

D

The letter "D" is used as an abbreviation for a number of words, the more important and usual of which are as follows:

1. *Digestum*, or *Digesta*, that is, the Digest or Pandects in the Justinian collections of the civil law. Citations to this work are sometimes indicated by this abbreviation, but more commonly by "Dig."

2. *Dictum*. A remark or observation, as in the phrase "*obiter dictum*" (*q.v.*)

3. *Demissione*. "On the demise." An action of ejectment is entitled "Doe *d.* Stiles v. Roe," that is, "Doe, on the demise of Stiles, against Roe."

4. "*Doctor*." As in the abbreviated forms of certain academical degrees. "M.D.," "doctor of medicine;" "LL. D.," "doctor of laws;" "D.C.L.," "doctor of civil law;" "J.D.," "juris doctor."

5. "*District*." Thus, "U.S. Dist. Ct. W.D. Pa." stands for United States District Court for the Western *District* of Pennsylvania.

In the Roman system of notation, this letter stands for five hundred; and, when a horizontal dash or stroke is placed above it, it denotes five thousand.

Dabis? dabo /déybəs? déybow/. Lat. (Will you give? I will give.) In the Roman law, one of the forms of making a verbal stipulation.

Dación /dasyówn/. In Spanish law, the real and effective delivery of an object in the execution of a contract.

Dactylography /dæktəlógrəfi/. Dactylography is the scientific study of finger prints as a means of identification.

Daily. Every day; every day in the week; every day in the week except one. A newspaper which is published six days in each week has been held to be a "daily" newspaper.

Daily balances; average daily balance. The various balances for the different days in the period for which interest is to be paid, and the "average daily balance" for the interest period means the sum of these daily balances divided by the number of days in the interest period.

Daily occupation. The same as "usual occupation". International Brotherhood of Boiler Makers, Iron Shipbuilders & Helpers of America v. Huval, 133 Tex. 136, 126 S.W.2d 476, 478.

Daily rate of pay. Obtained by multiplying hourly rate by number of hours in normal working day, though actual number of hours worked may be fewer.

Dale and sale. Fictitious names of places, used in the English books, as examples "The manor of *Dale* and the manner of *Sale*, lying both in *Vale*."

Dalus, dailus, dailia /déyləs, déyliyə(s)/. A certain measure of land; such narrow slips of pasture as are left between the plowed furrows in arable land.

Damage. Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property. The word is to be distinguished from its plural, "damages", which means a compensation in money for a loss or damage. An injury produces a right in them who have suffered any damage by it to demand reparation of such damage from the authors of the injury. By damage we understand every loss or diminution of what is a man's own, occasioned by the fault of another. The harm, detriment, or loss sustained by reason of an injury. *See also* Damages; Damage to person; Injury; Loss.

Damage-clear. In old English law, a fee assessed of the tenth part in the common pleas, and the twentieth part in the queen's bench and exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, etc., wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein he recovered, before he could have execution for the damages. This was originally a gratuity given to the prothonotaries and their clerks for drawing special writs and pleadings; but it was taken away by statute, since which, if any officer in these courts took any money in the name of damage-clear, or anything in lieu thereof, he forfeited treble the value.

Damage feasant or faisant /démaj fiyzənt/. Doing damage. A term formerly applied to a person's cattle or beasts found upon another's land, doing damage by treading down the grass, grain, etc. 3 Bl.Comm. 7, 211. This phrase seems to have been introduced in the reign of Edward III, in place of the older expression "*en son damage*" (*in damno suo*).

Damages. A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another. Restatement, Second, Torts, § 12A. Money compensation sought or awarded as a remedy for a breach of contract or for tortious acts.

Damages may be compensatory or punitive according to whether they are awarded as the measure of actual loss suffered or as punishment for outrageous conduct and to deter future transgressions. Nominal damages are awarded for the vindication of a right where no real loss or injury can be proved. Generally, punitive or exemplary damages are awarded only if compensatory or actual damages have been sustained.

See also Economic loss; Injury; Just compensation; Loss; Pain and suffering.

Actual damages. Real, substantial and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury, as opposed on the one hand to "nominal" damages, and on the other to "exemplary" or "punitive" damages. Synonymous with "compensatory damages" and with "general damages."

Benefit-of-the-bargain damages. Difference between the value received and the value of the fraudulent party's performance as represented.

Civil Damage Acts. See Dram Shop Acts.

Compensatory damages. Compensatory damages are such as will compensate the injured party for the injury sustained, and nothing more; such as will simply make good or replace the loss caused by the wrong or injury. Damages awarded to a person as compensation, indemnity, or restitution for harm sustained by him. The rationale behind compensatory damages is to restore the injured party to the position he or she was in prior to the injury. *Northwestern Nat. Cas. Co. v. McNulty*, C.A.Fla., 307 F.2d 432, 434. Equivalent of *Actual damages*, above.

Compensatory or actual damages consist of both general and special damages. General damages are the natural, necessary, and usual result of the wrongful act or occurrence in question. Special damages are those "which are the natural, but not the necessary and inevitable result of the wrongful act."

Consequential damages. Such damage, loss or injury as does not flow directly and immediately from the act of the party, but only from some of the consequences or results of such act. *Richmond Redevelopment and Housing Authority v. Laburnum Const. Corp.*, 195 Va. 827, 80 S.E.2d 574, 580. Damages which arise from intervention of special circumstances not ordinarily predictable. *Roanoke Hospital Ass'n v. Doyle & Russell, Inc.*, 215 Va. 796, 214 S.E.2d 155, 160. Those losses or injuries which are a result of an act but are not direct and immediate. Consequential damages resulting from a seller's breach of contract include any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise, and injury to person or property proximately resulting from any breach of warranty. U.C.C. § 2-715(2). See also *Hadley v. Baxendale*, rule of; and *Incidental damages*, below.

Continuing damages. Such as accrue from the same injury, or from the repetition of similar acts, between two specified periods of time.

Criminal damage. Criminal damage to property is by means other than by fire or explosive: (a) Willfully injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property in which another has an interest without the consent of such other person; or (b) Injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder. See *Arson*.

Damages ultra. Additional damages claimed by a plaintiff not satisfied with those paid into court by the defendant.

Direct damages. Direct damages are such as follow immediately upon the act done. Damages which arise naturally or ordinarily from breach of contract; they are damages which, in ordinary course of human experience, can be expected to result from breach. *Roanoke Hospital Ass'n v. Doyle & Russell, Inc.*, 215 Va. 796, 214 S.E.2d 155, 160.

Excessive damages. Damages awarded by a jury which are grossly in excess of the amount warranted by law on the facts and circumstances of the case; unreasonable or outrageous damages. See *Remittitur*.

Excess liability damages. A cause of action in tort by an insured against his liability carrier for the negligent handling of settlement negotiations which result in a judgment against the insured in excess of his policy limits. *G. A. Stowers Furniture Co. v. American Indemnity Co.*, Tex.Com.App., 15 S.W.2d 544.

Exemplary or punitive damages. Exemplary damages are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his evil behavior or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages. Unlike compensatory or actual damages, punitive or exemplary damages are based upon an entirely different public policy consideration—that of punishing the defendant or of setting an example for similar wrongdoers, as above noted. In cases in which it is proved that a defendant has acted willfully, maliciously, or fraudulently, a plaintiff may be awarded exemplary damages in addition to compensatory or actual damages. Damages other than compensatory damages which may be awarded against person to punish him for outrageous conduct. *Wetherbee v. United Ins. Co. of America*, 18 C.A.3d 266, 95 Cal.Rptr. 678, 680. Such are given as an enhancement of compensatory damages because of wanton, reckless, malicious or oppressive char-

acter of acts complained of. *Cape Publications, Inc. v. Bridges*, Fla.App., 387 So.2d 436, 440.

Expectancy damages. As awarded in actions for nonperformance of contract, such damages are calculable by subtracting the injured party's actual dollar position as a result of the breach from that party's projected dollar position had performance occurred. The goal is to ascertain the dollar amount necessary to ensure that the aggrieved party's position after the award will be the same—to the extent money can achieve the identity—as if the other party had performed. *Allover Distrib., Inc. v. Kroger Co.*, C.A.Ill., 513 F.2d 1137, 1140.

Fee damages. Damages sustained by and awarded to an abutting owner of real property occasioned by the construction and operation of an elevated railroad in a city street, are so called, because compensation is made to the owner for the injury to, or deprivation of, his easements of light, air, and access, and these are parts of the fee.

Foreseeable damages. Loss that the party in breach had reason to know of when the contract was made.

Future damages. Those sums awarded to an injured party for, among other things, residuals or future effects of an injury which have reduced the capability of an individual to function as a whole man, future pain and suffering, loss or impairment of earning capacity, and future medical expenses. *Jordan v. Bero*, 158 W.Va. 28, 210 S.E.2d 618, 631.

Those damages that flow as a natural and necessary result of the act claimed of, while "special damages" are damages which actually result from the act by reason of the special circumstances of the case and not as a necessary result of the act. *Porter v. Crawford & Co.*, Mo.App., 611 S.W.2d 265, 271. *Compare Special damages, below.*

General damages. Such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct, and proximate result, or such as necessarily result from the injury, or such as did in fact result from the wrong, directly and proximately, and without reference to the special character, condition, or circumstances of the plaintiff. *Myers v. Stephens*, 43 Cal.Rptr. 420, 433, 233 C.A.2d 104.

Hedonic damages. Damages awarded in some jurisdictions for the loss of enjoyment of life, or for the value of life itself, as measured separately from the economic productive value that an injured or deceased person would have had. Compensation to a personal injury victim "for the limitations on the person's life created by the injury." *Thompson v. National Railroad Passenger Corp.*, C.A.Tenn., 621 F.2d 814, 824. Many courts hold that such loss is included in damages for disability and pain and suffering.

Inadequate damages. Damages are called "inadequate," within the rule that an injunction will not be granted where adequate damages at law could be recovered for the injury sought to be prevented, when such a recovery

at law would not compensate the parties and place them in the position in which they formerly stood.

Incidental damages. Under U.C.C. § 2-710, such damages include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with the return or resale of the goods or otherwise resulting from the breach. Also, such damages, resulting from a seller's breach of contract, include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach. U.C.C. § 2-715(1). *See also Consequential damages, above.*

Irreparable damages. In the law pertaining to injunctions, damages for which no certain pecuniary standard exists for measurement. Damages not easily ascertainable at law. With reference to public nuisances which a private party may enjoin, the term includes wrongs of a repeated and continuing character, or which occasion damages estimable only by conjecture, and not by any accurate standard.

Land damages. A term sometimes applied to the amount of compensation to be paid for land taken under the power of eminent domain or for injury to, or depreciation of, land adjoining that taken. *See Just compensation; also, Severance damages, below, this topic.*

Limitation of damages. Provision in contract or agreement by which parties agree in advance as to the amount or limit of damages for breach. U.C.C. § 2-718. *See also Liquidated damages and penalties, below.*

Liquidated damages and penalties. The term is applicable when the amount of the damages has been ascertained by the judgment in the action, or when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other. *Stein v. Bruce*, 366 S.W.2d 732, 735. The purpose of a penalty is to secure performance, while the purpose of stipulating damages is to fix the amount to be paid in lieu of performance. The essence of a penalty is a stipulation as in terrorem while the essence of liquidated damages is a genuine covenant-estimated preestimate of such damages.

Liquidated damages is the sum which party to contract agrees to pay if he breaks some promise and, which having been arrived at by good faith effort to estimate actual damage that will probably ensue from breach, is recoverable as agreed damages if breach occurs. In re *Plywood Co. of Pa.*, C.A.Pa., 425 F.2d 151, 154. Such are those damages which are reasonably ascertainable at time of breach, measurable by fixed or established external standard, or by standard apparent from documents upon which plaintiffs based their claim. *Ramada Development Co. v. U.S. Fidelity & Guaranty Co.*, C.A.Mich., 626 F.2d 517, 525.

Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty. U.C.C. § 2-718(1).

Compare Unliquidated damages, below.

Mitigation of damages. Although the law of damages contemplates full and just compensation for negligently inflicted injuries, the law likewise prescribes, as a reciprocal principle, that a tortfeasor should not sustain liability for those damages not attributable to the injury producing event. Consequently, a plaintiff may not recover damages for the effects of an injury which reasonably could have been avoided or substantially ameliorated. This limitation on recovery is generally denominated as "mitigation of damages" or "avoidance of consequences." Mitigation of damages or avoidance of consequences arises only after the injury producing event has occurred.

Necessary damages. A term said to be of much wider scope in the law of damages than "pecuniary." It embraces all those consequences of an injury usually denominated "general" damages, as distinguished from special damages; whereas the phrase "pecuniary damages" covers a smaller class of damages within the larger class of "general" damages.

Nominal damages. Nominal damages are a trifling sum awarded to a plaintiff in an action, where there is no substantial loss or injury to be compensated, but still the law recognizes a technical invasion of his rights or a breach of the defendant's duty, or in cases where, although there has been a real injury, the plaintiff's evidence entirely fails to show its amount.

Pecuniary damages. Such as can be estimated in and compensated by money; not merely the loss of money or salable property or rights, but all such loss, deprivation, or injury as can be made the subject of calculation and of recompense in money. Those damages (either general or special) which can be accurately calculated in monetary terms. *Ellis v. Crockett*, 51 Haw. 45, 86, 451 P.2d 814, 820. *See also Pecuniary loss.*

Presumptive damages. A term occasionally used as the equivalent of "exemplary" or "punitive" damages.

Prospective damages. Damages which are expected to follow from the act or state of facts made the basis of a plaintiff's suit; damages which have not yet accrued, at the time of the trial, but which, in the nature of things, must necessarily, or most probably, result from the acts or facts complained of.

Proximate damages. Proximate damages are the immediate and direct damages and natural results of the act complained of, and such as are usual and might have been expected. Remote damages are those attributable immediately to an intervening cause, though it forms a link in an unbroken chain of causation, so that the

remote damage would not have occurred if its elements had not been set in motion by the original act or event.

Punitive damages. *See Exemplary or punitive damages, above.*

Remote damages. The unusual and unexpected result, not reasonably to be anticipated from an accidental or unusual combination of circumstances—a result beyond which the negligent party has no control.

Rescissory damages. Such damages contemplate a return of the injured party to the position he occupied before he was induced by wrongful conduct to enter into the transaction. When return of the specific property, right, etc. is not possible (e.g. in a stock fraud transaction, the stock is no longer available), the rescissory damages would be the monetary equivalent (e.g. value of stock).

Severance damages. In condemnation, where the property condemned constitutes only a part of an owner's interest, the owner is entitled to just compensation, not only for the fair market value of the interest actually taken, but also such additional amount as will be equivalent to the diminution or lowering, if any, of the fair market value of the owner's interest in the land which was not taken, due to the severance therefrom of the interest which was taken.

Special damages. Those which are the actual, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions. *Twin Coach Co. v. Chance Vought Aircraft Inc.*, 2 Storey 588, 163 A.2d 278, 286. Such are damages which do not arise from wrongful act itself, but depend on circumstances peculiar to the infliction of each respective injury. *Myers v. Stephens*, 233 C.A.2d 104, 43 Cal.Rptr. 420, 432, 433. In contract law, damages not contemplated by the parties at the time of the making of the contract. To be recoverable, they must flow directly and immediately from the breach of contract, and must be reasonably foreseeable. Special damages must be specially pleaded and proved. Fed.R. Civil P. 9(g). *Compare General damages, above.*

Speculative damages. Prospective or anticipated damages from the same acts or facts constituting the present cause of action, but which depend upon future developments which are contingent, conjectural, or improbable.

Statutory damages. Damages resulting from statutorily created causes of actions, as opposed to actions at common law; e.g. wrongful death and survival actions; actions under tort claims acts; under § 504 of the federal Copyright Act, a copyright owner has the right to collect statutory damages in lieu of actual damages for copyright infringement.

Substantial damages. A sum, assessed by way of damages, which is worth having; opposed to nominal damages, which are assessed to satisfy a bare legal right. Considerable in amount and intended as a real compensation for a real injury.

Temporary damages. Damages allowed for intermittent and occasional wrongs, such as injuries to real estate, where cause thereof is removable or abatable.

Treble damages. Damages given by statute in certain types of cases, consisting of the single damages found by the jury, actually tripled in amount. See e.g. Section 4 of Clayton Act which provides for treble damages for antitrust violations. 15 U.S.C.A. § 15.

Unliquidated damages. Such as are not yet reduced to a certainty in respect of amount, nothing more being established than the plaintiff's right to recover; or such as cannot be fixed by a mere mathematical calculation from ascertained data in the case. Compare *Liquidated damages and penalties, above*.

Vindictive damages. See *Exemplary or punitive damages, above*.

Damage to person. The measure of injury, physical, mental and emotional, as a result of another's action or omission, whether such action or omission be intentional or negligent. "Damage" and "injury" are commonly used interchangeably, but they are different to extent that injury is what is actually suffered while damage is the measure of compensation for such suffering. See *Damage; Injury; Loss*.

Damage to property. Injury to property and generally does not include conversion of such property or taking of such property by public authority (i.e. eminent domain). *Wandermere Corp. v. State*, 79 Wash.2d 688, 488 P.2d 1088. See also *Damage*.

Damaious /dæmiyəs/. In old English law, causing damage or loss, as distinguished from *torcenouse*, wrongful.

Dame. In English law, the legal designation of the wife of a knight or baronet, or the equivalent of a knighthood for women.

Damn, v. /dæm/. To invoke condemnation, curse, swear, condemn to eternal punishment, or consign to perdition.

Damna /dæmnə/. Damages, both inclusive and exclusive of costs.

Damnatus /dæmnétəs/. In old English law, condemned; prohibited by law; unlawful. *Damnatus coitus*, an unlawful sexual connection.

Damnification /dæmnəfəkéyshən/. That which causes damage or loss.

Damnify /dæmnəfay/. To cause damage or injurious loss to a person or put him in a position where he must sustain it. A surety is "damned" when a judgment has been obtained against him.

Damni injuriæ actio /dæmnay injúriyíy æksh(i)yow/. An action given by the civil law for the damage done by one who intentionally injured the slave or beast of another.

Damnosa hæreditas /dæmnówsə hæriydatəs/. In the civil law, a losing inheritance; an inheritance that was a charge, instead of a benefit.

The term has also been metaphorically applied to that species of property of a bankrupt which, so far from being valuable, would be a charge to the creditors; for example, a term of years where the rent would exceed the revenue.

Damnum /dæmnəm/. Lat. Damage; the loss or diminution of what is a man's own, either by fraud, carelessness, or accident.

Damnum absque injuria /dæmnəm æbskwíy injúriyə/. Loss, hurt, or harm without injury in the legal sense; that is, without such breach of duty as is redressible by a legal action. A loss or injury which does not give rise to an action for damages against the person causing it.

Damnum emergens /dæmnəm emərjenz/. *Lit.*, damage arising. Actual damage or loss as contrasted with future loss or expectancy.

Damnum fatale /dæmnəm fətéyli/. Fatal damage; damage from fate; loss happening from a cause beyond human control (*quod ex fato contingit*), or an act of God, for which bailees are not liable; such as shipwreck, lightning, and the like. The civilians included in the phrase "*damnum fatale*" all those accidents which are summed up in the common-law expression, "Act of God or public enemies;" though, perhaps, it embraced some which would not now be admitted as occurring from an irresistible force. See *Act of God*.

Damnum infectum /dæmnəm inféktəm/. In Roman law, damage not yet committed, but threatened or impending. A preventive interdict might be obtained to prevent such damage from happening; and it was treated as a *quasi-delict*, because of the imminence of the danger.

Damnum rei amissæ /dæmnəm riýay amísiy/. In the civil law, a loss arising from a payment made by a party in consequence of an error of law.

Damnum sine injuriâ esse potest /dæmnəm sáyniy injúriyæ ésiy pówtəst/. There may be damage or injury inflicted without any act of injustice.

Dan. Anciently the better sort of men in England had this title; so the Spanish *Don*. The old term of honor for men, as we now say *Master* or *Mister*.

Danelage /déynlèy, déynlò/. A system of laws, introduced by the Danes on their invasion and conquest of England, which was principally maintained in some of the midland counties, and also on the eastern coast. 1 Bl.Comm. 65; 4 Bl.Comm. 411.

Danger. Jeopardy; exposure to loss or injury; peril. *State v. Londe*, 345 Mo. 185, 132 S.W.2d 501, 506. See also *Apparent danger; Dangerous; Hazard; Imminent danger; Peril; Risk; Unavoidable dangers*.

Dangeria /dænjíriyə/. In old English law, a money payment made by forest-tenants, that they might have liberty to plow and sow in time of pannage, or mast feeding.

Danger invites rescue. Term used in law of torts and, in limited manner, in law of crimes to describe where

liability is borne by one who creates dangerous condition for one person when another person comes to his rescue and is injured. The liability to the second person is founded on this maxim. *Krauth v. Geller*, 54 N.J.Super. 442, 149 A.2d 271.

Dangerous. Attended with risk; perilous; hazardous; unsafe. *See also* Danger; Inherently dangerous.

Dangerous condition. Such condition of property for which a public entity may be liable is a condition of property which creates a substantial risk of injury when the property is used with due care in a manner in which it is reasonably foreseeable that it will be used. *Harland v. State*, 75 C.A.3d 475, 142 Cal.Rptr. 201, 206.

Dangerous criminal. One convicted of a particularly heinous crime or one who has escaped or tried to escape from penal confinement by use of force of an aggravated character. An armed criminal. Such criminals may be segregated within prison.

Dangerous instrumentality. Anything which has the inherent capacity to place people in peril, either in itself (e.g. dynamite), or by a careless use of it (e.g. boat). *Green v. Ross*, D.C.Fla., 338 F.Supp. 365, 367. Due care must be exercised in using to avoid injury to those reasonably expected to be in proximity. *Pendleton Woolen Mills v. Vending Associates*, 195 Neb. 46, 237 N.W.2d 99. In certain cases, absolute liability may be imposed. *See also* Dangerous weapon; Deadly weapon; Inherently dangerous; Strict liability.

Dangerous machine. A machine is "dangerous" in such sense that the employer is required to guard it, if, in the ordinary course of human affairs, danger may be reasonably anticipated from the use of it without protection.

Dangerous occupation. Term used to describe hazardous work for purposes of worker's compensation laws, and in wage and hour and child labor laws.

Dangerous per se. A thing that may inflict injury without the immediate application of human aid or instrumentality.

Dangerous place. One where there is considerable risk, or danger, or peril; one where accidents or injuries are very apt to occur. *Henri v. Rocky Mountain Packing Corp.*, 113 Utah 415, 196 P.2d 487, 489.

Dangerous product. *See* Inherently dangerous; Strict liability.

Dangerous-tendency test. Propensity of person or animal to inflict injury; used in dog bite cases to describe vicious habits of dog. *Frazier v. Stone*, 515 S.W.2d 766 (Mo.App.).

Dangerous weapon. One dangerous to life; one by the use of which a serious or fatal wound or injury may probably or possibly be inflicted. In context of criminal possession of a weapon can be any article which, in circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury. *People v. Green*,

4 Dept., 124 A.D.2d 725, 508 N.Y.S.2d 725, 726. What constitutes a "dangerous weapon" depends not on nature of the object itself but on its capacity, given manner of its use, to endanger life or inflict great bodily harm. *U.S. v. Bey*, C.A.Ga., 667 F.2d 7, 11. As the manner of use enters into the consideration as well as other circumstances, the question is often one of fact for the jury, but not infrequently one of law for the court. *See also* Assault with dangerous or deadly weapon; Dangerous instrumentality; Deadly weapon; Firearm.

Dangers of navigation. *See* Dangers of the river; Dangers of the sea, *infra*.

Dangers of the river. This phrase, as used in bills of lading, means only the natural accidents incident to river navigation, and does not embrace such as may be avoided by the exercise of that skill, judgment, or foresight which are demanded from persons in a particular occupation. It includes dangers arising from unknown reefs which have suddenly formed in the channel, and are not discoverable by care and skill.

Dangers of the sea. The expression "dangers of the sea" means those accidents peculiar to navigation that are of an extraordinary nature, or arise from irresistible force or overwhelming power, which cannot be guarded against by the ordinary exertions of human skill and prudence. *Hibernia Ins. Co. v. Transp. Co.*, 120 U.S. 166, 7 S.Ct. 550, 30 L.Ed. 621.

Danism /dánizəm/. The act of lending money or usury.

Dans et retinens, nihil dat /dánz et rétənənz náyl dæt/. One who gives and yet retains does not give effectually. Or, one who gives, yet retains [possession], gives nothing.

D & O Insurance. Directors and Officers liability insurance. *See* Insurance.

Dare /dériy/. Lat. In the civil law, to transfer property. When this transfer is made in order to discharge a debt, it is *datio solvendi animo*; when in order to receive an equivalent, to create an obligation, it is *datio contrahendi animo*; lastly, when made *donandi animo*, from mere liberality, it is a gift, *dono datio*.

Dare ad remanentiam /dériy àd rèmanénsh(iy)əm/. To give away in fee, or forever.

Darraign /dərəyn/. To clear a legal account; to answer an accusation; to settle a controversy.

Darrein /dərəyn/. L. Fr. Last.

Darrein continuance /dərəyn kəntínyuwəns/. The last continuance.

Darrein presentment /dərəyn prəsəntmənt/. In old English law, the last presentment. *See* Assize (*Assise of darrein presentment*).

Darrein seisin /dərəyn siyzən/. Last seisin. A plea at common law which lay in some cases for the tenant in a writ of right.

Dartmouth College Case. *Dartmouth College v. Woodward*, 17 U.S. 518, 4 Wheat. 518, 4 L.Ed. 629, held that a

college charter was a contract within the constitutional provision against state legislatures' prohibiting impairment of the obligation of contract. Art. I, Sec. 10, U.S.Const. Although *Dartmouth College* involved a charitable and educational institution, the Supreme Court readily expanded the principles announced in the opinion to corporate charters issued for business purposes. Consequently, the decision protected industrial and financial corporations from much government regulation.

Dash. The em dash (—) or the en dash (–) is often used to indicate the omission of the intermediate terms of a series which are to be supplied in reading, being thus often equivalent to * * * inclusive; thus Mark iv, 3–20 (that is, verses 3 to 20, inclusive); the years 1880–1888 (that is, 1880 to 1888).

Data. Organized information generally used as the basis for an adjudication or decision. Commonly, organized information, collected for specific purpose.

In old practice and conveyancing, the date of a deed; the time when it was *given*; that is, executed. Grounds whereon to proceed; facts from which to draw a conclusion.

Date. The specification or mention, in a written instrument, of the time (day, month and year) when it was made (executed). Also the time so specified. In its common and accepted statutory meaning refers simply to day, month and year. *Anderson v. State Personnel Bd.*, 103 C.A.3d 242, 162 Cal.Rptr. 865, 868.

The word is derived from the Latin word "datum" meaning given and is defined as the time given or specified—in some way ascertained and fixed. The time when an instrument was made, acknowledged, delivered or recorded; the clause or memorandum which specifies that fact; and the time from which its operation is to be reckoned.

That part of a deed or writing which expresses the day of the month and year in which it was made or given.

The primary signification of *date* is not time in the abstract, nor time taken absolutely, but time given or specified; time in some way ascertained and fixed. When we speak of the date of a deed, date of issue of a bond or date of a policy, we do not mean the time when it was actually executed, but the time of its execution as given or stated in the deed itself. The date of an item, or of a charge in a book-account, is not necessarily the time when the article charged was, in fact, furnished, but rather the time given or set down in the account, in connection with such charge. And so the expression "the date of the last work done, or materials furnished," in a mechanic's lien law, may be taken, in the absence of anything in the act indicating a different intention, to mean the time when such work was done or materials furnished, as specified in the plaintiff's written claim.

The precise meaning of date, however, depends upon context, since there are numerous instances when it means actual as distinguished from conventional time.

See also Antedate; Backdating; Post-date.

Date certaine /dát sértéyn/. In French law, a deed is said to be a *date certaine* (fixed date) when it has been subjected to the formality of registration. After this formality has been complied with, the parties to the deed cannot by mutual consent change the date thereof.

Date of bankruptcy. Under Bankruptcy law, time at which court declares a person a bankrupt. Usually coincides with date of filing in case of voluntary petition. See Bankruptcy Code § 301. See also Date of cleavage.

Date of cleavage. The date of filing voluntary petition of bankruptcy and hence the cut-off date as to dischargeability of debts in bankruptcy. Only those debts, with some exceptions, which exist at this time are dischargeable in bankruptcy.

Date of injury. Means inception date of the injury and is regarded as coincident with date of occurrence or happening of accident which caused such injury. *Indemnity Ins. Co. of North America v. Williams*, 129 Tex. 51, 99 S.W.2d 905, 907.

Date of issue. When applied to notes, bonds, etc., of series, usually means an arbitrary date fixed as beginning of term for which they run, without reference to precise time when convenience or state of market may permit their sale or delivery; date which bonds and stocks bear, and not date when they were actually issued in sense of being signed and delivered and put into circulation. *Whetstone v. City of Stuttgart*, 193 Ark. 88, 97 S.W.2d 641, 643.

The words in life insurance policy have been held not to mean the date of actual execution or the delivery date, but the date set forth in the policy itself. *Potts v. Metropolitan Life Ins. Co.*, 133 Pa.Super. 397, 2 A.2d 870, 872.

Date of maturity. Day on which a debt falls due as in the case of a promissory note, bond or other evidence of indebtedness.

Date of record. Date on which stockholder must have owned shares of stock to be entitled to dividend. See also Ex dividend.

Datio /déysh(iy)ow/. In the civil law, a giving, or act of giving. *Datio in solutum*; a giving in payment; a species of accord and satisfaction. Called, in modern law, "dation."

Dation /déyshən/. In the civil law, a gift; a giving of something. It is not exactly synonymous with "donation," for the latter implies generosity or liberality in making a gift, while dation may mean the giving of something to which the recipient is already entitled.

Dation en paiement /déyshən ən péymənt/dasyówn ən péymón/. In French law, a giving by the debtor and receipt by the creditor of something in payment of a debt, instead of a sum of money. It is somewhat like the accord and satisfaction of the common law.

Dative /déydəv/. A word derived from the Roman law, signifying "appointed by public authority." Thus, in Scotland, an executor-dative is an executor appointed by a court; corresponding or equivalent to an English *ad-*

ministrator or "administrator with the will annexed". In old English law, in one's gift; that may be given and disposed of at will and pleasure.

Da tua dum tua sunt, post mortem tunc tua non sunt /déy t(y)úwə dām t(y)úwə sánt, pòwst mórtəm tánk t(y)úwə nón sánt/. Give the things which are yours whilst they are yours; after death they are not yours.

Datum /déytəm/. A first principle; a thing given; a date.

Datur digniori /déytər digniyóray/. It is given to the more worthy.

Daughter. Female offspring.

Daughter-in-law. Wife of one's son.

Davis-Bacon Act. Federal law which deals with rate of pay for laborers and mechanics on public buildings and public works. 40 U.S.C.A. § 276a.

Day. 1. A period of time consisting of twenty-four hours and including the solar day and the night.

2. The period of time during which the earth makes one revolution on its axis. *Long v. City of Wichita Falls*, 142 Tex. 202, 176 S.W.2d 936, 938, 939.

3. The space of time which elapses between two successive midnights. *Long v. City of Wichita Falls*, 142 Tex. 202, 176 S.W.2d 936, 938, 939.

4. The whole or any part of period of 24 hours from midnight to midnight. *Talbott v. Caudill*, 248 Ky. 146, 58 S.W.2d 385.

5. That portion of time during which the sun is above the horizon, and, in addition, that part of the morning and evening during which there is sufficient light for the features of a man to be reasonably discerned. *U. S. v. Martin*, D.C.Mass., 33 F.2d 639, 640. *Compare* Nighttime.

6. An artificial period of time, computed from one fixed point to another twenty-four hours later, without any reference to the prevalence of light or darkness.

7. The period of time, within the limits of a natural day, set apart either by law or by common usage for the transaction of particular business or the performance of labor; as in banking, in laws regulating the hours of labor, in contracts for so many "days work," and the like, the word "day" may signify six, eight, ten, or any number of hours.

8. In practice and pleading, a particular time assigned or given for the appearance in court, the return of process, etc.

Artificial day. The time between the rising and setting of the sun; that is, day or daytime as distinguished from night.

Astronomical day. The period of twenty-four hours beginning and ending at noon.

Banking day. *See* Banking day.

Calendar days. *See* Calendar.

Civil day. The solar day, measured by the diurnal revolution of the earth, and denoting the interval of

time which elapses between the successive transits of the sun over the same hour circle, so that the "civil day" commences and ends at midnight.

Clear days. *See* Clear.

Common days. In old English practice, an ordinary day in court.

Daytime. *See* Daytime.

Juridical day. A day proper for the transaction of business in court. One on which the court may lawfully sit, excluding Sundays, holidays, and other days specifically excluded by statute or court rule. Fed.R.Civil P. 77.

Law day. Currently, May 1st of each year is designated "Law Day" and is observed in schools, public assemblies, and courts, in honor and respect of our legal system.

The day prescribed in a bond, mortgage, or defeasible deed for payment of the debt secured thereby; maturity date.

Natural day. Properly the period of twenty-four hours from midnight to midnight. Though sometimes taken to mean the daytime or time between sunrise and sunset.

Solar day. A term sometimes used as meaning that portion of the day when the sun is above the horizon, but properly it is the time between two complete (apparent) revolutions of the sun, or between two consecutive positions of the sun over any given terrestrial meridian, and hence, according to the usual method of reckoning, from noon to noon at any given place.

Day-book. A tradesman's account book; a book in which all the occurrences of the day are set down. It is usually a book of original entries.

Day certain. A fixed or appointed day; a specified particular day; a day in term.

Day in court. The right and opportunity afforded a person to litigate his claims, seek relief, or defend his rights in a competent judicial tribunal.

The time appointed for one whose rights are called judicially in question, or liable to be affected by judicial action, to appear in court and be heard in his own behalf. This phrase, as generally used, means not so much the time appointed for a hearing as the opportunity to present one's claims or rights in a proper forensic hearing before a competent tribunal.

A litigant has his "day in court" when he has been duly cited to appear and has been afforded an opportunity to appear and to be heard. *Cohen v. City of Houston*, Tex.Civ.App., 185 S.W.2d 450, 452; *In re Hampton's Estate*, 55 Cal.App.2d 543, 131 P.2d 565, 573.

Daylight. *See* Daytime.

Daylight saving time. Time each year from Spring through Fall when clocks are set ahead one hour to give people more daylight at end of working day. Daylight saving time is one hour later than Standard Time for the locality.

Day loan. *See* Loan.

Day of atonement. See Yom Kippur.

Day order. An order to buy or sell a security or commodity on a particular day and if such sale does not take place, the order expires.

Day-rule, or day-writ. In English law, a permission granted to a prisoner to go out of prison, for the purpose of transacting his business, as to hear a case in which he was concerned at the assizes, etc. Abolished by 5 & 6 Vict., c. 22, § 12 (1842).

Days in bank. (L. Lat. *dies in banco*.) In old English law, certain stated days in term appointed for the appearance of parties, the return of process, etc., originally peculiar to the court of common pleas, or bench (bank), as it was anciently called. 3 Bl.Comm. 277.

By the common law, the defendant was allowed three full days in which to make his appearance in court, exclusive of the day of appearance or return-day named in the writ; 3 Bl.Comm. 278. Upon his appearance, time was usually granted him for pleading; and this was called giving him day, or, as it was more familiarly expressed, a continuance. 3 Bl.Comm. 316. When the suit was ended by discontinuance or by judgment for the defendant, he was discharged from further attendance, and was said to go thereof *sine die*, without day. See Continuance.

Daysman. An arbitrator, umpire, or elected judge.

Days of grace. A number of days allowed, as a matter of favor or grace, to a person who has to perform some act, or make some payment (e.g., payment of insurance premium), after the time originally limited for the purpose has elapsed. In life insurance policies most states permit one month or thirty-one days.

In old practice, three days allowed to persons summoned in the English courts, beyond the day named in the writ, to make their appearance; the last day being called the "*quarto die post*". 3 Bl.Comm. 278.

In mercantile law, a certain number of days (generally three) allowed to the maker or acceptor of a bill, draft, or note, in which to make payment, after the expiration of the time expressed in the paper itself. Originally these days were granted only as a matter of *grace* or favor, but the allowance of them became an established custom of merchants, and was sanctioned by the courts (and in some cases prescribed by statute), so that they are now demandable as of right. *Bell v. Bank*, 115 U.S. 373, 6 S.Ct. 105, 29 L.Ed. 409; *Renner v. Bank*, 9 Wheat. 581, 6 L.Ed. 166.

See also Grace period.

Daytime. The time during which there is the light of day, as distinguished from night or nighttime. That portion of the full twenty-four hour day in which a man's countenance is visible by natural light and, hence, that portion of the day which is distinguished from nighttime in crime of burglary; nighttime being the period between one hour after sunset and one hour before sunrise. Model Penal Code, § 221.0(2). Word "daytime" as used in statutory crime of breaking and entering a dwelling in the daytime means that time of

day when there is sufficient daylight so as to be able to discern the features of another by natural sunlight. *State v. Briggs*, 161 Conn. 283, 287 A.2d 369, 373.

The period between sunrise and sunset. Calif.Penal Code § 7.

Under Fed.R.Crim.Proc. 41(h), relating to search and seizure, "daytime" means the hours from 6:00 a. m. to 10:00 p. m.

See also Nighttime.

Daywre. In old English law, a term applied to land, and signifying as much arable ground as could be plowed up in one day's work.

Daywork drilling contract. A drilling contract under which the drilling contractor is compensated on the basis of the amount of time spent in drilling operations. Essentially, the lease owner hires the drilling rig and its staff to work under his direction. Broad discretion is given to the contracting party to give instructions to the drilling contractor as to how to conduct drilling operations. The courts impose broad liability upon the contracting party as a result of his broad discretion.

D.B. Abbreviation for Doomsday Book.

D.B.A. Abbreviation for "doing business as."

D.B.E. An abbreviation for *de bene esse* (*q.v.*).

D.B.N. An abbreviation for *de bonis non*; descriptive of a species of administration.

D.C. An abbreviation standing either for "District Court," or "District of Columbia."

DDB. Double-declining-balance depreciation. See Depreciation.

De /diy/. A Latin preposition, signifying of; by; from; out of; affecting; concerning; respecting.

Deacon /diykən/. In ecclesiastical law, a minister or servant in the church, whose office is to assist the priest in divine service and the distribution of the sacrament. It is the lowest degree of holy orders in the Church of England.

De acquirendo rerum dominio /diy ækwærendow rirəm dæmin(i)yow/. Of (about) acquiring the ownership of things.

Dead. See Death.

Dead asset. Worthless asset which has no realizable value; e.g. uncollectable account receivable.

Deadbeat. Slang term for one who fails to pay his debts.

Dead body. A corpse. The body of a human being, deprived of life.

Dead-born. A dead-born child is to be considered as if it had never been conceived or born; in other words, it is presumed it never had life, it being a maxim of the common law that *mortuus exitus non est exitus* (a dead birth is no birth). This is also the doctrine of the civil law.

Dead freight. The amount paid by a charterer for that part of the vessel's capacity which he does not occupy although he has contracted for it.

Dead letter. A term sometimes applied to a law that has become obsolete by long disuse, and also to a letter that is undeliverable by the postal service because of insufficient address or postage and absence of return address.

Deadlocked. Unable to agree.

Corporation. Deadlock in a closely held corporation arises when a control structure permits one or more factions of shareholders to block corporate action if they disagree with some aspect of corporate policy. A deadlock often arises with respect to the election of directors, e.g., by an equal division of shares between two factions, but may also arise at the level of the board of directors itself. Term as used in statute empowering court to dissolve corporation when directors are deadlocked, means corporation which, because of decision or indecision of stockholders, cannot perform its corporate powers. *Kollbaum v. K & K Chevrolet, Inc.*, 196 Neb. 555, 244 N.W.2d 173, 177. See Rev. Model Bus. Corp. Act § 14.30(2) (involuntary dissolution at request of shareholder).

Jury. Jury which cannot agree on verdict; sometimes called "hung jury". Trial court should not repeatedly give an "anti-deadlock" instruction to "deadlocked jury," which is one which trial judge has concluded is genuinely deadlocked, giving due consideration to such things as nature and complexity of trial issues, duration of trial, length of jury deliberations, and representations of jury to court about state of deliberations. *Epperson v. U.S.*, D.C.App., 495 A.2d 1170, 1172. See also *Dynamite* instruction.

Deadly force. The degree of force that may result in the death of the person against whom the force is applied. Force likely or intended to cause death or great bodily harm; may be reasonable or unreasonable, depending on the circumstances.

Deadly weapon. Any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury. Model Penal Code, § 210.0. See also 18 U.S.C.A. § 921.

Such weapons or instruments as are made and designed for offensive or defensive purposes, or for the destruction of life or the infliction of injury. One which, from the manner used, is calculated or likely to produce death or serious bodily injury. *Austin v. State, Fla. App.*, 336 So.2d 480, 481.

See also *Dangerous weapon*; *Malicious assault with deadly weapon*.

Deadly weapon per se. A weapon which of itself is deadly or one which would ordinarily result in death by its use; e.g. gun. *Baylor v. State*, 151 Tex. Cr. R. 365, 208 S.W.2d 558, 561.

Dead man's part. In English law, that portion of the effects of a deceased person which, by the custom of London and York, is allowed to the administrator; being, where the deceased leaves a widow and children, one-third; where he leaves only a widow or only children, one-half; and, where he leaves neither, the whole. This portion the administrator was wont to apply to his own use, till the statute 1 Jac. II, c. 17, declared that the same should be subject to the statute of distributions. 2 Bl. Comm. 518.

Dead man's statute. An evidential disqualification which renders inadmissible oral promises or declarations of a dead person when offered in support of their claims by those who bring claims against the estate of the dead person. The last vestige of the disqualification of witnesses by reason of interest as this existed at common law, though many states admit such testimony under certain statutory conditions. The standard type of state dead man statute would be applicable under Fed. R. Evid. 601 only if testimony of the witness concerned claims or defenses, or elements thereof, which were governed by state law.

De admeasurement /diy ædmènshərəyshiyówniy/. Of admeasurement. Thus, *de admeasurement dotis* was a writ for the admeasurement of dower, and *de admeasurement pasturæ* was a writ for the admeasurement of pasture.

Dead-pledge. A mortgage, *mortuum vadium*.

Dead rent. In English law, a rent payable on a mining lease in addition to a royalty, so called because it is payable although the mine may not be worked.

Dead stock. Goods in inventory for which there is no market.

Dead storage. The storage, especially of automobiles in public garages, where automobiles not in use are to remain uninterrupted for a time, sometimes for the season.

Dead time. Time which does not count for any purpose, e.g. time for which a person is not paid wages, or time when employee is not working due to no fault of his own (e.g. because of machinery breakdown), or time for which a prisoner does not get credit in serving his sentence.

Dead use. A future use.

De advisamento consilii nostri /diy ædvàyzəméntow kənsilyay nóstray/. L. Lat. With or by the advice of our council. A phrase used in the old writs of summons to parliament.

De æquitate /diy èkwətéydiy/. In equity, *de jure stricto, nihil possum vindicare, de æquitate tamen, nullo modo hoc obtinet*; in strict law. I can claim nothing, but in equity this by no means obtains.

De æstimate /diy èstáméytow/. In Roman law, one of the innominate contracts, and, in effect, a sale of land or goods at a price fixed (*æstimate*), and guaranteed by some third party, who undertook to find a purchaser.

De ætate probanda /diy iytétyi prowbændə/. For proving age. A writ which formerly lay to summon a jury in order to determine the age of the heir of a tenant *in capite* who claimed his estate as being of full age.

Deafforest /diyəfóhrəst/. See Disafforest.

Deaf person. Any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications when spoken in a normal conversational tone. See Code of Ga. Ann. § 30-1-1.

Deal, n. An arrangement to attain a desired result by a combination of interested parties; the prime object being usually the purchase, sale, or exchange of property for a profit. Also, an act of buying and selling; a bargain to purchase at a favorable price. See Bargain.

Deal, v. To traffic; to transact business; to bargain or trade. Also, to act between two persons, to intervene, or to have to do with.

As to dealing in futures, see Futures contract.

Dealer. In the popular sense, one who buys to sell; not one who buys to keep, or makes to sell. One who purchases goods or property for resale to final customers; a retailer. See also Retailer.

The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business. Securities Exchange Act of 1934, § 3.

Dealer's talk. The puffing of goods to induce the sale thereof; not regarded in law as fraudulent unless accompanied by some artifice to deceive the purchaser and throw him off his guard or some concealment of intrinsic defects not easily discoverable. See Puffing.

Dealings. Transactions in the course of trade or business.

De allocatione facienda /diy æləkəyshiyówni fəys(hiyéndə/. Breve. Writ for making an allowance. An old writ directed to the lord treasurer and barons of the exchequer, for allowing certain officers (as collectors of customs) in their accounts certain payments made by them.

De alto et basso /diy æltow èt básow/. Of high and low. A phrase anciently used to denote the absolute submission of all differences to arbitration.

De ambitu /diy æmbətyuw/. Lat. Concerning bribery. A phrase descriptive of the subject-matter of several of the Roman laws; as the *Lex Aufidia*, the *Lex Pompeia*, the *Lex Tullia*, and others. See Ambitus.

De ampliori gratia /diy æmpliyóray gréysh(iy)ə/. Of more abundant or especial grace.

Dean. Administrative or academic head of school, college or university. There may be several kinds of deans in larger schools (e.g. dean of student affairs, academic dean) and also deans of specific schools within universi-

ty. Administrator in charge of counseling and disciplining students in college or secondary school.

In England, an ecclesiastical dignitary who presides over the chapter of a cathedral, and is next in rank to the bishop. So called from having been originally appointed to superintend *ten* canons or prebendaries. 1 Bl. Comm. 382.

De anno bissextili /diy énow báysekstáylay/. Of the bissextile or leap year. The title of a statute passed in the twenty-first year of Henry III, which in fact, however, is nothing more than a sort of writ or direction to the justices of the bench, instructing them how the extraordinary day in the leap year was to be reckoned in cases where persons had a day to appear at the distance of a year, as on the *essoin de malo lecti*, and the like. It was thereby directed that the additional day should, together with that which went before, be reckoned only as one, and so, of course, within the preceding year.

De annua pensione /diy ényuwə pənsihyówniy/. Breve. Writ of annual pension. An ancient writ by which the king, having a yearly pension due him out of an abbey or priory for any of his chaplains, demanded the same of the abbot or prior, for the person named in the writ.

De annuo reditu /diy ényuwow rédətyuw/. For a yearly rent. A writ to recover an annuity, no matter how payable, in goods or money.

Dean of the Arches. In England, the presiding judge of the Court of Arches (*q.v.*).

De apostata capiendo /diy əpostéytə kæpiyéndow/. Breve. Writ for taking an apostate. A writ which anciently lay against one who, having entered and professed some order of religion, left it and wandered up and down the country, contrary to the rules of his order, commanding the sheriff to apprehend him and deliver him again to his abbot or prior.

De arbitratione facta /diy ərbətrəyshiyówniy fəktə/. (Lat. Of arbitration had.) A writ formerly used when an action was brought for a cause which had been settled by arbitration.

De arrestandis bonis ne dissipentur /diy ərəstándəs bównəs níy dəsəpéntər/. An old writ which lay to seize goods in the hands of a party during the pendency of a suit, to prevent their being made away with.

De arrestando ipsum qui pecuniam recepit /diy ərəstándow ípsəm kwəy pəkýúwniyəm rəsíypət/. A writ which lay for the arrest of one who had taken the king's money to serve in the war, and hid himself to escape going.

De asportatis religiosorum /diy əspərtéytəs rəlijyowsórəm/. Concerning the property of religious persons carried away. The title of the statute 35 Edward I, passed to check the abuses of clerical possessions, one of which was the waste they suffered by being drained into foreign countries.

De assisa proroganda /diy əsáyə pròwrəgándə/. (Lat. For proroguing assise.) A writ to put off an assise,

issuing to the justices, where one of the parties is engaged in the service of the king.

Death. The cessation of life; permanent cessations of all vital functions and signs. Numerous states have enacted statutory definitions of death which include brain-related criteria. For example, many states have adopted, sometimes with variations, the Uniform Determination of Death Act definition: "An individual who has sustained either (1) irreversible cessation of circulatory and respiratory function, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards." See, e.g., Calif. Health & Safety Code, § 7180. See also *Swafford v. State, Ind.*, 421 N.E.2d 596, 602.

See also Contemplation of death; Presumption of death; Simultaneous Death Act; Wrongful death action.

Brain death. See Brain death; and *Natural Death Acts, below.*

Civil death. See Civil death.

Death benefits. Amount paid under insurance policy on death of insured. A payment made by an employer to the beneficiary or beneficiaries of a deceased employee on account of the death of the employee. A death benefit is also provided for under the Social Security Act.

Death by wrongful act. Statutory action arising from act to which law attaches liability as in the case of serving unwholesome food that results in death, the action for which may be brought by personal representative of deceased. See also Wrongful death statutes.

Death certificate. Official document issued by Register of Deaths or some other public official which certifies that a person has died. Generally such certificate specifies the cause of death, and is commonly required to be signed by the attending or an examining physician. Fed. Evid. R. 803(9) provides a hearsay exception for admissibility of death certificates.

Death duty. See *Death taxes, below.*

Death penalty. Supreme penalty exacted as punishment for murder and other capital crimes. The death penalty has been held to not be, under all circumstances, cruel and unusual punishment within prohibitions of 8th and 14th Amends., U.S. Const., *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859; nor does the 6th Amendment require a jury trial on the sentencing issue of life or death, *Spaziano v. Florida*, 468 U.S. 447, 104 S.Ct. 3154, 82 L.Ed.2d 340.

Death records. Official records of deaths kept by town or city Register of Deaths or by some other public official with like functions. See *Death certificate, above.*

Death sentence. See *Death penalty, above.*

Death taxes. Generic term to describe all taxes imposed on property or on transfer of property at death of owner. Includes estate and inheritance taxes. See *Estate tax; Inheritance tax.*

Death warrant. A warrant from the proper executive authority appointing the time and place for the execution of the sentence of death upon a convict judicially condemned to suffer that penalty.

Fetal death. See *Fetal death.*

Instantaneous death. Term to describe death following accident within a very short time such as 15–20 minutes; such concept is important in death actions in which a claim is made for pain and suffering.

Natural death. A death which occurs by the unassisted operation of natural causes, as distinguished not only from "civil death", but also from "unnatural" (e.g. violent) death.

Natural Death Acts. Such statutes (e.g. Cal. Health & Safety Code § 7185 *et seq.*) authorize an adult to make a written directive instructing his physician to withhold life-sustaining procedures in the event of a terminal condition. In the directive, which is to be executed in a prescribed manner and made a part of the patient's medical records, the declarant directs that if he has been certified by two physicians as being afflicted with a terminal condition, he is to be permitted to die naturally. The Act removes all civil or criminal liability from physicians who act in accordance with its provisions. It has been held that unwritten right of privacy is broad enough to include patient's decision to decline medical treatment in certain circumstances. *Matter of Quinlan*, 70 N.J. 10, 355 A.2d 647, 663. See also *Brain death; Will (Living will).*

Presumptive death. That which is presumed from proof of a long continued absence unheard from and unexplained. The general rule, as provided by state statutes, is that the presumption of the duration of life ceases at the expiration of seven years from the time when the person was last known to be living; and after the lapse of that period there is a presumption of death.

Violent death. One caused or accelerated by the interference of human agency; distinguished from "natural death."

Death action. See *Wrongful death action.*

Death Knell Doctrine. Doctrine which allows immediate appeal from interlocutory order where delay of review until final judgment will cause irreparable loss of substantial rights and where order has practical effect of permanently foreclosing relief on claim. *Moshe Myerowitz, D.C., P.A. v. Howard, Me.*, 507 A.2d 578, 580.

Death on High Seas Act. Federal Act which provides for a pecuniary recovery for death "caused by wrongful act, neglect or default occurring on the high seas beyond a marine league from the shore of any state [territory or dependency]." 41 U.S.C.A. § 761 *et seq.* *Mobil Oil Corp. v. Higginbotham*, 98 S.Ct. 2010, 56 L.Ed.2d 581.

Deathsman. The executioner; hangman; person that executes capital punishment.

Death's part. See *Dead man's part.*

Death trap. A structure or situation involving imminent risk of death or a place apparently safe but actual-

ly very dangerous to life. *Benson v. Missouri, K. & T. R. Co.*, Tex.Civ.App., 200 S.W.2d 233, 240.

De attornato recipiendo /diy àtárnéytow rəsipiyéndow/. A writ which lay to the judges of a court, requiring them to receive and admit an attorney for a party.

De audiendo et terminando /diy òdiyéndow èt tårnånándow/. For hearing and determining; to hear and determine. The name of a writ, or rather commission granted to certain justices to hear and determine cases of heinous misdemeanor, trespass, riotous breach of the peace, etc. *See Oyer and terminer.*

De averiis captis in withernamium /diy əvəriyəs káptəs ən wiðárnéymiyəm/. Writ for taking cattle in withernam. A writ which lay where the sheriff returned to a *pluries* writ of replevin that the cattle or goods, etc., were eloined, etc.; by which he was commanded to take the cattle of the defendant in withernam (or reprisal), and detain them until he could replevy the other cattle. *See Withernam.*

De averiis replegiandis /diy əvəriyəs rəpliyiyándəs/. A writ to replevy beasts. 3 Bl.Comm. 149.

De banco /diy bəŋkow/. Of the bench. A term formerly applied in England to the justices of the court of common pleas, or "bench," as it was originally styled.

Debarment. To bar, exclude or preclude from having or doing something. Exclusion from government contracting and subcontracting. *See also Disbarment.*

Debasement. Reducing the weight of gold and silver in coins of standard value or of increasing the amount of alloy in such coins. Such has the effect of reducing the intrinsic value.

Debauch /dəbóch/. To corrupt one's manners; to make lewd; to mar or spoil; to entice; and, when used of a woman, to seduce, or corrupt with lewdness. Originally, the term had a limited signification, meaning to entice or draw one away from his work, employment, or duty; and from this sense its application has enlarged to include the corruption of manners and violation of the person. In its modern legal sense, the word carries with it the idea of "carnal knowledge," aggravated by assault, violent seduction, ravishment. *See also Debauchery.*

Debauchery /dəbóchəriy/. In general, excessive indulgence in sensual pleasures; in a narrower sense, sexual immorality or excesses, or the unlawful indulgence of lust.

De bene esse /diy bínyiy ésiy/də bínyiy°/. Conditionally; provisionally; in anticipation of future need. A phrase applied to proceedings which are taken *ex parte* or provisionally, and are allowed to stand as *well done* for the present, but which may be subject to future exception or challenge, and must then stand or fall according to their intrinsic merit and regularity.

Examination de bene esse. A provisional examination of a witness. An examination of a witness whose testimony is important and might otherwise be lost, held out of court and before the trial, with the proviso that the deposition so taken may be used on the trial in case the

witness is unable to attend in person at that time or cannot be produced. *See e.g. Fed.R.Civil P. 26, 27.*

Debenture /dəbéntyər/. Long term unsecured debt instrument, issued pursuant to an indenture. A promissory note or bond backed by the general credit and earning history of a corporation and usually not secured by a mortgage or lien on any specific property; *e.g.*, an unsecured bond. Holders of corporate debentures are creditors of the corporation and entitled to payment before shareholders upon dissolution. *See also Bond; Indenture. Compare Secured bond.*

Certificate issued by customs to an importer for the deduction or refund of duties on merchandise imported and then exported by such importer.

Convertible debenture. Debenture which may be changed or converted into some other security (*e.g.* stock) usually at the option of the holder.

Convertible subordinated debenture. Debenture which is subject or subordinate to prior payment of other indebtedness but which may be converted into another form of security.

Sinking fund debenture. Debenture which is secured by periodic payments into sinking fund, commonly managed by trustee for purpose of retiring such debt.

Subordinate debenture. Debenture which is subject to or subordinate to prior payment of other indebtedness.

Debenture bond. Bonds not secured by any specific property but issued against the general credit of a corporation or government.

Debenture indenture. An indenture containing obligations not secured by a mortgage or other collateral; a key instrument in the process of long term debt financing for general business corporations. Its effect is to put the debenture-holder in substantially the same practical position as a bondholder secured by a first mortgage. *See also Indenture.*

Debenture stock. In England, a stock or fund representing money borrowed by a company or public body and charged on the whole or part of its property. An issue of stock usually irredeemable and transferable in any amount, not including a fraction of a pound. The terminability and fixity in amount of debentures being inconvenient to lenders led to their being in many cases superseded by debenture stock.

Debet esse finis litium /dəbətésiyy fáynəs lish(iy)əm/. There ought to be an end of suits; there should be some period put to litigation.

Debet et detinet /dəbət èt dètənet/. (Lat. He owes and detains.) Words anciently used in the original writ (and now, in English, in the plaintiff's declaration), in an action of debt, where it was brought by one of the original contracting parties who personally gave the credit, against the other who personally incurred the debt, or against his heirs, if they were bound to the payment; as by the obligee against the obligor, by the landlord against the tenant, etc. The declaration, in such cases, states that the defendant "owes to," as well

as "*detains* from," the plaintiff the debt or thing in question; and hence the action is said to be "in the *debet et detinet*". Where the declaration merely states that the defendant *detains* the debt (as in actions by and against an executor for a debt due to or from the testator), the action is said to be "in the *detinet*" alone. 3 Bl.Comm. 155.

Debet quis juri subjacere ubi delinquit /débət kwis júray sobjásəriy yúwbay dəlínkwət/. One [every one] ought to be subject to the law [of the place] where he offends.

Debet sine breve /débət sáyniy briyviy/. (Lat. He owes without declaration filed.) Used in relation to a confession of judgment.

Debet sua cuique domus esse perfugium tutissimum /débət syúwə kyuwákwiy dówməs ésiy pərfyúwjiyám tyúwtisáməm/. Every man's house should be a perfectly safe refuge.

De bien et de mal /də byén ey də mál/. L. Fr. For good and evil. A phrase by which a party accused of a crime anciently put himself upon a jury, indicating his entire submission to their verdict; also the name of the special writ of jail delivery formerly in use in England, which issued for each particular prisoner, of course. It was superseded by the general commission of jail delivery.

De biens le mort /də bíynz læ mór(t)/. L. Fr. Of the goods of the deceased.

De bigamis /diy bigáməs/. Concerning men twice married. The title of the English statute 4 Edw. I, St. 3; so called from the initial words of the fifth chapter.

Debile fundamentum fallit opus /débəliy fándəméntəm fələt ówpəs/. A weak foundation frustrates [or renders vain] the work [built upon it]. When the foundation fails, all goes to the ground; as, where the cause of action fails, the action itself must of necessity fail.

Debit /débət/. A sum charged as due or owing. An entry made on the asset side of a ledger or account. The term is used in book-keeping to denote the left side of the ledger, or the charging of a person or an account with all that is supplied to or paid out for him or for the subject of the account. Also, the balance of an account where it is shown that something remains due to the party keeping the account.

As a noun, an entry on the left-hand side of an account. As a verb, to make an entry on the left-hand side of an account. A term used in accounting or book-keeping which results in an increase to an asset and an expense account and a decrease to a liability, revenue, or owner's equity account.

Compare Credit.

Debita laicorum /débətə lèykórəm/. L. Lat. In old English law, debts of the laity, or of lay persons. Debts recoverable in the civil courts.

Debita sequuntur personam debitoris /débətə sək-wántər pərsównəm débətórəs/. Debts follow the person

of the debtor; that is, they have no locality, and may be collected wherever the debtor can be found.

Debit balance. Account balance showing money owed to lender or seller. Accounting condition where there is an excess of debit over credit entries.

Debitor /débətər/. In the civil and old English law, a debtor.

Debitor non præsimitur donare /débətər nòn prəzyúwmətər dənériy/. A debtor is not presumed to make a gift. Whatever disposition he makes of his property is supposed to be in satisfaction of his debts. Where a debtor gives money or goods, or grants land to his creditor, the natural presumption is that he means to get free from his obligation, and not to make a present, unless donation be expressed.

Debitorum pactionibus creditorum petitio nec tolli nec minui potest /débətórəm pəksh(iy)ównəbəs kredətórəm pətish(iy)ow nèk tólay nèk míyúway pówtəst/. The rights of creditors can neither be taken away nor diminished by agreements among (or of) the debtors.

Debitrix /débətrəks/. A female debtor.

Debitum /débətəm/. Something due, or owing, a debt.

Debitum et contractus sunt nullius loci /débətəm èt kənrəktə sənt nəláyəs lówsay/. Debt and contract are of [belong to] no place; have no particular locality. The obligation in these cases is purely personal, and actions to enforce it may be brought anywhere.

Debitum in præsenti solvendum in futuro /débətəm in prəzéntay sólvéndəm in fystyúrow/. A debt or obligation complete when contracted, but of which the performance cannot be required till some future period.

Debitum sine brevi /débətəm sáyniy briyvay/. L. Lat. Debt without writ; debt without a declaration. In old practice, this term denoted an action begun by original bill, instead of by writ. In modern usage, it is sometimes applied to a debt evidenced by confession of judgment without suit. The equivalent Norman-French phrase was "*debit sans breve*." Both are abbreviated to *d.s.b.*

De bone memorie /diy bówniy méməriy/. L. Fr. Of good memory; of sound mind.

De bonis asportatis /diy bównəs àspərtéytəs/. For goods taken away; for taking away goods. The action of trespass for taking personal property is technically called "*trespass de bonis asportatis*."

De bonis non /diy bównəs nón/. An abbreviation of *De bonis non administratis* (*q.v.*).

De bonis non administratis /diy bównəs nòn ədmínəstréytəs/. Of the goods not administered. When an administrator is appointed to succeed another, who has left the estate partially unsettled, he is said to be granted "*administration de bonis non*;" that is, of the goods not already administered.

De bonis non amovendis /diy bównəs nòn èym-əvéndəs/. Writ for not removing goods. A writ ancient-

ly directed to the sheriffs of London, commanding them, in cases where a writ of error was brought by a defendant against whom a judgment was recovered, to see that his *goods* and chattels were safely kept *without being removed*, while the error remained undetermined, so that execution might be had of them, etc.

De bonis propriis /diy bównəs prówpriyəs/. Of his own goods. The technical name of a judgment against an administrator or executor to be satisfied from his own property, and not from the estate of the deceased, as in cases where he has been guilty of a *devastavit* or of a false plea of *plene administravit*.

De bonis testatoris, or intestati /diy bównəs tès-tatòrəs/*intestéytay/. Of the goods of the testator, or intestate. A term applied to a judgment awarding execution against the property of a testator or intestate, as distinguished from the individual property of his executor or administrator.

De bonis testatoris ac si /diy bównəs tès-tatòrəs àk sáy/. (Lat. From the goods of the testator, *if he has any*, and, *if not, from those of the executor*.) A judgment rendered where an executor falsely pleads any matter as a release, or, generally, in any case where he is to be charged in case his testator's estate is insufficient.

De bono et malo /diy bównow et mǎlow/. See *De bien et de mal*.

De bono gestu /diy bównow jéstyuw/. For good behavior; for good abearance.

Debt. A sum of money due by certain and express agreement. A specified sum of money owing to one person from another, including not only obligation of debtor to pay but right of creditor to receive and enforce payment. *State v. Ducey*, 25 Ohio App.2d 50, 266 N.E.2d 233, 235. Liability on a claim. Bankruptcy Code § 101.

A fixed and certain obligation to pay money or some other valuable thing or things, either in the present or in the future. In a still more general sense, that which is due from one person to another, whether money, goods, or services. In a broad sense, any duty to respond to another in money, labor, or service; it may even mean a moral or honorary obligation, unenforceable by legal action. Also, sometimes an aggregate of separate debts, or the total sum of the existing claims against a person or company. Thus we speak of the "national debt", the "bonded debt" of a corporation, etc.

Active debt. One due to a person. Used in the civil law.

Ancestral debt. One of an ancestor which the law compels the heir to pay.

Antecedent debt. See that title.

Bad debt. Uncollectible account receivable. Under National Bank Act, an unsecured debt on which interest or payment is past due for at least six months. See also *Bad debt*; *Bad debt reserve*.

Bonded debt. Debt represented by bonds. See *Bonded debt*.

Common-law action. The name of a common-law action which lies to recover a certain specific sum of money, or a sum that can readily be reduced to a certainty. It is thus distinguished from *assumpsit*, which lies as well where the sum due is uncertain as where it is certain, and from *covenant*, which lies only upon contracts evidenced in a certain manner.

It is said to lie in the *debet* and *detinet* (when it is stated that the defendant owes and detains), or in the *detinet* (when it is stated merely that he detains). Debt in the *detinet* for goods differs from *detinue*, because it is not essential in this action, as in *detinue*, that the specific property in the goods should have been vested in the plaintiff at the time the action is brought.

Consumer debt. See *Consumer debt*.

Contingent debt. See *Contingent debt*.

Convertible debt. Debt which may be changed or converted by creditor into another form of security, e.g. shares of stock. See *Debenture (Convertible debenture)*.

Debt by simple contract. A debt or demand founded upon a verbal or implied contract, or upon any written agreement that is not under seal.

Debt by specialty or special contract. A debt due, or acknowledged to be due, by some deed or instrument under seal; as a deed of covenant or sale, a lease reserving rent, or a bond or obligation. 2 Bl.Comm. 465.

Debt of record. A debt which appears to be due by the evidence of a court of record, as by a judgment or recognizance. 2 Bl.Comm. 465.

Existing debt. See *Existing debt*.

Floating debt. Short-term or current debt, not represented by securities.

Fraudulent debt. A debt created by fraud. Such a debt implies confidence and deception. It implies that it arose out of a contract, express or implied, and that fraudulent practices were employed by the debtor, by which the creditor was defrauded.

Funded debt. Debt represented by bonds or other securities.

General debt. See that title.

Hypothecary debt. One which is a lien upon an estate.

Installment debt. Debt which is to be repaid in installments; e.g. retail installment contract.

Judgment debt. See *Judgment debt*.

Legal debts. Those that are recoverable in a court of law, as debt on a bill of exchange, a bond, or a simple contract.

Liquid debt. One which is immediately and unconditionally due. See also *Liquidated debt*.

Mutual debts. Money due on both sides between two persons. Such debts must be due to and from same persons in same capacity. Cross debts in the same capacity and right, and of the same kind and quality.

Passive debt. A debt upon which, by agreement between the debtor and creditor, no interest is payable, as distinguished from *active debt*; *i.e.*, a debt upon which interest is payable. As used in another sense, a debt is "active" or "passive" according as the person of the creditor or debtor is regarded; a passive debt being that which a man owes; an active debt that which is owing to him. In this meaning every debt is both active and passive; active as regards the creditor, passive as regards the debtor.

Preferential debts. See that title.

Privileged debt. One which is to be paid before others in case a debtor is insolvent; *e.g.* secured debt.

Proof of debt. See Proof.

Public debt. That which is due or owing by the government of a state or nation.

Secured debt. Debt secured by collateral; *e.g.* by mortgage, securities, deed, etc. See Secured transaction.

Simple contract debt. At common law, one where the contract upon which the obligation arises is neither ascertained by matter of record nor yet by deed or special instrument, but by mere oral evidence the most simple of any, or by notes unsealed, which are capable of a more easy proof, and therefore only better than a verbal promise. 2 Bl.Comm. 466.

