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H. This letter, as an abbreviation, stands for Henry (a king of that name) in the citation of English statutes. In the Year Books, it is used as an abbreviation for Hilary term. In tax assessments and other such official records, "h" may be used as an abbreviation for "house". Also, abbreviation for House, as in House of Representatives, House Report, House Bill.

H.A. An abbreviation for *hoc anno*, this year, in this year.

Habe, or have. Lat. A form of the salutatory expression "Ave" (hail) in the titles of the constitutions of the Theodosian and Justinian Codes.

Habeas corpora juratorum /héybiyəs kórpərə jürə-tóram/. In old English law, a writ commanding the sheriff to bring up the persons of jurors, and, if need were, to distrain them of their lands and goods, in order to insure or compel their attendance in court on the day of trial of a cause. It issued from the Common Pleas, and served the same purpose as a *distringas juratores* in the King's Bench. Such writ was abolished by the C.L.P. Act, 1852, § 104.

Habeas corpus /héybiyəs kórpəs/héybiyz'/. Lat. (You have the body.) The name given to a variety of writs (of which these were anciently the emphatic words), having for their object to bring a party before a court or judge. In common usage, and whenever these words are used alone, they are usually understood to mean the *habeas corpus ad subjiciendum* (see *infra*). U. S. v. Tod, 263 U.S. 149, 44 S.Ct. 54, 57, 68 L.Ed. 221. The primary function of the writ is to release from unlawful imprisonment. *People ex rel. Luciano v. Murphy*, 160 Misc. 573, 290 N.Y.S. 1011. The office of the writ is not to determine prisoner's guilt or innocence, and only issue which it presents is whether prisoner is restrained of his liberty by due process. *Ex parte Presnell*, 58 Okl.Cr. 50, 49 P.2d 232.

A form of collateral attack. An independent proceeding instituted to determine whether a defendant is being unlawfully deprived of his or her liberty. It is not an appropriate proceeding for appeal-like review of discretionary decisions of a lower court. *Sheriff, Clark County v. Hatch*, 100 Nev. 664, 691 P.2d 449, 450. For federal habeas corpus procedures, see 28 U.S.C.A. § 2241 et seq.

Initially, the writ only permitted a prisoner to challenge a state conviction on constitutional grounds that related to the jurisdiction of the state court. But the scope of the inquiry was gradually expanded, and *Fay v. Noia*, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837, conclud-

ed that the writ now extends to all constitutional challenges.

See also Post-conviction remedies with respect to review of sentence of federal prisoner.

Habeas corpus acts. The English statute of 31 Car. II, c. 2, is the original and prominent *habeas corpus* act. It was amended and supplemented by St. 56 Geo. III, c. 100. Similar statutes have been enacted in all the United States. This act is regarded as the great constitutional guaranty of personal liberty. See Art. I, § 9, U.S.Const.; 28 U.S.C.A. § 2241 et seq.

Habeas corpus ad deliberandum et recipiendum /héybiyəs kórpəs æd dalibərændəm èt rəsipiyéndəm/. A writ which is issued to remove, for trial, a person confined in one county to the county or place where the offense of which he is accused was committed. Thus, it has been granted to remove a person in custody for contempt to take his trial for perjury in another county.

Habeas corpus ad faciendum et recipiendum /héybiyəs kórpəs æd fæs(h)iyéndəm èt rəsipiyéndəm/. A writ issuing in civil cases to remove the cause, as also the body of the defendant, from an inferior court to a superior court having jurisdiction, there to be disposed of. It is also called "*habeas corpus cum causa*."

Habeas corpus ad prosequendum /héybiyəs kórpəs æd pròskwéndəm/. A court issues a writ of "habeas corpus ad prosequendum" when it is necessary to bring a person who is confined for some other offense before the issuing court for trial. *U.S. v. Cogdell, C.A.*, 585 F.2d 1130, 1132, 190 U.S.App.D.C. 185.

Habeas corpus ad respondendum /héybiyəs kórpəs æd rèspondéndəm/. A writ which is usually employed in civil cases to remove a person out of the custody of one court into that of another, in order that he may be sued and answer the action in the latter.

Habeas corpus ad satisfaciendum /héybiyəs kórpəs æd sàdsfæs(h)iyéndəm/. In English practice, a writ which issues when a prisoner has had judgment against him in an action, and the plaintiff is desirous to bring him up to some superior court, to charge him with process of execution.

Habeas corpus ad subjiciendum /héybiyəs kórpəs æd səbjis(h)iyéndəm/. A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, or person detained. This is the most common form of habeas corpus writ, the purpose of which is to test the legality of the detention or imprisonment; not whether he is guilty or innocent. This writ is

guaranteed by U.S.Const. Art. I, § 9, and by state constitutions. See 28 U.S.C.A. § 2241 et seq. for federal habeas corpus procedures.

This is the well-known remedy in England and the United States for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement. 3 Bl.Comm. 129. The "great writ of liberty," issuing at common law out of courts of Chancery, King's Bench, Common Pleas, and Exchequer.

Habeas corpus ad testificandum /hébıyəs kórpəs əd tɛstafəkəndəm/. The writ, meaning "you have the body to testify", used to bring up a prisoner detained in a jail or prison to give evidence before the court. *Hottle v. District Court in and for Clinton County*, 233 Iowa 904, 11 N.W.2d 30, 34; 3 Bl.Comm. 130.

Habeas corpus cum causa /hébıyəs kórpəs kəm kózə/. (You have the body, with the cause.) Another name for the writ of *habeas corpus ad faciendum et recipiendum* (*q.v.*).

Habemus optimum testem, confitentem reum /həbıyməs óptəməm tɛstəm, kənfədéntəm rıyəm/. We have the best witness,—a confessing defendant.

Habendum clause /həbéndəm klöz/. Portion of deed beginning with the words "To have and to hold". *Bannin v. Peck*, 266 App.Div. 209, 41 N.Y.S.2d 668, 670. The clause usually following the granting part of the premises of a deed, which defines the extent of the ownership in the thing granted to be held and enjoyed by the grantee. *New York Indians v. U. S.*, 170 U.S. 1, 18 S.Ct. 531, 42 L.Ed. 927. The office of the "habendum" is properly to determine what estate or interest is granted by the deed, though office may be performed by the premises, in which case the habendum may lessen, enlarge, explain, or qualify, but not totally contradict or be repugnant to, estate granted in the premises. *Claridge v. Phelps*, 105 Ind.App. 344, 11 N.E.2d 503, 504.

Habendum et tenendum /həbéndəm ət tənéndəm/. In old conveyancing "to have and to hold". Formal words in deeds of land from a very early period.

Habentes homines /həbéntıy z hóməniy z/. In old English law, rich men; literally, having men. The same with *fæsting-men* (*q.v.*).

Habere /həbıriy/. Lat. In the civil law, to have. Sometimes distinguished from *tenere* (to hold), and *possidere* (to possess); *habere* referring to the right, *tenere* to the fact, and *possidere* to both.

Habere facias possessionem /həbıriy féys(hıyəs pəzəs(hıyównəm/. Lat. That you cause to have possession. The name of the process commonly resorted to by the successful party in an action of ejectment, for the purpose of being placed by the sheriff in the actual possession of the land recovered. It is commonly termed simply "*habere facias*," or "*hab. fa.*"

Habere facias seisinam /həbıriy féys(hıyəs sıyənəm/. L. Lat. That you cause to have seisin. The writ of

execution in real actions, directing the sheriff to cause the demandant to have seisin of the lands recovered. It was the proper process for giving seisin of a freehold, as distinguished from a chattel interest in lands.

Habere facias visum /həbıriy féys(hıyəs váyəm/. Lat. That you cause to have a view. A writ to cause the sheriff to take a view of lands or tenements.

Habere licere /həbıriy ləıriy/. Lat. In Roman law, to allow [one] to have [possession]. This phrase denoted the duty of the seller of property to allow the purchaser to have the possession and enjoyment. For a breach of this duty, an *actio ex empto* might be maintained.

Habeto tibi res tuas /həbıy tıbay rıy z tyúwəm/. Lat. Have or take your effects to yourself. One of the old Roman forms of divorcing a wife.

Habilis /həbələs/. Lat. Fit; suitable; active; useful (of a servant). Proved; authentic (of Book of Saints). Fixed; stable (of authority of the king).

Habit. A disposition or condition of the body or mind acquired by custom or a usual repetition of the same act or function. The customary conduct, to pursue which one has acquired a tendency, from frequent repetition of the same acts. *Knickerbocker Life Ins. Co. v. Foley*, 105 U.S. 350, 26 L.Ed. 1055. A regular practice of meeting a particular kind of situation with a certain type of conduct, or a reflex behavior in a specific set of circumstances. *Frase v. Henry*, C.A.Kan., 444 F.2d 1228, 1232. Course of behavior of a person regularly repeated in like circumstances. Evidence of a specific habit may be admissible to show specific conduct or acts within the sphere of the developed habit. *Fed.Evid. R.* 406. *See also* Custom and usage; Habitual.

Habitable. *See* Habitability.

Habitability. Condition of premises which permits inhabitant to live free of serious defects to health and safety.

Warranty of habitability. Under "implied warranty of habitability," applicable to new housing, the builder-vendor warrants that he has complied with the building code of the area in which the structure is located and that the residence was built in a workmanlike manner and is suitable for habitation. *Duncan v. Schuster-Graham Homes, Inc.*, 39 Colo.App. 92, 563 P.2d 976, 977. In most states, either by statute or case law, every landlord is held to impliedly warrant that the residential premises rented are fit for human habitation (*i.e.* free of violations of building and sanitary codes) at the time of the inception of the tenancy, and will continue as such during the term. *Boston Housing Authority v. Hemingway et al.*, 363 Mass. 184, 293 N.E.2d 831; *Hinson v. Delis*, 26 Cal.App.3d 62, 102 Cal.Rptr. 661. *See* Uniform Residential Landlord and Tenant Law, § 2.104. *See also* Constructive eviction; Home Owners Warranty.

Habitable repair. A covenant by a lessee to "put the premises into habitable repair" binds him to put them into such a state that they may be occupied, not only with safety, but with reasonable comfort, for the purposes for which they are taken. *See* Habitability.

Habitancy. That fixed place of abode to which a person intends to return habitually when absent. *Owens v. Huntling*, C.C.A.Or., 115 F.2d 160, 162. Settled dwelling in a given place; fixed and permanent residence there. Place of abode; settled dwelling; residence; house. *Moore v. Tiller*, Ky., 409 S.W.2d 813, 815.

It is difficult to give an exact definition of "habitan-
cy." In general terms, one may be designated as an
"inhabitant" of that place which constitutes the princi-
pal seat of his residence, of his business, pursuits, con-
nections, attachments, and of his political and municipal
relations. The term, therefore, embraces the fact of
residence at a place, together with the intent to regard
it and make it a home. The act and intent must concur.

See also Domicile; Residence.

Habitant. Fr. In French and Canadian law, a resident
tenant; a settler; a tenant who kept hearth and home
on the seignior. A native of Canada of French descent,
particularly of the peasant or farming class.

Habitatio /hæbətáysh(i)yow/. Lat. In the civil law, the
right of dwelling; the right of free residence in another's
house.

Habitation. Place of abode; dwelling place; residence.

In the civil law, the right of a person to live in the
house of another without prejudice to the property. It
differed from a usufruct, in that the usufructuary might
apply the house to any purpose, as of a business; where-
as the party having the right of habitation could only
use it for the residence of himself and family.

See Domicile; Habitancy; Residence.

Habitual. Customary, usual, of the nature of a habit.
Synonyms are customary, common, regular; while its
antonyms are unusual, unwonted, extraordinary, rare.
Illinois Bankers Life Ass'n v. Theodore, 47 Ariz. 314, 55
P.2d 806, 811. Formed or acquired by or resulting from
habit; frequent use or custom. *See also* Habit.

Habitual criminal. A recidivist (*q.v.*). A legal category
created by statute in many states by which more severe
penalties can be imposed on offenders who have multi-
ple felony convictions. In general, habitual offender
statutes (which differ from state-to-state) impose greater
sentences on offender for repeated crimes, with life
imprisonment being imposed upon commission of sever-
al felonies. (see *e.g.* 21 U.S.C.A. § 848 repeat drug of-
fenders). The criminal history of a defendant is an
important factor in imposing sentence under federal
sentencing guidelines. 18 U.S.C.A. § 3553. *See also*
Model Penal Code § 7.03.

Habitual drunkenness or intoxication. One who fre-
quently and repeatedly becomes intoxicated by excessive
indulgence in intoxicating liquor so as to acquire a fixed
habit and an involuntary tendency to become intoxicat-
ed as often as the temptation is presented, even though
he remains sober for days or even weeks at a time. A
person given to inebriety or the excessive use of intoxi-
cating drink, who has lost the power or the will, by
frequent indulgence, to control his appetite for it. The
custom or habit of getting drunk; the constant indul-
gence in stimulants, whereby intoxication is produced;

not the ordinary use, but the habitual use of them; the
habit should be actual and confirmed, but need not be
continuous, or even of daily occurrence. That degree of
intemperance from the use of intoxicating drinks which
disqualifies the person a great portion of the time from
properly attending to business, or which would reason-
ably inflict a course of great mental anguish upon the
innocent party.

Habitually. Customarily; by frequent practice or use.
It does not mean entirely or exclusively. *See* Habitual.

Hable. L. Fr. In old English law, a port or harbor; a
station for ships.

Hacienda /hàs(i)yénda/hòsiyénda/. In Spanish law,
the public domain; the royal estate; the aggregate
wealth of the state. The science of administering the
national wealth; public economy.

Also an estate or farm belonging to a private person.
A royal estate.

Had. As used in a statute providing that no suit, action
or proceeding to foreclose a mortgage or trust deed shall
be had or maintained, "had" means commenced or be-
gun.

Hadbote /hædbowt/. In Saxon law, a recompense or
satisfaction for the violation of holy orders, or violence
offered to persons in holy orders.

