentment given to the murderer by the person upon whom the crime is committed; though an assassination of a public figure might be done by one acting alone for personal, social or political reasons. It is a federal crime, punishable as a homicide, to assassinate the President, President-elect, Vice President, or if there is no Vice President, the officer next in order of succession to the office of President, the Vice President-elect, or any individual who is acting as President under the Constitution. 18 U.S.C.A. § 1751. In addition, advocating the overthrow of the government by assassination of any officer of such government is a crime under 18 U.S.C.A. § 2385.

Assault. Any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability so to do, and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm, constitutes an assault. An assault may be committed without actually touching, or striking, or doing bodily harm, to the person of another. *State v. Murphy*, 7 Wash.App. 505, 500 P.2d 1276, 1281.

Frequently used to describe illegal force which is technically a battery. For crime of assault victim need not be apprehensive of fear if the outward gesture is menacing and defendant intends to harm, though for tort of assault, element of victim's apprehension is required. *Com. v. Slaney*, 345 Mass. 135, 185 N.E.2d 919. It is unlawful attempt to commit a battery. *People v. Lopez*, 271 C.A.2d 754, 77 Cal.Rptr. 59, 63.

In some jurisdictions degrees of the offense are established as first, second and even third degree assault.

See also Aggravated assault; Aggravated battery; Battery; Conditional assault; Felonious assault; Fresh complaint rule; Malicious assault with deadly weapon.

Aggravated assault. One committed with the intention of committing some additional crime; or one attended with circumstances of peculiar outrage or atrocity. This

class includes assault with a dangerous or deadly weapon (*q.v.*).

A person is guilty of aggravated assault if he: (a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon. Model Penal Code, § 211.1.

Simple assault. An assault unaccompanied by any circumstances of aggravation. A person is guilty of simple assault if he (a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (b) negligently causes bodily injury to another with a deadly weapon; or (c) attempts by physical menace to put another in fear of imminent serious bodily injury. Model Penal Code, § 211.1. An unlawful attempt coupled with present ability to commit violent injury on person of another. *People v. Gholston*, 164 Colo. 58, 432 P.2d 636, 637. *See also* Menace.

Assault and battery. Any unlawful touching of another which is without justification or excuse. It is both a tort, *Trogun v. Fruchtmann*, 58 Wis.2d 569, 207 N.W.2d 297, as well as a crime, *Scruggs v. State*, Ind.App., 317 N.E.2d 807, 809. The two crimes differ from each other in that battery requires physical contact of some sort (bodily injury or offensive touching), whereas assault is committed without physical contact. In most jurisdictions, statutes have created aggravated assaults and batteries, punishable as felonies, and worded in various ways. *See* Battery.

Assault with dangerous or deadly weapon. An unlawful attempt or offer to do bodily harm without justification or excuse by use of any instrument calculated to do harm or cause death. An aggravated form of assault as distinguished from a simple assault; *e.g.* pointing loaded gun at one is an assault with dangerous weapon. *State v. Gregory*, 108 Ariz. 445, 501 P.2d 387, 390.

Assault with intent to commit manslaughter. An unlawful assault committed in such manner and with such means as would have resulted in commission of crime of manslaughter if person assaulted had died from effects of assault.

Assault with intent to commit murder. To constitute this assault, specific intent to kill, actuated by malice aforethought, must concur. *Perez v. State*, 114 Tex. Cr.R. 473, 22 S.W.2d 309, 310.

Assault with intent to commit rape. Crime is constituted by the existence of the facts which bring the offense within the definition of an assault, coupled with an intention to commit the crime of rape. *Steptoe v. State*, 134 Tex.Cr.R. 320, 115 S.W.2d 916, 917.

Assay /əsey/əsey/. The proof or trial, by chemical experiments, of the purity or fineness of metals; particularly of the precious metals, gold and silver. *West v. State*, 140 Tex.Cr.R. 493, 145 S.W.2d 580, 584. Examination and determination as to characteristics (as weight, measure, or quality).

Assayer. One whose business it is to make assays of the precious metals. *West v. State*, 140 Tex.Cr.R. 493, 145 S.W.2d 580, 584.

Assayer of the king. An officer of the royal mint, appointed by St. 2 Hen. VI, c. 12, who received and tested the bullion taken in for coining; also called "assayator regis."

Assay office. The U.S. Assay Office, under the Bureau of the Mint, is responsible for the process of assaying gold and silver, required by government, incidental to maintaining the coinage.

Assecurare /əsəkjərəriy/. To assure, or make secure by pledges, or any solemn interposition of faith.

Assesuration /əsəkjərəriyshən/. In European law, assurance; insurance of a vessel, freight, or cargo.

Assesurator /əsəkjərəriytər/. In maritime law, an insurer.

Assemblage. A collection of persons. Also the act of coming together. Public address upon public grounds. In re *Whitney*, 57 Cal.App.2d 167, 134 P.2d 516, 521. Combining of adjoining lots into single large lot.

Assembly. The concourse or meeting together of a considerable number of persons at the same place. Also the persons so gathered.

Political assemblies are those required by the constitution and laws: for example, the general assembly.

The lower or more numerous branch of the legislature in many of the states (*e.g.* N.Y.) is also called the "Assembly" or "House of Assembly." *See also* House of Representatives.

Popular assemblies are those where the people meet to deliberate upon their rights; these are guaranteed by the Constitution. *See* Assembly, right of.

Assemblyman. Member of state Assembly (*q.v.*).

Assembly, right of. Right guaranteed by First Amendment, U.S. Constitution, allowing people to meet for any purpose connected with government; it encompasses meeting to protest governmental policies and actions and the promotion of ideas. *See* Unlawful assembly.

Assembly, unlawful. The congregating of people which results in antisocial behavior of the group, *e.g.* blocking a sidewalk, obstructing traffic, littering streets; but, a law which makes such congregating a crime because people may be annoyed is violative of the right of free assembly. *Coates v. City of Cincinnati*, 402 U.S. 611, 91 S.Ct. 1686, 29 L.Ed.2d 214. *See* Unlawful assembly.

Assent. Compliance; approval of something done; a declaration of willingness to do something in compliance with a request; acquiescence; agreement. To approve, ratify and confirm. It implies a conscious approval of facts actually known, as distinguished from mere neglect to ascertain facts. Sometimes it is equivalent to "authorize". *See* Approval; Approve; Consent.

Express assent. That which is openly declared.

Implied assent. That which is presumed by law, and proved by conduct of the parties. *See* Consent (*Implied consent*).

Mutual assent. The meeting of the minds of both or all the parties to a contract; the fact that each agrees to all the terms and conditions, in the same sense and with the same meaning as the others.

Assert. To state as true; declare; maintain.

Assertory covenant /əsártəriý kóvənant/. One which affirms that a particular state of facts exists; an affirming promise under seal. *See* Affirmation; Jurat.

Assertory oath /əsártəriý ówθ/. *See* Oath.

Assess /əsés/. To ascertain; fix the value of. To fix the amount of the damages or the value of the thing to be ascertained. To impose a pecuniary payment upon persons or property. To ascertain, adjust, and settle the respective shares to be contributed by several persons toward an object beneficial to them all, in proportion to the benefit received. To tax.

In connection with taxation of property, means to make a valuation and appraisal of property, usually in connection with listing of property liable to taxation, and implies the exercise of discretion on the part of officials charged with duty of assessing, including the listing or inventory of property involved, determination of extent of physical property, and placing of a value thereon. To adjust or fix the proportion of a tax which each person, of several liable to it, has to pay; to apportion a tax among several; to distribute taxation in a proportion founded on the proportion of burden and benefit. To calculate the rate and amount of taxes. To levy a charge on the owner of property for improvements thereto, such as for sewers or sidewalks.

"Access" is sometimes used as synonymous with "levy".

See also Assessment.

Assessable insurance. Insurance policy under which insured is liable for additional premium if losses are unusually large.

Assessable stock. Stock where the stockholder may have to pay more than his original investment if corporate affairs so require.

Assessed. Term is equivalent to "imposed." To value or appraise. *Abrams v. City and County of San Francisco*, 48 Cal.App.2d 1, 119 P.2d 197, 199.

Assessed valuation. Value on each unit of which a prescribed amount must be paid as property taxes. The worth or value of property established by taxing authorities on the basis of which the tax rate is applied. Commonly, however, it does not represent the true or market value of the property.

Assessment. In a general sense, the process of ascertaining and adjusting the shares respectively to be contributed by several persons towards a common beneficial object according to the benefit received. A valuation or a determination as to value of property. It is often used in connection with assessing property taxes or levying of

property taxes. Also the amount assessed. *See also* Assess; Equalization.

Corporations. Installments of the money subscribed for shares of stock, called for from the subscribers by the directors, from time to time as the company requires money, are called "assessments," or, in England, "calls." While the terms "call" and "assessment" are generally used synonymously, the latter term applies with peculiar aptness to contributions above the par value of stock or the subscription liability of the stockholders; whereas "call" or "installments" means action of the board of directors demanding payment of all or portion of unpaid subscriptions.

Damages. Fixing the amount of damages to which the successful party in a suit is entitled after judgment has been taken; also the name given to the determination of the sum which a corporation proposing to take lands for a public use must pay in satisfaction of the demand proved or the value taken.

Insurance. An apportionment made in general average upon the various articles and interests at risk, according to their value at the time and place of being in safety, for contribution for damage and sacrifices purposely made, and expenses incurred for escape from impending common peril.

A sum specially levied in mutual benefit insurance upon a fixed and definite plan within the limit of the company's or society's fundamental law of organization to pay losses, or losses and expenses incurred, being to a certain degree substantially the equivalent of premiums. The periodical demands made by a mutual insurance company, under its charter and by-laws, upon the makers of premium notes, are also denominated "assessments." Meaning "premiums," *Ancient Order of United Workmen of Kansas v. Hobbs*, 136 Kan. 708, 18 P.2d 561, 562; and being the consideration for the insurance contracts.

Special assessment. An assessment in the nature of a tax levied upon property according to benefits conferred on the property. *Davies v. City of Lawrence*, 218 Kan. 551, 545 P.2d 1115, 1120. A levy upon the owners of property adjacent to a public improvement (e.g., sidewalks) to defray the capital cost thereof. A tax, intended to offset cost of local improvements such as sewer, water and streets, which is selectively imposed upon beneficiaries. *Dosedel v. City of Ham Lake, Minn.App.*, 414 N.W.2d 751, 755. It differs from a general tax in that it is levied for a specific purpose and in an amount proportioned to the direct benefit of the property assessed. *City of Plymouth v. Elsner*, 28 Wis.2d 102, 135 N.W.2d 799, 803.

Persons convicted of federal crimes are required to pay special assessments under 18 U.S.C.A. § 3013.

Taxation. The listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. *Simikins v. City of Spartanburg*, 269 S.C. 243, 237 S.E.2d 69, 70. Also determining the share of a tax to be paid by each of many persons; or apportioning the entire tax

to be levied among the different taxable persons, establishing the proportion due from each. *Northwestern Imp. Co. v. Henneford*, 184 Wash. 502, 51 P.2d 1083, 1085. It fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls. *Dallas Joint Stock Land Bank of Dallas v. State*, Tex.Civ.App., 118 S.W.2d 941, 942.

The process whereby the Internal Revenue Service imposes an additional tax liability. If, for example, the IRS audits a taxpayer's income tax return and finds gross income understated or deductions overstated, it will assess a deficiency in the amount of the tax that should have been paid in light of the adjustments made. *See also*, Deficiency; Deficiency assessment; Jeopardy assessment.

Assessment base. Total assessed value of all property in an assessment district.

Assessment company. In life insurance, a company in which a death loss is met by levying an assessment on the surviving members of the association.

Assessment contract. One wherein the payment of the benefit is in any manner or degree dependent on the collection of an assessment levied on persons holding similar contracts. *See also* Assessment insurance.

Assessment district. In taxation, any subdivision of territory, whether the whole or part of any municipality, in which by law a separate assessment of taxable property is made by the officers elected or appointed therefor.

Assessment for benefits. A burden levied under the power of taxation. *Jackson v. City of Lake Worth*, 156 Fla. 452, 23 So.2d 526, 528. *See* Assessment.

Assessment fund. The assessment fund of a mutual benefit association is the balance of the assessments, less expenses, out of which beneficiaries are paid.

Assessment insurance. Exists when benefit to be paid is dependent upon collection of such assessments as may be necessary for paying the amounts to insured. *Keen v. Bankers Mut. Life Co.*, 230 Mo.App. 1072, 93 S.W.2d 85, 90. Type of mutual insurance where the policyholders are assessed whenever there is a loss.

Assessment list. The list of taxable persons and property furnished by the assessor to the board of equalization, board of assessment, or similar body. *See* Assessment roll.

Assessment period. Means taxable period. *Johnson City v. Clinchfield R. Co.*, 163 Tenn. 332, 43 S.W.2d 386, 387.

Assessment ratio. For purposes of taxation of property is the ratio of assessed value to fair market value. *Campbell Chain Co. of Cal. v. Alameda County*, 12 C.A.3d 248, 90 Cal.Rptr. 501, 504.