Specialty debt. See *Debt by specialty or special contract, above.*

Unliquidated debt. See Unliquidated debt.

Debt adjusting. Engagement in the business of making contracts, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaging in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors. See also Debt adjustment; Debt pooling; Wage earner's plan.

Debt adjustment. Settlement of dispute regarding debt obligation by compromise and adjustment. Term also refers to adjustment of debts of an individual with regular income as provided for under Chapter 13 of the Bankruptcy Code. See also Bankruptcy proceedings; Compromise and settlement; Debt pooling; Wage earner's plan.

Debt cancellation. Under federal tax law, discharge or cancellation of indebtedness ordinarily results in income to debtor when he settles debt for less than amount which he owes. I.R.C. § 61(a)(12). See Bankruptcy proceedings.

Debt consolidation. See Debt pooling.

Debtee. A person to whom a debt is due; a creditor.

Debt-equity ratio. An amount arrived at by dividing total liabilities by total equity of an entity (*e.g.*, total liabilities of corporation divided by total shareholders' equity). A high debt ratio is an indication that the entity may have difficulty meeting obligations which come due. A bank may be reluctant to provide financ-

ing to an entity with a high debt ratio due to the risks associated with repayment. See also Debt ratio.

Debt financing. Raising funds by issuing bonds or notes or borrowing from a financial institution. Contrasted with equity financing which is raising funds by issuing and selling stocks. Corporate borrowing of money, generally on a long term basis for acquiring working capital or for retiring current indebtedness.

Debt instrument. Written promise to repay debt; *e.g.*, promissory note, bill, bond, commercial paper.

Debt limitations. Ceiling placed on amount of borrowings by individuals, corporations or governments. Certain state constitutions prohibit deficit spending by government.

Debtor. One who owes a debt to another who is called the creditor; one who may be compelled to pay a claim or demand; anyone liable on a claim, whether due or to become due. First Nat. Bank & Trust Co. in Macon v. Kunes, 128 Ga.App. 565, 197 S.E.2d 446, 449.

"Debtor" means "the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term 'debtor' means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires." U.C.C. § 9-105(1)(d).

In bankruptcy law, person who files a voluntary petition or person against whom an involuntary petition is filed. Person or municipality concerning which a bankruptcy case has been commenced. Bankruptcy Code, § 101. See Bankruptcy.

See also Absconding debtor; Joint debtors.

Judgment debtor. One who owes money as a result of a judgment in favor of a creditor.

Debtor in possession. In bankruptcy, refers to debtor in a Bankruptcy Code Chapter 11 or Chapter 12 case. For example, in a Chapter 11 case either the debtor will remain in control of its business or assets or a trustee will be appointed to take control of the business or assets.

Debtor's Act of 1869. The English statute 32 & 33 Vict. c. 62, abolishing imprisonment for debt in England, and for the punishment of fraudulent debtors.

Debt pooling. Arrangement by which debtor adjusts many debts by distributing his assets among several creditors, who may or may not agree to take less than is owed; or, an arrangement by which debtor agrees to pay in regular installments a sum of money to one creditor who agrees to discharge all his debts. Such activities may constitute unauthorized practice of law (as in *e.g.* Mass.), and formerly could be an act of bankruptcy. See Act of bankruptcy; Arrangement with creditors; Assignment (*Assignment for benefit of creditors*); Bankruptcy proceedings; Wage earner's plan.

Debt ratio. Amount of long-term debt divided by total of company's capital. *See also* Debt-equity ratio.

Debt retirement. Repayment of debt.

Debt security. Any form of corporate security reflected as debt on the books of the corporation in contrast to equity securities such as stock; *e.g.* bonds, notes and debentures are debt securities.

Debt service. The interest and charges currently payable on a debt, including principal payments.

De cætero /diy siytərow/. Henceforth.

De calceto reparando /diy kælsetow rəpərandow/. Writ for repairing a causeway. An old English writ by which the sheriff was commanded to distrain the inhabitants of a place to repair and maintain a causeway, etc.

Decalogue /dəkəlɔg/. The ten commandments which, according to Exodus XX, 1-18, were given by God to Moses. The Jews called them the "Ten Words," hence the name.

Decanatus /dəkənétəs/. A deanery. A company of ten persons. Also (and in this sense sometimes spelled Decania, or Decana), a town or tithing, consisting originally of ten families of freeholders. Ten tithings compose a hundred. 1 Bl.Comm. 114.

Decania /dəkéyniəs/. The office, jurisdiction, territory, or command of a *decanus*, or dean.

Decanus /dəkéynəs/. In ecclesiastical and old European law, an officer having supervision over *ten*; a dean. A term applied not only to ecclesiastical, but to civil and military, officers. *Decanus monasticus*; a monastic dean, or dean of a monastery; an officer over ten monks. *Decanus in majori ecclesie*; dean of a cathedral church, presiding over ten prebendaries. *Decanus episcopi*; a bishop's or rural dean, presiding over ten clerks or parishes. *Decanus friborgi*; dean of a friborg. An officer among the Saxons who presided over a friborg, tithing, decennary, or association of ten inhabitants; otherwise called a "tithing man," or "borsholder," his duties being those of an inferior judicial officer. *Decanus militaris*; a military officer having command of ten soldiers.

In Roman law, an officer having the command of a company or "mess" of ten soldiers. Also an officer at Constantinople having charge of the burial of the dead.

De capitalibus dominis feodi /diy kəpətéləbəs dómənay fī(ə)day/. Of the chief lords of the fee.

Decapitation. The act of beheading. A mode of capital punishment by cutting off the head.

De capite minutis /diy kəpətiy mənýúwtəs/. Of those who have lost their *status*, or civil condition. The name of a title in the Pandects. *See* Capitulis deminutio.

De cartis reddendis /diy kærtəs rədéndəs/. For restoring charters. A writ to secure the delivery of charters or deeds; a writ of detinue.

De catallis reddendis /diy kətéləs rədéndəs/. For restoring chattels. A writ to secure the return specifically of chattels detained from the owner.

De cautione admittenda /diy kòshiyowniy àdməténdə/. Writ to take caution or security. A writ which anciently lay against a bishop who held an excommunicated person in prison for his contempt, notwithstanding he had offered sufficient security (*idoneam cautionem*) to obey the commands of the church; commanding him to take such security and release the prisoner.

Decease, n. Death; not including civil death. *See* Death.

Decease, v. To die; to depart life, or from life.

Deceased. A dead person. *See* Decedent.

Decedent. A deceased person, especially one who has lately died. Etymologically the word denotes a person who is *dying*, but it has come to be used in law as signifying any deceased person, testate or intestate.

Decedent's estate. Property, both real and personal, which person possesses at the time of his death, and title to it descends immediately to his heirs upon his death subject to the control of the probate court for the purposes of paying debts and claims and after distribution the estate ceases to exist. *Mathey v. Mathey*, 109 Mont. 467, 98 P.2d 373, 375.

Deceit. A fraudulent and deceptive misrepresentation, artifice, or device, used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. To constitute "deceit," the statement must be untrue, made with knowledge of its falsity or with reckless and conscious ignorance thereof, especially if parties are not on equal terms, made with intent that plaintiff act thereon or in a manner apparently fitted to induce him to act thereon, and plaintiff must act in reliance on the statement in the manner contemplated, or manifestly probable, to his injury. *See also* Fraud; Misrepresentation; Reliance. For larceny by deceit, *see* Larceny.

In old English law, the name of an original writ, and the action founded on it, which lay to recover damages for any injury committed *deceitfully*, either in the name of another (as by bringing an action in another's name, and then suffering a nonsuit, whereby the plaintiff became liable to costs), or by a fraudulent warranty of goods, or other personal injury committed contrary to good faith and honesty. Also the name of a judicial writ which formerly lay to recover lands which had been lost by default by the tenant in a real action, in consequence of his not having been summoned by the sheriff, or by the collusion of his attorney.

Decem tales /désəm téyliyz/. Ten such; or ten tales, jurors. In practice, the name of a writ which issued in England, where, on a trial at bar, *ten* jurors were necessary to make up a full panel, commanding the sheriff to summon the requisite number. 3 Bl.Comm. 364.

Decenviri litibus judicandis /dəsɛmvəray lājɪtəbəs jūwdəkændəs/. Lat. In the Roman law, ten persons (five senators and five *equites*) who acted as the council or assistants of the praetor, when he decided on matters of law.

Decency. Propriety of action, speech, dress, etc.

Decenna /dəsɛnə/. In old English law, a tithing or decennary; the precinct of a frank-pledge; consisting of ten freeholders with their families.

Decennarius /dəsɛnəriyəs/. Lat. One who held one-half a virgate of land. One of the ten freeholders in a decennary. *Decennier*. One of the *decennarii*, or ten freeholders making up a tithing. 1 Bl.Comm. 114.

Decennary /dəsɛnəriy/. At common law a tithing, composed of ten neighboring families. 1 Bl.Comm. 114.

Deception. The act of deceiving; intentional misleading by falsehood spoken or acted. Synonymous with fraud. *Jackman v. Mau*, 78 C.A. 234, 177 P.2d 599, 605. Knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact. *See also* Bait and switch; Deceit; Fraud; Misrepresentation; Theft (*theft by deception*).

Deceptione /dəsɛpshiyówny/. An old writ which lay properly against one that deceitfully did anything in the name of another, for one that was damaged thereby. It was either original or judicial.

Deceptis non decipientibus, jura subveniunt /dəsɛptəs nɔn dəsiپیéntəbəs, jūrə səbviyniyənt/. The laws help persons who are deceived, not those deceiving.

Deceptive advertising. False and misleading advertising. Advertisement which contains any assertion, representation or statement of fact which is untrue or misleading.

Where the public are not cautious or watchful in their buying habits and are likely to be misled, the legislature may require not only the absence of active deception in advertising, but also affirmative measures to prevent misunderstanding. *Com. v. Ferris*, 305 Mass. 233, 25 N.E.2d 378. *See, e.g., Mass.G.L. c. 266, § 91; 15 U.S.C.A. § 52 et seq.*

See also Deceptive sales practices.

Deceptive sales practices. The Federal Trade Commission and statutes in most states make deceptive sales practices unlawful. Historically, an act was deceptive if it had any tendency to deceive a nontrivial number of customers. A more recent reformulation of the test defines a deceptive act as one which is likely to deceive a consumer acting reasonably in the circumstances. *See, e.g., Mass.G.L. c. 93A, § 21(I); 15 U.S.C.A. § 45(a)(1).*

As term is used in consumer protection statutes, may import less than common law fraud in sale of goods or services though there must be some measure of deceit. *Slaney v. Westwood Auto, Inc.*, 366 Mass. 688, 322 N.E.2d 768, 779. A sales practice may be deceptive if it could reasonably be found to have caused person to act differently from way he otherwise would have acted. *Kazmaier v. Wooten, C.A.Mass.*, 761 F.2d 46.

Such practices may encompass any type of business practice or action which deceives consumers, but acts or practices which are not among those listed by statute present jury question of whether action was deceptive. *Southwest Lincoln-Mercury, Inc. v. Ross, Tex.Civ.App.*, 580 S.W.2d 2, 5. *See, e.g.,* Bait and switch.

See also Consumer protection laws; Deceptive advertising.

De certificando /diy sərtəfəkəndow/. A writ requiring a thing to be certified. A kind of *certiorari*.

Decertification. Process through which a group of employees decides it no longer wants a union to be its bargaining unit. The process involves an election conducted by the National Labor Relations Board.

De certiorando /diy sərsh(iy)ərəkəndow/. A writ for certifying. A writ directed to the sheriff, requiring him to certify to a particular fact.

Decessus /dəsɛsəs/. In the civil and old English law, death; departure.

Decet tamen principem servare leges quibus ipse servatus est /diysət tāmən prɪnsəpəm sərvəriy liyjiz kwɪbəs ɪpsiy sərvɛytəs ɛst/. It behooves, indeed, the prince to keep the laws by which he himself is preserved.

De champertia /diy kəmpərsh(iy)ə/. Writ of champerty. A writ directed to the justices of the bench, commanding the enforcement of the statute of *champertors*.

De char et de sank /də char èy dəsəŋ(k)/. L. Fr. Of flesh and blood. *Affaire rechat de char et de sank*. Words used in claiming a person to be a villein, in the time of Edward II.

De chimino /diy kimənow/. A writ for the enforcement of a right of way.

De cibariis utendis /diy səbəriyəs yuwɪtəndəs/. Of victuals to be used. The title of a sumptuary statute passed 10 Edw. III, St. 3, to restrain the expense of entertainments.

Decide. To arrive at a determination. To "decide" includes the power and right to deliberate, to weigh the reasons for and against, to see which preponderate, and to be governed by that preponderance. *See* Decision.

Decies tantum /dəshiyiz tántəm/. Ten times as much. The name of an ancient writ that was used against a juror who had taken a bribe in money for his verdict. The injured party could thus recover ten times the amount of the bribe.

Decimæ /dəsəmiy/. In ecclesiastical law, tenths, or tithes. The tenth part of the annual profit of each living, payable formerly to the pope. There were several valuations made of these livings at different times. The *decimæ* (tenths) were appropriated to the crown, and a new valuation established, by 26 Hen. VIII, c. 3. 1 Bl.Comm. 284. *See* Tithes.

Decimæ debentur parochio /dəsəmiy dəbɛntər pərow-kow/. Tithes are due to the parish priest.

Decimæ de decimatis solvi non debent /désæmiy diy dêsæméytas sólvay nón débænt/. Tithes are not to be paid from that which is given for tithes.

Decimæ de jure divino et canonica institutione pertinent ad personam /désæmiy diy júriy dæváynow èt kånónækæ instatýwshiyówniy pãrtænont æd pãrsównæm/. Tithes belong to the parson by divine right and canonical institution.

Decimæ non debent solvi, ubi non est annua renovatio; et ex annuatis renovantibus simul semel /désæmiy nón débænt sólvay, yúwbay nón èst ænyuwæ rênævéysh(iy)ow; èt èks ænyuwéytas rênævántøbæs sáyml sémæl/. Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once only.

Decimation. The punishing of every tenth soldier by lot, for mutiny or other failure of duty. This was termed "*decimatio legionis*" by the Romans. Sometimes only the twentieth man was punished (*vicesimatio*), or the hundredth (*centesimatio*).

Decipi quam fallere est tutius /désæpay kwæm fælæriy èst tyúwsh(iy)æs/. It is safer to be deceived than to deceive.

Decision. A determination arrived at after consideration of facts, and, in legal context, law. A popular rather than technical or legal word; a comprehensive term having no fixed, legal meaning. It may be employed as referring to ministerial acts as well as to those that are judicial or of a judicial character.

A determination of a judicial or quasi judicial nature. A judgment, decree, or order pronounced by a court in settlement of a controversy submitted to it and by way of authoritative answer to the questions raised before it. The term is broad enough to cover both final judgments and interlocutory orders. And though sometimes limited to the sense of judgment, the term is at other times understood as meaning simply the first step leading to a judgment; or as an order for judgment. The word may also include various rulings, as well as orders, including agency and commission orders. *U. S. v. Thompson*, 251 U.S. 407, 40 S.Ct. 289, 291, 64 L.Ed. 333.

The findings of fact and conclusions of law which must be in writing and filed with the clerk. *Wilcox v. Sway*, 69 Cal.App.2d 560, 160 P.2d 154, 156.

"Decision" is not necessarily synonymous with "opinion." A decision of the court is its judgment; the opinion is the reasons given for that judgment, or the expression of the views of the judge. But the two words are sometimes used interchangeably.

See also Decree; Final decision; Finding; Judgment; Opinion; Order; Verdict.

Decision on merits. A decision determining the validity of a written instrument or passing on a controversy with respect to the interpretation thereof which bars subsequent suit on same cause of action. *Eulenberg v. Torley's Inc.*, 56 Cal.App.2d 653, 133 P.2d 15, 17.

Decisive, or decisory, oath. See Oath.

Decker test. Under the "Decker test," an employee of a corporation, though not a member of its control group, is sufficiently identified with the corporation so that his communication to the corporation's lawyer is privileged where the employee made the communication at the direction of his supervisors and where the subject matter on which the lawyer's advice was sought by the corporation and dealt with in the communication was with the performance by the employee of the duties of his employment. *Virginia Elec. & Power Co. v. Sun Shipbuilding & Dry Dock Co.*, D.C.Va., 68 F.R.D. 397, 401.

De clamea admittenda in itinere per attornatum /diy kléymiyæ ædmætændæ in aytínæriy pær ætærnéytæm/. See *Clamea admittenda*, etc.

Declarant. A person who makes a declaration.

Declaration. In common-law pleading, the first of the pleadings on the part of the plaintiff in an action at law, being a formal and methodical specification of the facts and circumstances constituting his cause or action. It commonly comprises several sections or divisions, called "counts", and its formal parts follow each other in this general order: Title, venue, commencement, cause of action, counts, conclusion. The declaration, at common law, answers to the "libel" in ecclesiastical and admiralty law, the "bill" in equity, the "petition" in civil law, the "complaint" in code and rule pleading, and the "count" in real actions. The term "complaint" is used in the federal courts and in all states that have adopted Rules of Civil Procedure.

In law of evidence, an unsworn statement or narration of facts made by party to the transaction, or by one who has an interest in the existence of the facts recounted. Also, similar statements made by a person since deceased, which are admissible in evidence in some cases, contrary to the general rule, e.g., "dying declarations" (*q.v.*). See also *Declaration against interest*, below.

Listing by person entering United States of merchandise or other goods brought into country by him.

The basic governing document or "constitution" for a condominium.

A document by the owner of property which is recorded in order to establish a legal order upon the property, such as a condominium (by a declaration of condominium or master deed), a system of cross-easements (by a declaration of easements) or a homeowners association (by declaration of covenants, restrictions and easements).

Declarations against interest. An out of court statement by a declarant who is unavailable as a witness is admissible as an exception to the rule against hearsay if the statement was against his interest at the time it was made. Under the common law the statement must have been against the pecuniary or proprietary interest of the declarant. Under Federal Rule of Evidence 804(b)(3) and the law of some states, the statement may also be admitted if it was against the penal interest of the declarant. However, the Federal Rule provides that a statement which tends to expose the declarant to crimi-

nal liability and which is "offered to exculpate the accused" is not admissible "unless corroborating circumstances clearly indicate the trustworthiness of the statement."

Such declarations are evidence of the fact declared, and are therefore distinct from admissions, which amount to a waiver of proof. They are statements which, when made, conflict with the pecuniary or proprietary interest of the person making them, or so far tend to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true.

Declaration in chief. A declaration for the principal cause of action.

Declaration of dividend. The act of a corporation in setting aside a portion of its net or surplus income for distribution among the stockholders according to their respective stock ownership. *First Nat. Bank & Trust Co. v. Glenn*, D.C.Ky., 36 F.Supp. 552, 554. *See also* Dividend.

Declaration of homestead. Statement required to be filed with proper state or local official or agency showing property ownership for purposes of securing homestead exemption rights. It is merely an act of the owner whereby he avails himself of, and secures, a right or privilege given him by statute; it is neither a conveyance nor a contract, and there is no transfer of, or change in, title, nor any agreement of transfer or change. *U. S. Fidelity & Guaranty Co. v. Alloway*, 173 Wash. 404, 23 P.2d 408. *See also* Homestead.

Declaration of Independence. A formal declaration or announcement, promulgated July 4, 1776, by the Congress of the United States of America, in the name and behalf of the people of the colonies, asserting and proclaiming their independence of the British crown, vindicating their pretensions to political autonomy, and announcing themselves to the world as a free and independent nation.

Declaration of intention. A declaration made by an alien, as a preliminary to naturalization, before a court of record, to the effect that it is his intention in good faith to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whereof at the time he may be a citizen or subject. 8 U.S.C.A. § 1445.

Declaration of legitimacy. Formal pronouncement that a person is a legitimate child.

Declaration of pain. Exception to hearsay rule which permits testimony of out of court statement consisting of declarant's exclamation of present pain. Fed.Evid.R. 803(3).

Declaration of right. *See* Bill of Rights.

Declaration of state of mind. Exception to hearsay rule which permits testimony of out of court statement con-

cerning person's state of mind, e.g. "I am sad". Fed. Evid.R. 803(3).

Declaration of trust. The act by which the person who holds the legal title to property or an estate acknowledges and declares that he holds the same in trust to the use of another person or for certain specified purposes. The name is also used to designate the deed or other writing embodying such a declaration.

Declaration of war. A public and formal proclamation by a nation, through its executive or legislative department, that a state of war exists between itself and another nation, and forbidding all persons to aid or assist the enemy.

An act of Congress is necessary to the commencement of a foreign war and is in itself a "declaration" and fixes the date of the war. *Rosenau v. Idaho Mut. Ben. Ass'n*, 65 Idaho 408, 145 P.2d 227, 230. *See* Art. I, Sec. 8, cl. 11, U.S. Const.

Dying declarations. Statements made by a person who believes he is about to die in reference to the manner in which he received the injuries of which he is dying, or other immediate cause of his death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having committed them. Such statements are admissible in evidence as an exception to the hearsay rule in a trial for homicide (and occasionally, at least in some jurisdictions, in other cases) where the killing of the declarant is the crime charged to the defendant. *Shepard v. U.S.*, Kan., 290 U.S. 96, 54 S.Ct. 22, 78 L.Ed. 196.

Generally, the admissibility of such declarations is limited to use in prosecutions for homicide; but is admissible on behalf of accused as well as for prosecution.

In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death is not excluded by the hearsay rule. Fed.Evid.R. 804(b)(2).

Self-serving declaration. One made by a party in his own interest at some time and place out of court; not including testimony which he gives as witness at the trial.

Declaration date. The day on which directors of a corporation declare a dividend as contrasted with date on which the dividend is actually paid. *See* Ex dividend.

Declaration of estimated tax. A tax payment procedure whereby non-wage earner individuals, and wage earners with other income not subject to withholding, as well as corporations are required to file declarations of estimated tax and make periodic payments of such. This requirement assures current collection of taxes from taxpayers whose incomes are not taxed, or fully taxed, by means of payroll withholdings. I.R.C. §§ 6015, 6154. *See* Estimated tax.

Declaration of Paris. The name given to an agreement announcing four important rules of international law

effected between the principal European powers at the Congress of Paris in 1856. These rules are: (1) Privateering is and remains abolished; (2) the neutral flag covers enemy's goods, except contraband of war; (3) neutral goods, except contraband of war, are not liable to confiscation under a hostile flag; (4) blockades, to be binding, must be effective.

Declaration of Taking Act. Federal law governing taking of private property for public use under eminent domain. 40 U.S.C.A. §§ 58a-258e; U. S. v. Miller, 317 U.S. 369, 63 S.Ct. 276, 87 L.Ed. 336. See Eminent domain.

Declarator of trust. A common law action resorted to against a trustee who holds property upon titles *ex facie* for his own benefit.

Declaratory. Explanatory; designed to fix or elucidate what before was uncertain or doubtful.

Declaratory action. See Declaratory judgment.

Declaratory judgment. Statutory (see Declaratory Judgment Act) remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his legal rights. A binding adjudication of the rights and status of litigants even though no consequential relief is awarded. *Brimmer v. Thomson*, Wyo., 521 P.2d 574, 579. Such judgment is conclusive in a subsequent action between the parties as to the matters declared and, in accordance with the usual rules of issue preclusion, as to any issues actually litigated and determined. *Seaboard Coast Line R. Co. v. Gulf Oil Corp.*, C.A.Fla., 409 F.2d 879.

Declaratory Judgment Act. Federal statute enacted in 1934, 28 U.S.C.A. § 2201, which permits bringing of complaint for a declaration of rights if there is an actual controversy between the parties. The judgment is binding as to present and future rights of the parties to the action. See Fed.R.Civil P. 57. Most states have statutes of a like or similar nature; many of which are patterned on The Uniform Declaratory Judgments Act. See also Declaratory judgment.

Declaratory part of a law. That which clearly defines rights to be observed and wrongs to be eschewed.

Declaratory relief. See Declaratory judgment.

Declaratory statute. One enacted for the purpose of removing doubts or putting an end to conflicting decisions in regard to what the law is in relation to a particular matter. It may either be expressive of the common law, 1 Bl.Comm. 86; In re Ungaro's Will, 88 N.J.Eq. 25, 102 A. 244, 246, or may declare what shall be taken to be the true meaning and intention of a previous statute, though in the latter case such enactments are more commonly called "expository statutes." *McMahon v. Maddox*, Tex.Civ.App., 297 S.W. 310, 312. A statute enacted to put an end to a doubt as to what is the common law, or the meaning of another statute, and which declares what it is and ever has been. *Nelson v. Sandkamp*, 227 Minn. 177, 34 N.W.2d 640, 642.

Declare. To make known, manifest, or clear. To signify, to show in any manner either by words or acts. To publish; to utter; to announce clearly some opinion or resolution. To solemnly assert a fact before witnesses, e.g., where a testator *declares* a paper signed by him to be his last will and testament. See Declaration.

De claro die /diy klérow dáy(iy)/. By daylight.

De clauso fracto /diy klózow fráktow/. Of close broken; of breach of close. See Clausum fregit.

De clerico admittendo /diy kléhrəkow ædmaténdow/. See Admittendo clerico.

De clerico capto per statutum mercatorum deliberando /diy kléhrəkow káptow pâr statýúwtəm mârktóriyəm dälībērændow/. Writ for delivering a clerk arrested on a statute merchant. A writ for the delivery of a clerk out of prison, who had been taken and imprisoned upon the breach of a statute merchant.

De clerico convicto deliberando /diy kléhrəkow kánvíktow dälībērændow/. See Clerico convicto, etc.

De clerico infra sacros ordines constituto non eligendo in officium /diy kléhrəkow ínrä sækrows órdəniyž kónstátýúwtow nòn èlájéndow ín əfis(h)iyəm/. See Clerico infra sacros, etc.

De clero /diy klírow/. Concerning the clergy. The title of the statute 25 Edw. III, St. 3; containing a variety of provisions on the subject of presentations, indictments of spiritual persons, and the like.

Declination. Document filed in court by a fiduciary who chooses not to serve in his named capacity. At common law, a plea to the courts' jurisdiction on the ground that the judge is personally interested in the suit.

Declinatoires /deykliynatwárž/. In French law, pleas to the jurisdiction of the court; also of *lis pendens*, and of *connexité* (q.v.).

Declinatory exceptions /dəkláynətóriy əksépsəns/. Such dilatory exceptions as merely decline the jurisdiction of the judge before whom the action is brought. A plea to the jurisdiction *ratione personæ*.

Declinatory plea /dəkláynətóriy plíy/. In English practice, the plea of sanctuary, or of benefit of clergy, before trial or conviction. 4 Bl.Comm. 333. Now abolished.

Decline. A failing process, a tendency to a worse state; to become gradually impaired; a falling off or downward tendency. Also, to refuse or reject.

Decoctor /dəkóktər/. In the Roman law, a bankrupt; a spendthrift; a squanderer of public funds.

Decollatio /diykoléysh(iy)ow/. In old English and Scotch law, decollation; the punishment of beheading.

De combustione domorum /diy kəmbəst(i)yówniy dàmórəm/. of house burning. One of the kinds of appeal formerly in use in England.

De communi dividundo /diy kəmyúwnay dívədəndow/. For dividing a thing held in common. The name of an action given by the civil law.

De comon droit /də kómən dróyt/. L. Fr. Of common right; that is, by the common law.

Decomposed. A state of decomposition. A separation into components; specifically, decay or dissolution. In re Vetter, Cust. & Pat.App., 96 F.2d 999, 1000.

De computo /diy kómpyatow/. Writ of account. A writ commanding a defendant to render a reasonable account to the plaintiff, or show cause to the contrary. The foundation of the modern action of account.

De concilio curiæ /diy kənsíliyow kyúriyiy/. By the advice (or direction) of the court.

Deconfes. In French law, a name formerly given to those persons who died without confession, whether they refused to confess or whether they were criminals to whom the sacrament was refused.

De conflictu legum /diy kənflikt(y)uw líygəm/. Concerning the conflict of laws. The title of several works written on that subject.

De conjunctim feoffatis /diy kənjəŋktəm fíyféytəs/. Concerning persons jointly enfeoffed, or seised. The title of the statute 34 Edw. I, which was passed to prevent the delay occasioned by tenants in novel disseisin, and other writs, pleading that some one else was seised jointly with them.

De consanguineo, and de consanguinitate /diy kənsəŋgwínyow/diy kənsəŋgwínətéyiy/. Writs of consanguinity (*q.v.*).

De consilio /diy kənsíliyow/. In old criminal law, of counsel; concerning counsel or advice to commit a crime.

De consilio curiæ /diy kənsíliyow kyúriyiy/. By the advice or direction of the court.

De continuando assisam /diy kəntínyuwéndow əsáy-zəm/. Writ to continue an assise.

De contumace capiendo /diy kəntyméysiy kəpiyéndow/. Writ for taking a contumacious person. A writ which issues out of the English court of chancery, in cases where a person has been pronounced by an ecclesiastical court to be contumacious, and in contempt. It is a commitment for contempt.

De copia libelli deliberanda /diy kówpíyə ləbélay dəlibərəndə/. Writ for delivering the copy of a libel. An ancient writ directed to the judge of a spiritual court, commanding him to *deliver* to a defendant a copy of the libel filed against him in such court. The writ in the register was directed to the Dean of the Arches, and his commissary.

De coronatore eligendo /diy kòrənətóriy èlájéndow/. Writ for electing a coroner. A writ issued to the sheriff in England, commanding him to proceed to the election of a coroner, which is done in full county court, the freeholders being the electors.

De coronatore exonerando /diy kòrənətóriy əksòn-ərəndow/. Writ for discharging or removing a coroner. A writ by which a coroner in England may be removed

from office for some cause therein assigned. 1 Bl.Comm. 348.

De corpore comitatus /diy kórpariy kòmətéytəs/. From the body of the county at large, as distinguished from a particular neighborhood (*de vicineto*). 3 Bl.Comm. 360. Used with reference to the composition of a jury.

De corrodio habendo /diy kərówdiyow həbéndow/. Writ for having a corody. A writ to exact a corody from a religious house. See Corody.

Decoy. To inveigle, entice, tempt, or lure; as, to decoy a person within the jurisdiction of a court so that he may be served with process, or to decoy a fugitive criminal to a place where he may be arrested without extradition papers, or to decoy one away from his place of residence for the purpose of kidnapping him and as a part of that act. In all these uses the word implies enticement or luring by means of some fraud, trick, or temptation, but excludes the idea of force. Compare Entrapment.

Decoy letter. A letter prepared and mailed for the purpose of detecting a criminal, particularly one who is perpetrating frauds upon the postal or revenue laws.

Decree. The judgment of a court of equity or chancery, answering for most purposes to the judgment of a court of law. A decree in equity is a sentence or order of the court, pronounced on hearing and understanding all the points in issue, and determining the rights of all the parties to the suit, according to equity and good conscience. It is a declaration of the court announcing the legal consequences of the facts found. With the procedural merger of law and equity in the federal and most state courts under the Rules of Civil Procedure, the term "judgment" has generally replaced "decree". See Fed.R. Civil P. 54(a). See also Decision; Judgment; Order.

General Classification

Decrees in equity are either *final* or *interlocutory*. A final decree is one which fully and finally disposes of the whole litigation, determining all questions raised by the case, and leaving nothing that requires further judicial action. An interlocutory decree is a provisional or preliminary decree, which is not final and does not determine the suit, but directs some further proceedings preparatory to the final decree. It is a decree pronounced for the purpose of ascertaining matter of law or fact preparatory to a final decree. Where something more than the ministerial execution of the decree as rendered is left to be done, the decree is interlocutory, and not final, even though it settles the equities of the bill. *Lodge v. Twell*, 135 U.S. 232, 10 S.Ct. 745, 34 L.Ed. 153. The difficulty of exact definition is mentioned in *McGourkey v. Ry. Co.*, 146 U.S. 536, 13 S.Ct. 170, 36 L.Ed. 1079.

Consent decree. A judgment entered by consent of the parties whereby the defendant agrees to stop alleged illegal activity without admitting guilt or wrongdoing. Agreement by defendant to cease activities asserted as illegal by government (*e.g.* deceptive advertising practices as alleged by F.T.C.). Upon approval of such agree-

ment by the court the government's action against the defendant is dropped. Also, a decree entered in an equity suit on consent of both parties; it is not properly a judicial sentence, but is in the nature of a solemn contract or agreement of the parties, made under the sanction of the court, and in effect an admission by them that the decree is a just determination of their rights upon the real facts of the case, if such facts had been proved. It binds only the consenting parties; and is not binding upon the court.

Decree nisi /dəkriy náysay/. A provisional decree, which will be made absolute on motion unless cause be shown against it. Interlocutory judgment or decree in divorce action. In English practice, it is the order made by the court for divorce, on satisfactory proof being given in support of a petition for dissolution of marriage; it remains imperfect for a certain period (which period may be shortened by the court), and then, unless sufficient cause be shown, it is made absolute on motion, and the dissolution takes effect, subject to appeal. It effects a conditional divorce, becoming absolute only upon the happening of a prescribed contingency.

Decree of distribution. An instrument by which heirs receive property of a deceased; it is a final determination of the parties to a proceeding.

Decree of insolvency. One entered in a probate court, declaring the estate in question to be insolvent, that is, that the assets are not sufficient to pay the debts in full.

Decree of nullity. One entered in a suit for the annulment of a marriage, and adjudging the marriage to have been null and void *ab initio*. See Nullity.

Decree pro confesso. One entered in a court of equity in favor of the complainant where the defendant has made no answer to the bill and its allegations are consequently taken "as confessed." It is merely an admission of the allegations of the bill well pleaded.

Deficiency decree. In a mortgage foreclosure suit, a decree for the balance of the indebtedness after applying the proceeds of a sale of the mortgaged property to such indebtedness.

For *Execution of decree*, see Execution.

Decreet absolutor /dəkriyt əbzólvətər/. A decree dismissing a claim, or acquitting a defendant.

Decreet arbitral /dəkriyt árbətrəl/. An award of arbitrators.

Decreet cognitionis causá /dəkriyt kognishiyównəs kózə/. When a creditor brings his action against the heir of his debtor in order to constitute the debt against him and attach the lands, and the heir appears and renounces the succession, the court then pronounces a decree *cognitionis causá*.

Decreet condemnator /dəkriyt kòndəmnéytər/. One where the decision is in favor of the plaintiff.

Decreet of valuation of teinds /dəkriyt əv vəlyuwéyshən əv tíyndz/. A sentence of the court of sessions (who are now in the place of the commissioners

for the valuation of teinds), determining the extent and value of teinds.

Decrementum maris /dəkrəméntəm mārəs/. Lat. In old English law, decrease of the sea; the receding of the sea from the land. See Reliction.

Decrepit /dəkrépət/. This term designates a person who is disabled, incapable, or incompetent, either from physical or mental weakness or defects, whether produced by age or other causes, to such an extent as to render the individual comparatively helpless in a personal conflict with one possessed of ordinary health and strength. *Lutz v. State*, 147 Tex.Cr.R. 236, 179 S.W.2d 979, 980. The term includes a blind man. *Lewing v. State*, 135 Tex.Cr.R. 485, 121 S.W.2d 599, 600.

Decreta /dəkriytə/. In the Roman law, judicial sentences given by the emperor as supreme judge.

Decreta conciliorum non ligant reges nostros /dəkriytə kənsiliyóram nòn ligənt riyjiyz nóstrows/. The decrees of councils bind not our kings.

Decretal /dəkriytəl/. The granting or denying of remedy sought. *State v. Reagan County Purchasing Co.*, Tex.Civ.App., 186 S.W.2d 128, 134.

Decretal order /dəkriytəl órdər/. A preliminary order that determines no question upon the merits and establishes no right.

Decretals /dəkriytəlz/. In ecclesiastical law, letters of the pope, written at the suit or instance of one or more persons, determining some point or question in ecclesiastical law, and possessing the force of law, within the Roman Catholic Church. The decretals form the second part of the body of canon law.

This is also the title of the second of the two great divisions of the canon law, the first being called the "Decree" (decretum).

Decreto /deykreytów/. In Spanish colonial law, an order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign, in relation to ecclesiastical matters.

Decretum /dəkriytəm/. In the civil law, a species of imperial constitution, being a judgment or sentence given by the emperor upon hearing of a cause (*quod imperator cognoscens decrevit*).

In canon law, an ecclesiastical law, in contradistinction to a secular law (*lex*).

Decretum gratiani /dəkriytəm grèyshiyéynay/. Gratian's decree, or *decretum*. A collection of ecclesiastical law in three books or parts, made in the year 1151, by Gratian, a Benedictine monk of Bologna, being the oldest as well as the first in order of the collections which together form the body of the Roman canon law. 1 Bl.Comm. 82.

Decriminalization. An official act generally accomplished by legislation, in which an act or omission, formerly criminal, is made non-criminal and without punitive sanctions.

Decrowning. The act of depriving of a crown.

Decry. To cry down; to deprive of credit; to deprecate, disparage or belittle. "The king may at any time *decry* or cry down any coin of the kingdom, and make it no longer current." 1 Bl.Comm. 278.

De cujus /diy kyúwjes/. Lat. From whom. A term used to designate the person by, through, from, or under whom another claims.

De curia claudenda /diy kyúriyæ klodéndæ/. An obsolete writ, to require a defendant to fence in his court or land about his house, where it was left open to the injury of his neighbor's freehold.

Decurio /dəkyúriyow/. Lat. A decurion. In the provincial administration of the Roman empire, the decurions were the chief men or official personages of the large towns. Taken as a body, the decurions of a city were charged with the entire control and administration of its internal affairs; having powers both magisterial and legislative.

De cursu /diy kársyuw/. Of course. The usual, necessary, and formal proceedings in an action are said to be *de cursu*; as distinguished from *summary* proceedings, or such as are incidental and may be taken on summons or motion. Writs *de cursu* are such as are issued of course, as distinguished from prerogative writs.

De custode admittendo /diy kəstówdiy ædməténdow/. Writ for admitting a guardian.

De custode amovendo /diy kəstówdiy èymævéndow/. Writ for removing a guardian.

De custodia terræ et hæredis /diy kəstówdiyæ téhriy èt hæriydæs/. Writ of ward, or writ of right of ward. A writ which lay for a guardian in knight's service or in socage, to recover the possession and custody of the infant, or the *wardship of the land and heir*. 3 Bl. Comm. 141.

Dehdana /débeynæ/. In Saxon law, an actual homicide or manslaughter.

De debito /diy débətow/. A writ of debt.

De debitore in partes secundo /diy debətóriy ìn pártiyy səkændow/. In Roman law; "Of cutting a debtor in pieces." This was the name of a law contained in the Twelve Tables, the meaning of which has occasioned much controversy. Some commentators have concluded that it was literally the privilege of the creditors of an insolvent debtor (all other means failing) to cut his body into pieces and distribute it among them. Others contend that the language of this law must be taken figuratively, denoting a cutting up and apportionment of the debtor's *estate*.

De deceptione /diy dəsèpshiyówniy/. A writ of deceit which lay against one who acted in the name of another whereby the latter was damnified and deceived.

De deoneranda pro rata portionis /diy diyównærándæ pròw réytæ pòrshiyównæs/. Writ that lay where one was distrained for rent that ought to be paid by others proportionably with him.

Dedi /diyday/. (Lat. I have given.) A word used in deeds and other instruments of conveyance when such instruments were made in Latin, and anciently held to imply a warranty of title.

Dedicate. To appropriate and set apart one's private property to some public use; as to make a private way public by acts evincing an intention to do so.

Dedication. The appropriation of land, or an easement therein, by the owner, for the use of the public, and accepted for such use by or on behalf of the public. Such dedication may be express where the appropriation is formally declared, or by implication arising by operation of law from the owner's conduct and the facts and circumstances of the case. *Varallo v. Metropolitan Government of Nashville and Davidson County, Tenn. App.*, 508 S.W.2d 342, 346. A deliberate appropriation of land by its owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. *Consolidated Realty Co. v. Richmond Hotel & Building Co.*, 253 Ky. 463, 69 S.W.2d 985. *See also* Dedication and reservation.

By adverse user. A dedication may arise from an adverse exclusive use by the public under a claim of right with the knowledge, actual or imputed, and acquiescence of the owner.

Common-law or statutory. A common-law dedication is one made as above described, and may be either express or implied. A statutory dedication is one made under and in conformity with the provisions of a statute regulating the subject, and is of course necessarily express. An "express common-law dedication" is one where the intent is expressly manifested, such as by ordinary deeds, recorded plats not executed pursuant to statute or defectively certified so as not to constitute a statutory dedication. *Board of Com'rs of Garfield County v. Anderson*, 167 Okl. 253, 29 P.2d 75, 78.

Copyright law. At common law, the creator of a work has the right to copy and profit from it and distribute it or show it to a limited class of persons for a limited purpose without losing such right, and the right continues until the creator allows general publication of the work to occur. A general publication of work occurs when the work is made available to members of the public at large without regard to whom they are or what they propose to do with it, and common law copyright may be lost by general publication or by an unrestricted sale of a single copy. *Clark Equipment Co. v. Harlan Corp.*, D.C.Kan., 539 F.Supp. 561. Dedication of work to the public domain is a question of law, not intent of proprietor. *Data Cash Systems, Inc. v. JS & A Group, Inc.*, C.A.III., 628 F.2d 1038, 1043.

Express or implied. A dedication may be express, as where the intention to dedicate is expressly manifested by a deed or an explicit oral or written declaration of the owner, or some other explicit manifestation of his purpose to devote the land to the public use. An implied dedication may be shown by some act or course of

conduct on the part of the owner from which a reasonable inference of intent may be drawn, or which is inconsistent with any other theory than that he intended a dedication.

Statutory dedication. Such occurs when owner of property files or records a plat which marks or notes on plat portions of premises as donated or granted to public; it results in conveyance of dedicated portions in fee simple to public. *Water Products Co. of Illinois, Inc. v. Gabel*, 2 Dist., 120 Ill.App.3d 668, 76 Ill.Dec. 194, 197, 458 N.E.2d 594, 597.

Dedication and reservation. The dedicator may impose reasonable conditions, restrictions and limitations, and compliance therewith is essential unless waived. Dedicator may reserve a new right in himself by way of implied grant and may include rights personal or rights appurtenant to the land. At common law, a reservation in a dedication is not perpetual.

Dedication-day. The feast of dedication of churches, or rather the feast day of the saint and patron of a church, which was celebrated not only by the inhabitants of the place, but by those of all the neighboring villages, who usually came there; and such assemblies were allowed as lawful. It was usual for the people to feast and to drink on those days.

De die in diem /diy dáiyi in dáyam/. From day to day.

Dedi et concessi /díyday èt kónsésay/. I have given and granted. The operative words of conveyance in ancient charters of feoffment, and deeds of gift and grant; the English "*given and granted*" being still the most proper, though not the essential, words by which such conveyances are made. 2 Bl.Comm. 53, 316, 317.

Dedimus et concessimus /dédáməs èt kónsésáməs/. (Lat. We have given and granted.) Words used by the king, or where there were more grantors than one, instead of *dedi et concessi*.

Dedimus potestatem /dédáməs pòwtéstéytəm/. (We have given power.) In old English practice, a writ or commission issuing out of chancery, empowering the persons named therein to perform certain acts, as to administer oaths to defendants in chancery and take their answers, to administer oaths of office to justices of the peace, etc. 3 Bl.Comm. 447. It was anciently allowed for many purposes not now in use, as to make an attorney, to take the acknowledgment of a fine, etc.

In the United States, a commission to take testimony was sometimes termed a "*dedimus potestatem*."

Dedimus potestatem de attornno faciendo /dédáməs pòwtéstéytəm diy stárnòw fèys(h)iyéndow/. In old English practice, a writ, issued by royal authority, empowering an attorney to appear for a defendant. Prior to the statute of Westminster 2, a party could not appear in court by attorney without this writ.

Deditio /dədìshən/. The act of yielding up anything; surrender.

Dedititii /diydetayshiyay/. In Roman law, criminals who had been marked in the face or on the body with

fire or an iron, so that the mark could not be erased, and subsequently manumitted.

De diversis regulis juris antiqui /diy dāvərsəs régyələs júrés əntáykway/. Of divers rules of the ancient law. A celebrated title of the Digests, and the last in that collection. It consists of two hundred and eleven rules or maxims.

De dolo malo /diy dówlo málow/. Of or founded upon fraud. See *Actio de dolo malo*.

De domo reparanda /diy dómow rəpərándə/. A writ which lay for one tenant in common to compel his cotenant to contribute towards the repair of the common property.

De donis /diy dównəs/. Concerning gifts (or more fully, *de donis conditionalibus*, concerning conditional gifts). The name of a celebrated English statute, passed in the thirteenth year of Edw. I, and constituting the first chapter of the statute of Westm. 2, by virtue of which estates in fee-simple conditional (formerly known as "*dona conditionalia*") were converted into estates in fee-tail and rendered inalienable, thereby strengthening the power of the nobles. 2 Bl.Comm. 112.

De dote assignanda /diy dówtiy əsəgnándə/. Writ for assigning dower. A writ which lay for the widow of a tenant *in capite*, commanding the king's escheater to cause her dower to be assigned to her.

De dote unde nihil habet /diy dówtiy ándiy náyəl héybat/. A writ of dower which lay for a widow where no part of her dower had been assigned to her. It is not much used; but a form closely resembling it was sometimes used in the United States.

Deductible. That which may be taken away or subtracted. In taxation, an item which may be subtracted from gross income or adjusted gross income in determining taxable income (e.g., interest expenses, charitable contributions, certain taxes, etc.). See also *Deduction*.

The portion of an insured loss to be borne by the insured before he is entitled to recovery from the insurer. See *Deductible clause*.

Deductible clause. Clause in insurance policy providing that insured will absorb first part of loss (e.g. first \$100) with insurer paying the excess.

Deduction. That which is deducted; the part taken away; abatement; as deductions from gross income in arriving at net income for tax purposes.

In the civil law, a portion or thing which an heir has a right to take from the mass of the succession before any partition takes place. Civil Code La. art. 1358.

See also *Charitable deduction*; *Deductible*; *Marital deduction*; *Orphan's deduction*.

Itemized deductions. Those expenses which are allowed as deductions from adjusted gross income, itemized in detail under their appropriate captions, and subtracted to arrive at income subject to tax (e.g. taxes, charitable contributions, etc.). I.R.C. §§ 161-188. See also *Deductible*.

Standard deduction. An option available to all individual taxpayers whereby they can deduct a specified amount from adjusted gross income instead of itemizing their deductions. This option is generally used by taxpayers who do not have deductions which exceed the standard deduction assigned to them. The Tax Reform Act of 1986 changed the standard deduction amounts. The standard deduction amounts for 1989 and subsequent years are indexed for inflation.

Deduction for new. In marine insurance, an allowance or drawback credited to the insurers on the cost of repairing a vessel for damage arising from the perils of the sea insured against. This allowance is usually one-third, and is made on the theory that the parts restored with new materials are better in that proportion than they were before the damage.

Deductions in respect of a decedent. Deductions accrued to the point of death but not recognizable on the final income tax return of a decedent because of the method of accounting used. Such items are allowed as deductions on the estate tax return and on the income tax return of the estate or the heir. An example of a deduction in respect of a decedent would be interest expense accrued up to the date of death by a cash basis debtor.

Deed. A conveyance of realty; a writing signed by grantor, whereby title to realty is transferred from one to another. *National Fire Ins. Co. v. Patterson*, 170 Okl. 593, 41 P.2d 645, 647. A written instrument, signed, and delivered, by which one person conveys land, tenements, or hereditaments to another.

At common law, a *sealed* instrument, containing a contract or covenant, delivered by the party to be bound thereby, and accepted by the party to whom the contract or covenant runs. 2 Bl.Comm. 295. A writing under seal by which lands, tenements, or hereditaments are conveyed for an estate not less than freehold. 2 Bl. Comm. 294. It is no longer necessary that the instrument be sealed.

See also Ancient deed; Bargain and sale deed; Contract for deed; Quitclaim deed; Sheriff's deed; Special warranty deed; Tax deed; Trust (*Trust deed*); Warranty deed.

Deed absolute. Deed which conveys absolute title as contrasted with mortgage deed which is defeasible on fulfillment of mortgage conditions.

Deed for a nominal sum. In effect the same as a deed of gift. *Bertelsen v. Bertelson*, 49 Cal.App.2d 479, 122 P.2d 130, 133.

Deed indented, or indenture. In common-law conveyancing, a deed executed or purporting to be executed in parts, between two or more parties, and distinguished by having the edge of the paper or parchment on which it is written indented or cut at the top in a particular manner. This was formerly done at the top or side, in a line resembling the teeth of a saw; a formality derived from the ancient practice of dividing chirographs; but the cutting is now made either in a waving line, or more

commonly by notching or nicking the paper at the edge. 2 Bl.Comm. 295, 296.

Deed in fee. A deed conveying the title to land in fee simple with the usual covenants.

Deed of covenant. Covenants are sometimes entered into by a separate deed, for title, or for the indemnity of a purchaser or mortgagee, or for the production of title-deeds. A covenant with a penalty is sometimes taken for the payment of a debt, instead of a bond with a condition, but the legal remedy is the same in either case.

Deed of distribution. Deed of fiduciary by which real estate of decedent is conveyed.

Deed of gift. A deed executed and delivered without consideration.

Deed of release. One releasing property from the incumbrance of a mortgage or similar pledge upon payment or performance of the conditions. More specifically, where a deed of trust to one or more trustees has been executed, pledging real property for the payment of a debt or the performance of other conditions, substantially as in the case of a mortgage, a deed of release is the conveyance executed by the trustees, after payment or performance, for the purpose of divesting themselves of the legal title and revesting it in the original owner.

Deed of separation. An instrument by which, through the medium of some third person acting as trustee, provision is made by a husband for separation from his wife and for her separate maintenance.

Deed of settlement. A deed formerly used in England for the formation of joint stock companies constituting certain persons trustees of the partnership property and containing regulations for the management of its private affairs. They are now regulated by articles of association.

Deed of trust. An instrument in use in some states, taking the place and serving the uses of a mortgage, by which the legal title to real property is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions. Though differing in form from mortgage, it is essentially a security. In re Title Guaranty Trust Co., Mo.App., 113 S.W.2d 1053, 1057. See also Mortgage; Potomac mortgages; Trust (*Trust deed*).

Deed poll. A deed which is made by one party only. A deed in which only the party making it executes it or binds himself by it as a deed. It was originally so called because the edge of the paper or parchment was *polled* or cut in a straight line, wherein it was distinguished from a deed indented or indenture. As to a special use of this term in Pennsylvania in colonial times, see *Herron v. Dater*, 120 U.S. 464, 7 S.Ct. 620, 624, 30 L.Ed. 748 (citing *Evans v. Patterson*, 71 U.S. 224, 4 Wall. 224, 18 L.Ed. 393).

Deed to lead uses. A common law deed made before a fine or common recovery, to show the object thereof.

Defeasible deed. A deed containing a condition subsequent the happening of which will cause title to the property to revert to the grantor or to go to some third party.

Gratuitous deed. One made without consideration. See *Deed of gift above*.

Statutory deed. A warranty deed form prescribed by state statute. By statute in such states there are certain warranties and covenants that are legally regarded as being a part of all statutory deeds, although such are not included in the printed form.

Wild deed. A deed not in the chain of title. An instrument which is recorded but, because some previous instrument connecting it to the chain of title has not been recorded, will never be discovered in the indexes.

Deed, estoppel by. "Estoppel by deed" is a bar which precludes one party to a deed and his privies from asserting as against the other party and his privies any right or title in derogation of the deed or from denying the truth of any material facts asserted in it. *Denny v. Wilson County*, 198 Tenn. 677, 281 S.W.2d 671, 675. Such estoppel precludes a party from denying a certain fact recited in deed executed or accepted by him in an action brought on the deed by party who would be detrimentally affected by such denial. *Cleveland Boat Service v. City of Cleveland*, 102 Ohio App. 255, 130 N.E.2d 421, 425.

De ejectione custodiæ /diy əjəkshiyówniy kəstówdiyiy/. A writ which lay for a guardian who had been forcibly ejected from his wardship.

De ejectione firmæ /diy əjəkshiyówniy fərmiy/. A writ which lay at the suit of the tenant for years against the lessor, reversioner, remainderman, or stranger who had himself deprived the tenant of the occupation of the land during his term. 3 Bl.Comm. 199. By a gradual extension of the scope of this form of action its object was made to include not only damages for the unlawful detainer, but also the possession for the remainder of the term, and eventually the possession of land generally. And, as it turned on the right of possession, this involved a determination of the right of property, or the title, and thus arose the modern action of ejectment.

Deem. To hold; consider; adjudge; believe; condemn; determine; treat as if; construe.

Deemed transferor. The person holding an interest in a trust the expiration of which will lead to the imposition of a generation-skipping tax. Assume, for example, GF creates a trust, income payable to S (GF's son) for life and, upon S's death, remainder to GS (GF's grandson). Upon S's death, he will be the "deemed transferor" and the trust will be included in his gross estate for purposes of determining the generation-skipping transfer tax. I.R.S. § 2612. See *Generation-skipping trust*.

Deep pocket. A person or corporation of substantial wealth and resources from which a claim or judgment may be made.

Under the "deep pocket" theory in antitrust law, parent corporation's substantial assets will have an impact on competition in which subsidiary is engaged. *U.S. v. Connecticut Nat. Bank*, D.C.Conn., 362 F.Supp. 240, 277.

Deep Rock doctrine. A principle in bankruptcy law by which unfair or inequitable claims presented by controlling shareholders of bankrupt corporations may be subordinated to claims of general or trade creditors. The doctrine received its name from the corporate name of the subsidiary involved in the leading case articulating the doctrine. *Taylor et al. v. Standard Gas & Electric Co. et al.*, 306 U.S. 307, 59 S.Ct. 543, 83 L.Ed. 669.

De escæta /diy əschiytə/. Writ of escheat. A writ which a lord had, where his tenant died without heir, to recover the land.

De escambio monetæ /diy əskæmbiyow maniytiy/. A writ of exchange of money. An ancient writ to authorize a merchant to make a bill of exchange (*litteras cambitorias facere*).

De essendo quietum de tolonio /diy əsəndow kwaiyiytəm diy təlówniyow/. A writ which lay for those who were by privilege free from the payment of toll, on their being molested therein.

De essonio de malo lecti /diy əsówniyow diy məlow léktay/. A writ which issued upon an essoin of *malum lecti* being cast, to examine whether the party was in fact sick or not.

De estoveriis habendis /diy èstəviriyəs həbèndəs/. Writ for having estovers. A writ which lay for a wife divorced *a mensa et thoro*, to recover her alimony or estovers. 1 Bl.Comm. 441.

De estrepamento /diy əstrèpəməntow/. A writ which lay to prevent or stay waste by a tenant, during the pendency of a suit against him to recover the lands.

De eu et trene /də yúw èy tréyn/. L. Fr. Of water and whip of three cords. A term applied to a neife, that is, a bond woman or female villein, as employed in servile work, and subject to corporal punishment.

De eve et de treve /də év èy də trév/. A law French phrase, equivalent to the Latin *de avo et de tritavo*, descriptive of the ancestral rights of lords in their villeins. Literally, "from grandfather and from great-grandfather's great-grandfather." It occurs in the *Year Books*.

De excommunicato capiendo /diy èkskamyúwnəkéytow kəpiyéndow/. A writ commanding the sheriff to arrest one who was excommunicated, and imprison him till he should become reconciled to the church. 3 Bl.Comm. 102.

De excommunicato deliberando /diy èkskamyúwnəkéytow dəlibərəndow/. A writ to deliver an excommunicated person, who had made satisfaction to the church, from prison. 3 Bl.Comm. 102.

De excommunicato recapiendo /diy èkskamyúwnəkéytow rəkəpiyéndow/. Writ for retaking an excommuni-

cated person, where he had been liberated from prison without making satisfaction to the church, or giving security for that purpose.

De excusationibus /diy əkskyùwzèyshiyównəbəs/. "Concerning excuses." This is the title of book 27 of the Pandects (in the *Corpus Juris Civilis*). It treats of the circumstances which excuse one from filling the office of tutor or curator. The bulk of the extracts are from Modestinus.

De executione faciendā in withernamium /diy èksəkyùwshiyówiy fæs(h)iyéndə in wiðərnéymiyəm/. Writ for making execution in withernam. A species of *capias in withernam*.

De executione iudicii /diy eksəkyùwshiyówniy juwdishiyay/. A writ directed to a sheriff or bailiff, commanding him to do execution upon a judgment.

De exemplificatione /diy əgzèmpləfəkéyshiyówniy/. Writ of exemplification. A writ granted for the exemplification of an original.

De exoneratione sectæ /diy əgzònərèyshiyówniy séktiy/. Writ for exoneration of suit. A writ that lay for the king's ward to be discharged of all suit to the county court, hundred, leet, or court-baron, during the time of his wardship.

De expensis civium et burgensium /diy əkspénsəs siviyəm ət bərdžénsiyəm/. An obsolete writ addressed to the sheriff to levy the expenses of every citizen and burges of parliament.

De expensis militum levandis /diy əkspénsəs milətəm ləvəndəs/. Writ for levying the expenses of knights. A writ directed to the sheriff for levying the allowance for knights of the shire in parliament.

Deface. To mar or destroy the face (that is, the physical appearance of written or inscribed characters as expressive of a definite meaning) of a written instrument, signature, inscription, etc., by obliteration, erasure, cancellation, or superinscription, so as to render it illegible or unrecognizable. To mar, injure or spoil. *State v. Kasnett*, 30 Ohio App.2d 77, 283 N.E.2d 636, 638. Also used in respect of injury to monument, buildings and other structures. See *Cancel*; *Defile*; *Desecrate*; *Mar*; *Mutilation*; *Obliteration*.

De facto /diy fáktow/. In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate. Thus, an office, position or status existing under a claim or color of right such as a *de facto* corporation. In this sense it is the contrary of *de jure*, which means rightful, legitimate, just, or constitutional. Thus, an officer, king, or government *de facto* is one who is in actual possession of the office or supreme power, but by usurpation, or without lawful title; while an officer,

king, or governor *de jure* is one who has just claim and rightful title to the office or power, but has never had plenary possession of it, or is not in actual possession. *MacLeod v. United States*, 229 U.S. 416, 33 S.Ct. 955, 57 L.Ed. 1260. A wife *de facto* is one whose marriage is voidable by decree, as distinguished from a wife *de jure*, or lawful wife. But the term is also frequently used independently of any distinction from *de jure*; thus a blockade *de facto* is a blockade which is actually maintained, as distinguished from a mere paper blockade. Compare *De jure*.

"De facto doctrine" will validate, on grounds of public policy and prevention of failure of public justice, the acts of officials who function under color of law. *People v. Davis*, 86 Mich.App. 514, 272 N.W.2d 707, 710.

As to *de facto* Corporation; Court; Domicile; Government, Merger, and Officer, see those titles.

In old English law it means respecting or concerning the principal act of a murder, which was technically denominated *factum*.

De facto adoption. An agreement to adopt according to statutory procedures in a given state which will ripen into *de jure* adoption when the petition is properly presented. In *The Matter of The Estate of Schultz*, 220 Or. 350, 348 P.2d 22. An equitable adoption (*q.v.*)

De facto contract /diy fáktow kóntrəkt/. One which has purported to pass the property from the owner to another but is defective in some element.

De facto court. See *Court*.

De facto government. One that maintains itself by a display of force against the will of the rightful legal government and is successful, at least temporarily, in overturning the institutions of the rightful legal government by setting up its own in lieu thereof. *Wortham v. Walker*, 133 Tex. 255, 128 S.W.2d 1138, 1145.

De facto judge. A judge who functions under color of authority but whose authority is defective in some procedural form. *Riley v. Bradley*, 252 Ala. 282, 41 So.2d 641.

De facto marriage. A marriage in which the parties live together as husband and wife under color of validity but which is defective for reasons of form, etc.

De facto officer. One who, while in actual possession of the office, is not holding such in a manner prescribed by law. *Trost v. Tynatishon*, 12 Ill.App.3d 406, 299 N.E.2d 14.

De facto segregation. Segregation which is inadvertent and without assistance of school authorities and not caused by any state action, but rather by social, economic and other determinates. *DeFunis v. Odegaard*, 82 Wash.2d 11, 507 P.2d 1169. Compare *De jure segregation*.

De facto taking. This type of taking occurs when an entity clothed with power of eminent domain substantially deprives an owner of the use and enjoyment of his property. *City of Philadelphia v. Sorrentino*, 95 Pa. Cmwlt. 236, 505 A.2d 373, 374. Such occurs in extraor-

dinary circumstances when entity having power of eminent domain substantially deprives property owner of right to beneficial use and enjoyment of property as consequence of nonappropriative rather than appropriative act. In re Condemnation By Com., Dept. of Transp., 96 Pa.Cmwlth. 68, 506 A.2d 990, 993.

De faire échelle /də fêr eyshél/. In French law, a clause commonly inserted in policies of marine insurance, equivalent to a license to touch and trade at intermediate ports.

Defalcation /diyfolkéyshən/. The act of a defaulter; act of embezzling; failure to meet an obligation; misappropriation of trust funds or money held in any fiduciary capacity; failure to properly account for such funds. Commonly spoken of officers of corporations or public officials.

For purposes of Bankruptcy Code section making nondischargeable a debt resulting from fraud or defalcation by debtor while acting in fiduciary capacity, is failure to meet an obligation, misappropriation of trust funds or money held in any fiduciary capacity, and failure to properly account for such funds. In re Anderson, Bkrcty.N.D.Ill., 64 B.R. 331, 334.

Also set-off, recoupment or counterclaim. The diminution of a debt or claim by deducting from it a smaller claim held by the debtor or payor. See Defalk.

Defalk. To set off one claim against another; to deduct a debt due to one from a debt which one owes. This verb corresponds only to the second meaning of "defalcation" as given above; *i.e.* a public officer or trustee who misappropriates or embezzles funds in his hands is *not* said to "defalk."

De falso iudicio /diy fòlsow juwdshiyow/. Writ of false judgment.

De falso moneta /diy fòlsow mənīyətə/. Of false money. The title of the English statute 27 Edw. I, ordaining that persons importing certain coins, called "pollards," and "crokards," should forfeit their lives and goods, and everything they could forfeit.

Defamacast /dəfəyməkəst/. Defamation by broadcast. American Broadcasting-Paramount Theatres, Inc. v. Simpson, 106 Ga.App. 230, 126 S.E.2d 873, 879.

Defamation. An intentional false communication, either published or publicly spoken, that injures another's reputation or good name. Holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community; may be criminal as well as civil. Includes both libel and slander.

Defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, hatred, ridicule or obloquy. McGowen v. Prentice, La. App., 341 So.2d 55, 57. The unprivileged publication of false statements which naturally and proximately result in injury to another. Wolfson v. Kirk, Fla.App., 273 So.2d 774, 776.

To recover against a public official or public figure, plaintiff must prove that the defamatory statement was published with malice. Malice as used in this context means that it was published either knowing that it was false or with a reckless disregard as to whether it was true or false. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686.

A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. The meaning of a communication is that which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express. Restatement, Second, Torts §§ 559, 563.

See also Actionable per quod; Actionable per se; Journalist's privilege; Libel; Slander.

Defamatory. Calumnious; containing defamation; injurious to reputation; libelous; slanderous. See Defamation.

Defamatory libel. Written, permanent form of defamation as contrasted with slander which is oral defamation. See Libel.

Defamatory per quod /dəfəmətōriy pər kwód/. In respect of words, those which require an allegation of facts, aside from the words contained in the publication, by way of innuendo, to show wherein the words used libel the plaintiff. See Actionable per quod.

Defamatory per se /dəfəmətōriy pər sīy/. In respect of words, those which by themselves, and as such, without reference to extrinsic proof, injure the reputation of the person to whom they are applied. Conrad v. Allis-Chalmers Mfg. Co., 228 Mo.App. 817, 73 S.W.2d 438, 446. See Actionable per se.

Defames /dəfəymīyʒ/. L. Fr. Infamous.

Default. By its derivation, a failure. An omission of that which ought to be done. Town of Milton v. Bruso, 111 Vt. 82, 10 A.2d 203, 205. Specifically, the omission or failure to perform a legal or contractual duty, Easterwood v. Willingham, Tex.Civ.App., 47 S.W.2d 393, 395; to observe a promise or discharge an obligation (*e.g.* to pay interest or principal on a debt when due), Bradbury v. Thomas, 135 Cal.App. 435, 27 P.2d 402; or to perform an agreement, Eastman v. Morgan, D.C.N.Y., 43 F.Supp. 637, 641. The term also embraces the idea of dishonesty, and of wrongful act, Greco v. S. S. Kresge Co., 277 N.Y. 26, 12 N.E.2d 557, 562; or an act of omission discreditable to one's profession, Hilkert v. Canning, 58 Ariz. 290, 119 P.2d 233, 236.

Under the U.C.C. "default" is left undefined, §§ 9-501-507, though it is precisely what the parties agree that it is. Borochoff Properties, Inc. v. Howard Lumber Co., 115 Ga.App. 691, 155 S.E.2d 651.

Default-judgment. Judgment entered against a party who has failed to defend against a claim that has been brought by another party. Under Rules of Civil Procedure, when a party against whom a judgment for affirmative relief is sought has failed to plead (*i.e.* answer) or

otherwise defend, he is in default and a judgment by default may be entered either by the clerk or the court. Fed.R.Civil P. 55. See also Judgment.

Defaulter. One who is in default. One who misappropriates money held by him in an official or fiduciary character, or fails to account for such money.

Defeasance /dəfiyʒəns/. An instrument which defeats the force or operation of some other deed, estate, or will. A collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be *defeated* or totally undone. 2 Bl.Comm. 327.

An instrument accompanying a bond, recognizance, or judgment, containing a condition which, when performed, defeats it. See also Defeasance clause; Defeasible.

Defeasance clause. That provision in a mortgage which assures the revesting of title in the mortgagor when all the terms and conditions of the mortgage have been met. A clause which permits the mortgagor-borrower to defeat the temporary and conditional conveyance by discharging the debt and thus causing a release of any interests in the real estate.

Defeasible. Subject to be defeated, annulled, revoked, or undone upon the happening of a future event or the performance of a condition subsequent, or by a conditional limitation. An estate which is not absolute, *i.e.*, one which is determinable or subject to an executory limitation or condition subsequent. Usually spoken of estates and interests in land. For instance, a mortgagor's estate is defeasible (liable to be defeated) by the mortgagor's equity of redemption.

Defeasible fee. An estate in fee that is liable to be defeated by some future contingency; *e.g.*, a vested remainder which might be defeated by the death of the remainderman before the time fixed for the taking effect of the devise. *Giltner's Trustee v. Talbott*, 253 Ky. 474, 69 S.W.2d 981.

Defeasible title. One that is liable to be annulled or made void, but not one that is already void or an absolute nullity.

Defeasibly vested remainder. Gift over to remainderman which, though not subject to condition precedent as in the case of a contingent remainder, is subject to divestment on the happening of a condition subsequent.

Defeasive. Describes counterclaim which, if it prevails, will defeat right of plaintiffs to recover. *Hayden v. Collins*, 90 Utah 238, 63 P.2d 223, 225.

Defeat. To prevent, frustrate, or circumvent; as in the phrase "hinder, delay, or defeat creditors." To overcome or prevail against in any contest; as in speaking of the "defeated party" in an action at law, or "defeated candidate" in an election. *Norcop v. Jordan*, 216 Cal. 764, 17 P.2d 123, 124.

To annul, undo, or terminate; as, a title or estate. See Defeasible.