Hadd. In Hindu law, a boundary or limit. A statutory
punishment defined by law, and not arbitrary.

Haderunga /hædərəngə/. In old English law, hatred; ill
will; prejudice, or partiality.

Respect or distinction of persons.

Hadgonel. In old English law, a tax or mulct.

Hadley v. Baxendale, rule of. Under the rule of *Had-
ley v. Baxendale*, "special" or "consequential" damages
(as opposed to "general" damages which so obviously
result from a breach that all contracting parties are
deemed to have contemplated them) will only be award-
ed if they were in the parties' contemplation, at the time
of contracting, as a probable consequence of a breach of
contract. *See also* Damages (*Consequential damages*).

Hæc est conventio /hiyk èst kənvəns(i)yow/. Lat.
This is an agreement. Words with which agreements
anciently commenced.

Hæc est finalis concordia /hiyk èst fənéyləs
kənkörd(i)yə/. L. Lat. This is the final agreement.
The words with which the foot of a fine commenced.

Hæreda /hæriyda/. In Gothic law, a tribunal answering
to the English court-leet or hundred court.

Hærede abducto /hæriydiy əbdəktow/. An ancient writ
that lay for the lord, who, having by right the wardship
of his tenant under age, could not obtain his person, the
same being carried away by another person.

Hærede deliberando alteri qui habet custodiam terræ
/hæriydiy dəlibərəndow ɔltəray kwày héybət kəstów-
diyəm téhriy/. An ancient writ, directed to the sheriff,
to require one that had the body of an heir, being in

ward, to deliver him to the person whose ward he was by reason of his land.

Hæredem deus facit, non homo /hæriýdæm díyæs fêysæt, nòn hòwmow/. God makes the heir, not man.

Hærede raptò /hæriýdiy ráptow/. An ancient writ that lay for the ravishment of the lord's ward.

Hæredes /hæriýdiy/. Lat. In the civil law, heirs. The plural of *hæres* (q.v.).

Hæredes proximi /hæriýdiy próksəmay/. Nearest or next heirs. The children or descendants of the deceased.

Hæredes remotiores /hæriýdiy rəməwshiyóriy/. More remote heirs. The kinsmen other than children or descendants.

Hæredes sui et necessarii /hæriýdiy syúway èt nəsəsériyay/. In Roman law, own and necessary heirs; i.e., the lineal descendants of the estate-leaver. They were called "necessary" heirs, because it was the law that made them heirs, and not the choice of either the decedent or themselves. But since this was also true of slaves (when named "heirs" in the will) the former class was designated "*sui et necessarii*," by way of distinction, the word "*sui*" denoting that the necessity arose from their relationship to the decedent.

Hæredipeta /hirádipətə/. Lat. In old English law, a seeker of an inheritance; hence, the next heir to lands.

Hæredipetæ suo propinquo vel extraneo periculoso sane custodi nullus committatur /hîrédipətə s(y)úwov prəpînkwov vèl ekstréniyov pərikyəlòwsow séyniy kəstòwday nòlæs kòmətéytər/. To the next heir, whether a relation or a stranger certainly a dangerous guardian, let no one be committed.

Hæreditas /hæredətæs/. In Roman law, the *hæreditas* was a universal succession by law to any deceased person, whether such person had died testate or intestate, and whether in trust (*ex fideicommisso*) for another or not. The like succession according to Prætorian law was *bonorum possessio*.

In old English law, an estate transmissible by descent; an inheritance.

Hæreditas, alia corporalis, alia incorporalis; corporalis est, quæ tangi potest et videri; incorporalis quæ tangi non potest nec videri /hæredətæs éyl(i)yə kòrpərəylæs éyl(i)yə ìnkòrpərəylæs; kòrpərəylæs èst, kwiy tænjay pówtæst èt vèdiray; ìnkòrpərəylæs kwiy tænjay nòn pówdæst nèk vèdiray/. An inheritance is either corporeal or incorporeal. Corporeal is that which can be touched and seen; incorporeal, that which can neither be touched nor seen.

Hæreditas damnosa /hæredətæs dæmnòwsə/. A burdensome inheritance; one which would be a burden instead of a benefit, that is, the debts to be paid by the heir would exceed the assets.

Hæreditas est successio in universum jus quod defunctus habuerit /hæredətæs èst saksés(h)(i)yow in yùwnavòrsəm jəs kwòd dəfəŋtəs hæbyúwərət/. Inheri-

tance is the succession to every right which the deceased had.

Hæreditas jacens /hæredətæs jéysənz/. In civil law, a prostrate or vacant inheritance. The inheritance left to a voluntary heir was so called so long as he had not manifested, either expressly or by silence, his acceptance or refusal of the inheritance. So long as no one had acquired the inheritance, it was termed "*hæreditas jacens*"; and this, by a legal fiction, represented the person of the decedent. The estate of a person deceased, where the owner left no heirs or legatee to take it, called also "*caduca*"; an escheated estate. The term has also been used in English law to signify an estate in abeyance; that is, after the ancestor's death, and before assumption of heir. An inheritance without legal owner, and therefore open to the first occupant.

Hæreditas legitima /hæredətæs læjítəmə/. A succession or inheritance devolving by operation of law (intestate succession) rather than by the will of the decedent.

Hæreditas luctuosa /hæredətæs ləktyuwòwsə/. A sad or mournful inheritance or succession; as that of a parent to the estate of a child, which was regarded as disturbing the natural order of mortality (*turbato ordine mortalitatis*). It was sometimes termed *tristis successio*.

Hæreditas nihil aliud est, quam successio in universum jus, quod defunctus habuerit /hæredətæs náy(h)əl æliýad èst, kwæm saksés(h)(i)yow in yùwnavòrsəm jəs, kwòd dəfəŋtəs hæbyúwərət/. The right of inheritance is nothing else than the faculty of succeeding to all the rights of the deceased.

Hæreditas nunquam ascendit /hæredətæs nàŋkwəm əsəndət/. An inheritance never ascends. 2 Bl.Comm. 211. A maxim of feudal origin, and which invariably prevailed in the law of England down to the passage of the statute 3 & 4 Wm. IV, c. 106, § 6, by which it was abrogated.

Hæreditas testamentaria /hæredətæs tètəməntériyə/. Testamentary inheritance, that is, succession to an estate under and according to the last will and testament of the decedent.

Hæredum appellatione veniunt hæredes hæredum in infinitum /hæriýdæm əpələyshiyówniy véniyènt hæriýdiy hæriýdæm in infənáytm/. By the title of heirs, come the heirs of heirs to infinity.

Hæres /híriy/. In Roman law, the heir, or universal successor in the event of death. The heir is he who actively or passively succeeds to the entire property of the estate-leaver. He is not only the successor to the rights and claims, but also to the estate-leaver's debts, and in relation to his estate is to be regarded as the identical person of the estate-leaver, inasmuch as he represents him in all his active and passive relations to his estate.

The institution of the *hæres* was the essential characteristic of a *testament*: if this was not done, the instrument was called a *codicillus*. The office, powers, and duties of the *hæres*, in Roman law, were much more closely assimilated to those of a modern *executor* than to

those of an heir at law. Hence "heir" is not at all an accurate translation of "*hæres*," unless it be understood in a special technical sense.

In *Common law*, an heir; he to whom lands, tenements, or hereditaments by the act of God and right of blood to descend, of some estate of inheritance.

Hæres astrarius /híriyz æstréiyás/. In old English law, an heir in actual possession of the house of his ancestor.

Hæres de facto /híriyz diy fáktow/. In old English law, heir from fact; that is, from the disseisin or other act of his ancestor, without or against right. An heir in fact, as distinguished from an heir *de jure*, or by law.

Hæres est alter ipse, et filius est pars patris /híriyz èst óltær ípsiy èt filiyás, èst párz pátræs/. An heir is another self, and a son is part of the father.

Hæres est aut jure proprietatis aut jure representationis /híriyz èst òt júriy præpráyatéytas òt júriy reprázantéyshiýównás/. An heir is either by right of property, or right of representation.

Hæres est eadem persona cum antecessore /híriyz èst iyéydam pørsównæ kàm àntæsásóriy/. An heir is the same person with his ancestor.

Hæres est nomen collectivum /híriyz èst nówmæn kòlèktáyvəm/. "Heir" is a collective name or noun.

Hæres est nomen juris; filius est nomen naturæ /híriyz èst nówmæn juras, filiyás èst nówmæn natýúriy/. "Heir" is a name or term of law; "son" is a name of nature.

Hæres est pars antecessoris /híriyz èst párz àntæsásórás/. An heir is a part of the ancestor. So said because the ancestor, during his life, bears in his body (in judgment of law) all his heirs.

Hæres ex asse /híriyz èks ásiy/. In the civil law, an heir to the whole estate; a sole heir.

Hæres extraneus /híriyz ækstréyniyás/. In the civil law, a strange or foreign heir; one who was not subject to the power of the testator, or person who made him heir. *Qui testatoris juri subjecti non sunt, extranei hæredes appellantur.*

Hæres factus /híriyz fáktás/. In the civil law, an heir made by will; a testamentary heir; the person created universal successor by will. Otherwise called "*hæres ex testamento*," and "*hæres institutus*."

Hæres fideicommissarius /híriyz fidiyaykòmásériyás/. In the civil law, the person for whose benefit an estate was given to another (termed "*hæres fiduciarius*," *q.v.*) by will. Answering nearly to the *cestui que trust* of the English law.

Hæres fiduciarius /híriyz fèdúws(h)iyéiyás/. A fiduciary heir, or heir in trust; a person constituted heir by will, in trust for the benefit of another, called the "*fideicommissarius*."

Hæres hæredis mei est meus hæres /híriyz hæriýdæs míyay èst míyás híriyz/. The heir of my heir is my heir.

Hæres institutus /híriyz instatýúwtás/. A testamentary heir; one appointed by the will of the decedent.

Hæres legitimus /híriyz læjítémás/. A lawful heir; one pointed out as such by the marriage of his parents.

Hæres legitimus est quem nuptiæ demonstrant /híriyz læjítémás èst kwèm nópshiyiy dàmónstránt/. He is a lawful heir whom marriage points out as such; who is born in wedlock.

Hæres minor uno et viginti annis non respondebit, nisi in casu dotis /híriyz máynær yúwnow èt vajíntay énas nòn rèspondiybèt náysay in kéysyuw dówtás/. An heir under twenty-one years of age is not answerable, except in the matter of dower.

Hæres natus /híriyz néytás/. In the civil law, an heir born; one born heir, as distinguished from one made heir (*hæres factus, q.v.*); an heir at law, or by intestacy (*ab intestato*); the next of kin by blood, in cases of intestacy.

Hæres necessarius /híriyz nèsésériyás/. In the civil law, a necessary or compulsory heir. This name was given to the heir when, being a slave, he was named "heir" in the testament, because on the death of the testator, whether he would or not, he at once became free, and was compelled to assume the heirship.

Hæres non tenetur in Anglia ad debita antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus, præterquam debita regis tantum /híriyz nòn tæniýtær in ængliyæ æd débætæ àntæsásórás radéndæ, náysay pær àntæsásóræm æd hók fyúwæræt òblægéytas prætòrkwæm débætæ ríjæs tántæm/. In England, the heir is not bound to pay his ancestor's debts, unless he be bound to it by the ancestor, except debts due to the king. However, by 3 & 4 Wm. IV, c. 104, he is now liable.

Hæres rectus /híriyz réktás/. In old English law, a right heir.

Hæres suus /híriyz s(y)úwás/. In the civil law, a man's own heir; a decedent's proper or natural heir. This name was given to the lineal descendants of the deceased. Persons who were in the power of the testator but became *sui juris* at his death. Those descendants who were under the power of the deceased at the time of his death, and who are most nearly related to him.

Hæretare /hèhrétéiy/. In old English law, to give a right of inheritance, or make the donation hereditary to the grantee and his heirs.

Hæretico comburendo /hæretákow kòmbyéréndow/. The English statute 2 Hen. IV, c. 15, *de hæretico comburendo*, was the first penal law enacted against heresy, and imposed the penalty of death by burning against all heretics who relapsed or who refused to abjure their opinions. This statute was repealed by the statute 29 Car. II, c. 9. This was also the name of a writ for the purpose indicated.

Hafne /héyvæn/. A haven or port.

Hafne courts /héyvæn kórts/. Haven courts; courts anciently held in certain ports in England.

Hagne /hék/hég/. A little handgun. A misspelling of *hague*.

Hagnebut /hákbət/hég°. A handgun of a larger description than the *hagne*.

Hague Tribunal /héyg trəbyúwnəl/. The Court of Arbitration established by the Hague Peace Conference of 1899. The object of the establishment was to facilitate the immediate recourse to arbitration for the settlement of international differences by providing a permanent court, "accessible at all times, and acting, in default of agreement to the contrary between the parties, in accordance with the rules of procedure inserted in the present convention." The court was given jurisdiction over all arbitration cases, provided the parties did not agree to institute a special tribunal. An international Bureau was likewise established to serve as a registry for the court and to be the channel of communications relative to the meetings of the court. The court, although called "permanent," is really so only in the fact that there is a permanent list of members from among whom the arbitrators in a given case are selected. At the Second Hague Conference of 1907, apart from minor changes made in the court, it was provided that, of the two arbitrators appointed by each of the parties, only one should be a national of the appointing state.

Haia /héyə/. In old English law, a park inclosed. A hedge.

Hakh /hák/. Truth; the true God; a just or legal prescriptive right or claim; a perquisite claimable under established usage by village officers.

Hakhdar /hákdàr/. The holder of a right.

Halakar /hálakàr/. The realization of the revenue.

Half. One of two equal parts into which anything may be divided. *Hoynes v. Schneider*, 138 Kan. 545, 27 P.2d 558. A moiety.

Half blood. See Blood relations.

Half brother; half sister. Persons who have the same father, but different mothers; or the same mother, but different fathers.