Assessment roll. In taxation, the list or roll of taxable persons and property, completed, verified, and deposited by the assessors.

Assessment work. Under the mining laws of the United States, the holder of an unpatented mining claim on the public domain is required, in order to hold his claim, to do labor or make improvements upon it to the extent of at least one hundred dollars in each year. 30 U.S.C.A. § 28. This is commonly called by miners "doing assessment work."

Assessor. An officer chosen or appointed to appraise, value, or assess property. A person learned in some particular science or industry, who sits with the judge on the trial of a cause requiring such special knowledge and gives his advice.

Asset Depreciation Range (ADR). The range of depreciable lives allowed by the Internal Revenue Service for a specified depreciable asset. The ADR system applies to assets placed in service after 1970 and before 1980, at which time the ADR system was replaced by the Accelerated Cost Recovery System (ACRS). However, the ADR system has been revived under The Tax Reform Act of 1986 and is now used to assign class lives to assets depreciated under Modified Accelerated Cost Recovery System (MACRS). *See* Accelerated Cost Recovery System.

Asset dividend. *See* Dividend.

Assets /æzets/. Property of all kinds, real and personal, tangible and intangible, including, *inter alia*, for certain purposes, patents and causes of action which belong to any person including a corporation and the estate of a decedent. The entire property of a person, association, corporation, or estate that is applicable or subject to the payment of his or her or its debts.

See also Dead asset; Marshalling assets.

Accrued assets. Assets arising from revenues earned but not yet due.

Assets *entre mains*. L. Fr. Assets in hand; assets in the hands of executors or administrators, applicable for the payment of debts.

Assets *per descent*. That portion of the ancestor's estate which descends to the heir, and which is sufficient to charge him, as far as it goes, with the specialty debts of his ancestors.

Bankruptcy. The property or effects of debtor in bankruptcy proceedings available for payment of his debts.

Capital assets. For income tax purposes, a capital asset is defined as all property held by a taxpayer (*e.g.* house, car, stocks, bonds), except for certain assets listed in I.R.C. § 1221. Under the tax laws however, a given asset may be treated as a capital asset for one purpose, and as an ordinary asset for another.

Broadly speaking, all assets are capital except those specifically excluded by Internal Revenue Code. Major categories of non-capital assets include: property held for resale in the normal course of business (*i.e.* inventory), trade accounts and notes receivable, depreciable property and real estate used in a trade or business (*i.e.* I.R.C. "§ 1231 assets"). I.R.C. § 1221.

Commercial assets. The aggregate of available property, stock in trade, cash, etc., belonging to a merchant or mercantile company.

Current assets. Assets readily convertible into cash, e.g. marketable securities, notes, inventories, accounts receivable. *See also Quick assets, below.*

Equitable assets. All assets which are chargeable with the payment of debts or legacies in equity, and which do not fall under the description of legal assets. Those portions of the property which by the ordinary rules of law are exempt from debts, but which the testator has voluntarily charged as assets, or which, being non-existent at law, have been created in equity. They are so called because they can be reached only by the aid and instrumentality of a court of equity, and because their distribution is governed by a different rule from that which governs the distribution of legal assets.

Fixed assets. Assets of a permanent or long-term nature used in operation of business and not intended for sale; e.g. property, plant, equipment.

Frozen assets. Assets which are difficult to convert into cash (e.g. real estate for which there is no market); also, assets which cannot be used because of legal restriction.

Intangible assets. Assets lacking physical existence; e.g. patents, trademarks, organization costs, goodwill.

Legal assets. *See* Legal assets.

Liquid assets. *See* Current assets, above.

Net assets. Excess of assets over liabilities.

Net operating assets. The excess of cash and other assets which will be converted into cash in near future through normal operation over current liabilities.

Nominal assets. Assets whose value is difficult to determine, e.g. a judgment or claim; also, book value of asset in contrast to actual value.

Personal assets. Chattels, money, and other personal property belonging to a bankrupt, insolvent, or decedent estate, which go to the assignee or executor. *See also* Personal effects.

Probate assets. Property of a decedent available for the payment of debts and legacies. The estate coming to the heir or personal representative which is chargeable, in law or equity, with the obligations which such heir or representative is required, in his representative capacity, to discharge.

Quick assets. Accounting term used to describe cash and receivables, including notes and sometimes marketable securities, which will be converted into cash as part of normal operations. *See also* Current assets, above.

Real assets. Land and real estate.

Wasting assets. Assets exhausted through use or loss of value; e.g. patents, oil wells, coal deposits.

Asseveration /əsəvərəyʃən/. An affirmation; a positive assertion; a solemn declaration. This word is seldom, if ever, used for a declaration made under oath, but denotes a declaration accompanied with solemnity

or an appeal to conscience, whereas by an oath one appeals to God as a witness of the truth of what one says.

Assign. To transfer, make over, or set over to another. To appoint, allot, select, or designate for a particular purpose, or duty. To point at, or point out; to set forth, or specify; to mark out or designate; to particularize, as to *assign errors* on a writ of error; to *assign breaches* of a covenant. *See also* Assignment.

Assignability. Quality or legal attribute which permits a thing to be transferred or negotiated.

Assignable. *See* Assignability.

Assignable lease. A lease which contains a provision permitting its transfer by lessee or one which is silent as to lessee's right to transfer his interest and hence a lease which may be transferred. Assignment of lease is distinguishable from sublease to extent, inter alia, that in assigning, lessee transfers his entire estate in the demised premises, whereas in sublease the sublessee acquires something less than the lessee's entire interest. *Spears v. Canon de Carnue Land Grant*, 80 N.M. 766, 461 P.2d 415, 417 *See also* Assignment (*Assignment of lease*).

Assignment house. A bawdy house; a house of prostitution.

Assignatus utitur jure auctoris /əˈsɪɡnətəs ʊˈtɪtər ˈdʒʊəri ɒktɔːrəs/. An assignee uses the right of his principal; an assignee is clothed with the rights of his principal.

Assigned account. Pledge of account receivable to bank or factor as security for loan.

Assigned counsel. An attorney appointed by court to represent an indigent person; most commonly in criminal cases. *See* U.S. Constitution, Sixth Amendment (right to counsel); Fed.R.Crim.P. 44; 18 U.S.C.A. § 3006A. *See also* Assistance of counsel; Counsel, right to.

Assigned risk. As relating to motor vehicles nuisance, a risk which is not ordinarily acceptable to insurers but for which coverage is required by state statute and which is, therefore, assigned to insurers participating in an assigned risk pool.

Assigned risk plan. In those states having compulsory motor vehicle insurance laws (i.e. financial responsibility laws), such statutes provide that persons who are otherwise unable to buy coverage (because of, e.g., poor driving records) may secure insurance through a statutory plan under which insurers are compelled to write coverage for such persons. The insurance is handled through a pool of insurers.

See Financial responsibility acts.

Assignee /əˈsɪɡni/ asəyni/. A person to whom an assignment is made; grantee.

Under U.C.C., assignee is subject to all defenses which may be asserted against assignor by account debtor. U.C.C. § 9-318.

Assignee in fact is one to whom an assignment has been made in fact by the party having the right.

Assignee in law is one in whom the law vests the right; as an executor or administrator.

Assignee clause. A provision in Judiciary Act of 1789 preventing one who could not show diversity of citizenship to bring suit in Federal Court from assigning his claim to one who had the required diversity; modified in 28 U.S.C.A. § 1359 to prevent only assignment made collusively to invoke diversity jurisdiction. See *Caribbean Mills, Inc. v. Kramer*, C.A.5th, 392 F.2d 387.

Assignment. The act of transferring to another all or part of one's property, interest, or rights. A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. It includes transfers of all kinds of property (*Higgins v. Monckton*, 28 Cal.App.2d 723, 83 P.2d 516, 519), including negotiable instruments. The transfer by a party of all of its rights to some kind of property, usually intangible property such as rights in a lease, mortgage, agreement of sale or a partnership. Tangible property is more often transferred by possession and by instruments conveying title such as a deed or a bill of sale. See also *Collateral assignment*.

Assignment for benefit of creditors. A general assignment for benefit of creditors is transfer of all or substantially all of debtor's property to another person in trust to collect any money owing to debtor, to sell property, to distribute the proceeds to his creditors and to return the surplus, if any, to debtor. Under Bankruptcy Act of 1898, such assignment was an "act of bankruptcy" if made within 4 months of bankruptcy. Bankruptcy Act (1898) § 3a(4). See also *Preferential assignment*.

Assignment of account. Transfer to assignee giving him a right to have moneys when collected applied to payment of his debt. *Nanny v. H. E. Pogue Distillery Co.*, 56 Cal.App.2d 817, 133 P.2d 686, 688.

Assignment of counsel. See *Assigned counsel*; *Assistance of counsel*; *Counsel, right to*.

Assignment of dower. The act by which the share of a widow in her deceased husband's real estate is ascertained and set apart to her.

Assignment of error. See *Error*.

Assignment of income. A procedure whereby a taxpayer attempts to avoid the recognition of income by assigning the property that generates the income to another. Such a procedure will not avoid the recognition of income by the taxpayer making the assignment if it can be said that the income was earned at the point of the transfer. In this case, usually referred to as an anticipatory assignment of income, the income will be taxed to the person who earns it.

Assignment of lease. Such occurs where lessee transfers entire unexpired remainder of term created by lease as distinguished from sublease which transfers only part of remainder. *Dayenian v. American Nat. Bank and Trust*

Co. of Chicago, 91 Ill.App.3d 622, 47 Ill.Dec. 83, 85, 414 N.E.2d 1199, 1201. See also *Assignable lease*.

Assignment of wages. Transfer of right to collect wages from wage earner to creditor; generally, statutes govern the extent to which such assignment may be made.

Assignment pro tanto. Where an order is drawn upon a third party and made payable out of a particular fund then due or to become due to the drawer, the delivery of the order to the payee operates as an assignment pro tanto of the fund. *Doyle v. East New York Sav. Bank*, 44 N.Y.S.2d 318, 323.

Assignment with preferences. An assignment for the benefit of creditors, with directions to the assignee to prefer a specified creditor or class of creditors, by paying their claims in full before the others receive any dividend, or in some other manner. More usually termed a "preferential assignment." Such assignments formerly constituted an "act of bankruptcy" (*q.v.*). See *Assignment for benefit of creditors, above*.

Foreign assignment. An assignment made in a foreign country, or in another state.

General assignment. An assignment made for the benefit of all the assignor's creditors, instead of a few only; or one which transfers the *whole* of his estate to the assignee, instead of a part only.

Voluntary assignment. An assignment for the benefit of his creditors made by a debtor voluntarily, as distinguished from a compulsory assignment which takes place by operation of law in proceedings in bankruptcy. Such constitutes an assignment of a debtor's property in trust to pay his debts generally, in distinction from a transfer of property to a particular creditor in payment of his demand, or to a conveyance by way of collateral security or mortgage.

Assignor /ə'sáynər/. A person who assigns or transfers property to another. See *Grantor*.

Assignor estoppel. In patent law this doctrine precludes one who has assigned rights in a patent from later contending that what he has assigned was invalid. *Diamond Scientific Co. v. Ambico Inc.*, C.A.Fed., 848 F.2d 1220.

Assigns. Assignees; those to whom property is, will, or may be assigned. Used *e.g.* in the phrase, in deeds, "heirs, administrators, and assigns to denote the assignable nature of the interest or right created." It generally comprehends all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law.

Assisa /ə'sáyzə/. In old English and Scotch law, an assize or assise; a kind of jury or inquest; a writ; a sitting of a court; an ordinance or statute; a fixed or specific time, number, quantity, quality, price, or weight; a tribute, fine, or tax; a real action; the name of a writ. See *Assize*.

Assisa armorum /ə'sáyzə armóráɪm/. Assize of arms. A statute or ordinance requiring the keeping of arms for the common defense.

Assisa cadere /əsáyzə kádəriy/. To fail in the assize; i.e., to be nonsuited. 3 Bl.Comm. 402.

Assisa cadit in juratum /əsáyzə kádat ən jərəytəm/. The assize falls (turns) into a jury; hence to submit a controversy to trial by jury.

Assisa continuanda /əsáyzə kəntinyuwándə/. An ancient writ addressed to the justices of assize for the continuation of a cause, when certain facts put in issue could not have been proved in time by the party alleging them.

Assisa de Clarendon /əsáyzə diy klárəndən/. The assize of Clarendon. A statute or ordinance passed in the tenth year of Henry II, by which those that were accused of any heinous crime, and not able to purge themselves, but must abjure the realm, had liberty of forty days to stay and try what succor they could get of their friends towards their sustenance in exile.

Assisa de foresta /əsáyzə diy foréstə/. Assize of the forest; a statute concerning orders to be observed in the royal forests.

Assisa de mensuris /əsáyzə diy mens(y)úrəs/. Assize of measures. A common rule for weights and measures, established throughout England by Richard I, in the eighth year of his reign.