Defect. The want or absence of some legal requisite; deficiency; imperfection; insufficiency. *Galloway v. City of Winchester*, 299 Ky. 87, 184 S.W.2d 890, 892, 893. The absence of something necessary for completeness or perfection; a deficiency in something essential to the proper use for the purpose for which a thing is to be used. Some structural weakness in part or component which is responsible for damage. *Egan v. Washington General Ins. Corp.*, Fla.App., 240 So.2d 875, 877. In a strict liability action, may consist of a manufacturing flaw, a design defect, or an inadequate warning. *Butler v. PPG Industries, Inc.*, 201 N.J.Super. 558, 493 A.2d 619, 621. See also Apparent defects; Defective; Hidden defect; Latent defect.

Design defect. A "design defect" occurs when product is manufactured in conformity with intended design but design itself poses unreasonable dangers to consumers. *Thibault v. Sears, Roebuck & Co.*, 118 N.H. 802, 395 A.2d 843, 846.

Fatal defect. Of such serious nature as to nullify contract.

Latent defect. One which is not apparent to buyer by reasonable observation.

Patent defect. One which is apparent to buyer on normal observation.

Defect in highway or street. Ordinarily anything in the condition of state of highway or street that renders it unreasonably safe for travel. *Payne v. State Highway Commission*, 136 Kan. 561, 16 P.2d 509, 511.

Defective. Lacking in some particular which is essential to the completeness, legal sufficiency, or security of the object spoken of; as a "defective" service of process or return of service. A product is "defective" if it is not fit for the ordinary purposes for which such articles are sold and used, *Manieri v. Volkswagenwerk, A.G.*, 151 N.J.Super. 422, 376 A.2d 1317, 1322; or if it is dangerous because it fails to perform in manner to be expected in light of its nature and intended function, *Knapp v. Hertz Corp.*, 17 Ill.Dec. 65, 59 Ill.App.3d 241, 375 N.E.2d 1349, 1353. See also Defect; Warranty.

Defective condition. A product is in a defective condition unreasonably dangerous to the user when it has a propensity for causing physical harm beyond that which would be contemplated by the ordinary user or consumer who purchases it, with the ordinary knowledge common to the foreseeable class of users as to its characteristics. A product is not defective or unreasonably dangerous merely because it is possible to be injured while using it. *Moomey v. Massey-Ferguson, Inc.*, C.A.N.M., 429 F.2d 1184. See Strict liability.

Defective execution. Failure to comply with requirements in executing document with the result that document is legally inadequate or defective.

Defective pleadings. Complaint, answer, cross-claim, counterclaim, etc. which fail to meet minimum standards of sufficiency or accuracy in form or substance. Such defects may usually be cured by amendment. Fed. R.Civil P. 15.

Defective product. See Defect; Defective.

Defective record. May refer to record on appeal which does not conform to requisites of appellate rules. May also refer to state of title to real estate based on defects on the record in registry of deeds.

Defective title. With respect to negotiable paper within U.C.C. Article 3 (§ 3-201) the title of a person who obtains instrument or any signature thereto by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to fraud. See also Title (*Defective title*); Unmarketable title.

Defective verdict. Verdict lacking legitimacy because of some irregularity or inadequacy and hence one on which a judgment may not be based.

Defect of form. An imperfection in the style, manner, arrangement, or non-essential parts of a legal instrument, plea, indictment, etc., as distinguished from a "defect of substance" (*q.v.*).

Defect of parties. Insufficiency of the parties before a court in any given proceeding to give it jurisdiction and authority to decide the controversy, arising from the omission or failure to join plaintiffs or defendants who should have been brought in. Rules of Civil Procedure have relaxed some of the former rigidity in requirements of joinder, but not all. Fed.R.Civ.P., Rules 19, 20. See Joinder.

Defect of substance. An imperfection in the body or substantive part of a legal instrument, plea, indictment, etc., consisting in the omission of something which is essential to be set forth. *Sweeney v. Greenwood Index-Journal Co.*, D.C.S.C., 37 F.Supp. 484, 487.

Defectus /dɛfɛktəs/. Lat. Defect; default; want; imperfection; disqualification.

Challenge propter defectum. A challenge to a juror on account of some legal disqualification, such as infancy, etc. See Challenge.

Defectus sanguinis. Failure of the blood, *i.e.*, failure or want of issue.

Defend. To prohibit or forbid. To deny. To contest and endeavor to defeat a claim or demand made against one in a court of justice. To oppose, repel, or resist. To protect, to shield, to make a stand for, or uphold by force or argument. To vindicate, to maintain or keep secure, to guaranty, to agree to indemnify. To represent defendant in administrative, civil or criminal proceeding. See also Defense.

Defendant. The person defending or denying; the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case. See also Joint defendants; Nominal defendant.

Defendare /dɛfɛndəri/. To answer for; to be responsible for.

Defendemus /dɛfɛniyməs/. Lat. A word used in grants and donations, which binds the donor and his heirs to

defend the donee, if any one go about to lay any incumbrance on the thing given other than what is contained in the deed of donation.

Defender. (Fr.) To deny; to defend; to conduct a suit for a defendant; to forbid; to prevent; to protect. See Public defender.

In Scotch and canon law, a defendant.

Defendere se per corpus suum /dɛfɛndəri sɪj pɛr kɔrpəs s(y)úwəm/. To offer duel or combat as a legal trial and appeal. Abolished by 59 Geo. III, § 46. See *Battel*.

Defendere unica manu /dɛfɛndəri (sɪj) yúwnəko mán(y)uw/. To wage law; a denial of an accusation upon oath. See *Wager of law*.

Defender of the faith. A peculiar title belonging to the sovereign of England, as that of "Catholic" to the king of Spain, and that of "Most Christian" to the king of France. These titles were originally given by the popes of Rome; and that of *Defensor Fidei* was first conferred by Pope Leo X on King Henry VIII, as a reward for writing against Martin Luther; and the bull for it bears date *quinto Idus Octob.*, 1521.

Defendit vim et injuriam /dɛfɛndət vɪm ɛt ɪnjúriəm/. He defends the force and injury.

Defendour /dɛyfondúr/. L. Fr. A defender or defendant; the party accused in an appeal.

Defeneration /dɛfɛnərəyʃən/. The act of lending money on usury.

Defenestration /diyfɛnəstréyʃən/. Act of throwing something or somebody out of a window.

Defense. That which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why the plaintiff should not recover or establish what he seeks. That which is put forward to diminish plaintiff's cause of action or defeat recovery. Evidence offered by accused to defeat criminal charge.

With respect to defenses to a commercial instrument of which a holder in due course takes free, the term "defense" means a legally recognized basis for avoiding liability either on the instrument itself or on the obligation underlying the instrument.

A response to the claims of the other party, setting forth reasons why the claims should not be granted. The defense may be as simple as a flat denial of the other party's factual allegations or may involve entirely new factual allegations. In the latter situation, the defense is an affirmative defense. Under Rules of Civil Procedure, many defenses may be raised by motion as well as by answer (Rule 12(b)), while others must be pleaded affirmatively (Rules 8(c), 9). See *Affirmative defense*; *Answer*; *Equitable defense*; *Justification*.

As regards defense to criminal charge, such defenses include alibi, consent, "corporate" liability defenses, de minimis infraction, duress, entrapment, ignorance or mistake, infancy, insanity, intoxication, law enforcement authority, necessity, protection of property, public

duty, legal impossibility, self defense and protection of others.

Defense also means the forcible repelling of an attack made unlawfully with force and violence, such as the defense of one's person or property or nation in time of war. *See* Self-defense.

Affidavit of defense. *See* Affidavit.

Frivolous defense. One which at first glance can be seen to be merely pretensive, setting up some ground which cannot be sustained by argument. On motion, such defense may be ordered stricken from the pleadings. Fed.R.Civil P. 12(f).

Legal defense. A defense which is complete and adequate in point of law. A defense which may be set up in court of law, as distinguished from an "equitable defense", which is cognizable only in a court of equity or court possessing equitable powers. This later distinction is no longer applicable with the procedural merger of law and equity under Rules of Civil Procedure.

Meritorious defense. One going to the merits, substance, or essentials of the case, as distinguished from dilatory or technical objections. For purposes of vacating default judgment is defense presumptively established when allegations of defendant's answer, if established on trial, would constitute a complete defense to the action, and defendant need not establish its defense beyond doubt in its pleading. *Hritz v. Woma Corp., C.A.Pa., 732 F.2d 1178, 1181.*

Partial defense. One which goes only to a part of the cause of action, or which only tends to mitigate the damages to be awarded.

Peremptory defense. A defense which insists that the plaintiff never had the right to institute the suit, or that, if he had, the original right is extinguished or determined.

Personal defense. In negotiable instruments law, a defense which, though not good as against a holder in due course, is good against certain parties, because of their participation in or knowledge of certain transactions or facts from which such defense arises. Such defenses include all defenses that are not real or absolute defenses. U.C.C. § 3-305.

Pretermitted defense. One which was available to a party and of which he might have had the benefit if he had pleaded it in due season, but which cannot afterwards be heard as a basis for affirmative relief.

Real defense. In negotiable instruments law, a defense inherent in the res and therefore good against anyone seeking to enforce the instrument, even a holder in due course. Real defenses include infancy, and such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity, and fraud in the factum. These defenses are good even against a holder in due course because, where they exist, no contract was formed. U.C.C. § 3-305(2). *See also* Real defenses.

Self defense. *See* Self-defense.

Sham defense. A false or fictitious defense, interposed in bad faith, and manifestly untrue, insufficient, or irrelevant on its face.

Defense attorney. Lawyer who files appearance in behalf of defendant and represents such in civil or criminal case. *See* Public defender.

Defense au fond en droit /deyfóns ow fónð òn dr(w)ó/. (Called, also, *defense en droit*). A demurrer.

Defense au fond en fait /deyfóns ow fónð òn féy/. The general issue.

Défense bonds. United States Savings Bonds.

Défense of habitation. In criminal law, right to use force to defend one's home; interposed in criminal case in defense of crime. *See* Defense of property.

Defense of insanity. In criminal cases, an affirmative defense interposed to prove that defendant lacked essential mental capacity which is required for criminal responsibility. Model Penal Code, § 4.01. Fed.R.Crim.P. 12.2 requires the defendant to notify the prosecutor prior to trial of intention to assert such defense. *See* Insanity.

Defense of others. A justification defense available when one harms or threatens another in defense of a person other than oneself. *See e.g.,* Model Penal Code § 3.05. *See also* Self-defense.

Defense of property. Affirmative defense in criminal case consisting of justified force in protecting one's property though such force must be reasonable under all circumstances.

Defense of self. *See* Self-defense.

Defensiva /dèfənsáyvə/. In old English law, a lord or earl of the marches, who was the warden and defender of his country.

Defensive allegation. In English ecclesiastical law, a species of pleading, where the defendant, instead of denying the plaintiff's charge upon oath, has any circumstances to offer in his defense. This entitles him, in his turn to the plaintiff's answer upon oath, upon which he may proceed to proofs as well as his antagonist. 3 Bl.Comm. 100.

Defensive collateral estoppel. Doctrine precluding plaintiff from relitigating identical issues by merely switching adversary; thus, defensive collateral estoppel gives plaintiff strong incentive to join all possible defendants in first action if possible. *Baron v. Bryant, D.C. Hawaii, 556 F.Supp. 531, 536. See also* Collateral estoppel.

Defenso /dəfənsow/. In old England, that part of any open field or place that was allotted for corn or hay, and upon which there was no common or feeding, was anciently said to be *in defenso*; so of any meadow ground that was laid in for hay only. The same term was applied to a wood where part was inclosed or fenced, to secure the growth of the underwood from the injury of cattle.

Canon law. The advocate or patron of a church. An officer who had charge of the temporalities of the church.

Civil law. A defender; one who assumed the defense of another's case in court. Also an advocate. A tutor or curator.

Old English law. A guardian, defender, or protector. The defendant in an action. A person vouched in to warranty.

Defensor civitatis /dəfənsər sɪvətətɪs/. Defender or protector of a city or municipality. An officer under the Roman empire, whose duty it was to protect the people against the injustice of the magistrates, the insolence of the subaltern officers, and the rapacity of the money-lenders. He had the powers of a judge, with jurisdiction of pecuniary causes to a limited amount, and the lighter species of offenses. He had also the care of the public records, and powers similar to those of a notary in regard to the execution of wills and conveyances.

Defensor fidei /dəfənsər fāydɪy/. Defender of the faith. *See* Defender.

Defensum /dəfənsəm/. A prohibition. An inclosure of land; any fenced ground. *See* Defenso.

Defer. Delay; put off; remand; postpone to a future time. The term does not have, however, the meaning of abolish, *Moore v. Sampson County*, 220 N.C. 232, 17 S.E.2d 22, 23, or omit, *United States v. Murine Co.*, C.C.A.III., 90 F.2d 549, 551.

Deferment. A postponement or extension to a later time as in the case of one called to serve in the Armed Forces. *See* 50 U.S.C.A. § 456.

Deferral. Act of delaying, postponing or putting off.

Deferral of taxes. Postponement of taxes from one year to a later year. For example, individuals can defer taxes by contributing money to an individual retirement account (where contributions, as well as any earnings on the contributions, are taxed only when actually withdrawn from the IRA).

Deferral state. Within meaning of Age Discrimination in Employment Act is state which has its own anti-discrimination legislation and enforcement mechanism. *E.E.O.C. v. Chrysler Corp.*, D.C.Mich., 546 F.Supp. 54, 64.

Deferral period. Time span within which payment of expense, premium, interest, or the like, is delayed or in which income is postponed. *See also* Grace period.

Deferred annuity contract. An agreement in which the terms require payment to begin after a certain period of time has elapsed; e.g., payment will begin when the annuitant reaches the age of 60. *See* Annuity.

Deferred charge. Expense not recognized currently on the income statement and which is carried on the balance sheet; e.g. discount on bonds. Expenditure not recognized as an expense of the period when made but carried forward as an asset to be written off in future periods, such as for advance rent payments or insurance premiums.

Deferred claims. Claims which are postponed to a future date or to a subsequent accounting period.

Deferred compensation. Compensation that will be taxed when received and not when earned. An example is contributions by an employer to a qualified pension or profit-sharing plan on behalf of an employee. Such contributions will not be taxed to the employee until the funds are made available or distributed to the employee (e.g., upon retirement).

Nonqualified deferred compensation plans. Compensation arrangements which are frequently offered to executives. Such plans may include stock options, restricted stock, etc. Generally, an executive may defer the recognition of taxable income to future periods and the employer does not receive a tax deduction until the employee is required to include the compensation in income.

Deferred credits. Credits which are required to be spread over subsequent accounting periods such as the premium on bonds issued.

Deferred income. Income received but not yet earned, i.e., prepaid rent or insurance. Deferred income is recorded as a liability on the balance sheet until such time as the income is earned and recorded as revenue.

Deferred interest bonds. Bonds which carry a provision that interest payments are postponed for a certain period of time.

Deferred lien. Lien postponed or delayed in its effect until a future time as contrasted with a present lien; usually possessory in nature.

Deferred payments. Payments of principal or interest postponed to a future time; installment payments. *See also* Deferred income.

Deferred sentence. A sentence, the pronouncement of which has been postponed. It does not operate as a suspension of sentence. *See* Probation.

Deferred stock. *See* Stock.

Defiance /dəfāyəns/. A contemptuous opposition or disregard openly expressed in words or action. *State v. Mohar*, 169 Wash. 368, 13 P.2d 454, 455. A provoking to combat, a challenge, a declaration of hostilities. *Anderson-Berney Bldg. Co. v. Lowry*, Tex.Civ.App., 143 S.W.2d 401, 403. Defiant challenge or opposition to authority.

Deficiency. A lack, shortage, or insufficiency. The amount by which the tax properly due exceeds the sum of the amount of tax shown on a taxpayer's return plus amounts previously assessed or collected as a deficiency, less any credits, refunds or other payments due the taxpayer; i.e., the amount a taxpayer is deficient in his tax payments. *See* Deficiency assessment; Deficiency notice.

That part of a debt secured by mortgage not realized from sale of mortgaged property. A judgment or decree for the amount of such deficiency is called a "deficiency judgment" or "decree." *See* Deficiency judgment.

Deficiency assessment. In taxation, the excess of the amount of tax computed by the Internal Revenue Service over the amount computed by the taxpayer. I.R.C. § 6211 et seq. *See also* Deficiency; Deficiency notice; Jeopardy assessment.

Deficiency bill. In parliamentary practice, an appropriation bill covering items of expense omitted from the general appropriation bill or bills, or for which insufficient appropriations were made. If intended to cover a variety of such items, it is commonly called a "general deficiency bill"; if intended to make provision for expenses which must be met immediately, or which cannot wait the ordinary course of the general appropriation bills, it is called an "urgent deficiency bill."

Deficiency dividends. *See* Dividend.

Deficiency judgment. In mortgage law, imposition of personal liability on mortgagor for unpaid balance of mortgage debt after foreclosure has failed to yield full amount of due debt. In re Pittsburgh-Duquesne Development Co., C.A.Pa., 482 F.2d 243, 246. If a foreclosure sale yields less than the mortgage debt, most states permit the mortgagee to obtain a judgment for the difference. Such deficiency judgments are subject, however, to a substantial amount of statutory regulation. May also apply to debt due after repossession of personal property subject to security interest. *See also* Judgment.

Deficiency notice. Notice of tax deficiency (90 day letter) which is mailed to taxpayer by I.R.S. and which is prerequisite to jurisdiction of Tax Court. I.R.C. § 6212. *See also* Ninety day letter.

Deficiency suits. In mortgage law, action to recover difference between debt and amount realized on foreclosure. *See also* Deficiency judgment.

Deficit. An excess of expenditures over revenues. Excess of liabilities and debts over income and assets. A negative balance in the earnings and profits account. Financial loss in operation of business. Something wanting, generally in the accounts of one intrusted with money, or in the money received by him. The term is broad enough to cover defalcation, misappropriation, shrinkage, or costs, and, in its popular meaning, signifies deficiency from any cause.

In accounting, opposite of surplus on the balance sheet. May represent accumulated losses. A negative balance in the earnings and profits account.

Deficit spending. Expenditures in excess of income; usually from borrowed funds rather than from actual revenues or surplus.

De fide et officio iudicis non recipitur quæstio, sed de scientia, sive sit error juris, sive facti /diy fáydíy èt əfíshíyow júwdəsəs nòn rəsípətər kwés(h)t(iy)ow, sèd diy sayénsh(iy)ə, sáyvíy sit èhrər júrs sáyvíy fæktay/. Concerning the fidelity and official conduct of a judge, no question is [will be] entertained; but [only] concerning his knowledge, whether the error [committed] be of law or of fact. The *bona fides* and honesty of purpose of a judge cannot be questioned, but his decision may be

impugned for error either of law or fact. The law doth so much respect the certainty of judgments, and the credit and authority of judges, that it will not permit any error to be assigned which impeacheth them in their *trust* and *office*, and in willful abuse of the same; but only in ignorance and mistaking either of the law, or of the case and matter of fact. Thus, it cannot be assigned for error that a judge did that which he ought not to do; as that he entered a verdict for the plaintiff, where the jury gave it for the defendant.

De fidei læsione /diy fáydíyay líy(h)iyówníy/. Of breach of faith or fidelity.

Defile. To corrupt purity or perfection of; to debase; to make ceremonially unclean; to pollute; to sully; to dishonor. *State v. Kasnett*, 30 Ohio App.2d 77, 283 N.E.2d 636, 638. To debauch, deflower, or corrupt the chastity of a woman. The term does not necessarily imply force or ravishment, nor does it connote previous immaculateness. *See also* Desecrate.

Defilement /dəfáylmənt/. Uncleaness; impurity; corruption of morals or conduct.

Define. To explain or state the exact meaning of words and phrases; to state explicitly; to limit; to determine essential qualities of; to determine the precise signification of; to settle; to establish or prescribe authoritatively; to make clear. *Walling v. Yeakley*, C.C.A.Colo., 140 F.2d 830, 832. To declare that a certain act shall constitute an offense is defining that offense. *U. S. v. Arjona*, 120 U.S. 479, 7 S.Ct. 628, 30 L.Ed. 728. *See also* Definition.

To "define" with respect to space, means to set or establish its boundaries authoritatively; to mark the limits of; to determine with precision or to exhibit clearly the boundaries of; to determine the end or limit; to fix or establish the limits. It is the equivalent to declare, fix or establish. Seeking out what exists already is not "defining." *Redlands Foothill Groves v. Jacobs*, D.C.Cal., 30 F.Supp. 995, 1004.

De fine force /diy fáyníy fórs/. L. Fr. Of necessity; of pure necessity. *See* Fine-force.

De fine non capiendo pro pulchre placitando /diy fáyníy nòn kəpiyéndow pròw pəlkriy pləsətəndow/. A writ prohibiting the taking of fines for beau pleader.

De fine pro redisseisina capiendo /diy fáyníy pròw ríydəsíyənə kəpiyéndow/. A writ which lay for the release of one imprisoned for a re-disseisin, on payment of a reasonable fine.

De finibus levatis /diy fáynəbəs ləvéytəs/. Concerning fines levied. The title of the English statute 27 Edw. I, requiring fines thereafter to be levied, to be read openly and solemnly in court.

Definite. Fixed, determined, defined, bounded.

Definite sentence. Sentence calling for imprisonment for specified number of years as contrasted with indeterminate sentence which leaves duration to prison authorities (e.g. parole boards) and good behavior of prisoner. Also called "determinate sentence".

Definitio /dɛfɛnɪʃ(i)yow/. Lat. Definition, or more strictly, limiting or bounding; as in the maxim of the civil law: *Omnis definitio periculosa est, parum est enim ut non subverti possit, i.e.,* the attempt to bring the law within the boundaries of precise definitions is hazardous, as there are but few cases in which such a limitation cannot be subverted.

Definition. A description of a thing by its properties; an explanation of the meaning of a word or term. The process of stating the exact meaning of a word by means of other words. Such a description of the thing defined, including all essential elements and excluding all nonessential, as to distinguish it from all other things and classes. *See also* Define.

Definitive. That which finally and completely ends and settles a controversy. For example, a definitive sentence or judgment as opposed to an interlocutory judgment. *See* Definite sentence.

Definitive sentence. *See* Definite sentence.

Deflation. Decline in price of goods and services. *Compare* Disinflation.

Deflect. To turn aside, to deviate from a straight or horizontal line or from a proper position, to swerve.

Defloration /diyfloréyʃən/. Seduction or debauching. The act by which a woman is deprived of her virginity.

Deforce. In old English law, to withhold wrongfully; to withhold the possession of lands from one who is lawfully entitled to them. 3 Bl.Comm. 172.

Deforcement. Deforcement is where a man wrongfully holds lands to which another person is entitled. It therefore includes disseisin, abatement, discontinuance, and intrusion. But it is applied especially to cases, not falling under those heads, where the person entitled to the freehold has never had possession. 3 Bl.Comm. 172. Also, to detain dower from widow.

Deforciant /diyfórshənt/. One who wrongfully keeps the owner of lands and tenements out of the possession of them. 2 Bl.Comm. 350.

Deforciare /dɛfɔrs(h)iyériy/. L. Lat. To withhold lands or tenements from the rightful owner. This is a word of art which cannot be supplied by any other word.

Deforciatio /dɛfɔrs(h)iyéyʃ(i)yow/. L. Lat. In old English law, a distress, distraint, or seizure of goods for satisfaction of a lawful debt.

De forisfactura maritaggi /diy fɔrsfækchúrə mærtéy-jiyay/. Writ of forfeiture of marriage.

Deformity. A deformed or misshapen condition; an unnatural growth, or a distorted or misshapen part or member; disfigurement, as a bodily deformity.

Defossion /dɛfɔʃən/. The punishment of being buried alive.

De frangentibus prisonam /diy frænjentəbəs prizənəm/. Concerning those that break prison. The title of the English statute 1 Edw. II, ordaining that none from thenceforth who broke prison should have judgment of life or limb for breaking prison only, unless the cause for which he was taken and imprisoned required such a judgment if he was lawfully convicted thereof.

Defraud. To make a misrepresentation of an existing material fact, knowing it to be false or making it recklessly without regard to whether it is true or false, intending one to rely and under circumstances in which such person does rely to his damage. To practice fraud; to cheat or trick. To deprive a person of property or any interest, estate, or right by fraud, deceit, or artifice. *See also* Collusion; Deceit; Fraud; Material fact; Misrepresentation.

Intent to defraud means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

Defraudation. Privation by fraud.

Defunct. Having ceased to exist; no longer operative. Deceased; a deceased person. A business which has ceased to function.

Defunctus /dɛfʌŋ(k)təs/. Lat. Dead. "Defunctus sine prole," dead without (leaving) issue.

De furto /diy fɔrtow/. Of theft. One of the kinds of criminal appeal formerly in use in England.

Degaster /dɛygəstéy/. L. Fr. To waste.

De gestu et fama /diy jéstyuw ət féymə/. Of behavior and reputation. An old writ which lay in cases where a person's conduct and reputation were impeached.

Degradation. A deprivation of dignity; dismissal from rank or office; act or process of degrading. Moral or intellectual decadence; degeneration; deterioration.

An ecclesiastical censure, whereby a clergyman is divested of his holy orders. There are two sorts by the canon law,—one *summary*, by word only; the other *solemn*, by stripping the party degraded of those ornaments and rights which are the ensigns of his degree. Degradation is otherwise called "deposition," but the canonists have distinguished between these two terms, deeming the former as the greater punishment of the two. There was likewise a degradation of a lord or knight at common law, and also by act of parliament.

Dégradations /dɛgrədəyʃhənz/. A term for waste in the French law.

Degrade. *See* Degradation.

Degrading. Reviling; holding one up to public obloquy; lowering a person in the estimation of the public; exposing to disgrace, dishonor, or contempt.

De gratia /diy gréyʃ(i)yə/. Of grace or favor, by favor. *De speciali gratia*, of special grace or favor.

Degree. Extent, measure or scope of an action, condition or relation. Legal extent of guilt or negligence. Title conferred on graduates of school, college, or university. The state or civil condition of a person.

The grade or distance one thing may be removed from another; *i.e.*, the distance, or number of removes, which separates two persons who are related by consanguinity. Thus we speak of a brother as being in the second degree of kindred.

Degree of proof. That measure of cogency required to prove a case depending upon the nature of the case. In a criminal case such proof must be beyond a reasonable doubt, whereas in most civil cases such proof is by a fair preponderance of the evidence. *See also* Burden of proof; Proof (*Proof beyond a reasonable doubt*); Preponderance of evidence; Reasonable doubt.

Degrees of crime. A term used to refer to similar conduct that is punished to a greater or a lesser extent depending on the existence of one or more factors. A division or classification of one specific crime into several grades or *stadia* of guilt, according to the circumstances attending its commission. For example, in most states there are degrees of murder as "first" and "second" degree murder. Also, a division of crimes generally. Thus, a *felony* is punishable by imprisonment in state prison whereas a *misdemeanor* carries a maximum punishment of a short term sentence to a jail or house of correction and/or a fine. In some jurisdictions there are also petty misdemeanors. In addition, criminal codes in certain states classify felonies and misdemeanors into classes (*e.g.* class A, B, etc.) with corresponding punishment or sentencing categories. *See also* Classification of crimes; Crime.

Degrees of kin. The relationship between a deceased and the survivors which govern descent and distribution. *See also* Descent.

Degrees of negligence. The different grades of negligence which govern the liability of persons; *e.g.* ordinary negligence as contrasted with gross negligence. *See* Negligence.

De hærede deliberando illi qui habet custodiam terræ /diy hæriydiy dæliberændow ðlay kwày héybæt kæstówdiyəm téhriy/. Writ for delivering an heir to him who has wardship of the land. A writ directed to the sheriff, to require one that had the body of him that was ward to another to deliver him to the person whose ward he was by reason of his land.

De hærede raptō et abducto /diy hæriydiy ráptow et æbdáktow/. Writ concerning an heir ravished and carried away. A writ which anciently lay for a lord who, having by right the wardship of his tenant under age could not obtain his body, the same being carried away by another person.

De hæretico comburendo /diy hæretækow kómb(y)éréndow/. (Lat. For burning a heretic.) An ancient writ which formerly issued from the secular courts for the execution, by burning, of a heretic, who had been convicted in the ecclesiastical courts of heresy, had abjured,

and had relapsed into heresy. 4 Bl.Comm. 46. *See* Hæretico comburendo.

De homagio respectuando /diy hóméyjiyow ræspèktyuwáéndow/. A writ for respiting or postponing homage.

De homine capto in withernam /diy hóməniy kæptow ən wiðərnəm/. (Lat. For taking a man in withernam.) A writ to take a man who had carried away a bondman or bondwoman into another country beyond the reach of a writ of replevin.

De homine replegiando /diy hóməniy ræpliyyiéndow/. (Lat. For replevying a man.) A writ which lies to replevy a man out of prison, or out of the custody of a private person, upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. 3 Bl.Comm. 129. This writ has been superseded almost wholly, in modern practice, by that of *habeas corpus*; but it is still used, in some of the states, in an amended and altered form.

Dehors /dəhór/diyhórz/. L. Fr. Out of; without; beyond; foreign to; unconnected with. Blackford v. Anderson, 226 Iowa 1138, 286 N.W. 735, 746. *Dehors* the record; foreign to the record. 3 Bl.Comm. 387.

De identitate nominis /diy ædētətéytiy nómənəs/. A writ which lay for one arrested in a personal action and committed to prison under a mistake as to his identity, the proper defendant bearing the same name.

Dei gratia /díyay gréysh(iy)ə/. Lat. By the grace of God. A phrase used in the formal title of a king or queen, importing a claim of sovereignty by the favor or commission of God. In ancient times it was incorporated in the titles of inferior officers (especially ecclesiastical), but in later use was reserved as an assertion of "the divine right of kings."

De iis qui ponendi sunt in assisis /diy áyəs kwày pənénday sənt ən əsáyəs/. Of those who are to be put on assises. The title of a statute passed 21 Edw. I, defining the qualifications of jurors.

Dei iudicium /díyay juwdísh(iy)əm/. The judgment of God. The old Saxon trial by ordeal, so called because it was thought to be an appeal to God for the justice of a cause, and it was believed that the decision was according to the will and pleasure of Divine Providence.

De incremento /diy ðŋkréméntow/. Of increase; in addition. Costs *de incremento*, or costs of increase, are the costs adjudged by the court in civil actions, *in addition* to the damages and nominal costs found by the jury.

De ingressu /diy æŋgrés(y)uw/. A writ of entry.

De injuria /diy ðnjúriyə/. Of [his own] wrong. In the technical language of common law pleading, a replication *de injuria* is one that may be made in an action of tort where the defendant has admitted the acts complained of, but alleges, in his plea, certain new matter by way of justification or excuse. By this replication the plaintiff avers that the defendant committed the grievances in question "of his own wrong, and without any

such cause," or motive or excuse, as that alleged in the plea (*de injuria sua propria absque tali causa*); or, admitting part of the matter pleaded, "without the rest of the cause" alleged (*absque residuo causæ*). In form it is a species of traverse, and it is frequently used when the pleading of the defendant, in answer to which it is directed, consists merely of matter of excuse of the alleged trespass, grievance, breach of contract, or other cause of action. Its comprehensive character in putting in issue all the material facts of the defendant's plea has also obtained for it the title of the general replication. Such technical pleading no longer exists under current rules practice.

De inofficioso testamento /diy inəfis(h)iyówsow tès-təməntow/. Concerning an inofficious or undutiful will. A title of the civil law.

De integro /diy intəgrow/. Anew; a second time. As it was before.

De intrusione /diy əntrūwzhiyówniy/. A writ of intrusion; where a stranger entered after the death of the tenant, to the injury of the reversioner.

Dejación /dəyhasiyówn/. In Spanish law, surrender; release; abandonment; e.g., the act of an insolvent in surrendering his property for the benefit of his creditors, of an heir in renouncing the succession, the abandonment of insured property to the underwriters.

De jactura evitanda /diy jæktyúre èvətándə/. For avoiding a loss. A phrase applied to a defendant, as *de lucro captando* is to a plaintiff.

Dejeration /diyjərəyshən/. A taking of a solemn oath.

De jure /diy júriy/. Descriptive of a condition in which there has been total compliance with all requirements of law. Of right; legitimate; lawful; by right and just title. In this sense it is the contrary of *de facto* (q.v.). It may also be contrasted with *de gratia*, in which case it means "as a matter of right," as *de gratia* means "by grace or favor." Again it may be contrasted with *de æquitate*; here meaning "by law," as the latter means "by equity."

De jure corporation. Corporation which has been created as result of compliance with all of the constitutional or statutory requirements of state of incorporation. *Harris v. Stephens Wholesome Bldg. Supply Co. Inc.*, 54 Ala.App. 405, 309 So.2d 115.

De jure decimarum, originem ducens de jure patronatus, tunc cognitio spectat at legem civilem, i.e., communem. With regard to the right of tithes deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law; that is, the common law.

De jure government. See Government.

De jure judices, de facto juratores respondent /diy júriy júwdəsiyz, diy fáktow júretóriyz rəspóndənt/. The judges find the law, the jury the facts.

De jure segregation. Generally refers to segregation directly intended or mandated by law or otherwise issu-

ing from an official racial classification or in other words to segregation which has or had the sanction of law.

Term comprehends any situation in which the activities of school authorities have had a racially discriminatory impact contributing to the establishment or continuation of a dual system of schools, while "de facto segregation" is limited to that which is inadvertent and without the assistance or collusion of school authorities. *State ex rel. Citizens Against Mandatory Bussing v. Brooks*, 80 Wash.2d 121, 492 P.2d 536, 542.

Compare De facto segregation.

De la plus beale, or belle /də la pl(y)úw bəl/. L. Fr. Of the most fair. A term applied to a species of dower, which was assigned out of the fairest of the husband's tenements.

De latere /diy látəriy/. From the side; on the side; collaterally; of collaterals.

Delatio /dəléysh(iy)ow/. In the civil law, an accusation or information.

Delator /dəléydər/. An accuser; an informer; a sycophant.

Delatura /dələtyúre/. In old English law, the reward of an informer.

Delay. To retard; obstruct; put off; postpone; defer; procrastinate; prolong the time of or before; hinder; interpose obstacles; as, when it is said that a conveyance was made to "hinder and delay creditors." The term does not necessarily, though it may, imply dishonesty or involve moral wrong.

Delay rental. Rent, usually on oil and gas leases, paid for additional time in which to utilize land. Periodic payments, usually annual, by oil and gas lessee for privilege of deferring exploration during primary term of lease. *Amber Oil and Gas Co. v. Bratton*, Tex.App.—Austin, 711 S.W.2d 741, 743. It does not depend on oil or gas produced, does not exhaust substance of land, and resembles a bonus payment, which is an advance royalty. *Commissioner of Internal Revenue v. Wilson*, C.C.A. Tex., 76 F.2d 766, 769; *State v. Magnolia Petroleum Co.*, Tex.Civ.App., 173 S.W.2d 186, 190.

Del bien estre /dəl biyn é(s)trə/. L. Fr. In old English practice, of well being; of form. The same as *de bene esse*.

Del credere /dəl krédərey/. An agreement by which a factor, when he sells goods on credit, for an additional commission (called a "*del credere* commission"), guarantees the solvency of the purchaser and his performance of the contract. Such a factor is called a "*del credere* agent." He is a mere surety, liable to his principal only in case the purchaser makes default. Agent who is obligated to indemnify his principal in event of loss to principal as result of credit extended by agent to third party.

Delectus personæ /dəléktəs pərsówniy/. Lat. Choice of the person. By this term is understood the right of a partner to exercise his choice and preference as to the

admission of any new members to the firm, and as to the persons to be so admitted, if any. The doctrine is equally applicable to close and family corporations and is exemplified in the use of restrictions for the transfer of shares of stock.

Delegable duty. An obligation which may be performed by another. Some duties are not delegable such as those which are highly personal, *e.g.*, contract to sing for another. Contract rights are delegable in most instances. See U.C.C. § 2-210(1).

Delegata potestas non potest delegari /dèlègétàs pòtéstàs nòn pòwtèst dèlègéráy/. A delegated power cannot be delegated.

Delegate. A person who is appointed, authorized, delegated or commissioned to act in the stead of another. *Landro v. Pacific Atlantic S. S. Co.*, D.C.Wash., 30 F.Supp. 538, 539. Transfer of authority from one to another. A person to whom affairs are committed by another.

A person elected or appointed to be a member of a representative assembly. Usually spoken of one sent to a special or occasional assembly or convention. Person selected by a constituency and authorized to act for it at a party or State political convention.

As a verb, it means to transfer authority from one person to another; to empower one to perform a task in behalf of another, *e.g.*, a landlord may delegate his agent to collect rents.

See also Delegable duty; Delegation.

Delegates, the high court of. In English law, formerly the court of appeal from the ecclesiastical and admiralty courts. Abolished upon the judicial committee of the privy council being constituted the court of appeal in such cases.

Delegation. A sending away; a putting into commission; the assignment of a debt to another; the intrusting another with a general power to act for the good of those who depute him; a body of delegates. The transfer of authority by one person to another. The act of making or commissioning a delegate.

The body of delegates from a State to a national nominating convention or from a county to a State or other party convention. The whole body of delegates or representatives sent to a convention or assembly from one district, place, or political unit are collectively spoken of as a "delegation."

In civil law, a species of novation which consists in the change of one debtor for another, when he who is indebted substitutes a third person who obligates himself in his stead to the creditor, or to the person appointed by him so that the first debtor is acquitted and his obligation extinguished, and the creditor contents himself with the obligation of the second debtor. Delegation is essentially distinguished from any other species of novation, in this: that the former demands the consent of all three parties, but the latter that only of the two parties to the new debt. Delegation is novation effected by the intervention of another person whom the debtor,

in order to be liberated from his creditor, gives to such creditor, or to him whom the creditor appoints; and such person so given becomes obliged to the creditor in the place of the original debtor. *Perfect delegation* exists when the debtor who makes the obligation is discharged by the creditor. *Imperfect delegation* exists when the creditor retains his rights against the original debtor.

Delegation of powers. Transfer of authority by one branch of government in which such authority is vested to some other branch or administrative agency.

U.S. Constitution delegates different powers to the executive, legislative and judicial branches of government. Exercise by the executive branch of the powers delegated to the legislative branch offends this separation and delegation of powers and hence is unconstitutional. *Schechter Poultry Corp. v. U. S.*, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570. Certain powers may not be delegated from one branch of government to another such as the judicial powers or such congressional powers as power to declare war, impeach, or admit new states.

For distinction between delegated powers and various other types of constitutional powers, see *Power (Constitutional powers)*.

De legatis et fidei commissis /diy lègétàs èt fáydiyáy kómisəs/. Of legacies and trusts. The name of a title of the Pandects.

Delegatus non potest delegare /dèlègétàs nòn pòwdèst dèlègéríy/. A delegate cannot delegate; an agent cannot delegate his functions to a subagent without the knowledge or consent of the principal; the person to whom an office or duty is delegated cannot lawfully devolve the duty on another, unless he be expressly authorized so to do.

Delete /dèlyt/. To erase; to remove; to strike out.

Deleterious /dèlètíríyəs/. Hurtful, morally or physically; injurious, as influence; poisonous; unwholesome.

De libera falda /diy líbərə fòldə/. Writ of free fold. A species of *quod permittat*.

De libera piscaria /diy líbərə pèskériyəs/. Writ of free fishery. A species of *quod permittat*.

Deliberate, v. To weigh, ponder, discuss, regard upon, consider. To examine and consult in order to form an opinion. To weigh in the mind; to consider the reasons for and against; to consider maturely; reflect upon, as to deliberate a question; to weigh the arguments for and against a proposed course of action. *People v. Thomas*, 25 Cal.2d 880, 156 P.2d 7, 17, 18. See also *Deliberation*.

Deliberate, adj. Well advised; carefully considered; not sudden or rash; circumspect; slow in determining. Willful rather than merely intentional. Formed, arrived at, or determined upon as a result of careful thought and weighing of considerations, as a deliberate judgment or plan. Carried on coolly and steadily, especially according to a preconceived design; given to weighing facts and arguments with a view to a choice or decision; careful in considering the consequences of a

step; slow in action; unhurried; characterized by reflection; dispassionate; not rash. *People v. Thomas*, 25 Cal.2d 880, 156 P.2d 7, 17, 18.

By the use of this word, in describing a crime, the idea is conveyed that the perpetrator weighs the motives for the act and its consequences, the nature of the crime, or other things connected with his intentions, with a view to a decision thereon; that he carefully considers all these, and that the act is not suddenly committed. It implies that the perpetrator must be capable of the exercise of such mental powers as are called into use by deliberation and the consideration and weighing of motives and consequences. *See also* Deliberation; Premeditation.

Deliberately. Willfully; with premeditation; intentionally; purposely; in cold blood. *Averheart v. State*, 158 Ark. 639, 238 S.W. 620, 621.

Deliberate speed. Phrase used in mandate to desegregate public schools and means such speed as is consistent with the welfare of all people of the state, with the maintenance of law and order and with the preservation, if possible, of the common school system. *Calhoun v. Members of Bd. of Ed., City of Atlanta, D.C.Ga.*, 188 F.Supp. 401, 404; *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873.

Deliberation. The act or process of deliberating. The act of weighing and examining the reasons for and against a contemplated act or course of conduct or a choice of acts or means.

In the context of jury function means that a properly formed jury, comprised of the number of qualified persons required by law, are within the secrecy of jury room analyzing, discussing and weighing evidence which they have heard with a view to reaching a verdict based upon law applicable to facts of case as they find them to be; such deliberation can only be carried on by a lawful number of jurors in the presence of all. *Rushing v. State, Tenn.Cr.App.*, 565 S.W.2d 893, 895.

As used in context of an essential element of first-degree murder, is a weighing in the mind of consequences of course of conduct, as distinguished from acting upon a sudden impulse without exercise of reasoning powers. *Davis v. State*, 251 Ark. 771, 475 S.W.2d 155, 156.

For purposes of first-degree murder statute, "deliberation" means intent to kill carried out by defendant in cool state of blood, in furtherance of fixed design for revenge or to accomplish unlawful purpose and not under influence of violent passion, suddenly aroused by lawful or just cause or legal provocation. *State v. Hamlet*, 312 N.C. 162, 321 S.E.2d 837, 842.

See also Deliberate; Premeditation.

De libero passagio /diy libərow pəsəyjəw/. Writ of free passage. A species of *quod permittat*.

De libertate probanda /diy libərtəyti prəbændə/. Writ for proving liberty. A writ which lay for such as, being demanded for villeins or niefs, offered to prove themselves free.

De libertatibus allocandis /diy libərtətəbəs ələkændəs/. A writ of various forms, to enable a citizen to recover the liberties to which he was entitled.

De licentia transfretandi /diy ləsənsə(ɪ)ə trənsfrətəndə/. Writ of permission to cross the sea. An old writ directed to the wardens of the port of Dover, or other seaport in England, commanding them to permit the persons named in the writ to cross the sea from such port, on certain conditions.

Delict. Criminal offense; tort; a wrong.

In Roman law this word, taken in its most general sense, is wider in both directions than our English term "tort." On the one hand, it includes those wrongful acts which, while directly affecting some individual or his property, yet extend in their injurious consequences to the peace or security of the community at large, and hence rise to the grade of crimes or misdemeanors. These acts were termed in the Roman law "public delicts," while those for which the only penalty exacted was compensation to the person primarily injured were denominated "private delicts." On the other hand, the term appears to have included injurious actions which transpired without any malicious intention on the part of the doer. A quasi delict in Roman law was an act whereby a person, without malice, but by fault, negligence, or imprudence not legally excusable, caused injury to another. They were four in number, viz.: (1) *Qui iudex litem suam fecit*, being the offense of partiality or excess in the *iudex* (jurymen). (2) *Dejectum effusumve aliquid*, being the tort committed by one's servant in emptying or throwing something out of an attic or upper story upon a person passing beneath. (3) *Damnum infectum*, being the offense of hanging dangerous articles over the heads of persons passing along the king's highway. (4) Torts committed by one's agents in the course of their employment.

Delictual fault /dəliktyuəl fəlt/. An act, productive of obligations, which takes place between persons juridically strangers to each other; it supposes the absence of obligation and its result is the creation of one. *Reserve Ins. Co. v. Fabre*, 243 La. 982, 149 So.2d 413, 416.

Delictum /dəlikətəm/. Lat. A delict, tort, wrong, injury, or offense. Actions *ex delicto* are such as are founded on a tort, as distinguished from actions on contract.

Culpability, blameworthiness, or legal delinquency. The word occurs in this sense in the maxim, "*In pari delicto melior est conditio defendentis*".

A challenge of a juror *propter delictum* is for some crime or misdemeanor that affects his credit and renders him infamous. 3 Bl.Comm. 363.

Delimit. To mark or lay out the limits or boundary line of a territory or country; to fix or to mark the limits of; to demarcate; to limit; bound. *Walling v. Yeakley*, C.C.A.Colo., 140 F.2d 830, 832.

Delimitation. The act of fixing, marking off, or describing the limits or boundary line of a territory, country, authority, right, statutory exception or the like. *See* Delimit.

Delinquency. Failure, omission, violation of law or duty. Failure to make payment on debts when due. State or condition of one who has failed to perform his duty or obligation.

Delinquency charges. As used in the commercial credit field, generally refer to specific pecuniary sums that are assessed against the borrower solely because of his failure to make his payment in timely manner. *Johnson v. McCrackin-Sturman Ford, Inc., C.A.Pa., 527 F.2d 257, 265.*

Delinquent, n. Person who has been guilty of some crime, offense, or failure of duty or obligation.

Delinquent, adj. As applied to a debt or claim, it means simply due and unpaid at the time appointed by law or fixed by contract; as due and unpaid taxes or mortgage payments.

Delinquent child. An infant of not more than specified age who has violated criminal laws or engages in disobedient, indecent or immoral conduct, and is in need of treatment, rehabilitation, or supervision. In re *Garner*, 230 Pa.Super. 426, 326 A.2d 581, 584. Defined by a state statute as: A child who (A) violates any federal or state law, or municipal or local ordinance; or (B) without just cause runs away from his parental home or other properly authorized and lawful place of abode; or (C) is beyond the control of his parents, parent, guardian or other custodian; or (D) has engaged in indecent or immoral conduct; or (E) has been habitually truant or, while in school, has been continuously and overtly defiant of school rules and regulations; or (F) has violated any lawful order of court. See 18 U.S.C.A. § 5001 et seq. See also *Disobedient child*.

With respect to parental liability for acts of delinquent child, see *Parental liability*.

Delinquent taxes. Past due and unpaid taxes.

Delirium /dəˈlɪəriəm/. Disturbed mental state characterized by a combination of motor restlessness displaying excitement, confusion, incoherence, perplexity, and disorientation, in combination with a dream-like state and some sensory disturbance, such as hallucinations and delusions. Sometimes caused by an infection or a toxic chemical substance.

Delirium febrile /dəˈlɪəriəm fébrəli/. A form of mental aberration incident to fevers, and sometimes to the last stages of chronic diseases.

Delirium tremens /dəˈlɪəriəm trijmənz/. A delirium due to alcohol (Korsakow's Syndrome) or other drug poisoning or withdrawal, or to dietary metabolic deprivation resulting from sudden abstinence from alcohol.

Delisting. The process by which the privileges of a security listed on an exchange are suspended for failure to meet the requirements of listing. Such delisting may be permanent or temporary. See also *Deregistration*.

Deliverance. The verdict rendered by a jury.

At common law, a writ allowed a plaintiff in replevin, where the defendant has obtained judgment for return of the goods, by default or nonsuit, in order to have the

same distress again delivered to him, on giving the same security as before. 3 Bl.Comm. 150.

Delivery. The act by which the res or substance thereof is placed within the actual or constructive possession or control of another. *Poor v. American Locomotive Co., C.C.A.Ill., 67 F.2d 626, 630.* What constitutes delivery depends largely on the intent of the parties. It is not necessary that delivery should be by manual transfer, *Jones v. Young, Tex.Civ.App., 539 S.W.2d 901, 904; e.g.* "deliver" includes mail. Rev. Model Bus. Corp. Act, § 1.40. See also *Drop shipment delivery; Misdelivery.*

Absolute and conditional. An absolute delivery, as distinguished from conditional delivery or delivery in escrow, is one which is complete upon the actual transfer of the instrument from the possession of the grantor. A conditional delivery is one which passes the thing subject to delivery from the possession of the grantor, but is not to be completed by possession of the grantee, or a third person as his agent, until the happening of a specified event. One of the exceptions to parol evidence rule which permits introduction of evidence to the effect that document was delivered on condition that something be done and it is understood that document does not become operative until such action be taken.

Actual and constructive. Actual delivery consists in the giving real possession to the vendee or his servants or special agents who are identified with him in law and represent him. It is a formal immediate transfer of the property to the vendee.

Constructive delivery is a general term, comprehending all those acts which, although not truly conferring a real possession of the thing sold on the vendee, have been held, by construction of law, equivalent to acts of real delivery. A constructive delivery of personalty takes place when the goods are set apart and notice given to the person to whom they are to be delivered, or when, without actual transfer of the goods or their symbol, the conduct of the parties is such as to be inconsistent with any other supposition than that there has been a change in the nature of the holding. "Constructive delivery" is a term comprehending all those acts which, although not truly conferring a real possession of the vendee, have been held by construction of law equivalent to acts of real delivery. *Lakeview Gardens, Inc. v. State ex rel. Schneider, Kan., 557 P.2d 1286, 1290.* See also *Symbolical delivery, below*.

Commercial law. Delivery with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession. U.C.C. § 1-201(14).

The act by which seller parts with possession and buyer acquires possession. Delivery occurs whenever seller does everything necessary to put goods completely and unconditionally at buyer's disposal. *Crowder v. Aurora Co-op. Elevator Co., 223 Neb. 704, 393 N.W.2d 250, 256.*

Conditional delivery. Issuance of an instrument with the understanding that the instrument is ineffective, that is, the maker or drawer is not liable thereon, unless

and until a specified event, *i.e.*, a condition precedent, occurs.

Deed. The final and absolute transfer of a deed, properly executed, to the grantee, or to some person for his use, in such manner that it cannot be recalled by the grantor. Controlling factor in determining if there has been delivery of a deed is the intention of the grantor; to constitute "delivery" the deed must be placed in the hands of the grantee or within his control, with the intention that it is to become presently operative as a conveyance. *Jones v. Young*, 539 S.W.2d 901, 904.

Delivery bond. A bond given upon the seizure of goods (as under the revenue laws) conditioned for their restoration to the defendant, or the payment of their value, if so adjudged.

A guaranteed undertaking by a defendant whose property has been seized through attachment promising that, in exchange for return of the property to him pending resolution of the main action, he will surrender the property or its value in satisfaction of judgment against her. Another name for this bond is "forthcoming bond."

Delivery in escrow. Transfer physically of something such as a deed to escrow agent to be held on some condition which is not inconsistent with the primary transaction and which is to be released on the occurrence of some specific event or happening. *See Escrow.*

Delivery order. A written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading. U.C.C. § 7-102(1)(d). The primary function of the delivery order is to aid in the breaking down into smaller lots of one large lot of goods (whether fungible or otherwise) which is represented by one bill of lading.

Drugs. In the context of illegal transfer of drugs, "deliver" means the actual, constructive, or attempted transfer from one person to another of a controlled substance. *State v. Medina*, 87 N.M. 394, 534 P.2d 486, 489.

Gift. "Delivery" for purposes of creating a gift consists of irrevocable surrender of dominion and control over the subject matter of the gift. *Bray v. Illinois Nat. Bank of Springfield*, 37 Ill.App.3d 286, 345 N.E.2d 503, 505.

Second delivery. The legal delivery by the depository of a deed placed in escrow.

Symbolical delivery. The constructive delivery of the subject-matter of a sale, where it is cumbersome or inaccessible, by the actual delivery of some article which is conventionally accepted as the symbol or representative of it, or which renders access to it possible, or which is the evidence of the purchaser's title to it; as the key of a warehouse, or a bill of lading of goods on shipboard.

De lunatico inquirendo /diy l(y)uwnætəkow iŋkwəréndow/. The name of a writ directed to the sheriff, directing him to inquire by good and lawful men whether the party charged is a lunatic or not.

Delusion. False, unshakeable belief which is (a) contrary to fact, (b) inappropriate to the person's education,

intelligence or culture, and (c) adhered to in spite of tangible evidence that it is false. A reality judgment which cannot be accepted by people of the same class, education, race and period of life as the person who expresses it and which cannot be changed by logical argument or evidence against it. Three common delusions are: (1) delusions of persecution; (2) delusions of grandeur; and (3) delusions of personal unworthiness. The first two are common to schizophrenia. Delusion appears to spring from a distorted world view created by the subject in order to satisfy his inner needs or to reconcile conflicting elements of his personality. *See Insane delusion.*

Dem. An abbreviation for "demise"; *e.g.*, *Doe dem. Smith*, Doe, on the demise of Smith.

De magna assisa eligenda /diy mægna əsáyza èlájénda/. A writ by which the grand assise was chosen and summoned.

Demain. *See Demesne.*

De majori et minori non variant jura /diy məjóráy èt mənóráy nòn vəriyant júra/. Concerning greater and less laws do not vary.

De malo /diy mælow/. Of illness. This phrase was frequently used to designate several species of *essoin* (*q.v.*), such as *de malo lecti*, of illness in bed; *de malo veniendi*, of illness (or misfortune) in coming to the place where the court sat; *de malo villæ*, of illness in the town where the court sat.

Demand, v. To claim as one's due; to require; to ask relief. To summon; to call in court.

Demand, n. The assertion of a legal right; a legal obligation asserted in the courts. An imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from some act. Request for payment of debt or amount due. An asking with authority, claiming or challenging as due. *Smith v. Municipal Court of Glendale Judicial Dist., Los Angeles County*, 167 Cal.App.2d 534, 334 P.2d 931.

The seeking after a commodity or service. It is not something static, but necessarily contains the idea of "competition" and a realization that markets are as much limited by sales efforts as by capacity to produce. *Mendota Coal & Coke Co. v. Eastern Ry. & Lumber Co.*, C.C.A.Wash., 53 F.2d 77, 82.

See also Call; Liquidated demand; On demand; Payable on demand.

Cross-demand. A demand that is preferred by one party to an action in opposition to a demand already preferred against him by his adversary. *See Counterclaim; Cross-claim.*

Demand clause. Provision in note which allows holder to compel full payment if maker fails to meet any installment. *See Demand note, below.*

Demand deposits. Any bank deposit which the depositor may demand (withdraw) at any time in contrast to time deposit which requires depositor to wait the speci-

fied time before withdrawing or pay a penalty for early withdrawal. Funds accepted by bank subject to immediate withdrawal; such represent largest element in money supply of the United States. *U. S. v. Philadelphia Nat. Bank*, D.C.Pa., 201 F.Supp. 348, 360.

Demand draft. Sight draft; draft payable on demand.

Demand instrument. An instrument that is payable on demand, at sight or on presentation. See U.C.C. § 3-108 (when an instrument is payable on demand). See also *Demand note, below*.

Demand loan. Loan which may be called by lender at any time because there is no fixed maturity date. A loan payable upon request by the creditor rather than on a specific date. See *Demand note, below*.

Demand note. A note with no set maturity date which expressly states that it is payable on demand, on presentation, or at sight. A note in which no time for payment is expressed. *Kent v. Lampman*, 59 Cal.App.2d 407, 139 P.2d 57, 59. A note issued, accepted or indorsed when overdue, as regards person so issuing, accepting or indorsing it. *Nees v. Hagan*, 22 Tenn.App. 78, 118 S.W.2d 566, 568. See also *Demand instrument, above*; and *Sight draft*.

Legal demand. A demand properly made, as to form, time, and place, by a person lawfully authorized.

Personal demand. A demand for payment of a bill or note, made upon the drawer, acceptor or maker, in person.

Demandant /dəmændənt/. The plaintiff or party suing in a real action.

Demandress /dəmændrəs/. A female demandant.

De manucaptione /diy mənəkəpshiyówniy/. Writ of manucaption, or mainprise. A writ which lay for one who, being taken and imprisoned on a charge of felony, had offered bail, which had been refused; requiring the sheriff to discharge him on his finding sufficient mainperners or bail.

De manutenendo /diy mənətənéndow/. Writ of maintenance. A writ which lay against a person for the offense of maintenance.

Demarcation. The marking of a boundary line on the ground by physical means or a cartographic representation. *State ex rel. Buckson v. Pennsylvania R. Co.*, Del., 267 A.2d 455, 459.

Demeanor /dəmiynər/. As respects a witness or other person, relates to physical appearance; outward bearing or behavior. *Faircloth v. State*, 44 Ala.App. 295, 208 So.2d 66, 70. It embraces such facts as the tone of voice in which a witness' statement is made, the hesitation or readiness with which his answers are given, the look of the witness, his carriage, his evidences of surprise, his gestures, his zeal, his bearing, his expression, his yawns, the use of his eyes, his furtive or meaning glances, or his shrugs, the pitch of his voice, his self-possession or embarrassment, his air of candor or seeming levity. *Rains v. Rains*, 17 N.J.Misc. 310, 8 A.2d 715, 717.

Demeanor evidence. Species of real evidence consisting of behavior of witness on the witness stand and which may be considered by trier of fact on issue of credibility.

Demease /dəmiyz/. In old English law, death.

De medietate linguæ /diy miydiyətəytiy lɪŋgwiy/. Of the half tongue; half of one tongue and half of another. This phrase describes that species of jury which, at common law, was allowed in both civil and criminal cases where one of the parties was an alien, not speaking or understanding English. It was composed of six English denizens or natives and six of the alien's own countrymen.

De medio /diy miydiyow/. A writ in the nature of a writ of right, which lay where upon a subinfeudation the *mesne* (or middle) lord suffered his under-tenant or tenant *paravail* to be distrained upon by the lord paramount for the rent due him from the *mesne* lord.

De melioribus damnis /diy miyliyórəbəs dəmnəs/. Of or for the better damages. A term used in practice to denote the election by a plaintiff against which of several defendants (where the damages have been assessed separately) he will take judgment.

Judgment *de melioribus damnis* (of, or for, the better damages). Where, in an action against several persons for a joint tort, the jury by mistake sever the damages by giving heavier damages against one defendant than against the others the plaintiff may cure the defect by taking judgment for the greater damages (*de melioribus damnis*) against that defendant, and entering a *nolle prosequi* (*q.v.*) against the others.

Demens /diymenz/. One whose mental faculties are enfeebled; one who has lost his mind; distinguished from *amens*, one totally insane.

Demented /dəméntəd/. Of unsound mind.

Dementenant en avant /də mē(y)ntənánt òn əvón(t)/. L. Fr. From this time forward.

Dementia /dəménsh(iy)ə/. Form of mental disorder in which cognitive and intellectual functions of the mind are prominently affected; impairment of memory is early sign; total recovery not possible since organic cerebral disease is involved. See also *Insanity*.

Dementia praecox /dəménsh(iy)ə priykòks/. A term used to include a wide range of mental disorders which occur in early life. It is also called adolescent insanity and schizophrénia. *Dementia praecox* includes three types, namely, primary dementia, catatonia, and hebephrenia. See also *Insanity*.

De mercatoribus /diy məkətórəbəs/. "Concerning merchants." The name of an English statute passed in the eleventh year of Edw. I (1233), more commonly called the "Statute of Acton Burnel," authorizing the recognition by statute merchant. 2 Bl.Comm. 161.

Demesne /dəmiyn/dəméyn/. Domain; dominical; held in one's own right, and not of a superior; not allotted to tenants.

In the language of pleading, own; proper; original. Thus, *son assault demesne*, his own assault, his assault originally or in the first place.

Ancient demesne. See Ancient.

Demesne as of fee. A man is said to be seised *in his demesne as of fee* of a corporeal inheritance, because he has a property, *dominicum* or *demesne*, in the thing itself. But when he has no dominion in the thing itself, as in the case of an incorporeal hereditament, he is said to be seised as of fee, and not in his *demesne* as of fee. 2 Bl.Comm. 106.

Demesne lands. In old English law, those lands of a manor not granted out in tenancy, but reserved by the lord for his own use and occupation. Lands set apart and appropriated by the lord for his own private use, as for the supply of his table, and the maintenance of his family; the opposite of *tenemental* lands. Tenancy and demesne, however, were not in every sense the opposites of each other; lands held for years or at will being included among demesne lands, as well as those in the lord's actual possession. 2 Bl.Comm. 90.

Demesne lands of the crown. That share of lands reserved to the crown at the original distribution of landed property, or which came to it afterwards by forfeiture or otherwise. 1 Bl.Comm. 286.

Demesnial. Pertaining to a *demesne*.

De minimis non curat lex. The law cares not for small things.

Demi /démíy-/. Fr. Half; the half. Used chiefly in composition.

As to demi Mark; Official; Vill, see those titles.

Demidietas /dèmiydáyètàs/. In old records, a half or moiety.

De minimis doctrine. See *De minimis non curat lex*.

De minimis non curat lex /diy mínəməs nòn kyùrət léks/. The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles. Provision is made under certain criminal statutes for dismissing offenses which are "de minimis." See, e.g., Model Penal Code § 2.12.

De minis /diy mínəs/. Writ of threats. A writ which lay where a person was threatened with personal violence, or the destruction of his property, to compel the offender to keep the peace.

Deminutio /diymən(y)úwsh(iy)ow/. In the civil law, a taking away; loss or deprivation. See *Capitis diminutio*.

Demi-sanguis, or **demy-sanguis** /démíysəŋ(k)/. Half-blood.

Demise, v. To convey or create an estate for years or life. To lease; to bequeath or transmit by succession or inheritance.

Demise, n. A conveyance of an estate to another for life, for years, or at will (most commonly for years); a lease. Originally a posthumous grant. Commonly a lease or conveyance for a term of years; sometimes applied to

any conveyance in fee, for life, or for years. "Demise" is synonymous with "lease" or "let". The use of the term in a lease imports a covenant for quiet enjoyment, *Sixty-Third & Halsted Realty Co. v. Chicago City Bank & Trust Co.*, 299 Ill.App. 297, 20 N.E.2d 162, 167; and implies a covenant by lessor of good right and title to make the lease, *Evans v. Williams*, 291 Ky. 484, 165 S.W.2d 52, 55.

The word is also used as a synonym for "decease" or "death". In England it is especially employed to denote the death of the sovereign.

Demise and redemise. In conveyancing, mutual leases made from one party to another on each side, of the same land, or something out of it; as when A. grants a lease to B. at a nominal rent (as of a pepper corn), and B. redemises the same property to A. for a shorter time at a real, substantial rent.

Demise charter. Under a demise (or "bareboat") charter, there is but a hiring of the vessel, under which no title passes to the charterer but merely the right to possess and control it for a limited period. *McGahern v. Koppers Coal Co.*, C.C.A.Pa., 108 F.2d 652, 653. One under which control of vessel is taken from owner and vested in the charterer who mans and navigates vessel during rental period. *F. Jacobus Transp. Co. v. Gallagher Bros. Sand & Gravel Corp.*, D.C.N.Y., 161 F.Supp. 507, 511. There must be relinquishment of all control over ship, barge or scow. *B. W. King, Inc. v. Consolidated Iron & Metal Co.*, D.C.N.Y., 310 F.Supp. 471, 474.

Demise of the crown. The natural dissolution of the king is generally so called; an expression which signifies merely a transfer of property. By demise of the crown we mean only that, in consequence of the disunion of the king's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual. 1 Bl.Comm. 249.

Several demises. In English practice, in the action of ejectment, it was formerly customary, in case there were any doubt as to the legal estate being in the plaintiff, to insert in the declaration several demises from as many different persons; but this was rendered unnecessary by the provisions of the common-law procedure acts.

Single demise. A declaration in ejectment might contain either one demise or several. When it contained only one, it was called a "declaration with a single demise."

Demised premises. That property, or portion of a property which is leased to a tenant.

Demisi /dəmáyzy/. Lat. I have demised or leased. *Demisi, concessi, et ad firman tradidi*; have demised, granted, and to farm let. The usual operative words in ancient leases, as the corresponding English words are in the modern forms. 2 Bl.Comm. 317, 318.

Demissio /dəmísh(iy)ow/. L. Lat. A demise or letting. Chiefly used in the phrase *ex demissione* (on the demise), which formed part of the title of the cause in the old actions of ejectment, where it signified that the nominal

plaintiff (a fictitious person) held the estate "on the demise" of, that is, by a lease from, the real plaintiff.

De mittendo tenorem recordi /diy məténdow tənórəm rakórday/. A writ to send the tenor of a record, or to exemplify it under the great seal.

Demobilization. The dismissal of an army or body of troops from active service.

Democracy. That form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation, as distinguished from a monarchy, aristocracy, or oligarchy.

De moderata misericordia capienda /diy modérétya mizərəkórdiyə kəpiyénda/. Writ for taking a moderate amercement. A writ, founded on *Magna Charta* (c. 14), which lay for one who was excessively amerced in a court not of record, directed to the lord of the court, or his bailiff, commanding him to take a moderate amercement of the party.

De modo decimandi /diy mówdow dēsáménday/. Of a *modus* of tithing. A term applied in English ecclesiastical law to a prescription to have a special manner of tithing. 2 Bl.Comm. 29.

De molendino de novo erecto non jacet prohibitio /diy máléndənəw diy nóvwow əréktow nòn jéysət pròw-(h)əbíš(iy)ow/. A prohibition lies not against a newly-erected mill.

Demolish. To throw or pull down; to raze; to destroy the fabrication of; to pull to pieces; hence to ruin or destroy. *Star Mfg. Co. v. Quarries*, 172 Okl. 550, 46 P.2d 497, 498. To destroy totally or to commence the work of total destruction with the purpose of completing the same.

Demonetization /diymonətəzėjshən/. The disuse of a particular metal for purposes of coinage. The withdrawal of the value of a metal as money. For example, in the United States gold has been demonetized.

Demonstrate. To teach by exhibition of samples; to derive from admitted premises by steps of reasoning which admit of no doubt; to prove indubitably. To show or prove value or merits by operation, reasoning, or evidence.

Demonstratio /dēmənstréysh(iy)ow/. Lat. Description; addition; denomination. Occurring often in the phrase, "*Falsa demonstratio non nocet*" (a false description does not harm). 2 Bl.Comm. 382.

Demonstration. Description; pointing out. That which is said or written to designate a thing or person. Show or display of attitudes toward a person, cause, or issue. *See also* False demonstration.

Demonstrative bequest. A testamentary gift which, by its terms, must be paid from a specific fund; e.g. bequest of one thousand dollars to be paid from testator's shares of stock in X Corporation. Hence, it is partly a general bequest and partly a specific bequest. *See also* Legacy.

Demonstrative evidence. That evidence addressed directly to the senses without intervention of testimony. Such evidence is concerned with real objects which illustrate some verbal testimony and has no probative value in itself. *People v. Diaz*, 111 Misc.2d 1083, 445 N.Y.S.2d 888, 889. Real ("thing") evidence such as the gun in a trial of homicide or the contract itself in the trial of a contract case. Evidence apart from the testimony of witnesses concerning the thing. Such evidence may include maps, diagrams, photographs, models, charts, medical illustrations, X-rays.

Demonstrative legacy. *See* Legacy.

Demonstrator. One who stands, walks or parades in public in support of a cause to inform the public of the legitimacy of the cause and to enlist support for such cause.

De morte hominis nulla est cunctatio longa /diy mór-tiy hómənəs nələ èst kəŋktéysh(iy)ow lónjə/. Where the death of a human being is concerned [in a matter of life and death], no delay is [considered] long.