Half cent. A copper coin of the United States, of the value of five mills, and of the weight of ninety-four grains. The coinage of these was discontinued in 1857.

Half defense. See Defense.

Half dime. A silver (now nickel) coin of the United States, of the value of five cents.

Half dollar. A silver (now only partially silver) coin of the United States, of the value of fifty cents, or one-half the value of a dollar.

Half eagle. A gold coin of the United States, of the value of five dollars. No longer in general circulation.

Half endea or **halfen-deal** /hàf°/hòfəndiyl/. A moiety or half of a thing.

Half-king /háfkínəg/. In Saxon law, half-king (*semirex*). A title given to the aldermen of all England.

Half-mark. A noble, or six shillings and eight pence in English money.

Half nephew or half niece. Son or daughter of a half brother or half sister.

Half pilotage. Compensation for services which a pilot has put himself in readiness to perform, by labor, risk, and cost, and has offered to perform, at half the rate he would have received if the services had actually been performed. *Gloucester Ferry Co. v. Pennsylvania*, 114 U.S. 196, 5 S.Ct. 826, 29 L.Ed. 158.

Half-proof. In the civil law, proof by one witness, or a private instrument. Or *prima facie* proof, which yet was not sufficient to found a sentence or decree.

Half-seal. That which was formerly used in the English chancery for sealing of commissions to delegates, upon any appeal to the court of delegates, either in ecclesiastical or marine causes.

Half section. The half of a section of land according to the divisions of the government survey, laid off either by a north-and-south or by an east-and-west line, and containing 320 acres.

Half-timer. A child who, by the operation of the English factory and education acts, was employed for less than the full time in a factory or workshop, in order that he might attend some "recognized efficient school."

Half-tongue. A jury half of one *tongue* or nationality and half of another.

Halfway house. Loosely structured residential facility designed to rehabilitate persons who have recently left a medical care facility or prison or who, for personal reasons, need help in readjusting. Such houses, for example, assist a recently discharged prisoner in making the often difficult transition from prison to civilian life.

Half year. In legal computation, the period of one hundred and eighty-two days; the odd hours being rejected.

Halifax law /hálfæks ló/. A synonym for lynch law, or the summary (and unauthorized) trial of a person accused of crime and the infliction of death upon him; from the name of the parish of Halifax, in England, where anciently this form of private justice was practised by the free burghers in the case of persons accused of stealing; also called "gibbet law."

Haligemot or halimote /hálgə(m)òwt/. In Saxon law, the meeting of a hall (*conventus aulae*), that is, a lord's court; a court of a manor, or court-baron. So called from the *hall*, where the tenants or freemen met, and justice was administered. It was sometimes used to designate a convention of citizens in their public hall and was also called folkmote and hallmote. The word *halimote* rather signifies the lord's court or a court baron held in a manor in which the differences between the tenants were determined. Furthermore, it seems to have been a common practice for a wealthy abbey to keep a court, known as a *halimote*, on each of its manors, while in addition to these manorial courts it

kept a central court, a *libera curia* for all its greater freehold tenants.

Halimas /hæləməs/. In English law, the feast of All Saints, on the 1st of November; one of the cross-quarters of the year, was computed from Halimas to Candlemas.

Hall. A building or room of considerable size, used as a place for the meeting of public assemblies, conventions, courts, etc.; as, the city hall, the town hall.

In old English law, a name given to many manorhouses because the magistrate's court was held in the hall of his mansion; a chief mansion-house.

Hence, *hall day*, a court day.

Hallage /hóləj/. In old English law, a fee or toll due for goods or merchandise vended in a hall. A toll due to the lord of a fair or market, for such commodities as were vended in the common hall of the place.

Hallazgo /hə(ly)áskow/. In Spanish law, the finding and taking possession of something which previously had no owner, and which thus becomes the property of the first occupant.

Halle-gemote /hólgəməwt/. In Saxon law, haligemot (*q.v.*).

Hallmark. An official stamp affixed by the goldsmiths upon articles made of gold or silver as an evidence of genuineness, and hence used to signify any mark of genuineness.

Hallmoot /hólməwt/. See Haligemot.

Hallucination /həl(y)üwsənéyshən/. An apparently real sensory perception (auditory or visual) without any real external stimuli to cause it; commonly experienced by psychotics. It may occur with relation to any of the special senses, *e.g.* hearing sounds or seeing things that do not exist. The perception by any of the senses of an object which has no existence. The conscious recognition of a sensation of sight, hearing, feeling, taste, or smell which is not due to any impulse received by the perceptive apparatus from without, but arises within the perceptive apparatus itself.

Hallucinogenic drug. Drugs that induce hallucinations, such as mescaline, LSD, and the like.

Halmote /hólməwt/. See Haligemot.

Halved notes. Payment notes which are torn in half, one half of each note being given to seller when order is placed, the other half, when the goods are delivered.

Halymote /hælaməwt/. A holy or ecclesiastical court. It was anciently held on Sunday next before St. Thomas' day, and therefore called the "*holymote*", or holy court.

Halywerfolk /hælwərkfówk/. Sax. In old English law, tenants who held land by the service of repairing or defending a church or monument, whereby they were exempt from feudal and military services. Especially in the county of Durham, those who held by service of defending the corpse of St. Cuthbert.

Ham. In England, a place of dwelling; a homeclose; a little narrow meadow. A house or little village.

Hama /héymə/. In English law, a piece of land.

Hamel, hameleta, or hamleta /hæməl/hæmləts/. A hamlet.

Hamesecken /héymsəkən/. In old English law, the crime of housebreaking or burglary. See also *Hamsocne*.

Hamfare /hæmfèr/. (Sax. From *ham*, a house.) In Saxon law, an assault made in a house; a breach of the peace in a private house. This word by some is said to signify the freedom of a man's house. See also *Hamsocne*.

Hamlet. A small village; a part or member of a vill. It is the diminutive of "*ham*", a village. A "village" or "hamlet" in a rural community may be no more than a store, a school, a church, and a few residences.

Hammer. Metaphorically, a forced sale or sale at public auction. "To bring to the hammer", *i.e.* to put up for sale at auction. "Sold under the hammer", *i.e.* sold by an officer of the law or by an auctioneer. See also *Forced sale*.

Hammurabi, Code of. Set of laws once considered the oldest promulgation of laws in human history prepared by Babylonian king, 1792–1750 B.C. (circa).

Hamsocne /hæmsöwkən/. In Saxon law, the word is variously spelled *hamsoca*, *hamsocna*, *haimsuken*, *hamesaken*, *hamsocn*. The right of security and privacy in a man's house. The breach of this privilege by a forcible entry of a house is breach of the peace.

Among the Anglo-Saxons it was breaking into a house; perhaps the time of the day was not an element. See also *Hamesecken*.

Hanaper /hænəpər/. In old English law, a hamper or basket in which were kept the writs of the court of chancery relating to the business of a subject, and their returns; equivalent to the Roman *fiscus*. The fees accruing on writs, etc., were there kept.

Hanaper-office /hænəpər ófəs/. An office formerly belonging to the common-law jurisdiction of the court of chancery, so called because all writs relating to the business of a subject, and their returns, were formerly kept in a hamper, *in hanaperio*.

Hand. A measure of length equal to four inches, used in measuring the height of horses.

A person's signature.

In anatomical usage the hand, or manus, includes the phalanges, or fingers and thumb; the metacarpus, or hand proper; and the carpus, or wrist; but in popular usage the wrist is often excluded.

An instrumental part; *e.g.* "he had a hand in the crime". One who performs some work or labor; *e.g.* a "hired hand". To give assistance; *e.g.* to lend a "hand". To deliver; *e.g.* to "hand over".

In the plural, the term may be synonymous with "possession"; as, the "hands" of an executor, garnishee, etc.

In old English law, an oath.

For the meaning of the terms Strong hand and Clean hands doctrine, see those titles.

Handbill. A written or printed notice displayed, handed out, or posted, to inform those concerned of something to be done or some event. Posting and distribution of handbills is regulated by ordinance or statute in most localities.

Handborow. In Saxon law, a hand pledge; a name given to the nine pledges in a decennary or friborg; the tenth or chief, being called "*headborow*" (*q.v.*). So called as being an inferior pledge to the chief.

Handcuffs. See Fetters.

Hand down. To announce or file an opinion in a cause. Used originally and properly of the opinions of appellate courts transmitted to the court below; but in later usage the term is employed more generally with reference to any decision by a court upon a case or point reserved for consideration.

Hand-fasting. In old English law, betrothment.

Hand-grith. Peace or protection given by the king with his own hand; used in the laws of Henry I.

Handhabend or hand-habende /hændhæbænd/. In Saxon law, one having a thing in his hand, that is, a thief found having the stolen goods in his possession. Jurisdiction to try such thief.

Handle. To control, direct, to deal with, to act upon, to perform some function with regard to or to have passed through one's hands. To buy and sell, or to deal or trade in. *State ex rel. Bell v. Phillips Petroleum Co.*, 349 Mo. 360, 160 S.W.2d 764, 769. To manage or operate.

Hand money. Money paid in hand to bind a bargain; earnest money, when it is in cash.

Handsale. Anciently, among the northern European nations, shaking of hands was held necessary to bind a bargain,—a custom still retained in verbal contracts. A sale thus made was called "handsale" (*venditio per mutam manum complexionem*). In process of time the same word was used to signify the price or earnest money which was given immediately after the shaking of hands, or instead thereof. 2 Bl.Comm. 448.

Handsel. Handsale, or earnest money.

Handwriting. The chirography of a person. The cast or form of writing peculiar to a person, including the size, shape, and style of letters, tricks of penmanship, and whatever gives individuality to his writing, distinguishing it from that of other persons. Anything written by hand; an instrument written by the hand of a person, or a specimen of his writing.

Handwriting, considered under the law of evidence, includes not only the ordinary writing of one able to write, but also writing done in a disguised hand, or in

cipher, and a mark made by one able or unable to write. For nonexpert opinion as to genuineness of handwriting, as based on familiarity not required for purposes of litigation, see Fed.Evid. R. 901(b)(2).

Handwriting exemplars. Samples of one's handwriting required in criminal cases involving forgery, kidnapping, etc., for comparison purposes.

Compelling grand jury witness to produce handwriting and printing exemplars, to be used solely as standard of comparison in order to determine whether witness was author of certain writings, does not violate Fifth Amendment privilege although privilege might be asserted if government should seek more than physical characteristics of handwriting as by seeking to obtain written answers to incriminating questions or a signature on incriminating statement. U.S.C.A.Const. Amend. 5. *U. S. v. Mara*, 410 U.S. 19, 93 S.Ct. 774, 35 L.Ed.2d 99.

Hang. In old practice, to remain undetermined. Thus, the present participle means pending; during the pendency. Remaining undetermined. See Pending.

Hanged, drawn and quartered. A method of executing traitors in England, said to have been introduced in 1241. The traitor was carried on a sled, or hurdle to the gallows (formerly dragged there tied to the tail of a horse); hanged till half dead and then cut down; his entrails cut out and burnt; his head cut off and his body to be divided into quarters, which, with his head, were hung in some public place. In practice the executioner usually cut out the heart and held it up to view.

Hanging. As a form of capital punishment, means suspension by neck until dead. Such means of capital punishment is seldom used in United States.

Hanging in chains. In atrocious cases it was at one time usual, in England, for the court to direct a murderer, after execution, to be hanged upon a gibbet in chains near the place where the murder was committed. Its legality was declared by acts in 1751 and 1828, and abolished by 4 & 5 Wm. IV, c. 26.

Hangman. An executioner. One who executes condemned criminals by hanging.

Hangwite /hæŋwæt/. In Saxon law, a fine for illegal hanging of a thief, or for allowing him to escape. Immunity from such fine.

Hanse /hæns/hânzə/. In Germany, formerly an alliance or confederation among merchants or cities, for the good ordering and protection of the commerce of its members. An imposition upon merchandise.

Hanseatic /hænzijædæk/. Pertaining to a hance or commercial alliance; but, generally, the union of the Hanse Towns is the one referred to, as in the expression the "Hanseatic League."

Hanse Towns /hæns tawnz/. The collective name of certain German cities, including Lübeck, Hamburg, and Bremen, which formed an alliance for the mutual protection and furtherance of their commercial interests, in the twelfth century. The powerful confederacy thus

formed was called the "Hanseatic League." The league framed and promulgated a code of maritime law, which was known as the "Laws of the Hanse Towns," or *Jus Hanseaticum Maritimum*.

The years 1356 to 1377 marked the zenith of the league's power. The league gradually declined till, in 1669, the last general assembly was held and Lübeck, Hamburg and Bremen were left alone to preserve the name and small inheritance of the "Hansa."

Hanse Towns, laws of the /lóz əv ðə hæns táwnz/. The maritime ordinances of the Hanseatic towns, first published in German at Lübeck, in 1597, and in May, 1614, revised and enlarged.

Hantelod, or hantelode /hántəlòwd/. In old European law, an arrest, or attachment.

Haole /háwliy/. White foreign person. *International Longshoremen's & Warehousemen's Union v. Ackerman*, D.C.Hawaii, 82 F.Supp. 65, 76.

Hap. To catch. Thus, "hap the rent," "hap the deed-poll," were formerly used.

Happiness. Comfort, consolation, contentment, ease, enjoyment, pleasure, satisfaction. The constitutional right of men to pursue their "happiness" means the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity, or develop their faculties, so as to give to them their highest enjoyment. *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 4 S.Ct. 652, 28 L.Ed. 585.

Harassment. As defined in federal statute providing for a civil action to restrain harassment of a victim or witness, is "a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose." 18 U.S.C.A. § 1514(c)(1). Term is used in a variety of legal contexts to describe words, gestures and actions which tend to annoy, alarm and abuse (verbally) another person; *e.g.*, the use of "obscene or profane language or language the natural consequence of which is to abuse the hearer or reader" is unlawful harassment under the Federal Fair Debt Collection Practices Act. 15 U.S.C.A. § 1692(d)(2).