Assisa de nocumento /əsáyzə diy nókyméntow/. An assize of nuisance; a writ to abate or redress a nuisance.

Assisa de utrum /əsáyzə diy yúwtrəm/. An obsolete writ, which lay for the parson of a church whose predecessor had alienated the land and rents of it.

Assisa friscæ fortis /əsáyzə frískiy fórshiyiy/. Assize of fresh force, which see.

Assisa mortis d'ancestoris /əsáyzə mórtəs dən-séstóras/. Assize of mort d'ancestor, which see.

Assisa novæ disseysinæ /əsáyzə nówviy dəsíyzəniy/. Assize of novel disseisin, which see.

Assisa panis et cerevisiæ /əsáyzə pánəs èt sərəvishiyiy/. Assize of bread and ale, or beer. The name of a statute passed in the fifty-first year of Henry III, containing regulations for the sale of bread and ale; sometimes called the "statute of bread and ale."

Assisa proroganda /əsáyzə pròwrowgándə/. An obsolete writ, which was directed to the judges assigned to take assizes, to stay proceedings, by reason of a party to them being employed in the king's business.

Assisa ultimæ præsentationis /əsáyzə áltəmiy prè-zəntèyshiyównəs/. Assize of darrein presentment (*q.v.*).

Assisa venalium /əsáyzə vənélyiyəm/. The assize of salable commodities, or of things exposed for sale.

Assise. See Assize.

Assist. To help; aid; succor; lend countenance or encouragement to; participate in as an auxiliary. To contribute effort in the complete accomplishment of an ultimate purpose intended to be effected by those engaged.

Assistance, or (assistants) court of. See Court of assistants.

Assistance of counsel. Sixth Amendment to Federal Constitution, guaranteeing accused in criminal prosecution "assistance of counsel" for his defense, means effective assistance, as distinguished from bad faith, sham, mere pretense or want of opportunity for conferences and preparation. Fed.R.Crim.P. 44; 18 U.S.C.A. § 3006A; Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799; Geders v. U. S., 425 U.S. 80, 96 S.Ct. 1330, 47 L.Ed.2d 592. See Assigned counsel; Counsel, right to; Miranda Rule.

Assistance, writ of. See Writ of assistance.

Assistant. A deputy, aide, or subordinate; as an assistant assessor. One who stands by and aids or helps another. Ordinarily refers to employee whose duties are to help his superior, to whom he must look for authority to act. State ex rel. Dunn v. Ayers, 112 Mont. 120, 113 P.2d 785, 788.

Assisus /əsáyzəs/. Rented or farmed out for a specified assize; that is, a payment of a certain assessed rent in money or provisions.

Assize, or assise (obsolete) /əsáyz/. An ancient species of court, consisting of a certain number of men, usually twelve, who were summoned together to try a disputed cause, performing the functions of a jury, except that they gave a verdict from their own investigation and knowledge and not upon evidence adduced. From the fact that they sat together (*assideo*), they were called the "assize." A court composed of an assembly of knights and other substantial men, with the baron or justice, in a certain place, at an appointed time. The verdict or judgment of the jurors or recognitors of assize. 3 Bl. Comm. 57, 59.

In later English law, the name "assizes" or "assises" was given to the court, time, or place where the judges of assize and *nisi prius*, who were sent by special commission from the crown on circuits through the kingdom, proceeded to take indictments, and to try such disputed causes issuing out of the courts at Westminster as were then ready for trial, with the assistance of a jury from the particular county. These judges of assize were the successors of the ancient "justices in eyre." They sat by virtue of four separate authorities: (1) Commission of Oyer and Terminer, (2) of goal delivery, (3) of nisi prius, and (4) Commission of Peace. In 1971 the Crown Court was established which superseded the criminal jurisdiction of courts of assize and all the jurisdiction of quarter sessions. The assize courts were accordingly abolished.

Anything reduced to a certainty in respect to time, number, quantity, quality, weight, measure, etc.

A species of writ, or real action, said to have been invented by Glanville, chief justice to Henry II, and having for its object to determine the right of possession of lands, and to recover the possession. 3 Bl.Comm. 184, 185.

The whole proceedings in court upon a writ of assize. The verdict or finding of the jury upon such a writ. 3 Bl.Comm. 57.

See also Certificate of assize.

Assize of Clarendon. See Assisa de Clarendon.

Assize of darrein presentment. A writ of assize which formerly lay when a man or his ancestors under whom he claimed presented a clerk to a benefice, who was instituted, and afterwards, upon the next avoidance, a stranger presented a clerk and thereby disturbed the real patron. 3 Bl.Comm. 245. It has given way to the remedy by *quare impedit*.

Assize of fresh force. In old English practice, a writ which lay by the usage and custom of a city or borough, where a man was disseised of his lands and tenements in such city or borough. It was called "fresh force," because it was to be sued within forty days after the party's title accrued to him.

Assize of mort d'ancestor. A real action which lay to recover land of which a person had been deprived on the death of his ancestor by the abatement or intrusion of a stranger. 3 Bl.Comm. 185. It was abolished by St. 3 & 4 Wm. IV, c. 27.

Assize of Northampton. A re-enactment and enlargement (1176) of the Assise of Clarendon.

Assize of novel disseisin. A writ of assize which lay for the recovery of lands or tenements, where the claimant had been lately disseised.

Assize of nuisance. A writ of assize which lay where a nuisance had been committed to the complainant's freehold; either for abatement of the nuisance or for damages.

Assize of the forest. A statute touching orders to be observed in the king's forests.

Assize of utrum. A writ of assize which lay for a parson to recover lands which his predecessor had improperly allowed the church to be deprived of. 3 Bl.Comm. 257.

An assize for the trial of the question of whether land is a lay fee, or held in frankalmoigne.

Assize rents. The certain established rents of the freeholders and ancient copyholders of a manor; so called because they are *assized*, or made precise and certain.

Grand assize. A peculiar species of trial by jury, introduced in the time of Henry II, giving the tenant or defendant in a writ of right the alternative of a trial by battle, or by his peers. Abolished by 3 & 4 Wm. IV, c. 42, § 13. 3 Bl.Comm. 341. See *Battel*.

Assizer /əsáyzər/. An assessor; juror; an officer who has the care and oversight of weights and measures.

Assizes de Jerusalem /əsáyzəz də jərúwzələm/. A code of feudal jurisprudence prepared by an assembly of barons and lords A.D. 1099, after the conquest of Jerusalem. It was compiled principally from the laws and customs of France.

Assizors /əsáyzərz/. In Scotch law, jurors; the persons who formed that kind of court which in Scotland was called an "assize," for the purpose of inquiring into and judging divers civil causes, such as perambulations, cognitions, molestations, purprestures, and other matters; like jurors in England.

Associate. Signifies confederacy or union for a particular purpose, good or ill. To join together, as *e.g.* partners. Partner or colleague. See *Association*.

Having subordinate status; *e.g.* associate professor.

An officer in each of the English courts of common law, appointed by the chief judge of the court, and holding his office during good behavior, whose duties were to superintend the entry of causes, to attend the sittings of *nisi prius*, and there receive and enter verdicts, and to draw up the postea and any orders of *nisi prius*. The associates were later officers of the Supreme Court of Judicature, and are styled "Masters of the Supreme Court". Duties of associates are now carried out by clerks in the Crown Office and Associates Department of the Central Office of the Supreme Court.

Associate justices. Judges of courts, other than the presiding or chief justice.

Associates in office. Those who are united in action; who have a common purpose; who share the responsibility or authority and among whom is reasonable equality. Those who are authorized by law to perform the duties jointly or as a body.

Association. The act of a number of persons in uniting together for some special purpose or business. It is a term of vague meaning used to indicate a collection or organization of persons who have joined together for a certain or common object. Also, the persons so joining; the state of being associated.

An unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. *Penrod Drilling Co. v. Johnson, C.A.Tex., 414 F.2d 1217, 1222.* It is not a legal entity separate from the persons who compose it. See also *Affiliation*.

An organization treated as a corporation for Federal tax purposes even though it may not qualify as such under applicable state law. What is designated as a trust or a partnership, for example, may be classified as an association if it clearly possesses corporate attributes. Corporate attributes include: centralized management, continuity of existence, free transferability of interests, and limited liability. I.R.C. § 7701(a)(3).

A "business trust" is an "association" when it has a continuing entity throughout trust period, centralized management, continuity of trust uninterrupted by death among beneficial owners, means for transfer of beneficial interests, and limitation of personal liabilities of participants to property embarked in undertaking. *Fletcher v. Clark, D.C.Wyo., 57 F.Supp. 479, 480.*

To prove "association" with a criminal venture, for purpose of convicting upon evidence that defendant aid-

ed and abetted illegal enterprise, there must be evidence to establish defendant shared in principal's criminal intent. U.S. v. Cowart, C.A.Ga., 595 F.2d 1023, 1035.

See also Articles of association; Confederacy; Cooperative; Joint stock association or company; Non-profit association; Professional association; Unincorporated association.

Partnership association. See Partnership.

Professional association. See Corporation (*Professional corporation*).

Unincorporated association. A confederation of individuals organized for a specific purpose which may or may not be profit making but which is not chartered as a corporation.

Association, freedom of. See Assembly, right of.

Association of American Law Schools, The. AALS is literally an association of law schools. After a school has graduated at least three annual classes it is eligible to apply for membership. Compliance with the rules of membership are determined through a three or four person inspection team. Recommendations for admission to membership are made by the Executive Committee, upon advice of the Accreditation Committee. Membership is attained by action of the House of Representatives.

Assoil /əsóyl/. (Spelled also *assoile*, *absoile*, *assoilyie*.) To absolve; acquit; to set free; to deliver from excommunication.

As soon as. This term has a relative meaning according to the thing which is to be done. It may denote merely a reasonable time; or may be equivalent to "whenever", or may mean "immediately".

As soon as may be. Promptly and with due diligence; as soon as was reasonably possible; within a reasonable time; as soon as possible; forthwith; as soon as they conveniently can. *George A. Fuller Co. v. Jersey City*, 21 N.J.Misc. 38, 29 A.2d 720, 722.

As soon as practicable. Means reasonable time. These words are not synonymous with "as soon as possible"; they mean ordinarily as soon as reasonably can be expected in the particular circumstances; or "in due time". But the words have also been construed as practically synonymous with speedily.

The words "as soon as practicable" within liability policy requirement that insured will notify the insurer of an occurrence as soon as practicable means within reasonable time in view of all the facts and circumstances of each particular case. *Greenway v. Selected Risks Ins. Co.*, D.C.App., 307 A.2d 753, 755.

As speedily as possible. Means within reasonable time or without unreasonable delay having regard to all the circumstances of the case and the things to be done. *Tatum v. Levi*, 117 Cal.App. 83, 3 P.2d 963, 967.

Assume. To pretend. To undertake; engage; promise. To take to or upon one's self. Also taking up, receiving, adopting, taking to oneself, or to put on deceitfully, take appearance of, affect, or outwardly seem. To take on,

become bound as another is bound, or put oneself in place of another as to an obligation or liability. *Texas Employers' Ins. Ass'n v. Texas & P. Ry. Co.*, Tex.Civ. App., 129 S.W.2d 746, 749. See also Assumption.

Assumed facts. Facts concerning which no evidence has been introduced at trial and hence no rulings of law or jury instructions are required. In argument, a hypothetical set of facts used to illustrate a point of law. See Stipulation.

Assumed name. See Alias.

Assumed risk. See Assumption of risk.

A summo remedio ad inferiorem actionem non habetur regressus, neque auxilium /éy sámoŵ rəmiyd(i)yow əd infriyóram əkshiyóŵnəm nòn həbiytər rəgrésəs, nékwiy ógzíl(i)yəm/. From (after using) the highest remedy, there can be no recourse (going back) to an inferior action, nor assistance (derived from it). A maxim in the old law of real actions, when there were grades in the remedies given; the rule being that a party who brought a writ of right, which was the highest writ in the law, could not afterwards resort or descend to an inferior remedy. 3 Bl.Comm. 193, 194.

Assumpsit /əsám(p)sət/. Lat. He undertook; he promised.

A promise or engagement by which one person assumes or undertakes to do some act or pay something to another. It may be either oral or in writing, but is not under seal. It is *express* if the promisor puts his engagement in distinct and definite language; it is *implied* where the law infers a promise (though no formal one has passed) from the conduct of the party or the circumstances of the case. *Dukes v. Rogers*, 67 Ga.App. 661, 21 S.E.2d 295, 297.

A common law form of action which lies for the recovery of damages for the non-performance of a parol or simple contract; or a contract that is neither of record nor under seal. A liberal and equitable action, applicable to almost every case where money has been received which in equity and good conscience ought to be refunded; express promise is not necessary to sustain action, but it may be maintained whenever anything is received or done from the circumstances of which the law implies a promise of compensation. The action of *assumpsit* differs from *trespass* and *trover*, which are founded on a tort, not upon a contract; from *covenant* and *debt*, which are appropriate where the ground of recovery is a sealed instrument, or special obligation to pay a fixed sum; and from *replevin*, which seeks the recovery of specific property, if attainable, rather than of damages.