Demotion. A reduction to lower rank or grade, or to lower type of position, or to lower pay scale. *See also* Degradation.

Demur /dəmər/. To present a demurrer; to take an exception to the sufficiency in point of law of a pleading or state of facts alleged. *See* Demurrer.

Demurrable /dəmərəbəl/. Subject to a demurrer. A pleading, petition, or the like, is said to be demurrable when it does not state such facts as support the claim, prayer, or defense put forward.

Demurrage /dəmərəj/. In maritime law, the sum which is fixed by the contract of carriage, or which is allowed, as remuneration to the owner of a ship for the detention of his vessel beyond the number of days allowed by the charter-party for loading and unloading or for sailing. Also the detention of the vessel by the freighter beyond such time. With respect to railroads a charge exacted by a carrier from a shipper or consignee on account of a failure on the latter's part to load or unload cars within the specified time prescribed by the applicable tariffs; the purpose of the charge is to expedite the loading and unloading of cars, thus facilitating the flow of commerce, which is in the public interest. *St. Louis, Southwestern Ry. Co. v. Mays*, D.C.Ark., 177 F.Supp. 182, 183. Demurrage is extended freight and is the amount payable for delays by receiver in loading or unloading cargo; it is stipulated damages for detention. *Hellenic Lines, Limited v. Director General of India Supply Mission for and on Behalf of Union of India*, D.C.N.Y., 319 F.Supp. 821, 831.

Demurrage lien. Carrier's right to possession of goods for unpaid demurrage charges.

Demurrant /dəmərənt/. One who demurs; the party who, in pleading, interposes a demurrer.

Demurrer. An allegation of a defendant, which, admitting the matters of fact alleged by complaint or bill (equity action) to be true, shows that as they are therein

set forth they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer; or that, for some reason apparent on the face of the complaint or bill, or on account of the omission of some matter which ought to be contained therein, or for want of some circumstances which ought to be attendant thereon, the defendant ought not to be compelled to answer. The formal mode of disputing the sufficiency in law of the pleading of the other side. In effect it is an allegation that, even if the facts as stated in the pleading to which objection is taken be true, yet their legal consequences are not such as to put the demurring party to the necessity of answering them or proceeding further with the cause. An assertion that complaint does not set forth a cause of action upon which relief can be granted, and it admits, for purpose of testing sufficiency of complaint, all properly pleaded facts, but not conclusions of law. *Balsbaugh v. Rowland*, 447 Pa. 423, 290 A.2d 85, 87. A legal objection to the sufficiency of a pleading, attacking what appears on the face of the document. *People v. Hale*, 232 Cal.App.2d 112, 42 Cal.Rptr. 533, 538. See Calif. Code of Civil Proc. § 430.10. See also Demurrer to evidence.

By Federal Rules of Civil Procedure (adopted in whole or part in most states) demurrers, pleas and exceptions for insufficiency of a pleading are abolished. Rule 7(c). Every defense in law shall be made by motion or by answer; motions going to jurisdiction, venue, process, or failure to state a claim are to be disposed of before trial, unless the court orders otherwise. While the Federal Rules do not provide for the use of a demurrer, an equivalent to a general demurrer is provided in the motion to dismiss for failure to state a claim on which relief may be granted. Fed.R. Civil P. 12(b). Objections to the pleadings by means of demurrer still exists however in certain states; see e.g. Calif. Code of Civil Proc. § 430.10 et seq.

Classification of Demurrers

General demurrer. A *general* demurrer is a demurrer framed in general terms, without showing specifically the nature of the objection, and which is usually resorted to where the objection is to matter of substance. Thus, a demurrer on the ground that the complaint sets forth no cause of action is a general demurrer (see e.g. Calif. Code of Civil Proc. § 430.10(e)), and a motion to dismiss a bill on ground that there is no equity apparent on the face thereof or that court has no jurisdiction is treated as a general demurrer.

A general demurrer to an indictment challenges only matters of form and substance appearing on its face. It is one which raises an objection that averments are insufficient in law to support the action or defense without specifying any particular cause or defect, and is sufficient only to reach matters of substance.

The Federal Rules equivalent to a general demurrer is a motion to dismiss for failure to state a claim on which relief may be granted. Fed.R. Civil P. 12(b).

Special demurrer. A *special* demurrer goes merely to structure or form of pleading which it attacks, and

usually only to some portion thereof, and must distinctly specify wherein defect lies. *Cameron v. Evans Securities Corp.*, 119 Cal.App. 164, 6 P.2d 272, 274. It is one which excepts to the sufficiency of the pleadings on the opposite side, and shows specifically the nature of the objection, and the particular ground of the exception. *Johanson v. Cudahy Packing Co.*, 107 Utah 114, 152 P.2d 98, 105. See e.g. Calif. Code of Civil Proc. §§ 430.50, 430.60. The Federal Rules analogue of the special demurrer is the motion to make more definite and certain. Fed.R. Civil P. 12(e).

Speaking demurrer. A *speaking* demurrer is one which, in order to sustain itself, requires the aid of a fact not appearing on the face of the pleading objected to, or, in other words, which alleges or assumes the existence of a fact not already pleaded, and which constitutes the ground of objection and is condemned both by the common law and the code system of pleading. *Preston A. Blair Co. v. Rose*, 56 Idaho 114, 51 P.2d 209, 212. A speaking demurrer is one which alleges some new matter, not disclosed by the pleading against which the demurrer is aimed and not judicially known or legally presumed to be true.

Parol demurrer. A *parol* demurrer (not properly a demurrer at all) was a staying of the pleadings; a suspension of the proceedings in an action during the nonage of an infant, especially in a real action. Now abolished. 3 Bl.Comm. 300.

Demurrer book. A record of the issue on a demurrer at law, containing a transcript of the pleadings, with proper entries; and intended for the use of the court and counsel on the argument.

Demurrer ore tenus. An objection to the introduction of any evidence on the ground that the complaint or petition fails to state a cause of action. *Peerless Fixture Co. v. Frick*, Mo.App., 133 S.W.2d 1089, 1090. This name is sometimes given to a ruling on an objection to evidence, but is not properly a demurrer at all. It should be considered as a general demurrer only.

Demurrer to evidence. This proceeding is analogous to a demurrer to a pleading. It is an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue. The practice has been largely superseded by motions for nonsuit and directed verdict. Thus, a motion to nonsuit, a motion to dismiss at close of plaintiff's evidence for failure to prove essential facts, and a defendant's motion for a directed verdict, made at close of the evidence, have been held to be equivalent to a "demurrer to the evidence" for insufficiency to sustain a verdict for plaintiff. A motion to exclude evidence has the effect of a demurrer to the evidence, the chief points of difference being the stage of the proceeding at which each is available and the consequences resulting from deferring the motion to exclude. *Thornhill v. Thornhill*, 172 Va. 553, 2 S.E.2d 318, 319.

Demurrer to interrogatories. Where a witness objects to a question propounded (particularly on the taking of a

deposition) and states his reason for objecting or refusing to answer, it is called a "demurrer to the interrogatory," though the term cannot here be understood as used in its technical sense.

Demy sanke, or demy sangue /démíy sàŋ(k)/. Half-blood. A corruption of *demi-sang*.

Den and strond /dén ən(d) strónd/. In old English law, liberty for ships or vessels to run aground, or come ashore (strand themselves).

Denariate /dénériyət/. In old English law, as much land as is worth one penny *per annum*.

Denarii /dénériyay/. An ancient general term for any sort of *pecunia numerata*, or ready money. The French use the word "*denier*" in the same sense,—*payer de ses propres deniers*.

Denarius Dei /dénériyəs díyay/. (Lat. "God's penny.") Earnest money; money given as a token of the completion of a bargain. It differs from *arrhæ* in this: that *arrhæ* is a part of the consideration, while the *denarius Dei* is no part of it. The latter was given away in charity; whence the name.

Denationalization. As applied to a person, the act of depriving him of national rights or status. As applied to an industry or function, the act of returning it to private ownership and control after a period of national or sovereign ownership and control.

De nativo habendo /díy néytəvow həbéndow/. A writ which lay for a lord directed to the sheriff, commanding him to apprehend a fugitive villein, and restore him, with all his chattels, to the lord.

De natura brevium /díy nətyúrə bríyviyəm/. (Lat.) Concerning the nature of writs. The title of more than one textbook of English Mediæval law.

Denial. A traverse in the pleading of one party of an allegation of fact asserted by the other; a defense. A response by the defendant to matter(s) alleged by the plaintiff in the complaint. Under Rules of Civil Procedure, denials must be specific and directed at the particular allegations controverted. Denials may be made in part (*i.e.*, specific denial) or in whole (*i.e.*, general denial), but in the main should be specific and "fairly meet the substance of the averments denied." Fed.R. Civil P. 8(b). Averments in pleadings to which a responsive pleading is required are admitted unless denied. Rule 8(d).

General and specific. In code pleading, a general denial is one which puts in issue all the material averments of the complaint or petition, and permits the defendant to prove any and all facts tending to negative those averments or any of them. A specific denial is a separate denial applicable to one particular allegation of the complaint. An answer by way of a general denial is the equivalent of, and substitute for, the general issue under the common-law system of pleading. It gives to the defendant the same right to require the plaintiff to

establish by proof all the material facts necessary to show his right to a recovery as was given by that plea.

Denier /dánáyər/. L. Fr. In old English law, denial; refusal. *Denier* is when the rent (being demanded upon the land) is not paid.

Denier á Dieu /dányéy a dyúw/. In French law, earnest money; a sum of money given in token of the completion of a bargain. The phrase is a translation of the Latin *denarius Dei* (*q.v.*).

Denization /dénəzýshən/. The act of making one a denizen; the conferring of the privileges of citizenship upon an alien born. See Denizen.

Denize /dánáyz/. To make a man a denizen or citizen.

Denizen /dénəzən/. In English law, a person who, being an alien born, has obtained, *ex donatione regis*, letters patent to make him an English subject,—a high and incommunicable branch of the royal prerogative. A denizen is in a kind of middle state between an alien and a natural-born subject, and partakes of the *status* of both of these. The term is used to signify a person who, being an alien by birth, has obtained letters patent making him an English subject. The king may denize, but not naturalize, a man; the latter requiring the consent of parliament, as under the naturalization act, 1870, 33 & 34 Vict., c. 14. A denizen holds a position midway between an alien and a natural-born or naturalized subject, being able to take lands by purchase or devise (which an alien could not until 1870 do), but not able to take lands by descent (which a natural-born or naturalized subject may do). The denizen becomes a British subject from the date of the letters while a naturalized person is placed in a position equivalent to that of a natural-born subject. Naturalization of aliens is now governed by British Nationality Act.

In American law, a dweller; a stranger admitted to certain rights in a foreign country or as one who lives habitually in a country but is not a native born citizen; one holding a middle state between an alien and a natural born subject. One who has some relation to the enemy nation which is not lost by the alien's presence within the United States. United States *ex rel.* D'Esquiva v. Uhl, C.C.A.N.Y., 137 F.2d 903, 905. Thus, one who lived and worked in Austria in 1938 at time Germany obtained control of Austrian government, and continued to live there until leaving for the United States in 1939, at which time he was issued a German passport, was a "denizen" of Germany, within Enemy Alien Act. United States *ex rel.* Zdunic v. Uhl, D.C.N.Y., 47 F.Supp. 520.

A denizen, in the primary, but obsolete, sense of the word, is a natural-born subject of a country.

Denman's (Lord) Act /lòrd) dénmənz ákt/. An English statute, for the amendment of the law of evidence (6 & 7 Vict., c. 85), which provides that no person offered as a witness shall thereafter be excluded by reason of incapacity, from crime or interest, from giving evidence.

Denman's (Mr.) Act /místər) dénmənz ákt/. An English statute, for the amendment of procedure in criminal trials (28 & 29 Vict., c. 18), allowing counsel to sum up

the evidence in criminal as in civil trials, provided the prisoner be defended by counsel.

Denombrement /dɛnɔbrɛmɔn/. In French feudal law, a minute or act drawn up, on the creation of a fief, containing a description of the fief, and all the rights and incidents belonging to it.

Denominatio fieri debet a dignioribus /dɛnɔmɛnɛy-sh(i)ow fɛyɔrɛy dɛbɛt ɛy digniɔrɛbɛs/. Denomination should be made from the more worthy.

Denomination. The act of naming. A society of individuals known by the same name, usually a religious society.

Denominational, adj. /dɛnɔmɛnɛyshɛnəl/. Of, or pertaining to, a denomination; sectarian.

Denominational institution. Institution controlled or operated by a religious sect or organization and hence forbidden to receive governmental aid because of constitutional separation of church and state.

De nomine proprio non est curandum cum in substantia non erretur; quia nomina mutabilia sunt, res autem immobiles /diy nɔmɛniy prɔwpriyow nɔn ɛst kyɔrɛndɛm kɛm in sɛbstɛnsh(i)yɛ nɔn ɛriytɔr, kwɛyɔ nɔmɛnɛ myɔwtɛbiliyɛ sɛnt, riyz ɔtɛm imɔwbɛliyz/. As to the proper name it is not to be regarded where it errs not in substance, because names are changeable, but things immutable.

De non apparentibus, et non existentibus, eadem est ratio /diy nɔn ɛpɛrɛntɛbɛs et nɔn ɛgzɛstɛntɛbɛs iyɛydɛm ɛst rɛysh(i)ow/. As to things not apparent, and those not existing, the rule is the same.

De non decimando /diy nɔn dɛsɛmɛndow/. Of not paying tithes. A term applied in English ecclesiastical law to a prescription or claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. 2 Bl.Comm. 31.

De non procedendo ad assisam /diy nɔn prɔwsɛdɛndow ɛd ɛsɛyɛm/. A writ forbidding the justices from holding an assise in a particular case.

De non residentia clerici regis /diy nɔn rɛzɛdɛnsh(i)yɛ klɛrɛsɛy riyjɛs/. An ancient writ where a parson was employed in the royal service, etc., to excuse and discharge him of non-residence.

De non sane memorie /diy nɔn sɛyniy mɛmɔriy/ˈsɛniy mɛmɛriy/. L. Fr. Of unsound memory or mind; a phrase synonymous with *non compos mentis*.

Denounce. To declare (an act or thing) to be a crime and prescribe a punishment for it. To pronounce or condemn something as being evil or morally wrong. The word is also used (not technically but popularly) as the equivalent of "accuse" or "inform against."

The term is frequently used in regard to treaties, indicating the act of one nation in giving notice to another nation of its intention to terminate an existing treaty between the two nations. The French *dénoncer* means to declare, to lodge an information against.

Denouncement. An application to the authorities for a grant of the right to work a mine, either on the ground of new discovery, or on the ground of forfeiture of the rights of a former owner, through abandonment or contravention of the mining law. *Castillero v. U. S.*, 67 U.S. 17, 2 Black 17, 17 L.Ed. 360; *Stewart v. King*, 85 Or. 14, 166 P. 55, 56. An application for the acquisition of land for mining purposes, under certain rules prescribed by Mexican laws. The application is called the "denouncement," and, when approved by the Mexican government, is called "concession" or "title," sometimes "patent." It is then a grant given by the government to use the land applied for, for the purpose of mining, and is called the "title." *Winningham v. Dyo*, Tex.Com. App., 48 S.W.2d 600, 603.

In Spanish and Mexican law, a judicial proceeding for the forfeiture of land held by an alien.

De novi operis nunciatione /diy nɔwvay ɔwpɛrɛs nɛnsiyɛyshiyɔwniy/. In the civil law, a form of interdict or injunction which lies in some cases where the defendant is about to erect a "new work" (*q.v.*) in derogation or injury of the plaintiff's rights.

De novo /diy nɔwvow/. Anew; afresh; a second time. A *venire de novo* is a writ for summoning a jury for the second trial of a case which has been sent back from above for a new trial.

De novo hearing. See Hearing de novo.

De novo trial. Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered. *Farmingdale Supermarket, Inc. v. U. S.*, D.C.N.J., 336 F.Supp. 534, 536.

Density zoning. See Zoning.

De nullo, quod est sua natura indivisibile, et divisionem non patitur, nullam partem habebit vidua, sed satisfaciat ei ad valentiam /diy nɔlow, kwɔd ɛst s(y)ɔwɛ nɔt(y)ɔrɛ indivɛzibɛliy ɛt dɛviz(h)iyɔwnɛm nɔn pɛtɛtɛr, nɔlɛm pɛrtɛm hɛbiyɛt vɛd(y)uwɛ, sɛd sɛtɛsfɛy-shiyɛt iyay ɛd vɛlɛnshiyɛm/. A widow shall have no part of that which in its own nature is indivisible, and is not susceptible of division, but let the heir satisfy her with an equivalent.

De nullo tenemento, quod tenetur ad terminum, fit homagii, fit tamen inde fidelitatis sacramentum /diy nɔlow tɛnɛmɛntow, kwɔd tɛniytɛr ɛd tɛrmɛnɛm, fit hɛmɛyjiyay, fit tɛmɛn ɛndiy fɛdiylɛtɛytɛs sɛkrɛmɛntɛm/. In no tenement which is held for a term of years is there an avail of homage; but there is the oath of fealty.

Denumeration. The act of present payment.

Denunciation. Act of denouncing.

In the civil law, the act by which an individual informs a public officer, whose duty it is to prosecute offenders, that a crime has been committed.

The giving of an information in the ecclesiastical courts by one who was not the accuser.

Denuntiatio /dɛnɛnsiyɛysh(i)ow/. In old English law, a public notice or summons.

Deny. To traverse. To give negative answer or reply to. To refuse to grant or accept. To refuse to grant a petition or protest. *Safeway Stores v. Brown*, Em.App., 138 F.2d 278, 280. See *Denial*.

Deodand /diyədænd/. (L. Lat. *Deo dandum*, a thing to be given to God.) In English law, any personal chattel which was the immediate occasion of the death of any reasonable creature, and which was forfeited to the crown to be applied to pious uses, and distributed in alms by the high almoner.

De odio et atia /diy ówdiyow ed éysh(iy)ə/. A writ anciently called "*breve de bono et malo*," addressed to the sheriff to inquire whether a man committed to prison upon suspicion of murder were committed on just cause of suspicion, or only upon malice and ill will (*propter odium et atiam*); and, if upon the inquisition, due cause of suspicion did not appear, then there issued another writ for the sheriff to admit him to bail. 3 Bl.Comm. 128.

De onerando pro rata portione /diy òwnərəndow pròw réytə pòrshiyówniy/. Writ for charging according to a rateable proportion. A writ which lay for a joint tenant, or tenant in common, who was distrained for more rent than his proportion of the land came to.

De pace et legalitate tenenda /diy péysiy èt ləgələtéy-tiy tənéndə/. For keeping the peace, and for good behavior.

De pace et plagis /diy péysiy èt pléyjas/. Of peace (breach of peace), and wounds. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of assault, wounding, and breach of the peace.

De pace et roberia /diy péysiy èt ròbóriyə/. Of peace [breach of peace] and robbery. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of robbery and breach of the peace.

De parco fracto /diy párkow fráktow/. A writ or action for damages caused by a pound-breach (*q.v.*). It has long been obsolete. 3 Bl.Comm. 146.

Depart. To go away from; leave; die.

De partitione facienda /diy partishiyówniy fèy-s(h)iyéndə/. A writ which lay to make partition of lands or tenements held by several as coparceners, tenants in common, etc.

Department. One of the territorial divisions of a country. The term is chiefly used in this sense in France, where the division of the country into departments is somewhat analogous, both territorially and for governmental purposes, to the division of an American state into counties.

One of the major administrative divisions of the executive branch of the government usually headed by an officer of cabinet rank; *e.g.* Department of State. Generally, a branch or division of governmental administration. Also, a division of a business, or of something comparable thereto. *U. S. v. Elgin, J. & E. Ry. Co.*, Ill., 298 U.S. 492, 56 S.Ct. 841, 80 L.Ed. 1300.

Department of State. See *State Department*.

Departure. A deviation or divergence, from a standard rule, measurement or course of conduct.

A variance between pleading and proof. *Kintner v. U. S.*, C.C.A.Colo., 71 F.2d 961, 962. In common law pleading, the statement of matter in a replication, rejoinder, or subsequent pleading, as a cause of action or defense, which is not pursuant to the previous pleading of the same party, and which does not support and fortify it. Under Rules of Civil Procedure, no provision is made for "departure" but there are liberal amendment provisions. Fed.R. Civil P. 15.

See also *Variance*.

Departure in despite of court. In old English practice, the tenant in a real action, having once appeared, was considered as constructively present in court until again called upon. Hence if, upon being demanded, he failed to appear, he was said to have "departed in despite [*i.e.*, contempt] of the court."

Depeceage. The process whereby different issues in a single case arising out of a single set of facts are decided according to the laws of different states. *Broome v. Antlers' Hunting Club*, 595 F.2d 921, 923 n. 5 (3rd Cir., 1979). Under "depeceage" choice of law theory, court considers issues on which there is disagreement among the contact states over which rule of law is applicable to each issue. *Lazzara v. Howard A. Esser, Inc.*, D.C.Ill., 622 F.Supp. 382, 384.

Depeculation. In English law, a robbing of the prince or commonwealth; an embezzling of the public treasure.

Dependable, adj. Trustworthy or reliable; evidence.

Dependence. A state of looking to another for support, maintenance, food, clothing, comfort and protection of a home and care. *Soderstrom v. Missouri Pac. R. Co.*, Mo.App., 141 S.W.2d 73, 79. See *Dependent*.

Dependency. A territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe. *Posadas v. National City Bank of N. Y.*, Phil. Islands, 296 U.S. 497, 56 S.Ct. 349, 350, 80 L.Ed. 351. It differs from a *colony*, because it is not settled by the citizens of the sovereign or mother state; and from *possession*, because it is held by other title than that of mere conquest. Dependencies of the United States include Puerto Rico, Virgin Islands, Guam and other Pacific islands. See 48 U.S.C.A. § 731 et seq.

A relation between two persons, where one is sustained by another or looks to or relies on aid of another for support or for reasonable necessities consistent with dependent's position in life. See *Dependent*; *Partial dependency*.

Dependency exemption. An amount which may be subtracted in computing taxable income for each person who qualifies as a dependent of the taxpayer and whose gross income is less than the exemption amount or who is a child of the taxpayer and who has either not

attained the age of 19 or who is a full time student. I.R.C. § 151(e).

Dependent, n. One who derives his or her main support from another. Means relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power, or aid of someone else. *Fox-Vliet Wholesale Drug Co. v. Chase*, Okl., 288 P.2d 391, 393. Generally, for workers' compensation purposes, "dependent" is one who relies on another for support or favor and one who is sustained by another. *Industrial Indem. Co. v. Industrial Acc. Commission*, 243 Cal.App.2d 700, 52 Cal.Rptr. 647, 651, 653. One who has relied upon decedent for support and who has reasonable expectation that such support will continue. *Wheat v. Red Star Exp. Lines*, 156 Conn. 245, 240 A.2d 859, 862, 863. See also Lawful dependents.

In taxation, a person who receives more than half of his or her support from the taxpayer during the calendar year; is a relative of the taxpayer, i.e., brother, child, parent, aunt, etc.; and is a citizen or resident of the U.S. See Dependency exemption.

Dependent, adj. Deriving existence, support, or direction from another; conditioned, in respect to force or obligation, upon an extraneous act or fact.

Dependent conditions. Mutual covenants which go to the whole consideration on both sides.

Dependent contract. One which depends or is conditional upon another. One which it is not the duty of the contractor to perform until some obligation contained in the same agreement has been performed by the other party.

Dependent covenant. See Covenant.

Dependent coverage. Provision in life and health insurance for protection of dependents of named insured.

Dependent promise. One which it is not the duty of the promisor to perform until some obligation contained in the same agreement has been performed by the other party.

Dependent intervening cause. A conclusory label used by the common law to refer to a cause that intervenes between the defendant's behavior and a given result such that it is still fair to hold the defendant responsible for the result. See also Cause.

Dependent relative revocation. The doctrine which regards as mutually dependent the acts of one destroying a will and thereupon substituting another instrument for distribution of estate, when both acts are result of one plan, so that, if second act, through incompleteness or other defect, fails to accomplish its intended purpose, and it thereby becomes evident that testator was misled when he destroyed his will, act of destruction is regarded as bereft of intent of revocation and way for probate of destroyed will is opened. In re *Cuneco's Estate*, 60 Cal.2d 196, 32 Cal.Rptr. 409, 412, 384 P.2d 1.

Depending. Pending or undetermined; in progress.

In patent law, a convenient means of saying that the parts of a device were so attached as to have a right-an-

gle relationship to each other, not a gravitational hanging of one part upon another. *Alemite Mfg. Corporation v. Rogers Products Co.*, C.C.A.N.J., 42 F.2d 648, 651.

De perambulatione facienda /diy pərambɔləyʃiəw-niy fəʃ(h)iyéndə/. A writ which lay where there was a dispute as to the boundaries of two adjacent lordships or towns, directed to the sheriff, commanding him to take with him twelve discreet and lawful knights of his county and make the perambulation and set the bounds and limits in certainty.

Depesas /dəpéysəs/°-z/. In Spanish-American law, spaces of ground in towns reserved for commons or public pasturage.

De pignore surrepto furti, actio /əksh(iy)ow diy pignóriy sərɛptow fərtay/. In the civil law, an action to recover a pledge stolen.

De placito /diy plásətow/. Of a plea; of or in an action. Formal words used in declarations and other proceedings, as descriptive of the particular action brought.

De plagis et mahemio /diy pléyʃəs èt məhiymiyow/. Of wounds and mayhem. The name of a criminal appeal formerly in use in England, in cases of wounding and maiming. See Appeal.

De plano /diy pléynow/. Lat. On the ground; on a level. A term of the Roman law descriptive of the method of hearing causes, when the praetor stood on the ground with the suitors, instead of the more formal method when he occupied a bench or tribunal; hence informal, or summary.

De plegiis acquietandis /diy pliyjiyəs əkwəyətəndəs/. Writ for acquitting or releasing pledges. A writ that lay for a surety, against him for whom he had become surety for the payment of a certain sum of money at a certain day, where the latter had not paid the money at the appointed day, and the surety was compelled to pay it.

Depletable economic interest. The interest in mineral land which is subject to depletion by the removal of the minerals by operation of an oil well, mine, or the like. *Spalding v. U. S.*, C.C.A.Cal., 97 F.2d 697, 700; *U. S. v. Spalding*, C.C.A.Cal., 97 F.2d 701, 704. See Depletion.

Deplete. To reduce or lessen, as by use, exhaustion, or waste. *McKnight v. U. S.*, C.C.A.Cal., 78 F.2d 931, 933.

Depletion. An emptying, exhausting or wasting of assets. A reduction during taxable year of oil, gas or other mineral deposits or reserves (i.e., wasting assets) as a result of production. The process by which the cost or other basis of a natural resource (e.g., an oil and gas interest) is recovered upon extraction and sale of the resource.

Depletion allowance. The tax laws allow a depletion allowance (deduction) to owners of oil, gas, mineral, and timber resources as such are exhausted. The two ways to determine the depletion allowance are the *cost* and *percentage* (or statutory) methods. Under the *cost* method, each unit of production sold is assigned a portion of the cost or other basis of the interest. This is deter-

mined by dividing the cost or other basis by the total units expected to be recovered. I.R.C. § 611. Under the *percentage* (or statutory) method the tax law provides a special percentage factor for different types of minerals and other natural resources. Such depletion is based on a percentage of the estimated gross income to be earned during the period from a natural resource, without reference to the cost of the resource. This percentage is multiplied by the gross income from the interest to arrive at the depletion allowance. I.R.C. §§ 613 and 613A. *See also* Amortization.

Depletion allowance. *See* Depletion.

Depletion deduction. *See* Depletion.

Depletion reserve. In accounting, a charge to income to reflect the decrease in value of a wasting asset such as an oil well.

De ponendo sigillum ad exceptionem /diy pönéndow sjílləm æd aksèpshiyónəm/. Writ for putting a seal to an exception. A writ by which justices were formerly commanded to put their seals to exceptions taken by a party in a suit.

Deponent /dəpównənt/. One who *deposes* (that is, testifies) to the truth of certain facts; one who gives under oath testimony which is reduced to writing; one who makes oath to a written statement. One whose deposition is given. A witness; an affiant. *See* Depose; Deposition.

Depopulatio agrorum /diypopysléysh(iy)ow ægrórəm/. In old English law, the crime of destroying, ravaging, or laying waste a country. 4 Bl.Comm. 373.

Depopulation. In old English law, a species of waste by which the population of the kingdom was diminished. Depopulation of houses was a public offense.

Deportatio /diyportéysh(iy)ow/. Lat. In the civil law, a kind of banishment, where a condemned person was sent or carried away to some foreign country, usually to an island (*in insulam deportatur*), and thus taken out of the number of Roman citizens.

Deportation. Banishment to a foreign country, attended with confiscation of property and deprivation of civil rights. A punishment derived from the *deportatio* (*q.v.*) of the Roman law.

The transfer of an alien, excluded or expelled, from the United States to a foreign country. *Petition for Milanovic*, D.C.N.Y., 162 F.Supp. 890, 892. The removal or sending back of an alien to the country from which he came because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated. The list of grounds for deportation are set forth at 8 U.S.C.A. § 1251, and the procedures are provided for in §§ 1252-1254. *See also* Banishment. *Compare* Extradition.

Depose. To make a deposition; to give evidence in the shape of a deposition; to make statements which are written down and sworn to; to give testimony which is reduced to writing by a duly-qualified officer and sworn to by the deponent. *See* Deponent; Deposition.

To deprive an individual of a public employment or office against his will. The term is usually applied to the deprivation of all authority of a sovereign.

In ancient usage, to testify as a witness; to give evidence under oath.

Deposit, v. To commit to custody, or to lay down; to place; to put; to let fall (as sediment). *Jefferson County ex rel. Grauman v. Jefferson County Fiscal Court*, 273 Ky. 674, 117 S.W.2d 918, 924. To lodge for safe-keeping or as a pledge to intrust to the care of another. *White v. Greenlee*, 330 Mo. 135, 49 S.W.2d 132, 134.

Deposit, n. A bailment of goods to be kept by the bailee without reward, and delivered according to the object or purpose of the original trust. In general, an act by which a person receives the property of another, binding himself to preserve it and return it in kind. The delivery of chattels by one person to another to keep for the use of the bailor. The giving of the possession of personal property by one person to another, with his consent, to keep for the use, benefit, and safekeeping of the first or of a third person. Something intrusted to the care of another, either for a permanent or a temporary disposition.

Money placed with a person as an earnest or security for the performance of some contract, to be forfeited if the depositor fails in his undertaking. It may be deemed to be part payment, and to that extent may constitute the purchaser the actual owner of the estate.

The act of placing money in the custody of a bank or banker, for safety or convenience, to be withdrawn at the will of the depositor or under rules and regulations agreed on. Also, the money so deposited, or the credit which the depositor receives for it. Deposit, according to its commonly accepted and generally understood meaning among bankers and by the public, includes not only deposits payable on demand and subject to check, but deposits not subject to check, for which certificates, whether interest-bearing or not, may be issued, payable on demand, or on certain notice, or at a fixed future time.

A quantity of ore or other mineral substances occurring naturally in the earth; as, a deposit of gold, oil, etc.

See Bailment; Earnest money; Escrow.

General Classification

According to the classification of the civil law, deposits are of the following several sorts: (1) *Necessary*, made upon some sudden emergency, and from some pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity, when property is confided to any person whom the depositor may meet without proper opportunity for reflection or choice, and thence it is called "*miserabile depositum*." (2) *Voluntary*, which arises from the mere consent and agreement of the parties. The common law has made no such division. The civilians again divide deposits into "simple deposits," made by one or more persons having a common interest, and "sequestrations," made by one or more persons, each of whom has a different and adverse

interest in controversy touching it; and these last are of two sorts,—“conventional,” or such as are made by the mere agreement of the parties without any judicial act; and “judicial,” or such as are made by order of a court in the course of some proceeding. Thus, under Louisiana statutes, it is said that the difference between “sequestration” and “deposit” is that the former may have for its object both movable and immovable property, while the latter is confined to movables.

There is another class of deposits called “involuntary,” which may be without the assent or even knowledge of the depositor; as lumber, etc., left upon another’s land by the subsidence of a flood. An “involuntary” deposit is one made by the accidental leaving or placing of personal property in the possession of any person without negligence on the part of the owner. Another class of deposits is called “irregular,” as when a person, having a sum of money which he does not think safe in his own hands, confides it to another, who is to return to him, not the same money, but a like sum when he shall demand it. A *regular* deposit is a strict or special deposit; a deposit which must be returned *in specie*; i.e., the thing deposited must be returned. A *quasi* deposit is a kind of implied or involuntary deposit, which takes place where a party comes lawfully to the possession of another person’s property, by finding it. Particularly with reference to money, deposits are also classed as *general* or *special*. A general deposit is where the money deposited is not itself to be returned, but an equivalent in money (that is, a like sum) is to be returned. It is equivalent to a loan, and the money deposited becomes the property of the depositary. A special deposit is a deposit in which the identical thing deposited is to be returned to the depositor. The particular object of this kind of deposit is safekeeping. In banking law, this kind of deposit is contrasted with a “general” deposit, as above; but in the civil law it is the antithesis of an “irregular” deposit. A *gratuitous* or *naked* deposit is a bailment of goods to be kept for the depositor without hire or reward on either side, or one for which the depositary receives no consideration beyond the mere possession of the thing deposited. Properly and originally, all deposits are of this description; for according to the Roman law, a bailment of goods for which hire or a price is to be paid, is not called “depositum” but “*locatio*.” If the owner of the property pays for its custody or care, it is a “*locatio custodiae*,” if, on the other hand, the bailee pays for the use of it, it is “*locatio rei*.” (See *Locatio*.) But in the modern law, a gratuitous or naked deposit is distinguished from a “deposit for hire,” in which the bailee is to be paid for his services in keeping the article. There is also a *specific* deposit, which exists where money or property is given to a bank for some specific and particular purpose, as a note for collection, money to pay a particular note, or property for some other specific purpose.

See also Certificate of deposit; Involuntary deposit; Security deposit. For bank deposit, see Bank.

Demand deposit. Bank deposit which may be withdrawn at any time by the depositor, without prior notice to bank. Compare *Time deposit*, below.

Deposit box. Commonly referred to as safe deposit box in which a person may keep valuables. See Safe deposit box.

Deposit company. A company whose business is the safe-keeping of securities or other valuables deposited in boxes or safes in its building which are leased to the depositors. See Depositary; Depository.

Deposit contract. Agreement between a payor bank and a customer that governs the rights and duties of the parties with respect to funds deposited by the customer in a demand or other account maintained at the bank, and that specifies, among other things, the circumstances under which items drawn against the account are properly payable and properly charged against the account.

Deposit in court. Person who acknowledges liability but is in doubt as to whom the liability runs may pay into court the sum of money representing his liability and be bound by the court’s determination of who is entitled to it. See e.g. Fed.R. Civil P. 67. May also embrace payment into court pursuant to court order as in the case of rent pending outcome of eviction case.

Deposit insurance. Insurance coverage (e.g. Federal Deposit Insurance Corporation) for bank depositors protecting them from loss resulting from bank failure. See Deposit Insurance Corporation.

Deposit of title-deeds. A method of pledging real property as security for a loan, by placing the title-deeds of the land in the keeping of the lender as pledgee.

Deposit premium. The initial premium paid by the insured on a provisional basis pending a premium adjustment in the case of policies subject to adjustment.

Deposit ratio. Ratio of total deposits to total capital.

Deposit slip. An acknowledgment that the amount named therein has been received by the bank. It is a receipt intended to furnish evidence as between the depositor and depositary that on a given date there was deposited the sum named therein, the time of deposit, and amount deposited, being also shown.

Time deposit. Bank deposit which is to remain for specified period of time, or on which notice must be given to bank before withdrawal.

Depositary. The party or institution (e.g. bank or trust company) receiving a deposit. One with whom anything is lodged in trust, as “depository” is the place where it is put. A trustee; fiduciary; one to whom goods are bailed to be held without recompense. The obligation on the part of the depositary is that he keep the thing with reasonable care, and, upon request, restore it to the depositor, or otherwise deliver it, according to the original trust. This term should not be confused with “depository” which is the physical place of deposit.

Deposit Insurance Act. Federal act creating Federal Deposit Insurance Corporation (F.D.I.C.) to insure deposits of qualifying banks. 12 U.S.C.A. § 1811 et seq. See Deposit Insurance Corporation.

Deposit Insurance Corporation. Independent federal agency (Federal Deposit Insurance Corporation) created to insure bank deposits up to a specified amount in national and most state banks, including commercial and savings and loan banks, and to protect depositors from hazards of bank closings. See Federal Deposit Insurance Corporation.

Deposition. The testimony of a witness taken upon oral question or written interrogatories, not in open court, but in pursuance of a commission to take testimony issued by a court, or under a general law or court rule on the subject, and reduced to writing and duly authenticated, and intended to be used in preparation and upon the trial of a civil action or criminal prosecution. A pretrial discovery device by which one party (through his or her attorney) asks oral questions of the other party or of a witness for the other party. The person who is deposed is called the deponent. The deposition is conducted under oath outside of the courtroom, usually in one of the lawyer's offices. A transcript—word for word account—is made of the deposition. Testimony of witness, taken in writing, under oath or affirmation, before some judicial officer in answer to questions or interrogatories. Fed.R. Civil P. 26 et seq.; Fed.R. Crim.P. 15. See also Discovery; Interrogatories.

In ecclesiastical law, the act of depriving a clergyman, by a competent tribunal, of his clerical orders, to punish him for some offense and to prevent his acting in future in his clerical character.

Oral deposition. Form of discovery by addressing questions orally to person interrogated. Fed.R. Civil Proc. 30.

Written questions. Form of discovery in which written questions are addressed to person interrogated. Fed.R. Civil Proc. 31.

Deposition de bene esse /dèpòzishən diy binyi ésiy/. Testimony to be read at the trial, so far as relevant and competent, as though the witness were present in court. *Milprint, Inc. v. Macleod Laboratories*, 127 N.J.L. 333, 22 A.2d 566, 567.

Depósito /deypósiytow/. In Spanish law, deposit; the species of bailment so called.

A real contract by which one person confides to the custody of another an object on the condition that it shall be returned to him whenever he shall require it.

Depositor. One who makes a deposit. One who delivers and leaves money with a bank on his order or subject to check.

Depository. The place where a deposit (*q.v.*) is placed and kept; *e.g.* bank, savings and loan institutions, credit union, trust company. Place where something is deposited or stored as for safekeeping or convenience; *e.g.* safety deposit box.

This term should not be confused with "depository" which is the person or institution taking responsibility for the deposit, rather than the place itself.

United States depositories are banks selected and designated to receive deposits of the public funds (*e.g.* taxes) of the United States.

Depository bank. The first bank to which an item is transferred for collection even though it may also be the payor bank. U.C.C. § 4-105(a).

Depository transfer check (DTC). An unsigned, non-negotiable check used to transfer funds from a local collection bank to a concentration bank.

Depositum /dèpòzətəm/. Lat. In the civil law, one of the forms of the contract of bailment, being a naked bailment of goods to be kept for the use of the bailor without reward. See Deposit.

One of the four real contracts specified by Justinian, and having the following characteristics: (1) The depository or depositee is not liable for negligence, however extreme, but only for fraud, *dolus*; (2) the property remains in the depositor, the depository having only the possession. *Precarium* and *sequestre* were two varieties of the *depositum*.

De post disseisina /diy pówst dəsíyzənə/. Writ of post disseisin. A writ which lay for him who, having recovered lands or tenements by *præcipe quod reddat*, on default, or reddition, was again disseised by the former disseisor.

Dépôt /dèypów/. In French law, the *depositum* of the Roman and the deposit of the English law. It is of two kinds, being either (1) *dépôt* simply so called, and which may be either voluntary or necessary, and (2) *séquestre*, which is a deposit made either under an agreement of the parties, and to abide the event of pending litigation regarding it, or by virtue of the direction of the court or a judge, pending litigation regarding it.

De prerogativa regis /diy prərogətáyva ríyjes/. The English statute 17 Edw. I, St. 1, c. 9, defining the prerogatives of the crown on certain subjects, but especially directing that the king shall have ward of the lands of idiots, taking the profits without waste, and finding them necessities.

De præsentí /diy prázéntay/. Of the present; in the present tense. See *Per verba de præsentí*.

Deprave. To defame; to corrupt morally; vilify; exhibit contempt for. Corrupt, perverted or immoral state of mind.

Depraved. As an adjective means marked by debasement, corruption, perversion or deterioration. *State v. Weso*, 60 Wis.2d 404, 210 N.W.2d 442, 446.

Depraved mind. An inherent deficiency of moral sense and rectitude, equivalent to statutory phrase "depravity of heart" defined as highest grade of malice. A corrupt, perverted, or immoral state of mind. As required for conviction of second-degree murder, is one which is indifferent to the life of others. *Jones v. State*, 70 Wis.2d 41, 233 N.W.2d 430, 435. Such state of mind is

equatable with malice in commonly understood sense of ill will, hatred, spite or evil intent. *Weaver v. State*, Fla.App., 220 So.2d 53, 60.

Depreciable. Assets subject to depreciation; assets that decline in value or usefulness over a period of time through use or obsolescence. An example of depreciable assets includes machinery and equipment; land is a non-depreciable asset. *See* Depreciation.

Depreciable life. For an asset, the time period over which depreciable cost is to be allocated. For tax returns, depreciable life may be shorter than estimated service life.

Depreciation /dəpɹiəʃiəyʃən/. In accounting, spreading out the cost of a capital asset over its estimated useful life. Depreciation expense reduces the taxable income of an entity but does not reduce the cash. A decline in value of property caused by wear or obsolescence and is usually measured by a set formula which reflects these elements over a given period of useful life of property. *State Highway Commission v. Tubbs*, 147 Mont. 296, 411 P.2d 739, 744. Consistent, gradual process of estimating and allocating cost of capital investments over estimated useful life of asset in order to match cost against earnings. *Coca-Cola Bottling Co. of Baltimore v. U.S.*, 203 Ct.Cl. 18, 487 F.2d 528, 534. The depreciation expense recorded on the entity's tax return may differ from that recorded on the entity's financial statements. An entity usually uses an accelerated method on its tax return and the straight-line method on its financial statements due to the larger write-offs in the early years. As to *intangible assets*, *see* Amortization. As to natural resources, *see* Depletion. *See also* Accelerated Cost Recovery System; Accrued depreciation; Annual depreciation; Asset Depreciation Range; Recapture of depreciation; Useful life.

Depreciation Methods

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.

Accrued depreciation. *See* Accrued depreciation, and Accumulated depreciation, below.

Accumulated depreciation. Total depreciation recorded on an asset to date. On the balance sheet, accumulated depreciation reflects the book value of an asset. *See also* Accrued depreciation.

Declining balance method. Under the declining balance method, the annual depreciation allowance is computed by multiplying the undepreciated cost of the asset each year by a uniform rate up to double the straight-line rate or 150 percent, as the case may be.

Double declining method. Spreading the initial cost of a capital asset over time by deducting in each period double the percentage recognized by the straight-line method and applying that double percentage to the

undepreciated balance existing at the start of each period. No salvage value is used in the calculation.

Replacement cost method. The amortization or depreciation of an asset in which the value is fixed in terms of replacement cost.

Sinking fund method. A process of recovering the value of an asset by setting up a sinking fund.

Straight-line method. Under the straight-line method of depreciation, the cost or other basis (*e.g.*, fair market value in the case of donated assets) of the asset, less its estimated salvage value, if any, is determined first; then this amount is written off in equal amounts over the period of the estimated useful life of the asset. Taking the initial cost of a capital asset, deducting the expected salvage value at the time it is expected to be discarded, and spreading the difference in equal installments per unit of time over an estimated life of the asset.

Sum-of-the-year's digits method. Under this method, the annual depreciation allowance is computed by multiplying the depreciable cost basis (cost less salvage value) by a constantly decreasing fraction. The numerator of the fraction is represented by the remaining years of useful life of the asset at the beginning of each year, and the denominator is always represented by the sum of the years' digits of useful life at the time of acquisition.

Unit method. A depreciation or amortization method used in which an asset is written off in direct relation to the productivity of the asset. The cost of the asset is divided by the estimated total number of units to be produced. This unit cost is then multiplied by the number of units sold during the year resulting in the depreciation or amortization expense for the year.

Depreciation reserve. An account kept on the books, as of a public utility, to offset the depreciation of the property due to time and use. It does not represent the actual depreciation of its properties which is to be deducted from the reproduction cost new to ascertain the present value for rate purposes; but only what observation and experience suggest as likely to happen, with a margin over. In taxation, when gain is realized on disposition of depreciable property the gain must be reported as ordinary income, not capital gain, to the extent of depreciation previously taken as a deduction. I.R.C. §§ 1245, 1250.

Depredation /dəpɹédéyʃən/. The act of plundering, robbing, or pillaging. *Deal v. U. S.*, 274 U.S. 277, 47 S.Ct. 613, 615, 71 L.Ed. 1045.

In French law, pillage, waste, or spoliation of goods, particularly of the estate of a decedent.

Depression. A period of economic stress; usually accompanied by poor business conditions and high unemployment. *McCuston v. Haggard*, 21 Tenn.App. 277, 109 S.W.2d 413. A sharp decline in aggregate business activity that persists over an extended period of time. In economic parlance, a "depression" is more severe than a "recession."

A hole or hollow.

Mental syndrome manifested by sense of inadequacy, self-depreciation, melancholy, and guilt feelings.

Depressive reaction. Mental or emotional condition, precipitated by some external factor and manifested by guilt, self-depreciation, psychomotor retardation, deflection and/or sense of inadequacy; generally considered to be a neurosis.

Deprivation /dèprévýshn/. A taking away or confiscation; as the deprivation of a constitutional right or the taking of property under eminent domain without due process of law (*i.e.* without just compensation). *See also* Deprivation of property.

Deprivation of property. Due process guaranty which is abridged when government takes private property without just compensation except under extraordinary circumstances of the police power, though for deprivation of property there is not required an actual, physical taking for private or public use. Even a temporary deprivation of property constitutes a "deprivation" within meaning of Fourteenth Amendment. *Remm v. Landrieu, D.C.La., 418 F.Supp. 542, 545. See* Condemnation; Eminent domain; Expropriation; Just compensation; Taking.

Deprive. As used in the statute proscribing the offense of receiving stolen property means to withhold property from the owner permanently or to use or dispose of the property in a manner that makes recovery of the property by the owner unlikely. *State v. Freeman, Mo.App., 667 S.W.2d 443, 446. See* Deprive permanently.

Deprive permanently. To "deprive permanently" means to: (a) Take from the owner the possession, use or benefit of his property, without an intent to restore the same; or (b) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or (c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

De procedendo ad iudicium /diy prò(w)sədéndow àd juwdish(iy)əm/. An old English writ proceeding out of chancery and ordering the judges of any court to proceed to judgment. 3 Bl.Comm. 109.

Deprogramming. As the term has become known, is the process whereby individuals who are members of certain religious groups are subjected to a scheme of brain-washing or mind control in an attempt to dissuade them of their religious beliefs. *Baer v. Baer, D.C.Cal., 450 F.Supp. 481, 485.*

De proprietate probanda /diy prəpràytétyi pròbànda/. Writ for proving property. An old English writ directed to the sheriff, to inquire of the property or goods distrained, where the defendant in an action of replevin claims the property. 3 Bl.Comm. 148.

Deputize. To appoint a deputy; to appoint or commission one to act as deputy to an officer. In a general sense, the term is descriptive of empowering one person to act for another in any capacity or relation, but in law

it is almost always restricted to the substitution of a person appointed to act for an officer of the law.

Deputy. A substitute; a person duly authorized by an officer to exercise some or all of the functions pertaining to the office, in the place and stead of the latter. One appointed to substitute for another with power to act for him in his name or behalf. A substitute for another and is empowered to act for him in his name and behalf in all matters in which principal may act. *Williams v. Ferrentino, Fla.App., 199 So.2d 504, 511.*

Deputy consul. See Consul.

Deputy sheriff. One appointed to act in the place and stead of the sheriff in the official business of the latter's office. A *general* deputy (sometimes called "undersheriff") is one who, by virtue of his appointment, has authority to execute all the ordinary duties of the office of sheriff, and who executes process without any special authority from his principal. A *special* deputy, who is an officer *pro hac vice*, is one appointed for a special occasion or a special service, as, to serve a particular writ or to assist in keeping the peace when a riot or tumult is expected or in progress. He acts under a specific and not a general appointment and authority.

Deputy steward. In English law steward of a manor could depute or authorize another to hold a court; and the acts done in a court so holden were as legal as if the court had been holden by the chief steward in person. So an under steward or deputy could authorize another as subdeputy, *pro hac vice*, to hold a court for him; such limited authority not being inconsistent with the rule *delegatus non potest delegare*.

Special deputy. One appointed to exercise some special function or power of the official or person for whom he is appointed. *See also* Deputy sheriff, above.

De quarantina habenda /diy kwòrəntáynə həbéndə/. At common law, a writ which a widow entitled to quarantine might sue out in case the heir or other persons ejected her. It seems to have been a summary process, and required the sheriff, if no just cause were shown against it, speedily to put her into possession.

De quibus sur disseisin /diy kwíbəs sər dəsíyzən/. An ancient writ of entry.

De quo /diy kwów/ and **de quibus** /diy kwíbəs/. Of which. Formal words in the simple writ of entry, from which it was called a writ of entry "in the *quo*," or "in the *quibus*."

De quota litis /diy kwówtə láytəs/. In the civil law, a contract by which one who has a claim difficult to recover agrees with another to give a part, for the purpose of obtaining his services to recover the rest.

Deraign /dəréyn/. To prove; to vindicate; to disprove allegations.

Derangement. *See* Insanity.

De raptu virginum /diy répt(y)uw vərjənam/. Of the ravishment of maids. The name of an appeal formerly in use in England in cases of rape.

De rationabilibus divis /diy rāshənəbīləbəs dəváyəs/.

Writ for fixing reasonable boundaries. A writ which lay to settle the boundaries between the lands of persons in different towns, where one complained of encroachment.

De rationabili parte bonorum /diy rāsh(iy)ənáyəbəlay

pártiy bənórəm/. A writ which lay for the widow (and children) of a deceased person against his executors, to recover a third part of the deceased's personality, after payment of his debts, or to recover their reasonable part or share of his goods. 2 Bl.Comm. 492.

Derecho /deréychow/. In Spanish law, law or right.

Derecho común, common law. The civil law is so called. A right. *Derechos*, rights. Also, specifically, an impost laid upon goods or provisions, or upon persons or lands, by way of tax or contribution.

De recordo et processu mittendis /diy rəkórdow ét

prəsésyuw məténdəs/. Writ to send the record and process of a cause to a superior court; a species of writ of error.

De recto /diy réktow/. Writ of right. See Writ of right.**De recto de advocacione** /diy réktow diy ədvəkəy-

shiyówniy/. Writ of right of advowson. An old English writ which lay for one who had an estate in an advowson to him and his heirs in fee-simple, if he were disturbed to present. Abolished by St. 3 & 4 Wm. IV, c. 27.

De recto de rationabili parte /diy réktow diy

rāshənáyəbəlay pártiy/. Writ of right, of reasonable part. An old English writ which lay between privies in blood, as between brothers in gavelkind, or between sisters or other coparceners for lands in fee-simple, where one was deprived of his or her share by another. Abolished by St. 3 & 4 Wm. IV, c. 27.

De recto patens /diy réktow péytənz/. Writ of right patent.**De redisseisina** /diy riydəsəiyzənə/. Writ of redisseisin.

A writ which lay where a man recovered by assise of novel disseisin land, rent, or common, and the like, and was put in possession thereof by verdict, and afterward was disseised of the same land, rent, or common, by him by whom he was disseised before.

Deregistration. Deregistration of an issuer of securities occurs when the number of securities holders of an issuer registered under section 12 of the Securities Exchange Act of 1934 has declined to the point where registration is no longer required. See also Delisting; Registered corporation.

Deregulation. Reduction of government regulation of business to permit freer markets and competition.

Derelict /dérəlīkt/. Forsaken; abandoned; deserted; cast away. Personal property abandoned or thrown away by the owner in such manner as to indicate that he intends to make no further claim thereto.

Land left uncovered by the receding of water from its former bed. See Dereliction.

A boat or vessel found entirely deserted or abandoned on the sea without hope or intention of recovery or return by the master or crew, whether resulting from wreck, accident, necessity, or voluntary abandonment. When a vessel, without being abandoned, is no longer under the control or direction of those on board (as where part of the crew are dead, and the remainder are physically and mentally incapable of providing for their own safety), she is said to be *quasi derelict*. When the crew have left their vessel temporarily, with the intention of returning to resume possession, she is not technically a derelict, but is what may be termed a "quasi derelict."

Dereliction /dérəlīkshən/. The gaining of land from the water, in consequence of the sea, river, or stream shrinking back below the usual water mark; the opposite of *alluvion* (*q.v.*). *Mexico Beach Corp. v. St. Joe Paper Co.*, 97 So.2d 708, 710. Also, land left dry by running water retiring imperceptibly from one of its shores and encroaching on the other. "Dereliction" or "renunciation" of property at sea as well as on land requires both the intention to abandon and external action. *The No. 105*, C.C.A.Fla., 97 F.2d 425, 426. See also Accretion; Avulsion; Reliction.

In the civil law, the voluntary abandonment of goods by the owner, without the hope or the purpose of returning to the possession.

De reparatione facienda /diy rēpərəyshiyówniy fās(h)iyéndə/. A writ by which one tenant in common sought to compel another to aid in repairing the property held in common.

De rescussu /diy rəskásyuw/. Writ of rescue or rescous. A writ which lay where cattle distrained, or persons arrested, were rescued from those taking them.

De retorno habendo /diy rətórnow həbéndow/. For having a return; to have a return. A term applied to the judgment for the defendant in an action of replevin, awarding him a return of the goods replevied; and to the writ or execution issued thereon. 3 Bl.Comm. 149. Applied also to the sureties given by the plaintiff on commencing the action.

D.E.R.I.C. An abbreviation used for *De ea re ita censuere* (concerning that matter have so decreed), in recording the decrees of the Roman senate.

De rien culpable /də riyən kálpəbəl/. L. Fr. Guilty of nothing; not guilty.

Derivative. Coming from another; taken from something preceding; secondary. That which has not its origin in itself, but owes its existence to something foregoing. Anything obtained or deduced from another.

Derivative action. A suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party, and the relief which is granted is a judgment against a third person in favor of the corporation. *Price v. Gurney*, Ohio, 324 U.S. 100, 65 S.Ct. 513, 516, 89 L.Ed. 776. An action is a derivative action when the action is based upon a primary right of the corporation, but is asserted on its behalf by the stockholder because of the

corporation's failure, deliberate or otherwise, to act upon the primary right. *Lehrman v. Godeboux Sugars*, 207 Misc. 314, 138 N.Y.S.2d 163, 168. Procedure in such actions in federal courts is governed by Fed.R. Civil P. 23.1. Most states also have similar procedural rules or statutes for such actions.

Term is also used in reference to actions based on injury to another; e.g., action for loss of consortium by husband against third person for injuries to wife. See Consortium; also, Derivative liability.

Derivative contraband. Items of property not otherwise illegal but subject to forfeiture according to use to which they are put. *Kane v. McDaniel*, D.C.Ky., 407 F.Supp. 1239, 1242.

Derivative conveyances. Conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. They are releases, confirmations, surrenders, assignments, and defeasances. 2 Bl.Comm. 324.

Derivative evidence. Evidence which is derived or spawned from other illegally obtained evidence is inadmissible because of the primary taint. See Fruit of poisonous tree doctrine.

Derivative jurisdiction doctrine. Under this doctrine, a case is not properly removable unless it is within the subject matter jurisdiction of the state court from which it is removed. *Harvey v. Price*, D.C.Ill., 603 F.Supp. 1205, 1207.

Derivative liability. There are two distinct categories of "derivative liability": in the first category is the action which a plaintiff may institute to redress a wrong done to another; in the second category is the action which a plaintiff may institute to redress a wrong done to himself which is proximately caused by a wrong done to another. *Garfield v. U.S.*, D.C.Wis., 297 F.Supp. 891, 900. See also Derivative action; Vicarious liability.

Derivative suit. See Derivative action.

Derivative title. The common-law principle, codified repeatedly in the U.C.C., that a transferee of property acquires only the transferor's rights therein.

Derivative tort. Tort liability may be imposed on a principal for wrong committed by agent and to this extent the principal's liability is derivative. See also Derivative liability; Vicarious liability.

Derivative work. Under the copyright law, a work based on a pre-existing work, such as a translation, musical arrangement, fictionalization, motion picture version, abridgment or any other form in which a work may be recast, transformed or adapted, is a derivative work. Only the holder of copyright in the underlying work (or one acting with his permission) may prepare a derivative work. The preparation of such a work by any other party constitutes infringement. See Copyright Act, 17 U.S.C.A. § 101.

Derive. To receive from a specified source or origin. *Crews v. Commissioner of Internal Revenue*, C.C.A.10,

89 F.2d 412, 416. To proceed from property, sever from capital, however invested or employed, and to come in, receive or draw by taxpayer for his separate use, benefit, and disposal. *Staples v. United States*, D.C.Pa., 21 F.Supp. 737, 739.

Derived. Received from specified source.

Derogation /dɛrəˈɡeɪʃən/. The partial repeal or abolishing of a law, as by a subsequent act which limits its scope or impairs its utility and force. Distinguished from *abrogation*, which means the entire repeal and annulment of a law.

Derogation from grant. Provision in an instrument of transfer such as a deed which diminishes or militates against the grant itself.

Derogatory clause. In a will, this is a sentence or secret character, inserted by the testator, of which he reserves the knowledge to himself, with a condition that no will he may make thereafter should be valid, unless this clause be inserted word for word. This is done as a precaution to guard against later wills being extorted by violence, or otherwise improperly obtained. Such a provision is anomalous.

Derogatur legi, cum pars detrahitur; abrogatur legi, cum prorsus tollitur /dɛrəˈɡɛɪtər liːjəɪ, kəm pɑːz dɛtrɛɪ(h)ətər; əbrəˈɡɛɪtər liːjəɪ, kəm prɔːsəs tɒlɪtər/. To derogate from a law is to take away part of it; to abrogate a law is to abolish it entirely.

Desafuero /dɛsəˈfɛr(u)wɛrɔw/. In Spanish law, an irregular action committed with violence against law, custom, or reason.

De salva gardia /diː sɑːlvə ɡɑːrdiə/. A writ of safeguard allowed to strangers seeking their rights in English courts, and apprehending violence or injury to their persons or property.

De salvo conductu /diː sɑːlvɔw kɔndʌkt(y)uw/. A writ of safe conduct.

Desamortizacion /dɛsəˈmɔrtiːsɪsɪzəʃən/. In Mexican law, the *desamortizacion* of property is to take it out of mortmain (dead hands); that is, to unloose it from the grasp, as it were, of ecclesiastical or civil corporations. The term has no equivalent in English.

De sa vie /dɛ sɑː viː/. L. Fr. Of his or her life; of his own life; as distinguished from *pur autre vie*, for another's life.

De scaccario /diː skəkəriəw/. Of or concerning the exchequer. The title of a statute passed in the fifty-first year of Henry III.

Descend. To pass by succession; as when the estate vests by operation of law in the heirs immediately upon the death of the ancestor. The term, as used in some statutes, includes an acquisition by devise. *Cordon v. Gregg*, 164 Or. 306, 101 P.2d 414, 415. To pass down from generation to generation. To go or pass to; often used as a word of transfer. As used in wills, the word is often regarded as a general expression equivalent to the words "go to" or "belong to," and as indicating a passing

of title by the force of the will rather than of the statute. *See* Descent.

Descendant or descendent. Those persons who are in the blood stream of the ancestor. Term means those descended from another, persons who proceed from a body of another such as a child or grandchild, to the remotest degree; it is the opposite of "ascendants". *Bassett v. Merlin, Inc., Fla.App., 304 So.2d 543, 544.* In the plural, the term means issue, offspring or posterity in general. Also, all those to whom an estate descends, whether it be in a direct or collateral line from the intestate. *See* Descent.

Lineal descendant. One who is in the line of descent from the ancestor. The term may include an adopted child.

Descender. Descent; in the descent. *See* Formedon.

Descendibility of future interests. Legal suitability of a future interest such as a remainder or executory interest to pass by inheritance on death of the holder.

Descendible. Capable of passing by descent, or of being inherited or transmitted by devise (spoken of estates, titles, offices, and other property).

Descent. Hereditary succession. Succession to the ownership of an estate by inheritance, or by any act of law, as distinguished from "purchase." Title by descent is the title by which one person, upon the death of another, acquires the real estate of the latter as his heir at law. 2 Bl.Comm. 201. The title by inheritance is in all cases called descent, although by statute law the title is sometimes made to ascend.

The division among those legally entitled thereto of the real property of intestates.

See also Per capita; Per stirpes.

Classification

Descents are of two sorts, *lineal* and *collateral*. Lineal descent is descent in a direct or right line, as from father or grandfather to son or grandson. Collateral descent is descent in a collateral or oblique line, that is, up to the common ancestor and then down from him, as from brother to brother, or between cousins. They are also distinguished into *mediate* and *immediate* descends. But these terms are used in different senses. A descent may be said to be a mediate or immediate descent of the estate or right; or it may be said to be mediate or immediate, in regard to the mediateness or immediateness of the pedigree or consanguinity. Thus, a descent from the grandfather, who dies in possession, to the grandchild, the father being then dead, or from the uncle to the nephew, the brother being dead, is, in the former sense, in law, immediate descent, although the one is collateral and the other lineal; for the heir is in the *per*, and not in the *per* and *cui*. On the other hand, with reference to the line of pedigree or consanguinity, a descent is often said to be immediate, when the ancestor from whom the party derives his blood is immediate, and without any intervening link or degrees; and mediate, when the kindred is derived from him *mediante*

altero, another ancestor intervening between them. Thus a descent in lineals from father to son is in this sense immediate; but a descent from grandfather to grandson, the father being dead, or from uncle to nephew, the brother being dead, is deemed mediate; the father and the brother being, in these latter cases, the *medium deferens*, as it is called, of the descent or consanguinity.

Descent was denoted, in the Roman law, by the term "*successio*," which is also used by Bracton, from which has been derived the *succession* of the Scotch and French jurisprudence.

Line of Descent

The order or series of persons who have descended one from the other or all from a common ancestor, considered as placed in a line of succession in the order of their birth, the line showing the connection of all the blood-relatives.

Collateral line. A line of descent connecting persons who are not directly related to each other as ascendants or descendants, but whose relationship consists in common descent from the same ancestor.

Direct line. A line of descent traced through those persons only who are related to each other directly as ascendants or descendants.

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

Paternal line. A similar line of descent traced through the father.

Descent cast. The devolving of realty upon the heir on the death of his ancestor intestate.

Another name for what was formerly called a "descent which tolls entry." When a person had acquired land by disseisin, abatement, or intrusion, and died seised of the land, the descent of it to his heir took away or tolled the real owner's right of entry, so that he could only recover the land by an action.

Describe. To narrate, express, explain, set forth, relate, recount, narrate, depict, delineate, portray; sketch. Of land, to give the metes and bounds.

Description. A delineation or account of a particular subject by the recital of its characteristic accidents and qualities.

A written enumeration of items composing an estate, or of its condition, or of titles or documents; like an inventory, but with more particularity, and without involving the idea of an appraisalment.

An exact written account of an article, mechanical device, or process which is the subject of an application for a patent.

A method of pointing out a particular person by referring to his relationship to some other person or his character as an officer, trustee, executor, etc.

That part of a conveyance, advertisement of sale, etc., which identifies the land or premises intended to be affected.

A fair portrayal of the chief features of the proposed law in words of plain meaning, so that it can be understood by the persons entitled to vote. *Sawyer Stores v. Mitchell*, 103 Mont. 148, 62 P.2d 342, 348.

That part of affidavit for search warrant describing the place to be searched.

For description of criminal suspect, *see* Lineup.

See also Identification.

Descriptio personæ /dəskrípsh(iy)ow pərsónniy/. Lat. Description of the person. By this is meant a word or phrase used merely for the purpose of identifying or pointing out the person intended, and not as an intimation that the language in connection with which it occurs is to apply to him only in the official or technical character which might appear to be indicated by the word. *Forrester v. Cantley*, 227 Mo.App. 325, 51 S.W.2d 550, 551.

In wills, it sometimes happens that the word heir is used as a *descriptio personæ*. A legacy "to the eldest son" of A would be a designation of the person.

Descriptive. Containing a description; serving or aiming to describe; having the quality of representing. *Sawyer Stores v. Mitchell*, 103 Mont. 148, 62 P.2d 342, 348. *See also* Identification.

Descriptive mark. A trademark which merely describes the goods to which it is affixed. A descriptive mark will only be protected or registrable if the user can demonstrate secondary meaning. *See also* Secondary meaning.

If trademark imparts information directly, it is "descriptive"; if it stands for an idea which requires some operation of the imagination connected with the goods, it is "suggestive"; the information imparted may concern a characteristic, quality or ingredient of the product. *Union Carbide Corp. v. Ever-Ready, Inc.*, C.A.III, 531 F.2d 366, 378.

Descriptive term. *See* Descriptive mark.

De scutagio habendo /diy skyuwtéjjiyow hóbéndow/. Writ for having (or to have) escuage or scutage. A writ which anciently lay against tenants by knight-service, to compel them to serve in the king's wars or send substitutes or to pay escuage; that is a sum of money. The same writ lay for one who had already served in the king's army, or paid a fine instead, against those who held of him by knight-service, to recover his escuage or scutage.

De se bene gerendo /diy siy bíyniy jərəndow/. For behaving himself well; for his good behavior.

Desecrate. To violate sanctity of, to profane, or to put to unworthy use. Offense consists of defacing, damaging,

polluting or otherwise physically mistreating in a way that the actor knows will outrage the sensibilities of persons likely to observe or discover his action. Model Penal Code, § 250.9. *See also* Deface; Defile; Flag desecration.

De secta ad molendinum /diy séktə əd mələndənəm/. Of suit to a mill. An old English writ which lay to compel one to continue his custom (of grinding) at a mill. 3 Bl.Comm. 235.

Desegregation. The judicial mandate eliminating color of a person as a basis for disqualification to attend the school of his or her choice or to work at place of employment of his or her choice. *See* Brown decision; Discrimination.

Desert. To leave or quit with an intention to cause a permanent separation; to forsake utterly; to abandon. It is essentially willful in nature.

Desertion. The act by which a person abandons and forsakes, without justification, or unauthorized, a station or condition of public, social, or family life, renouncing its responsibilities and evading its duties. A willful abandonment of an employment or duty in violation of a legal or moral obligation.

Criminal desertion is a husband's or wife's abandonment or willful failure without just cause to provide for the care, protection or support of a spouse who is in ill health or necessitous circumstances.

See also Abandonment; Desertion and non-support; Non-support.

Adoption. As used in statute providing that parental consent to adoption is not required when parent has wilfully deserted child evinces settled purpose to forego, abandon, or desert all parental duties and parental rights in child. *Moody v. Voorhies*, 257 Or. 105, 475 P.2d 579, 581.

Constructive desertion. That arising where an existing cohabitation is put an end to by misconduct of one of the parties, provided such misconduct is itself a ground for divorce. For example, where one spouse, by his or her words, conduct, demeanor, and attitude produces an intolerable condition which forces the other spouse to withdraw from the joint habitation to a more peaceful one. *West v. West*, 264 Ky. 826, 95 S.W.2d 789, 790.