Sexual harassment by employers against employees is recognized as a cause of action under Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e et seq., *e.g.*, *Tomkins v. Public Service Electric & Gas Co.*, C.A.N.J., 568 F.2d 1044. *See also* Sexual harassment.

A person commits a petty misdemeanor if, with purpose to harass another, he: (1) makes a telephone call without purpose of legitimate communication; or (2) insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or (3) makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or (4) subjects another to an offensive touching; or (5) engages in any other course of alarming conduct serving no legitimate purpose of the actor. Model Penal Code, § 250.4.

The federal Fair Debt Collection Practices Act prohibits debt collectors from using such harassment tactics as threats, abusive language, or telephone excesses. 15 U.S.C.A. § 1692c et seq.

Harbinger /hárbənjər/. In England, an officer of the royal household.

Harbor, n. A haven, or a space of deep water so sheltered by the adjacent land and surroundings as to afford a safe anchorage for ships. A port or haven for ships; a sheltered place, natural or artificial, on the coast of a sea, lake, or other body of water. A place of security and comfort; a refuge. *See also* Haven.

Harbor, v. To afford lodging to, to shelter, or to give a refuge to. To clandestinely shelter, succor, and protect improperly admitted aliens. *Susnjar v. U. S.*, C.C.A. Ohio, 27 F.2d 223, 224. To receive clandestinely and without lawful authority a person for the purpose of so concealing him that another having a right to the lawful custody of such person shall be deprived of the same. Or, in a less technical sense, it is the reception of persons improperly. It may be aptly used to describe the furnishing of shelter, lodging, or food clandestinely or with concealment, and under certain circumstances, may be equally applicable to those acts divested of any accompanying secrecy. Harboring a criminal is a crime under both federal and state statutes, and a person who harbors a criminal is an accessory after the fact. *See, e.g.*, 18 U.S.C.A. §§ 2, 1071, 1072; Model Penal Code, § 242.3. *See also* Accessory (*Accessory after the fact*); Aid and abet.

Harboring a criminal. *See* Harbor.

Harbor line. A line marking the boundary of a certain part of a public water which is reserved for a harbor. The line beyond which wharves and other structures cannot be extended.

Hard cases. A phrase used to indicate judicial decisions which, to meet a case of hardship to a party, are not entirely consonant with the true principle of the law. It is said of such: "Hard cases make bad law."

Hard goods. Durable merchandise (*e.g.*, appliances, furniture, hardware).

Hard labor. A punishment, additional to mere imprisonment, sometimes imposed upon convicts sentenced to a penitentiary for serious crimes, or for misconduct while in prison.

Hard money. Lawful coined money (as contrasted with paper currency).

Hardship. In general, privation, suffering, adversity. As used in zoning statutes as grounds for variance, it refers to fact that zoning ordinance or restriction as applied to a particular property is unduly oppressive, arbitrary or confiscatory. *St. Onge v. City of Concord*, 95 N.H. 306, 63 A.2d 221.

The severity with which a proposed construction of the law would bear upon a particular case, founding, sometimes, an argument against such construction, which is otherwise termed the "argument *ab inconvenienti*." *See* Hard cases.

Harm. The existence of loss or detriment in fact of any kind to a person resulting from any cause. *See also* Damages; Injury; Physical injury.

Harmful. As used in connection with foods, means noxious, hurtful, pernicious, likely to cause illness or damage. *See also* Adulteration.

As used in connection with errors committed at trial, it means that rights were seriously affected; an appellate court will consider harmful error but not harmless error. *See also* Error; Harmless error doctrine; Plain error rule.

Harmless error doctrine. The doctrine that minor or harmless errors during a trial do not require reversal of the judgment by an appellate court. An error which is trivial or formal or merely academic and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case. *State v. Johnson*, 1 Wash.App. 553, 463 P.2d 205, 206. An error is "harmless" if reviewing court, after viewing entire record, determines that no substantial rights of defendant were affected and that error did not influence or had only very slight influence on verdict. *U.S. v. McCrady*, C.A.Minn., 774 F.2d 868, 874. Doctrine which permits an appellate court to affirm a conviction in spite of such type error appearing in the record. *State v. Michelli*, La., 301 So.2d 577, 579.

Harmless error is not a ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless such refusal appears to the court inconsistent with substantial justice. Fed.R.Civil P. 61. Any error, defect, irregularity or variance which does not affect substantial rights will be disregarded by court. Fed.R. Crim.P. 7(c), 52.

See also Error.

Harmonic plane. The zero adopted by the United States Coast and Geodetic Survey of the Department of Commerce upon which its tidal tables, charts, and maps are based. It is an arbitrary plane, and, in Puget Sound, is the lowest plane of the tide recognized by that department.

Harmonize. *See* Harmony.

Harmony. The phrase "in harmony with" is synonymous with "in agreement, conformity, or accordance with."

Haro, harron /hárow/. Fr. In Norman and early English law, an outcry, or hue and cry after felons and malefactors.

Harter Act. A name commonly applied to the act of Congress of February 13, 1893, c. 105, providing: (§ 1) that agreements in a bill of lading relieving the owner, etc., of a vessel sailing between the United States and foreign ports, from liability for negligence or fault in proper loading, storage, custody, care, or delivery of merchandise, are void (46 U.S.C.A. § 190); (§ 2) that no bill of lading shall contain any agreement whereby the obligations of the owner to exercise due diligence, properly equip, man, provision and outfit a vessel and make it seaworthy, and whereby the obligations of the master,

etc., carefully to handle, store, care for and deliver the cargo, are in any way lessened, weakened or avoided (46 U.S.C.A. § 191); (§ 3) that if the owner shall exercise due diligence to make such vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor her owners, etc., shall be liable for loss resulting from faults or errors in navigation or management, nor for losses arising from dangers of the sea, acts of God, or public enemies, or the inherent defect of the thing carried, or insufficiency of package, or seizure under legal process, or any act or omission of the shipper of the goods, or from saving or attempting to save life at sea, or deviation in rendering such service (46 U.S.C.A. § 192).

Hart-Scott-Rodino Antitrust Improvement Act. A (1976) procedural statute that gives states attorneys general the right to sue as *parens patriae* for injuries suffered by consumers in the state, provides for premerger notification, and generally strengthens the antitrust enforcement powers of the Department of Justice.

Harvesting. The act or process of gathering of crops of any kind. Also the quantity or yield of a crop.

Hashish. Drug which is formed of resin scraped from the flowering top of the cannabis plant, as distinguished from marijuana which consists of the chopped leaves and stems of the cannabis plant.

Haspa /háspə/. In old English law, the hasp of a door; by which livery of seisin might anciently be made, where there was a house on the premises.

Hasta /hástə/. Lat. A spear. In the Roman law, a spear was the sign of a public sale of goods or sale by auction. Hence the phrase "*hastæ subjicere*" (to put under the spear) meant to put up at auction.

In feudal law, a spear, the symbol used in making investiture of a fief.

Hatch Act. Federal statute which prohibits federal, state, and local employees from partaking in certain types of political activities. 5 U.S.C.A. § 7324.

Hat money. In maritime law, prize; a small duty paid to the captain and mariners of a ship.

Hauber /ówbər/. O. Fr. A high lord; a great baron.

Haul. To pull or draw with force; to drag; to transport by hauling.

Haula. *See* Aula.

Haulage royalty /hólaj róyáltiy/. Damages at a certain amount per ton for coal from adjacent lands hauled through subterranean passageways of lessor's land. *Quality Excelsior Coal Co. v. Reeves*, 206 Ark. 713, 177 S.W.2d 728, 732.

Haustus /hóstəs/. Lat. In the civil law, a species of servitude, consisting in the right to draw water from another's well or spring, in which the *iter* (right of way to the well or spring), so far as it is necessary, is tacitly included.

Have. Lat. A form of the salutatory expression "Ave," used in the titles of some of the constitutions of the Theodosian and Justinian Codes.

Have. Imports ownership, and has been defined to mean "to keep," "to hold in possession," "to own." To bear (children).

Have and hold. A common phrase in conveyancing, derived from the *habendum et tenendum* of the old common law. See *Habendum et tenendum*.

Haven. A place of a large receipt and safe riding of ships, so situate and secured by the land circumjacent that the vessels thereby ride and anchor safely, and are protected by the adjacent land from dangerous or violent winds; as Milford Haven, Plymouth Haven, and the like. *Lowndes v. Board of Trustees*, 153 U.S. 1, 14 S.Ct. 758, 38 L.Ed. 615. A place of refuge. See also *Harbor*.

Hawker. An itinerant or traveling salesman who carries goods about in order to sell them, and who actually sells them to purchasers, in contradistinction to a trader who has goods for sale and sells them in a fixed place of business. A hawker or peddler usually sells his goods in the public streets, or from door-to-door, and commonly is required to have a license.

Formerly, a peddler who used beast of burden to carry wares and who cried out merits of wares in street. *City of Washington v. Reed*, 229 Mo.App. 1195, 70 S.W.2d 121, 122. See *Hawking*; *Peddler*.

Hawking. The act of offering goods for sale from door-to-door, or on the streets by outcry or by attracting the attention of persons by exposing goods in a public place, or by placards, labels, or signals. The business of peddling or hawking is distinct from that of a manufacturer selling his own products, and those who raise or produce what they sell, such as farmers and butchers, are not peddlers or hawkers.

Hay-bote /héybōwt/. In old English law, another name for "hedge-bote," being one of the estovers allowed to a tenant for life or years, namely, material for repairing the necessary hedges or fences of his grounds, or for making necessary farming utensils. 2 Bl.Comm. 35.

Hayward. In old English law, an officer appointed in the lord's court to keep a common herd of cattle of a town; so called because he was to see that they did not break or injure the hedges of inclosed grounds. His duty was also to impound trespassing cattle, and to guard against poundbreaches.

Hazard. A risk or peril, assumed or involved, whether in connection with contract relation, employment, personal relation, sport or gambling. A danger or risk lurking in a situation which by change or fortuity develops into an active agency of harm. *Hough v. Contributory Retirement Appeal Board*, 309 Mass. 534, 36 N.E.2d 415, 417, 418. Exposure to the chance of loss or injury. *Caminetti v. Guaranty Union Life Ins. Co.*, 52 Cal.App.2d 330, 126 P.2d 159, 163. A game of chance or wagering.

In insurance law, the risk, danger, or probability that the event insured against may happen, varying with the circumstances of the particular case.

In old English law, an unlawful game at dice, those who play at it being called "hazardors."

See also *Dangerous*; *Extraordinary hazard*; *Risk*.

Moral hazard. In fire insurance, the risk or danger of the destruction of the insured property by fire, as measured by the character and interest of the insured owner, his habits as a prudent and careful man or the reverse, his known integrity or his bad reputation, and the amount of loss he would suffer by the destruction of the property or the gain he would make by suffering it to burn and collecting the insurance.

Hazardor /háẓərdər/. In old English law, one who played at a hazard, *i.e.*, an unlawful game of dice.

Hazardous. Exposed to or involving danger; perilous; risky; involving risk of loss. *Caminetti v. Guaranty Union Life Ins. Co.*, 52 Cal.App.2d 330, 126 P.2d 159, 162, 163.

The terms "hazardous", "extra-hazardous", "specially hazardous", and "not hazardous" are well-understood technical terms in the business of insurance, having distinct and separate meanings. See *Extraordinary hazard*.

Hazardous contract. See *Contract*.

Hazardous employment. High risk and extra perilous work. When used in context of workers' compensation, it refers to employment which requires employer to carry workers' compensation coverage or its equivalent regardless of the number of employees.

Hazardous insurance. Insurance effected on property which is in unusual or peculiar danger of destruction by fire, or on the life of a person whose occupation exposes him to special or unusual perils.

Hazardous negligence. See *Negligence*.

Hazardous substance. A solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. 42 U.S.C.A. § 6903(5).

Includes certain flammable, toxic or radioactive substances. Under the Federal Hazardous Substance Act, a substance may be a "hazardous substance" if it meets the statutory definition or has been so defined by regulation. *U.S. v. Articles of Hazardous Substance*, C.A.N.C., 588 F.2d 39. See 15 U.S.C.A. § 1261(f) et seq.

Hazard pay. Special compensation for work under unpleasant or unsafe conditions.

Hazar-zamin. A bail or surety for the personal attendance of another.

H.B. House Bill; a bill in the process of going through the House of Representatives on its way to becoming a law.

H.B.M. An abbreviation for His (or Her) Britannic Majesty.

H.C. An abbreviation for House of Commons, or for *habeas corpus*.

He. Properly a pronoun of the masculine gender, but usually used and construed in status to include both sexes as well as corporations. May be read "they". *Buono v. Yankee Maid Dress Corporation, C.C.A.N.Y., 77 F.2d 274, 278.*

Head. Chief; leading; principal; the upper part or principal source of a stream.

The principal person or chief of any agency, bureau, organization, corporation, or firm.

Headborough. In Saxon law, the head or chief officer of a borough; chief of the frank-pledge tithing or decenary. This office was afterwards, when the petty constableness was created, united with that office.

Head money. A sum of money reckoned at a fixed amount for each head (person) in a designated class. Particularly (1) a capitation or poll tax. (2) A bounty offered by the laws of the United States for each person on board an enemy's ship or vessel, at the commencement of a naval engagement, which shall be sunk or destroyed by a ship or vessel of the United States of equal or inferior force, the same to be divided among the officers and crew in the same manner as prize money. A similar reward is offered by the British statutes. (3) The tax or duty imposed by act of congress of Aug. 3, 1882, on owners of steamships and sailing vessels for every immigrant brought into the United States. *Head Money Cases, 112 U.S. 580, 5 S.Ct. 247, 28 L.Ed. 798.* (4) A bounty or reward formerly paid to one who pursued and killed a bandit or outlaw and produced his head as evidence; the offer of such a reward being popularly called "putting a price on his head". See *Bounty; Reward*.