Express assumpsit. See Express assumpsit.

General (common or indebitatus) assumpsit is an action of assumpsit brought upon the promise or contract implied by law in certain cases. It is founded upon what the law terms an implied promise on the part of defendant to pay what, in good conscience, he is bound to pay to plaintiff.

Special assumpsit is an action of assumpsit brought upon an express contract or promise.

Assumpsit for money had and received. Is of equitable character and lies, in general, whenever defendant has received money which in equity and good conscience he ought to pay to plaintiff.

Assumpsit on quantum meruit /əsəm(p)st òn kwóntəm méruwət/. When a person employs another to do work for him, without any agreement as to his compensation, the law implies a promise from the employer to the workman that he will pay him for his services as much as he may deserve or merit. In such case, the plaintiff may suggest in his declaration that the defendant promised to pay him as much as he reasonably deserved, and then aver that his trouble was worth such a sum of money, which the defendant has omitted to pay. This is called an "assumpsit on quantum meruit". *Travis v. Kennedy*, Tex.Civ.App., 66 S.W.2d 444, 446. *See also* Quantum meruit.

Assumption. The act of conceding or taking for granted. Laying claim to or taking possession of.

The act or agreement of assuming or taking upon one's self. The undertaking or adoption of a debt or obligation primarily resting upon another, as where the purchaser of real estate "assumes" a mortgage resting upon it, in which case he adopts the mortgage debt as his own and becomes personally liable for its payment. The difference between the purchaser of land assuming a mortgage on it and simply buying subject to the mortgage, is that in the former case he makes himself personally liable for the payment of the mortgage debt, while in the latter case he does not. When he takes the conveyance subject to the mortgage, he is bound only to the extent of the property. Where one "assumes" a lease, he takes to himself the obligations, contracts, agreements, and benefits to which the other contracting party was entitled under the terms of the lease. *See* Assumption of mortgage.

Assumption clause. In mortgages, a provision that the mortgage may not be assumed without written consent of mortgagee. *See* Assumption of mortgage. Also a provision in an instrument of transfer in which the transferee agrees to assume an obligation of the transferor.

Assumption fee. Lender's charge for processing records for new buyer assuming an existing loan (mortgage).

Assumption of care. *See* Good Samaritan doctrine.

Assumption of indebtedness. Exists when person binds himself to pay debt incurred by another. *Pawnee County Excise Board v. Kurn*, 187 Okl. 110, 101 P.2d 614, 618. *See also* Subrogation.

Assumption of mortgage. To take or acquire a mortgage or deed of trust from some prior holder. Thus, a purchaser may assume or take over the mortgage of the seller. Often this requires permission of the mortgagee. This is distinguishable from taking equity of redemption subject to mortgage because in latter case grantee is not contractually bound to pay mortgage, whereas if he

assumes the mortgage, he binds himself to mortgagor to pay the mortgage and to fulfill all other terms and conditions of mortgage. *See also* Assumption.

Assumption of risk. The doctrine of assumption of risk, also known as *volenti non fit injuria*, means legally that a plaintiff may not recover for an injury to which he assents, *i.e.*, that a person may not recover for an injury received when he voluntarily exposes himself to a known and appreciated danger. The requirements for the defense of *volenti non fit injuria* are that: (1) the plaintiff has knowledge of facts constituting a dangerous condition, (2) he knows the condition is dangerous, (3) he appreciates the nature or extent of the danger, and (4) he voluntarily exposes himself to the danger. An exception may be applicable even though the above factors have entered into a plaintiff's conduct if his actions come within the rescue or humanitarian doctrine. *Clarke v. Brockway Motor Trucks*, D.C.Pa., 372 F.Supp. 1342, 1347.

A defense to action of negligence which consists of showing that the plaintiff, knowing the dangers and risk involved, chose to act as he did. An affirmative defense which the defendant in a negligence action must plead and prove. Fed.R.Civil P. 8(c). It is not a defense under state workers' compensation laws or in FELA actions. Many states have abolished the defense of assumption of risk in automobile cases with the enactment of no-fault insurance acts or comparative negligence acts.

See also *Volenti non fit injuria*.

Secondary assumption of risk. Such occurs when individual voluntarily encounters known, appreciated risk without an intended manifestation by that individual that he consents to relieve another of his duty. *Calvert v. Garvey Elevators, Inc.*, 236 Kan. 570, 694 P.2d 433, 437.

Assurance. The act or action of assuring; *e.g.* a pledge, guaranty, or surety. A declaration tending to inspire full confidence.

The deed or instrument by which real property is conveyed; also, the act of conveying such.

Same as "Insurance"; term used in Canada and England.

In England, the legal evidences of the transfer of property are called the "common assurances" of the kingdom, whereby every man's estate is assured to him, and all controversies, doubts, and difficulties are either prevented or removed.

Assurance, further, covenant for. *See* Covenant (*Covenant for further assurance*).

Assure. To make certain and put beyond doubt. To declare, aver, avouch, assert, or ensure positively. To declare solemnly; to assure to any one with design of inspiring belief or confidence. Used interchangeably with "insure" in insurance law. In real property documents it means a warranty; and in business documents, generally, it means a pledge or security. *Utilities Engineering Institute v. Kofod*, 185 Misc. 1035, 58 N.Y.S.2d 743, 745.

Assured. A person who has been insured by some insurance company, or underwriter, against losses or perils mentioned in the policy of insurance. Ordinarily synonymous with "insured".

Assured clear distance ahead. Requires driver to keep motor vehicle under such control that he can stop in distance that he can clearly see; the distance varying with circumstances. *Smiley v. Arrow Spring Bed Co.*, 138 Ohio St. 81, 33 N.E.2d 3, 5, 6, 7, 9.

Assurer. An insurer against certain perils and dangers; an underwriter; an indemnifier.

Ass stipulation /əstɪpəleɪʃən/. A mutual agreement, assent, and consent between parties; also a witness or record.

Astitrarius hæres /əstrətəriyəs hɪriyz/. An heir apparent who has been placed, by conveyance, in possession of his ancestor's estate during such ancestor's lifetime.

Astitution /əstət(y)uʃhən/. An arraignment (*q.v.*)

Astrarius /əstrəriyəs/. In old English law, a householder; belonging to the house; a person in actual possession of a house.

Astrarius hæres /əstrəriyəs hɪriyz/. Where the ancestor by conveyance hath set his heir apparent and his family in a house in his lifetime.

Astrer /əstrər/. In old English law, a householder, or occupant of a house or hearth.

Astrihiltet. In Saxon law, a penalty for a wrong done by one in the king's peace. The offender was to replace the damage twofold.

Astrum /əstrəm/. A house, or place of habitation.

Asylum /əsáyləm/. A sanctuary, or place of refuge and protection, where criminals and debtors found shelter, and from which they could not be taken without sacrilege. Shelter; refuge; protection from the hand of justice. The word includes not only place, but also shelter, security, protection. While a foreign country has the right to offer an asylum to fugitives from other countries, there is no corresponding right on the part of the alien to claim asylum. This right of asylum has been voluntarily limited by most countries by treaties providing for the extradition (*q.v.*) of fugitive criminals (international extradition).

In time of war, a place of refuge in neutral territory for belligerent warships.

An institution for the protection and relief of unfortunates, as asylums for the poor, or for the insane; though this term is no longer generally used for such institutions.

Aliens. An alien may be considered for asylum or refugee status in the United States if the alien has a well-founded fear of persecution in his or her home country. To be eligible for either asylum or refugee status, the applicant must qualify as a refugee, as defined by 8 U.S.C.A. § 1101(a)(42). Also, under the Refugee Act of 1980, "an alien physically present in the United States or at a land border or port of entry ...

may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee" 8 U.S.C.A. § 1158(a).

At. A term of considerable elasticity of meaning, and somewhat indefinite. A function word to describe or indicate presence or occurrence in, on, or near; or to indicate the means, cause, or manner; or to indicate that with which one is occupied or employed. As used to fix a time, it does not necessarily mean *eo instante* or the identical time named, or even a fixed definite moment. Often expresses simply nearness and proximity, and consequently may denote a reasonable time.

Atamita /ətémətə/. In the civil law, a great-great-grandfather's sister.

At any time. Grant of time without limit. *Haworth v. Hubbard*, 220 Ind. 611, 44 N.E.2d 967, 970. Period of time limited by circumstances. *Imes v. Globe Oil & Refining Co.*, 184 Okl. 79, 84 P.2d 1106, 1107, 1108. Within a reasonable time.

At any time prior to. Synonymous with "not later than". *Hughes v. United States*, C.C.A.Tenn., 114 F.2d 285, 287.

At arm's length. Beyond the reach of personal influence or control. Parties are said to deal "at arm's length" when each stands upon the strict letter of his rights, and conducts the business in a formal manner, without trusting to the other's fairness or integrity, and without being subject to the other's control or overmastering influence. See *Arm's length transaction*.

Atavia /ətéyviyə/. In the civil law, a great-grandmother's grandmother.

Atavunculus /ətávŋkyələs/. The brother of a great-grandfather's grandmother, or a great-great-grandfather's brother.

Atavus /ətávəs/. The male ascendant in the fifth degree. The great-grandfather's or great-grandmother's grandfather; a fourth grandfather.

Ataxia /ətáksiyə/. Condition involving impaired coordinative control over the extremities; power present in the extremities, but control is lacking.

At bar. Before the court. "The case at bar," etc.

A tempore cujus contrarii memoria non existet /èy témpəriy kyúwjs kənt්රəriyay memóriyə non egzístət/. From a time of which there is no memory to the contrary.

A teneris annis /èy ténərəs ənəs/. By reason of youth.

A terme /a térm/. For a or the term.

A terme de sa vie /a térm də sa viy/. For the term of his life.

A terme que n'est mye encore passe. For a term that has not yet passed.

A terme que passe est /a térm kə paséy/. For a term that has passed.

Atha /âθə/. (Spelled also *Atta*, *Athe*, *Atte*.) In Saxon law, an oath; the power or privilege of exacting and administering an oath.

Atheist. One who does not believe in the existence of a God.

Atia /éysh(iy)ə/. Hatred or ill-will. *See* De odio et atia.

Atilian law. *See* Lex Atilia.

Atinian law. *See* Lex Atinia.

At issue. Whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at an issue. Criminal case is "at issue" when defendant enters a plea. *State v. Padilla*, App., 88 N.M. 160, 538 P.2d 802, 804.

ATLA. American Trial Lawyers Association.

At large. Not limited to any particular place, district, person, matter, or question; open to discussion or controversy; not precluded. Free; unrestrained; not under corporal control, as a ferocious animal so free from restraint as to be liable to do mischief. Fully; in detail; in an extended form.

Elected officials chosen by the voters of the State as a whole rather than from separate congressional or legislative districts.

At law. According to law; by, for, or in law. Particularly in distinction from that which is done in or according to equity; or in titles such as sergeant at law, barrister at law, attorney or counsellor at law.

At least. In deed of trust covenant specifying amount of fire insurance, means at lowest estimate, at smallest concession or claim, in smallest or lowest degree, at smallest number. *Browne v. Franklin Fire Ins. Co.*, 225 Mo.App. 665, 37 S.W.2d 977, 979.

Atmatertera /ætmeytártəɹə/. A great-grandfather's grandmother's sister (*atavia soror*), called by Bracton "atmatertera magna."

At once. In contracts of various kinds the phrase is construed as synonymous with "immediately" and "forthwith," where the subject-matter is the giving of notice. The use of such term does not ordinarily call for instantaneous action, but rather that notice shall be given within such time as is reasonable in view of the circumstances. Likewise, contracts or statutes requiring the performance of a particular act "at once" are usually held to mean simply within a reasonable time. An order to "ship at once" is synonymous with "as soon as possible". *Myers v. Hardin*, 208 Ark. 505, 186 S.W.2d 925, 928.

A tort. Without reason; unjustly; wrongfully. *See* Tort.

A tort et a travers. Without consideration or discernment.

A tort ou a droit. Right or wrong.

At par. Said of a bond or preferred stock issued or selling at its face value.

Atpatruus /ætptəruwəs/. The brother of a great-grandfather's grandfather.

At-risk amount. The taxpayer has an amount at risk in a business or investment venture to the extent that it has subjected personal assets to the risks of the business. Typically, the taxpayer's at-risk amount includes (1) the amount of money or other property that the investor contributed to the venture for the investment, (2) the amount of any of the entity's liabilities for which the taxpayer personally is liable and that relate to the investment, and (3) an allocable share of nonrecourse debts incurred by the venture from third parties in arm's length transactions, with respect to real estate investments. *See* At-risk rules.

At-risk rules. The at-risk rules limit a taxpayer's deductible losses to the amount the taxpayer has at risk. Amounts at risk include the cash investment, and the debt for which the taxpayer is personally liable. The objective of the at-risk rules is to prevent investors from sheltering income through losses incurred in activities financed substantially through non-recourse debt. *See also* At-risk amount.

Atrocious assault and battery. An assault by maiming and wounding. Aggravated assault.