Divorce law. As a ground for divorce, an actual abandonment or breaking off of matrimonial cohabitation, by either of the parties, and a renouncing or refusal of the duties and obligations of the relation, with an intent to abandon or forsake entirely and not to return to or resume marital relations, occurring without legal justification either in the consent or the wrongful conduct of the other party. The elements of offense of "desertion" as ground for divorce are a voluntary intentional abandonment of one party by the other, without cause or justification and without consent of party abandoned. *See also* Constructive desertion, above; and Desertion and non-support.

Maritime law. The act by which a seaman deserts and abandons a ship or vessel, in which he had engaged to perform a voyage, before the expiration of his time, and without leave. By desertion, in the maritime law, is meant, not a mere unauthorized absence from the ship without leave, but an unauthorized absence from the ship, with an intention not to return to her service, or, as it is often expressed, *animo non revertendi*; that is, with an intention to desert. *The Cripple Creek, D.C.Pa.*, 52 F.Supp. 710, 712 (strike); *The Youngstown, C.C.A.La.*, 110 F.2d 968, 970. Desertion, within statute providing for forfeiture of wages of deserting seaman, consists of seaman's unconsented abandonment of duty by quitting ship before termination of engagement specified in articles he signed, without justification and with intention of not returning. *Petition of Russo, D.C.Cal.*, 232 F.Supp. 650, 651.

Military law. Any member of the armed forces who—(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently; (2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or (3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States; is guilty of desertion. Code of Military Justice, 10 U.S.C.A. § 885.

Non-support. Desertion is frequently accompanied by non-support, which may be a crime. *See also* Desertion and non-support; Non-support.

Obstinate desertion. *See* Obstinate desertion.

Desertion and non-support. While both desertion and non-support go hand in hand in many cases, they are distinguishable because a man may be guilty of desertion and not guilty of non-support. The converse is also true because a man may be guilty of wilfully failing to support though he remains in the marital home. *See also* Desertion; Non-support.

Deserving. Worthy or meritorious, without regard to condition or circumstances. In no sense of the word is it limited to persons in need of assistance, or objects which come within the class of charitable uses.

Deshonra /dèysonóra/. In Spanish law, dishonor; injury; slander.

Design. To form plan or scheme of, conceive and arrange in mind, originate mentally, plan out, contrive. Also, the plan or scheme conceived in mind and intended for subsequent execution; preliminary conception of idea to be carried into effect by action; contrivance in accordance with preconceived plan. A project, an idea. As a term of art, the giving of a visible form to the conceptions of the mind, or invention.

In evidence, purpose or intention, combined with plan, or implying a plan in the mind.

In patent law, the drawing or depiction of an original plan or conception for a novel pattern, model, shape, or configuration, to be used in the manufacturing or textile arts or the fine arts, and chiefly of a decorative or ornamental character. "Design patents" are contrasted with "utility patents," but equally involve the exercise of the inventive or originative faculty. Design, in the view of the patent law, is that characteristic of a physical substance which, by means of lines, images, configuration, and the like, taken as a whole, makes an impression, through the eye, upon the mind of the observer. The essence of a design resides not in the elements individually, nor in their method of arrangement, but in the total ensemble—in that indefinable whole that awakens some sensation in the observer's mind. Impressions thus imparted may be complex or simple. But whatever the impression, there is attached in the mind of the observer, to the object observed, a sense of uniqueness and character.

Designate. To indicate, select, appoint, nominate, or set apart for a purpose or duty, as to designate an officer for a command. To mark out and make known; to point out; to name; indicate. *New Haven Federation of Teachers v. New Haven Bd. of Ed.*, 27 Conn.Sup. 298, 237 A.2d 373, 380. *See also* Identification.

Designating petition. Means used to designate a candidate for a party nomination at a primary election or for election to party position.

Designatio iudicialiorum est a rege; iudicatio vero ordinaria a lege /dezəgnéysh(iy)ow jəstishiyèriyòrəm est ey riyjiy; jürəsdiksh(iy)ow vîrə òrdənəriyè ey líyjiy/. The appointment of justices is by the king, but their ordinary jurisdiction by the law.

Designation. An addition to a name, as of title, profession, trade, or occupation, to distinguish the person from others. A description or descriptive expression by which a person or thing is denoted in a will without using the name. Also, an appointment or assignment, as to a particular office. The act of pointing out, distinguishing by marks of description, or calling by a distinctive title. *See also* Identification.

Designatio personæ /dèzəgnéysh(iy)ow pərsówniy/. The description of a person or a party to a deed or contract. *See also* Descriptio personæ.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum /dèzəgnéysh(iy)ow yuwnáyəs èst əksklúwzh(iy)ow oltəríyyes, èt əksprésəm féysət səsériy tásətəm/. The specifying of one is the exclusion of another, and that which is expressed makes that which is understood to cease. (The appointment or designation of one is the exclusion of the other; and that which is expressed prevails over that which is implied.)

Designed. Contrived or taken to be employed for a particular purpose. Fit, adapted, prepared, suitable, appropriate. Intended, adapted, or designated. The term may be employed as indicating a bad purpose with evil intent.

Designedly. Sometimes equivalent to the words "wilfully," "knowingly," "unlawfully," and "feloniously."

De similibus ad similia eadem ratione procedendum est /diy sãmíløbəs əd sãmíliyə iyéydəm réyshiyówni pròwsədëndəm ést/. From like things to like things we are to proceed by the same rule or reason [*i.e.*, we are allowed to argue from the analogy of cases].

De similibus idem est judicandum /diy sãmíløbəs áydəm ést juwdkəkándəm/. Of [respecting] like things [in like cases], the judgment is to be the same.

Desire. To ask, to request. Sometimes, to empower or authorize. According to context or circumstances, the word may import a request or even a demand, but ordinarily means to wish for more or less earnestly.

This term, used in a will in relation to the management and distribution of property, has been interpreted by the courts with different shades of meaning, varying from the mere expression of a preference to a positive command. The word "desire" may be as effective as if the word "devise" or "bequeath" had been used. *Drinkard v. Hughes*, Tex.Civ.App., 32 S.W.2d 935, 936.

See also Intent.

Desistement /dəsístmənt/. The name of a doctrine under which the court, in construing a foreign will, applies the law of the forum on the theory that there is a hiatus.

Deslinde /dəyslíyndeý/. A term used in the Spanish law, denoting the act by which the boundaries of an estate or portion of a country are determined.

Desmemoriados /dəysmemòriyáðows/. In Spanish law, persons deprived of memory.

De son tort /də sówn tór(t)/. L. Fr. Of his own wrong. An *executor de son tort* is an executor of his own wrong. A person who assumes to act as executor of an estate without any lawful warrant or authority, but who, by his intermeddling, makes himself liable as an executor to a certain extent. If a stranger takes upon him to act as executor without any just authority, he is called in law an "executor of his own wrong," *de son tort*. 2 Bl.Comm. 507.

De son tort demesne /də sówn tór(t) dəmiyn/. Of his own wrong. The law French equivalent of the Latin phrase *de injuria (q.v.)*.

Despitus /dəspətəs/. Contempt. A contemptible person.

Despoil /dəspóyl/. This word involves, in its signification, violence or clandestine means by which one is deprived of that which he possesses.

Despojar /dəspowhár/. A possessory action of the Mexican law. It is brought to recover possession of immovable property, of which one has been despoiled (*despojado*) by another. *See also* Despoil.

Desponsation /dəspònséyshən/. The act of betrothing persons to each other.

Desposorio /dəspowsóriyow/. In Spanish law, espousals; mutual promises of future marriage.

Despot. This word, in its original and most simple acceptation, signifies *master and supreme lord*; it is synonymous with monarch. A ruler with absolute power and authority, but taken in bad sense, as it is usually employed, it signifies a tyrant. In some nations, despot is the title given to the sovereign, as king is given in others.

Despotism /dəspətizəm/. That abuse of government where the sovereign power is not divided, but united and unlimited in the hands of a single man, whatever may be his official title. It is not, properly, a form of government.

"Despotism" is not exactly synonymous with "autocracy," for the former involves the idea of tyranny or abuse of power, which is not necessarily implied by the latter. Every despotism is autocratic; but an autocracy is not necessarily despotic.

Dessaisissement /dəseyziysmón/. In French law, when a person is declared bankrupt, he is immediately deprived of the enjoyment and administration of all his property; this deprivation, which extends to all his rights, is called "dessaisissement."

De statuto mercatorio /diy státyúwtow mǎrkətériyow/. The writ of statute merchant.

De statuto stapulæ /diy státyúwtow stéypəliý/. The writ of statute staple.

Destination. The purpose to which it is intended an article or a fund shall be applied. Act of appointing or setting aside for a purpose. A testator gives a destination to a legacy when he prescribes the specific use to which it shall be put. Place to which something is sent; place set for end of journey; terminal point to which one directs his course.

Destination bill. Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request. Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. U.C.C. § 7-305.

Destination contract. Contract between seller and buyer by which risk of loss passes to buyer upon seller's tender of goods at destination. U.C.C. § 2-509(1)(b).

Destination du père de famille /dəstənasiyówn dyúw pér də fəmiý/. A use which owner has intentionally established on one part of his property in favor of another part, and which is equal to a title with respect to perpetual and apparent servitudes thereon.

Destitute. Not possessing necessities of life; in condition of extreme want; bereft; lacking possessions and resources. *Destitute of Bennington County by Van Santvoord v. Henry W. Putnam Memorial Hospital*, 125 Vt. 289, 215 A.2d 134, 138. *See also* Indigent.

Destitute or necessitous circumstances. Circumstances in which one needs the necessities of life, which cover not only primitive physical needs, things absolutely indispensable to human existence and decency, but those things, also, which are in fact necessary to the particular person left without support.

Destroy. Term is susceptible of applications in a variety of contexts, but in general, it means to ruin completely and may include a taking. *State v. Robinson*, 266 Minn. 166, 123 N.W.2d 812. To ruin the structure, organic existence or condition of a thing; to demolish; to injure or mutilate beyond possibility of use; to nullify. *State by Clark v. Wolkoff*, 250 Minn. 504, 85 N.W.2d 401, 410.

As used in policies of insurance, leases, and in maritime law, and under various statutes, this term is often applied to an act which renders the subject useless for its intended purpose, though it does not literally demolish or annihilate it.

In relation to wills, contracts, and other documents, the term "destroy" does not import the annihilation of the instrument or its resolution into other forms of matter, but a destruction of its legal efficacy, which may be by cancellation, obliterating, tearing into fragments, etc.

Destructibility. Capability of being destroyed by some action or turn of events or by operation of law. In estates, a characteristic of contingent remainders which requires them to have become vested remainders on or before the time they are to become possessory or else suffer total destruction. *See term below.*

Destructibility of contingent remainders. Doctrine dealing with future interest which may be destroyed by failure of condition. Such destructible future interest as a contingent remainder is subject to Rule Against Perpetuities unlike future interest which is destructible by act of the grantor or owner of present estate.

Destructible trust. Trust susceptible of being terminated or destroyed by happening of certain events or by operation of law.

Desuetude /dɛswət(y)úwd/. Disuse; cessation or discontinuance of use, especially in the phrase, "to fall into desuetude." Applied to obsolete practices and statutes.

De superoneratione pasturæ /diy súwpərownərəy-shiyówniy pəstyúriy/. Old English writ of surcharge of pasture. A judicial writ which lay for him who was impleaded in the county court, for surcharging a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the courts at Westminster.

De tabulis exhibendis /diy tábylɛs ɛgzəbéndəs/. Of showing the tablets of a will.

Detachiare /dətəshyériy/. To seize or take into custody another's goods or person by writ of attachment or course of law.

Detail, v. To enumerate minutely, specify, particularize.

Detail, n. An individual part, an item, a particular.

One who belongs to the army, but is only detached, or set apart, for the time to some particular duty or service, and who is liable at any time to be recalled to his place in the ranks.

Detain. To retain as the possession of personalty. To arrest, to check, to delay, to hinder, to hold, or keep in custody, to retard, to restrain from proceeding, to stay, to stop, to withhold. *State v. King*, 303 S.W.2d 930, 934. *See* Confinement; Custody.

Detainer. The act (or the juridical fact) of withholding from a person lawfully entitled the possession of land or goods, or the restraint of a man's personal liberty against his will; detention. The wrongful keeping of a person's goods is called an "unlawful detainer" although the original taking may have been lawful. *See also* Forcible detainer; Unlawful detainer.

Request filed by criminal justice agency with institution in which prisoner is incarcerated, asking institution either to hold prisoner for agency or to notify agency when release of prisoner is imminent. *Carchman v. Nash*, 473 U.S. 716, 105 S.Ct. 3401, 87 L.Ed.2d 516. Under Interstate Agreement on Detainers, a "detainer" is a notification filed with institution in which prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction. It must be a formal notice initiated by a prosecuting or law enforcement agency within member state where criminal charges are pending that prisoner is wanted to face criminal charges and notice must be filed with institution in which prisoner is serving a sentence.

Detainment. Act of detaining. This term is used in policies of marine insurance, in the clause relating to "arrests, restraints, and detentions." The last two words are construed as equivalents, each meaning the effect of superior force operating directly on the vessel.

De tallagio non concedendo /diy təléjjiyow nɔn kɔnsədéndow/. Of not allowing talliage. The name given to the English statutes 25 and 34 Edw. I, restricting the power of the king to grant talliage.

Detection. A discovery or laying open of that which was hidden; investigation.

Detective. One whose business it is to detect criminals or discover matters of secret and pernicious import for the protection of the public. Such may be either a private detective engaged by an individual, or a member of a police force.

Detector. Device which reveals the presence of electric waves or radioactivity or the presence of metal or indicates the presence of eavesdropping equipment ("bug"). *See also* Polygraph; Wiretapping.

De tempore cujus contrarium memoria hominum non existit /diy témpəriy kyúwjas kəntrériyám məmóriyá hómənám nɔn ɛgzistət/. From time whereof the memory of man does not exist to the contrary.

De tempore in tempus et ad omnia tempora /diy témpəriy in témpəs ɛd əd ónniyə témpərə/. From time to time, and at all times.

De temps dont memorie ne court /də tɒn dɔwn məməri nə kúr/. L. Fr. From time whereof memory runneth not; time out of memory of man.

Detentio /datəns(y)ow/. In the civil law, that condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. It forms the substance of possession in all its varieties.

Detention. The act of keeping back, restraining or withholding, either accidentally or by design, a person or thing. Detention occurs whenever police officer accosts individual and restrains his freedom to walk away, or approaches and questions individual or stops individual suspected of being personally involved in criminal activity. *People v. RICO*, 97 C.A.3d 124, 158 Cal.Rptr. 573, 576. *See* Confinement; Detain; Detainer; Imprisonment; Preventive detention.

Detention hearing. Judicial or quasi judicial proceeding used to determine the propriety of detaining a person on bail or a juvenile in a shelter facility. *P. F. M. v. District Court In and For County of Adams*, 184 Colo. 393, 520 P.2d 742. *See* Preliminary hearing.

Detention in a reformatory. A punishment or measure of prevention where a juvenile offender is sentenced to be sent to a reformatory school, to be there detained for a certain period of time.

Deter. To discourage or stop by fear. To stop or prevent from acting or proceeding by danger, difficulty, or other consideration which disheartens or countervails the motive for the act.

Deterioration. With respect to a commodity, consists of a constitutional hurt or impairment, involving some degeneration in the substance of the thing, such as that arising from decay, corrosion, or disintegration. With respect to values or prices, a decline.

Determinable. Liable to come to an end upon the happening of a certain contingency. Susceptible of being determined, found out, definitely decided upon, or settled.

As to determinable Fee and Freehold, see those titles.

Determinate. That which is ascertained; what is particularly designated.

Determinate hospitalization. Fixed period of hospitalization pursuant to civil commitment.

Determinate obligation. *See* Obligation.

Determinate sentence. Sentence to confinement for a fixed period as specified by statute as contrasted with an indeterminate sentence, the duration of which is only partly governed by statute; the duration of the latter, in the main, being governed by behavior of prisoner. *See also* Sentence.

Determination. The decision of a court or administrative agency. It implies an ending or finality of a controversy or suit. *Piccone v. U. S.*, 186 Ct.Cl. 752, 407 F.2d 866, 873. To settle or decide by choice of alternatives or possibilities. The ending or expiration of an estate or

interest in property, or of a right, power, or authority. The coming to an end in any way whatever.

A "determination" is a "final judgment" for purposes of appeal when the trial court has completed its adjudication of the rights of the parties in the action. *Thomas Van Dyken Joint Venture v. Van Dyken*, 90 Wis. 236, 279 N.W.2d 459, 463.

Also, an estimate. As respects an assessment, the term implies judgment and decision after weighing the facts.

See also Determination; Decision; Decree; Finding; Judgment; Opinion.

Determination letter. Document issued by a District Director of Internal Revenue Service, upon request of a taxpayer, giving an opinion as to the tax significance of a past or prospective transaction. Determination letters are most frequently used to clarify employee status, to determine whether a retirement or profit-sharing plan "qualifies" under the Internal Revenue Code, and to determine the tax exempt status of certain non-profit organizations.

Determinative issues. The "determinative issues" which are to be embraced in a special verdict form are the ultimate issues which, when decided, will definitely settle the entire controversy between or among the parties and leave nothing for the court to do but enter judgment for party, or parties, in whose favor such determinative issues have been resolved by jury. *Miller v. McAllister*, 169 Ohio St. 487, 160 N.E.2d 231, 237.

Determinism. A philosophy which teaches that human behavior is governed, in the main, by pre-existing conditions such as environment and family patterns and leaves no room for freedom of the will.

Deterrent. Anything which impedes or has a tendency to prevent; *e.g.* punishment is a "deterrent" to crime.

De theolonio /di y θiylɔwniyow/. A writ which lay for a person who was prevented from taking toll.

Detinet /détənət/. Lat. He detains. In old English law, a species of action of debt, which lay for the specific recovery of goods, under a contract to deliver them.

An action of *debt* is said to be in the *detinet* when it is alleged merely that the defendant withholds or unjustly detains from the plaintiff the thing or amount demanded.

An action of *replevin* is said to be in the *detinet* when the defendant retains possession of the property until after judgment in the action.

Detinue /détən(y)uw/. A form of action which lies for the recovery, *in specie*, of personal chattels from one who acquired possession of them lawfully, but retains it without right, together with damages for the detention. Possessory action for recovery of personal chattels unjustly detained. *Durst v. Durst*, 232 Md. 311, 193 A.2d 26. *See also* Replevin.

The action of *detinue* is defined in the old books as a remedy founded upon the delivery of goods by the owner to another to keep, who afterwards refuses to redeliver

them to the bailor; and it is said that, to authorize the maintenance of the action, it is necessary that the defendant should have come lawfully into the possession of the chattel, either by delivery to him or by finding it. In fact, it was once understood to be the law that *detinue* does not lie where the property had been tortiously taken. But it is, upon principle, very unimportant in what manner the defendant's possession commenced, since the gist of the action is the wrongful detainer, and not the original taking.

It is only incumbent upon the plaintiff to prove property in himself, and possession in the defendant. The action of *detinue* is proper in every case where the owner prefers recovering the specific property to damages for its conversion, and no regard is had to the manner in which the defendant acquired the possession.

Detinue of goods in frank marriage /détən(y)uw əv gúdz in fræŋk mæraj/. A writ formerly available to a wife after a divorce, for the recovery of the goods given with her in marriage.

Detinuit /dətínyuwət/. An action of replevin is said to be in the *detinuit* when the plaintiff acquires possession of the property claimed by means of the writ. The right to retain is, of course, subject in such case to the judgment of the court upon his title to the property claimed.

Detour. A temporary turning aside from usual or regular route, course or procedure or from a task or employment. *See also* Deviation.

A temporary road or a longer road in temporary use because of an obstruction or state of disrepair on regularly used road.

Detournement. The misappropriation by a servant of funds the property of his master; fraudulent abstraction of documents; or "abus de confiance" which is fraudulently misusing or spending to anybody's prejudice goods, cash, bills, documents, or contracts handed over for a special object. *See also* Embezzlement.

Detraction. The removal of property from one state to another upon a transfer of the title to it by will or inheritance.

De transgressione /diy trænzgreshiyówniy/. A writ of trespass.

De transgressione, ad audiendum et terminandum /diy trænzgreshiyówniy, æd òdiyendəm èt tærmænændəm/. A writ or commission for the hearing and determining any outrage or misdemeanor.

Detriment. Any loss or harm suffered in person or property; *e.g.*, the consideration for a contract may consist not only in a payment or other thing of value given, but also in loss or "detriment" suffered by the promisee. In that connection, "detriment" means that the promisee has, in return for the promise, forborne some legal right which he otherwise would have been entitled to exercise, or that he has given up something which he had a right to keep, or done something which he had a right not to do. *Irving v. Irwin*, 133 Cal.App. 374, 24 P.2d 215. *See* Consideration; Legal detriment.

Detrimental reliance. Response by promisee by way of act to offer of promisor in a unilateral contract. *See also* Promissory estoppel.

Detriment to promisee. In contracts, consideration offered by promisee to promisor, especially in a unilateral contract which calls for an act from the promisee though the promisor may revoke his offer before the completion of the act. *See also* Consideration; Culpa in contrahendo.

Detunicari /dətýüwnəkéray/. To discover or lay open to the world.

De una parte /diy yúwnə pártiy/. A deed *de una parte* is one where only one party grants, gives, or binds himself to do a thing to another. It differs from deed *inter partes* (*q.v.*).

Deuterogamy /d(y)ùwtérógəmiy/. The act, or condition, of one who marries after the death of a former wife or husband.

De uxore rapta et abducta /diy əksóriy ráptə èd əbdáktə/. Old English writ which lay where a man's wife had been ravished and carried away. A species of writ of trespass. 3 Bl.Comm. 139.

Devadiatus, or divadiatus /dəvədiyéytəs/. In old English law, an offender without sureties or pledges.

Devaluation. Reduction in value of a currency or of a standard monetary unit. *See also* Revaluation.

Devastation. Wasteful use of the property of a deceased person, as for extravagant funeral or other unnecessary expenses. 2 Bl.Comm. 508.

Devastaverunt /dəvəstəvírənt/. They have wasted. A term applied in old English law to waste by executors and administrators, and to the process issued against them therefor. *See* Devastavit.

Devastavit /dəvəstéyvat/. Lat. He has wasted. The act of an executor or administrator in wasting the goods of the deceased; mismanagement of the estate by which a loss occurs. A breach of trust or misappropriation of assets held in a fiduciary character; any violation or neglect of duty by an executor or administrator, involving loss to the decedent's estate, which makes him personally responsible to heirs, creditors, or legatees.

De vasto /diy véstow/. Writ of waste. Old English writ which might be brought by him who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, in dower, by curtesy, or for years, where the latter had committed *waste* in lands; calling upon the tenant to appear and show cause why he committed waste and destruction in the place named, to the disinherison (*ad exhæredationem*) of the plaintiff. 3 Bl.Comm. 227, 228. Abolished by St. 3 & 4 Wm. IV, c. 27.

De ventre inspiciendo /diy véntriy ənspis(h)iyéndow/. A common law writ to inspect the body, where a woman feigned to be pregnant, to see whether she was with child. It lay for the heir presumptive to examine a widow suspected to be feigning pregnancy in order to

enable a supposititious heir to obtain the estate. 1 Bl.Comm. 456. It lay also where a woman sentenced to death pleaded pregnancy. 4 Bl.Comm. 395. This writ was also formerly recognized in America. See *Matrons*, jury of.

De verbo in verbum /diy vərbəw in vərbəm/. Word for word. Literally, from word to word.

Devest. To deprive or dispossess of a title or right (*e.g.* of an estate).

Deviation. Departure from established or usual conduct or ideology. A change made in the progress of a work from the original terms or design or method agreed upon. *Ward v. City of Monrovia*, 16 Cal.2d 815, 108 P.2d 425, 429. A voluntary departure by railroad carrier, without necessity or reasonable cause, from the regular or usual route or from a stipulated or customary mode of carriage. *Ward v. Gulf, M. & N. R. Co.*, 23 Tenn.App. 533, 134 S.W.2d 917, 924. A wandering from the way, variation from the common way, from an established rule, standard, or position. *S. J. Groves & Sons Co. v. West Virginia Turnpike Commission*, D.C.W.Va., 164 F.Supp. 816, 821.

In employment, departure of employee from his course of employment and duties to employer for purposes entirely personal. Such term comes into use and is applied in workers' compensation cases and in actions against employer by third persons for injuries caused by employee. See also *Scope of employment*.

In insurance, term refers to variance from the risks insured against, as described in the policy, without necessity or just cause, after the risk has begun. Such deviation may void the liability or responsibility of the insurer.

In shipping, a voluntary, unnecessary or unexcused departure without reasonable cause from the course of the voyage insured, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage. *The Willdomino v. Citro Chemical Co. of America*, 272 U.S. 718, 47 S.Ct. 261, 262, 71 L.Ed. 491.

Deviation doctrine. In wills and trusts, principle which permits variation from terms of trust where circumstances are such that purposes of trust would otherwise be defeated. *Connecticut Bank & Trust Co. v. Johnson Memorial Hospital*, 30 Conn.Sup. 1, 294 A.2d 586, 591. In agency, principle which permits agent to vary activity slightly from scope of master's permission. *Johnson v. Maryland Casualty Co.*, C.C.A.Wis., 125 F.2d 337.

Deviation well survey. Examination permitted under Fed.Rules Civ.Proc., Rule 34 to determine whether a well is bottomed under another person's land. *Williams v. Continental Oil Co.*, C.A.Okl., 215 F.2d 4.

Device. An invention or contrivance; any result of design, as in the phrase "gambling device," which means a machine or contrivance of any kind for the playing of an unlawful game of chance or hazard. A plan or project; a scheme to trick or deceive; a stratagem or artifice, as in the laws relating to fraud and cheating. Also, an emblem, pictorial representation, or distin-

guishing mark or sign of any kind; as in the laws prohibiting the marking of ballots used in public elections with "any device."

In patent law, a plan or contrivance, or an application, adjustment, shaping, or combination of materials or members, for the purpose of accomplishing a particular result or serving a particular use, chiefly by mechanical means and usually simple in character or not highly complex, but involving the exercise of the inventive faculty.

That which is devised, or formed by design; a contrivance; an invention. *Ernst and Ernst v. Hochfelder*, 425 U.S. 185, 96 S.Ct. 1375, 1384, 47 L.Ed.2d 668.

De vicineto /diy vəsɪnətəw/. From the neighborhood, or vicinage. 3 Bl.Comm. 360. A term applied to a jury.

De vi laica amovenda /diy váy léyəkə əmɔvəndə/. Writ of (or for) removing lay force. A writ which lay where two parsons contended for a church, and one of them entered into it with a great number of *laymen*, and held out the other *vi et armis*; then he that was holden out had this writ directed to the sheriff, that he remove the force.

Devilling /dévəliŋ/. A term used in London of a barrister recently admitted to the bar, who assists a junior barrister in his professional work, without appearing in any way in the matter.

Devil on the neck. An instrument of torture, formerly used to extort confessions, etc. It was made of several irons, which were fastened to the neck and legs, and wrenched together so as to break the back.

Devisable. Capable of being devised.

Devisavit vel non /dévəzəvɪt vəl nɒn/. The name of an issue sent out of a court of chancery, or one which exercises chancery jurisdiction, to a court of law, to try the validity of a paper asserted and denied to be a will, to ascertain whether or not the testator did devise, or whether or not that paper was his will.

Devise /däváyvz/. A testamentary disposition of land or realty; a gift of real property by the last will and testament of the donor. When used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will. Uniform Probate Code, § 1-201(7). See also *Bequest*; *Executory devise*; *Legacy*.

To contrive; plan; scheme; invent; prepare.

Classification

Devises are *contingent* or *vested*; that is, after the death of the testator. Contingent, when the vesting of any estate in the devisee is made to depend upon some future event, in which case, if the event never occur, or until it does occur, no estate vests under the devise. But, when the future event is referred to merely to determine the time at which the devisee shall come into the use of the estate, this does not hinder the vesting of the estate at the death of the testator. Devises are also classed as *general* or *specific*. A general devise is one

which passes lands of the testator without a particular enumeration or description of them; as, a devise of "all my lands" or "all my other lands." In a more restricted sense, a general devise is one which grants a parcel of land without the addition of any words to show how great an estate is meant to be given, or without words indicating either a grant in perpetuity or a grant for a limited term; in this case it is construed as granting a life estate. Specific devises are devises of lands particularly specified in the terms of the devise, as opposed to general and residuary devises of land, in which the local or other particular descriptions are not expressed. For example, "I devise my Hendon Hall estate" is a specific devise; but "I devise all my lands," or, "all my other lands," is a *general* devise or a *residuary* devise. But all devises are (in effect) specific, even residuary devises being so. At common law, all devises of land were deemed to be "specific" whether the land was identified in the devise or passed under the residuary clause. A *conditional* devise is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated. An *executory* devise of lands is such a disposition of them by will that thereby no estate vests at the death of the devisor, but only on some future contingency. It differs from a remainder in three very material points: (1) That it needs not any particular estate to support it; (2) that by it a fee-simple or other less estate may be limited after a fee-simple; (3) that by this means a remainder may be limited of a chattel interest, after a particular estate for life created in the same. 2 Bl.Comm. 172. In a stricter sense, a limitation by will of a future contingent interest in lands, contrary to the rules of the common law. A limitation by will of a future estate or interest in land, which cannot, consistently with the rules of law, take effect as a remainder. A future interest taking effect as a fee in derogation of a defeasible fee devised or conveyed to the first taker, when created by will, is an "executory devise," and, when created by deed, is a "conditional limitation," and in either event is given effect as a shifting or springing use.

The estates known as a contingent remainder and an "executory devise" are both interests or estates in land to take effect in the future and depend upon a future contingency; an "executory devise" being an interest which the rules of law do not permit to be created in conveyances, but allow in case of wills. It follows a fee estate created by a will. A contingent remainder may be created by will or other conveyance and must follow a particular or temporary estate created by the same instrument of conveyance.

Lapsed devise. A devise which fails, or takes no effect, in consequence of the death of the devisee before the testator; the subject-matter of it being considered as not disposed of by the will.

Residuary devise. A devise of all the residue of the testator's real property, that is, all that remains over and above the other devises. *See also* general definition above.

Devisee /dəvəziy/. The person to whom lands or other real property are devised or given by will. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees. Uniform Probate Code, § 1-201(8).

Residuary devisee. The person named in a will, who is to take all the real property remaining over and above the other devises.

Devisor /dəvəzər/. A giver of lands or real estate by will; the maker of a will of lands; a testator.

Devoir /dəvɔi(ə)r/dəvwar/. Fr. Duty. It is used in the statute of 2 Rich. II, c. 3, in the sense of duties or customs.

Devolution. The transfer or transition from one person to another of a right, liability, title, estate, or office. Transference of property from one person to another. *Hermann v. Crossen*, Ohio App., 160 N.E.2d 404, 408. *See also* Descent.

In ecclesiastical law, the forfeiture of a right or power (as the right of presentation to a living) in consequence of its non-user by the person holding it, or of some other act or omission on his part, and its resulting transfer to the person next entitled.

Devolve /dəvɔlv/. To pass or be transferred from one person to another; to fall on, or accrue to, one person as the successor of another; as a title, right, office, liability. The term is said to be peculiarly appropriate to the passing of an estate from a person dying to a person living. *See* Descent; Devolution.

Devy /dəvəy/. L. Fr. Dies; deceases.

De warrantia chartæ /diy wɔhrəns(h)iyə kártiy/. Writ of warranty of charter. A writ which lay for him who was enfeoffed, with clause of warranty [in the charter of feoffment], and was afterwards impleaded in an assise or other action, in which he could not *vouch* or call to warranty; in which case he might have this writ against the feoffor, or his heir, to compel him to warrant the land unto him. Abolished by St. 3 & 4 Wm. IV, c. 27.

De warrantia diei /diy wɔrəns(h)iyə dəiyay/. A writ that lay where a man had a day in any action to appear in proper person, and the king at that day, or before, employed him in some service, so that he could not appear at the day in court. It was directed to the justices, that they should not record him to be in default for his not appearing.

Dextrarius /dəkstrəriyəs/. One at the right hand of another.

Dextras dare /dəkstrəs dəriy/. To shake hands in token of friendship; or to give up oneself to the power of another person.

Diaconate /diyækənət/day°. The office of a deacon.

Diaconus /diyækənəs/. A deacon.

Diagnosis /dəyəgnówsəs/. A medical term, meaning the discovery of the source of a patient's illness or the determination of the nature of his disease from a study

of its symptoms. The art or act of recognizing the presence of disease from its symptoms, and deciding as to its character, also the decision reached, for determination of type or condition through case or specimen study or conclusion arrived at through critical perception or scrutiny. A "clinical diagnosis" is one made from a study of the symptoms only, and a "physical diagnosis" is one made by means of physical measure, such as palpation and inspection.

Diagnostic tests. Tests to determine and identify the nature of a disease; including laboratory and exploratory tests.

Dialectics /dāyələktəks/. That branch of logic which teaches the rules and modes of reasoning.

Diallage /dayələjij/. A rhetorical figure in which arguments are placed in various points of view, and then turned to one point.

Dialogus de scaccario /dayələgəs diy skəkəriyow/. In old English law, dialogue of or about the exchequer. An ancient treatise on the court of exchequer, attributed by some to Gervase of Tilbury, by others to Richard Fitz Nigel, bishop of London in the reign of Richard I. It is quoted by Lord Coke under the name of Ockham.

Dianatic /dāyənətək/. A logical reasoning in a progressive manner, proceeding from one subject to another.

Diarium /dayəriyəm/. Daily food, or as much as will suffice for the day.

Diatim /dayéytəm/. In old records, daily; every day; from day to day.

Dica /dáykə/. In old English law, a tally for accounts, by number of cuts (*taillees*), marks, or notches. See Tallia; Tally.

Dicast /dáykəst/. An officer in ancient Greece answering in some respects to our jurymen, but combining, on trials had before them, the functions of both judge and jury. The dicasts sat together in numbers varying, according to the importance of the case, from one to five hundred.

Di colonna /diy kolónə/. In maritime law, the contract which takes place between the owner of a ship, the captain, and the mariners, who agree that the voyage shall be for the benefit of all. The term is used in the Italian law.

Dicta /diktə/. Opinions of a judge which do not embody the resolution or determination of the specific case before the court. Expressions in court's opinion which go beyond the facts before court and therefore are individual views of author of opinion and not binding in subsequent cases as legal precedent. *State ex rel. Foster v. Naftalin*, 246 Minn. 181, 74 N.W.2d 249. See also Dictum.

Dictate. To order or instruct what is to be said or written. To pronounce, word by word, what is meant to be written by another. See Dictation.

Dictation. In Louisiana, this term is used in a technical sense, and means to pronounce orally what is destined

to be written at the same time by another. It is used in reference to nuncupative wills. The dictation of a will refers to the substance, and not the style, and it is sufficient if the will, as written, conveys the identity of thought expressed by the testator, though not the identity of words used by him.

Dictator. One in whom supreme authority in any line is invested, one who rules autocratically, and one who prescribes for others authoritatively, and offer oppressively. *Houston Printing Co. v. Hunter*, Tex.Civ.App., 105 S.W.2d 312, 317.

In Roman law, a magistrate invested with unlimited power, and created in times of national distress and peril. Among the Romans, he continued in office for six months only, and had unlimited power and authority over both the property and lives of the citizens.

Dictores. Arbitrators.

Dictum /diktəm/. A statement, remark, or observation. *Gratis dictum*; a gratuitous or voluntary representation; one which a party is not bound to make. *Simplex dictum*; a mere assertion; an assertion without proof.

The word is generally used as an abbreviated form of *obiter dictum*, "a remark by the way;" that is, an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested by the case at bar, but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion. Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand are *obiter dicta*, and lack the force of an adjudication. *Wheeler v. Wilkin*, 98 Colo. 568, 58 P.2d 1223, 1226. *Dicta* are opinions of a judge which do not embody the resolution or determination of the court, and made without argument, or full consideration of the point, are not the professed deliberate determinations of the judge himself.

In old English law, *dictum* meant an arbitrament, or the award of arbitrators.

In French law, the report of a judgment made by one of the judges who has given it.

Dictum de Kenilworth. The edict or declaration of Kenilworth. An edict or award between King Henry III, and all the barons and others who had been in arms against him; and so called because it was made at Kenilworth Castle in Warwickshire, in the fifty-first year of his reign, containing a composition of five years' rent for the lands and estates of those who had forfeited them in that rebellion.

Die, v. To expire; cease to live; the equivalent to the phrase "lose his life." See also Death.

Diei dictio /dayiyay diksh(iy)ow/. Lat. In Roman law, this name was given to a notice promulgated by a magistrate of his intention to present an impeachment against a citizen before the people, specifying the day

appointed, the name of the accused, and the crime charged.

Diem clausit extremum /dáyəm klózət əkstriyməm/. (Lat. He has closed his last day, i.e. died.) A writ which formerly lay on the death of a tenant *in capite*, to ascertain the lands of which he died seised, and reclaim them into the king's hands. It was directed to the king's escheators.

A writ awarded out of the exchequer after the death of a crown debtor, the sheriff being commanded by it to inquire by a jury when and where the crown debtor died, and what chattels, debts, and lands he had at the time of his decease, and to take and seize them into the crown's hands.

Dies /dáyiyz/. Lat. A day; days. Days for appearance in court. Provisions or maintenance for a day. The king's rents were anciently reserved by so many days' provisions.

Dies amoris /dáyiz əmórəs/. A day of favor. The name given to the appearance day of the term on the fourth day, or *quarto die post*. It was the day given by the favor and indulgence of the court to the defendant for his appearance, when all parties appeared in court, and had their appearance recorded by the proper officer.

Dies a quo /dáyiyz èy kwów/. (The day from which.) In the civil law. The day from which a transaction begins; the commencement of it; the conclusion being the *dies ad quem*.

Dies cedit /dáyiyz síydət/. The day begins; *dies venit*, the day has come. Two expressions in Roman law which signify the vesting or fixing of an interest, and the interest becoming a present one.

Dies communes in banco /dáyiyz kəmyúwniyz in bəŋkow/. Regular days for appearance in court; called, also "common return-days."

Dies datus /dáyiyz déytəs/. A day given or allowed (to a defendant in an action); amounting to a continuance. But the name was appropriate only to a continuance before a declaration filed; if afterwards allowed, it was called an "imparlance."

Dies datus in banco /dáyiyz déytəs in bəŋkow/. A day given in the *bench* (or court of common pleas). A day given in bank, as distinguished from a day at *nisi prius*.

Dies datus partibus /dáyiyz déytəs pártəbəs/. A day given to the parties to an action; an adjournment or continuance.

Dies datus prece partium /dáyiyz déytəs príysiy párshəm/. A day given on the prayer of the parties.

Dies dominicus /dáyiyz dəmínəkəs/. The Lord's day; Sunday.

Dies dominicus non est juridicus /dáyiyz dəmínəkəs nón èst jəridəkəs/. Sunday is not a court day, or day for judicial proceedings, or legal purposes.

Dies excrecens /dáyiyz əkskriysənz/. In old English law, the added or increasing day in leap year.

Dies fasti /dáyiyz fəstay/. In Roman law, days on which the courts were open, and justice could be legally administered; days on which it was lawful for the prætor to pronounce (*feri*) the three words "do", "dico", "addico". Hence called "triverbial days," answering to the *dies juridici* of the English law.

Dies feriati /dáyiyz fəriyéytay/. In the civil law, holidays.

Dies gratiæ /dáyiyz gréyshiyiy/. In old English practice, a day of grace, courtesy, or favor. The *quarto die post* was sometimes so called.

Dies inceptus pro completo habetur /dáyiyz ənséptəs pròw kəmpliytow həbiytər/. A day begun is held as complete.

Dies incertus pro conditione habetur /dáyiyz ənsértəs pròw kəndishiyówniy həbiytər/. An uncertain day is held as a condition.

Dies intercesi /dáyiyz intərsáyzay/. In Roman law, divided days; days on which the courts were open for a part of the day.

Dies juridicus /dáyiyz jəridəkəs/. A lawful day for the transaction of judicial or court business; a day on which the courts are or may be open for the transaction of business.

Dies legitimus /dáyiyz læjitəməs/. In the civil and old English law, a lawful or law day; a term day; a day of appearance.

Dies marchiæ /dáyiyz mārkiyiy/. In old English law, the day of meeting of English and Scotch, which was annually held on the marches or borders to adjust their differences and preserve peace.

Dies nefasti /dáyiyz niyfəstay/. In Roman law, days on which the courts were closed, and it was unlawful to administer justice; answering to the *dies non juridici* of the English law.

Dies non /dáyiyz nón/. An abbreviation of *Dies non juridicus* (q.v.).

Dies non juridicus /dáyiyz nòn jəridəkəs/. A day not juridical; not a court day. A day on which courts are not open for business, such as Sundays and some holidays.

Dies pacis /dáyiyz péysəs/. (Days of peace.) The year was formerly divided into the days of the peace of the church and the days of the peace of the king, including in the two divisions all the days of the year.

Dies solaris /dáyiyz sələrəs/. In old English law, a solar day, as distinguished from what was called "*dies lunaris*" (a lunar day); both composing an artificial day. See Day.

Dies solis /dáyiyz sówłəs/. In the civil and old English law, Sunday (literally, the day of the sun).

Dies utiles /dáyiyz yúwtəliyiy/. Juridical days; useful or available days. A term of the Roman law, used to designate those especial days occurring within the limits

of a prescribed period of time upon which it was lawful, or possible, to do a specific act.

Diet. A general legislative assembly is sometimes so called on the continent of Europe.

Dieta /dayiytə/. A day's journey; a day's work; a day's expenses.

Di. et fi. /dáy et fáy/(dáléktow èt fədiylay)/. L. Lat. In old writs, an abbreviation of *dilecto et fideli* (to his beloved and faithful).

Dieu et mon droit /dyúw ey món dr(w)ó/. Fr. God and my right. The motto of the royal arms of England, first assumed by Richard I.

Dieu son acte /dyúw sòn ákt/. L. Fr. In old law, God his act; God's act. An event beyond human foresight or control. *See* Act of God.

Die without issue. *See* Dying without issue.

Diffacere /dəféysəriy/. To destroy; to disfigure or deface.

Difference. In an agreement for submission to arbitration, a disagreement or dispute. As respects contract specifications or material described therein, a state of being unlike. Disagreement in opinion, interpretation or conclusion. Instance or cause of disagreement. *See also* Disagreement.

Difforcicare /dəfòrs(h)(i)yériy/. In old English law, to deny, or keep from one. *Difforcicare rectum*, to deny justice to any one, after having been required to do it.

Diffuse. To spread widely; scatter; disperse.

Digama, or digamy /digəmiy/. Second marriage; marriage to a second wife after the death of the first, as "bigamy," in law, is having two wives at once. Originally, a man who married a widow, or married again after the death of his wife, was said to be guilty of bigamy.

Digest. A collection or compilation, embodying the chief matter of numerous books, articles, court decisions, etc. in one, disposed under proper heads or titles, and usually by an alphabetical arrangement, for facility in reference.

An index to reported cases, providing brief statements of court holdings or facts of cases, which is arranged by subject and subdivided by jurisdiction and courts. *See American Digest System; Special digests, below.*

As a legal term, "digest" is to be distinguished from "abridgment." The latter is a summary or epitome of the contents of a single work, in which, as a rule, the original order or sequence of parts is preserved, and in which the principal labor of the compiler is in the matter of consolidation. A digest is wider in scope; is made up of quotations or paraphrased passages, and has its own system of classification and arrangement. An "index" merely points out the places where particular matters may be found, without purporting to give such matters *in extenso*. A "treatise" or "commentary" is not a compilation, but an original composition, though it may include quotations and excerpts.

A reference to the "Digest," or "Dig.," is often understood to designate the Digest (or Pandects) of the Justinian collection; that being the digest *par eminence*, and the authoritative compilation of the Roman law.

American Digest System. The American Digest System is a subject classification scheme whereby digests of decisions that were reported chronologically in the various units of the National Reporter System are rearranged by subject, bringing together all cases on a similar point of law. The system divides the subject of law into seven main classes. Each class is then divided into sub-classes and then each sub-class into topics. There are over 400 digest topics, each of which corresponds to a legal concept. The system consists of a Century Digest (1658-1896), eight Decennial Digests (1897-1905, 1906-1915, 1916-1925, 1926-1935, 1936-1945, 1946-1955, 1956-1966, and 1966-1976), (the Ninth Decennial Digest, Part 1 (1976-1981), the Ninth Decennial Digest, Part 2 (1981-1986), and the General Digest, 7th Series (1986 to date). The American Digest System is the master index to all reported case law. *See also* Key number system; and *Special digests, below.*

Special digests. Decisions included in the American Digest System are as well included in special digests covering the federal courts and also in regional, state, and topical digests. The "U.S. Supreme Court Digest" covers decisions of the U.S. Supreme Court. The Federal Digest (cases decided prior to 1939), Modern Federal Practice Digest (1939-1961), West's Federal Practice Digest 2d (1961-1975) and West's Federal Practice Digest 3rd and 4th (1975 to date) cover Federal court cases. Specialty federal digests include the Bankruptcy Digest, the Claims Court Digest, and West's Military Justice Digest. State court decisions from geographical areas are also published in "Regional Digests" (Atlantic, Northwestern, Pacific, Southeastern, Southern Digests; several of these are in 1st and 2d series). *Also*, individual "State Digests" are published for most states. Other specialty digests include West's Education Law Digest and the Merit Systems Protection Board Digest.

Digesta /dəjéstə/. Digests. One of the titles of the Pandects of Justinian.

Digests. The ordinary name of the Pandects of Justinian, which are now usually cited by the abbreviation "Dig." instead of "Ff.," as formerly. Sometimes called "Digest," in the singular. *See also* Digest.

Dignitary. In canon law, a person holding an ecclesiastical benefice or dignity, which gave him some pre-eminence above mere priests and canons. To this class exclusively belonged all bishops, deans, archdeacons, etc.; but it now includes all the prebendaries and canons of the church.

Dignity. In English law, an honor; a title, station, or distinction of honor. Dignities are a species of incorporeal hereditaments, in which a person may have a property or estate. 2 Bl.Comm. 37; 1 Bl.Comm. 396.

Dijudication /dəyjuwdəkéyshən/. Judicial decision or determination.

Dilación /diylasyówn/. In Spanish law, a space of time granted to a party to a suit in which to answer a demand or produce evidence of a disputed fact.

Dilapidation. A species of ecclesiastical waste which occurs whenever the incumbent suffers any edifices of his ecclesiastical living to go to ruin or decay. It is either voluntary, by pulling down, or permissive, by suffering the church, parsonage-houses, and other buildings thereunto belonging, to decay. And the remedy for either lies either in the spiritual court, where the canon law prevails, or in the courts of common law. It is also held to be good cause of deprivation if the bishop, parson, or other ecclesiastical person dilapidates buildings or cuts down timber growing on the patrimony of the church, unless for necessary repairs; and that a writ of prohibition will also lie against him in the common-law courts. 3 Bl.Comm. 91.

The term is also used, in the law of landlord and tenant, to signify the neglect of necessary repairs to a building, or suffering it to fall into a state of decay, or the pulling down of the building or any part of it.

Dilationes in lege sunt odiosæ /dälëyshiyówniyz in lÿjyiy sânt owdiyówsiy/. Delays in law are odious.

Dilatory /dÿlät(ò)riy/. Tending or intended to cause delay or to gain time or to put off a decision.

Dilatory defense. In chancery practice, one the object of which is to dismiss, suspend, or obstruct the suit, without touching the merits, until the impediment or obstacle insisted on shall be removed. 3 Bl.Comm. 301, 302. *See also* Dilatory pleas.

Dilatory exceptions. Such as do not tend to defeat the action, but only to retard its progress.

Dilatory pleas. A class of defenses at common law, founded on some matter of fact not connected with the merits of the case, but such as might exist without impeaching the right of action itself. They were either pleas to the *jurisdiction*, showing that, by reason of some matter therein stated, the case was not within the jurisdiction of the court; or pleas in *suspension*, showing some matter of temporary incapacity to proceed with the suit; or pleas in *abatement*, showing some matter for abatement or quashing the declaration. *Davis v. Thiede*, 138 Ind.App. 537, 203 N.E.2d 835. Under modern civil procedure such defenses are raised by motion or answer. *See* Plea (*Plea in abatement*).

Diligence. Vigilant activity; attentiveness; or care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety. Attentive and persistent in doing a thing; steadily applied; active; sedulous; laborious; unremitting; untiring. *National Steel & Shipbuilding Co. v. U. S.*, 190 Ct.Cl. 247, 419 F.2d 863, 875. The attention and care required of a person in a given situation and is the opposite of negligence. *Turnquist v. Kjelbak*, N.D., 77 N.W.2d 854, 861.

The civil law is in perfect conformity with the common law. It lays down three degrees of diligence,—ordi-

nary (*diligentia*); extraordinary (*exactissima diligentia*); slight (*levissima diligentia*).

There may be a high degree of diligence, a common degree of diligence, and a slight degree of diligence, with their corresponding degrees of negligence. Common or ordinary diligence is that degree of diligence which men in general exercise in respect to their own concerns; high or great diligence is of course extraordinary diligence, or that which very prudent persons take of their own concerns; and low or slight diligence is that which persons of less than common prudence, or indeed of any prudence at all, take of their own concerns.

See also Care.

Due diligence. Such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.

Extraordinary diligence. That extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights.

Great diligence. Such a measure of care, prudence, and assiduity as persons of unusual prudence and discretion exercise in regard to any and all of their own affairs, or such as persons of ordinary prudence exercise in regard to very important affairs of their own.

High diligence. The same as great diligence.

Low diligence. The same as slight diligence.

Necessary diligence. That degree of diligence which a person placed in a particular situation must exercise in order to entitle him to the protection of the law in respect to rights or claims growing out of that situation, or to avoid being left without redress on account of his own culpable carelessness or negligence.

Ordinary diligence is that degree of care which men of common prudence generally exercise in their affairs, in the country and the age in which they live.

Reasonable diligence. A fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity.

Special diligence. The measure of diligence and skill exercised by a good business man in his particular specialty, which must be commensurate with the duty to be performed and the individual circumstances of the case; not merely the diligence of an ordinary person or non-specialist.

Diligent. Attentive and persistent in doing a thing; steadily applied; active; sedulous; laborious; unremitting; untiring.

Diligent inquiry. Such inquiry as a diligent man, intent upon ascertaining a fact, would ordinarily make, and it is inquiry made with diligence and good faith to

ascertain the truth, and must be an inquiry as full as the circumstances of the situation will permit. *Liepelt v. Baird*, 17 Ill.2d 428, 161 N.E.2d 854, 857.

Diligatus /dəljijéytəs/. (Fr. *De lege ejectus*, Lat.) Outlawed.

Dillon's Rule. Rule used in construction of statutes delegating authority to local government: ". . . [A] municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable . . ." *Merriam v. Moody's Executors*, 25 Iowa 163, 170 (1868).

Dilution. In corporate law, refers to the reduction in value of outstanding shares resulting from the issuance of additional shares. The dilution may be of voting power if shares are not issued proportionately to the holdings of existing shareholders, or it may be financial, if shares are issued disproportionately and the price at which the new shares are issued is less than the market or book value of the outstanding shares prior to the issuance of the new shares.

Dilution doctrine. A trademark doctrine protecting strong marks against use by other parties even where there is no competition or likelihood of confusion. Concept is most applicable where subsequent user used the trademark of prior user for a product so dissimilar from the product of the prior user and there is no likelihood of confusion of the products or sources, but where the use of the trademark by the subsequent user will lessen uniqueness of the prior user's mark with the possible future result that a strong mark may become a weak mark. *Holiday Inns, Inc. v. Holiday Out in America*, C.A.Fla., 481 F.2d 445, 450.

Dimidia, dimidium, dimidius /dəmídiyə(m)/dəmídiyə(s)/. Half; a half; the half.

Dimidietas /dimədáyətəs/. The moiety or half of a thing.

Diminished capacity doctrine. This doctrine recognizes that although an accused was not suffering from a mental disease or defect when the offense was committed sufficient to exonerate him from all criminal responsibility, his mental capacity may have been diminished by intoxication, trauma, or mental disease so that he did not possess the specific mental state or intent essential to the particular offense charged. *State v. Corraera*, R.I., 430 A.2d 1251, 1253. *See also* Diminished responsibility doctrine.

Diminished responsibility doctrine /dəmínəst rəspònsəbílətiy dóktrən/. Term used to refer to lack of capacity to achieve state of mind requisite for commission of crime. *McGuire v. Superior Court for Los Angeles County*, 274 Cal.App. 583, 79 Cal.Rptr. 155, 161. The concept of diminished responsibility, also known as partial insanity, permits the trier of fact to regard the impaired mental state of the defendant in mitigation of

the punishment or degree of the offense even though the impairment does not qualify as insanity under the prevailing test. A number of courts have adopted the concept. In some jurisdictions, mental retardation and extremely low intelligence will, if proved, serve to reduce first degree murder to manslaughter. *See also* Insanity.

Diminutio /dimən(y)úwsh(iy)ow/. In the civil law, diminution; a taking away; loss or deprivation. *Diminutio capitis*, loss of status or condition. *See* *Capitis diminutio*.

Diminution /dimən(y)úwshan/. Incompleteness. Act or process of diminishing, taking away, or lessening. A word signifying that the record sent up from an inferior to a superior court for review is incomplete, or not fully certified.

Diminution in value. Rule of damages which provides for difference between "before" and "after" value of property which has been damaged or taken. *Big Rock Mountain Corp. v. Stearns-Roger Corp.*, C.A.S.D., 388 F.2d 165, 168. If breach of contract results in defective or unfinished construction, and loss in value to injured party is not proved with sufficient certainty, the affected party may recover damages based on diminution in market price of property caused by breach. *Restatement, Second, Contracts*, § 348(2)(a). *See also* *Damages (Expectancy damages)*.

Diminution of damages. *See* *Mitigation of damages*.

Dimisi /dəmáysay/. In old conveyancing, I have demised. *Dimisi, concessi, et ad firmam tradidi*, have demised, granted, and to farm let. The usual words of operation in a lease. 2 Bl.Comm. 317, 318.

Dimisit /dəmáysət/. In old conveyancing, [he] has demised. *See* *Dimisi*.

Dimissoria litteræ /diməsóriyiy lítəriy/. In the civil law, letters dimissory or dismissory, commonly called "apostles" (*quæ vulgo apostoli dicuntur*). *See* *Apostoli*, *Apostles*.

Dimissory letters /diməsòriy létərz/. Where a candidate for holy orders has a title of ordination in one diocese in England, and is to be ordained in another, the bishop of the former diocese gives letters dimissory to the bishop of the latter to enable him to ordain the candidate.

Dinarchy /dəynarkiy/. A government of two persons.

Diocesan /dayósəsən/. Belonging to a diocese; a bishop, as he stands related to his own diocese.

Diocesan courts. In English law, the consistorial courts of each diocese, exercising general jurisdiction of all matters arising locally within their respective limits, with the exception of places subject to *peculiar* jurisdiction, and administering the other branches of the ecclesiastical law.

Diocesan mission. A mission which does missionary work in single diocese.

Diocese /dayəsəs/. The territorial extent of a bishop's jurisdiction. The circuit of every bishop's jurisdiction.

Dioichia /dayiykiya/. The district over which a bishop exercised his spiritual functions.

Diploma. In the civil law, a royal charter; letters patent granted by a prince or sovereign. Instrument conferring some honor, privilege, or authority. Commonly used to denote document given by educational institution on graduation and awarding of degree.

Diplomacy. The art and practice of conducting negotiations between foreign governments for the attainment of mutually satisfactory political relations. Negotiation or intercourse between nations through their representatives. The rules, customs, and privileges of representatives at foreign courts.

Diplomatic agent. In international law, a general name for all classes of persons charged with the negotiation, transaction, or superintendence of the diplomatic business of one nation with that of another. *See also* Ambassador.

Diplomatic relations. Established and formal communications and acknowledgment between one country and another in which diplomatic agents are exchanged.

Diplomatics. The science of diplomas, or of ancient writings and documents. The art of judging of ancient charters, public documents, diplomas, etc., and discriminating the true from the false.

Dipsomania /dipsəméyn(i)ya/. A mental disease characterized by an uncontrollable desire for intoxicating drinks. An irresistible impulse to indulge in intoxication, either by alcohol or other drugs.

Dipsomaniac /dipsəméyniyæk/. A person subject to dipsomania. One who has an irresistible desire for alcoholic liquors. *See* Insanity.

Diptycha /díptikə/. Diptychs; tablets of wood, metal, or other substance, used among the Romans for the purpose of writing, and folded like a book of two leaves. The diptychs of antiquity were especially employed for public registers. They were used in the Greek, and afterwards in the Roman, church, as registers of the names of those for whom supplication was to be made, and are ranked among the earliest monastic records.

Direct, *v.* To point to; guide; order; command; instruct. To advise; suggest; request.

Direct, *adj.* Immediate; proximate; by the shortest course; without circuitry; operating by an immediate connection or relation, instead of operating through a medium; the opposite of *indirect*. *Carter v. Carter Coal Co.*, App.D.C., 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed. 1160.

In the usual or natural course or line; immediately upwards or downwards; as distinguished from that which is out of the line, or on the side of it. In the usual or regular course or order, as distinguished from that which diverts, interrupts, or opposes. The opposite of cross, contrary, collateral or remote.

Without any intervening medium, agency or influence; unconditional.

Direct action. An action by insured directly against insurer rather than against tortfeasor's indemnity policy. *Hand v. Northwestern Nat. Ins. Co.*, 255 Ark. 802, 502 S.W.2d 474. Action by a stockholder to enforce right of action existing in him as contrasted with a derivative suit in behalf of corporation. *Citizens Nat'l Bank of St. Petersburg v. Peters*, Fla.App., 175 So.2d 54, 56.

Direct and proximate cause. *See* Direct cause.

Direct attack. A direct attack on a judgment or decree is an attempt, for sufficient cause, to have it annulled, reversed, vacated, corrected, declared void, or enjoined, in a proceeding instituted for that specific purpose, such as an appeal, writ of error, bill of review, or injunction to restrain its execution; distinguished from a collateral attack, which is an attempt to impeach the validity or binding force of the judgment or decree as a side issue or in a proceeding instituted for some other purpose. *Ernell v. O'Fiel*, Tex.Civ.App., 441 S.W.2d 653, 655. A direct attack on a judicial proceeding is an attempt to void or correct it in some manner provided by law. *Compare* Collateral attack.

Direct cause. That which sets in motion train of events which brings about result without intervention of any force operating or working actively from new and independent source; or, as one without which the injury would not have happened. *Norbeck v. Mutual of Omaha Ins. Co.*, 3 Wash.App. 582, 476 P.2d 546, 547. *See* Cause; Proximate cause.

Direct charge-off method. A method of accounting for bad debts whereby a deduction is permitted only when an account becomes partially or completely worthless.

Direct contempt. Such contempt consists of contumacious words or acts expressed in presence of court, while "indirect contempt" consists of similar misconduct or other disobedient acts performed outside court's presence. *State v. Wisniewski*, 103 N.M. 430, 708 P.2d 1031, 1035. *See also* Contempt.

Direct costs. Costs of direct material and labor, and variable overhead incurred in producing a product.

Direct damages. *See* Damages.

Directed verdict. In a case in which the party with the burden of proof has failed to present a prima facie case for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it, because, as a matter of law, there can be only one such verdict. *Fed.R.Civil P.* 50(a). In a criminal case, in federal court, the judge may render a judgment of acquittal in favor of defendant (in place of a motion for directed verdict, what has been abolished). *Fed.R.Crim.P.* 29. A directed verdict may be granted either on the court's own initiative or on the motion of a party. *See also* Verdict.

Direct estoppel. Form of estoppel by judgment where issue has been actually litigated and determined in action between same parties based upon same cause of action. *Napper v. Anderson et al.*, C.A.Tex., 500 F.2d 634, 636. *See also* Collateral estoppel doctrine.

Direct evidence. Evidence in form of testimony from a witness who actually saw, heard or touched the subject of questioning. *State v. Baker*, 249 Or. 549, 438 P.2d 978, 980. Evidence, which if believed, proves existence of fact in issue without inference or presumption. *State v. McClure*, Mo.App., 504 S.W.2d 664, 668. That means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact, and is distinguished from circumstantial evidence, which is often called "indirect." Direct evidence means evidence which in the first instance applies directly to the factum probandum, or which immediately points to a question at issue, or is evidence of the precise fact in issue and on trial by witnesses who can testify that they saw the acts done or heard the words spoken which constituted the precise fact to be proved.

Evidence that directly proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. *Calif.Evid.Code*.

Compare Circumstantial evidence.

Direct examination. The first interrogation or examination of a witness, on the merits, by the party on whose behalf he is called. The first examination of a witness upon a matter that is not within the scope of a previous examination of the witness. *Calif.Evid.Code*.

This is to be distinguished from an examination *in pais*, or on the *voir dire*, which is merely preliminary, and is had when the competency of the witness is challenged; from the cross-examination, which is conducted by the adverse party; and from the redirect examination which follows the cross-examination, and is had by the party who first examined the witness.

Compare Cross examination. *See also* Leading question; Redirect examination.

Direct financing. A means whereby a person obtains credit for the purchase or lease of property or services by getting a loan from a bank or other third person who is not the supplier of the property or services.

Direct injury. A wrong which directly results in the violation of a legal right and which must exist to permit a court to determine the constitutionality of an act of Congress.

Direct interest. A direct interest, such as would render the interested party incompetent to testify in regard to the matter, is an interest which is certain, and not contingent or doubtful. A matter which is dependent alone on the successful prosecution of an execution cannot be considered as uncertain, or otherwise than direct, in this sense.

Direction. The act of governing; management; superintendence. *Denton v. Yazoo & M. V. R. Co.*, Miss., 284 U.S. 305, 52 S.Ct. 141, 142, 76 L.Ed. 310. Also the body of persons (called "directors") who are charged with the management and administration of a corporation or institution.

The charge or instruction given by the court to a jury upon a point of law arising or involved in the case, to be

by them applied to the facts in evidence. *See* Jury instructions.

The clause of a bill in equity containing the address of the bill to the court.

That which is imposed by directing; a guiding or authoritative instruction; order; command. *Hughes v. Van Bruggen*, 44 N.M. 534, 105 P.2d 494, 496.

The line or course upon which anything is moving or aimed to move.

Direct line. *See* Descent.

Direct loss. One resulting immediately and proximately from the occurrence and not remotely from some of the consequences or effects thereof. *See* Loss.

Directly. In a direct way without anything intervening; not by secondary, but by direct, means.

Director. One who, or that which directs; as one who directs or regulates, guides or orders; a manager or superintendent, or a chief administrative official. *State ex inf. McKittrick v. Bode*, 342 Mo. 162, 113 S.W.2d 805, 808. *See* Directors.

Director of Public Prosecutions. An officer in England, either barrister or solicitor of ten years standing, under the supervision of the Attorney General, who undertakes prosecutions for murder and important cases as he sees fit. *Prosecution of Offenses Act, 1985*, as amended by the *Criminal Justice Act, 1987*.

Director of the Mint. An officer having the control, management, and superintendence of the United States Mint and its branches. He is appointed by the President, by and with the advice and consent of the senate.

Directors. Persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company. The whole of the directors collectively form the board of directors.

Board of directors. *See* Board of directors.

Directors liability insurance. *See* Insurance.

Inside director. Director who is an employee, officer or major stockholder of corporation.

Interlocking director. Person who is a director of more than one corporation having allied interests. *See* Interlocking directors.

Outside director. Non-employee director with no, or only minimal, direct interest in corporation.

Directory, adj. A provision in a statute, rule of procedure, or the like, which is a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed. The general rule is that the prescriptions of a statute relating to the performance of a public duty are so far directory that, though neglect of them may be punishable, yet it does not affect the validity of the acts done under them, as in the case of a statute requiring an officer to prepare and deliver a document to another officer on or before a certain day.

A "directory" provision in a statute is one, the observance of which is not necessary to the validity of the proceeding to which it relates; one which leaves it optional with the department or officer to which it is addressed to obey or not as he may see fit. Generally, statutory provisions which do not relate to essence of thing to be done, and as to which compliance is matter of convenience rather than substance are "directory," while provisions which relate to essence of thing to be done, that is, matters of substance, are "mandatory." *Rodgers v. Meredith*, 274 Ala. 179, 146 So.2d 308, 310.

Under a general classification, statutes are either "mandatory" or "directory," and, if mandatory, they prescribe, in addition to requiring the doing of the things specified, the result that will follow if they are not done, whereas, if directory, their terms are limited to what is required to be done. A statute is mandatory when the provision of the statute is the essence of the thing required to be done; otherwise, when it relates to form and manner, and where an act is incident, or after jurisdiction acquired, it is directory merely.

Directory trust. Where, by the terms of a trust, the fund is directed to be vested in a particular manner till the period arrives at which it is to be appropriated, this is called a "directory trust." It is distinguished from a discretionary trust, in which the trustee has a discretion as to the management of the fund.

Directory, n. Book containing names, addresses, and occupations of inhabitants of city. Also any list or compilation, usually in book or pamphlet form, of persons, professional organizations, firms or corporations forming some class separate and distinct from others, e.g. telephone directory, lawyer's directory, hotel directory, etc.

Direct payment. One which is absolute and unconditional as to the time, amount, and the persons by whom and to whom it is to be made.

Direct placement. With respect to securities offerings, the negotiation by a borrower, such as an industrial or utility company, directly with the lender, such as a life insurance company or group of investors, for sale of an entire issue of securities. No underwriter is involved and the transaction is exempt from SEC filing. This is also called a *private placement* (q.v.)

Direct selling. Selling directly to customer rather than to distributor or dealer; or to retailer rather than to wholesaler.

Direct tax. One that is imposed directly upon property, according to its value. It is generally spoken of as a property tax or an ad valorem tax. Distinguishable from an indirect tax which is levied upon some right or privilege.

Diribitores /dirəbətōriyz/. In Roman law, officers who distributed ballots to the people, to be used in voting.

Diriment impediments /dirəmənt impədēmənts/. In canon law, absolute bars to marriage, which would make it null *ab initio*.

Disability. The want of legal capability to perform an act. Term is generally used to indicate an incapacity for the full enjoyment of ordinary legal rights; thus, persons under age, insane persons, and convicts are said to be under legal disability. Sometimes the term is used in a more limited sense, as when it signifies an impediment to marriage, or the restraints placed upon clergymen by reason of their spiritual avocations, or lack of legal qualifications to hold office.

As used in connection with workers' compensation acts, disability is a composite of (1) actual incapacity to perform the tasks usually encountered in one's employment and the wage loss resulting therefrom (i.e. impairment of earning capacity), and (2) physical impairment of the body that may or may not be incapacitating. *Russell v. Bankers Life Co.*, 46 Cal.App.3d 405, 120 Cal.Rptr. 627, 633.

Statutory definition of a "disability," for social security benefits purposes, imposes three requirements: (1) that there be a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration; (2) that there be an inability to engage in any substantial gainful employment; and (3) that the inability be by reason of the impairment. 42 U.S.C.A. §§ 416(i)(1), 423(d). *Pierce v. Gardner*, C.A.III., 388 F.2d 846, 847. Inability to work without some pain or discomfort does not necessarily satisfy test of disability. *DeFontes v. Celebrezze*, 226 F.Supp. 327, 330 (D.C.R.I.). However, pain by itself or pain in conjunction with other injuries may be the basis for "disability" within meaning of the Social Security Act. *Farmer v. Weinberger*, D.C.Pa., 368 F.Supp. 1, 5.