Headnote. A brief summary of a legal rule or significant facts in a case, which, among other headnotes applicable to the case, precedes the printed opinion in reports. A syllabus to a reported case; a summary of the points decided in the case, which is placed at the head or beginning of the opinion. See also *Digest; Syllabus*.

Head of household. An individual who actually supports and maintains in one household one or more individuals who are closely connected with him by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for the dependent individuals is based upon some moral or legal obligation. *Miller v. Glenn, D.C.Ky., 47 F.Supp. 794, 796, 797.*

A taxpayer classification which, generally, describes an unmarried individual (other than a surviving spouse) who provides a home for his or her dependent(s). I.R.C. § 2(b). The Internal Revenue Code provides for prefer-

ential treatment for those individuals that qualify as a head of household. The head of household status entitles the taxpayer to use income tax rates which are lower than those applicable to other unmarried individuals, but higher than those applicable to surviving spouses and married persons filing a joint return.

A term used in homestead and exemption laws to designate a person who maintains a family; a household. Not necessarily a husband or father, but any person who has charge of, supervises, supports, maintains, and manages the affairs of the household or the collective body of persons residing together and constituting the family. The term may thus include an abandoned wife maintaining minor children or a bachelor supporting his parents.

Head of stream. The highest point on the stream which furnishes a continuous stream of water, not necessarily the longest fork or prong. The source of a stream. See also *Headstream*.

Headright. An interest in trust funds arising from mineral income from land held or once held by an Indian tribe as well as the right to any royalties or interest. *Sheppard v. Sheppard, 104 Idaho 1, 655 P.2d 895, 904.* Under the Allotment Act (Act Cong. June 28, 1906 [34 Stat. 539]), creating a trust fund from all tribal funds which included funds from sale of tribal lands, funds allowed on claims against the United States and received from tribal oil, gas, and mineral rights, each allottee owned his pro rata share of the trust fund, and this pro rata beneficial interest is commonly called a "headright."

Headright certificate. In the laws of the republic of Texas, a certificate issued under authority of an act of 1839, which provided that every person immigrating to the republic between October 1, 1837, and January 1, 1840, who was the head of a family and actually resided within the government with his or her family should be entitled to a grant of 640 acres of land, to be held under such a certificate for three years, and then conveyed by absolute deed to the settler, if in the meantime he had resided permanently within the republic and performed all the duties required of citizens.

Head-silver. In old English law, a name sometimes given to a Common Fine (*q.v.*). By a payment of a certain sum of money to the lord, litigants might try their suits nearer home.

Headstream. Stream that is the source of a river. See also *Head of stream*.

Head tax. Tax of flat amount per person.

Heafodweard. In old English law, one of the services to be rendered by a thane, or a geneath or villein, the precise nature of which is unknown.

Healer. One who heals or cures; specifically, one who professes to cure bodily diseases without medicine or any material means, according to the tenets and practices of so-called "Christian Science," whose beliefs and practices are founded on their religious convictions.

Healgeomote /héylgamòwt/. In Saxon law, a court-baron; an ecclesiastical court; Haligemot (*q.v.*)

Healing act. Another name for a curative act or statute. See *Curative (Curative statute)*.

Healsfang /héylsfån/. In Saxon law, a sort of pillory, by which the head of the culprit was caught between two boards, as feet are caught in a pair of stocks. It was very early disused, no mention of it occurring in the laws of the Saxon Kings.

Health. State of being hale, sound, or whole in body, mind or soul, well being. Freedom from pain or sickness. See *Healthy*.

Bill of health. See *Bill*.

Board of health. See *Board*.

Health laws. Laws, ordinances, or codes prescribing sanitary standards and regulations, designed to promote and preserve the health of the community.

Health officer. The officer charged with the execution and enforcement of health laws, *e.g.* Surgeon General. The powers and duties of health officers are regulated by federal, state and local laws.

Public health. As one of the objects of the police power of the state, the "public health" means the prevailing healthful or sanitary condition of the general body of people or the community in mass, and the absence of any general or widespread disease or cause of mortality. The wholesome sanitary condition of the community at large. Many cities have "Public Health Departments" or agencies of similar function and status. Federal laws dealing with health are administered by the Department of Health, Education and Welfare.

Sound health. See *Sound*.

Health Maintenance Organization (HMO). Groups of participating health care providers (physicians, hospitals, clinics) that provide medical services to enrolled members of group health insurance plan.

Healthy. Free from disease, injury, or bodily ailment, or any state of the system peculiarly susceptible or liable to disease or bodily ailment.

Hearing. A proceeding of relative formality (though generally less formal than a trial), generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and evidence presented. It is a proceeding where evidence is taken to determine issue of fact and to render decision on basis of that evidence. *People v. Ivenditti*, 276 C.A.2d 178, 80 Cal.Rptr. 761, 762. The parties proceeded against or otherwise involved have right to be heard, in much the same manner as a trial and such proceedings may terminate in final order. See *e.g.* 5 U.S.C.A. § 556.

It is frequently used in a broader and more popular significance to describe whatever takes place before magistrates clothed with judicial functions and sitting without jury at any stage of the proceedings subsequent to its inception (see *Preliminary hearing, below*), and to hearings before administrative agencies as conducted by

a hearing examiner or Administrative Law Judge. As to the later type, it consists of any confrontation, oral or otherwise, between an affected individual and an agency decision-maker sufficient to allow individual to present his case in a meaningful manner. *Gray Panthers v. Schweiker, C.A.*, 652 F.2d 146, 151, 209 U.S.App.D.C. 153.

The introduction and admissibility of evidence is usually more lax in a hearing than in a civil or criminal trial (see *e.g.*, 42 U.S.C.A. § 405(b) which provides for admissibility of evidence at social security hearings that would otherwise be inadmissible at regular trial).

Hearings are extensively employed by both legislative and administrative agencies and can be adjudicative or merely investigatory. Adjudicative hearings can be appealed in a court of law. Congressional committees often hold hearings prior to enactment of legislation; these hearings are then important sources of legislative history.

See also *Administrative hearing; Detention hearing; Fair hearing; Full hearing; Omnibus hearing.*

Ex parte hearing. See *Ex parte*.

Final hearing. See *Final*.

In criminal law. The examination of a person charged with a crime or misdemeanor, and of the witnesses for or against the accused; See *Preliminary hearing, below*.

Preliminary examination. The examination of a person charged with crime, before a magistrate or judge. See *Preliminary hearing, below*.

Preliminary hearing. In criminal law, synonymous with "preliminary examination". The hearing given to a person accused of crime, by a magistrate or judge, exercising the functions of a committing magistrate, to ascertain whether there is sufficient evidence to warrant and require the commitment and holding to bail of the persons accused. It is in no sense a trial for the determination of accused's guilt or innocence, but simply a course of procedure whereby a possible abuse of power may be prevented, and accused discharged or held to answer, as the facts warrant. See *Fed.R.Crim.P.* 5(c), 5.1. See also *Suppression hearing*.

Probable cause hearing. See *Preliminary hearing, above*.

Unfair hearing. See that title.

Hearing de novo /híriŋ diy nówvow/. Generally, a new hearing or a hearing for the second time, contemplating an entire trial in same manner in which matter was originally heard and a review of previous hearing. Trying matter anew the same as if it had not been heard before and as if no decision had been previously rendered. *Ray v. Illinois Racing Bd.*, 1 Dist., 113 Ill.App.3d 510, 69 Ill.Dec. 451, 454, 447 N.E.2d 886, 889. On hearing "de novo" court hears matter as court of original and not appellate jurisdiction. *Collier & Wallis v. Astor*, 9 Cal.2d 202, 70 P.2d 171, 173.

Hearing examiner. Generally, a civil service employee of an administrative agency whose responsibility is to conduct hearings on matters within the agency's jurisdiction. See *e.g.* 5 U.S.C.A. § 556(b). Now called "Ad-

ministrative Law Judge" (*q.v.*) in the federal government.

Hearing officer. See Administrative law judge.

Hearsay. A term applied to that species of testimony given by a witness who relates, not what he knows personally, but what others have told him, or what he has heard said by others. A statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Fed.R.Evid. 801(c). Hearsay includes any statement made outside the present proceeding which is offered as evidence of the truth of matters asserted therein. Also included as hearsay is nonverbal conduct which is intended to be the equivalent of a spoken assertion. Such conduct is called assertive conduct. Under Fed.R.Evid. Rule 801(a) conduct which was not intended as an assertion at the time it was done is not hearsay. Such conduct is called nonassertive conduct. Fed.R.Evid. Rule 801(c) also provides that assertions which are offered to prove something other than the matter asserted are not hearsay.

Hearsay evidence is testimony in court of a statement made out of the court, the statement being offered as an assertion to show the truth of matters asserted therein, and thus resting for its value upon the credibility of the out-of-court asserter. *Mutyambizi v. State*, 33 Md.App. 55, 363 A.2d 511, 518. Evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what he has heard others say. That which does not derive its value solely from the credit of the witness, but rests mainly on the veracity and competency of other persons. The very nature of the evidence shows its weakness, and, as such, hearsay evidence is generally inadmissible unless it falls within one of the many exceptions which provides for admissibility (see *e.g.*, Fed.R.Evid. 803, 804).

See also Double (or multiple) hearsay.

Heart balm statutes. State statutes abolishing right of action for alienation of affections, breach of promise to marry, criminal conversation, and seduction of person over legal age of consent.

Hearth money. A tax levied in England by St. 14 Car. II, c. 10, consisting of two shillings on every hearth or stove in the kingdom. It was extremely unpopular, and was abolished by 1 W. & M., St. 1, c. 10. This tax was otherwise called "chimney money."

Hearth silver. In old English law, a species of *modus* or composition for tithes; viz.: a prescription for cutting down and using for fuel the tithe of wood.

Heat of passion. A term used by the common law to refer to the condition of a defendant who can assert provocation as a basis for mitigating murder to manslaughter. Refers to passion or anger suddenly aroused at the time by some immediate and reasonable provocation, by words or acts of one at the time. As sufficient to reduce killing from murder to voluntary manslaughter means any intense or vehement emotional excitement of the kind prompting violent and aggressive ac-

tion, which would cause an ordinary person to act on impulse without reflection. *State v. Guebara*, 236 Kan. 791, 696 P.2d 381, 385. The term includes an emotional state of mind characterized by anger, rage, hatred, furious resentment or terror. *State v. Lott*, 207 Kan. 602, 485 P.2d 1314, 1317. See also Hot blood.

Heave to. In maritime parlance and admiralty law, to stop a sailing vessel's headway by bringing her head "into the wind," that is, in the direction from which the wind blows. A steamer is said to be "hove to" when held in such a position that she takes the heaviest seas upon her quarter.

Hebberthef /hébərθəyf/. In Saxon law, the privilege of having the goods of a thief, and the trial of him, within a certain liberty.

Hebdomad /hébdaməd/. A week; a space of seven days.

Hebephrenia /hiybəfriyn(i)yə/. Psychotic form of schizophrenia featuring regression into silly, deteriorated, or infantile behavior and mannerisms.

Hebote. The king's edict commanding his subjects into the field.

Heda. A small haven, wharf, or landing place. See Harbor; Haven.

Hedagium /hədəyjiəm/. In old English law, a toll or customary dues at the hithe or wharf, for landing goods, etc., from which exemption was granted by the crown to some particular persons and societies.

Hedge fund. Mutual funds that utilize various types of hedging techniques for their investments. See Hedging.

Hedger. A commodities trader with an interest in the cash market for the commodity, who deals in futures contracts as a means of transferring risks which he or she faces in the cash market. *Leist v. Simplot*, C.A. N.Y., 638 F.2d 283, 287. See Hedging.

Hedging. A means by which traders and exporters of grain or other products, and manufacturers who make contracts in advance for the sale of their goods, secure themselves against the fluctuations of the market by counter-contracts for the purchase or sale of an equal quantity of the product or of the material of manufacture. *Whorley v. Patton-Kjose Co.*, 90 Mont. 461, 5 P.2d 210, 214. A means by which a party who deals in the purchase of commodities in large quantities for actual delivery at some future time insures itself against unfavorable changes in the price of such commodities by entering into compensatory arrangements or counterbalancing transactions on the other side. *Ralston Purina Co. v. McFarland*, C.A.N.C., 550 F.2d 967, 970. A transaction where an identified forward exchange contract is locked into an identified agreement to purchase or sell goods in the future. *Siegel v. Titan Indus. Corp.*, C.A. N.Y., 779 F.2d 891, 893.

Safeguarding one's self from loss on a bet or speculation by making compensatory arrangements on the other side. *Whorley v. Patton-Kjose Co.*, 90 Mont. 461, 5 P.2d 210, 214.

For various types of *hedging* techniques, see Arbitrage; Call option; Futures contract; Option; Put option; Short sale.

Cross-hedging. The use of a futures contract on one financial instrument to hedge a position in a different financial instrument.

Hedonic damages. See Damages.

Heedless. Term is almost as strong as word "reckless" and includes the element of disregard of the rights or safety of others. Thoughtless; inconsiderate.

Hegemony /həjəmənɪy/héjəmòwnɪy/həg'é/. The leadership of one among several independent confederate states.

Heir /ér/. See Heirs.

Heir apparent. An heir whose right of inheritance is indefeasible, provided he outlive the ancestor; as in England the eldest son, or his issue, who must, by the course of the common law, be heir to the father whenever he happens to die. One who, before the death of the ancestor, is next in the line of succession, provided he be heir to the ancestor whenever he happens to die. See also Apparent heir.

Heir at law. At common law, he who, after his ancestor dies intestate, has a right to all lands, tenements, and hereditaments which belonged to him or of which he was seised. The same as "heir general."