Atrocity. A word implying conduct that is outrageously or wantonly wicked, criminal, vile, cruel; extremely horrible and shocking.

Atrophy /ætɹəfiy/. Degeneration or wasting away of tissues, organs or parts due to lack of use; disease or interference with nerve supply.

ATS. At suit of.

At sea. Out of the limits of any port or harbor on the sea-coast. *U. S. v. Symonds*, 120 U.S. 46, 7 S.Ct. 411, 30 L.Ed. 557.

Attach. Seizure of property under a writ of attachment. *See* Attachment.

To bind, fasten, tie, or connect, to make fast or join; its antonyms are separate, detach, remove.

Attaché /ætəshéy/ətəshèy/. A person attached to an embassy, to the office of an ambassador, or to a foreign legation. One connected with an office, *e.g.*, a public office.

Attached. A term describing the physical union of two otherwise independent structures or objects, or the relation between two parts of a single structure, each having its own function. As applied to buildings, the term is often synonymous with "annexed." *See also* Fixture.

Attached account. Account against which court order has been issued; payments can only be made with consent of court.

Attachiamenta /ətəch(iy)əméntə/. L. Lat. Attachment.

Attachiamenta bonorum /ətəch(iy)əméntə bownórəm/. A distress formerly taken upon goods and chattels, by the legal *attachiators* or bailiffs, as security to answer an action for personal estate or debt.

Attachiamenta de placitus coronæ /ətäch(iy)əméntə diy plásətəs kərówniy/. Attachment of pleas of the crown.

Attachiamenta de spinis et boscis /ətäch(iy)əméntə diy spáy-nəs èt bóskəs/. A privilege granted to the officers of a forest to take to their own use thorns, brush, and windfalls, within their precincts.

Attachiamentum /ətäch(iy)əméntəm/. L. Lat. An attachment.

Attaching creditor. *See* Creditor.

Attachment. The legal process of seizing another's property in accordance with a writ or judicial order for the purpose of securing satisfaction of a judgment yet to be rendered. The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the court for the purpose of securing satisfaction of the judgment ultimately to be entered in the action. While formerly the main objective of attachment was to coerce the defendant debtor to appear in court by seizure of his property, today the writ of attachment is used primarily to seize the debtor's property in order to secure the debt or claim of the creditor in the event that a judgment is rendered. The remedy of attachment is governed strictly by state statutes, with such differing considerably as to when attachment is available (the majority of states providing that such is available at or after the commencement of the main action until entry of judgment). Federal courts follow the local rules or statutes relating to attachment. Fed. R.Civil P. 64.

A remedy ancillary to an action by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain. *Lipscomb v. Rankin*, C.C.A.Tex., 139 S.W.2d 367, 369.

See also Execution; Garnishment; Levy; Lien of attachment.

Commercial law. When the three basic prerequisites of a security interest exist (agreement, value, and collateral), the security agreement becomes enforceable between the parties and is said to "attach." U.C.C. § 9-203.

Distinguished from execution. *See* Execution.

Domestic and foreign. In some jurisdictions it is common to give the name "domestic attachment" to one issuing against a resident debtor (upon the special ground of fraud, intention to abscond, etc.), and to designate an attachment against a non-resident, or his property, as "foreign."

Where the defendant is a non-resident, or beyond the territorial jurisdiction of the court, his goods or land within the territory may be seized upon process of attachment; whereby he will be compelled to enter an appearance, or the court acquires jurisdiction so far as to dispose of the property attached. This is sometimes called "foreign attachment." In such a case, the pro-

ceeding becomes in substance one in rem against the attached property.

Persons. A writ issued by a court of record, commanding the sheriff to bring before it a person who has been guilty of contempt of court, either in neglect or abuse of its process or of subordinate powers. A *capias* (*q.v.*).

Property. A species of mesne process, by which a writ is issued at the institution or during the progress of an action, commanding the sheriff to seize the property, rights, credits, or effects of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover. It is principally used against absconding, concealed, or fraudulent debtors. Mass.R. Civil P. 4.1.

Attachment bond. A bond used to dissolve an attachment so as to free the property subject to the attachment for sale or other disposition; may be surety company bond or personal bond with sureties. Plaintiff then looks to bond for satisfaction of his judgment.

Attachment execution. A name given in some states to a process of garnishment for the satisfaction of a judgment. As to the judgment debtor it is an execution; but as to the garnishee it is an original process—a summons commanding him to appear and show cause, if any he has, why the judgment should not be levied on the goods and effects of the defendant in his hands.

Attachment of privilege. In old English law, a process by which a man, by virtue of his privilege, calls another to litigate in that court to which he himself belongs, and who has the privilege to answer there. A writ issued to apprehend a person in a privileged place.

Attachment of risk. Used to describe point in time, generally when title passes, when risk of loss for destruction of property which is subject of sale passes to buyer from seller. U.C.C. § 2-509.

Attachment of the forest. In old English law, one of the three courts formerly held in forests. The highest court was called "justice in eyre's seat;" the middle, the "swainmote;" and the lowest, the "attachment."

Attain. To reach or come to by progression or motion; to arrive at; as, to attain a ripe old age. *Watkins v. Metropolitan Life Ins. Co.*, 156 Kan. 27, 131 P.2d 722, 723.

Attainder /ətéynder/. At common law, that extinction of civil rights and capacities which took place whenever a person who had committed treason or felony received sentence of death for his crime.

The effect of "attainder" upon such felon was, in general terms, that all his estate, real and personal, was forfeited. At the common law, attainder resulted in three ways, viz.: *by confession*, *by verdict*, and *by process* or *outlawry*. The first case was where the prisoner pleaded guilty at the bar, or having fled to sanctuary, confessed his guilt and abjured the realm to save his life. The second was where the prisoner pleaded not guilty at the bar, and the jury brought in a verdict against him.

The third, when the person accused made his escape and was outlawed.

In England, by statute 33 & 34 Vict. c. 23, attainder upon conviction, with consequent corruption of blood, forfeiture, or escheat, was abolished. In the United States, the doctrine of attainder is now scarcely known, although during and shortly after the Revolution acts of attainder were passed by several of the states. The passage of such bills is expressly forbidden by the Constitution (Art. I, Sec. 9).

Bills of attainder. Such special acts of the legislature as inflict capital punishments upon persons supposed to be guilty of high offenses, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death, it is called a "bill of pains and penalties," but both are included in the prohibition in the Constitution (Art. I, Sec. 9). *Losier v. Sherman*, 157 Kan. 153, 138 P.2d 272, 273; *State v. Graves*, 352 Mo. 1102, 182 S.W.2d 46, 54. See also *Bill*.

Attaint /ə'téynt/. Attainted, stained, or blackened.

In old English practice, a writ which lay to inquire whether a jury of twelve men had given a false verdict, in order that the judgment might be reversed. 3 Bl. Comm. 402. This inquiry was made by a grand assise or jury of twenty-four persons, usually knights, and, if they found the verdict a false one, the judgment was that the jurors should become infamous, should forfeit their goods and the profits of their lands, should themselves be imprisoned, and their wives and children thrust out of doors, should have their houses razed, their trees extirpated, and their meadows plowed up, and that the plaintiff should be restored to all that he lost by reason of the unjust verdict. 3 Bl. Comm. 404.

Attaint d'une cause /ə'téyn d(y)ùwn kówz/. In French law, the gain of a suit.

Attempt. In statutes and in cases other than criminal prosecutions an "attempt" ordinarily means an intent combined with an act falling short of the thing intended. It may be described as an endeavor to do an act, carried beyond mere preparation, but short of execution.

Criminal law. An intent to commit a crime coupled with an act taken toward committing the offense. An effort or endeavor to accomplish a crime, amounting to more than mere preparation or planning for it, which, if not prevented, would have resulted in the full consummation of the act attempted, but which, in fact, does not bring to pass the party's ultimate design. The requisite elements of an "attempt" to commit a crime are: (1) an intent to commit it, (2) an overt act toward its commission, (3) failure of consummation, and (4) the apparent possibility of commission. *State v. Stewart*, Mo.App., 537 S.W.2d 579, 581.

A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he: (a) purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or (b) when causing a particular result is an element of

the crime, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or (c) purposely does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime. Model Penal Code, § 5.01.

Attendant, n. One who owes a duty or service to another, or in some sort depends upon him. One who follows and waits upon another.

Attendant, adj. Accompanying, or connected with.

Attendant circumstances. Facts surrounding an event; e.g. the time, place and declarations of a testator prior to and immediately following execution of his will.

Attendant terms. In English law, terms (usually mortgages), for a long period of years, which are created or kept outstanding for the purpose of *attending* or waiting upon and protecting the inheritance. A phrase used in conveyancing to denote estates which are kept alive, after the objects for which they were originally created have ceased, so that they might be deemed merged or satisfied, for the purpose of protecting or strengthening the title of the owner. By the Satisfied Terms Act of 1845, any attendant term becoming satisfied after the Act immediately ceased. But the Act did not apply to leaseholds. That Act was repealed and replaced by Sec. 5 of the Law of Property Act of 1925, which applies to terms created out of leaseholds as well as terms created out of freeholds.

Attentat /ə'téntət/. Lat. He attempts.

In the civil and canon law, anything wrongfully innovated or *attempted* in a suit by an inferior judge (or judge *a quo*) pending an appeal.

Attention. Consideration with a view to action; notice; attentiveness; the act or state of attending.

Atterminare /ə'tərmənəriy/. In old English law, to put off to a succeeding term; to prolong the time of payment of a debt.

Attermining /ə'tərməniŋ/. In old English law, a putting off; the granting of a time or term, as for the payment of a debt.

Attermoient. In canon law, a making terms; a composition, as with creditors.

Attest. To bear witness to; to bear witness to a fact; to affirm to be true or genuine; to act as a witness to; to certify; to certify to the verity of a copy of a public document formally by signature; to make solemn declaration in words or writing to support a fact; to signify by subscription of his name that the signer has witnessed the execution of the particular instrument. *Lindsey v. Realty Trust Co.*, Tex.Civ.App., 75 S.W.2d 322, 324; *City Lumber Co. of Bridgeport v. Borsuk*, 131 Conn. 640, 41 A.2d 775, 778. Also the technical word by which, in the practice in many of the states, a certifying officer gives assurance of the genuineness and correctness of a copy. Thus, an "attested" copy of a document

is one which has been examined and compared with the original, with a certificate or memorandum of its correctness, signed by the persons who have examined it. *See* Affirmation; Jurat; Oath; Verification.

Attestation. The act of witnessing an instrument in writing, at the request of the party making the same, and subscribing the name of the witness in testimony of such fact. In *re* Carlson's Estate, 156 Or. 597, 68 P.2d 119, 121. *See* Affirmation; Jurat; Oath; Verification.

Attestation clause. That clause (*e.g.* at the end of a will) wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same. A certificate certifying as to facts and circumstances attending execution of will. In *re* Bragg's Estate, 106 Mont. 132, 76 P.2d 57, 62. *See* Uniform Probate Code, § 2-502.

Attestation of will. Act of witnessing performance of statutory requirements to valid execution. *Zaruba v. Schumaker*, Tex.Civ.App., 178 S.W.2d 542, 543. *See* Attestation clause.

Attested copy. *See* Attest.

Attesting witness. One who signs his name to an instrument, at the request of the party or parties, for the purpose of proving and identifying it.

Attestor. One who attests or vouches for.

At the courthouse door. In proximity of courthouse door. At place provided for posting of legal notices in courthouse. *Matson v. Federal Farm Mortg. Corporation*, Tex.Civ.App., 151 S.W.2d 636, 640, 641.

At the end of the will. The words "at the end of the will" within statute providing that every will shall be subscribed by testator at the end of the will mean the end of the language and not paper on which it is written. In *re* Hildreth's Will, 36 N.Y.S.2d 938, 939, 940.

At the market. Order to broker to buy or sell a stock at the current market price, rather than at a specified price. *See* Market order.

At time cause of action accrues. Term is sometimes applied to present enforceable demand, but more often simply means to arise or come into existence. *Stone v. Phillips*, 142 Tex. 216, 176 S.W.2d 932, 933.

Attincta /ətɪŋktə/. L. Lat. An attain, stain, or blackening; a conviction or finding of guilty of some offense.

Attorn /ətɔrn/. To turn over; to transfer to another money or goods; to assign to some particular use or service. To consent to the transfer of a rent or reversion. To agree to become tenant to one as owner or landlord of an estate previously held of another, or to agree to recognize a new owner of a property or estate and promise payment of rent to him.

Attornare /ətɔrnəri/. Lat. To attorn; to transfer or turn over; to appoint an attorney or substitute.

Attornare rem /ətɔrnəri rém/. To turn over money or goods, *i.e.*, to assign or appropriate them to some particular use or service.

Attornato faciendo vel recipiendo /ətɔrnédow fəshiyéndow vèl rəsipiyéndow/. An obsolete writ, which commanded a sheriff or steward of a county court or hundred court to receive and admit an attorney to appear for the person that owed suit of court.