Absence of competent physical, intellectual, or moral powers; impairment of earning capacity; loss of physical function that reduces efficiency; inability to work. *Rorabaugh v. Great Eastern Casualty Co.*, 117 Wash. 7, 200 P.2d 587, 590.

Under Uniform Probate Code, an incapacitated person is one who is impaired by reason of physical disability.

See also Capacity; Civil disabilities; Incapacity; Incompetency; Loss of earning capacity; Permanent injury; Temporary disability; Total disability.

General Classification

Disability may be either *general* or *special*; the former when it incapacitates the person for the performance of all legal acts of a general class, or giving to them their ordinary legal effect; the latter when it debars him from one specific act. Disability may also be either *personal* or *absolute*; the former where it attaches to the particular person, and arises out of his *status*, his previous act, or his natural or juridical incapacity; the latter where it originates with a particular person, but extends also to his descendants or successors. The term *civil* disability is used as equivalent to *legal* disability, both these expressions meaning disabilities or disqualifications created by positive law, as distinguished from *physical* disabilities. A *physical* disability is a disability or incapacity caused by physical defect or infirmity, or bodily

imperfection, or mental weakness or alienation; as distinguished from *civil* disability, which relates to the civil status or condition of the person, and is imposed by the law.

Partial disability. Under workers' compensation law, incapacity in part from returning to work performed before accident. Such exists if employee is unable to perform duties in which he was customarily engaged when injured or duties of same or similar character, nature, or description, but is able to engage in gainful activity at some job for which he is fitted by education, training or experience. *Daney v. Argonaut Ins. Co.*, La.App., 421 So.2d 331, 338.

Permanent disability. Incapacity forever from returning to work formerly performed before accident, though this incapacity may be either total or partial. *See also* Permanent disability.

Temporary disability. Temporary, as distinguished from permanent, disability is a condition that exists until the injured employee is as far restored as the permanent character of the injuries will permit.

Total disability. Total disability to follow insured's usual occupation arises where person is incapacitated from performing any substantial part of his ordinary duties, though still able to perform a few minor duties and be present at his place of business. "Total disability" within an accident policy does not mean absolute physical disability to transact any business pertaining to insured's occupation, but disability from performing substantial and material duties connected with it. The term may also apply to any impairment of mind or body rendering it impossible for insured to follow continuously a substantially gainful occupation without seriously impairing his health, the disability being permanent when of such nature as to render it reasonably certain to continue throughout the lifetime of insured. *See also* Permanent disability; Wholly disabled.

Disability clause. Provision in insurance policy calling for waiver of premiums during period of disability.

Disability compensation. Payments from public or private funds to one during period of disability and incapacity from work; *e.g.* social security or workers' compensation disability benefits.

Disability insurance. Insurance coverage purchased to protect insured financially during periods of incapacity from working. Often purchased by professionals.

Disability retirement. Plan of retirement which is invoked when person covered is disabled from working to normal retirement age or increased benefits when person retires because of disability.

Disable. Ordinarily, to take away the ability of, to render incapable of proper and effective action. *Federal Union Life Ins. Co. of Cincinnati, Ohio v. Richey's Adm'x*, 256 Ky. 262, 75 S.W.2d 767, 768. *See* Civil death; Disability.

In the old language of pleading, to disable is to take advantage of one's own or another's disability. Thus, it

was an express maxim of the common law that the party shall "not disable himself"; but "this disability to disable himself * * * is personal."

Disabled person. Person who lacks legal capacity to act *sui juris* or one who is physically or mentally disabled from acting in his own behalf or from pursuing occupation. *See* Civil death; Disability.

Disabling restraints. Restraints on alienation of property which are normally void as against public policy. *Lohmann v. Adams, Okl.*, 540 P.2d 552, 556.

Disabling statutes. English acts of parliament, restraining and regulating the exercise of a right or the power of alienation; the term is specially applied to 1 Eliz., c. 19, and similar acts restraining the power of ecclesiastical corporations to make leases.

Disadvocare. To deny a thing.

Disaffirm. To repudiate; to revoke a consent once given; to recall an affirmance. To refuse one's subsequent sanction to a former act; to disclaim the intention of being bound by an antecedent transaction.

Disaffirmance. The repudiation of a former transaction. The refusal by one who has the legal power to refuse (as in the case of a voidable contract), to abide by his former acts, or accept the legal consequences of them. It may either be "express" (in words) or "implied" from acts inconsistent with a recognition of validity of former transaction.

Disafforest /disəfōhrəst/. To restore to their former condition lands which have been turned into forests. To remove from the operation of the forest laws. 2 Bl. Comm. 416.

Disagreement. Difference of opinion or want of uniformity or concurrence of views; as, a disagreement among the members of a jury, among the judges of a court, or between arbitrators.

The refusal by a grantee, lessee, etc., to accept an estate, lease, etc., made to him. The annulling of a thing that had essence before. No estate can be vested in a person against his will. Consequently, no one can become a grantee, etc., without his *agreement*. The law implies such an agreement until the contrary is shown, but his disagreement renders the grant, etc., inoperative.

Disallow. To refuse to allow, to deny the need or validity of, to disown or reject.

Disalt /dāsólt/. To disable a person.

Disappropriation. In ecclesiastical law, this is where the appropriation of a benefice is severed, either by the patron presenting a clerk or by the corporation which has the appropriation being dissolved. 1 Bl. Comm. 385.

Disapprove. To pass unfavorable judgment upon; to refuse official approbation to; to disallow; to decline to sanction; to refuse to confirm, ratify or consent to.

Disaster. For common disaster, *see* Common.

Disaster loss. If a casualty is sustained in an area designated as a disaster area by the President of the U.S., the casualty is designated a disaster loss. In such an event, the disaster loss may be treated as having occurred in the taxable year immediately preceding the taxable year in which the disaster actually occurred. Thus, immediate tax benefits are provided to victims of a disaster. *See* Casualty loss.

Disavow /disəvaw/. To repudiate the unauthorized acts of an agent; to deny the authority by which he assumed to act.

Disbarment. Act of court in suspending attorney's license to practice law. A disbarment proceeding is neither civil nor criminal action; it is special proceeding peculiar to itself, disciplinary in nature, and of summary character resulting from inherent power of courts over their officers. *In re Prisock*, 244 Miss. 427, 143 So.2d 434, 436. *See also* Debarment.

Disbocatio /disbəkəysh(iy)ow/. In old English law, a conversion of wood grounds into arable or pasture; an assarting. *See* Assart.

Disbursement /disbərsmənt/. To pay out, commonly from a fund. To make payment in settlement of a debt or account payable.

D.I.S.C. Domestic International Sales Corporation (*q.v.*)

Discarcare /diskarkəriy/. In old English law, to discharge, to unload; as a vessel. *Carcare et discarcare*; to charge and discharge; to load and unload.

Discargare /diskargəriy/. In old European law, to discharge or unload, as a wagon.

Disceptio causæ /dəsəpsh(iy)ow kóziy/. In Roman law, the argument of a cause by the counsel on both sides.

Discharge. To release; liberate; annul; unburden; disincumber; dismiss. To extinguish an obligation (*e.g.* a person's liability on an instrument); terminate employment of person; release, as from prison, confinement or military service.

Discharge is a generic term; its principal species are rescission, release, accord and satisfaction, performance, judgment, composition, bankruptcy, merger.

In contract law, discharge occurs either when the parties have performed their obligations in the contract, or when events, the conduct of the parties, or the operation of law releases the parties from performing.

As applied to demands, claims, rights of action, incumbrances, etc., to discharge the debt or claim is to extinguish it, to annul its obligatory force, to satisfy it. And here also the term is generic; thus a debt, a mortgage, a legacy, may be discharged by payment or performance, or by any act short of that, lawful in itself, which the creditor accepts as sufficient. U.C.C. § 3-601 et seq. governs discharge of commercial instruments. To discharge a person is to liberate him from the binding force of an obligation, debt, or claim.

See also Performance; Release.

Bankruptcy. The release of a debtor from all of his debts which are provable in bankruptcy, except such as are excepted by the Bankruptcy Code. The discharge of the debtor is the step which regularly follows the filing of a petition in bankruptcy and the administration of his estate. By it the debtor is released from the obligation of all his debts which were or might be proved in the proceedings, so that they are no longer a charge upon him, and so that he may thereafter engage in business and acquire property without its being liable for the satisfaction of such former debts. Bankruptcy Code §§ 523, 524. *See also* Bankruptcy proceedings.

Constructive discharge. That which occurs when an employer deliberately makes an employee's working conditions so intolerable that the employee is forced into involuntary resignation. *Pittman v. Hattiesburg Municipal Separate School Dist.*, C.A.Miss., 644 F.2d 1071, 1077.

Contract. To cancel the obligation of a contract; to make an agreement or contract null and inoperative. As a noun, the word means the act or instrument by which the binding force of a contract is terminated, irrespective of whether the contract is carried out to the full extent contemplated (in which case the discharge is the result of *performance*) or is broken off before complete execution.

Criminal law. The act by which a person in confinement, held on an accusation of some crime or misdemeanor, is set at liberty.

Employment. To dismiss from employment; to terminate the employment of a person. *Hunn v. City of Madison Heights*, 60 Mich.App. 326, 230 N.W.2d 414, 418.

Equity practice. In the process of accounting before a master in chancery, the *discharge* is a statement of expenses and counter-claims brought in and filed, by way of set-off, by the accounting defendant; which follows the *charge* in order.

Jury. To discharge a jury is to relieve them from any further consideration of a cause. This is done when the continuance of the trial is, by any cause, rendered impossible; also when the jury, after deliberation, has rendered a verdict or cannot agree on a verdict.

Military discharge. The release or dismissal of a soldier, sailor, or marine, from further military service, either at the expiration of his term of enlistment, or previous thereto on special application therefor, or as a punishment. An "honorable" discharge is one granted at the end of an enlistment and accompanied by an official certificate of good conduct during the service. A "dishonorable" discharge is a dismissal from the service for bad conduct or as a punishment imposed by sentence of a court-martial for offenses against the military law. There is also in occasional use a form of "discharge without honor," which implies censure, but is not in itself a punishment.

Mortgage. Formal document which recites that a mortgage debt has been satisfied and which is generally

recorded in Registry of Deeds (or comparable recording body) or in other appropriate place for recording deeds to real estate.

Dischargeable claim. In bankruptcy, a claim which is barred by bankrupt's discharge if properly scheduled. See Bankruptcy Code § 727.

Disciplinary proceedings. Proceedings which are brought against attorney to secure his or her censure, suspension or disbarment for various acts of unprofessional conduct. Most states have procedural rules governing such proceedings including Disciplinary Rules for attorneys. See Code of Professional Responsibility; Disbarment; Disciplinary rules.

Disciplinary rules. Name of the Disciplinary Rules of the ABA Model Code of Professional Responsibility. They stated "the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action." These rules have been superseded by the ABA Model Rules of Professional Conduct (*q.v.*).

Discipline. Instruction, comprehending the communication of knowledge and training to observe and act in accordance with rules and orders.

Correction, chastisement, punishment, penalty. To bring order upon or bring under control.

Disclaimer. The repudiation or renunciation of a claim or power vested in a person or which he had formerly alleged to be his. The refusal, or rejection of an estate or right offered to a person. The disavowal, denial, or renunciation of an interest, right, or property imputed to a person or alleged to be his. Also the declaration, or the instrument, by which such disclaimer is published.

The rejection, refusal, or renunciation of a claim, power, or property. I.R.C. § 2518 sets forth the conditions required to avoid gift tax consequences as the result of a disclaimer.

See also Refusal; Renunciation; Repudiation.

Estates. The act by which a party refuses to accept an estate which has been conveyed to him.

Patents. When the title and specifications of a patent do not agree, or when part of that which it covers is not strictly patentable, because neither new nor useful, the patentee is empowered, with leave of the court, to enter a disclaimer of any part of either the title or the specification, and the disclaimer is then deemed to be part of the letters patent or specification, so as to render them valid for the future.

Pleading. In common law pleading, a renunciation by the defendant of all claim to the subject of the demand made by the plaintiff's bill. See also Denial.

Qualified disclaimer. A refusal by a person to accept an interest in property. A qualified disclaimer must be in writing and must be received by the transferor not later than 9 months from the time the interest is created. Once the property is accepted and enjoyed by the individual, the property can not be disclaimed.

Warranty. Words or conduct which tend to negate or limit warranty in sale of goods and which in certain

instances must be conspicuous and refer to specific warranty to be excluded. U.C.C. § 2-316.

"Disclaimer of warranties" is means of controlling liability of seller by reducing number of situations in which seller can be in breach of contract terms. *Collins Radio Co. of Dallas, Tex. v. Bell, Okl.App., 623 P.2d 1039, 1049.* See also Warranty.

Disclaimer clause. Device used to control seller's liability by reducing number of situations in which seller can be in breach of warranty. *Lecates v. Hertrich Pontiac Buick Co., Del.Super., 515 A.2d 163, 171.* See *e.g.* Warranty (*Limited warranty*).

Disclose. To bring into view by uncovering; to expose; to make known; to lay bare; to reveal to knowledge; to free from secrecy or ignorance, or make known. See Discovery.

Disclosure. Act of disclosing. Revelation; the impartation of that which is secret or not fully understood.

In patent law, the specification; the statement of the subject-matter of the invention, or the manner in which it operates.

In securities law, the revealing of certain financial and other information believed relevant to investors considering buying securities in some venture; the requirement that sufficient information be provided prospective investors so that they can make an intelligent evaluation of a security. See Prospectus.

Under Truth in Lending Act "disclosure" is a term of art which refers to the manner in which certain information (*e.g., total cost of loan*), deemed basic to an intelligent assessment of a credit transaction, shall be conveyed to the consumer. 15 U.S.C.A. § 1601 et seq. *Doggett v. Ritter Finance Co. of Louisa, D.C.Va., 384 F.Supp. 150, 153.* See Disclosure statement.

See Buried facts doctrine; Compulsory disclosure; Discovery; Freedom of Information Act; Full disclosure; Subpoena.

Disclosure by parties. Term sometimes used in law of deceit or fraud as to the obligation of parties to reveal fact which is material if its revelation is necessary because of the position of the parties to each other. See also Material fact.

Disclosure statement. The Federal Truth in Lending Act requires that the finance charge, annual percentage rate, number and amount of periodic payments, and other credit terms, be fully disclosed in consumer loan agreements. This is commonly done by means of a disclosure statement which accompanies or is made a part of the agreement. See also Truth in Lending Act.

Discommon /diskómøn/. To deprive commonable lands of their commonable quality, by inclosing and appropriating or improving them.

Discontinuance /diskántinyuwəns/. Ending, causing to cease, ceasing to use, giving up, leaving off. Refers to the termination or abandonment of a project, structure, highway, or the like.

The cessation of the proceedings in an action where the plaintiff voluntarily puts an end to it, either by giving notice in writing to the defendant before any step has been taken in the action subsequent to the answer, or at any other time by order of the court of a judge. A non-suit; dismissal. Under Rules practice, "dismissal" is appropriate term for discontinuance; may be voluntary or involuntary and may effect counterclaim, cross claim or third party claim. Costs may be assessed. Fed.R. Civil P. 41. *See* Dismissal.

In common law pleading, that technical interruption of the proceedings in an action which follows where a defendant does not answer the whole of the plaintiff's declaration, and the plaintiff omits to take judgment for the part unanswered.

Discontinuance of an estate. The termination or suspension of an estate-tail, in consequence of the act of the tenant in tail, in conveying a larger estate in the land than he was by law entitled to do. 2 Bl.Comm. 275; 3 Bl.Comm. 171. An alienation made or suffered by tenant in tail, or by any that, is seised in *autre droit*, whereby the issue in tail, or the heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter. The cesser of a seisin under an estate, and the acquisition of a seisin under a new and necessarily a wrongful title.

Disconvenable /diskɒnviːnəbəl/. L. Fr. Improper; unfit.

Discount. In a general sense, an allowance or deduction made from a gross sum on any account whatever. In a more limited and technical sense, the taking of interest in advance.

A deduction from an original price or debt, allowed for paying promptly or in cash. Method of selling securities (e.g., treasury bills) which are issued below face value and redeemed at face value. Difference between a bond's current market price and its face value. Reduction in normal selling price of goods.

The low initial interest rate lenders offer on adjustable-rate mortgages. It usually applies for one or two years. After the discount period ends, the rate usually increases, depending on the index used to determine the interest rate.

To purchase an instrument or other right to the payment of money, usually for an amount less than the face amount or value of the right.

A discount by a bank means a drawback or deduction made upon its advances or loans of money, upon negotiable paper or other evidences of debt payable at a future day, which are transferred to the bank. Although the discounting of notes or bills, in its most comprehensive sense, may mean lending money and taking notes in payment, yet, in its more ordinary sense, the discounting of such means advancing a consideration for a bill or note, deducting or discounting the interest which will accrue for the time the note has to run. Discounting by a bank means lending money upon a note, and deducting the interest or premium in advance. That step in lending transaction where interest

on loan is taken in advance by deducting amount therefor for term of loan, giving borrower face value of obligation less interest. *Russell v. Lumbermen's Mortg. Co.*, Com.Pl., 27 Ohio Misc. 171, 273 N.E.2d 803, 804.

See also Rebate; Rediscount; Rediscount rate.

Quantity discount. Allowed manufacturers or wholesalers for purchases in large amounts. Robinson Patman Act requires that such be justified by savings of seller.

Trade discount. Price reduction to different classes of customers; e.g. discount given by lumber dealers to builders and contractors.

Discount bond. A bond sold for less than face or maturity value. No interest is paid annually, but all interest accrues to the maturity date when it is paid.

Discount broker. A bill broker; one who discounts bills of exchange and promissory notes, and advances money on securities. A securities broker that executes buy and sell orders at rates lower than full service brokers.

Discount loan. A loan in which the bank deducts the interest in advance at the time the loan is made.

Discount market. Segment of the money market in which banks and other financial institutions trade commercial paper.

Discount rate. Percentage of the face amount of commercial paper which a holder pays when he transfers such paper to a financial institution for cash or credit. Rate charged for discounting loan. *See* Discount; Rediscount rate.

The rate of interest used in the process of finding present values (discounting).

The discount rate is the rate charged Federal Reserve System member banks for borrowing from the country's district Federal Reserve banks. The rate, which is set by the Federal Reserve Board, controls the supply of money available to banks for lending and provides a floor for interest rates.

Discount shares. Shares of stock issued as fully paid and nonassessable for less than the full lawful consideration. Par value shares issued for cash less than par value. Discount shares are considered a species of watered shares and may impose a liability on the recipient equal to the difference between the par value and the cash for which such shares were issued.

Discount stock. *See* Discount shares.

Discount yield. Yield on a security sold at a discount.

Discover. To uncover that which was hidden, concealed, or unknown from every one. To get first sight or knowledge of; to get knowledge of what has existed but has not theretofore been known to the discoverer. *Shellmar Products Co. v. Allen-Qualley Co.*, C.C.A.III., 87 F.2d 104, 108. Under U.C.C., refers to knowledge rather than reason to know. U.C.C. § 1-201(25). *See also* Discovery; Notice.

Discovered peril doctrine. The doctrine of discovered peril (or "last clear chance") is regarded as a limitation of, or an exception to, the general rule of contributory

negligence precluding a plaintiff's recovery. It is founded on considerations of public policy, deduced from humanitarian principles, which impose a moral duty upon everyone to avoid injuring another unnecessarily. The three essential elements which comprise the doctrine of discovered peril are: (1) the exposed condition brought about by the negligence of the plaintiff, (2) the actual discovery by defendant or his agents of plaintiff's perilous situation in time to have averted the injury by use of all means at their command commensurate with their own safety, and (3) failure thereafter to use such means. The party raising the issue of discovered peril must also prove that the opposing party's negligent conduct was a proximate cause of the injuries he sustained. *Welch v. Ada Oil Co.*, Tex.Civ.App., 302 S.W.2d 175, 179. *See also* Last clear chance doctrine.

Discover /diskóvərt/. Not married; not subject to the disabilities of a coverture. It applies equally to a maid and a widow.

Discovery. In a general sense, the ascertainment of that which was previously unknown; the disclosure or coming to light of what was previously hidden; the acquisition of notice or knowledge of given acts or facts; as, in regard to the "discovery" of fraud affecting the running of the statute of limitations, or the granting of a new trial for newly "discovered" evidence.

International law. As the foundation for a claim of national ownership or sovereignty, discovery is the finding of a country, continent, or island previously unknown, or previously known only to its uncivilized inhabitants.

Mining claim. *See* Mining location.

Patent law. The finding out some substance, mechanical device, improvement, or application, not previously known. It is something less than invention, and may be the result of industry, application, or be perhaps merely fortuitous. *A. O. Smith Corporation v. Petroleum Iron Works Co. of Ohio*, C.C.A.Ohio, 73 F.2d 531, 538.

Trial practice. The pre-trial devices that can be used by one party to obtain facts and information about the case from the other party in order to assist the party's preparation for trial. Under Federal Rules of Civil Procedure (and in states which have adopted rules patterned on such), tools of discovery include: depositions upon oral and written questions, written interrogatories, production of documents or things, permission to enter upon land or other property, physical and mental examinations and requests for admission. Rules 26-37. Term generally refers to disclosure by defendant of facts, deeds, documents or other things which are in his exclusive knowledge or possession and which are necessary to party seeking discovery as a part of a cause of action pending, or to be brought in another court, or as evidence of his rights or title in such proceeding. *Hardenbergh v. Both*, 247 Iowa 153, 73 N.W.2d 103, 106.

In *criminal* proceedings, "discovery" emphasizes right of defense to obtain access to evidence necessary to prepare its own case. *Britton v. State*, 44 Wis.2d 109, 170 N.W.2d 785, 789. Discovery and inspection in feder-

al criminal cases is governed by Fed.R.Crim.P. 16 and 26.2; most states having similar court rule or statutory discovery provisions.

See also Deposition; Fishing trip or expedition; Good cause; Inspection; Interrogatories; Jencks Act or Rule; Perpetuating testimony; Work product rule.

Discovery, bill of. In equity pleading, a bill for the discovery of facts resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power; but seeking no relief in consequence of the discovery, though it may pray for a stay of proceedings at law until the discovery is made.

Discovery rule. Under the "discovery rule," limitation statute in malpractice cases does not start to run, *i.e.*, the cause of action does not accrue, until the date of discovery of the malpractice, or the date when, by the exercise of reasonable care and diligence, the patient should have discovered the wrongful act. *Shinabarger v. Jatoi*, D.C.S.C., 385 F.Supp. 707, 710.

Discovery vein. *See* Vein.

Discredit. To destroy or impair the credibility of a person; to impeach; to lessen the degree of credit to be accorded to a witness or document, as by impugning the veracity of the one or the genuineness of the other; to disparage or weaken the reliance upon the testimony of a witness, or upon documentary evidence, by any means whatever. *See* Impeachment.

Discreetly. Prudently; judiciously; with discernment.

Discrepancy. A difference between two things which ought to be identical, as between one writing and another; a variance (*q.v.*). Also discord, discordance, dissonance, dissidence, unconformity, disagreement, difference.

Discretely. Separately; disjunctively.

Discretio est discernere per legem quid sit justum /diskrésh(iy)ow èst dəsérnəriy pər líyjəm kwid sit jústəm/. Discretion is to know through law what is just.

Discretio est scire per legem quid sit justum /diskrésh(iy)ow èst sáyriy pər líyjəm kwid sit jústəm/. Discretion consists in knowing what is just in law.

Discretion. When applied to public functionaries, discretion means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. As applied to public officers connotes action taken in light of reason as applied to all facts and with view to rights of all parties to action while having regard for what is right and equitable under all circumstances and law. *State v. Whitman*, R.I., 431 A.2d 1229, 1233.

In *criminal* law and the law of torts, it means the capacity to distinguish between what is right and wrong, lawful or unlawful, wise or foolish, sufficiently to render one amenable and responsible for his acts.

Wise conduct and management; cautious discernment, especially as to matters of propriety and self-control; prudence; circumspection; wariness.

See Discretionary acts.

Abuse of discretion. See Abuse (*Discretion*).

Judicial and legal discretion. These terms are applied to the discretionary action of a judge or court, and mean discretion bounded by the rules and principles of law, and not arbitrary, capricious, or unrestrained. It is not the indulgence of a judicial whim, but the exercise of judicial judgment, based on facts and guided by law, or the equitable decision of what is just and proper under the circumstances. It is a legal discretion to be exercised in discerning the course prescribed by law and is not to give effect to the will of the judge, but to that of the law. The exercise of discretion where there are two alternative provisions of law applicable, under either of which court could proceed. A liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of the law, and exercise of such discretion is reviewable only for an abuse thereof. *Manekas v. Allied Discount Co.*, 6 Misc.2d 1079, 166 N.Y.S.2d 366, 369. For "abuse of discretion", see Abuse.

Discretionary account. An account in which customer gives broker discretion, as to purchase and sales of securities or commodities, including selection, timing, and price to be paid or received. *Stevens v. Abbott, Proctor and Paine*, D.C.Va., 288 F.Supp. 836, 839.

Discretionary acts. Those acts wherein there is no hard and fast rule as to course of conduct that one must or must not take and, if there is clearly defined rule, such would eliminate discretion. *Elder v. Anderson*, 205 Cal.App.2d 326, 23 Cal.Rptr. 48, 51. Option open to judges and administrators to act or not as they deem proper or necessary and such acts or refusal to act may not be overturned without a showing of abuse of discretion, which means an act or failure to act that no conscientious person acting reasonably could perform or refuse to perform. One which requires exercise in judgment and choice and involves what is just and proper under the circumstances. *Burgdorf v. Funder*, 246 Cal. App.2d 443, 54 Cal.Rptr. 805. Compare Ministerial act. See also Discretion.

Discretionary damages. Those which are measureable by enlightened conscience of impartial jurors.

Discretionary function. See Discretionary acts.

Discretionary power. One which is not imperative or, if imperative, the time, manner, or extent of execution of which is left to donee's discretion. The power to do or to refrain from doing a certain thing. *City of San Antonio v. Zogheib*, Tex.Civ.App., 70 S.W.2d 333, 334.

Discretionary review. Form of appellate review which is not a matter of right but rather occurs only at the discretion of the appellate court; e.g. appeal to U.S. Supreme Court. See Certiorari.

Discretionary trusts. Such as are not marked out on fixed lines, but allow a certain amount of discretion in their exercise. Those which cannot be duly administered without the application of a certain degree of prudence and judgment. Trusts where the trustee or another party has the right to accumulate (rather than pay out) the income for each year. Depending on the terms of the trust instrument, such income may be accumulated for future distributions to the income beneficiaries or added to corpus for the benefit of the remainderman. See also Trust.

Discrimination. In constitutional law, the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between whom and those not favored no reasonable distinction can be found. Unfair treatment or denial of normal privileges to persons because of their race, age, sex, nationality or religion. A failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored. *Baker v. California Land Title Co.*, D.C.Cal., 349 F.Supp. 235, 238, 239.

Federal statutes prohibit discrimination in employment on basis of sex, age, race, nationality, religion, or being handicapped; e.g. Title VII of 1964 Civil Rights Act, Age Discrimination in Employment Act, Equal Pay Act, Sex Discrimination in Employment Based on Pregnancy Act. Other federal acts, as supplemented by court decisions, prohibit discrimination in voting rights, housing, extension of credit, public education, and access to public facilities.

With reference to common carriers, a breach of the carrier's duty to treat all shippers alike, and afford them equal opportunities to market their product. A carrier's failure to treat all alike under substantially similar conditions.

See also Age Discrimination Act; Bias; Disparate treatment; Equal protection clause; Equal protection of the law; Invidious discrimination; Price discrimination; Protected class; Redlining; Reverse discrimination.

Discussion. In the civil law, a proceeding, at the instance of a surety, by which the creditor is obliged to exhaust the property of the principal debtor, towards the satisfaction of the debt, before having recourse to the surety; and this right of the surety is termed the "benefit of discussion."

Disease. Deviation from the healthy or normal condition of any of the functions or tissues of the body. An alteration in the state of the body or of some of its organs, interrupting or disturbing the performance of the vital functions, and causing or threatening pain and weakness. Illness; sickness; disorder; malady; bodily infirmity. An illness or an abnormal state having a definite pattern of symptoms. See also Industrial disease; Occupational disease.

Disentailing deed /disentáyliŋ díyd/. In English law, an enrolled assurance barring an entail, pursuant to 3 & 4 Wm. IV, c. 74.

Disentailing statutes. Statutes dealing with or prohibiting the barring of the entail in a fee tail conveyance.

Disentailment. Act of barring the entail created by fee tail conveyance and consisting of a deed absolute in fee simple by the tenant in tail. In this case the grantee took the fee simple and the entail or right of the first born of the tenant in tail took nothing on the death of the tenant in tail.

Disfigurement. That which impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner. *See* Maim.

Disfranchise. To deprive of the rights and privileges of a free citizen; to deprive of chartered rights and immunities; to deprive of any franchise, as of the right of voting in elections, etc. In any election where the party system furnishes the means by which the citizen's right of suffrage is made effective, denial of his party's right to participate in the election accomplishes the "disfranchisement of voters" or compels them, if they vote, to vote for representatives of political parties other than that to which they belong, and the deprivation of the right of selection is a deprivation of the right of franchise. *Communist Party of United States of America v. Peek*, 20 Cal.2d 536, 127 P.2d 889, 894.

Disfranchisement. The act of disfranchising. The act of depriving a member of a corporation of his right as such, by expulsion. It differs from amotion (*q.v.*) which is applicable to the removal of an officer from office, leaving him his rights as a member.

In a more popular sense, the taking away of the elective franchise (that is, the right of voting in public elections) from any citizen or class of citizens.

Disgavel /disgævəl/. In English law, to deprive lands of that principal quality of gavelkind tenure by which they descend equally among all the sons of the tenant.

Disgrace. Ignominy; shame; dishonor.

Disgrading. In old English law, the depriving of an order or dignity.

Disguise, v. /dəskáyz/. To change the guise or appearance of, especially to conceal by unusual dress; to hide by a counterfeit appearance. To obscure the existence or true state or character of a person or thing.

Disguise, n. A counterfeit habit; a dress intended to conceal the person who wears it. Anything worn upon the person with the intention of so altering the wearer's appearance that he shall not be recognized by those familiar with him, or that he shall be taken for another person.

Disherson /dishé(h)rəzən/. Disinheritance; depriving one of an inheritance. Obsolete term.

Disheritor /dishéhrtər/. One who disinherits, or puts another out of his freehold. Obsolete term.

Dishonesty. Disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity. Lack of honesty, probity or integrity in principle; lack of fair-

ness and straightforwardness; disposition to defraud, deceive or betray. *Tucker v. Lower*, 200 Kan. 1, 434 P.2d 320, 324.

Dishonor. To refuse to accept or pay a draft or to pay a promissory note when duly presented. An instrument is dishonored when a necessary or optional presentment is duly made and due acceptance or payment is refused, or cannot be obtained within the prescribed time, or in case of bank collections, the instrument is seasonably returned by the midnight deadline; or presentment is excused and the instrument is not duly accepted or paid. U.C.C. § 3-507(1); § 4-210. Includes the insurer of a letter of credit refusing to pay or accept a draft or demand for payment. For bank's liability for wrongful dishonor, see U.C.C. § 4-402. *See also* Notice of dishonor; Protest.

As respects the flag, to deface or defile, imputing a lively sense of shaming or an equivalent acquiescent callousness. *State v. Schlueter*, 127 N.J.L. 496, 23 A.2d 249, 251. 18 U.S.C.A. § 700. *See* Deface; Defile.

Disincarcerate /disɪŋkɑrsəreɪt/. To set at liberty, to free from prison.

Disinfected. Made free from injurious or contagious diseases. Immunization.

Disinflation. Slowing down of rate at which prices increase. *Compare* Deflation.

Disinherison /disinhé(h)rəzən/. In the civil law, the act of depriving a forced heir of the inheritance which the law gives him. Disinherison is a testamentary disposition and not a mere penalty for lack of filial respect, but such a testamentary disposition is not self-operative and something more than its mere appearance in a will is required to give it effect.

Disinheritance /disinhéhɾədəns/. The act by which the owner of an estate deprives a person, who would otherwise be his heir, of the right to inherit it.

Disinter /disintər/. To exhume, unbury, take out of the grave.

Disinterested. Not concerned, in respect to possible gain or loss, in the result of the pending proceedings or transactions. Not having any interest in matter referred to or in controversy; free from prejudice or partiality; impartial or fair minded; without pecuniary interest; not previously interested; not biased or prejudiced. *Schipper & Block, Inc. v. Carson Pirie Scott & Co.*, 122 Ill.App.2d 34, 256 N.E.2d 854, 857. *Compare* Bias.

Disinterested witness. One who has no interest in the cause or matter in issue, and who is lawfully competent to testify.

Disintermediation. When free market interest rates exceed the regulated interest ceiling for time deposits, some depositors withdraw their funds and invest them elsewhere at a higher interest rate (*e.g.* in U.S. Treasury bills). This process is known as "disintermediation."

Disjunctim /dəsjŋktəm/. Lat. In the civil law, separately; severally. The opposite of *conjunctim* (*q.v.*).

Disjunctive allegation. A statement in a pleading or indictment which expresses or charges a thing alternatively, with the conjunction "or"; for instance, an averment that defendant "murdered or caused to be murdered", etc., would be of this character.

Disjunctive allegations of indictment are those which charge that defendant did one thing or another, and whenever the word "or" would leave averment uncertain as to which of two or more things is meant, it is inadmissible. *Austin v. State, Okl., 419 P.2d 569.*

In civil actions, relief in the alternative or of several different types may be demanded. *Fed.R.Civ.P. 8(a).* See *Alternative pleading.*

Disjunctive term. One which is placed between two contraries, by the affirming of one of which the other is taken away; it is usually expressed by the word "or".

Dislocation. To put out of proper place.

Disloyal. Not true to; unfaithful.

Dimes /dáympz/. Tenths; tithes (*q.v.*). The original form of "dime," the name of the American coin.

Dismiss. To send away; to discharge; to discontinue; to dispose of; to cause to be removed temporarily or permanently; to relieve from duty. To dismiss an action or suit without any further consideration or hearing. See also *Discharge.*

Dismissal. An order or judgment finally disposing of an action, suit, motion, etc., without trial of the issues involved. Such may be either voluntary or involuntary. *Fed.R. Civil P. 41.*

A release or discharge from employment.

Involuntary dismissal. Under rules practice, may be accomplished on court's own motion for lack of prosecution or on motion of defendant for lack of prosecution or failure to introduce evidence of facts on which relief may be granted. *Fed.R. Civil P. 41(b).*

Voluntary dismissal. Under rules practice, may be accomplished by plaintiff without leave of court if filed before answer or by stipulation signed by all parties after answer is filed. *Fed.R. Civil P. 41(a).*

Dismissal and nonsuit. Termination of case because of plaintiff's failure to prosecute or plaintiff's desire to discontinue.

Dismissal compensation. The payment of a specific sum, made by employer to employee for permanently terminating employment. Also called severance or separation pay.

Dismissal for cause. See *For cause.*

Dismissal without prejudice. Term meaning dismissal without prejudice to the right of the complainant to sue again on the same cause of action. The effect of the words "without prejudice" is to prevent the decree of dismissal from operating as a bar to a subsequent suit.

Dismissal with prejudice. Term meaning an adjudication on the merits, and final disposition, barring the right to bring or maintain an action on the same claim or cause. It is *res judicata* as to every matter litigated.

Dismissed for want of equity. A phrase used to indicate a decision on the merits, as distinguished from one based upon some formal defect. The dismissal may be because the averments of complainant's bill have been found untrue in fact, or because they are insufficient to entitle complainant to the relief sought. *Reinman v. Little Rock, 237 U.S. 171, 35 S.Ct. 511, 513, 59 L.Ed. 900.*

Dismortgage /dismórgəj/. To redeem from mortgage. See *Redemption.*

Disobedience. See *Civil disobedience; Civil disorder.*

Disobedient child. Child who may be adjudicated delinquent in some jurisdictions under law governing stubborn children. May be subject of petition as child in need of social services. Child who wilfully refuses to honor requests of parents or legal guardian or other person in whose custody he is. See also *Delinquent child.*

Disorder. Turbulent or riotous behavior; immoral or indecent conduct. The breach of the public decorum and morality. See also *Breach of the peace; Civil disobedience; Civil disorder; Riot; Unlawful assembly.*

A slight, partial, and temporary physical ailment. *Pacific Mut. Life Ins. Co. v. McCombs, 188 Ark. 52, 64 S.W.2d 333.*

Disorderly. Contrary to the rules of good order and behavior; violative of the public peace or good order; turbulent, riotous, or indecent.

Disorderly conduct. A term of loose and indefinite meaning (except when defined by statutes), but signifying generally any behavior that is contrary to law, and more particularly such as tends to disturb the public peace or decorum, scandalize the community, or shock the public sense of morality. An offense against public morals, peace or safety. *State v. Cherry, 185 Neb. 103, 173 N.W.2d 887, 888.* Disorderly conduct statutes must sufficiently specify the prohibited conduct or they may be held to be unconstitutional. *Baker v. Bindner, D.C. Ky., 274 F.Supp. 658.*

A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: (a) engages in fighting or threatening, or in violent or tumultuous behavior; or (b) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or (c) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor. *Model Penal Code, § 250.2.*

See also *Breach of the peace.*

Disorderly house. House or place where residents or inhabitants behave in such a manner as to become a nuisance to the neighborhood. One where acts are performed which tend to corrupt morals of community or promote breaches of peace. *Payne v. U. S., D.C.Mun. App., 171 A.2d 509, 511.* It has a wide meaning, and includes bawdy houses, gambling houses, houses of prostitution and places of a like character. At common law, it was misdemeanor to keep such house. *Burgess v. Johnson, 223 Ga. 427, 156 S.E.2d 78.* Under current

laws, such activity, generally, would constitute a breach of the peace or disorderly conduct. The *specific* acts (e.g. prostitution) might also be crimes.

Disorderly persons. Such as are dangerous or hurtful to the public peace and welfare by reason of their misconduct or vicious habits, and are therefore amenable to police regulation. The phrase is chiefly used in statutes, and the scope of the term depends on local regulations. One who violates peace and good order of society.

Disorderly picketing. See Unlawful picketing.

Disorientation. Inability to identify time, place or surroundings.

Disparagare /dispærægérij/. In old English law, to bring together those that are unequal (*dispaes conferre*); to connect in an indecorous and unworthy manner; to connect in marriage those that are unequal in blood and parentage.

Disparagatio /dispærægéysh(iy)ow/. In old English law, disparagement. *Hæredes maritentur absque disparagatione*, heirs shall be married without disparagement.

Disparagation /dispærægéyshən/. L. Fr. Disparagement; the matching an heir, etc., in marriage, under his or her degree or condition, or against the rules of decency.

Disparage /dæspærəj/. To connect unequally; to match unsuitably. To discredit one's person or property.

Disparagement /dæspærəjmənt/. In old English law, an injury by union or comparison with some person or thing of inferior rank or excellence. To discredit by marriage below one's class. Marriage without *disparagement* was marriage to one of suitable rank and character.

Matter which is intended by its publisher to be understood or which is reasonably understood to cast doubt upon the existence or extent of another's property in land, chattels or intangible things, or upon their quality.

A falsehood that tends to denigrate the goods or services of another party is actionable in a common law suit for disparagement. The same conduct is also actionable under certain state statutes and can form the basis for an F.T.C. complaint. There is no private federal cause of action for disparagement under the Lanham Act.

Disparagement of goods. A statement about a competitor's goods which is untrue or misleading and is made to influence or tends to influence the public not to buy. *Aerosonic Corp. v. Trodyne Corp.*, 402 F.2d 223, 231. See Disparagement.

Disparagement of title. Actionably tortious detraction from title for which person may be required to respond in damages. Injurious falsehood in which aspersion is cast on person's title to property. Publication made without privilege or justification of matter that is untrue and disparaging to another's property in land, chattels or intangible things under such circumstances as would lead reasonable man to foresee that conduct of

third person as purchaser or lessee thereof might be determined thereby and results in pecuniary loss from impairment of vendability thus caused. *Hill v. Allan*, 259 Cal.App.2d 470, 66 Cal.Rptr. 676, 689.

Disparaging instructions. Jury charge which tends to detract or defame person or party to litigation.

Disparate treatment. Differential treatment of employees or applicants on the basis of their race, color, religion, sex, national origin, handicap, or veteran's status. *Rich v. Martin Marietta Corp.*, D.C.Colo., 467 F.Supp. 587, 608.

Disparity. Marked difference in quantity or quality between two things or among many things.

Dispatch. A sending off, completion or settlement with speed.

In maritime law, diligence, due activity, or proper speed in the discharge of a cargo; the opposite of delay. *Customary dispatch* is such as accords with the rules, customs, and usages of the port where the discharge is made. *Dispatch money* is in the nature of a reward to charterer of ship for loading or unloading in shorter time than provided for or than stipulated as "lay days", *The West Nosska*, D.C.N.Y., 2 F.Supp. 547. *Quick dispatch* is speedy discharge of cargo without allowance for the customs or rules of the port or for delay from the crowded state of the harbor or wharf.

Dispauper /dispópər/. When a person, by reason of his poverty, is admitted to sue *in formâ pauperis*, and afterwards, before the suit be ended, acquires any lands, or personal estate, or is guilty of anything whereby he is liable to have this privilege taken from him, then he loses the right to sue *in formâ pauperis*, and is said to be dispaupered.

Dispel. To drive away by scattering, to clear away, to banish, to dissipate.

Dispensary. Place where a drug is prepared or distributed.

Dispensatio est mali prohibiti provida relaxatio, utilitate seu necessitate pensata; et est de jure domino regi concessa, propter impossibilitatem prævidendi de omnibus particularibus /dispenséysh(iy)ow èst málay prøhibétay prøváyðə rølækséysh(iy)ow, yuwtílátéytiy s(y)üw násèsátéytiy penséytə, èt èst diy júriy dómənow riyjay kənsésə, prøptər impøsbílátéytam priyvédénday diy ómnəbəs partikylérəbəs/. A dispensation is the provident relaxation of a *malum prohibitum* weighed from utility or necessity; and it is conceded by law to the king on account of the impossibility of foreknowledge concerning all particulars.

Dispensatio est vulnus, quod vulnerat jus commune /dispenséysh(iy)ow èst válnəs kwød válnræt jəs kəmyúwniy/. A dispensation is a wound, which wounds common law.

Dispensation. An exemption from some laws; a permission to do something forbidden; an allowance to omit something commanded; the canonistic name for a license. A relaxation of law for the benefit or advantage

of an individual. In the United States, no power exists, except in the legislature, to dispense with law; and then it is not so much a dispensation as a change of the law. *See also* Exemption.

Dispense. Etymologically, "dispense" means to weigh out, pay out, distribute, regulate, manage, control, etc., but when used with "with," it has, among other meanings, that of "doing without," and "doing away with," being synonymous with "abolish."

Dispersonare /dispərsənəriy/. To scandalize or disparage.

Displace. To crowd out; to take the place of. *Ford v. Department of Water and Power of City of Los Angeles*, 4 Cal.App.2d 526, 41 P.2d 188, 189.

Displaced person. Person left homeless in his own country because of war or for other reason.

Displacement. Shifting of emotional emphasis from one object to another as a means of disguising or avoiding unacceptable ideas or tendencies.

Display. An opening or unfolding, exhibition, manifestation, ostentatious show, exhibition for effect, parade. *20th Century Lites v. Goodman*, 64 Cal.App.2d Supp. 938, 149 P.2d 88, 91.

In copyright law, to "display" a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially. Copyright Act, 17 U.S.C.A. § 101.

As applied to printing, means a varying arrangement of lines, as by the use of unequal lengths or different styles or sizes of type faces; also matter thus printed. Display advertising means advertising not under specific headings in newspapers, magazines and trade papers. *Rust v. Missouri Dental Board*, 348 Mo. 616, 155 S.W.2d 80, 85.

Dispono /dispównow/. Lat. To dispose of, grant, or convey. *Disponet*, he grants or alienates. *Jus disponendi*, the right of disposition, *i.e.*, of transferring the title to property.

Disposable earnings. That portion of person's income which he is free to spend or invest as he sees fit after payment of taxes and other obligations.

Disposable portion. That portion of a man's property which he is free to dispose of by will to beneficiaries other than his wife and children. By the ancient common law, this amounted to one-third of his estate if he was survived by both wife and children. 2 Bl.Comm. 492. In the civil law (by the *Lex Falcidia*) it amounted to three-fourths.

Disposal. Sale, pledge, giving away, use, consumption or any other disposition of a thing. To exercise control over; to direct or assign for a use; to pass over into the control of someone else; to alienate, bestow, or part with.

Dispose of. To alienate or direct the ownership of property, as disposition by will. Used also of the determination of suits. To exercise finally, in any manner, one's power of control over; to pass into the control of someone else; to alienate, relinquish, part with, or get rid of; to put out of the way; to finish with; to bargain away. Often used in restricted sense of "sale" only, or so restricted by context.

Disposing capacity or mind. These are alternative or synonymous phrases in the law of wills for "sound mind," and "testamentary capacity" (*q.v.*).

Disposition. Act of disposing; transferring to the care or possession of another. The parting with, alienation of, or giving up property. *See* Bequeath; Testamentary (*Testamentary disposition*).

The final settlement of a matter, and with reference to decisions announced by court, judge's ruling is commonly referred to as disposition, regardless of level of resolution. *Western Line Consol. School Dist. v. Continental Cas. Co.*, N.D.Miss., 632 F.Supp. 295, 303.

In criminal procedure, the sentencing or other final settlement of a criminal case.

With respect to a mental state, means an attitude, prevailing tendency, or inclination.

Disposition hearing. Judicial proceeding in which a criminal defendant is sentenced or otherwise disposed of. *See* Sentencing.

Disposition without trial. The sentencing or other treatment of a criminal defendant who has pleaded guilty or admitted to sufficient facts for finding of guilty without a trial on the merits.

Dispositive facts. Jural facts, or those acts or events that create, modify or extinguish jural relations.

Dispossess. To oust a person from land by legal process (*e.g.*, eviction by landlord). To eject, to exclude from possession of realty. *See* Eviction; Forcible entry and detainer; Process (*Summary process*).

Dispossession. Ouster; a wrong that carries with it the amotion of possession. An act whereby the wrongdoer gets the actual occupation of the land or hereditament. It includes abatement, intrusion, disseisin, discontinuance, forfeiture.

Dispossess proceedings. Summary process by a landlord to oust the tenant and regain possession of the premises for nonpayment of rent or other breach of the conditions of the lease. *See also* Ejectment; Eviction; Forcible entry and detainer; Process (*Summary process*).

Disproportionate. Not pro rata or ratable.

Disprove. To refute; to prove to be false or erroneous; not necessarily by mere denial, but by affirmative evidence to the contrary.

Dispunishable. In old English law, not answerable. Not punishable; *e.g.* "This murder is dispunishable."

Disputable presumption. A species of evidence that may be accepted and acted upon when there is no other evidence to uphold contention for which it stands; and

when evidence is introduced supporting such contention, evidence takes place of presumption, and there is no necessity for indulging in any presumption. A rule of law to be laid down by the court, which shifts to the party against whom it operates the burden of evidence merely. *City of Montpelier v. Town of Calais*, 114 Vt. 5, 39 A.2d 350, 356. See *Presumption*.

Disputatio fori /dispyuwttéysh(iy)ow fóray/. In the civil law, discussion or argument before a court.

Dispute. A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined. See *Cause of action*; *Claim*; *Controversy*; *Justiciable controversy*; *Labor dispute*.

Disqualify. To divest or deprive of qualifications; to incapacitate; to render ineligible or unfit, as, in speaking of the "disqualification" of a judge by reason of his interest in the case, of a juror by reason of his holding a fixed preconceived opinion, or of a candidate for public office by reason of non-residence, lack of statutory age, previous commission of crime, etc.

Disrate /disréyt/. In maritime law, to deprive a seaman or petty officer of his "rating" or rank; to reduce to a lower rate or rank.

Disrationare, or **dirationare** /di(s)rèyshənériy/. To justify; to clear one's self of a fault; to traverse an indictment; to disprove.

Disregard. To treat as unworthy of regard or notice; to take no notice of; to leave out of consideration; to ignore; to overlook; to fail to observe.

Disregard of corporate entity. To treat a corporation as if it did not exist for tax or certain other liability purposes. In such event, each shareholder would account for an allocable share of all corporate transactions possessing tax or other liability consequences. See also *Piercing the corporate veil*.

Disrepair. The state of being in need of repair or restoration after decay or injury.

Disrepute. Loss or want of reputation; ill character; disesteem; discredit.

Disruptive conduct. Disorderly or contemptuous conduct generally within the framework of a judicial or quasi judicial proceeding. See *Contempt*.

Dissection /dəsékshən/. The act of cutting into pieces an animal or vegetable for the purpose of ascertaining the structure and use of its parts. The anatomical examination of a dead body by cutting into pieces or excising one or more parts or organs. The process of separating tissues along their natural lines of separation from each other; the act of separating into constituent parts for the purpose of critical examination.

Disseise /dəsiyz/. To dispossess; to deprive.

Disseisee /dəsiyzi/. One who is wrongfully put out of possession of his lands; one who is disseised.

Disseisin /dəsiyzən/. Dispossession; a deprivation of possession; a privation of seisin; a usurpation of the right of seisin and possession, and an exercise of such powers and privileges of ownership as to keep out or displace him to whom these rightfully belong. It is a wrongful putting out of him that is seised of the freehold, not, as in *abatement* or *intrusion*, a wrongful entry, where the possession was vacant, but an attack upon him who is in actual possession, and turning him out. It is an ouster from a freehold in deed, as *abatement* and *intrusion* are ousters in law.

When one man invades the possession of another, and by force or surprise turns him out of the occupation of his lands, this is termed a "disseisin," being a deprivation of that actual seisin or corporal possession of the freehold which the tenant before enjoyed. In other words, a disseisin is said to be when one enters intending to usurp the possession, and to oust another from the freehold. To constitute an entry a disseisin, there must be an ouster of the freehold, either by taking the profits or by claiming the inheritance.

Equitable disseisin is where a person is wrongfully deprived of the equitable seisin of land, e.g., of the rents and profits.

Disseisin by election is where a person alleges or admits himself to be disseised when he has not really been so.

Disseisinam satis facit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat /dəsiyzənəm sətəs féysət kwáy yúwtay nòn pərmitat pòwzesórəm, vèl máynəs kómədiy, láysət omnáynow nòn əkspélət/. He makes disseisin enough who does not permit the possessor to enjoy, or makes his enjoyment less beneficial, although he does not expel him altogether.

Disseisitrix /dəsiyzətrəks/. A female disseisor; a disseisress.

Disseisitus /dəsiyzətəs/. One who has been disseised.

Disseisor /dəsiyzər/. One who puts another out of the possession of his lands wrongfully. A settled trespasser on the land of another. *Flinn v. Blakeman*, 254 Ky. 416, 71 S.W.2d 961, 968.

Disseisress /dəsiyzərəs/. A woman who unlawfully puts another out of his land.

Dissemble /dəsémbəl/. To conceal by assuming some false appearance.

Dissensus /dəsénsəs/. Lat. In the civil law, the mutual agreement of the parties to a simple contract obligation that it shall be dissolved or annulled; technically, an undoing of the *consensus* which created the obligation.

Dissent /dəsént/. Contrariety of opinion; refusal to agree with something already stated or adjudged or to an act previously performed.

The term is most commonly used to denote the explicit disagreement of one or more judges of a court with the decision passed by the majority upon a case before them. In such event, the non-concurring judge is reported as

"dissenting." A dissent may or may not be accompanied by a dissenting opinion.

Ecclesiastical law. A refusal to conform to the rites and ceremonies of the established church.

Dissenter. One who dissents. For shareholder dissenter rights, see Appraisal remedy.

Dissentiente /dəsɛnʃiənti/ /dəsɛntiənti/. (Lat. dissenting.) Used with the name or names of one or more judges, it indicates a dissenting opinion in a case. *Nemine dissentiente* /nɛmənaɪ/. No one dissenting; unanimous.

Dissignare /disəgnəri/. In old law, to break open a seal.

Dissimulatione tollitur injuria. /dəsimɔləyʃiəwɔni tɔlətər injuriə/. An injury is extinguished by the forgiveness or reconciliation of the party injured.

Dissipate. To destroy or waste, as to expend funds foolishly. Also, to break up a crowd. See also Drain.

Dissolute. Loosed from restraint, unashamed, lawless, loose in morals and conduct, recklessly abandoned to sensual pleasures, profligate, wanton, lewd, debauched.

Dissolution. Act or process of dissolving; termination; winding up. In this sense it is frequently used in the phrase "dissolution of a partnership." See *Partnership, below*, this topic.

Contracts. The dissolution of a contract is the cancellation or abrogation of it by the parties themselves, with the effect of annulling the binding force of the agreement, and restoring each party to his original rights.

Corporation. The dissolution of a corporation is the termination of its legal existence. This may take place in several ways; as by act of the legislature, by surrender or forfeiture of its charter; by expiration of its charter by lapse of time; by proceedings for winding it up under the law; by loss of all its members or the reduction below the statutory limit; by bankruptcy. *Bruun v. Katz Drug Co.*, 351 Mo. 731, 173 S.W.2d 906, 909.

Dissolution of a corporation can be either *voluntary* (initiated and approved by board of directors and shareholders) or *involuntary*. Involuntary dissolutions may be "administrative" (e.g., by state for failure of corporation to file reports or pay certain taxes) or "judicial" (e.g., by attorney general for abuse of corporate authority; by shareholders because of deadlock in managements; by unpaid creditors) or can result from bankruptcy of corporation. Procedures for corporate dissolution are usually provided for in state statutes. See e.g. Rev. Model Bus. Corp. Act § 14.01 et seq.

See also Articles of dissolution; Liquidation.

Marriage. The act of terminating a marriage; divorce; but the term does not include annulment. *Deihl v. Jones*, 170 Tenn. 217, 94 S.W.2d 47, 48. See Divorce.

Partnership. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as

distinguished from the winding up of the business. Uniform Partnership Act, § 29.

Dissolution of parliament. The crown may dissolve parliament either in person or by proclamation; the dissolution is usually by proclamation, after a prorogation.

Dissolve. To terminate; abrogate; cancel; annul; disintegrate. To release or unloose the binding force of anything. As to "dissolve a corporation," see Dissolution.

Dissolving bond. A bond given to obtain the dissolution of a legal writ or process, particularly an attachment or an injunction, and conditioned to indemnify the opposite party or to abide the judgment to be given.

Dissuade. In criminal law, to advise and procure a person not to do an act.

To dissuade a witness from giving evidence against a person indicted is an indictable offense at common law.

Distance. A straight line along a horizontal plane from point to point and is measured from the nearest point of one place to the nearest point of another.

Distill. To subject to a process of distillation, i.e., vaporizing the more volatile parts of a substance and then condensing the vapor so formed. In law, the term is chiefly used in connection with the manufacture of intoxicating liquors.

Distilled liquor or distilled spirits. A term which includes all potable alcoholic liquors obtained by the process of distillation (such as whisky, brandy, rum, and gin).

Distiller. One who produces distilled spirits (i.e. alcoholic liquors) or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirit from any fermented substance.

Distillery. A place or building where alcoholic liquors are distilled or manufactured.

Distinct. Clear to the senses or mind; easily perceived or understood; plain; unmistakable. Evidently not identical; observably or decidedly different.

Distinguished by nature or station; not the same; different in the place or the like; separate; individual; that which is capable of being distinguished; actually divided or apart from other things. *Gavin v. Webb*, Tex. Civ. App., 99 S.W.2d 372, 379.

Distincte et aperte /dəstɪŋktɪj èt əpɔrti/. In old English practice, distinctly and openly. Formal words in writs of error, referring to the return required to be made to them.

Distinctively. Characteristically, or peculiarly, but not necessarily exclusively.

Distinctiveness. An essential element of a device claimed to be a trademark is that it identify the goods of a particular merchant and distinguish them from the goods of others. A word, symbol, shape, or color serving this purpose is said to be distinctive. Certain marks are inherently distinctive while others only acquire distinc-

tiveness over time (*see* Secondary meaning). A distinctive mark may lose its distinctiveness over time and become generic.

Distinguish. To point out an essential difference; to prove a case cited as applicable, inapplicable.

Distinguishing mark. A birth mark, scar, or other like feature which distinguishes a person. A mark on a ballot which takes away its secrecy. Any deliberate marking of ballot by voter that is not made in attempt to indicate his choice of candidates and which is also effective as mark by which his ballot may be distinguished.

In reference to trademark law, *see* Distinctiveness.

Distort. To twist out of natural or regular shape; to twist aside physically; to force or put out of true posture; to wrest, or deform.

Distracted person. A term used in the statutes of certain states to express a state of insanity.

Distractio /dəstrácksh(iy)ow/. Lat. In the civil law, a separation or division into parts; also an alienation or sale. Sometimes applied to the act of a guardian in appropriating the property of his ward.

Distractio bonorum /dəstrácksh(iy)ow bənórəm/. The sale at retail of the property of an insolvent estate, under the management of a curator appointed in the interest of the creditors, and for the purpose of realizing as much as possible for the satisfaction of their claim.

Distraction rule. If plaintiff's attention is diverted from known danger by a sufficient cause, under this rule the question of contributory negligence is for jury.

Distractio pignoris /dəstrácksh(iy)ow pignóres/. The sale of a thing pledged or hypothecated, by the creditor or pledgee, to obtain satisfaction of his claim on the debtor's failure to pay or redeem.

Distrahere /dəstréy(h)əriy/. To sell; to draw apart; to dissolve a contract; to divorce.

Distrain. To take as a pledge property of another, and keep it until he performs his obligation or until the property is replevied by the sheriff. Remedy used to secure an appearance in court, payment of rent, performance of services, etc. Also, any detention of personal property, whether lawful or unlawful, for any purpose. *See* Distrain; Distress.

Distrainer or distrainor. He who seizes property under a distress.

Distrain. Seizure; the act of distraining or making a distress. The inchoate right and interest which a landlord has in the property of a tenant located on the demised premises. Upon a tenant's default, a landlord may in some jurisdictions distrain upon the tenant's property, generally by changing the locks and giving notice, and the landlord will then have a lien upon the goods. The priority of the lien will depend on local law. *See* Distress.

Distress. A common-law right of landlord, now regulated by statute, to seize a tenant's goods and chattels in a nonjudicial proceeding to satisfy an arrears of rent.

The taking of goods and chattels out of the possession of a wrong-doer into the custody of the party injured to procure a satisfaction for a wrong committed; as for non-payment of rent. The taking of personal property by way of pledge, to enforce the performance of something due from the party distrained upon. *Hall v. Marshall*, 145 Or. 221, 27 P.2d 193. The taking of a defendant's goods, in order to compel an appearance in court.

Certain state statutes, insofar as they authorize distress for rents by landlords, have been held to be unconstitutional. *See e.g. Van Ness Industries v. Claremont Painting*, 129 N.J.Super. 507, 324 A.2d 102.

The seizure of personal property to enforce payment of taxes, to be followed by its public sale if the taxes are not voluntarily paid; also the thing taken by distraining, *i.e.* that which is seized to procure satisfaction.

See Distrain; Landlord's warrant.

Distress infinite. At common law, one that had no bounds with regard to its quantity, and could be repeated from time to time, until the stubbornness of the party was conquered. Such were distresses for realty or suit of court, and for compelling jurors to attend. 3 Bl.Comm. 231.

Distress warrant. A writ authorizing an officer to make a distrain; particularly, a writ authorizing the levy of a distress on the chattels of a tenant for non-payment of rent.

A power of attorney by which landlord delegates exercise of his right to his duly authorized agent. In re *Koizim*, D.C.N.J., 52 F.Supp. 357, 358.

Grand distress, writ of. A writ formerly issued in England in the real action of *quare impedit*, when no appearance had been entered after the attachment; it commanded the sheriff to distrain the defendant's lands and chattels in order to compel appearance. It is no longer used, 23 & 24 Vict., c. 126, § 26, having abolished the action of *quare impedit*, and substituted for it the procedure in an ordinary action.

Second distress. A supplementary distress for rent in arrear, allowed by law in some cases, where the goods seized under the first distress are not of sufficient value to satisfy the claim.

Distress and danger. The "distress" and "danger" to which a ship needs to be exposed to entitle its rescuer to salvage need not be actual or immediate, or the danger imminent and absolute. It is sufficient if at the time the assistance is rendered, the ship has encountered any damage or misfortune which might possibly expose her to destruction if the services were not rendered, or if a vessel is in a situation of actual apprehension though not of actual danger.

Distressed goods. Goods sold at a distressed sale.

Distressed property. Property that must be sold because of mortgage foreclosure or on probate of insolvent estate.

Distressed sale. Form of liquidation sale (e.g. "going out of business" sale) in which the seller receives less for his goods than he would under normal selling conditions.

Distributable net income (DNI). The measure that limits the amount of the distributions from estates and trusts that the beneficiaries thereof will have to include in income. Also, DNI limits the amount that estates and trusts can claim as a deduction for such distributions. I.R.C. § 643(a).

Distribute. To deal or divide out in proportion or in shares. *See* Distribution.

In criminal law, a person "distributes" a dangerous drug when he sells, transfers, gives or delivers to another, or leaves, barters or exchanges with another, or offers or agrees to do the same. *State v. Schofill*, 63 Haw. 77, 621 P.2d 364, 368.

Distributee /dəstribyuwtiy/. An heir; a person entitled to share in the distribution of an estate. This term is used to denote one of the persons who is entitled, under the statute of distributions, to the personal estate of one who is dead intestate. *See also* Beneficiary.

Distribution. The giving out or division among a number, sharing or parceling out, allotting, dispensing, apportioning.

Corporate. A direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise. *Rev. Model Bus. Corp. Act*, § 1.40.

Partnership. A payment by a partnership to a partner. The payment may be in the form of cash or property. A payment to a partner may be out of current earnings or it may be an advance against future earnings to provide cash flow to the partner. A distribution may also consist of the partners' capital in the event of the partners' liquidation. I.R.C. § 731.

Probate. The apportionment and division, under authority of a court, of the remainder of the estate of an intestate, after payment of the debts and charges, among those who are legally entitled to share in the same. *See* Distributive share.

Securities offering. A public offering of securities of an issuer, whether by an underwriter, statutory underwriter or by the issuer itself. Such offering may be *controlled*, i.e. an offering to the public of securities by selling stockholders or an issuer through a broker-dealer acting as an underwriter for such persons pursuant to a formal underwriting arrangement; or *uncontrolled*, i.e. an offering to the public of securities by selling stockholders on a random basis through any number of brokers who are willing to assist such persons; or an

offering to the public by such persons without the use of a broker.

Statutes of distribution. State laws prescribing the manner of the distribution of the estate of an intestate among his heirs or relatives.

Trust. The amount paid or credited to the beneficiaries of a trust. The payment may be in the form of cash or property and is generally income to the beneficiary. I.R.C. § 643(a).

Distribution in kind. A transfer of property "as is." If, for example, a corporation distributes land to its shareholders, a distribution in kind has taken place. A sale of land followed by a distribution of the cash proceeds would not be a distribution in kind of the land. *See also* Like-kind exchange.

Distribution in liquidation. Distribution of assets upon dissolution of corporation. Liquidating dividend is amount distributed in complete or partial liquidation of corporation and such amount is treated as in full payment for the stock of the corporation. I.R.C. § 331(a). *Compare* Nonliquidating distribution.

Distributive. That which exercises or accomplishes distribution; that which apportions, divides, and assigns in separate items or shares.

Distributive clause. That provision in trust which governs distribution of income and ultimate distributions or gifts over.

Distributive deviation. Distribution of principal to income beneficiaries for whom income is inadequate, without the consent of the remaindermen who are entitled to receive the entire principal at a later time under the terms of the trust.

Distributive finding of the issue. The jury are bound to give their verdict for that party who, upon the evidence, appears to them to have succeeded in establishing his side of the issue. But there are cases in which an issue may be found distributively, i.e., in part for plaintiff, and in part for defendant. Thus, in an action for goods sold and work done, if the defendant pleaded that he never was indebted, on which issue was joined, a verdict might be found for the plaintiff as to the goods, and for the defendant as to the work. *See also* Comparative negligence.

Distributive justice. *See* Justice.

Distributive share. The share or portion which a given heir receives on the legal distribution of an intestate estate; or from a dissolved partnership. *Helvering v. Enright's Estate*, 312 U.S. 636, 61 S.Ct. 777, 781, 85 L.Ed. 1093. Sometimes, by an extension of meaning, the share or portion assigned to a given person on the distribution of any estate or fund, as, under an assignment for creditors or under insolvency proceedings.

Distributor. Any individual, partnership, corporation, association, or other legal relationship which stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods. A wholesaler, jobber or other merchant middle-

man authorized by a manufacturer or supplier to sell chiefly to retailers and commercial users. *Aaron E. Levine & Co., Inc. v. Calkraft Paper Co.*, D.C.Mich., 429 F.Supp. 1039, 1046. *See also* Dual distributor.

District. One of the territorial areas into which an entire state or country, county, municipality or other political subdivision is divided, for judicial, political, electoral, or administrative purposes. *State ex rel. Schur v. Payne*, 57 Nev. 286, 63 P.2d 921, 925.

The circuit or territory within which a person may be compelled to appear. Circuit of authority; province.

As to Fire; Judicial; Land; Levee; Metropolitan; Mineral; Mining; Road; School; and Tax (*districts*), see those titles.

Congressional district. Geographical district of state which may send (vote) a representative to U.S. Congress.

District attorney. Under the state governments, the prosecuting officer who represents the state in each of its judicial districts. Also, the prosecuting officer of the United States government in each of the federal judicial districts. In some states, where the territory is divided, for judicial purposes, into sections called by some other name than "districts," the same officer is denominated "prosecuting attorney," "county attorney" or "state's attorney." *See also* United States Attorney; Prosecutor.

District clerk. The clerk of a district court of either a state or the United States.

District courts. Each state is comprised of one or more federal judicial districts, and in each district there is a district court. 28 U.S.C.A. § 81 *et seq.* The United States district courts are the trial courts with general Federal jurisdiction over cases involving federal laws or offenses and actions between citizens of different states. Each State has at least one district court, though many have several judicial districts (*e.g.* northern, southern, middle districts) or divisions. There is also a United States district court in the District of Columbia. In addition, the Commonwealth of Puerto Rico has a United States district court with jurisdiction corresponding to that of district courts in the various States. Only one judge is usually required to hear and decide a case in a district court, but in some kinds of cases it is required that three judges be called together to comprise the court (28 U.S.C.A. § 2284). In districts with more than one judge, the judge senior in commission who has not reached his seventieth birthday acts as the chief judge. *See* Diversity of citizenship; Federal question jurisdiction.

Also, name for inferior state courts of record having general jurisdiction.

District judge. The judge of a United States district court; also, in some states, the judge of a district court of the state.

District parishes. Ecclesiastical divisions of parishes in England, for all purposes of worship, and for the celebration of marriages, christenings, churchings, and burials, formed at the instance of the queen's commissioners for building new churches.

Legislative district. Geographical district which may send (vote) a representative to the state legislature.

Districting. Term refers to defining lines of electoral districts. *Moolenaar v. Todman*, D.C.Virgin Islands, 317 F.Supp. 226, 231. 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. *See* Apportionment; Reapportionment.