A deceased person's "heirs at law" are those who succeed to his estate of inheritance under statutes of descent and distribution, in absence of testamentary disposition, and not necessarily his heirs at common law, who are persons succeeding to deceased's realty in case of his intestacy. In *re Towndrow's Will*, 47 N.M. 173, 138 P.2d 1001, 1003.

As the term is used in wrongful death statute, means lineal descendants. *Howlett v. Greenberg*, 34 Colo.App. 356, 530 P.2d 1285, 1287.

See also Descent; Heir, legal.

Heir beneficiary. In the civil law, one who has accepted the succession under the benefit of an inventory regularly made.

Heirs are divided into two classes, according to the manner in which they accept the successions left to them, to-wit, unconditional and beneficiary heirs. Unconditional heirs are those who inherit without any reservation, or without making an inventory, whether their acceptance be express or tacit. Beneficiary heirs are those who have accepted the succession under the benefit of an inventory regularly made. Civ.Code La. art. 883. If the heir apprehend that the succession will be burdened with debts beyond its value, he accepts with benefit of inventory, and in that case he is responsible only for the value of the succession. See Beneficiary.

Heir by adoption. By statute in most all jurisdictions, an adopted child takes all the rights of succession to intestate property as those of a natural born child unless a contrary intention is clearly expressed. Statutes dif-

fer however as to whether such adopted child may in addition inherit from its natural parents or family.

Heir by custom. In old English law, one whose right of inheritance depends upon a particular and local custom, such as gavelkind, or borough English.

Heir by devise. One to whom lands are devised by will; a devisee of lands. Answering to the *hæres factus* (q.v.) of the civil law.

Heir collateral. One who is not lineally related to the decedent, but is of collateral kin; e.g., his uncle, cousin, brother, nephew.

Heir conventional. In the civil law, one who takes a succession by virtue of a contract or settlement entitling him thereto.

Heirdom /érdəm/. Succession by inheritance.

Heiress /éras/. A female heir to a person having an estate of inheritance. When there are more than one, they are called "co-heiresses," or "co-heirs."

Heir expectant. See Heir apparent.

Heir, forced. One who cannot be disinherited. See Forced heirs.

Heir general. An heir at law. The ordinary heir by blood, succeeding to all the lands.

Heir hunter. Those whose business or occupation consists in tracking down missing heirs.

Heir, legal. The person to whom the law would give the decedent's property, real and personal, if he should die intestate. In legal strictness, the term signifies one who would inherit real estate, but it is also used to indicate one who would take under the statute of distribution. See also Descent; Heir at law; Heirs.

Heirless estate. The property of one who dies intestate leaving no heirs in which case there generally is escheat (q.v.).

Heirlooms /érlüwmz/. In general, valued possessions of great sentimental value passed down through generations within a family.

In old English law, such goods and chattels as, contrary to the nature of chattels, shall go by special custom to the heir along with the inheritance, and not to the executor. The termination "loom" (Sax.) signifies a limb or member; so that an heirloom is nothing else but a limb or member of the inheritance. They are generally such things as cannot be taken away without damaging or dismembering the freehold; such as deer in a park, doves in a cote, deeds and charters, etc.

Heir, male. In English law, the nearest male blood-relation of the decedent, unless further limited by the words "of his body," which restrict the inheritance to sons, grandsons, and other male descendants in the right line.

Heir of the blood. An inheritor who succeeds to the estate by virtue of consanguinity with the decedent, either in the ascending or descending line, including illegitimate children, but excluding husbands, wives, and adopted children.

Heir of the body. An heir begotten or borne by the person referred to, or a child of such heir; any lineal descendant of the decedent, excluding a surviving husband or wife, adopted children, and collateral relations; bodily heir. May be used in either of two senses: In their unrestricted sense, as meaning the persons who from generation to generation become entitled by descent under the entail; and in the sense of heirs at law, or those persons who are descendants of him whom the statute of descent appoints to take intestate estate.

Heir presumptive. The person who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child.

Heir, pretermitted. One who, except for an unambiguous act of the ancestor, would take his property on his death. *See also* Pretermitted heir.

Heirs /érz/. At common law, the person appointed by law to succeed to the estate in case of intestacy. One who inherits property, whether real or personal. A person who succeeds, by the rules of law, to an estate in lands, tenements, or hereditaments, upon the death of his ancestor, by descent and right of relationship. One who would receive his estate under statute of descent and distribution. Faulkner's Guardian v. Faulkner, 237 Ky. 147, 35 S.W.2d 6, 7. Moreover, the term is frequently used in a popular sense to designate a successor to property either by will or by law. Word "heirs" is no longer limited to designated character of estate as at common law. Jay v. Dollarhide, 3 Cal.App.3d 1001, 84 Cal.Rptr. 538, 547.

Word "heirs" is a technical term and is used to designate persons who would, by statute, succeed to an estate in case of intestacy. Wells Fargo Bank v. Title Ins. & Trust Co., 22 Cal.App.3d 295, 99 Cal.Rptr. 464, 466.

See also Descent.

Bodily laws. *See* Heir of the body.

Civil law. A universal successor in the event of death. He who actively or passively succeeds to the entire property or estate, rights and obligations, of a decedent, and occupies his place.

The term is indiscriminately applied to all persons who are called to the succession, whether by the act of the party or by operation of law. The person who is created universal successor by a will is called the "testamentary heir;" and the next of kin by blood is, in cases of intestacy, called the "heir at law," or "heir by intestacy." The executor of the common law in many respects corresponds to the testamentary heir of the civil law. Again, the administrator in many respects corresponds with the heir by intestacy. By the common law, executors and administrators have no right except to the personal estate of the deceased; whereas the heir by the civil law is authorized to administer both the personal and real estate. The term "heir" has several significations. Sometimes it refers to one who has formally

accepted a succession and taken possession thereof; sometimes to one who is called to succeed, but still retains the faculty of accepting or renouncing, and it is frequently used as applied to one who has formally renounced.

Collateral heir. *See* that title.

Joint heirs. Co-heirs. The term is also applied to those who are or will be heirs to both of two designated persons at the death of the survivor of them, the word "joint" being here applied to the ancestors rather than the heirs.

Known heirs. *See* that title.

Lawful heirs. *See* Descent; Heir at law; Heir, legal.

Legitimate heirs. Children born in lawful wedlock and their descendants, not including collateral heirs or issue in indefinite succession.

Lineal heir. *See* Lineal heir.

Natural heirs. Heirs by consanguinity as distinguished from heirs by adoption, and also as distinguished from collateral heirs.

Right heir. This term was formerly used, in the case of estates tail, to distinguish the preferred heir, to whom the estate was limited, from the heirs in general, to whom, on the failure of the preferred heir and his line, the remainder over was usually finally limited. With the abolition of estates tail, the term has fallen into disuse, but when still used, in modern law, it has no other meaning than "heir at law."

Heirs and assigns. Ordinarily words of limitation and not of purchase. At common law, the words were essential to conveyance granting title in fee simple, and though they are unnecessary for that or any purpose under statute when used in wills or deeds, words still have that meaning.

Heirs at law shall not be disinherited by conjecture, but only by express words or necessary implication. Maxim which means that ancestor must clearly cut off heir and that such disinheritance is not lightly inferred.

Heirship /érshəp/. The quality or condition of being heir, or the relation between the heir and his ancestor. It is a legal right, regulated by law, to be enjoyed subject to the provisions of the statute.

Heir special. In English law, the issue in tail, who claims *per formam doni*; by the form of the gift.

Heirs per stirpes. *See* Per stirpes.

Heir testamentary. In the civil law, one who is named and appointed heir in the testament of the decedent. This name distinguishes him from a *legal* heir (one upon whom the law casts the succession), and from a *conventional* heir (one who takes it by virtue of a previous contract or settlement).

Held. In reference to the decision of a court, means decided. In context of kidnapping offense, connotes a state or degree of physical restraint. *See also* Hold; Judgment.

Hell. The name formerly given in England to a place under the exchequer chamber, where the king's debtors were confined.

Helsing. A Saxon brass coin, of the value of a half-penny.

Henceforth /hénsfôrθ/. A word of futurity, which, as employed in legal documents, statutes, and the like, always imports a continuity of action or condition from the present time forward, but excludes all the past.

Henchman. A page; an attendant; servant; a herald. A loyal and trusted follower. A footman; one who holds himself at the bidding of another. It has come to mean here a political follower and supporter, as used in a rather derogatory sense. *Gates v. State*, 140 Tex.Cr.R. 228, 143 S.W.2d 780, 783, 784. Member of criminal gang.

Henfare. In old English law, a fine for flight on account of murder.

Henghen /héŋən/. In Saxon law, a prison, a gaol, or house of correction.

Hengwyte /héŋwət/. Sax. In old English law, an acquittance from a fine for hanging a thief.

Henricus Vetus /henráykəs víytəs/. Henry the Old, or Elder. King Henry I is so called in ancient English chronicles and charters, to distinguish him from the subsequent kings of that name.

Heordfæte, or Hedefæst. In Saxon law, a master of a family, keeping house, distinguished from a lower class of freemen, viz., *folgeras* (*folgarii*), who had no habitations of their own, but were house-retainers of their lords.

Heordpenny /hórdpèniy/. Peter-pence (*q.v.*).

Heordwerch /hórdwørk/. In Saxon law, the service of herdsman, done at the will of their lord.

Hepburn Act. The name commonly given to an act of Congress (1906), amending §§ 1, 6, 14, 15, 16 and 20 of the Interstate Commerce Act. Such Act increased the jurisdiction of the I.C.C. to include pipelines; prohibited free passes except to employees; prohibited common carriers from transporting any products, except timber, in which they had an interest; required joint tariffs and uniform system of accounts.

Heptarchy /héptárkiy/. A government exercised by seven persons, or a nation divided into seven governments. In the year 560, seven different monarchies had been formed in England by the German tribes, namely, that of Kent by the Jutes; those of Sussex, Wessex, and Essex by the Saxons; and those of East Anglia, Bernicia, and Deira by the Angles. To these were added, about the year 586, an eighth, called the "Kingdom of Mercia," also founded by the Angles, and comprehending nearly the whole of the heart of the kingdom. These states formed what has been designated the "Anglo-Saxon Octarchy," or more commonly, though not so correctly, the "Anglo-Saxon Heptarchy," from the custom of speaking

of Deira and Bernicia under the single appellation of the "Kingdom of Northumberland."

Herald. In ancient law, a herald was a diplomatic messenger who carried messages between kings or states, and especially proclamations of war, peace, or truce. In English law, a herald is an officer whose duty is to keep genealogical lists and tables, adjust armorial bearings, and regulate the ceremonies at royal coronations and funerals.

Heraldry /héhrældriy/. The art, office, or science of heralds. Also an old and obsolete abuse of buying and selling precedence in the paper of causes for hearing.

Heralds' College. In England, an ancient royal corporation, first instituted by Richard III, in 1483. It comprised three kings of arms, six heralds, and four marshals or pursuivants of arms, together with the earl marshal and a secretary. The heralds' books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, and to register such marriages and descents as were verified to them upon oath, are allowed to be good evidence of pedigrees. The heralds' office is still allowed to make grants of arms and to permit change of names.

Herbage /hərbəj/. In English law, an easement or liberty, which consists in the right to pasture cattle on another's ground.

Herciscunda /hərsəkóndə/. In the civil law, to be divided. *Familia herciscunda*, an inheritance to be divided. *Actio familiae herciscundæ*, an action for dividing an inheritance. *Herciscunda* is more commonly used in the civil law.

Herd, n. An indefinite number, more than a few, of cattle, sheep, horses, or other animals of the larger sorts, assembled and kept together as one drove and under one care and management. *Boland v. Cecil*, 65 Cal.App.2d Supp. 832, 150 P.2d 819, 822.

Herd, v. To tend, take care of, manage, and control a herd of cattle or other animals, implying something more than merely driving them from place to place.

Herder. One who herds or has charge of a herd of cattle, in the senses above defined.

Herdwerch, heordwerch /hórdwørk/. In old English law, herdsman's work, or customary labor, done by shepherds and inferior tenants, at the will of the lord.

Hereafter. A word of futurity, used in statutes and legal documents as indicative of future time, excluding both the present and the past.

Herebannum /hərbænnəm/. In old English law, a proclamation summoning the army into the field. A mulct or fine for not joining the army when summoned. A tax or tribute for the support of the army.

Herebote /hərbòwt/. In old English law, the royal edict summoning the people to the field.

Heredad /həreyðád/. In Spanish law, a piece of land under cultivation; a cultivated farm, real estate; an inheritance or heirship.