Attornatus /ətɔrnéytəs/. One who is attorned, or put in the place of another; a substitute; hence, an attorney.

Attornatus fere in omnibus personam domini representat /ətɔrnéytəs fríy in ómnabəs pərsónnam dómənay rəprəzéntət/. An attorney represents the person of his master in almost all respects.

Attorne /ətɔrn/. L. Fr. In old English law, an attorney.

Attorney. In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place or stead of another. An agent, or one acting on behalf of another. *Sherts v. Fulton Nat. Bank of Lancaster*, 342 Pa. 337, 21 A.2d 18. In its most common usage, however, unless a contrary meaning is clearly intended, this term means "attorney at law", "lawyer" or "counselor at law".

"Attorney" means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law. Bankruptcy Code, § 101.

The word "attorney" includes a party prosecuting or defending an action in person. New York C.P.L.R. § 105.

See also Attorney for government; Attorney General; Barrister; District (*District attorney*); House counsel; Lawyer; Prosecuting attorney; State's attorney; United States Attorney.

Attorney ad hoc. *See* Ad hoc.

Attorney at large. In old practice, an attorney who practiced in all the courts.

Attorney at law. Person admitted to practice law in his respective state and authorized to perform both civil and criminal legal functions for clients, including drafting of legal documents, giving of legal advice, and representing such before courts, administrative agencies, boards, etc.

In English law, a public officer belonging to the superior courts of common law at Westminster, who conducted legal proceedings on behalf of others, called his clients, by whom he was retained; he answered to the solicitor in the courts of chancery, and the proctor of the admiralty, ecclesiastical, probate, and divorce courts. An attorney was almost invariably also a solicitor. It was provided by the judicature act, 1873, § 87, that solicitors, attorneys, or proctors of, or by law empowered to practice in, any court the jurisdiction of which is by that act transferred to the high court of justice or the court of appeal, shall be called "solicitors of the supreme court."

Attorney ethics. *See* Code of Professional Responsibility; Rules of Professional Conduct.

Attorney fees. *See* American rule; Attorney's lien; Common fund doctrine; Equal Access to Justice Act; Fee; Lodestar Rule; Minimum fee schedules; Retainer.

Attorney in fact. A private attorney authorized by another to act in his place and stead, either for some particular purpose, as to do a particular act, or for the transaction of business in general, not of a legal character. This authority is conferred by an instrument in writing, called a "letter of attorney," or more commonly a "power of attorney." See Power of attorney.

Attorney of record. Attorney whose name must appear somewhere in permanent records or files of case, or on the pleadings or some instrument filed in the case, or on appearance docket. Person whom the client has named as his agent upon whom service of papers may be made. *Reynolds v. Reynolds*, 21 Cal.2d 580, 134 P.2d 251, 254.

An attorney who has filed a notice of appearance (e.g., through a praecipe) and who hence is formally mentioned in court records as the official attorney of the party. Once an attorney becomes an attorney of record, he often cannot withdraw from the case without court permission.

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. Fed.R. Civil P. 11.

Attorney's license. A formal document issued by a state supreme court, normally after passage of a bar examination, which permits one to practice law in that jurisdiction. Also, a similar document issued by federal courts to attorneys admitted to practice in state courts. Such licenses may be revoked because of disbarment or suspended for attorney misconduct.

Attorney's lien. See Attorney's lien.

Letter of attorney. A power of attorney; a written instrument by which one person constitutes another his true and lawful attorney, in order that the latter may do for the former, and in his place and stead, some lawful act. An instrument of writing, appointing an attorney in fact for an avowed purpose and setting forth his powers and duties. It is, in effect, a mere contract of agency. A *general* power authorizes the agent to act generally in behalf of the principal. A *special* power is one limited to particular acts.

Power of attorney. The instrument by which authority of one person to act in place and stead of another as attorney in fact is set forth. See also Power of attorney.

Practice of law. See Practice.

Public attorney. A name sometimes given to an attorney at law, as distinguished from a *private* attorney, or attorney in fact.

Right to attorney. See Counsel, right to.

Attorney-client privilege. In law of evidence, client's privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between he and his attorney. Such privilege protects communications between attorney and client made for purpose of furnishing or obtaining professional legal advice or assistance. *Levingston v. Allis-Chalmers Corp.*, D.C.Miss., 109 F.R.D. 546, 550. That privilege

which permits an attorney to refuse to testify as to communications from client to him though it belongs to client, not to attorney, and hence client may waive it. In federal courts, state law is applied with respect to such privilege. Fed.Evid. Rule 501. See also Client's privilege; Joint defense doctrine.

Attorney for government. Includes the Attorney General, an authorized assistant of the Attorney General, a United States Attorney, an authorized assistant of a United States Attorney and when applicable to cases arising under the laws of Guam means the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein. Fed.R.Crim.P. 54(c).

Attorney General. The Attorney General, as head of the Department of Justice and chief law officer of the Federal Government, represents the United States in legal matters generally and gives advice and opinions to the President and to the heads of the executive departments of the Government when so requested. The Attorney General appears in person to represent the Government in the U.S. Supreme Court in cases of exceptional gravity or importance. See also Solicitor General.

In each state there is also an attorney general, who is the chief law officer of the state. He gives advice and opinions to the governor and to executive and administrative departments or agencies.

In England, the principal law officer of the Crown, and head of the bar of England.

Private Attorney General. The "private attorney general" concept holds that a successful private party plaintiff is entitled to recovery of his legal expenses, including attorney fees, if he has advanced the policy inherent in public interest legislation on behalf of a significant class of persons. *Dasher v. Housing Authority of City of Atlanta, Ga.*, D.C.Ga., 64 F.R.D. 720, 722. See also Equal Access to Justice Act.

Attorney general's bill. An indictment presented to grand jury by leave of court without prior complaint before magistrate and holding for court. *Commonwealth v. Wilson*, 134 Pa.Super. 222, 4 A.2d 324, 327.

Attorney general's opinion. An opinion furnished by U.S. Attorney General to President, members of executive department or governmental agencies on request concerning question of law. Also, opinion rendered by state attorney general to Governor or state agencies on request concerning an interpretation of law.

Attorney, right to. See Counsel, right to.

Attorneyship. The office of an agent or attorney.

Attorney's lien. The right of an attorney at law to hold or retain in his possession the money or property of a client until his proper charges have been adjusted and paid. It requires no equitable proceeding for its establishment. Also a lien on funds in court payable to the client, or on a judgment or decree or award in his favor, recovered through the exertions of the attorney, and for

the enforcement of which he must invoke the equitable aid of the court.

Charging lien. An attorney's lien, for his proper compensation, on the fund or judgment which his client has recovered by means of his professional aid and services. It is a specific lien covering only the services rendered by an attorney in the action in which the judgment was obtained, whereas a retaining lien is a general lien for the balance of the account between the attorney and his client, and applies to the property of the client which may come into the attorney's possession in the course of his employment.

Retaining lien. The lien which an attorney has upon all his client's papers, deeds, vouchers, etc., which remain in his possession, entitling him to retain them until satisfaction of his claims for professional services. It is a general lien.

Attorney's work product. See Work product rule.

Attornment /ətɔːnmənt/. In feudal and old English law, a turning over or transfer by a lord of the services of his tenant to the grantee of his seignior.

Attornment is the act of a person who holds a leasehold interest in land, or estate for life or years, by which he agrees to become the tenant of a stranger who has acquired the fee in the land, or the remainder or reversion, or the right to the rent or services by which the tenant holds. It is an act by which a tenant acknowledges his obligation to a new landlord.

The agreement of a person to recognize a third party as a permissible successor party to a contract; most often, the agreement of a tenant to pay rent to a new landlord, especially a mortgagee who has foreclosed.

Attractive agencies doctrine. See Attractive nuisance doctrine.

Attractive instrumentalities doctrine. See Attractive nuisance doctrine.

Attractive nuisance doctrine. The doctrine is that person who has an instrumentality, agency, or condition upon his own premises, or who creates such condition on the premises of another, or in a public place, which may reasonably be apprehended to be a source of danger to children, is under a duty to take such precautions as a reasonably prudent man would take to prevent injury to children of tender years whom he knows to be accustomed to resort there, or who may, by reason of something there which may be expected to attract them, come there to play. See Restatement, Second, Torts § 339.

Attribution. Under certain circumstances, the tax law applies attribution rules to assign to one taxpayer the ownership interest of another taxpayer. If, for example, the stock of X Corporation is held 60% by M and 40% by S, M may be deemed to own 100% of X Corporation if M and S are mother and son. In such a case, the stock owned by S is attributed to M. Stated differently, M has a 60% "direct" and a 40% "indirect" interest in X Corporation. It can also be said that M is the "constructive" owner of S's interest.

Attrition. In general, natural and gradual decrease. Term is used to describe decline in public utility's actual rate of return, after test year, caused by growth in its rate base or operating expenses, or both, which outstrips any increase in revenues. South Central Bell Tel. Co. v. Louisiana Public Service Commission, La., 373 So.2d 478, 486. Term used to describe the phenomenon present when factors, other than extraordinary growth, are forcing costs upward without a concomitant increment in revenues. Southern Bell Tel. & Tel. Co. v. Florida Public Service Com'n, Fla., 443 So.2d 92, 95.

Att'y. Attorney.

Aubaine /ɔːbɛɪn/. See Droit d'aubaine.

A.U.C. Ab urbe condita. From the founding of the city.

Auction /ɔːkʃən/. An auction is a public sale of property to the highest bidder by one licensed and authorized for that purpose. The auctioneer is employed by the seller and is primarily his agent. However, when the property is struck off he is also the agent of the buyer to the extent of binding the parties by his memorandum of sale, thus satisfying the statute of frauds. Hawaii Jewelers Ass'n v. Fine Arts Gallery, Inc., 51 Hawaii 502, 463 P.2d 914, 916.

A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Such a sale is with reserve unless the goods are in explicit terms put up without reserve. U.C.C. § 2-328.

Dutch auction. A method of sale by auction which consists in the public offer of the property at a price beyond its value, and then gradually lowering the price until some one becomes the purchaser.

Auctionaria /ɔːkʃ(ɪ)ənəriyɪ/. Catalogues of goods for public sale or auction.

Auctionarius /ɔːkʃ(ɪ)ənəriyəs/. A seller; a regrator; a retailer; one who bought and sold; an auctioneer, in the modern sense. One who buys poor, old, worn-out things to sell again at a greater price.

Auctioneer. A person authorized or licensed by law to sell lands or goods of other persons at public auction. One who sells goods at public auction for another on commission, or for a recompense.

Auctioneers differ from *brokers*, in that the latter may both buy and sell, whereas auctioneers can only sell; also brokers may sell by private contract only, and auctioneers by public auction only.

Auctor /ɔːktər/. In the Roman law, an auctioneer. In the civil law, a grantor or vendor of any kind. In old French law, a plaintiff.

Auctoritas /ɔːktɔːrətəs/. In the civil law, authority. In old European law, a diploma, or royal charter.

Auctoritates philosophorum, medicorum, et poetarum, sunt in causis allegandæ et tenendæ /ɔːktɔːrətɛy-diɪz fɔːləsɔːfɔːrəm mɛdɛkɔːrəm ɛt pɔːwɛtɛrəm sánt in kɔːzəs əlɛgændiɪ ɛt tənændiɪ/. The opinions of philosophers,

physicians, and poets are to be alleged and received in causes.

Aucupia verborum sunt iudice indigna /òkyúwpiyà vòrbòrəm sànt júwdəsiy indígnə/. Catching at words is unworthy of a judge. Applied in *State v. Flemming*, 66 Me. 142, 151.

Audi alteram partem /ódày àltərəm pàrtəm/. Hear the other side; hear both sides. No man should be condemned unheard. *Lowry v. Inman*, 46 N.Y. 119; *Shaw v. Stone*, 55 Mass. (1 Cush.) 228.

Audience. In international law, a hearing; interview with the sovereign. The king or other chief executive of a country grants an audience to a foreign minister who comes to him duly accredited; and, after the recall of a minister, an "audience of leave" ordinarily is accorded to him.

Audience court. In English law, a court belonging to the Archbishop of Canterbury, having jurisdiction of matters of form only, as the confirmation of bishops, and the like. This court has the same authority with the Court of Arches, but is of inferior dignity and antiquity. The Dean of the Arches is the official auditor of the Audience court. The Archbishop of York has also his Audience court. These courts, as separate courts, have long since been disused.

Audiendo et terminando /òdiyéndow èt tər̀mənéndow/. A writ or commission to certain persons to appease and punish any insurrection or great riot.

Audit. Systematic inspection of accounting records involving analyses, tests, and confirmations.

The hearing and investigation had before an auditor. An audience; a hearing; an examination in general. A formal or official examination and authentication of accounts, with witnesses, vouchers, etc. *Green-Boots Const. Co. v. State Highway Commission*, 165 Okl. 288, 25 P.2d 783.

See also Auditor; Generally Accepted Auditing Standards (GAAS).