Districtio /distriksh(iy)ow/. Lat. A distress; a distraint.

District of Columbia. A territory situated on the Potomac river, and being the seat of government of the United States. It was originally ten miles square, and was composed of portions of Maryland and Virginia ceded by those states to the United States; but in 1846 the tract coming from Virginia was retroceded. Legally it is neither a state nor a territory, but is made subject, by the Constitution, to the exclusive jurisdiction of Congress.

Distringas /dəstriŋgəs/. In English practice, a writ formerly directed to the sheriff of the county in which a defendant resided or had any goods or chattels, commanding him to *distrain* upon the goods and chattels of the defendant for forty shillings, in order to compel his appearance. This writ issued in cases where it was found impracticable to get at the defendant personally, so as to serve a summons upon him.

A *distringas* was also used in equity, as the first process to compel the appearance of a corporation aggregate.

A form of execution in the actions of detinue and assise of nuisance.

Distringas juratores /dəstriŋgəs jürətōriyz/. In old English law, a writ commanding the sheriff to have the bodies of the jurors, or to *distrain* them by their lands and goods, that they may appear upon the day appointed. It issued at the same time with the *venire*, though in theory afterwards, founded on the supposed neglect of the juror to attend.

Distringas nuper vice comitem /dəstriŋgəs n(y)úwpər váysiy kómētəm/. In old English law, a writ to *distrain* the goods of one who lately filled the office of sheriff, to compel him to do some act which he ought to have done before leaving the office; as to bring in the body of a defendant, or to sell goods attached under a *fi. fa.*

Distringas vice comitem /dəstriŋgəs váysiy kómētəm/. In old English law, a writ of *distringas*, directed to the coroner, issued against a sheriff if he neglected to execute a writ of *venditioni exponas*.

Distringere /distriŋjəriy/. In feudal and old English law, to *distrain*; to *coerce* or *compel*.

Disturb. To throw into disorder; to move from a state of rest or regular order; to interrupt a settled state of; to throw out of course or order.

Disturbance. Any act causing annoyance, disquiet, agitation, or derangement to another, or interrupting his peace, or interfering with him in the pursuit of a lawful

and appropriate occupation or contrary to the usages of a sort of meeting and class of persons assembled that interferes with its due progress or irritates the assembly in whole or in part. *See* Disturbance of peace; Riot.

At common law, a wrong done to an incorporeal hereditament by hindering or disquieting the owner in the enjoyment of it. Blackstone enumerated five types of such disturbances: Disturbances of franchises, common, tenure, ways, and patronage. 3 Bl.Comm. 235.

Disturbance of common. At common law, the doing any act by which the right of another to his common is incommoded or diminished; as where one who has no right of common puts his cattle into the land, or where one who has a right of common puts in cattle which are not commonable, or surcharges the common; or where the owner of the land, or other person, incloses or otherwise obstructs it.

Disturbance of franchise. The disturbing or incommoding a man in the lawful exercise of his franchise, whereby the profits arising from it are diminished. 3 Bl.Comm. 236.

Disturbance of patronage. The hindrance or obstruction of a patron from presenting his clerk to a benefice. 3 Bl.Comm. 242.

Disturbance of peace. Interruption of the peace, quiet, and good order of a neighborhood or community, particularly by unnecessary and distracting noises. Conduct which tends to annoy all good citizens and which does in fact annoy anyone present not favoring it. *Com. v. Orlando, Mass.*, 359 N.E.2d 810. In some jurisdictions (e.g. Calif.) term includes an affray. "Breach of the peace" and "disturbing the peace" are synonymous terms. *People v. Cohen*, 1 C.A.3d 94, 81 Cal.Rptr. 503, 505. *See also* Breach of the peace; Disorderly conduct; Riot.

Disturbance of public meetings. It was a misdemeanor at common law to be guilty of conduct which tended to disturb a public assembly, though the prosecution, in most instances, was required to prove that the disturbance was caused wantonly or wilfully. In most jurisdictions there is statutory crime for such conduct and the disturbance need not be so turbulent as to constitute a riot.

Disturbance of public or religious worship. Any acts or conduct which interfere with the peace and good order of an assembly of persons lawfully met together for religious exercises.

Disturbance of tenure. In the law of tenure, disturbance was where a stranger, by menaces, force, persuasion, or otherwise, caused a tenant to leave his tenancy; this disturbance of tenure was an injury to the lord for which an action could lie.

Disturbance of ways. This happened where a person who had a right of way over another's ground by grant or prescription was obstructed by inclosures or other obstacles, or by plowing across it by which means he could not enjoy his right of way, or at least in so

commodious a manner as he might have done. 3 Bl. Comm. 241.

Ditching, diking, or tiling. Every kind of work necessary to convert parts of arid lands, particularly sagebrush lands, into farms and orchards,—the word "diking" as applied to arid regions implying a leveling of the land, and the term "clearing land" as applied to arid regions covered with sagebrush meaning not only the removal or the destruction of the brush but the plowing or breaking up of the roots as well.

Divers /dáyvərs/. Various, several, sundry; a collective term grouping a number of unspecified persons, objects, or acts.

Diversion. A turning aside or altering the natural course or route of a thing. The term is chiefly applied to the unauthorized change or alteration of a water course to the prejudice of a lower riparian, or to the unauthorized use of funds.

Diversion program. A disposition of a criminal defendant either before or after adjudication of guilt in which the court directs the defendant to participate in a work or educational program as part of a probation.

Diversité des cours /divərsətéy dèy kúr(t)s/. A treatise on courts and their jurisdiction, written in French in the reign of Edward III as is supposed, and by some attributed to Fitzherbert. It was first printed in 1525, and again in 1534.

Diversity /dəvərsətí/. In criminal pleading at common law, a plea by the prisoner in bar of execution, alleging that he was not the same who was attainted, upon which a jury was immediately impaneled to try the collateral issue thus raised, viz., the identity of the person, and not whether he was guilty or innocent, for that had been already decided. 4 Bl.Comm. 396.

Diversity jurisdiction. *See* Diversity of citizenship.

Diversity of citizenship. A phrase used with reference to the jurisdiction of the federal courts, which, under U.S.Const. Art. III, § 2, extends to cases between citizens of different states, designating the condition existing when the party on one side of a lawsuit is a citizen of one state, and the party on the other side is a citizen of another state, or between a citizen of a state and an alien. The requisite jurisdictional amount must, in addition, be met. 28 U.S.C.A. § 1332. *See* Outcome test.

Divert /dəvərt/. To turn aside; to turn out of the way; to alter the course of things. Usually applied to water-courses or to the unauthorized use of funds. *See* Diversion.

Dives /dáyviyz/. In the practice of the English chancery division, "dives costs" are costs on the ordinary scale, as opposed to the costs formerly allowed to a successful pauper suing or defending *in formâ pauperis*, which consisted only of his costs out of pocket.

Divest. Equivalent to divest (*q.v.*)

Divestitive fact /dəvəstətəv fækt/. Any act or event that extinguishes or modifies a jural relation.

Divestiture /dəvɛstətʃər/. In anti-trust law, the order of court to a defendant (e.g. corporation) to divest itself of property, securities or other assets. *U. S. v. E. I. duPont de Nemours and Co.*, 366 U.S. 316, 81 S.Ct. 1243, 6 L.Ed.2d 318. A firm's act of selling off one or more of its parts, such as a subsidiary, a plant, or certain assets that create productive capacity. Divestiture is sometimes mandated by the courts in merger and monopolization cases.

Divestment. In property law, the cutting short of an interest prior to its normal termination. Restatement, Second, Property, § 16. The complete loss of an interest in land (total divestment) or the partial loss of it by virtue of others sharing it (partial divestment).

Divide. To cut into parts, disunite, separate, keep apart. The term is synonymous with distribute.

Divide and pay over rule. Substance of such rule is that when the only words of gift are found in direction to divide or pay at a future time, use of such words imports a condition of survival, but if postponement of payment is for purpose of letting in an intermediate estate, then interest shall be deemed vested at death of testator and class of legatee is to be determined as of that date for futurity is not annexed to substance of the gift. In *re Bogart's Will*, 62 Misc.2d 114, 308 N.Y.S.2d 594, 602.

Divided court. Appellate court whose opinion or decision is not unanimous in a particular case. *See also* Division of opinion.

Divided custody. *See* Custody.

Dividend. The distribution of current or accumulated earnings to the shareholders of a corporation pro rata based on the number of shares owned. Dividends are usually issued in cash. However, they may be issued in the form of stock or property. The dividend on preferred shares is generally a fixed amount; however, on common shares the dividend varies depending on such things as the earnings and available cash of the corporation, as well as future plans for the acquisition of property and equipment by the corporation. *See also* Allocation of dividends.

Accumulated dividend. A cumulative dividend which has not been paid when due.

Asset dividend. Dividend paid in the form of an asset of the company; normally a product. *See Property dividend, below*.

Bond dividend. Type of dividend distribution which is rare but one in which the shareholder receives bonds instead of scrip, property or money.

Cash dividend. *See* that title.

Consent dividend. For purposes of avoiding or reducing the penalty tax on the unreasonable accumulation of earnings or the personal holding company tax, a corporation may declare a consent dividend. In a consent dividend no cash or property is distributed to the shareholders although the corporation obtains a dividends paid deduction. The consent dividend is taxed to the

shareholders and increases the basis in their stock investment. IRC § 565.

Constructive dividend. A taxable benefit derived by a shareholder from his or her corporation although such benefit was not designated as a dividend. Examples include unreasonable compensation, excessive rent payments, bargain purchases of corporate property, and shareholder use of corporate property. The pass-through of undistributed taxable income (i.e., UTI) to the shareholders of a Subchapter S corporation sometimes is referred to as a constructive dividend. Constructive dividends generally are a problem limited to closely-held corporations.

If a stockholder has an unqualified right to a dividend, such a dividend is called constructive for tax purposes though he does not actually receive it because it is subject to his demand and the corporation has set it aside for this purpose. *Clark v. C.I.R.*, C.A.Fed., 266 F.2d 698.

Cumulative dividend. A typical feature of preferred stock that requires any past-due preferred stock dividends to be paid before any common stock dividends can be paid. A dividend that if not paid annually (or periodically as provided in the stock certificate) will ultimately have to be paid before any common stock dividend can be paid. The arrearage is said to accumulate.

Deferred dividend. One declared, but due to be paid at some future date.

Deficiency dividend. Once the IRS has established a corporation's liability for the personal holding company tax in a prior year, the tax may be reduced or avoided by the issuance of a deficiency dividend under I.R.C. § 547. The deficiency dividend procedure is not available in cases where the deficiency was due to fraud with intent to evade tax or to a willful failure to file the appropriate tax return [§ 547(g)]. Nor does the deficiency dividend procedure avoid the usual penalties and interest applicable for failure to file a return or pay a tax.

Dividend addition. Something added to the policy in the form of paid-up insurance, and does not mean unapportioned assets or surplus. The term does not refer to dividends added directly to the loan value. *Anderson v. Liberty Life Ins. Co. of Topeka*, 149 Kan. 447, 87 P.2d 499, 502.

Ex-dividend. Term used by stock brokers, meaning that a sale of corporate stock does not carry with it the seller's right to receive his proportionate share of a dividend already declared and shortly payable. *See* Ex dividend.

Extra dividend. One paid in addition to regular dividends; normally because of exceptional profits of corporation during dividend period.

Extraordinary dividend. *See* that title.

Liquidation dividend. *See* that title.

Nimble dividends. Dividends paid out of current earnings at a time when there is a deficit in earned surplus

(or other financial account from which dividends may be paid). Some state statutes do not permit nimble dividends. These statutes require current earnings to be applied against prior deficits rather than being used to pay a current dividend.

Noncumulative dividends. See that title.

Passed dividend. Dividend not paid when due by company which has history of paying regular dividends.

Preferred dividend. One paid on the preferred stock of a corporation. A dividend paid to one class of shareholders in priority to that paid to another.

Property dividend. Consists of a portion of corporate property paid to shareholders instead of cash or corporate stock. See *Asset dividend, above*.

Scrip dividend. One paid in scrip, or in certificates of the ownership of a corresponding amount of capital stock of the company thereafter to be issued. Dividend paid in a short term promissory note which, in effect, divides profits but enables the corporation to postpone actual distribution of cash. *Billingham v. E. P. Gleason Mfg. Co.*, 101 A.D. 476, 91 N.Y.S. 1046.

Stock dividend. A dividend paid in the form of stock rather than cash. A stock dividend is usually expressed as a percentage of the number of shares already held by the shareholder. A corporation normally elects to issue a stock dividend in order to conserve cash. The tax advantage of a stock dividend to a shareholder is that a stock dividend is taxable at the time of sale, while a cash dividend is taxable when received.

Tax treatment. A nondeductible distribution to the shareholders of a corporation. A dividend constitutes gross income to the recipient if it is from the current or accumulated earnings and profits of the corporation. See also Dividend received deduction, *infra*.

Unpaid dividend. Dividends declared by a corporation, but not yet paid. Unpaid dividends are a liability on the balance sheet of a corporation.

Year-end dividend. Type of extra dividend paid at end of fiscal year with amount dependent on profits. See also *Extra dividend, above*.

Dividenda /divə'dendə/. An indenture; one counterpart of an indenture.

Dividend income. Species of gross income derived from dividend distribution and subject to tax. I.R.C. §§ 61(a)(7), 301(c).

Dividend received deduction. A deduction allowed a corporate shareholder for dividends received from a domestic corporation. As a result of the Tax Reform Act of 1986, corporations are allowed an 80% deduction for dividends received in 1987, and a deduction of 70% for dividends received after 1987. However, if the corporation owns more than 80% of the stock of the distributing corporation, the deduction allowed is 80%. I.R.C. §§ 243-246.

Dividend yield. The current annual dividend divided by the market price per share.

Divinare /divənəriy/. Lat. To divine; to conjecture or guess; to foretell. *Divinatio*, a conjecturing or guessing.

Divine laws. Those ascribed to God. See Natural law.

Divine right of kings. The right of a king to rule as posited by the patriarchal theory of government, especially under the doctrine that no misconduct and no dispossession can forfeit the right of a monarch or his heirs to the throne, and to the obedience of the people. This theory was in its origin directed, not against popular liberty, but against papal and ecclesiastical claims to supremacy in temporal as well as spiritual affairs.

Divine service. Divine service was the name of a feudal tenure, by which the tenants were obliged to do some special divine services in certain; as to sing so many masses, to distribute such a sum in alms, and the like. It differed from tenure in *frankalmoign*, in this: that, in case of the tenure by divine service, the lord of whom the lands were holden might distrain for its nonperformance, whereas, in case of *frankal moign*, the lord has no remedy by distraint for neglect of the service, but merely a right of complaint to the visitor to correct it.

Divisa /dəváyzo/. In old English law, a device, award, or decree; also a devise; also bounds or limits of division of a parish or farm, etc. Also a court held on the boundary, in order to settle disputes of the tenants.

Divisible. That which is susceptible of being divided.

Divisible contract. One which is in its nature and purposes susceptible of division and apportionment, having two or more parts in respect to matters and things contemplated and embraced by it, not necessarily dependent on each other nor intended by the parties so to be.

Divisible divorce. Decree of divorce may be divided as between provisions for support and alimony and provisions dissolving the marriage. Doctrine applied in cases under full faith and credit clause in connection with effect of foreign divorce on support provisions. *Rymanowski v. Rymanowski*, 105 R.I. 89, 249 A.2d 407.

Divisible obligation. See Obligation.

Divisible offense. One that includes one or more offenses of lower grade, *e.g.*, murder includes assault, battery, assault with intent to kill, and other offenses. See Lesser included offense.

Divisim /dəváyzəm/. In old English law, severally; separately.

Division. Act of distributing among a number. Portion of territorial area marked off for a particular purpose. Operating or administrative unit of government, court, business, or school system. Condition of being divided in opinion. Major military unit. Separation of members of a legislative body to take a vote. See also Range.

Division, action for. Action to compel obligee to divide his claim against debtors and collect as if each debtor were liable only for his portion. *Central Bank v. Winn Farmers Co-op.*, La.App., 299 So.2d 442, 445.

Divisional courts. Courts in England, consisting of two or (in special cases) more judges sitting to transact certain kinds of business which cannot be disposed of by one judge. There exist divisional courts of the Queen's Bench Division, Chancery Division, and Family Division. Established originally in 1873 and now governed by Supreme Court Act, 1981, § 66.

Divisional securities. Special type of securities issued to finance particular projects.

Division of opinion. In the practice of appellate courts, this term denotes such a disagreement among the judges that there is not a majority in favor of any one view, and hence no decision can be rendered on the case. But it also commonly denotes a division into two classes, one of which may comprise a majority of the judges; as when we speak of a decision having proceeded from a "divided court." See also Divided court.

Division of powers. See Separation of powers.

Division order. A direction and authorization to purchaser of oil to distribute purchase price in specified manner; its purpose is to assure that purchaser pays only those parties who are entitled to payment. *Blauzey v. Stein*, 61 Ohio St.2d 264, 15 O.O.3d 268, 400 N.E.2d 408, 410.

Divisum imperium /dəváyzəm ímpíriyəm/. Lat. A divided jurisdiction. Applied, e.g., to the jurisdiction of courts of common law and equity over the same subject.

Divorce. The legal separation of man and wife, effected by the judgment or decree of a court, and either totally dissolving the marriage relation, or suspending its effects so far as concerns the cohabitation of the parties.

See also Alimony; Equitable distribution; Ex parte divorce; Legislative divorce; Living separate and apart; Mail order divorce; Mexican divorce; Migratory divorce; Rabbinical divorce.

Divisible divorce. Decree of divorce may be divided as between provisions for support and alimony and provisions dissolving the marriage. Doctrine applied in cases under Full Faith and Credit Clause in connection with effect of foreign divorce on support provisions.

Divorce a mensa et thoro /dəvórs èy ménə èt θórow/. A divorce from table and bed, or from bed and board. A partial or qualified divorce, by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself.

Divorce a vinculo matrimonii /dəvórs èy víŋkyəlow mætrəmówniyay/. A divorce from the bond of marriage. A total, absolute divorce of husband and wife, dissolving the marriage tie, and releasing the parties wholly from their matrimonial obligations.

Divorce by consent (no-fault). Type of no-fault divorce in which parties are not required to prove fault or grounds for divorce beyond a showing of irretrievable breakdown of marriage or irreconcilable differences. The majority of states have no-fault divorce statutes in one form or another. See, e.g., Uniform Marriage and Divorce Act, §§ 302, 305.

Divorce from bed and board. See *Divorce a mensa et thoro*, above.

Foreign divorce. A divorce obtained out of the state or country where the marriage was solemnized.

Limited divorce. A divorce from bed and board; or a judicial separation of husband and wife not dissolving the marriage tie. See also Separation of spouses.

Migratory divorce. Term used to describe a divorce secured by a spouse or spouses who leave(s) his/their domicile and move(s) to, or reside(s) temporarily in, another state or country for purpose of securing the divorce. See also Ex parte divorce.

No-fault divorce. See *Divorce by consent*, above.

Parliamentary divorce. A divorce decreed by the British Parliament or by a legislative act in contrast to a divorce granted by a court. See *Lady's friend*.

Divorce proctors. Person, generally an attorney, appointed to protect children or the interests of the state in a divorce action. Uniform Marriage and Divorce Act, § 310.

Divortium dicitur a divertendo, quia vir divertitur ab uxore /dəvóresh(iy)əm dístətər èy dəyvərténdow, kwáyə vór dəvórtətər əb əksóriy/. Divorce is called from *divertendo*, because a man is diverted from his wife.

Divulge /dəvólj/. To disclose or make known, as to divulge secret or classified information.

D. J. An abbreviation for "District Judge."

DNA identification. DNA profiling or fingerprinting is an analysis of Deoxyribonucleic Acid (DNA) resulting in the identification of an individual's patterned chemical structure of genetic information. A method of determining distinctive patterns in genetic material in order to identify the source of a biological specimen, such as blood, tissue or hair. *Cobey v. State*, 80 Md.App. 31, 559 A.2d 391. A forensic technique used in criminal cases to identify, or rule out, crime suspect and in paternity cases to identify, or rule out, father of child. See e.g. Ann.Code of Md., Cts. & Jud.Proc. § 10-915.

Do /dów/. Lat. I give. The ancient and aptest word of feoffment and of gift.

Dock, v. To curtail or diminish, as to dock a person's wages for, e.g. lateness or poor work.

Dock, n. The cage or inclosed space in a criminal court where prisoners stand when brought in for trial.

Dockage. A charge against vessels for the privilege of mooring to the wharves or in the slips. A pecuniary compensation for the use of a dock while a vessel is undergoing repairs. See also Demurrage; Moorage.

Docket, v. To abstract and enter in a book. To make a brief entry of any proceeding in a court of justice in the docket.

Docket, n. A minute, abstract, or brief entry; or the book containing such entries. A formal record, entered in brief, of the proceedings in a court of justice. A book containing an entry in brief of all the important acts done in court in the conduct of each case, from its

inception to its conclusion. The name of "docket" or "trial docket" is sometimes given to the list or calendar of causes set to be tried at a specified term, prepared by the clerks for the use of the court and bar.

General Classification

An *appearance docket* is one in which the appearances in actions are entered, containing also a brief abstract of the successive steps in each action. A *bar docket* is an unofficial paper consisting of a transcript of the docket for a term of court, printed for distribution to members of the bar. An *execution docket* is a list of the executions sued out or pending in the sheriff's office. A *judgment docket* is a list or docket of the judgments entered in a given court, methodically kept by the clerk or other proper officer, open to public inspection, and intended to afford official notice to interested parties of the existence or lien of judgments. *See also* Judgment docket; Preferred dockets.

Civil docket. Fed.R. Civil P. 79(a), and analogous state rules, requires that the clerk keep a "civil docket" of all actions pending before the court. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the actions is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

Docket fee. An attorney's fee, of a fixed sum, chargeable with or as a part of the costs of the action, for the attorney of the successful party; so called because chargeable on the docket, not as a fee for making docket entries.

Dock-master. In England, an officer invested with powers within the docks, and a certain distance therefrom, to direct the mooring and removing of ships, so as to prevent obstruction to the dock entrances.

Dock receipt. Also known as dock warrant. A type of interim certificate issued by maritime shipping company upon delivery of goods at the dock, often entitling the designated person to have a bill of lading issued to him. Trade usage may in some cases entitle such paper to be treated as a document of title. If the receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt. *See also* Document (*Document of title*); Warehouse receipt.

Dock sale. Exists where a purchaser uses its owned or rented vehicles to take possession of the product at the seller's shipping dock. In most states, the sale is apportioned to the operating state of the purchaser, rather than the seller.

Dock warrant. *See* Dock receipt.

Doctor, v. To prescribe or treat medically or to treat as a doctor or physician.

Doctor, n. A learned man; one qualified to give instruction of the higher order in a science or art, particularly, one who has received the highest academical degree in his art or faculty, as, a doctor of laws, medicine, or theology. In colloquial language, however, the term is practically restricted to practitioners of medicine; *i.e.* physicians, surgeons.

Doctor-patient privilege. In law of evidence, right of patient to exclude from evidence communications made by him to his physician; recognized in most jurisdictions but sometimes limited; *e.g.* to communications to psychotherapist.

Doctrinal interpretation. *See* Interpretation.

Doctrine. A rule, principle, theory, or tenet of the law; as, *e.g.* Abstention doctrine; Clean hands doctrine, etc.

Document. An instrument on which is recorded, by means of letters, figures, or marks, the original, official, or legal form of something, which may be evidentially used. In this sense the term "document" applies to writings; to words printed, lithographed, or photographed; to maps or plans; to seals, plates, or even stones on which inscriptions are cut or engraved. In the plural, the deeds, agreements, title-papers, letters, receipts, and other written instruments used to prove a fact. As used as a verb, to support with documentary evidence or authorities.

Within meaning of the best evidence rule, document is any physical embodiment of information or ideas; *e.g.* a letter, a contract, a receipt, a book of account, a blueprint, or an X-ray plate. *Strico v. Cotto*, 67 Misc.2d 636, 324 N.Y.S.2d 483, 486. *See also* Documentary evidence.

See also Instrument.

Ancient documents. Deeds, wills, and other writings more than thirty years (twenty years under Fed.Evid.R. 803(16)) old are so called; they are presumed to be genuine without express proof, when coming from the proper custody.

Commercial law. Under U.C.C., any paper including document of title, security, invoice, certificate, notice of default and the like. U.C.C. § 5-103. *See also* Documentary draft.

Conflicts of law. (1) Whether a right is embodied in a document is determined by the law which governs the right. (2) As between persons who are not both parties to the conveyance, (a) the effect of a conveyance of a right embodied in a document depends upon the effect of the conveyance of the document; and (b) the effect of a conveyance of an interest in a document in which a right is embodied is determined by the law that would be applied by the courts of the state where the document was at the time of the conveyance. These courts would usually apply their own local law in determining such questions. Restatement, Second, Conflicts, § 249.

Document of title. A written description, identification or declaration of goods "which in the regular course of business or financing is treated as adequately evidencing

that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass." U.C.C. § 1-201(15). Examples are: bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods. *Id.* See also Order document; Order instrument.

Foreign document. One which was prepared or executed in, or which comes from, a foreign state or country.

Judicial documents. Proceedings relating to litigation. They are divided into (1) judgments, decrees, and verdicts; (2) depositions, examinations, and inquisitions taken in the course of a legal process; (3) writs, warrants, pleadings, etc., which are incident to any judicial proceedings.

Public document. A state paper, or other instrument of public importance or interest, issued or published by authority of congress or a state legislature. Also any document or record, evidencing or connected with the public business or the administration of public affairs, preserved in or issued by any department of the government. One of the publications printed by order of congress or either house thereof. Broadly any document open to public inspection.

Documentary credit. Credit which is extended on documents of title or other legal documents.

Documentary draft. A "documentary draft" or a "documentary demand for payment" is one the honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like. U.C.C. § 5-103(b).

Any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft. U.C.C. § 4-104(f).

Check with accompanying documents which are to be delivered when payment is made is "documentary draft." *Wiley v. Peoples Bank & Trust Co., C.A.Miss., 438 F.2d 513, 516.*

Documentary evidence. Evidence derived from conventional symbols (such as letters) by which ideas are represented on material substances. Such evidence as is furnished by written instruments, inscriptions, documents of all kinds, and also any inanimate objects admissible for the purpose, as distinguished from "oral" evidence, or that delivered by human beings *viva voce*. *People v. Purcell, 22 Cal.App.2d 126, 70 P.2d 706, 709.* See also Authentication; Document.

Documentary instructions. Term for written agreement between importer and exporter covering disposition of the various documents relating to the shipment, and disposition of the goods.

Documentary originals rule. See Best evidence.

Documentary stamp. Stamp required by federal (prior to 1968) and state law to be affixed to deeds and other documents of transfer before they may be recorded, the cost of which is generally governed by the consideration recited in the document. Federal Revenue Stamps were abolished in 1968.

Documentation. See Authorities.

DOD. Department of Defense.

Do, dico, addico /dów, díkow, ədíkow/. Lat. I give, I say, I adjudge. Three words used in the Roman law, to express the extent of the civil jurisdiction of the praetor. *Do* denoted that he gave or granted actions, exceptions, and judices; *dico*, that he pronounced judgment; *addico*, that he adjudged the controverted property, or the goods of the debtor, etc., to the plaintiff.

DOE. Department of Energy.

Doed-bana /débèynə/. In Saxon law, the actual perpetrator of a homicide.

Doe, John. The name of the fictitious plaintiff in certain types of actions; e.g. ejectment action. See also John Doe.

Dé office /d(ə) owfɪs/. L. Fr. Of office; in virtue of office; officially; in the discharge of ordinary duty.

Dog-draw. In old English forest law, the manifest apprehension of an offender against venison in a forest, when he was found drawing after a deer by the scent of a hound led in his hand; or where a person had wounded a deer or wild beast, by shooting at him, or otherwise, and was caught with a dog drawing after him to receive the same.

Dog-Latin. The Latin of illiterate persons. Latin words put together on the English grammatical system.

Dogma. Definite authoritative opinions or tenets. Formally stated and proclaimed doctrines on faith or morals. In the civil law, a word occasionally used as descriptive of an ordinance of the senate.

DOHSA. Death on High Seas Act.

Doing. The formal word by which *services* were reserved and expressed in old conveyances; as "rendering" (*reddendo*) was *expressive of rent*.

Doing business. Within statutes on service of process on foreign corporations, means equivalent to carrying on, conducting or managing business. A foreign corporation is "doing business", making it amenable to process within state, if it does business therein in such a manner as to warrant the inference that it is present there. Or that it has subjected itself to the jurisdiction and laws in which the service is made. The doing of business is the exercise in the state of some of the ordinary functions for which the corporation was organized. What constitutes "doing business" depends on the facts in each particular case. The general rule is that the business need only have certain "minimum contacts" with the state to make it amenable to process in that state. *International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95.* And,

such contacts may be as minimal as selling a single insurance contract. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223; *Hanson v. Denckla*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283. See also Long arm statutes; Minimal contacts.

The determination as to what constitutes "doing business" may differ as to whether the term is being used with reference to amenability to service of process or to taxation, and also may vary in definition from state to state.

Doitkin, or **doit** /dóyt(kən)/. A base coin of small value prohibited by Henry the Fifth. We still retain the phrase, in the common saying, when we would undervalue a man, that he is not worth a doit.

Do, lego. Lat. I give, I bequeath; or I give and bequeath. The formal words of making a bequest or legacy, in the Roman law. The expression is literally retained in modern wills.

Dolg /dólǵ/. Sax. A wound.

Dolg-bote /dólǵbówt/. A recompense for a scar or wound.

Doli. Lat. See *Dolus*.

Doli capax /dówlaj kéypæks/. Capable of malice or criminal intention; having sufficient discretion and intelligence to distinguish between right and wrong, and so to become amenable to the criminal laws.

Doli incapax /dówlaj inkéypæks/. Incapable of criminal intention or malice; not of the age of discretion; not possessed of sufficient discretion and intelligence to distinguish between right and wrong to the extent of being criminally responsible for his actions.

Dollar. The money unit employed in the United States of the value of one hundred cents, or of any combination of coins totalling 100 cents.

Dollar averaging. Investment term for practice of purchasing a fixed dollar amount of a given security at regular intervals.

Dolo /dówlow/. In Spanish law, bad or mischievous design.

Dolo facit qui petit quod redditurus est /dówlow féysət kwáj pétət kwód rədətúrəs ést/. He acts with guile who demands that which he will have to return.

Dolo malo pactumse non servaturum /dówlow málow páktámsiy nòn sərvt(ý)úrəm/. An agreement induced by fraud cannot stand.

Dolus versatur in generalibus /dəlówsəs vərséytər in jənəréyləbəs/. A person intending to deceive deals in general terms.

Dolum ex indiciis perspicuis probari convenit /dówləm èks indíshiyəs pərspíkyuwəs prówbéraj kənvíynət/. Fraud should be proved by clear tokens.

Dolus /dówləs/. In the civil law, guile; deceitfulness; malicious fraud. A fraudulent address or trick used to

deceive some one; a fraud. Any subtle contrivance by words or acts with a design to circumvent.

Such acts or omissions as operate as a deception upon the other party, or violate the just confidence reposed by him, whether there be a deceitful intent (*malus animus*) or not.

Fraud, willfulness, or intentionality. In that use it is opposed to *culpa*, which is negligence merely, in greater or less degree. The policy of the law may sometimes treat extreme *culpa* as if it were *dolus*, upon the maxim *culpa dolo comparatur*. A person is always liable for *dolus* producing damage, but not always for *culpa* producing damage, even though extreme.

Dolus auctoris non nocet successori /dówləs óktórəs nòn nósət sàksəsóraj/. The fraud of a predecessor prejudices not his successor.

Dolus bonus, dolus malus /dówləs bow-nəs/dówləs má-ləs/. In a wide sense, the Roman law distinguishes between "good," or rather "permissible" *dolus* and "bad" or fraudulent *dolus*. The former is justifiable or allowable deceit; it is that which a man may employ in self-defense against an unlawful attack, or for another permissible purpose, as when one dissembles the truth to prevent a lunatic from injuring himself or others. The latter exists where one intentionally misleads another or takes advantage of another's error wrongfully, by any form of deception, fraud, or cheating.

Dolus circuitu non purgatur /dówləs sərkyúwətuw nòn pərgéytər/. Fraud is not purged by circuitry.

Dolus dans locum contractui /dówləs dánz lówkəm kənráktuywáj/. Fraud (or deceit) giving rise to the contract; that is, a fraudulent misrepresentation made by one of the parties to the contract, and relied upon by the other, and which was actually instrumental in inducing the latter to enter into the contract.

Dolus est machinatio, cum aliud dissimulat aliud agit /dówləs ést məkənéysh(iy)ow kəm əliyəd dəsímýlət əliyəd éyjtət/. Deceit is an artifice, since it pretends one thing and does another.

Dolus et fraus nemini patrocinentur, (patrocinari derent) /dówləs èt frós némanay pətrówsənéntər ("pətrówsənérəy débənt)/. Deceit and fraud shall excuse or benefit no man.

Dolus latet in generalibus /dówləs léytət in jənəréyləbəs/. Fraud lurks in generalities.

Dolus versatur in generalibus /dówləs vərséytər in jənəréyləbəs/. Fraud deals in generalities.

Domain. The complete and absolute ownership of land; a paramount and individual right of property in land. Also the real estate so owned. The inherent sovereign power claimed by the legislature of a state, of controlling private property for public uses, is termed the "right of eminent domain." See *Condemnation*; *Eminent domain*.

National domain is sometimes applied to the aggregate of the property owned directly by a nation. Public domain embraces all lands, the title to which is in the

United States, including as well land occupied for the purposes of federal buildings, arsenals, dock-yards, etc., as land of an agricultural or mineral character not yet granted to private owners.

Sphere of influence. Range of control or rule; realm.

Dombec, domboc /dówmbúk/. (Sax. From *dom*, judgment, and *bec, boc*, a book.) Dome-book or doom-book. A name given among the Saxons to a code of laws. Several of the Saxon kings published *dombocs*, but the most important one was that attributed to Alfred. This is sometimes confounded with the celebrated *Domesday-Book*. See Dome-book; Domesday.

Dombrowski doctrine. Rule enunciated in *Dombrowski v. Pfister*, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22, to the effect that a person is entitled to an injunction in a federal court to prevent state officers from prosecuting or threatening to prosecute him under a state statute which is so broad and vague that it interferes with rights guaranteed by the First Amendment, U.S. Constitution.

Dome. (Sax.) Doom; sentence; judgment. An oath. The homager's oath in the black book of Hereford.

Dome-book. A book or code said to have been compiled under the direction of Alfred, for the general use of the whole kingdom of England; containing, as is supposed, the principal maxims of the common law, the penalties for misdemeanors, and the forms of judicial proceedings. It is said to have been extant so late as the reign of Edward IV, but is now lost. 1 Bl.Comm. 64, 65.

Domesday, domesday-book /dówmzdey búk/dúwmzdey°. (Sax.) An ancient record made in the time of William the Conqueror, and later remaining in the English exchequer, consisting of two volumes of unequal size, containing minute and accurate surveys of the lands in England. 2 Bl.Comm. 49, 50. The work was begun by five justices in each county in 1081, and finished in 1086.

Domesmen /dówmzmən/. (Sax.) In old English law, an inferior kind of judge. Men appointed to doom (judge) in matters in controversy. Suitors in a court of a manor in ancient demesne, who were judges there.

Domestic, n. A household servant.

Domestic, adj. Pertaining, belonging, or relating to a home, a domicile, or to the place of birth, origin, creation, or transaction.

As to *domestic* Administrators; Attachment; Commerce; Corporation; Creditor; Factor; Fixture; Judgment; and Manufacture, see those titles.

Domestic animals. Such as are habituated to live in or about the habitations of men, or such as contribute to the support of a family. Tamed animals; e.g. horses, sheep, dogs.

Domesticated. Made domestic or converted to domestic use; e.g. taming of wild horse.

Domestic authority. The right of parents and, by extension, the right of teachers, to discipline and compel

obedience to their lawful commands from their children. See Corporeal punishment.

Domestic bill. Draft which is payable in the state in which it is drawn, as contrasted with a foreign bill which is payable in another state.

Domestic corporation. When a corporation is organized and chartered in a particular state, it is considered a domestic corporation of that state. Term is used in contrast to foreign corporation which has been incorporated in another state, territory or country. For tax purposes, a corporation created or organized in the U.S. or under the law of the U.S. or any state or territory. I.R.C. § 7701(a)(4). Compare Foreign corporation.

Domestic courts. Those existing and having jurisdiction at the place of the party's residence or domicile.

Domestic exports. Goods originally grown, produced, or manufactured in the United States, in contrast to goods originally imported and then re-exported.

Domestic International Sales Corporation (DISC). A U.S. corporation, usually a subsidiary, whose income is primarily attributable to exports. Income tax on a certain percentage of a DISC's income is usually deferred resulting, generally, in a lower overall corporate tax for the parent than would otherwise be incurred. I.R.C. § 991 et seq.

Domestic jurisdiction. Power of court over a person or action within its district or state.

Domestic relations. That branch or discipline of the law which deals with matters of the household or family, including divorce, separation, custody, support and adoption.

Domestic servant. A person hired or employed primarily for the performance of household duties and chores, the maintenance of the home, and the care, comfort and convenience of members of the household. *Hardware Dealers Mut. Fire Ins. Co. v. King*, Tex.Civ.App., 408 S.W.2d 790, 791. See also Domestic.

Domesticus /dəméstəkəs/. In old European law, a *seneschal*, steward, or *major domo*; a judge's assistant; an assessor (*q.v.*).

Domicellus /dòməséləs/. In old English law, a better sort of servant in monasteries; also an appellation of a king's bastard.

Domicile. A person's legal home. That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. *Smith v. Smith*, 206 Pa.Super. 310, 213 A.2d 94. Generally, physical presence within a state and the intention to make it one's home are the requisites of establishing a "domicile" therein. *Montoya v. Collier*, 85 N.M. 356, 512 P.2d 684, 686. The permanent residence of a person or the place to which he intends to return even though he may actually reside elsewhere. A person may have more than one residence but only one domicile. The legal domicile of a person is important since it, rather than the actual residence, often controls the jurisdiction of

the taxing authorities and determines where a person may exercise the privilege of voting and other legal rights and privileges. The established, fixed, permanent, or ordinary dwellingplace or place of residence of a person, as distinguished from his temporary and transient, though actual, place of residence. It is his legal residence, as distinguished from his temporary place of abode; or his home, as distinguished from a place to which business or pleasure may temporarily call him. *See also* Abode; Residence.

"Citizenship," "habitation," and "residence" are severally words which in particular cases may mean precisely the same as "domicile," while in other uses may have different meanings.

"Residence" signifies living in particular locality while "domicile" means living in that locality with intent to make it a fixed and permanent home. *Schreiner v. Schreiner*, Tex.Civ.App., 502 S.W.2d 840, 843.

For purpose of federal diversity jurisdiction, "citizenship" and "domicile" are synonymous. *Hendry v. Masonite Corp.*, C.A.Miss., 455 F.2d 955.

Commercial domicile. A domicile acquired by the maintenance of a commercial establishment. A concept employed to permit taxation of property or activity of nonresident corporation by state in which managerial activities occurred in quantity and character sufficient to avoid contention of nonresident corporation that taxation of its activities and property located outside bounds of taxing state amounted to deprivation of property without due process. *North Baton Rouge Development Co., Inc. v. Collector of Revenue, La.*, 304 So.2d 293, 297.

Corporate domicile. Place considered by law as center of corporate affairs and place where its functions are discharged. *See also Commercial domicile, above.*

Domicile of choice. The essentials of "domicile" of choice are the fact of physical presence at a dwelling place and the intention to make that place home. *New York Trust Co. v. Riley*, 24 Del.Ch. 354, 16 A.2d 772, 776, 783, 785.

Domicile of origin. The home of the parents. That which arises from a man's birth and connections. The domicile of the parents at the time of birth, or what is termed the "domicile of origin," constitutes the domicile of an infant, and continues until abandoned, or until the acquisition of a new domicile in a different place. *Struble v. Struble*, Tex.Civ.App., 177 S.W.2d 279, 283.

Domicile of succession. As distinguished from a commercial, political, or forensic domicile, the actual residence of a person within some jurisdiction, of such a character as shall, according to the well-established principles of public law, give direction to the succession of his personal estate.

Domicile of trustee. Jurisdiction which appoints trustee is domicile of trustee.

Elected domicile. The domicile of parties fixed in a contract between them for the purposes of such contract.

Foreign domicile. A domicile established by a citizen or subject of one sovereignty within the territory of another.

Matrimonial domicile. The place where a husband and wife have established a home, in which they reside in the relation of husband and wife, and where the matrimonial contract is being performed.

Municipal domicile. One which as distinguished from "national domicile" and "quasi national domicile" (see those titles, *infra*), has reference to residence in a county, township, or municipality.

National domicile. The domicile of a person, considered as being within the territory of a particular nation, and not with reference to a particular locality or subdivision of a nation.

Natural domicile. The same as domicile of origin or domicile by birth.

Necessary domicile. That kind of domicile which exists by operation of law, as distinguished from voluntary domicile or domicile of choice.

Quasi national domicile. One involving residence in a state. *See also National domicile, above.*

Domiciled /dómæsəld/dómæsəyld/. Established in a given domicile; belonging to a given state or jurisdiction by right of domicile.

Domiciliary /dóməsíl(i)yəriy/. Pertaining to domicile; relating to one's domicile. Existing or created at, or connected with, the domicile of a suitor or of a decedent.

Domiciliary administration. Administration of estate in state where person was domiciled at time of death is deemed principal or primary administration and is ordinarily termed "domiciliary administration." *First Nat. Bank v. Blessing*, 231 Mo.App. 288, 98 S.W.2d 149, 151.

Domiciliate /dóməsíliyeyt/. To establish one's domicile; to take up one's fixed residence in a given place. To establish the domicile of another person whose legal residence follows one's own.

Domiciliation /dóməsíliyeyshən/. In Spanish law, the acquisition of domiciliary rights and status, nearly equivalent to naturalization, which may be accomplished by being born in the kingdom, by conversion to the Catholic faith there, by taking up a permanent residence in some settlement and marrying a native woman, and by attaching oneself to the soil, purchasing or acquiring real property and possessions.

Domicilium /dóməsíl(i)yam/. Lat. Domicile (*q.v.*)

Domigerium /dóməjériyam/. In old English law, power over another; also danger.

Domina (dame) /dómənə/. A title given to honorable women, who anciently, in their own right of inheritance, held a barony.

Dominant estate or tenement /dómənənt əstéyt/. Land that benefits from easement on another (usually adjacent) property. That to which a servitude or easement is due, or for the benefit of which it exists. A term used

in the civil and Scotch law, and later in ours, relating to servitudes, meaning the tenement or subject in favor of which the service is constituted; as the tenement over which the servitude extends is called the "servient tenement." That particular parcel of land that is benefited as a result of an easement on a servient estate.

Possessor of dominant estate is entitled to benefit of uses authorized by easement. In such case, easement is said to be appurtenant to dominant estate. *See also* Servient tenement.

Dominant tenant. The person who holds the benefit of an easement.

Dominant theme. Within meaning of requirement that before any material can be found to be obscene the dominant theme of material taken as a whole must appeal to prurient interest in sex means prevailing, governing, influencing or controlling idea. *State ex rel. Dowd v. "Pay the Baby Sitter"*, Com.Pl., 31 Ohio Misc. 208, 287 N.E.2d 650, 654. *See also* Obscene; Obscenity.

Dominate /dómənèyt/. To master, to rule, or to control. *Humble Oil & Refining Co. v. National Labor Relations Board*, C.C.A.5, 113 F.2d 85, 88, 90.

Dominatio /dómənèysh(iy)ow/. In old English law, lordship.

Dominical. That which denotes the Lord's day, or Sunday.

Dominicide /dómínəsàyd/. The act of killing one's lord or master.

Dominicum /dómínəkəm/. Lat. Domain; demain; demesne. A lordship. That of which one has the lordship or ownership. That which remains under the lord's immediate charge and control. In *Domesday Book* it meant the home farm as distinguished from the holdings of the tenants.

Property; domain; anything pertaining to a lord. In ecclesiastical law, a church, or any other building consecrated to God.

Dominicum antiquum /dómínəkəm æntáykwəm/. In old English law, ancient demesne.

Dominio /domiyniyow/. Sp. In Spanish law, a term corresponding to the most complete right of ownership. It is derived from the Latin *dominium* (q.v.). *Dominio alto*, eminent domain; *dominio directo*, immediate ownership; *dominio util*, beneficial ownership.

Dominion. Generally accepted definition of "dominion" is perfect control in right of ownership. The word implies both title and possession and appears to require a complete retention of control over disposition. *Eastex Aviation, Inc. v. Sperry & Hutchinson Co.*, C.A.Tex., 522 F.2d 1299, 1307. Title to an article of property which arises from the power of disposition and the right of claiming it.

Sovereignty; as the dominion of the seas or over a territory.

In the civil law, with reference to the title to property which is transferred by a sale of it, dominion is said to

be either "proximate" or "remote," the former being the kind of title vesting in the purchaser when he has acquired both the ownership and the possession of the article, the latter describing the nature of his title when he has legitimately acquired the ownership of the property but there has been no delivery.

See also Ownership; Title.

Dominium /dámíniyəm/. In the civil and old English law, ownership; property in the largest sense, including both the right of property and the right of possession or use.

The mere right of property, as distinguished from the possession or usufruct. The right which a lord had in the fee of his tenant.

Sovereignty or dominion. *Dominium maris*, the sovereignty of the sea.

Dominium directum /dámíniyəm dərèktəm/. In the civil law, strict ownership; that which was founded on strict law, as distinguished from equity. In later law, property without use; the right of a landlord. In feudal law, right or proper ownership; the right of a superior or lord, as distinguished from that of his vassal or tenant. The title or property which the sovereign in England is considered as possessing in all the lands of the kingdom, they being holden either immediately or mediately of him as lord paramount.

Dominium directum et utile /dámíniyəm dərèktəm èt yúwtəliy/. The complete and absolute dominion in property; the union of the title and the exclusive use.

Dominium eminens /dámíniyəm émənèn(d)z/. Eminent domain.

Dominium non potest esse in pendenti /dámíniyəm nòn pówtest èsiy in pèndéntay/. Lordship cannot be in suspense, i.e., property cannot remain in abeyance.

Dominium plenum /dámíniyəm plíynəm/. Full ownership; the union of the *dominium directum* with the *dominium utile*.

Dominium utile /dámíniyəm yúwtəliy/. In the civil law, equitable or praetorian ownership; that which was founded on equity. In later law, use without property; the right of a tenant. In feudal law, useful or beneficial ownership; the usufruct, or right to the use and profits of the soil, as distinguished from the *dominium directum* (q.v.) or ownership of the soil itself; the right of a vassal or tenant.

Domino volente /dómənow vəlèntiy/. Lat. The owner being willing; with the consent of the owner.

Dominus /dómənəs/. In feudal and ecclesiastical law, a lord, or feudal superior. *Dominus rex*, the lord the king; the king's title as lord paramount. *Dominus capitalis*, a chief lord. *Dominus medius*, a mesne or intermediate lord. *Dominus ligius*, liege lord or sovereign.

Lord or sir; a title of distinction. It usually denoted a knight or clergyman; and was sometimes given to a gentleman of quality, though not a knight, especially if he were lord of a manor.

The owner or proprietor of a thing, as distinguished from him who uses it merely. A master or principal, as distinguished from an agent or attorney.

In the civil law, a husband; a family.

Dominus capitalis loco hæredis habetur, quoties per defectum vel delictum extinguitur sanguis sui tenentis /dómənəs kəpətéyləs lówkow hæriydəs hæbiytər, kwówsdiyiz pər dəfəktəm vél dəliktəm ekstingwətər səngwəs s(y)úway tənéntəs/. The supreme lord takes the place of the heir, as often as the blood of the tenant is extinct through deficiency or crime.

Dominus litis /dómənəs láytəs/. Lat. The master of the suit; *i.e.*, the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate. But the term is also applied to one who, though not originally a party, has made himself such, by intervention or otherwise, and has assumed entire control and responsibility for one side, and is treated by the court as liable for costs. *Virginia Electric & Power Co. v. Bowers*, 181 Va. 542, 25 S.E.2d 361, 363.

Dominus navis /dómənəs néyvəs/. In the civil law, the owner of a vessel.

Dominus non maritabit pupillum nisi semel /dómənəs nòn mərətéybət pyuwplám náysay séməl/. A lord cannot give a ward in marriage but once.

Dominus rex nullum habere potest parem, multo minus superiorem /dómənəs réks nóləm hábiri pówtəst pərəm, máltoiw máynəs səpiriyóram/. The king cannot have an equal, much less a superior.

Domitæ /dómətiy/. Lat. Tame; domesticated; not wild. Applied to domestic animals, in which a man may have an absolute property. 2 Bl.Comm. 391.

Dommages intéréts. In French law, damages.

Domo reparanda /dówmow rəpərəndə/. A writ that lay for one against his neighbor, by the anticipated fall of whose house he feared a damage and injury to his own.

Dom. Proc. An abbreviation of *Domus Procerum* or *Domo Procerum*; the house of lords in England. Sometimes expressed by the letters D. P.

Domus /dówməs/. Lat. In the civil and old English law, a house or dwelling; a habitation. *Shreveport Long Leaf Lumber Co. v. Wilson*, D.C.La., 38 F.Supp. 629, 631. See *Domicile*.

Domus conversorum /dówməs kɔnvərsóram/. An ancient house built or appointed by King Henry III for such Jews as were converted to the Christian faith; but King Edward III, who expelled the Jews from the kingdom, deputed the place for the custody of the rolls and records of the chancery.

Domus dei /dówməs díyay/. The house of God; a name applied to many hospitals and religious houses.

Domus procerum /dó(w)məs pró(w)səram/. The house of lords, abbreviated into *Dom. Proc.*, or *D. P.*

Domus sua cuique est tutissimum refugium /dówməs s(y)úwə k(yu)wáykwiy èst tyuwtsíməm rəfyúwjiyəm/. To every man his own house is his safest refuge. The house of every one is to him as his castle and fortress, as well for his defense against injury and violence as for his repose. A man's dwellinghouse is his castle, not for his own personal protection merely, but also for the protection of his family and his property therein.

Domus tutissimum cuique refugium atque receptaculum sit /dówməs tyuwtsíməm k(yu)wáykwiy rəfyúwjiyəm ətkwiy rəsəptəkyləm sít/. A man's house should be his safest refuge and shelter. The habitation of each one is an inviolable asylum for him. A maxim of the Roman law.

Dona clandestina sunt semper suspiciosa /dównə klændəstáynə sənt sémper səspishiyówsə/. Clandestine gifts are always suspicious.

Donari videtur, quod nullo jure cogente conceditur /dównəray vadiytər kwód nólów júriy kajéntiy kənsiydətər/. A thing is said to be given when it is yielded otherwise than by virtue of right (that is considered to be given which is granted when no law compels).

Donatarius /dównətəriyəs/. A donee; one to whom something is given. See *Donee*.

Donated stock. Securities given to a corporation by its own stockholders commonly for resale.

Donated surplus. Contribution of assets to a corporation generally in the form of stock from its stockholders.

Donatio /dównéysh(iy)ow/. Lat. A gift. A transfer of the title to property to one who receives it without paying for it. The act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another person, without any consideration.

By the civil law (adopted into the English and American law) donations are either *inter vivos* (between living persons) or *mortis causa* (in anticipation of death). As to these forms, see *infra*. A *donatio* or gift as between living persons is called *donatio mera* or *pura* when it is a simple gift without compulsion or consideration, that is, resting solely on the generosity of the donor, as in the case of most charitable gifts. It is called *donatio remuneratoria* when given as a reward for past services, but still not under any legal compulsion, as in the case of pensions and land-grants. It is called *donatio sub modo* (or *modalis*) when given for the attainment of some special object or on condition that the donee shall do something not specially for the benefit of the donor, as in the case of the endowment of hospitals, colleges, etc., coupled with the condition that they shall be established and maintained. The following terms are also used: *Donatio conditionalis*, a conditional gift; *donatio relata*, a gift made with reference to some service already done, *donatio stricta et coarctura*, a restricted gift, as an estate tail.

Donatio causa mortis. A gift of personal property made by a party in expectation of death, then imminent, subject to condition that donor die as anticipated; establishment of gift calls for proof of delivery. Scherer v. Hyland, 75 N.J. 127, 380 A.2d 698, 700. See Donatio mortis causa.

Donatio inofficiosa /dòwnéysh(iy)ow inəfis(h)iyówsə/. An inofficious (undutiful) gift; a gift of so great a part of the donor's property that the birthright portion of his heirs is diminished.

Donatio inter vivos /dòwnéysh(iy)ow íntər váyvovs/. A gift between the living. The ordinary kind of gift by one person to another. A term derived from the civil law. A donation *inter vivos* (between living persons) is an act by which the donor divests himself at present and irrevocably of the thing given in favor of the donee who accepts it.

There are three kinds of "donations inter vivos", namely, "gratuitous donations", "onerous donations", and "remunerative donations", the first being based on mere liberality, the second being burdened with charges imposed by the donee, and the third being recompense for services rendered. White v. White, La.App., 7 So.2d 255, 257.

Donatio mortis causa /dòwnéysh(iy)ow mórtəs kózə/. A gift made by a person in sickness, who, apprehending his death, delivers, or causes to be delivered, to another the possession of any personal goods, to keep as his own in case of the donor's decease. The civil law defines it to be a gift under apprehension of death; as when anything is given upon condition that, if the donor dies, the donee shall possess it absolutely, or return it if the donor should survive or should repent of having made the gift, or if the donee should die before the donor. A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver. A donation *mortis causa* (in prospect of death) is an act to take effect when the donor shall no longer exist, by which he disposes of the whole or a part of his property, and which is revocable. See Contemplation of death.

Donation. A gift (*q.v.*). See Donatio.

In ecclesiastical law, a mode of acquiring a benefice by deed of gift alone, without presentation, institution, or induction.

Donation lands. Lands granted from the public domain to an individual as a bounty, gift, or donation; particularly, in early Pennsylvania history, lands thus granted to soldiers of the revolutionary war.

Donatio non præsuntur /downéysh(iy)ow nòn prəz-(y)úwmətər/. A gift is not presumed.

Donationum alia perfecta, alia incepta et non perfecta, ut si donatio lecta fuit et concessa, ac traditio nondum fuerit subsecuta /dənéyshiyównəm éyl(i)yə pərféktə, éyl(i)yə inéptə èt nòn pərféktə, èt sày downéysh(iy)ow léktə fyúwət èt kənsésə, àk trədísh(iy)ow nòndəm fyúwəst sàbsəkyúwtə/. Some gifts are perfect,

others incipient and not perfect as if a gift were read and agreed to, but delivery had not then followed.

Donatio perficitur possessione accipientis /downéysh(iy)ow pərfísətər pəzəshiyówniy əksipiyéntəs/. A gift is perfected [made complete] by the possession of the receiver. A gift is incomplete until possession is delivered.

Donatio principis intelligitur sine præjudicio tertii /downéysh(iy)ow prinsəpəs íntələjətər sáyniy priy-juwdísh(iy)ow társhiyà/. A gift of the prince is understood without prejudice to a third party.

Donatio propter nuptias /downéysh(iy)ow próptər nəpshiyəs/. A gift on account of marriage. In Roman law, the bridegroom's gift to the bride in anticipation of marriage and to secure her *dos* was called "*donatio ante nuptias*"; but by an ordinance of Justinian such gift might be made after as well as before marriage, and in that case it was called "*donatio propter nuptias*."

Donative advowson /dòwnədəv ədvəwzən/. In ecclesiastical law, a species of advowson, where the benefice is conferred on the clerk by the patron's deed of donation, without presentation, institution, or induction. 2 Bl.Comm. 23.

Donative trust. Type of trust created by transfer of property in trust as gift for benefit of another person or by proper declaration of legal owner of property that he will hold it in trust for another's benefit and does not require payment of any consideration by the beneficiary. Elbert v. Waples-Platter Co., Tex.Civ.App., 156 S.W.2d 146, 150, 151.

Donator /dòwnéytər/. A donor; one who makes a gift (*donatio*).

Donatorius /dòwnətóriyəs/. A donee; a person to whom a gift is made; a purchaser.

Donator nunquam desinit possidere, antequam donatorius incipiat possidere /downéytow nənkwəm désənat pəsədíriy əntəkwəm dòwnətóriyəs insípiyət pəsədíriy/. The donor never ceases to possess, until the donee begins to possess.

Donatory /dòwnət(ò)riy/. The person on whom the king bestows his right to any forfeiture that has fallen to the crown.

Done. Completed; brought to an end; over.

Donec /dòwnək/. Lat. As long as; while; until; within a certain time.

Donec probetur in contrarium /dòwnək prəwbíytər in kənt්රériyəm/. [Given] until proof to the contrary.

Donee. The recipient of a gift. One to whom a gift is made or a bequest given. One who is invested with a power of appointment; the party executing a power, otherwise called the "appointer." He to whom lands or tenements are given in tail. In old English law, he to whom lands were given; the party to whom a *donatio* was made.

Donee beneficiary. A person not a party to a contract but to whom the benefits of a contract flow as a direct

result of an intention to make a gift to that person. In a third party contract, the person who takes the benefit of the contract though there is no privity between him and the contracting parties.

Where performance of a promise in a contract will benefit a person other than the promisee, that person is a "donee beneficiary" if it appears from the terms of the promise in view of the accompanying circumstances that the purpose of the promisee in obtaining the promise is to make a gift to the beneficiary or to confer upon him a right against the promisor to some performance not due from the promisee to the beneficiary. *Bain v. Gillispie*, Iowa App., 357 N.W.2d 47, 50.

Donee of power. The person to whom the settlor or donor of a power of appointment gives such power to be exercised. In the case of a special power, in favor of a limited class such as members of a family, or, in the case of a general power, in favor of any one including the donee himself.

Donis, Statute de /státyuwt diy dównəs/. See *De donis*.

Donneur d'aval /dònár davál/. In French law, guarantor of negotiable paper other than by indorsement.

Donor. The party conferring a power. One who makes a gift. One who creates a trust. He who gives lands or tenements to another in tail. In old English law, he by whom lands were given to another; the party making a *donatio*.

Donum /dównəm/. Lat. In the civil law, a gift; a free gift. The difference between *donum* and *munus* is said to be that *donum* is more general, while *munus* is specific.

Doomsday-book. See *Domesday-book*.

Door closing doctrine. The principle invoked when a loop-hole in a law is closed by a statute or decision.

Dope. Any thick liquid or pasty preparation, as of opium for medicinal purposes, of grease for a lubricant, etc., and in popular meaning signifies opium derivative, ranging from harmless concoction to most powerful narcotics containing heroin or opium as ingredient.

Dormancy. Lapse in the executability of a judgment, and also in the effectiveness of the judgment lien, which is cured through revival of the judgment.

Dormant. Literally, sleeping; hence, inactive; in abeyance; unknown; concealed; silent.

Dormant claim. One which is in abeyance.

Dormant corporation. An inactive but legal corporation which is capable of being activated, but is presently not operating.

Dormant execution. One which a creditor delivers to the sheriff with directions to levy only, and not to sell, until further orders, or until a junior execution is received.

Dormant judgment. One which has not been satisfied, nor extinguished by lapse of time, but which has remained so long unexecuted that execution cannot now

be issued upon it without first reviving the judgment, or one which has lost its lien on land from the failure to issue execution on it or take other steps to enforce it within the time limited by statute. See *Judgment; Revival*.

Dormant partner. See *Partner*.

Dormiunt aliquando leges, nunquam moriuntur /dórmiyənt ələkwóndow liyjijz, nánkwəm mōriyántər/. The laws sometimes sleep, never die.

Dorsum /dórsəm/. Lat. The back. In *dorso recordi*, on the back of the record.

Dos /dóws/. In Roman law, dowry; a wife's marriage portion; all that property which on marriage is transferred by the wife herself or by another to the husband with a view of diminishing the burden which the marriage will entail upon him. It is of three kinds. *Profectitia dos* is that which is derived from the property of the wife's father or paternal grandfather. That *dos* is termed *adventitia* which is not *profectitia* in respect to its source, whether it is given by the wife from her own estate or by the wife's mother or a third person. It is termed *receptitia dos* when accompanied by a stipulation for its reclamation by the constitutor on the termination of the marriage.

In old English law, the portion given to the wife by the husband at the church door, in consideration of the marriage; dower; the wife's portion out of her deceased husband's estate in case he had not endowed her.

Dos de dote peti non debet /dóws diy dówtiy pétay nòn débət/. Dower ought not to be demanded of dower. A widow is not dowable of lands assigned to another woman in dower.

Dos rationabilis /dóws rəshənéybələs/. A reasonable marriage portion. A reasonable part of her husband's estate, to which every widow is entitled, of lands of which her husband may have endowed her on the day of marriage. Dower, at common law. 2 Bl.Comm. 134.

Dos rationabilis vel legitima est cujuslibet mulieris de quocunque tenemento tertia pars omnium terrarum et tenementorum, quæ vir suus tenuit in dominio suo ut de feodo, etc. /dóws rəshənéybələs vèl lejítəm əst kyuwjəsləbət myùwliyíras diy kwowkəŋkwiy tənəmén tow társhiyə párz ómniyəm tehrérəm èt tənəmentóram, kwiy vər s(y)úwəs ténuyuwət in dəmín(i)yow s(y)úwow àt diy fyúwdow/. Reasonable or legitimate dower belongs to every woman of a third part of all the lands and tenements of which her husband was seised in his demesne, as of fee, etc.

Dossier /dòs(i)yéy/dós(i)yèy/. Fr. A brief; a bundle of papers.

Dot. (A French word, adopted in Louisiana.) The fortune, portion, or dowry which a woman brings to her husband by the marriage.

DOT. Department of Transportation.

Dotage /dówtəj/. Senility. That feebleness of the mental faculties which proceeds from old age. It is a dimi-

nution or decay of that intellectual power which was once possessed. *Also* called "second childhood."

Relating to woman's marriage dowry.

Dotal /dówtəl/. Relating to the *dos* or portion of a woman; constituting her portion; comprised in her portion.

Dotalitium /dówtəlīshiyəm/. In canon and feudal law, dower.

Dotal property /dówtəl própərtiy/. In the civil law, in Louisiana, property which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Extradotal property, otherwise called "paraphernal property," is that which forms no part of the dowry. *Fleitas v. Richardson*, 147 U.S. 550, 13 S.Ct. 495, 37 L.Ed. 276. *See also* Community.

Dotation /dówtéyshən/. The act of giving a dowry or portion; endowment in general, including the endowment of a hospital or other charitable institution.

Dote /dówtey/, *n.* In Spanish law, the marriage portion of a wife. The property which the wife gives to the husband on account of marriage, or for the purpose of supporting the matrimonial expenses.

Dote, *v.* To be besotted, delirious, silly, or insane.

Dote assignanda /dówtiy àsəgnándə/. A writ which lay for a widow, when it was judicially ascertained that a tenant to the king was seised of tenements in fee or fee-tail at the day of his death, and that he held of the king in chief. In such case the widow might come into chancery, and then make oath that she would not marry without the king's leave, and then she might have this writ. These widows were called the "king's widows."

Dote unde nihil habet /dówtiy ándiy náy(h)əl héybat/. "Dower from whence she has nothing." An English writ which lay for a widow to whom no dower had been assigned.

Doti lex favet; præmium pudoris est; ideo parcatur /dówday léks féyvət, priymiyəm pyuwdórəs èst, idiyow parkéytər/. The law favors dower; it is the reward of chastity; therefore let it be preserved.

Dotis administratio /dówtəs ədmīnəstréysh(iy)ow/. Admeasurement of dower, where the widow holds more than her share, etc.

Dotissa /dówtīsə/. A dowager.

Double. Twofold; acting in two capacities or having two aspects; multiplied by two. This term has ordinarily the same meaning in law as in popular speech. The principal compound terms into which it enters are noted below.

Double adultery. Adultery committed by two persons each of whom is married to another as distinguished from "single" adultery, where one of the participants is unmarried.

Double assessment. The imposition of same tax, by same taxing power, upon same subject matter. *Aragon*

v. Empire Gold Mining & Milling Co., 47 N.M. 299, 142 P.2d 539, 541.

Double commissions. Commissions or fees paid by both seller and buyer or paid to the same person in different capacities, such as executor and trustee.

Double complaint /dábəl kəmpléynt/, **double quarrel** /'kwóhrəl/ or **duplex querela** /d(y)úwpleks kwəriylə/. A grievance made known by a clerk or other person, to the archbishop of the province, against the ordinary, for delaying or refusing to do justice in some cause ecclesiastical, as to give sentence, institute a clerk, etc. It is termed a "double complaint," because it is most commonly made against both the judge and him at whose suit justice is denied or delayed; the effect whereof is that the archbishop, taking notice of the delay, directs his letters, under his authentic seal, to all clerks of his province, commanding them to admonish the ordinary, within a certain number of days, to do the justice required, or otherwise to appear before him or his official, and there allege the cause of his delay; and to signify to the ordinary that if he neither perform the thing enjoined, nor appear nor show cause against it, he himself, in his court of audience, will forthwith proceed to do the justice that is due. In current usage, a complaint in the nature of an appeal from the ordinary to his next immediate superior, as from a bishop to an archbishop. This complaint is available to a clergyman who, having been presented to a living, is refused institution by the ordinary. *See* Duplicity.

Double costs. *See* Costs.

Double creditor. One who has a lien on two funds.

Double damages. *See* Damages.

Double eagle. A gold coin of the United States of the value of twenty dollars.

Double entry. A system of bookkeeping, in which the entries are posted twice into the ledger, once as a credit and once as a debit.

Double (or multiple) hearsay. Hearsay statements which contain further hearsay statements within them. A statement made outside of court is hearsay when introduced in court to prove the truth of the statement. However, certain exceptions permit the introduction of hearsay if the out-of-court statement was made on the personal knowledge of the declarant as in the case of a declaration of a deceased person. If such statement of the deceased person was not made on his personal knowledge, the hearsay would be double or totem pole hearsay.

An out-of-court admission of a defendant repeated by a non-testifying co-conspirator. *State v. Farber*, 642 P.2d 668, 675, 56 Or.App. 351.

Double house. A building having accommodations for two families, divided vertically instead of horizontally. Also called "duplex".

Double indemnity. Payment of twice the basic benefit in event of loss resulting from specified causes or under specified circumstances. Provision in life insurance con-

tract requiring payment of twice the face amount of the policy by the insurer in the event of death by accidental means.

Double insurance. Exists where the same person is insured by several insurers separately in respect to the same subject and interest.

Double jeopardy. Fifth Amendment guarantee, enforceable against states through Fourteenth Amendment, protects against second prosecution for same offense after acquittal or conviction, and against multiple punishments for same offense. *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656. The evil sought to be avoided is double trial and double conviction, not necessarily double punishment. *Breed et al. v. Jones*, 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346. *See also* Former jeopardy; Jeopardy; Same evidence test.

Double patenting. A doctrine of patent law which prevents single patentee from obtaining two patents on same invention. *Anchor Hocking Corp. v. Eyelet Speciality Co.*, D.C.Del., 377 F.Supp. 98, 101. The test respecting "double patenting" is whether the claims of both patents, when properly construed in the light of the descriptions given, define essentially the same things. Occurs only when claims of two patents issued to one applicant are the same.