- Heredad yacente** /h(è)reyðád yaséntey/. From Lat. "*Hæreditas jacens*" (*q.v.*). In Spanish law, an inheritance not yet entered upon or appropriated.
- Heredero** /h(è)reyðérow/. In Spanish law, heir; he who, by legal or testamentary disposition, succeeds to the property of a deceased person. "*Hæres censeatur cum defuncto una eademque persona.*"
- Hereditagium** /hæredətéj(iy)əm/. In Sicilian and Neapolitan law, that which is held by hereditary right; the same with *hereditamentum* (*hereditament*) in English law.
- Hereditaments** /hæredətəmənts/hèhrədītəmənts/. Things capable of being inherited, be it corporeal or incorporeal, real, personal, or mixed, and including not only lands and everything thereon but also heirlooms, and certain furniture which, by custom, may descend to the heir together with the land. Things which may be directly inherited, as contrasted with things which go to the personal representative of a deceased. *Denver Joint Stock Land Bank of Denver v. Dixon*, 57 Wyo. 523, 122 P.2d 842, 846.
- At common law corporeal hereditaments were physical objects, comprehended under the term land, and were said to lie in livery, while incorporeal hereditaments existed only in contemplation of law, were said to lie in grant and were affiliated with chattel interests.
- Corporeal hereditaments.* Substantial permanent objects which may be inherited. The term "land" will include all such.
- Incorporeal hereditaments.* Anything, the subject of property, which is inheritable and not tangible or visible. A right issuing out of a thing corporate (whether real or personal) or concerning or annexed to or exercisable within the same. A right growing out of, or concerning, or annexed to, a corporeal thing, but not the substance of the thing itself.
- Hereditary** /hæredət(è)riy/. That which is the subject of inheritance. Genetically transmitted or transmittable from parent to offspring.
- Hereditary right to the crown.** The crown of England, by the positive constitution of the kingdom, has ever been descendible, and so continues, in a course peculiar to itself, yet subject to limitation by parliament; but, notwithstanding such limitation, the crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited. 1 Bl.Comm. 191.
- Hereditary succession.** Inheritance by law; title by descent. The title whereby a person, on the death of his ancestor, acquires his estate by right of representation as his heir at law. *See* Descent.
- Heredity** /hæredətiy/. Inheritance. That biological law by which all living beings tend to repeat themselves in their descendants. The transmission through genes of characteristics from parents to children.
- Herefare** /hærsfær/. Sax. A going into or with an army; a going out to war (*profectio militaris*); an expedition.
- Heregeat** /həriyət/. A heriot (*q.v.*).
- Heregeld** /hæregəld/. Sax. In old English law, a tribute or tax levied for the maintenance of an army.
- Heremones** /hèrəmówniyz/. Followers of an army.
- Herenach** /hèrənæk/. An archdeacon.
- Heres** /híriyz/. Heir; an heir. A form of *hæres*, very common in the civil law. *See* Hæres.
- Hereslita, heressa, heressiz.** A hired soldier who departs without license.
- Heresy** /héhrsəiy/. In English law, an offense against religion, consisting not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. Opinion or doctrine contrary to church dogma. An opinion on divine subjects devised by human reason, openly taught, and obstinately maintained. This offense is now subject only to ecclesiastical correction, and is no longer punishable by the secular law.
- Heretoch** /hértòk/. A general, leader, or commander; also a baron of the realm.
- Heretofore.** This word simply denotes time past, in distinction from time present or time future, and has no definite and precise signification beyond this.
- Hereunder.** A word of reference in a document or law, directing attention to matter therein which follows in such document or is contained therein.
- Herge.** In Saxon law, offenders who joined in a body of more than thirty-five to commit depredations.
- Heriot** /həriyət/. In English law, a customary tribute of goods and chattels, payable to the lord of the fee on the decease of the owner of the land. Heriots are divided into heriot *service* and heriot *custom*. The former expression denotes such as are due upon a special reservation in a grant or lease of lands, and therefore amount to little more than a mere rent; the latter arise upon no special reservation whatever, but depend solely upon immemorial usage and custom.
- Herischild** /hærsəhild/. In old English law, a species of military service, or knight's fee.
- Heriscindium** /hærsindiyəm/. A division of household goods.
- Herislit** /hærsliyt/. Laying down of arms. Desertion from the army.
- Heristal** /hærstòl/. The station of an army; the place where a camp is pitched.
- Heritable bond** /hèhrətəbəl bønd/. A bond for a sum of money to which is added, for further security of the creditor, a conveyance of land or heritage to be held by the creditor as pledge.
- Heritable security** /hèhrətəbəl səkyúrədiy/. Security constituted by heritable property.
- Heritage** /hèhrətəj/. In the civil law, every species of immovable which can be the subject of property; such as lands, houses, orchards, woods, marshes, ponds, etc., in whatever mode they may have been acquired, either by descent or purchase.

Hermadad /ərmandád/. In Spanish law, a fraternity formed among different towns and villages to prevent the commission of crimes, and to prevent the abuses and vexations to which they were subjected by men in power.

Hermaphroditus tam masculino quam femina comparatur, secundum praevalentiam sexus incalescentis /hərməfrədáyətəs təm mäskyəlow kwəm fémaniy kòmperáyətər, səkándəm prèvalénsh(iy)əm séksəs inkələséntəs/. An hermaphrodite is to be considered male or female according to the predominance of the exciting sex.

Hermeneutics /hərmən(y)úwtəks/. The science or art of construction and interpretation. By the phrase "legal hermeneutics" is understood the systematic body of rules which are recognized as applicable to the construction and interpretation of legal writings.

Hermer /hərmər/. A great lord.

Hermogenian Code /hərməjyiniyən kówd/. See Codex Hermogenianus.

Hernescus /hərnéskəs/. A heron.

Heroin. Narcotic drug which is a derivative of opium and whose technical name is diacetyl-morphine. It is classified as a Class A substance for criminal purposes and the penalty for its unlawful manufacture, distribution, sale, or possession is severe. 21 U.S.C.A. § 841.

Heroud, heraud /héra(l)d/. L. Fr. A herald.

Herus /h(i)rəs/. Lat. A master. *Servus facit ut herus det*, the servant does [the work] in order that the master may give [him the wages agreed on]. *Herus dat ut servus facit*, the master gives [or agrees to give, the wages], in consideration of, or with a view to, the servant's doing [the work]. 2 Bl.Comm. 445.

Hesia /hiyz(h(i)yə/. An easement.

Hetæraarcha /hètərárkə/. The head of a religious house; the head of a college; the warden of a corporation.

Hetæria /hətíriyə/. In Roman law, a company, society, or college.

Heuvelborh /hyúwvəlbə(k)/. Sax. In old English law, a surety (*warrantus*).

He who comes into a court of equity must come with clean hands. See Clean hands doctrine.

He who has committed iniquity shall not have equity. See Clean hands doctrine.

He who is silent when conscience requires him to speak shall be debarred from speaking when conscience requires him to be silent. A maxim of equity invoked when a person who has a duty to speak and to disclose a matter is silent so as to conceal that which should be revealed but who seeks equitable relief against him to whom it should have been disclosed.

He who seeks equity must do equity. This expression means that the party asking the aid of a court for equitable relief must stand in a conscientious relation toward his adversary and the transaction from which

his claim arises must be fair and just and the relief must not be harsh and oppressive upon defendant. *Jacklich v. Baer*, 57 Cal.App.2d 684, 135 P.2d 179, 184. This maxim provides that court will not confer equitable relief on party seeking its aid, unless he has acknowledged and conceded or will admit and provide for all equitable rights, claims, and demands justly belonging to adverse party and growing out of or necessarily involved in subject matter of controversy. *Bates v. Dana*, 345 Mo. 311, 133 S.W.2d 326, 329. It is in pursuance of this maxim that equity enforces the right of the wife's equity to a settlement.

He who will have equity done to him must do equity to the same person. This maxim of equity provides that conduct which, by itself, is not illegal or even morally reprehensible but which is contrary to principles of equity will bar one who seeks equitable relief from one against whom such conduct is directed.

HHS. Federal Department of Health and Human Services.

Hidage /háydəj/. In old English law, an extraordinary tax formerly payable to the crown for every hide of land. This taxation was levied, not in money, but provision of armor, etc.

Hidalgo /h(i)yðálgow/. In Spanish law, a noble; a person entitled to the rights of nobility. By *hidalgos* are understood men chosen from good situations in life (*de buenos lugares*), and possessed of property (*algo*).

Hidalguia /h(i)yðálgíyə/. In Spanish law, nobility by descent or lineage.

Hidden asset. Asset carried on books at a substantially reduced or understated value; its market value being greater than its book value.

Hidden defect. Type of deficiency in property which is not discoverable by reasonable inspection and for which a lessor or seller is generally liable if such defect causes harm to a user, and for which a purchaser is provided a right to revoke a prior acceptance. U.C.C. § 2-608(1)(b). See also Defect; Latent defect.

Hidden tax. Tax built into ultimate selling price that was incurred at a prior manufacturing or distribution stage.

Hide. In old English law, a measure of land, being as much as could be worked with one plow. It is variously estimated at from 60 to 100 acres, but was probably determined by local usage. Another meaning was as much land as would support one family or the dwellers in a mansion-house. Also a house; a dwelling-house. A hide was anciently employed as a unit of taxation.

Hidel /háydəl/. In old English law, a place of protection; a sanctuary.

Hidgild /háydgild/. A sum of money paid by a villein or servant to save himself from a whipping.

Hierarchy /há(y)ərárkíy/híyər°. Originally, government by a body of priests. Now, the body of officers in any church or ecclesiastical institution, considered as form-

ing an ascending series of ranks or degrees of power and authority, with the correlative subjection, each to the one next above. Derivatively, any body of persons organized or classified according to authority, position, rank, or capacity.

High. This term, as used in various compound legal phrases, is sometimes merely an addition of dignity, not importing a comparison; but more generally it means exalted, either in rank or location, or occupying a position of superiority, and in a few instances it implies superiority in respect to importance, size, or frequency or publicity of use, e.g., "high seas," "highway."

As to *high* Bailiff; Constable; Crime; Justice; Justiciar; License; Prerogative writs; Probability (*High probability rule*); School; Sea; Sheriff; Tide; Treason; Water-mark, see those titles.

High Commission Court. See Court of High Commission.

High Court of Admiralty. See Court of Admiralty.

High Court of Delegates. See Court of Delegates.

High Court of Errors and Appeals. See Court of Errors and Appeals.

High Court of Parliament. See Parliament.

High degree of care and diligence. See Care.

High degree of negligence. See Negligence (*Gross negligence*).

Higher and lower scale. In the practice of the English supreme court of judicature there were two scales regulating the fees of the court and the fees which solicitors were entitled to charge. The lower scale applied (unless the court otherwise ordered) to the following cases: All causes and matters assigned by the judicature acts to the king's bench, or the probate, divorce, and admiralty divisions; all actions of debt, contract, or tort; and in almost all causes and matters assigned by the acts to the chancery division in which the amount in litigation was under £1,000. The higher scale applied in all other causes and matters, and also in actions falling under one of the above classes, but in which the principal relief sought to be obtained was an injunction.

Highest and best use. In real estate valuation (e.g. in condemnation proceedings) the use of land or buildings which will bring the greatest economic return over a given time. This method of valuation requires expert to determine what condemned property's fair market value would realistically be if owner were hypothetically allowed to adapt his property to its most advantageous and valuable use. Raleigh-Durham Airport Authority v. King, 75 N.C.App. 57, 330 S.E.2d 622, 626.

Highest court. Court of last resort; a court whose decision is final and cannot be appealed because there is no higher court to further consider such matter; e.g. U.S. Supreme Court is highest federal court.

Highest degree of care. That degree of care that a very careful and prudent person would use under same or similar circumstances. Schneider v. Bi-State Development Agency, Mo.App., 447 S.W.2d 788, 791. A standard of care exacted in some jurisdictions of common

carriers of passengers. The standard is relative, not absolute, and is sometimes regarded as no more than reasonable care measured by the circumstances.

Highest proved value. In an action of trover the amount which the jury from a consideration of all the evidence, may find to be the highest value of the property during the period between the conversion and the trial.

Highgrading. The practice, in mining vernacular, of stealing ore. People v. Siderius, 29 Cal.App.2d 361, 84 P.2d 545, 547.

Highness. A title of honor given to princes. The kings of England, before the time of James I were not usually saluted with the title of "Majesty", but with that of "Highness". The children of crowned heads generally receive the title of "Highness". Since 1917 the title "Royal Highness" is limited to the sovereign's children, and children of sons of the sovereign, and the eldest living son of the eldest living son of the Prince of Wales.

High seas. That portion of ocean which is beyond the territorial jurisdiction of any country. The "high seas" lie seaward of a nation's territorial sea, which is the bank of water that extends up to three miles out from the coast. U.S. v. Romero-Galue, C.A.Fla., 757 F.2d 1147, 1149. See 18 U.S.C.A. § 3241 for jurisdiction of federal courts over crimes committed on high seas. See also Sea; Territorial waters.

High water line or mark. The line on the shore to which high tide rises under normal weather conditions. High-water mark is generally computed as a mean or average high tide and not as extreme height of water. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513, 516. High water mark of navigable river is line to which high water ordinarily reaches and is not line reached by water in unusual floods; it is that line below which soil is unfit for vegetation or agricultural purposes. State v. Bonelli Cattle Co., 108 Ariz. 258, 495 P.2d 1312, 1314.

Highway. A free and public roadway, or street; one which every person has the right to use. In popular usage, refers to main public road connecting towns or cities. The entire width between boundaries of every publicly maintained way when any part is open to use of the public for purposes of vehicular traffic. Kimes By and Through Kimes v. Herrin, 217 Mont. 330, 705 P.2d 108, 110. In broader sense, refers to any main route on land, water, or in the air.

The term "highway," as generally understood, does not have a restrictive or a static meaning, but it denotes ways laid out or constructed to accommodate modes of travel and other related purposes that change as customs change and as technology develops, and the term "highway," as it is generally understood, includes areas other than and beyond the boundaries of the paved surface of a roadway. Opinion of the Justices to the Senate, Mass., 352 N.E.2d 197, 201.

Commissioners of Highways. Public officers appointed in states, counties and municipalities to take charge of constructing, altering, repairing and vacating of highways within their respective jurisdictions.

Common highway. A road to be used by the community at large for any purpose of transit or traffic.

Highway acts, or laws. The body or system of laws governing the laying out, construction, repair, and use of highways.

Highway crossing. A place where the track of a railroad crosses the line of a highway.

Highway-rate. In English law, a tax for the maintenance and repair of highways, chargeable upon the same property that is liable to the poorrate.

Highway robbery. See Hijacking; Robbery.

Highway tax. A tax for and applicable to the making and repair of highways.

Highway toll. See Toll.

Public highway. One under the control of and maintained by public authorities for use of the general public; including every public street, road or highway. Calif. Code Pub. Utilities, § 3509.

Highwayman. A bandit; one who robs travelers upon the highway. *Anderson v. Hartford Accident & Indemnity Co.*, 77 Cal.App. 641, 247 P. 507, 510. See also Hijacking.

Higler /higlər/. In English law, a hawker or peddler. A person who carries from door to door, and sells by retail, small articles of provisions, and the like.

Higuera /h'iygéylə/. In Spanish law, a receipt given by an heir of a decedent, setting forth what property he has received from the estate.