Audit opinion. Report of certified public accountant after an examination of financial statements, expressing opinion on the fairness of presentation of such statements. The opinion may take one of the following forms: unqualified opinion; qualified opinion; adverse opinion; disclaimer of opinion.

Audit trail. Chain of evidence connecting account balances or other summary results to original transactions and calculations. The flow of events between the original transaction and the account balances in the financial statements.

Correspondence audit. See Correspondence audit.

Desk audit. Review of civil service positions to determine if duties and responsibilities of position fit job classification and pay grade.

Field audit. An audit by the Internal Revenue Service conducted on the business premises of the taxpayer or in the office of the tax practitioner representing the tax-

payer. To be distinguished from a correspondence audit or an office audit (*q.v.*).

Independent audit. One conducted by an outside person or firm not connected in any way with the company being audited. See also Audit committee.

Internal audit. Audit performed by personnel of company to assure that internal procedures, operations, and accounting practices are in proper order—in contrast to an audit by outside, independent auditors.

Office audit. See Office (*Office audit*).

Tax audit. An examination of books, vouchers and records, or other transactions possessing tax consequences, of a taxpayer conducted by agents of the I.R.S. See Correspondence audit; Office (*Office audit*); RAR.

Audita querela /òdáydə kwəríylə/. The name of a common law writ constituting the initial process in an action brought by a judgment defendant to obtain relief against the consequences of the judgment on account of some matter of defense or discharge arising since its rendition and which could not be taken advantage of otherwise. *Barnett v. Gitlitz*, 290 Ill.App. 212, 8 N.E.2d 517, 520. May also lie for matters arising before judgment where defendant had no opportunity to raise such matters in defense. *Louis E. Bower, Inc. v. Silverstein*, 298 Ill.App. 145, 18 N.E.2d 385, 387.

This writ has been abolished in most states that have adopted Rules of Civil Procedure, being supplanted by motion for relief from judgment. Rule of Civil Procedure 60(b).

Audit committee. A committee of the board of directors of a corporation usually consisting of outside directors who nominate the independent auditors and discuss their work with them. If the auditors believe certain matters should be brought to the attention of stockholders, the auditors first bring these matters to the attention of the audit committee.

Auditor. One who checks the accuracy, fairness, and general acceptability of accounting records and statements and then attests to them; *e.g.* a Certified Public Accountant.

A State official whose duty is to examine the accounts of state agencies to determine if expenditures were made in accordance with authorizations by the legislature. See also General Accounting Office.

An officer of a business who examines and verifies accounts for accuracy.

An officer (or officers) of the court, assigned to state the items of debit and credit between the parties in a suit where accounts are in question, and exhibit the balance. Under the Rules of Civil Procedure in many states, the term "master" is used to describe those persons formerly known as auditors; *e.g.* Mass.R. Civil P. 53. See Master; Reference.

Auditor of the imprest. Any of several officers in the English exchequer, who formerly had the charge of auditing the accounts of the customs, naval and military

expenses, etc., now performed by the commissioners for auditing public accounts.

Auditor of the receipts. An officer of the English exchequer.

Public auditor. Examines account records of private businesses for a fee.

State auditor. See first general definition above.

Augmentation /ɔgməntéyshən/. The increase of the crown's revenues from the suppression of religious houses and the appropriation of their lands and revenues. Also the name of a court (now abolished) erected 27 Hen. VIII, to determine suits and controversies relating to monasteries and abbey-lands. The court was dissolved in the reign of Mary, but the office of augmentations remained long after.

A share of the great tithes temporarily granted to the vicars by the appropriators, and made perpetual by statute 29 Car. II, c. 8. The word is used in a similar sense in the Canadian law.

Augmented estate. Estate reduced by funeral and administration expenses, homestead allowance, family allowances, exemptions, and enforceable claims to which is added value of property transferred to anyone other than bona fide purchaser and value of property owned by surviving spouse at decedent's death. Uniform Probate Code, § 2-202.

Augusta legibus soluta non est /əgəstə líyjbəs səlyúwtə nɔn ést/. The empress or queen is not privileged or exempted from subjection to the laws. 1 Bl. Comm. 219.

Aula /ólə/. In old English law, a hall, or court; the court of a baron, or manor; a court baron. This word was employed in mediæval England along with *curia*; it was used of the meetings of the lord's men held there in the same way that the word *court* was used.

Aula ecclesiæ /ólə əklízyiy/. A nave or body of a church where temporal courts were anciently held.

Aula regis /ólə riyjəs/. (Called also *Aula Regia*.) The king's hall or palace. The chief court of England in early Norman times. It was established by William the Conqueror in his own hall. It was composed of the great officers of state, resident in the palace, and followed the king's household in all his expeditions. See also *Curia regis*.

Aulic /ólək/. Pertaining to a royal court.

Aulnage. See *Alnager*.

Aulnager. See *Alnager*.

Aumone, service in. Where lands are given in alms to some church or religious house, upon condition that a service or prayers shall be offered at certain times for the repose of the donor's soul.

Aunt. The sister of one's father or mother, and a relation in the third degree, correlative to niece or nephew.

Aunt Minnie. An arrangement whereby a stockbroker, with memberships on both New York Stock Exchange

and regional exchange, gives up part of his or her commission on the regional exchange in consideration of the recipient arranging to place a trade on the New York Stock Exchange so that recipient pays for the New York Stock Exchange trade not the regular commission but that amount less the give-up on the regional exchange; it is an unlawful rebate. *Moses v. Burgin*, D.C.Mass., 316 F.Supp. 31, 47.

Aures /óhriyz/. A Saxon punishment by cutting off the ears, inflicted on those who robbed churches, or were guilty of any other theft.

Aurum reginæ /óhrəm rájáyniy/. Queen's gold. A royal revenue belonging to every queen consort during her marriage with the king.

Australian ballot. An official ballot on which the names of all the candidates are printed. Its use is accompanied by safeguards designed to maintain secrecy in voting. The so-called Australian ballot laws, widely adopted in various forms in the United States, have generally been sustained by the courts.

Auter /ówtər/, **autre** /'trə/. L. Fr. Another; other. See *Autre*.

Authentic /əθéntik/. Genuine; true; real; pure; reliable; trustworthy; having the character and authority of an original; duly vested with all necessary formalities and legally attested. Competent, credible, and reliable as evidence.

Authentic act. In the civil law, an act which has been executed before a notary or public officer authorized to execute such functions, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register.

Authentic copy. A copy which is of such authority as to prove the form and contents of the original from which it is taken. See also *Authentication*.

Authentication /əθéntəkéyshən/. In the law of evidence, the act or mode of giving authority or legal authenticity to a statute, record, or other written instrument, or a certified copy thereof, so as to render it legally admissible in evidence. Verifications of judgments. An attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed so to do. Acts done with a view of causing an instrument to be known and identified. See also *Verification*.

Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law. Calif.Evid.Code, § 1400.

The requirement of authentication as a condition precedent to admissibility of evidence is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Fed.Evid.Rule 901.

Self authentication. Statutes frequently provide that certain classes of writings shall be received in evidence "without further proof." The following fall into this category: (1) deeds, conveyances or other instruments, which have been acknowledged by the signers before a notary public, (2) certified copies of public records, and (3) books of statutes which purport to be printed by public authority. See Fed.Evid.Rule 902.

Authenticum /oθéntakəm/. In the civil law, an original instrument or writing; the original of a will or other instrument, as distinguished from a copy.

Author. One who produces, by his own intellectual labor applied to the materials of his composition, an arrangement or compilation new in itself. A beginner or mover of anything; hence efficient cause of a thing; creator; originator; a composer, as distinguished from an editor, translator or compiler.

Authorities. Citations to constitutions, statutes, precedents, judicial decisions, rules, regulations, textbooks, articles, and the like made on the argument of questions of law (e.g., in briefs, motions, etc.) on the trial of causes before a court, in support of the legal positions contended for, or adduced to fortify the opinion of a court or of a text writer upon any question. Authorities may be either primary (e.g., statutes, court decisions, regulations), or secondary (e.g., Restatements, treatises).

Authority. Permission. Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge. Control over; jurisdiction. Often synonymous with power. The power delegated by a principal to his agent. The lawful delegation of power by one person to another. Power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to agent. See Restatement, Second, Agency § 7.

Refers to the precedential value to be accorded an opinion of a judicial or administrative body. A court's opinion is binding authority on other courts directly below it in the judicial hierarchy. Opinions of lower courts or of courts outside the hierarchy are governed by the degree to which it adheres to the doctrine of stare decisis. See Stare decisis.

Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties.

See also Actual authority; Apparent authority; Binding authority; Commission; Competent authority; Constructive authority; Control; Credentials; Implied authority; Power; Precedent; Real authority; Scope of authority.

Actual express authority. Actual authority derived from written or spoken words of principal. See also Actual authority.

Actual implied authority. Actual authority inferred from words or conducted manifested to agent by principal. See also Implied authority.

Apparent authority. That which, though not actually granted, the principal knowingly permits the agent to exercise, or which he holds him out as possessing. The

power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons. Restatement, Second, Agency, § 8. See *Authority by estoppel, below.*

Authority by estoppel. Not actual, but apparent only, being imposed on the principal because his conduct has been such as to mislead, so that it would be unjust to let him deny it. See *Apparent authority, above.*

Authority coupled with an interest. Authority given to an agent for a valuable consideration, or which forms part of a security.

Express authority. That given explicitly, either in writing or orally. See *Express authority.*

General authority. That which authorizes the agent to do everything connected with a particular business. It empowers him to bind his principal by all acts within the scope of his employment; and it cannot be limited by any private direction not known to the party dealing with him.

Implied authority. Actual authority circumstantially proved. That which the principal intends his agent to possess, and which is implied from the principal's conduct. It includes only such acts as are incident and necessary to the exercise of the authority expressly granted.

Incidental authority. Such authority as is necessary to carry out authority which is actually or apparently given, e.g. authority to borrow money carries with it as an incidental authority the power to sign commercial paper to effectuate the borrowing.

Inferred authority. See *Incidental authority, above.*

Inherent authority. Such power as reposes in an agent by virtue of the agency itself.

Limited authority. Such authority as the agent has when he is bound by precise instructions.

Naked authority. That arising where the principal delegates the power to the agent wholly for the benefit of the former.

Ostensible authority. See *Apparent authority, above.*

Presumptive authority. See *Implied authority, above.*

Special authority. That which is confined to an individual transaction. Such an authority does not bind the principal, unless it is strictly pursued.

Unlimited authority. That possessed by an agent when he is left to pursue his own discretion.

Authorize. To empower; to give a right or authority to act. To endow with authority or effective legal power, warrant, or right. *People v. Young*, 100 Ill.App.2d 20, 241 N.E.2d 587, 589. To permit a thing to be done in the future. It has a mandatory effect or meaning, implying a direction to act.

"Authorized" is sometimes construed as equivalent to "permitted"; or "directed", or to similar mandatory language. Possessed of authority; that is, possessed of

legal or rightful power, the synonym of which is "competency." *Doherty v. Kansas City Star Co.*, 143 Kan. 802, 57 P.2d 43, 45.

Authorized capital. *See* Authorized stock issue.

Authorized stock issue. Total number of shares of capital stock which charter or articles of incorporation permits corporation to sell. The shares of all classes a domestic or foreign corporation is authorized to issue. *Rev. Model Bus. Corp. Act*, § 1.40.

Autocracy /*òtòkràsiy/*. The name of an unlimited monarchical government. A government at the will of one man (called an "autocrat"), unchecked by constitutional restrictions or limitations.

Autograph. One's handwriting; written with one's own hand.

Automatic stay. Immediately upon the filing of a voluntary petition under the Bankruptcy Code a stay arises which generally bars all debt collection efforts against the debtor or property of his bankruptcy estate although the collection of postpetition debts against the debtor is not stayed. Code § 362(a). The court need not sign any order to give rise to the stay; the mere filing of the petition, with supporting documentation, with the clerk is sufficient. *In re Artishon, Bkrcty.Minn.*, 39 B.R. 890, 893; *Jones v. Wood (In re Wood), Bkrcty.Idaho*, 33 B.R. 320, 321.

Automatism /*òtómàtizəm/*. Behavior performed in a state of mental unconsciousness or dissociation without full awareness, *i.e.*, somnambulism, fugues. Term is applied to actions or conduct of an individual apparently occurring without will, purpose, or reasoned intention on his part; a condition sometimes observed in persons who, without being actually insane, suffer from an obscuration of the mental faculties, loss of volition or of memory, or kindred affections. "Ambulatory automatism" describes the pathological impulse to purposeless and irresponsible wanderings from place to place often characteristic of patients suffering from loss of memory with dissociation of personality. Automatism may be asserted as a criminal defense to negate the requisite mental state of voluntariness for commission of a crime. *See e.g. Model Penal Code*, § 2.01.

Automobile guest. *See* Family automobile doctrine; Family purpose doctrine; Guest; Guest statute.

Automobile insurance. A comprehensive term which embraces insurance coverage for all risks involved in owning and operating an automobile, such as personal injury protection, property damage to another and to the insured, fire, theft and vandalism. *See* Insurance.