Double plea, double pleading. *See* Duplicity; Plea; Pleadings.

Double proof. Species of evidence required for conviction of certain crimes in which the government must offer corroboration.

Double recovery. Recovery which represents more than the total maximum loss which all parties have sustained.

Double rent. In English law, rent payable by a tenant who continues in possession after the time for which he has given notice to quit, until the time of his quitting possession. *See* the Distress for Rent Act, 1737, § 18.

Doubles. Letters-patent.

Double standard. Set of principles which permit greater opportunity for one class of people than another and commonly based on differences such as sex, race or color and hence invidious standards which may offend equal protection of law to the discriminated minority. *See* Discrimination.

Double taxation. The taxing of the same item or piece of property twice to the same person, or taxing it as the property of one person and again as the property of another, but this does not include the imposition of different taxes concurrently on the same property or income (*e.g.* federal and state income taxes), nor the taxation of the same piece of property to different persons when they hold different interests in it or when it represents different values in their hands, as when both the mortgagor and mortgagee of property are taxed in respect to their interests in it, or when a tax is laid upon the profits of a corporation and also upon the dividends paid to its shareholders. "Double taxation" means tax-

ing twice for the same purpose in the same year some of the property in the territory in which the tax is laid without taxing all of it. *Amarillo-Pecos Valley Truck Lines v. Gallegos*, 44 N.M. 120, 99 P.2d 447, 451. To constitute "double taxation," two taxes must be imposed on same property by same governing body during same taxing period and for same taxing purpose. *Second St. Properties, Inc. v. Fiscal Court of Jefferson County, Ky.*, 445 S.W.2d 709, 715.

Term also refers to the structure of taxation under the Internal Revenue Code which subjects income earned by a corporation to an income tax at the corporate level and a second tax at the shareholder level if the same income is distributed to shareholders in the form of dividends.

Double tax rule. Collections made in taxable year on sales made in prior years, and which had already been taxed in prior years. *Hoover-Bond Co. v. Denman, C.C. A.Ohio*, 59 F.2d 909, 910.

Double use. In patent law, an application of a principle or process, previously known and applied, to some new use, but which does not lead to a new result or the production of a new article.

Double value. In old English law, a penalty on a tenant holding over after his landlord's notice to quit. By 4 Geo. II, c. 28, § 1, it is enacted that if any tenant for life or years hold over any lands, etc., after the determination of his estate, after demand made, and notice in writing given, for delivering the possession thereof, by the landlord, or the person having the reversion or remainder therein, or his agent thereunto lawfully authorized, such tenant so holding over shall pay to the person so kept out of possession at the rate of *double* the yearly value of the lands, etc., so detained, for so long a time as the same are detained.

Double voucher. In old English law, this was when a common recovery was had, and an estate of freehold was first conveyed to any indifferent person against whom the *præcipe* was brought, and then he vouched the tenant in tail, who vouched over the common vouchee. For, if a recovery were had immediately against a tenant in tail, it barred only the estate in the premises of which he was then actually seised, whereas, if the recovery were had against another person, and the tenant in tail were vouchee, it barred every latent right and interest which he might have in the lands recovered. 2 Bl.Comm. 359.

Double waste. When a tenant bound to repair suffers a house to be wasted, and then unlawfully fells timber to repair it, he is said to commit double waste.

Double will. A will in which two persons join, each leaving his property and estate to the other, so that the survivor takes the whole. *See* Reciprocal wills.

Doubt, v. To question or hold questionable.

Doubt, n. Uncertainty of mind; the absence of a settled opinion or conviction; the attitude of mind towards the acceptance of or belief in a proposition, theory, or state-

ment, in which the judgment is not at rest but inclines alternately to either side.

Reasonable doubt. This is a term often used, probably quite well understood, but not easily defined. It does not mean a mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. If upon proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal; for it is not sufficient to establish a probability, though a strong one, arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary, but the evidence must establish the truth of the fact to a reasonable and moral certainty, *i.e.* a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This is proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.

Proof "beyond a reasonable doubt" is not beyond all possible or imaginary doubt, but such proof as precludes every reasonable hypothesis except that which it tends to support. It is proof "to a moral certainty"; such proof as satisfies the judgment and consciences of the jury, as reasonable men, and applying their reason to the evidence before them, that the crime charged has been committed by the defendant, and so satisfies them as to leave no other reasonable conclusion possible.

A "reasonable doubt" is such a doubt as would cause a reasonable and prudent man in the graver and more important affairs of life to pause and hesitate to act upon the truth of the matter charged. But a reasonable doubt is not a mere possibility of innocence, nor a caprice, shadow, or speculation as to innocence not arising out of the evidence or the want of it.

See also Reasonable doubt.

Doubtful title. One as to the validity of which there exists some doubt, either as to matter of fact or of law; one which invites or exposes the party holding it to litigation. *Barrett v. McMannis*, 153 Kan. 420, 110 P.2d 774, 778. Distinguished from a "marketable" title, which is of such a character that the courts will compel its acceptance by a purchaser who has agreed to buy the property or has bid it in at public sale. *See* Marketable title.

Doun /dówn/. L. Fr. A gift. Otherwise written "*don*" and "*done*." The thirty-fourth chapter of Britton is entitled "*De Douns*."

Do ut des /dów ðt díyz/. Lat. I give that you may give; I give [you] that you may give [me]. A formula in the civil law, constituting a general division under which those contracts (termed "innominate") were classed in

which something was *given* by one party as a consideration for something *given* by the other.

Do ut facias /dów ðt féys(h)(i)yás/. Lat. I give that you may do; I give [you] that you may do or make [for me]. A formula in the civil law, under which those contracts were classed in which one party *gave* or agreed to give money, in consideration the other party *did* or performed certain work. In this and the foregoing phrase, the conjunction "*ut*" is not to be taken as the technical means of expressing a consideration. In the Roman usage, this word imported a *modus*, that is, a qualification; while a consideration (*causa*) was more aptly expressed by the word "*quia*."

Dovetail seniority. Combining two or more seniority lists (usually of different companies being merged) into a master seniority list, with each employee keeping the seniority he had previously acquired even though he may thereafter be employed by a new employer.

Dowable /dówábəl/. Subject to be charged with dower; as dowable lands. Entitled or entitling to dower. Thus, a dowable interest in lands is such as entitles the owner to have such lands charged with dower.

Dowager /dówəjər/. A widow who is endowed, or who has a jointure in lieu of dower. Widow holding property or a title received from her deceased husband. In England, this is a title or addition given to the widows of princes, dukes, earls, and other noblemen, to distinguish them from the wives of the heirs, who have right to bear the title. 1 Bl.Comm. 224.

Dowager-queen /dówəjər kwíyn/. The widow of the king. As such she enjoys most of the privileges belonging to her as queen consort. It is not treason to conspire her death or violate her chastity, because the succession to the crown is not thereby endangered. No man, however, can marry her without a special license from the sovereign, on pain of forfeiting his lands or goods. 1 Bl.Comm. 233.

Dower. The provision which the law makes for a widow out of the lands or tenements of her husband, for her support and the nurture of her children. 2 Bl.Comm. 130; *In re Miller's Estate*, 44 N.M. 214, 100 P.2d 908, 911. A species of life-estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seised in fee during the marriage, and which her issue, if any, might by possibility have inherited. The life estate to which every married woman is entitled on death of her husband, intestate, or, in case she dissents from his will, one-third in value of all lands of which husband was beneficially seized in law or in fact, at any time during coverture.

Dower has been abolished in the majority of the states and materially altered in most of the others.

See also Curtesy; Election (*Law of wills*); Election by spouse; Inchoate dower.

Dower ad ostium ecclesie /dówər æd óstiyəm əklízy-ziy/. Dower at the church door or porch. An ancient kind of dower in England, where a man (being tenant in

fee-simple, of full age), openly *at the church door*, where all marriages were formerly celebrated, after affiance made and troth plighted between them, *endowed* his wife with the whole of his lands, or such quantity as he pleased, at the same time specifying and ascertaining the same. 2 Bl.Comm. 133.

Dower by common law. The ordinary kind of dower in English and American law, consisting of a life interest in one-third of the lands of which the husband was seised in fee at any time during the coverture. 2 Bl. Comm. 132. Abolished by the Administration of Estates Act, 1945, § 45.

Dower by custom. A kind of dower in England, regulated by custom, where the quantity allowed the wife different from the proportion of the common law; as that the wife should have half the husband's lands; or, in some places, the whole; and, in some, only a quarter. 2 Bl.Comm. 132.

Dower de la plus belle (de la plus beale) /dāwər də la plyūw bəl/. L. Fr. Dower of the fairest [part]. A species of ancient English dower, incident to the old tenures, where there was a guardian in chivalry, and the wife occupied lands of the heir as guardian in socage. If the wife brought a writ of dower against such guardian in chivalry, he might show this matter, and pray that the wife might be endowed *de la plus belle* of the tenement in socage. This kind of dower was abolished with the military tenures. 2 Bl.Comm. 132.

Dower ex assensu patris /dāwər èks əséns(h)yuw pātrəs/. Dower by the father's assent. A species of dower *ad ostium ecclesiae*, made when the husband's father was alive, and the son, by his consent expressly given, endowed his wife with parcel of his father's lands. 2 Bl.Comm. 133.

Dower unde nihil habet /dāwər ándiy náy(h)əl héybat/. A writ of right which lay for a widow to whom no dower had been assigned.

Dow Jones Average. A stock market performance indicator that consists of the price movements in the top 30 industrial companies in the United States.

Dowle stones. Stones dividing lands, etc.

Dowment. In old English law, endowment; dower.

Down payment. The portion of purchase price which is generally required to be paid at time purchase and sale agreement is signed and is generally paid in cash or its equivalent. An amount of money paid to the seller at the time of sale, which represents only a part of the total cost. *See also* Earnest money.

Dowress /dāw(ə)rəs/. A woman entitled to dower; a tenant in dower.

Dowry. The property which a woman brings to her husband in marriage; also sometimes called a "portion." *See* Dos.

Dozen peers /dāzən pírz/. Twelve peers assembled at the instance of the barons, in the reign of Henry III, to

be privy counselors, or rather conservators of the kingdom.

D. P. An abbreviation for *Domus Procerum*, the house of lords.

Dr. An abbreviation for "doctor". Also, in commercial usage, for "debtor," indicating the items or particulars in a bill or in an account-book chargeable against the person to whom the bill is rendered or in whose name the account stands, as opposed to "Cr." ("Credit" or "creditor"), which indicates the items for which he is given credit.

Drachma /drækmə/. A term employed in old pleadings and records, to denote a groat.

An Athenian silver coin, of the value of about fifteen cents.

Draconian laws /drəkówniyən lóz/. A code of laws prepared by Draco, the celebrated lawgiver of Athens. These laws were exceedingly severe, and the term is now sometimes applied to any laws of unusual harshness.

Draff. Waste matter, sweepings, refuse, lees, or dregs. In weighing commodities the term signifies dust and dirt, and not what is generally meant by "draught" or "draft" (*q.v.*).

Draft. A written order by the first party, called the drawer, instructing a second party, called the drawee (such as a bank), to pay money to a third party, called the payee. An order to pay a sum certain in money, signed by a drawer, payable on demand or at a definite time, and to order or bearer. *People v. Norwood*, 26 Cal.App.3d 148, 103 Cal.Rptr. 7, 11. An unconditional order to pay money drawn by drawer on drawee to the order of the payee; same as a bill of exchange. U.C.C. § 3-104. *See also* Check; Documentary draft; Redraft; Sight draft; Trade acceptance.

A tentative, provisional, or preparatory writing out of any document (as a will, contract, lease, etc.) for purposes of discussion and correction, which is afterwards to be prepared in its final form.

Compulsory conscription of persons into military service.

Also, a small arbitrary deduction or allowance made to a merchant or importer, in the case of goods sold by weight or taxable by weight, to cover possible loss of weight in handling or from differences in scales.

Bank draft. One drawn by one bank on another.

Clean draft. One which has no shipping documents attached.

Documentary draft. One to which various shipping documents are attached.

Overdraft. Writing a check for more money than is in account.

Sight draft. One which is payable on presentation or demand. UCC § 3-108.

Time draft. One payable a certain number of days after sight or after presentation for acceptance. The number of days must be specified. UCC § 3-109.

Draft board. Federal agency that registers, classifies and selects men for compulsory military service. *See also* Selective Service System.

Draftsman. Any one who draws or frames a legal document, *e.g.*, a will, conveyance, pleading, etc. One who draws plans and specifications for machinery, structures, etc.

Dragnet clause. Provision in a mortgage in which mortgagor gives security for past and future advances as well as present indebtedness. A type of mortgage provision that attempts to make the mortgaged real estate security for other, usually unspecified, debts that the mortgagor may already or in the future owe to the mortgagee. While it is a species of future advances mortgage, the mortgagor and mortgagee rarely have in mind any specific future advances.

Drago doctrine. The principle asserted by Luis Drago, Minister of Foreign Affairs of the Argentine Republic, in a letter to the Argentine Minister at Washington, December 29, 1902, that the forcible intervention of states to secure the payment of public debts due to their citizens from foreign states is unjustifiable and dangerous to the security and peace of the nations of South America. The subject was brought before the Conference by the United States and a Convention was adopted in which the contracting powers agreed, with some restrictive conditions, not to have recourse to armed force for the recovery of contract debts claimed by their nationals against a foreign state. *See* Calvo doctrine.

Drain, v. To conduct water from one place to another, for the purpose of drying the former. To make dry; to draw off water; to rid land of its superfluous moisture by adapting or improving natural water courses and supplementing them, when necessary, by artificial ditches. To "drain," in its larger sense, includes not only the supplying of outlets and channels to relieve the land from water, but also the provision of ditches, drains, and embankments to prevent water from accumulating.

To totally consume or exhaust.

Drain, n. A trench or ditch to convey water from wet land; a channel through which water may flow off. The word has no technical legal meaning. Any hollow space in the ground, natural or artificial, where water is collected and passes off, is a ditch or drain.

Also, sometimes, the easement or servitude (acquired by grant or prescription) which consists in the right to drain water through another's land. *See* Drainage rights.

Public drainage way. The land reserved or dedicated for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation, and erosion.

Drainage district. A political subdivision of the state, created for the purpose of draining and reclaiming wet and overflowed land, as well as to preserve the public health and convenience.

Drainage rights. A landowner may not obstruct or divert the natural flow of a watercourse or natural drainage course to the injury of another. In urban areas, "natural drainage course" is narrowly interpreted to include only streams with well-defined channels and banks. In rural areas, the term is more broadly construed, apparently including the flow and direction of diffused surface waters. *Chamberlin v. Ciaffoni*, 373 Pa. 430, 436, 437, 96 A.2d 140, 143. *See also* Water (*Water rights*).

Dram. A drink of some substance containing alcohol; something which can produce intoxication. An apothecary system measurement of fluid, roughly equivalent to 4 or 5 cc, or one teaspoonful.

Drama. A term descriptive of any representation in which a story is told, a moral conveyed, or the passions portrayed, whether by words and actions combined, or by mere actions alone.

Dramatic composition. In copyright law, a literary work setting forth a story, incident, or scene from life, in which, however, the narrative is not related, but is represented by a dialogue and action; may include a descriptive poem set to music, or a pantomime.

Dram-shop. A drinking establishment where liquors are sold to be drunk on the premises; a bar or saloon.

Dram Shop Acts. Many states have Dram Shop or Civil Liability Acts which impose liability on the seller of intoxicating liquors (which may or may not include beer), when a third party is injured as a result of the intoxication of the buyer where the sale has caused or contributed to such intoxication. Some acts apply to gifts as well as sales. Such acts protect the third party not only against personal injuries and property damages resulting directly from affirmative acts of the intoxicated man, such as resulting from negligent operation of vehicle or assault and battery, but also against the loss of family support due to such injuries.

Draw, v. To draw a firearm or deadly weapon is to point it intentionally. To draw a bead on; to bring into line with the bead or fore sight of a rifle and the hind sight; to aim at.

The act of a drawer in creating a draft. To draw a bill of exchange, check, or draft, is to write (or cause it to be written) and sign it; to make, as a note.

To compose and write out in due form, as, a deed, complaint, petition, memorial, etc.

To draw a jury is to select the persons who are to compose it, either by taking their names successively, but at hazard, from the jury box, or by summoning them individually to attend the court. *See* Impanel.

In old criminal practice, to drag (on a hurdle) to the place of execution. Anciently no hurdle was allowed, but the criminal was actually dragged along the road to the place of execution. A part of the ancient punishment of traitors was to be thus drawn. 4 Bl.Comm. 92, 377.

To withdraw money; *i.e.*, to take out money from a bank, treasury, or other depository in the exercise of a

lawful right and in a lawful manner. To periodically advance money on a construction loan agreement or against future sales commissions. *See also* Drawing account.

Drawback. In the customs laws, an allowance made by the government upon the duties due on imported merchandise when the importer, instead of selling it here, re-exports it; or the refunding of such duties if already paid. This allowance amounts, in some cases, to the whole of the original duties; in others, to a part only. *See* 19 U.S.C.A. § 1313.

Drawee. The person on whom a bill or draft is drawn. A person to whom a bill of exchange or draft is directed, and who is requested to pay the amount of money therein mentioned. The drawee of a check is the bank on which it is drawn.

When drawee accepts, he engages that he will pay the instrument according to its tenor at the time of his engagement or as completed. U.C.C. § 3-413(1).

Drawer. The person who draws a bill or draft. The drawer of a check is the person who signs it. The person who creates or executes a draft, that is, issues it, and in signing the instrument gives the order to pay contained therein.

The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest, he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse. U.C.C. § 3-413(2).

Drawing account. Fund of money from which salesperson or other employees may draw in anticipation of future earnings or commissions; may be used to pay current expenses.

Drawing lots. An act in which selection is based on pure chance and in which the result depends upon the particular lot which is drawn. *See also* Lottery.

Drawlatches /drólàchəz/. Thieves; robbers.

Drayage. A charge for the local transportation of property. Similar to cartage.

Dred Scott Case. The case in which the United States Supreme Court held that descendants of Africans who were imported into this country, and sold as slaves, were not included nor intended to be included under the word "Citizens" in the Constitution, whether emancipated or not, and remained without rights or privileges except such as those which the government might grant them. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 15 L.Ed. 691.

Dreit-dreit /driyt-driyt/. Droit-droit. (Also written without the hyphen.) Double right. A union of the right of possession and the right of property. 2 Bl. Comm. 199.

Drenches, or drenches. In Saxon law, tenants *in capite*. They are said to be such as, at the coming of William the Conqueror, being put out of their estates, where afterwards restored to them, on their making it appear

that they were the true owners thereof, and neither *in auxilio* or *consilio* against him.

Drengage /dréj(g)əj/. The tenure by which the drenches, or drenches, held their lands. A variety of feudal tenure by *serjeanty* (*q.v.*), often occurring in the northern counties of England, involving a kind of general service.

Driftland, drofland, or dryfland. A Saxon word, signifying a tribute or yearly payment made by some tenants to the king, or their landlords, for driving their cattle through a manor to fairs or markets.

Drifts of the forest. In old English law, a view or examination of what cattle were in a forest, chase, etc., that it could be known whether such be surcharged or not; and whose the beasts were, and whether they were commonable. These drifts were made at certain times in the year by the officers of the forest, when all cattle were driven into some pound or place inclosed, for the before-mentioned purposes, and also to discover whether any cattle of strangers be there, which ought not to be common.

Drift-stuff. This term signifies, not goods which are the subject of salvage, but matters floating at random, without any known or discoverable ownership, which, if cast ashore, will probably never be reclaimed, but will, as a matter of course, accrue to the riparian proprietor.

Drinking-shop. A place where intoxicating liquors are sold to be drunk on the premises; a bar or saloon.

Drip rights. A species of easement or servitude obligating one man to permit the water falling from another man's house to fall upon his own land. *See also* Eaves-drip.

Drive-it-yourself cars. A term used to describe automobiles which their owners, as a regular business, rent out for hire without furnishing drivers. More commonly termed "rental" or "leased" cars.

Driver. A person actually doing driving, whether employed by owner to drive or driving his own vehicle.

Driver's license. The certificate or license issued by a state which authorizes a person to operate a motor vehicle. Generally, a written and driving examination is required for obtaining such.

Driving. To urge forward under guidance, compel to go in a particular direction, urge onward, and direct the course of.

Driving while intoxicated (DWI). An offense committed by one who operates a motor vehicle while under the influence of intoxicating liquor or drugs. A showing of complete intoxication is not required. State statutes specify levels of blood alcohol content at which a person is presumed to be under the influence of intoxicating liquor. *See also* Blood alcohol count; Blood test evidence; Breathalyzer test; Consent (*Implied consent*); Drunk-o-meter; Field sobriety tests; Intoxilyzer; Intoximeter; Sobriety checkpoint.

Drofland /drówfłánd/. In old English law, a quit rent, or yearly payment, formerly made by some tenants to the king, or their landlords, for *driving* their cattle through a manor to fairs or markets.

Droit Fr. /dr(w)ó, Engl. /dróyt/. In French law, right, justice, equity, law, the whole body of law; also a right.

This term exhibits the same ambiguity which is discoverable in the German equivalent, "*recht*" and the English word "*right*." On the one hand, these terms answer to the Roman "*jus*," and thus indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law, or give it an ethical content. Taken in this abstract sense, the terms may be adjectives, in which case they are equivalent to "just," or nouns, in which case they may be paraphrased by the expressions "justice," "morality," or "equity." On the other hand, they serve to point out a right; that is, a power, privilege, faculty, or demand, inherent in one person, and incident upon another. In the latter signification, *droit* (or *recht* or *right*) is the correlative of "duty" or "obligation." In the former sense, it may be considered as opposed to wrong, injustice, or the absence of law. *Droit* has the further ambiguity that it is sometimes used to denote the existing body of law considered as one whole, or the sum total of a number of individual laws taken together. See *Jus*; *Recht*; *Right*.

A person was said to have *droit droit*, *plurimum juris*, and *plurimum possessionis*, when he had the freehold, the fee, and the property in him.

In old English law, law; right; a writ of right.

Autre droit. The right of another.

Droit-close /dròyt klóws/. An ancient writ, directed to the lord of ancient demesne on behalf of those of his tenants who held their lands and tenements by charter in fee-simple, in fee-tail, for life, or in dower.

Droit common /dròyt kómən/. The common law.

Droit coutumier /drwó kùwtiyuwmyéy/. Common law.

Droit d'accession /drwó daksèsyówn/. That property which is acquired by making a new species out of the material of another. It is equivalent to the Roman "*specificatio*."

Droit d'accroissement /drwó dakr(o)wàsmón/. The right which an heir or legatee has of combining with his own interest in a succession the interest of a coheir or colegatee who either refuses to or cannot accept his interest.

Droit d'aubaine /drwó dowbé(y)n/. A rule by which all the property of a deceased foreigner, whether movable or immovable, was confiscated to the use of the state, to the exclusion of his heirs, whether claiming *ab intestato* or under a will of the deceased. Finally abolished in 1819.

Droit de bris /drwó dabríy/. A right formerly claimed by the lords of the coasts of certain parts of France, to shipwrecks, by which not only the property, but the

persons of those who were cast away, were confiscated for the prince who was lord of the coast. Otherwise called "*droit de bris sur le naufrage*." This right prevailed chiefly in Bretagne, and was solemnly abrogated by Henry III as duke of Normandy, Aquitaine, and Guienne, in a charter granted A.D. 1226, preserved among the rolls at Bordeaux.

Droit de détraction /drwó də dèytraksyówn/. A tax upon the removal from one state or country to another of property acquired by succession or testamentary disposition; it does not cover a tax upon the succession to or transfer of property. Cf. Duties of detraction.

Droit de garde /drwó də gárd/. In French feudal law, right of ward. The guardianship of the estate and person of a noble vassal, to which the king, during his minority, was entitled.

Droit de gîte /drwó də zhiyt/. In French feudal law, the duty incumbent on a *roturier*, holding lands within the royal domain, of supplying board and lodging to the king and to his suite while on a royal progress.

Droit de greffe /drwó də gréf/. In old French law, the right of selling various offices connected with the custody of judicial records or notarial acts. A privilege of the French kings.

Droit de maîtrise /drwó d(ə) meytríyz/. In old French law, a charge payable to the crown by any one who, after having served his apprenticeship in any commercial guild or brotherhood, sought to become a master workman in it on his own account.

Droit de naufrage /drwó d(ə) nowfrázh/. The right of a seigneur, who owns the seashore, or the king, when a vessel is wrecked, to take possession of the wreckage and to kill the crew or sell them as slaves.

Droit de prise /drwó d(ə) priyz/. In French feudal law, the duty (incumbent on a *roturier*) of supplying to the king on credit, during a certain period, such articles of domestic consumption as might be required for the royal household.

Droit de quint /drwó də kán(t)/. In French feudal law, a relief payable by a noble vassal to the king as his *seigneur*, on every change in the ownership of his fief.

Droit de suite /drwó də swíyt/. The right of a creditor to pursue the debtor's property into the hands of third persons for the enforcement of his claim.

Droit d'exécution /drwó dèkseykyúwsyówn/. The right of a stockbroker to sell the securities bought by him for account of a client, if the latter does not accept delivery thereof. The same expression is also applied to the sale by a stockbroker of securities deposited with him by his client, in order to guaranty the payment of operations for which the latter has given instructions.

Droit-droit. A double right; that is, the right of possession and the right of property. These two rights were, by the theory of our ancient law, distinct; and the above phrase was used to indicate the concurrence of both in one person, which concurrence was necessary to constitute a complete title to land.

Droit écrit /drwót eykríy/. In French law, the written law. The Roman civil law, or *Corpus Juris Civilis*.

Droit international /drwót àternàsyownál/. International law.

Droit maritime /drwó màriyíym/. Maritime law.

Droit moral. A European doctrine of "artistic integrity" that gives artists the right to prevent others from altering their work without permission. Non-pecuniary right based upon the dual relationship between society and its artists, and the artist and his work. The basic rights sought to be protected under this concept comprise: the right to create; the right to disclose or publish; the right to withdraw from publication; the right to be identified with the work; and, the right to integrity with respect to the work, including the right to object to the mutilation or distortion of the work.

Droit naturel /drwó natyurél/. The law of nature.

Droit ne done plus que soit demande /drwó nà dón pwíy kà swó dèymondéy/. The law gives not more than is demanded.

Droit ne poet pas mourier /drwó nà pyúw pà mouríy/. Right cannot die.

Droits civils /drwó sívil/. This phrase in French law denotes private rights, the exercise of which is independent of the *status (qualité)* of citizen. Foreigners enjoy them; and the extent of that enjoyment is determined by the principle of reciprocity. Conversely, foreigners may be sued on contracts made by them in France.

Droits of admiralty /dróyts əv ədmərəltiy/. Rights or prerequisites of the admiralty. A term applied to goods found derelict at sea. Applied also to property captured in time of war by non-commissioned vessels of a belligerent nation. In England, it has been usual in maritime wars for the government to seize and condemn, as droits of admiralty, the property of an enemy found in her ports at the breaking out of hostilities. The power to exercise such a right has not been delegated to, nor has it ever been claimed by, the United States government.

Droitural /dróychərəl/. What belongs of right; relating to right; as real actions are either droitural or possessory,—*droitural* when the plaintiff seeks to recover the property.

Dromones, dromos, dromunda /drəmówniyz, drów-mowz, dráməndə/. These were at first high ships of great burden, but afterwards those which we now call "men-of-war."

Drop. In English practice, when the members of a court are equally divided on the argument showing cause against a rule *nisi*, no order is made, *i.e.*, the rule is neither discharged nor made absolute, and the rule is said to *drop*. In practice, there being a right to appeal, it has been usual to make an order in one way, the junior judge withdrawing his judgment.

Drop-letter. A letter addressed for delivery in the same city or district in which it is posted.

Drop shipment delivery. Shipment of goods directly from manufacturer to dealer or consumer rather than first to wholesaler, though wholesaler still earns profit because he took order for such.

Drop shipper. Type of wholesaler described above.

Drove. A number of animals collected and driven together in a body; a flock or herd of cattle in process of being driven, indefinite as to number, but including at least several.

Drover's pass. A free pass given by a railroad company, accepting a drove of cattle for transportation, to the drover who accompanies and cares for the cattle on the train.

Drug. An article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals and any article other than food intended to affect the structure or any function of the body of man or other animals. 21 U.S.C.A. § 321(g)(1). The general name of substances used in medicine; any substance, vegetable, animal, or mineral, used in the composition or preparation of medicines; any substance used as a medicine. *See* Controlled Substance Acts.

Drug abuse. State of chronic or periodic intoxication detrimental to the individual and to society, produced by the repeated consumption of a drug, natural or synthetic. *See also* Addict; Drug dependence.

The voluntary, habitual, and excessive use of drugs is a ground for divorce in many states.

Drug addict. A person subject to drug abuse. *See* Addict; Drug abuse; Drug dependence.

Drug dependence. Habituation to, abuse of, and/or addiction to a chemical substance. *See* Addict.

Druggist. A dealer in drugs; one whose business is to mix, compound, dispense, and sell drugs.

Drugless healer. Any person who practises or holds himself out in any way as practising the treatment of any ailment, disease, defect, or disability of the human body by manipulation, adjustment, manual or electrotherapy, or by any similar method. *State v. Houck*, 32 Wash.2d 681, 203 P.2d 693, 699. *See* Chiropractor.

Drummer. A term applied to commercial agents who travel for wholesale merchants and supply the retail trade with goods or take orders for goods to be shipped to the retail dealer. Term most commonly refers to traveling salesmen. *See also* Commercial traveler.

Drungarius /drəngériyəs/. In old European law, the commander of a *drungus*, or band of soldiers. Applied also to a naval commander.

Drungus /drəngəs/. In old European law, a band of soldiers (*globus militum*).

Drunk. *See* Drunkenness; Intoxication.

Drunkard. One who is habitually intoxicated. A "common" drunkard is defined by statute in some states as a person who has been convicted of drunkenness (or proved to have been drunk) a certain number of times

within a limited period. Elsewhere the word "common" in this connection is understood as being equivalent to "habitual."

Drunkeness. State of intoxication. The condition of a person whose mind is affected by the consumption of intoxicating drinks; the state of one who is "drunk." The effect produced upon the mind or body by drinking intoxicating liquors to such an extent that the normal condition of the subject is changed and his capacity for rational action and conduct is substantially lessened. *See also* Driving while intoxicated; Intoxication.

While some states have decriminalized public drunkness (e.g. Mass.), there is no constitutional infirmity in a criminal statute which penalizes being drunk in public. *Powell v. Texas*, 392 U.S. 514, 88 S.Ct. 2145, 20 L.Ed.2d 1254.

Drunk-o-meter. Device used for measuring blood alcohol content by chemical analysis of the breath. The results of such tests are generally used in prosecutions for drunk driving or operating a vehicle under the influence of liquor. *See also* Blood alcohol count; Breathalyzer test; Consent (*Implied consent*); Driving while intoxicated; Field sobriety tests; Intoxilyzer; Intoximeter.

Dry, adj. In the vernacular, this term means desiccated or free from moisture; but, in legal use, it signifies formal or nominal, without imposing any duty or responsibility, or unfruitful, without bringing any profit or advantage; e.g. dry trust.

Dry, n. Term used to designate a person who is opposed to allowing the sale of intoxicating liquors; a prohibitionist, in contradistinction to a "wet," or antiprohibitionist.

Dry check. Synonymous with "cold check", and "hot check". *Elder v. Evatt*, Tex.Civ.App., 154 S.W.2d 684, 685.

Dry-craft. Witchcraft; magic.

Dry exchange. In English law, a term formerly in use, said to have been invented for the purpose of disguising and covering usury; something being pretended to pass on both sides, whereas, in truth, nothing passed but on one side, in which respect it was called "dry."

Dry hole agreement. A support agreement in which the contributing party agrees to make a cash contribution in exchange for geological or drilling information, if a dry hole is drilled.

Dry hole clause. A provision in an oil and gas lease specifying what a lessee must do to maintain the lease for the remainder of the primary term after drilling an unproductive well. A dry hole clause is intended to make clear that the lease may be maintained by payment of delay rentals for the remainder of the primary term.

Dry mortgage. One which creates a lien on land for the payment of money, but does not impose any personal liability upon the mortgagor, collateral to or over and above the value of the premises.

Dry receivership. Receivership wherein there is no equity to be administered for general creditors, even if action is in statutory form.

Dry rent. Rent seck; a rent reserved without a clause of distress.

Dry state. State wherein sale of intoxicating liquors is prohibited.

Dry trust. A passive trust; one which requires no action on the part of the trustee beyond turning over money or property to the *cestui que trust*.

Dual business. Such business must show units of substantial separateness and completeness, such as might be maintained as an independent business and capable of producing profit in and of themselves.

Dual capacity doctrine. Under this doctrine employer normally shielded from tort liability by exclusive remedy of workers' compensation law may become liable in tort to his employee if he occupies, in addition to his capacity as employer, a second capacity that confers on him obligations independent of those imposed on him as employer. *Pavlek v. Forbes Steel and Wire Corp.*, 358 Pa.Super. 316, 517 A.2d 564, 565.

Dual citizenship. Citizenship in two different countries. Status of citizens of United States who reside within a state; i.e., persons who are born or naturalized in the U.S. are citizens of the U.S. and the state wherein they reside.

Dual court system. Term descriptive of Federal and State court systems of United States.

Dual distributor. A firm that sells goods simultaneously to buyers on two different levels of the distribution chain—such as a manufacturer who sells directly to both wholesalers and retailers—is called a dual distributor.

Dual listing. *See* Listed security.

Dual purpose doctrine. The dual purpose doctrine is that if the work of an employee creates a necessity for travel, he is in the course of his employment while doing that work even though at the same time he is serving some purpose of his own. *Snowden v. Orscheln Bros. Truck Lines, Inc.*, Mo.App., 446 S.W.2d 494, 496. Doctrine is that injury during trip which serves both business and personal purpose is within course of employment if trip involves performance of service for employer which would have caused trip to be taken by someone even if it had not coincided with personal journey. *Stoskin v. Board of Ed. of Montgomery County*, 11 Md.App. 355, 274 A.2d 397, 400.

Duarchy /d(y)úwàrkiy/. A form of government where two reign jointly.

Duas uxores eodem tempore habere non licet /d(y)úwəs əksóriyz iyówdəm témpəriy hăbəriy nòn láysət/. It is not lawful to have two wives at the same time. 1 Bl.Comm. 436.

Dubitante /d(y)üwbätätenty/. Doubting. Term is affixed to the name of a judge, in the reports, to signify that he doubted the decision rendered.

Dubitatur /d(y)üwbätétytər/. It is doubted. A word frequently used in the reports to indicate that a point is considered doubtful.

Dubitavit /d(y)üwbätétyvət/. Doubted.

Ducat /dókət/. A foreign coin, varying in value in different countries.

Ducatus /dékéytəs/. In feudal and old English law, a duchy, the dignity or territory of a duke.

Duces tecum /d(y)üwsiyz tỳkəm/. (Lat. Bring with you.) The name of certain species of writs, of which the *subpoena duces tecum* is the most usual, requiring a party who is summoned to appear in court to bring with him some document, piece of evidence, or other thing to be used or inspected by the court. See *Subpoena duces tecum*.

Duces tecum licet languidus /d(y)üwsiyz tỳkəm láysət léngwədəs/. (Bring with you, although sick.) In practice, an ancient writ, now obsolete, directed to the sheriff, upon a return that he could not bring his prisoner without danger of death, he being *adeo languidus* (so sick); whereupon the court granted a *habeas corpus* in the nature of a *duces tecum licet languidus*.

Duchy Court of Lancaster. A tribunal of special jurisdiction, held before the chancellor of the duchy, or his deputy, concerning all matters of equity relating to lands holden of the crown in right of the duchy of Lancaster; which is a thing very distinct from the county palatine (which has also its separate chancery, for sealing of writs, and the like), and comprises much territory which lies at a vast distance from it; as particularly a very large district surrounded by the city of Westminster. The proceedings in this court are the same as were those on the equity side of the court of chancery, so that it seems not to be a court of record; and, indeed, it has been holden that the court of chancery has a concurrent jurisdiction with the duchy court, and may take cognizance of the same causes. Although not formally abolished, this court has not sat since 1835.

Duchy of Lancaster /dóchiy əv léŋkəstər/. Those lands which formerly belonged to the dukes of Lancaster, and now belong to the crown in right of the duchy. The duchy is distinct from the county palatine of Lancaster, and includes not only the county, but also much territory at a distance from it, especially the Savoy in London and some land near Westminster. 3 Bl.Comm. 78.

Ducking-stool. See Castigatory.

Dueroire /dyuwkrwóhr/. In French law, guaranty; equivalent to *del credere* (which see).

Due. Just; proper; regular; lawful; sufficient; reasonable, as in the phrases "due care," "due process of law," "due notice."

Owing; payable; justly owed. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done.

Owed, or owing, as distinguished from payable. A debt is often said to be *due* from a person where he is the party owing it, or primarily bound to pay, whether the time for payment has or has not arrived. The same thing is true of the phrase "due and owing."

Payable. A bill or note is commonly said to be *due* when the time for payment of it has arrived.

The word "due" always imports a fixed and settled obligation or liability, but with reference to the time for its payment there is considerable ambiguity in the use of the term, the precise signification being determined in each case from the context. It may mean that the debt or claim in question is now (presently or immediately) matured and enforceable, or that it matured at some time in the past and yet remains unsatisfied, or that it is fixed and certain but the day appointed for its payment has not yet arrived. But commonly, and in the absence of any qualifying expressions, the word "due" is restricted to the first of these meanings, the second being expressed by the term "overdue," and the third by the word "payable."

Due and proper care. That degree of care which is required of one for prevention of the accident. See *Due care*.

Due and reasonable care. Care which reasonably prudent man would exercise under same or similar circumstances. See *Due care*.

Due bill. Written acknowledgment of a debt, or promise to pay. See *IOU*.

Due care. Just, proper, and sufficient care, so far as the circumstances demand; the absence of negligence. That degree of care that a reasonable person can be expected to exercise to avoid harm reasonably foreseeable if such care is not taken. That care which an ordinarily prudent person would have exercised under the same or similar circumstances. *Strickland v. Hughes*, 2 N.C. App. 395, 163 S.E.2d 24, 26. "Due care" is care proportioned to any given situation, its surroundings, peculiarities, and hazards. It may and often does require extraordinary care. "Due care," "reasonable care," and "ordinary care" are often used as convertible terms.

This term, as usually understood in cases where the gist of the action is the defendant's negligence, implies not only that a party has not been negligent or careless, but that he has been guilty of no violation of law in relation to the subject-matter or transaction which constitutes the cause of action.

Due compensation. Term as used in eminent domain is the value of land taken and the damages, if any, which result to owner as a consequence of the taking without considering either general benefits or injuries. See *Just compensation*.

Due consideration. To give such weight or significance to a particular factor as under the circumstances it seems to merit, and this involves discretion. *United States ex rel. Maine Potato Growers & Shippers Ass'n v. Interstate Commerce Commission*, 66 App.D.C. 398, 88

F.2d 780, 783. As regards sufficient consideration in contract law, *see* Consideration.

Due course holder. *See* Holder in due course.

Due course of law. This phrase is synonymous with "due process of law," or "the law of the land," and the general definition thereof is "law in its regular course of administration through courts of justice". *See* Due process of law.

Due date. In general, the particular day on or before which something must be done to comply with law or contractual obligation.

Due diligence. *See* Diligence.

Due influence. Influence obtained by persuasion and argument or by appeals to the affections. In *re Chamberlain's Estate*, Cal.App., 109 P.2d 449, 452. *See also* Coercion; Duress.

Duel. A duel is any combat with deadly weapons fought between two or more persons, by previous agreement or upon a previous quarrel.

Dueling. The fighting of two persons, one against the other, at an appointed time and place, upon a precedent quarrel. If death results, the crime is murder. It differs from an affray in this, that the latter occurs on a sudden quarrel, while the former is always the result of design.

Duellum /d(y)uwéləm/. The trial by battel or judicial combat. *See* Battel.

Due negotiation. Transferring a negotiable document of title under such conditions that the transferee takes the document and the goods free of certain claims enforceable against the transferor. *See* U.C.C. §§ 7-501(4) & 7-502(1). Due negotiation is the good faith purchase exception to the doctrine of derivative title as applied to documents.

Due notice. Sufficient, legally prescribed notice. Notice reasonably intended, and with the likelihood of, reaching the particular person or public. No fixed rule can be established as to what shall constitute "due notice." "Due" is a relative term, and must be applied to each case in the exercise of the discretion of the court in view of the particular circumstances. *See* Notice.

Due-on-encumbrance clause. Mortgage language that gives the mortgagee the option to accelerate the mortgage debt in the event the mortgagor further encumbers or mortgages the real estate without mortgagee's consent.

Due-on-sale clause. A provision usually found in a note or mortgage whereby the entire debt becomes immediately due and payable at mortgagee's option upon sale of mortgaged property. Such clauses are generally used to prevent subsequent purchasers from assuming existing loans at lower than current market rates. The validity of such provisions has been upheld by the Supreme Court.

Due posting. Stamping and placing letter in United States mail.

Due process clause. Two such clauses are found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects: procedural, in which a person is guaranteed fair procedures and substantive which protects a person's property from unfair governmental interference or taking. Similar clauses are in most state constitutions. *See* Due process of law.

Due process of law. Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoy v. Neff*, 95 U.S. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law.

An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. *Kazubowski v. Kazubowski*, 45 Ill.2d 405, 259 N.E.2d 282, 290. Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. *Pettit v. Penn*, La.App., 180 So.2d 66, 69. The concept of "due process of law" as it is embodied in Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. *U. S. v. Smith*, D.C.Iowa, 249 F.Supp. 515, 516. Fundamental requisite of "due process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert before the appropriate decision-making body the reasons for such choice. *Trinity Episcopal Corp. v. Romney*, D.C.N.Y., 387 F.Supp. 1044, 1084. Aside from all else, "due process"

means fundamental fairness and substantial justice. *Vaughn v. State*, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883.

Embodied in the due process concept are the basic rights of a defendant in criminal proceedings and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her; the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge; the presumption of innocence under which guilt must be proven by legally obtained evidence and the verdict must be supported by the evidence presented; the right of an accused to be warned of constitutional rights at the earliest stage of the criminal process; protection against self-incrimination; assistance of counsel at every critical stage of the criminal process; and the guarantee that an individual will not be tried more than once for the same offense (double jeopardy).

See also Procedural due process; Substantive due process.

Due process rights. All rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice. Procedural and substantive rights of citizens against government actions that threaten the denial of life, liberty, or property. See Due process of law.

Due proof. Within insurance policy requirements, term means such a statement of facts, reasonably verified, as, if established in court, would prima facie require payment of the claim, and does not mean some particular form of proof which the insurer arbitrarily demands. *National Life Ins. Co. v. White*, D.C.Mun.App., 38 A.2d 663, 666. Sufficient evidence to support or produce a conclusion; adequate evidence. See Burden of proof; Proof.

Due regard. Consideration in a degree appropriate to demands of the particular case.

Dues. Certain payments; rates or taxes. As applied to clubs and other membership organizations, refers to sums paid toward support and maintenance of same and as a requisite to retain membership.

Due to. Expressions "sustained by," "caused by," "due to," "resulting from," "sustained by means of," "sustained in consequence of," and "sustained through" have been held to be synonymous.

D.U.I. The crime of driving under the influence of alcohol or drugs. See Driving while intoxicated.

Duke. In English law, is a title of nobility, ranking immediately next to the Prince of Wales. It is only a title of dignity. Conferring it does not give any domain, territory, or jurisdiction over the place whence the title is taken. *Duchess*, the consort of a duke.

Duke of Exeter's Daughter. The name of a rack in the Tower, so called after a minister of Henry VI, who sought to introduce it into England.

Duke of York's Laws. A body of laws compiled in 1665 for the government of the colony of New York.

Dulocracy /d(y)ùwlókrəsiy/. A government where servants and slaves have so much license and privilege that they domineer.

Duly. In due or proper form or manner; according to legal requirements. Regularly; properly; suitable; upon a proper foundation, as distinguished from mere form; according to law in both form and substance. See Due process of law.

Duly ordained minister of religion. Person who has been ordained in accordance with the ceremonial, ritual, or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites and ceremonies and public worship, and who customarily performs those duties.

Duly qualified. Being "duly qualified" to fill an office, in the constitutional sense and in the ordinary acceptation of the words, means that the officer shall possess every qualification; that he shall in all respects comply with every requisite before entering on duties of the office; and that he shall be bound by oath or affirmation to support the Constitution, and to perform the duties of the office with fidelity.

Dum /dòm/. Lat. While; as long as; until; upon condition that; provided that.

Dumb-bidding. In sales at auction, when the minimum amount which the owner will take for the article is written on a piece of paper, and placed by the owner under an object, and it is agreed that no bidding shall avail unless equal to that, this is called "dumb-bidding."

Dum bene se gesserit /dàm bínyiy siy jésərət/. While he shall conduct himself well; during good behavior. Expressive of a tenure of office not dependent upon the pleasure of the appointing power, nor for a limited period, but terminable only upon the death or misconduct of the incumbent.

Dum fervet opus /dàm fěrvət ówpəs/. While the work glows; in the heat of action.

Dum fuit infra ætatem /dàm fyúwət ínfrè iytéytəm/. (While he was within age.) In old English practice, a writ of entry which formerly lay for an infant after he had attained his full age, to recover lands which he had aliened in fee, in tail, or for life, during his infancy; and, after his death, his heir had the same remedy.

Dum fuit in prisona /dàm fyúwət ín prizənə/. In old English law, a writ which lay for a man who had aliened lands under duress by imprisonment, to restore to him his proper estates. Abolished by St. 3 & 4 Wm. IV, c. 27.

Dummodo /dàmówdow/. Provided; provided that. A word of limitation in the Latin forms of conveyances, of frequent use in introducing a reservation; as in reserving a rent.

Dummy, n. One who purchases property and holds legal title for another, usually to conceal the identity of the

true owner; a straw man. Space 6½ feet in width between street railroad tracks.

Dummy, *adj.* Sham; make-believe; pretended; imitation. Person who serves in place of another, or who serves until the proper person is named or available to take his place (*e.g.* dummy corporate directors; dummy owners of real estate).

Dummy corporation. Corporation formed for sham purposes and not for conduct of legitimate business; *e.g.* formed for sole reason of avoiding personal liability.

Dummy director. One to whom (usually) a single share of stock in a corporation is transferred for the purpose of qualifying him as a director of the corporation, in which he has no real or active interest. One who is a mere figurehead and in effect discharges no duties.

Dummy stockholder. One who holds shares of stock in his name for the benefit of the true owner whose name is generally concealed. *See also* Street name.

Dum non fuit compos mentis /dám nòn fyúwæt kóm-pəs méntəs/. In old English law, the name of a writ which the heirs of a person who was *non compos mentis*, and who aliened his lands, might have sued out to restore him to his rights. Abolished by 3 & 4 Wm. IV, c. 27.

Dump. To put or throw down with more or less of violence; to unload. To drop down; to deposit something in a heap or unshaped mass. To sell abroad at less than price sold at home. *See* Dumping Act.

Dumping. The act of selling in quantity at a very low price or practically regardless of the price; also, selling goods abroad at less than the market price at home. *See* Dumping Act.

The act of forcing a product such as cotton on the market during the short gathering season.

Dumping Act. Federal antidumping law which provides that the Secretary of Treasury is required to notify U.S. International Trade Commission (USITC) whenever he determines that foreign merchandise is being or is likely to be sold in U.S. or elsewhere at less than its fair value and the USITC shall determine the injury to U.S. industry. If such imports are determined to be injurious to domestic sales of like products, such imports may be ordered stopped. 19 U.S.C.A. § 1673.

Dum recens fuit maleficium /dám riyész fyúwæt mæləfɪʃ(iy)əm/. While the offense was fresh. A term employed in the old law of appeal of rape.

Dum sola /dəm sówlə/. While sole, or single. *Dum sola fuerit*, while she shall remain sole. *Dum sola et casta vixerit*, while she lives single and chaste. Words of limitation in old conveyances. Also applied generally to an unmarried woman in connection with something that was or might be done during that condition.

Dun. A demand for payment (*e.g.* dun letter) to a delinquent debtor.

Dungeon. Such an underground prison or cell as was formerly placed in the strongest part of a fortress. A dark or subterranean prison.

Dunio. A double; a kind of base coin less than a farthing.

Dunnage. Pieces of wood placed against the sides and bottom of the hold of a vessel, to preserve the cargo from the effect of leakage, according to its nature and quality. There is considerable resemblance between dunnage and ballast. The latter is used for trimming the ship, and bringing it down to a draft of water proper and safe for sailing. Dunnage is placed under the cargo to keep it from being wetted by water getting into the hold, or between the different parcels to keep them from bruising and injuring each other. Padding in shipping container to prevent breakage.

Duodecemvirale iudicium /d(y)úwəwədəsəmvrəylyj juwdɪʃ(iy)əm/. The trial by twelve men, or by jury. Applied to juries *de medietate linguae*.

Duodecima manus /d(y)úwəwədəsəmə mə́nəs/. Twelve hands. The oaths of twelve men, including himself, by whom the defendant was allowed to make his law. 3 Bl.Comm. 343.

Duodena /d(y)uwədiynə/. In old records, a jury of twelve men.

Duodena manu /d(y)uwədiynə mə́n(y)uw/. A dozen hands, *i.e.*, twelve witnesses to purge a criminal of an offense.

Duo non possunt in solido unam rem possidere /d(y)úwəw nòn pəsənt in sólədəw yúwnəm rém pəsədírɪj/. Two cannot possess one thing in entirety.

Duopoly /d(y)uwópɫɪj/. A condition in the market in which there are only two producers or sellers of a given product.

Duorum in solidum dominium vel possessio esse non potest /d(y)uwórəm in sólədəm dəmínɪjəm vél pəzəʃ(iy)əw ésiy nòn pówtəst/. Ownership or possession in entirety cannot be in two persons of the same thing.

Duosony /d(y)uwósəniy/. A condition of the market in which there are only two buyers of a given product.

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas, ratio et autoritas /dyúwəw sənt instrəméntə æd ómniy rɪz ət kɔ́nfərmə́ndəs ət ímpəgnə́ndəs, réyʃ(iy)əw ət óθə́hrətəs/. There are two instruments for confirming or impugning all things,—reason and authority.

Dupla /d(y)úwplə/. In the civil law, double the price of a thing.

Duplex house. A dwelling which has accommodations for two families, without regard to whether such accommodations are identical or not. The units may be either adjacent to each other or on separate floors.

Duplex querela /d(y)úwplèks kwəriylə/. A double complaint. An ecclesiastical proceeding, which is in the nature of an appeal. *See* Double complaint.

Duplex valor maritaggi /d(y)úwpléks válər mārətéyjiy-ay/. In old English law, double the value of the marriage. While an infant was in ward, the guardian had the power of tendering him or her a suitable match, without disparagement, which if the infants refused, they forfeited the value of the marriage to their guardian, that is, so much as a jury would assess or any one would give to the guardian for such an alliance; and, if the infants married themselves without the guardian's consent, they forfeited double the value of the marriage. 2 Bl.Comm. 70.

Duplicate, *v.* To double, repeat, copy, make, or add a thing exactly like a preceding one; reproduce exactly.

Duplicate, *n.* A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original. Fed.R.Evid. 1001.

That which exactly resembles or corresponds to something else; another, correspondent to the first; hence, a copy; transcript; counterpart; an original instrument repeated; a document the same as another in essential particulars. The term is also frequently used to signify a new original, made to take the place of an instrument that has been lost or destroyed, and to have the same force and effect. *See also* Copy.

In England, the ticket given by a pawnbroker to the pawner of a chattel.

Duplicate taxation. *See* Double taxation.

Duplicate will. A term used where a testator executes two copies of his will, one to keep himself, and the other to be deposited with another person. Upon application for probate of a duplicate will, both copies must be deposited in the registry of the court of probate. The execution of duplicate wills is undesirable because if the testator desires to revoke his will, he must be careful to comply with the laws of revocation as to both wills. *See also* Reciprocal wills.

Duplicatio /d(y)úwpləkéysh(iy)ow/. In the civil law, the defendant's answer to the plaintiff's replication; corresponding to the rejoinder of the common law.

Duplicationem possibilitatis lex non patitur /d(y)úwpləkéyshiyównəm pösəbilétýtəs léks nòn tóltər/. The law does not allow the doubling of a possibility.

Duplicatum jus /d(y)úwpləkéytm jús/. Double right.

Duplicitous /d(y)úwplísətəs/. A pleading which joins in one and the same count different grounds of action of different nature, or of the same nature, to enforce a single right to recovery, or which is based on different theories of the defendant's liability. Such duplicity was not permitted in common law pleading, but is allowed under Rule of Civil Procedure 8(e). In an information, the joinder of separate and distinct offenses in one and the same count. *State v. Seward*, 163 Kan. 136, 181

P.2d 478, 480. *See e.g. Fed.R.Crim.P. 8(a). See also* Duplicity.

Duplicitous appeal. Appeal from two separate judgments or from judgment and order or from two independent orders, both of which are appealable. *City of Duncan v. Abrams*, 171 Okl. 619, 43 P.2d 720, 723.

Duplicity. The technical fault in common law pleading of uniting two or more causes of action in one count in a writ, or two or more grounds of defense in one plea, or two or more breaches in a replication, or two or more offenses in the same count of an indictment, or two or more incongruous subjects in one legislative act, or two or more controverted ultimate issues submitted in a single special issue. Such duplicity of pleading in civil actions is permitted under Rule of Civil Procedure 8(e).

Rule of "duplicity" prohibits the simultaneous charging of several distinct, unrelated crimes in one indictment. *Mechling v. Stayton*, D.C.Va., 361 F.Supp. 770, 772. The joining in a single count of two or more distinct and separate offenses. *State v. New Jersey Trade Waste Ass'n*, 96 N.J. 8, 472 A.2d 1050, 1057. *See e.g. Fed.R.Crim.P. 8(a). See also* Multiplicity of actions or suits.

Deliberate deception or double dealing.

Dupuytren's contraction. A pathological condition involving the palmar fascia of the hands.

Durable goods. *See* Goods.

Durable leases. Leases reserving a rent payable annually, with right of re-entry for nonpayment of the same, and for the term "as long as grass grows or water runs," or equivalent terms.

Durable power of attorney. *See* Power of attorney.

Dura mater /d(y)úrə méytər/. The tough, membranous, outer covering of the brain and spinal cord.

Durante /d(y)ərántiy/. Lat. During. A word of limitation in old conveyances.

Durante absentia /d(y)ərántiy əbsəns(iy)ə/. During absence. In some jurisdictions, administration of a decedent's estate is said to be granted *durante absentia* in cases where the absence of the proper proponents of the will, or of an executor, delays or imperils the settlement of the estate.

Durante bene placito /d(y)ərántiy biyniy plásətow/. During good pleasure. The ancient tenure of English judges was *durante bene placito*. 1 Bl.Comm. 267, 342.

Durante minore etate /d(y)ərántiy mənóriy iytéyiy/. During minority. 2 Bl.Comm. 503. Words taken from the old form of letters of administration.

Durante viduitate /d(y)ərántiy vedyúwətéyiy/. During widowhood. 2 Bl.Comm. 124. *Durante casta viduitate*, during chaste widowhood.

Durante virginitate /d(y)ərántiy vərjinátéyiy/. During virginity (so long as she remains unmarried).

Durante vita /d(y)ərántiy váytə/. During life.

Duration. Extent, limit or time. The portion of time during which anything exists.

Interest. The period of time during which an interest in property lasts.

Trust. The period of time during which a trust exists before its termination.

Duress. Any unlawful threat or coercion used by a person to induce another to act (or to refrain from acting) in a manner he or she otherwise would not (or would). Subjecting person to improper pressure which overcomes his will and coerces him to comply with demand to which he would not yield if acting as free agent. *Head v. Gadsden Civil Service Bd.*, Ala.Civ.App., 389 So.2d 516, 519. Application of such pressure or constraint as compels man to go against his will, and takes away his free agency, destroying power of refusing to comply with unjust demands of another. *Haumont v. Security State Bank*, 220 Neb. 809, 374 N.W.2d 2, 6.

A condition where one is induced by wrongful act or threat of another to make a contract or perform a tortious act under circumstances which deprive him of exercise of his free will. *Hyde v. Lewis*, 25 Ill.App.3d 495, 323 N.E.2d 533, 537. Includes any conduct which overpowers will and coerces or constrains performance of an act which otherwise would not have been performed. *Williams v. Rentz Banking Co.*, 112 Ga.App. 384, 145 S.E.2d 256, 258.

Duress may be a defense to a criminal act, breach of contract, or tort because an act to be criminal or one which constitutes a breach of contract or a tort must be voluntary to create liability or responsibility.

A contract entered into under duress by physical compulsion is void. Also, if a party's manifestation of assent to a contract is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim. *Restatement, Second, Contracts* §§ 174, 175.

As a defense to a civil action, it must be pleaded affirmatively. *Fed.R.Civil P.* 8(c).

As an affirmative defense in criminal law, one who, under the pressure of an unlawful threat from another human being to harm him (or to harm a third person), commits what would otherwise be a crime may, under some circumstances, be justified in doing what he did and thus not be guilty of the crime in question. See *Model Penal Code* § 2.09.

See also *Coercion*; *Economic duress*; *Extortion*; *Undue influence*.

Duress of goods. Where the act consists of a tortious seizure or detention of property from the person entitled to it, and requires some act as a condition for its surrender, the act is "duress of goods". *Sistrom v. Anderson*, 51 Cal.App.2d 213, 124 P.2d 372, 376.

Duress of imprisonment. The wrongful imprisonment of a person, or the illegal restraint of his liberty, in order to compel him to do some act. 1 Bl.Comm. 130, 131, 136, 137. See also *Duress*.

Duressor /d(y)ərəsər/. One who subjects another to duress; one who compels another to do a thing, as by menace.

Duress per minas /d(y)ərəs pər mɔ́nəs/. Duress by threats. The use of threats and menaces to compel a person, by the fear of death, or grievous bodily harm, as mayhem or loss of limb, to do some lawful act, or to commit a misdemeanor. 1 Bl.Comm. 130; 4 Bl.Comm. 30. See *Metus*.

Durham /dʰrəm/. A county palatine in England, the jurisdiction of which was vested in the Bishop of Durham until the statute 6 & 7 Wm. IV, c. 19 vested it as a separate franchise and royalty in the crown. The jurisdiction of the Durham Court of Pleas was transferred to the Supreme Court of Judicature by the Judicature Act of 1873.

Durham rule. The irresistible impulse test of criminal responsibility. The rule states that when there is some evidence that the accused suffered from a diseased or defective mental condition at the time the unlawful act was committed the accused is not criminally responsible if it is found beyond a reasonable doubt that the act was the product of such mental abnormality. *Durham v. United States*, C.A.D.C., 214 F.2d 862, 875. This test of criminal responsibility (as first adopted in 1954 by the Court of Appeals of the District of Columbia in the cited case) was rejected by the same Court in 1972 when it adopted the ALI criterion of insanity of *Model Penal Code* § 4.01(1). *U.S. v. Brawner*, 471 F.2d 969. This same *Model Penal Code* test has also been adopted by a number of other courts. See *Insanity*.

During. Throughout the course of; throughout the continuance of; in the time of; after the commencement and before the expiration of. *Continental Bank & Trust Co. of N. Y. v. Chemical Bank & Trust Co.*, 51 N.Y.S.2d 903, 909.

During the hours of service. Within workers' compensation law, means working-hours plus reasonable periods for ingress and egress. See also *Course of employment*.

During the trial. Period beginning with swearing of jury and ending with rendition of verdict. Period commencing with presentation of indictment by grand jury to court and terminating with final judgment.

Dutch auction. See *Auction*.

Dutch lottery. Also known as the "class lottery." As distinguished from the "Genoese lottery" (*q.v.*), it is a scheme in which the number and value of the prizes are regularly estimated, all the ticket holders are interested at once in the play, and chance determines whether a prize or a blank falls to a given number.

Duties. In its most usual signification this word is the synonym of imposts or customs; *i.e.* tax on imports; but it is sometimes used in a broader sense, as including all manner of taxes, charges, or governmental impositions. *See also* Customs; Most favored nation clause; Tariff; Toll; Tonnage-duty.

Duties of detraction. Taxes levied upon the removal from one state to another of property acquired by succession or testamentary disposition. *Fredrickson v. Louisiana*, 23 How. 445, 16 L.Ed. 577; *In re Strobel's Estate*, 5 App.Div. 621, 39 N.Y.S. 169. *Cf.* Droit de détraction.

Duties on imports /d(y)úwtiyz òn impòrts/. This term signifies not merely a duty on the act of importation, but a duty on the thing imported. It is not confined to a duty levied while the article is entering the country, but extends to a duty levied after it has entered the country. *See* Customs Duties.

Duty. A human action which is exactly conformable to the laws which require us to obey them. Legal or moral obligation. An obligation that one has by law or contract. Obligation to conform to legal standard of reasonable conduct in light of apparent risk. *Karrar v. Barry County Road Com'n*, 127 Mich.App. 821, 339 N.W.2d 653, 657. Obligatory conduct or service. Mandatory obligation to perform. *Huey v. King*, 220 Tenn. 189, 415 S.W.2d 136. An obligation, recognized by the law, requiring actor to conform to certain standard of conduct for protection of others against unreasonable risks. *Samson v. Saginaw Professional Bldg., Inc.*, 44 Mich. App. 658, 205 N.W.2d 833, 835. *See also* Legal duty; Obligation.

A thing due; that which is due from a person; that which a person owes to another. An obligation to do a thing. A word of more extensive signification than "debt," although both are expressed by the same Latin word "*debitum*." Sometimes, however, the term is used synonymously with debt.

Those obligations of performance, care, or observance which rest upon a person in an official or fiduciary capacity; as the *duty* of an executor, trustee, manager, etc.

In negligence cases term may be defined as an obligation, to which law will give recognition and effect, to comport to a particular standard of conduct toward another, and the duty is invariably the same, one must conform to legal standard of reasonable conduct in light of apparent risk. *Merluzzi v. Larson*, 96 Nev. 409, 610 P.2d 739, 741. The word "duty" is used throughout the Restatement of Torts to denote the fact that the actor is required to conduct himself in a particular manner at the risk that if he does not do so he becomes subject to liability to another to whom the duty is owed for any injury sustained by such other, of which that actor's conduct is a legal cause. Restatement, Second, Torts § 4. *See* Care; Due care.

In its use in jurisprudence, this word is the correlative of *right*. Thus, wherever there exists a right in any person, there also rests a corresponding duty upon some other person or upon all persons generally.

It also denotes a tax or impost due to the government upon the importation or exportation of goods. *See* 19 U.S.C.A. *See also* Customs; Customs duties; Tariff; Toll; Tonnage-duty.

Judicial duty. *See* Judicial.

Duty free. Products or merchandise of foreign origin that are not subject to import or export taxes. *See* Customs duties.

Duty of tonnage. A charge upon a vessel as an instrument of commerce for entering, lying in or leaving a port, and includes all taxes and duties, regardless of name or form. *Marine Lighterage Corporation v. Luckenbach S. S. Co.*, 139 Misc. 612, 248 N.Y.S. 71, 72.

Duty of water. Such a quantity of water necessary when economically conducted and applied to land without unnecessary loss as will result in the successful growing of crops.

Duty to act. Obligation to take some action to prevent harm to another and for failure of which there may or may not be liability in tort depending upon the circumstances and the relationship of the parties to each other. *See* Emergency doctrine; Humanitarian doctrine.

Duumviri /d(y)uwámvrày/. (From *duo*, two, and *vir*, men.) A general appellation among the ancient Romans, given to any magistrates elected in pairs to fill any office, or perform any function.

Duumviri municipales were two annual magistrates in the towns and colonies, having judicial powers.

Duumviri navales were officers appointed to man, equip, and refit the navy.

Dux /dóks/. A military governor of a province. A military officer having charge of the borders or frontiers of the empire, called "*dux limitis*." At this period, the word began to be used as a title of honor or dignity.

In Roman law, a leader or military commander. The commander of an army.

In feudal and old European law, duke; a title of honor, or order of nobility. 1 Bl.Comm. 397.

Dwell. To have an abode; to reside; to inhabit; to live in a place. More than mere physical presence is sometimes required. It must be in conformity with law. *Kaplan v. Tod*, 267 U.S. 228, 45 S.Ct. 257, 69 L.Ed. 585. To abide as a permanent residence or for a time. Term is synonymous with inhabit, live, sojourn, reside, stay, rest. *See also* Domicile; Residence.

Dwelling. The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building, or group of buildings, occupied by a family as a place of residence. Structure used as place of habitation.

In conveyancing, includes all buildings attached to or connected with the house. In criminal law (*e.g.* burglary), means a building or portion thereof, a tent, a mobile home, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

Under statute prohibiting breaking and entering a "dwelling house" the test for determining if a building is such a house is whether it is used regularly as a place to sleep. *Wallace v. State*, 63 Md.App. 399, 492 A.2d 970, 973.

Dwelling defense. In most jurisdictions, a person in his dwelling is permitted to use even deadly force to protect himself, his household and the house itself from attack on the principle that a person's house is his castle. *State v. Couch*, 52 N.M. 127, 193 P.2d 405. Model Penal Code §§ 3.11, 3.06(3)(d).

D.W.I. In genealogical tables, a common abbreviation for "died without issue." Also, abbreviation for offense of "driving while intoxicated" (*q.v.*).

Dyer Act. National Motor Vehicle Theft Act (1919) which makes it a criminal offense to transport a stolen motor vehicle in interstate or foreign commerce knowing it to be stolen or to receive or conceal such a motor vehicle in interstate or foreign commerce knowing it to be stolen, though knowledge of its interstate transportation is not essential to guilt. *Odom v. U. S.*, C.A.Fla., 377 F.2d 853. 18 U.S.C.A. §§ 2311-2313.

Dying declaration. *See* Declaration.

Dying without issue. Dying without a child either before or after the decedent's death. At common law this phrase imports an indefinite failure of issue, and not a dying without issue surviving at the time of the death of the first taker. But this rule has been changed in many decisions, with many states having held that the expression "dying without issue," and like expressions, have reference to the time of the death of the party, and not to an indefinite failure of issue. *See also* Failure of issue.

Dying without children imports not a failure of issue at any indefinite future period, but a leaving no children at the death of the legatee. The law favors vesting of estates, and limitation such as "dying without issue," refers to a definite period, fixed in will, rather than to an indefinite failure of issue. Where context is such as to show clearly that testator intended the phrase "die without issue" to mean that, if first taker die without issue during life of testator, the second taker shall stand in his place and prevent a lapse, the words "die without issue" are taken to mean death during life of testator. *Martin v. Raff*, 114 Ind.App. 507, 52 N.E.2d 839, 845.

Dynamite instruction. Further instruction given by the trial judge to jury when the jury have reported an inability to agree on a verdict in a criminal case. In the further instructions, the judge advises them of their obligation to consider the opinions of their fellow jurors and to yield their own views where possible. *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528. This type of jury instruction (also called "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. *See also* Allen charge.

Dynasty /dáynəstiy/dínəstiy/. A succession of rules in the same line or family. Powerful and influential group or family which continues in existence for a considerable time.

Dysnomy /dɪsnəmy/. Bad legislation; the enactment of bad laws.

Dyspareunia /dispərúwniyə/. Incapacity of a woman to sustain the act of sexual intercourse except with great difficulty and pain; anaphrodisia.