Autonomy. The political independence of a nation; the right (and condition) of power of self-government. The negation of a state of political influence from without or from foreign powers. *Green v. Obergfell*, 73 App.D.C. 298, 121 F.2d 46, 57.

Autopsy /*òtòpsiy/*. The dissection of a dead body for the purpose of inquiring into the cause of death. A post mortem examination to determine the cause, seat, or

nature of a disease. Such is normally required by statute for deaths by violent, unexplained, or unnatural means. *See also* Inquest.

Autoptic evidence. An exhibit of a thing offered before jury as evidence to be seen through jury's own eyes. *Johnson v. State*, 139 Tex.Cr.R. 279, 139 S.W.2d 579, 581. *See* Autoptic preference; Demonstrative evidence.

Autoptic preference. Proffering or presenting in open court of articles for observation or inspection of the tribunal. *See* Autoptic evidence; Demonstrative evidence.

Auto theft. A form of larceny, the subject matter of which is a motor vehicle. The taking and carrying away of a motor vehicle from the owner or possessor with intent to deprive him permanently of it. The intent distinguishes larceny from a lesser offense of use without authority. *See also* Joyriding.

Autre /*òwtrə/*. (Fr.) Another.

Autre action pendant /*òwtrə àksiyòwn pòndòn/*. In common law pleading, another action pending. A species of plea in abatement.

Autre droit /*òwtrə dr(w)ò/*. In right of another, *e.g.*, a trustee holds trust property in right of his *cestui que trust*. A *prochein amy* sues in right of an infant. 2 Bl.Comm. 176.

Autrefois /*òwtrəfwò/*. L. Fr. At another time; formerly; before; heretofore.

Autrefois acquit /*òwtrəfwò àkiy/òkwít/*. Fr. Formerly acquitted. The name of a plea in bar to a criminal action, stating that the defendant has been once already indicted and tried for the same alleged offense and has been acquitted. *See* Double jeopardy.

Autrefois attaint /*òwtrəfwò àtæn/òteynt/*. In criminal law, formerly attained. An old English plea (now obsolete) that the defendant has already been attained for one felony, and therefore cannot be criminally prosecuted for another.

Autrefois convict /*òwtrəfwò kònvikt/*. Fr. Formerly convicted. A plea by a criminal in bar to an indictment that he has been formerly convicted of the same crime. 4 Bl.Comm. 336.

Autre vie /*òwtrə viy/*. Another's life. A person holding an estate for or during the life of another is called a tenant "*pur autre vie*," or "*pur terme d'autre vie*." *See* Estate pur autre vie.

Auxiliary /*ògzil(iy)əriy/*. Aiding; attendant on; ancillary (*q.v.*); as, an auxiliary bill in equity, an auxiliary receiver. Synonymous with "subsidiary." *Baker v. Fenley*, 233 Mo.App. 998, 128 S.W.2d 295, 298.

Auxiliator /*ògziliyèyər/*. Lat. Helper or assistant; the word is closely related to the English word auxiliary.

Auxilium /*ògziliyəm/*. In feudal and old English law, aid; compulsory aid, hence a tax or tribute; a kind of tribute paid by the vassal to his lord, being one of the incidents of the tenure by knight's service.

Auxilium ad filium militem faciendum et filiam maritandam /ògziliyèm æd filiyèm milètèm fæshiyéndèm èt filiyèm mæretændèm/. An ancient writ which was addressed to the sheriff to levy compulsorily an aid towards the knighting of a son and the marrying of a daughter of the tenants *in capite* of the crown.

Auxilium curiæ /ògziliyèm kyúriyiy/. In old English law, a precept or order of court citing and convening a party, at the suit and request of another, to warrant something.

Auxilium regis /ògziliyèm riyjəs/. In old English law, the king's aid or money levied for the royal use and the public service, as taxes granted by parliament. A subsidy paid to the king.

Auxilium vice comiti /ògziliyèm váysiy kómətay/. An ancient duty paid to sheriffs.

Available. Suitable; useable; accessible; obtainable; present or ready for immediate use. Having sufficient force or efficacy; effectual; valid.

Available for work. To be considered "available" for purposes of eligibility for unemployment compensation, claimant must be ready, willing and able to accept either temporary or permanent suitable employment at any time by another employer and be actually and currently attached to labor force. *Craig v. Com. Unemployment Compensation Bd. of Review*, 65 Pa.Cmwlth. 305, 442 A.2d 400, 402.

Avail of marriage. In feudal law, the right of marriage, which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. A guardian in socage had also the same right, but not attended with the same advantage. 2 Bl.Comm. 88.

Aval /əvəl/. In French law, the guaranty of a bill of exchange; so called because usually placed at the foot or bottom (*aval*) of the bill.

In Canadian law, the act of subscribing one's signature at the bottom of a promissory note or of a bill of exchange; properly an act of suretyship, by the party signing, in favor of the party to whom the note or bill is given.

Avanture /əvònt(y)úr/. L. Fr. Chance; hazard; mischance.

Avaria, avarie /əvériyə/. Average; the loss and damage suffered in the course of a navigation. *See* Average.

Avarice. Excessive greed or desire for wealth or gain.

Avenage. A certain quantity of oats paid by a tenant to his landlord as rent, or in lieu of some other duties.

Adventure, or adventure /ə(d)vénchər/. A mischance causing the death of a man, as where a person is suddenly drowned or killed by any accident, without felony.

Aver /əvər/, *v.* In pleading, to declare or assert; to set out distinctly and formally; to allege. *See also* Averment.

In old pleading, to avouch or verify; to make or prove true; to make good or justify a plea.

Aver /éyvər/, *n.* In old English and French, property; substance, estate and particularly live stock or cattle; hence a working beast, a horse or bullock.

Aver corn. A rent reserved to religious houses, to be paid in corn. Corn drawn by the tenant's cattle.

Aver land. In feudal law, land plowed by the tenant for the proper use of the lord of the soil.

Aver penny. Money paid towards the king's averages or carriages, and so to be freed thereof.

Aver silver. A custom or rent formerly so called.

Avera /əvírə/. A day's work of a ploughman, formerly valued at eight pence.

Average. A mean proportion, medial sum or quantity, made out of unequal sums or quantities. *Brisendine v. Skousen Bros.*, 48 Ariz. 416, 62 P.2d 326, 329. In ordinary usage the term signifies the mean between two or more quantities, measures, or numbers. If applied to something which is incapable of expression in terms of measure or amount, it signifies that the thing or person referred to is of the ordinary or usual type.

In maritime law, loss or damage accidentally happening to a vessel or to its cargo during a voyage. Also a small duty paid to masters of ships, when goods are sent in another man's ship, for their care of the goods, over and above the freight. *See* subdefinitions below.

In old English law, a service by horse or carriage, anciently due by a tenant to his lord. A labor or service performed with working cattle, horses, or oxen, or with wagons and carriages.

General average. A contribution by the several interests engaged in a maritime venture to make good the loss of one of them for the voluntary sacrifice of a part of the ship or cargo to save the residue of the property and the lives of those on board, or for extraordinary expenses necessarily incurred for the common benefit and safety of all. The law of general average is part of the maritime law, and not of the municipal law, and applies to maritime adventures only. *Ralli v. Troop*, 157 U.S. 386, 15 S.Ct. 657, 39 L.Ed. 742.

Gross average. More commonly called "general average" (*q.v.*). Where loss or damage occurs to a vessel or its cargo at sea, *average* is the adjustment and apportionment of such loss between the owner, the freight, and the cargo, in proportion to their respective interests and losses, in order that one may not suffer the whole loss, but each contribute ratably.

Particular average is a loss happening to the ship, freight, or cargo which is not to be shared by contribution among all those interested, but must be borne by the owner of the subject to which it occurs. It is thus called in contradistinction to *general average*.

Petty average denotes such charges and disbursements as, according to occurrences and the custom of every place, the master necessarily furnishes for the benefit of the ship and cargo, either at the place of loading or unloading, or on the voyage; such as the hire of a pilot for conducting a vessel from one place to another, tow-

age, light money, beaconage, anchorage, bridge toll, quarantine and such like.

Simple average is the same as "particular average" (*q.v.*).

Average clause. A clause providing that similar items in one location or at several locations which are covered by one insurance policy shall each be covered in the proportion that the value in each bears to the value in all.

Average daily balance. Average amount of money that a depositor keeps on deposit in a bank, or average balance on which finance charge is computed on consumer credit account, on any given day.

Average man test. Used to determine bias of prospective juror who asserts that he is without prejudice but who is so connected with case that ordinary man under circumstances would be biased without recognition of his prejudice. *U. S. v. Haynes, C.A.Conn., 398 F.2d 980, 984.*

Averaging up or down. Practice of purchasing the same security at different price levels, thus realizing a higher or lower average cost than the first purchase.

A verbis legis non est recedendum /ey vǎrbis líyjis nón est ráséndéndǎm/. The words of a statute must not be departed from. A court is not at liberty to disregard the letter of a statute, in favor of a supposed intention.

Averis captis in withernam /ǎviriýǎs kǎptǎs in wíðǎrnǎm/. In old English pleading, a writ granted to one whose cattle were unlawfully distrained by another and driven out of the county in which they were taken, so that they could not be replevied by the sheriff.

Averium /ǎviriýǎm/. Lat. Goods; property. A beast of burden.

Averment /ǎvǎrmǎnt/. In pleading, to allege or assert positively. All averments in pleadings are required to be simple, concise, and direct. *Fed.R. Civil P. 8(e).*

In old pleading, an offer to prove a plea, or pleading. The concluding part of a plea, replication, or other pleading, containing new affirmative matter, by which the party offers or declares himself "ready to *verify*."

Averrare /ǎvǎrériý/. In feudal law, a duty required from some customary tenants, to carry goods in a wagon or upon loaded horses.

Aversio /ǎvǎrz(h)(iy)ow/. In the civil law, an averting or turning away. A term applied to a species of sale in gross or bulk.

Letting a house altogether, instead of in chambers.

Averum /ǎvirǎm/. Goods, property, substance; a beast of burden.

Avia /éyviýǎ/. In the civil law, a grandmother.

Aviaticus /éyviýǎtǎkǎs/. In the civil law, a grandson.

Aviation Act. Federal law that created Federal Aviation Agency (FAA) which is responsible for regulation of aviation including aircraft safety, aircraft marking, etc. *See Federal Aviation Administration.*

A vinculo matrimonii /ey víŋkyǎlow mǎtrǎmówniyay/. Lat. From the bond of matrimony. A term descriptive of a kind of divorce, which effects a complete dissolution of the marriage contract. *See Divorce.*

Avocat /avowká/. Fr. An advocate; a barrister.

Avocation /ǎvǎkéýshǎn/. A calling away, a diversion; suggesting idea of smaller affairs of life, or subordinate or occasional employments, or hobbies, as distinguished from one's ordinary or principal occupation.

Avoid. To annul; cancel; make void; to destroy the efficacy of anything. To evade; escape.

Avoidable consequences doctrine. Doctrine imposes duty on person injured to minimize damages. *Baglio v. N. Y. Central R. Co., 344 Mass. 14, 180 N.E.2d 798.* The general rule relating to duty of party who has been wronged by breach of contract to mitigate damages; *i.e.* to not sit idly by and allow damages to accumulate. *Restatement, Second, Contracts, § 350.* This doctrine provides that one injured by tort of another is not entitled to recover damages for any harm that he could have avoided by use of reasonable effort. *Flowers v. District of Columbia, D.C.App., 478 A.2d 1073, 1077.* *See also Mitigation of damages.*

Avoidance. A making void, useless, empty, or of no effect; annulling, cancelling; escaping or evading. *See also Evasion.*

In pleading, the allegation or statement of new matter, in opposition to a former pleading, which, admitting the facts alleged in such former pleading, shows cause why they should not have their ordinary legal effect. *Fed.R. Civil P. 8(c).* *See also Affirmative defense; Confession and avoidance.*

Avoidance of tax. *See Tax avoidance.*

Avoirdupois /ǎvǎrd(y)uwpóyz/. The name of a system of weights (sixteen ounces to the pound) used in weighing articles other than medicines, metals, and precious stones; so named in distinction from the Troy weight.

Avoucher /ǎvǎwchǎr/. The calling upon a warrantor of lands to fulfill his undertaking. *See Voucher.*

Avoué /ǎvuwéý/. In French and Canadian law, a barrister, advocate, solicitor, or attorney. An officer charged with representing and defending parties before the tribunal to which he is attached.

Avow /ǎvǎw/. In pleading, to acknowledge and justify an act done. To make an avowry. *See Avowal; Avowry; Justification.*

Avowal /ǎvǎwǎl/. An open declaration. Purpose is to enable the court to know what the witness would have stated in answer to the question propounded, and to inform the court what the interrogator would prove contrary to the testimony given at the trial. *See Offer of proof.*

Avowant. One who makes an avowry.

Avowry /ǎvǎwry/. A common law pleading in the action of replevin, by which the defendant *avows*, that is, acknowledges and justifies the taking of the distress or