H.I.H. His (or her) Imperial Highness.

Hiis testibus /háys téstəbəs/. Words formerly used in deeds, signifying *these being witness*. They have been disused since Henry VIII.

Hijacking. Robbery of goods while in transit, commonly from trucks. May involve robbery of only goods, or of both vehicle and goods. May also refer to commandeering an airplane. See 18 U.S.C.A. §§ 1951, 2117. See also Piracy.

Hilary Rules /hílariy rúwłz/. A collection of orders and forms extensively modifying the pleading and practice in the English superior courts of common law, established in Hilary term, 1834.

Hilary term. In English law, a term of court, beginning on the 11th and ending on the 31st of January in each year. Superseded (1875) by Hilary sittings, which begin January 11th, and end on the Wednesday before Easter. See also Easter, Michaelmas, Trinity terms.

Hilton doctrine. In civil procedure, rule that in a dispute between parties to an oil and gas lease, royalty holders who would lose their rights if the lease to the defendant was terminated are regarded as indispensable parties to the proceeding challenging the lease. *Hilton v. Atlantic Refining Co.*, C.A.Tex., 327 F.2d 217.

Hindeni homines /hindíynay hóməniyz/. A society of men. The Saxons ranked men into three classes, and valued them, as to satisfaction for injuries, etc., accord-

ing to their class. The highest class were valued at 1,200s., and were called "*twelf hindmen*"; the middle class at 600s., and called "*sexhindmen*"; the lowest at 200s., called "*twyhindmen*". Their wives were termed "*hindas*."

Hinder. Obstruct or impede.

Hine, or hind. In old English law, a husbandry servant.

Hinefare /háyn(d)fēr/. In old English law, the loss or departure of a servant from his master.

Hinegeld /háyn(d)gèld/. A ransom for an offense committed by a servant.

Hipoteca /h'iypowtýka/. In Spanish law, a mortgage of real property.

Hirciscunda /h'ərsəskónda/. See Herciscunda.

Hire, v. To purchase the temporary use of a thing, or to arrange for the labor or services of another for a stipulated compensation. See also Employ; Rent. Compare Lease.

Hire, n. Compensation for the use of a thing, or for labor or services. *State v. Kenyon, Inc.*, Tex.Civ.App., 153 S.W.2d 195, 197. Act of hiring. A bailment in which compensation is to be given for the use of a thing, or for labor and services about it.

Hirer. One who hires a thing, or the labor or services of another person. See also Employer.

Hiring. See Hire.

Hiring at will. A general or indefinite hiring with right to terminate such at will of employer. *Long v. Forbes*, 58 Wyo. 533, 136 P.2d 242, 246. See Employment at will.

Hiring hall. Agency or office operated by union, by employer and union, or by state or local employment service, to provide and place employees for specific jobs.

His. This pronoun, generically used, may refer to a person of either sex. Its use in a written instrument, in referring to a person whose Christian name is designated therein by a mere initial, is not conclusive that the person referred to is a male; it may be shown by parol that the person intended is a female.

His Excellency. In English law, the title of a viceroy, governor general, ambassador, or commander in chief.

In American law, this title is given to the governor of Massachusetts by the constitution of that state; and it is commonly given, as a title of honor and courtesy, to the governors of the other states and to the president of the United States and also to certain members of the clergy. It is also customarily used by foreign ministers in addressing the secretary of state in written communications.

His Honor. A title given by the Constitution of Massachusetts to the lieutenant governor of that commonwealth. Mass.Const. part 2, c. 2, § 2, art. 1. It is also customarily given to some inferior magistrates, as the mayor of a city.

Hissa /hisə/. A lot or portion; a share of revenue or rent.

His testibus /háys téstəbəs/. Lat. These being witnesses. The attestation clause in old deeds and charters. See *Hiis testibus*.

Historical cost. In accounting, acquisition or original cost; e.g. original construction cost of building.

Historic bay. Those bays over which a coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations. *U.S. v. Louisiana*, 470 U.S. 93, 105 S.Ct. 1074, 84 L.Ed.2d 73.

Historic preservation. An ordinance which prohibits the demolition or exterior alteration of certain historic buildings or of all buildings in an historic district. See *Historic site*.

Historic site. Any building, structure, area or property that is significant in the history, architecture, archeology or culture of a State, its communities or the Nation and has been so designated pursuant to statute. Such structures are commonly statutorily protected and cannot be altered without permission of the appropriate authorities. See, e.g., 16 U.S.C.A. § 461 et seq.

Hit and run accident. Collision generally between motor vehicle and pedestrian or with another vehicle in which the operator of vehicle leaves scene without identifying himself and without giving certain other information to other motorist and police as usually required by statute. Such an act is a crime.

Most states by statute require that motorists involved in accidents to stop at the scene and provide certain information to police and other drivers and passengers involved.

Hitherto. In legal use, this term always restricts the matter in connection with which it is employed to a period of time already passed.

H.L. House of Lords.

Hlafeta /(h)láfiytə/. Sax. A servant fed at his master's cost.

Hlaford /(h)lávərd/. Sax. A lord.

Hlafordsocna /(h)lávərdəsòwknə/. Sax. A lord's protection.

Hlafordswice /(h)lávərdzway̆s/. Sax. In Saxon law, the crime of betraying one's lord (*proditio domini*); treason.

Hlasocna /(h)lásòwknə/. Sax. The benefit of the law.

HLA test. A system of tissue typing for determining the probability of paternity and which involves the drawing of blood. *Pizana v. Jones*, 127 Mich.App. 123, 339 N.W.2d 1, 3. See also DNA identification.

Hlothbote /(h)lóθbòwt/. In Saxon law, a fine for being present at an unlawful assembly.

Hlothe /(h)lówθ/. In Saxon law, an unlawful assembly from eight to thirty-five, inclusive.

HMO. See Health Maintenance Organization.

Hoarding. Act of holding and acquiring goods in short supply beyond the reasonable needs of the person so holding. See also *Profiteering*.

Fence enclosing house and materials while builders are at work.

Hobblers /hóblərz/. In old English law, light horsemen or bowmen; also certain tenants, bound by their tenure to maintain a little light horse for giving notice of any invasion, or such like peril, towards the seaside.

Hobbs Act. Federal anti-racketeering act making it a crime to interfere with interstate commerce by extortion, robbery, or physical violence. 18 U.S.C.A. § 1951. Racketeering offenses are defined in 18 U.S.C.A. § 1961. See *Racketeering*; RICO laws.

Hobby. An activity not engaged in for profit. The IRC restricts the amount of losses that an individual can deduct with respect to hobby activities so that such transactions cannot be used to offset income from other sources. I.R.C. § 183. See *Hobby loss*.

Hobby loss. A nondeductible loss arising from a personal hobby as contrasted with an activity engaged in for profit. Generally, the law provides a presumption that an activity is engaged in for profit if gross profits are earned during any 2 or more years during a 5 year period. I.R.C. § 183.

Hoc /hók/. Lat. This. *Hoc intuitu*, with this expectation. *Hoc loco*, in this place. *Hoc nomine*, in this name. *Hoc titulo*, under this title. *Hoc voce*, under this word.

Hoc paratus est verificare /hók pəréytəs èst verəfəkəriy/. Lat. This he is ready to verify.

Hoc quidem perquam durum est, sed ita lex scripta est /hók kwáydəm pərkwəm dyúrəm èst, sèd áytə léks skríptə èst/. Lat. This indeed is exceedingly hard, but so the law is written; such is the written or positive law. An observation quoted by Blackstone as used by Ulpian in the civil law; and applied to cases where courts of equity have no power to abate the rigor of the law.

Hoc servabitur quod initio convenit /hók sərvéybətər kwòd ənish(iy)òw kənvíynət/. This shall be preserved which is useful in the beginning.

Hodge-Podge Act. A name applied to a statute which comprises a medley of incongruous subjects.

Hoghenhyne /hówənhàyn(d)/. In Saxon law, a house-servant. Any stranger who lodged three nights or more at a man's house in a decennary was called "*hoghenhyne*," and his host became responsible for his acts as for those of his servant.

Hold, v. 1. To possess in virtue of a lawful title; as in the expression, common in grants, "to have and to hold," or in that applied to notes, "the owner and holder."

2. To be the grantee or tenant of another; to take or have an estate from another. Properly, to have an estate on condition of paying rent, or performing service.

3. To adjudge or decide, spoken of a court, particularly to declare the conclusion of law reached by the court as to the legal effect of the facts disclosed. *See* Holding.

4. To maintain or sustain; to be under the necessity or duty of sustaining or proving; as when it is said that a party "holds the affirmative" or negative of an issue in a cause.

5. To bind or obligate; to restrain or constrain; to keep in custody or under an obligation; as in the phrases "hold to bail," "hold for court," "held and firmly bound," etc.

6. To administer; to conduct or preside at; to convoke, open, and direct the operations of; as to hold a court, hold pleas, etc.

7. To prosecute; to direct and bring about officially; to conduct according to law; as to hold an election.

8. To possess; to occupy; to be in possession and administration of; as to hold office.

9. To keep; to retain; to maintain possession of or authority over.

See also Ownership; Possession.

Hold over. To retain possession as tenant of property leased, after the end of the term. To continue in possession of an office and continue to exercise its functions, after the end of the officer's lawful term.

Hold pleas. To hear or try causes. 3 Bl.Comm. 35, 298.

Hold, n. In old English law, tenure. A word constantly occurring in conjunction with others, as *freehold*, *leasehold*, *copyhold*, etc., but rarely met with in the separate form.

Holder. The holder of a bill of exchange, promissory note, check, or other commercial paper, is the person who has legally acquired possession of the same, by indorsement or delivery, and who is entitled to receive payment of the instrument. Person who is in possession of a document of title or an instrument or an investment security drawn, issued or endorsed to him or to his order, or to bearer or in blank. U.C.C. § 1-201(20).

Holder for value. A holder who has given a valuable consideration for the document of title, instrument or investment security which he has in his possession. A holder takes an instrument for value: (a) to the extent that the agreed consideration has been performed or that he acquires a security interest in, or a lien on, the instrument otherwise than by legal process; or (b) when he takes the instrument in payment of, or as security for, an antecedent claim against any person whether or not the claim is due; or (c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person. U.C.C. § 3-303.

Holder in due course. In commercial law, a holder of an instrument who took it for value, in good faith and without notice of any claim or defense against it, U.C.C. § 3-302(1), and who can enforce the instrument free from all claims and personal defenses. U.C.C. § 3-305. A payee may be a holder in due course. A holder does not become a holder in due course of an instrument by

purchase of it at a judicial sale or by taking it under legal process, or by acquiring it in taking over an estate, or by purchasing it as part of a bulk transaction not in regular course of business of the transferor. A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased. *Kaw Valley State Bank & Trust Co. v. Riddle*, 219 Kan. 550, 549 P.2d 927, 933.

A holder in due course of a consumer credit contract (*i.e.* consumer paper) is subject to all claims and defenses which the debtor (buyer) could assert against the seller of the goods or services obtained pursuant to the credit contract or with the proceeds thereof. 16 CFR § 433.1 et seq.

Compare Bona fide purchaser. *See also* Real defenses.

Holder in good faith. One who takes property or an instrument without knowledge of any defect in its title.

Hold harmless agreement. A contractual arrangement whereby one party assumes the liability inherent in a situation, thereby relieving the other party of responsibility. Such agreements are typically found in leases, and easements. Agreement or contract in which one party agrees to hold the other without responsibility for damage or other liability arising out of the transaction involved. *See also* Guaranty; Indemnity; Surety.

Holding. The legal principle to be drawn from the opinion (decision) of the court. Opposite of dictum (*q.v.*). It may refer to a trial ruling of the court upon evidence or other questions presented during the trial. *Edward L. Eyre & Co. v. Hirsch et al.*, 36 Wash.2d 439, 218 P.2d 888. Also, general term for property, securities, etc. owned by person or corporation. *See also* Decision; Dicta.

In English law, a piece of land held under a lease or similar tenancy for agricultural, pastoral, or similar purposes.

Holding company. A company that usually confines its activities to owning stock in, and supervising management of, other companies. A holding company usually owns a controlling interest in the companies whose stock it holds. In order for a corporation to gain the benefits of tax consolidation, including tax free dividends and the ability to share operating losses, the holding company must own 80% or more of the voting stock of the corporation. I.R.C. § 243. *See also* Investment company.

Personal holding company. A closely held corporation which receives personal holding company income. Personal holding income includes but is not limited to: dividends, interest, rents, royalties, etc. If a company comes within the definition of a personal holding company, it may be subject to the regular corporate tax, as well as a personal holding company tax on the undistributed personal holding company income. The tax is imposed to prevent individuals from accumulating income in the corporation and not subjecting the individuals to the personal income tax on the earnings. *See also* Holding company tax; Personal holding company.

Holding company tax. Tax on undistributed personal holding company income after allowable deductions for dividends paid, etc. I.R.C. § 545.

Holding period. In taxation, that period of time in which a capital asset must be held to determine whether gain or loss from its sale or exchange is long term or short term. I.R.C. §§ 1222-1223.

Holdings. Extent of ownership of investments (real estate, securities, etc.).

Holdover tenant. A tenant who remains in possession after the expiration of a lease, or after a tenancy at will has been terminated.

Holiday. A religious festival; a day set apart for commemorating some important event in history; a day of exemption from labor. A day upon which the usual operations of business and government are suspended and the courts closed, and, generally, no legal process is permitted to be served. In addition to national holidays (e.g. Fourth of July), there are also state holidays (e.g. "Bunker Hill" holiday in Massachusetts).

Legal holiday. See Legal holiday.

Public holiday. A legal holiday (*q.v.*)

Statutory holidays. Most states observe the same holidays as those observed by the federal government (see 5 U.S.C.A. § 6103). There are variations however, e.g., several states do not celebrate Columbus Day, several states do not observe the National Memorial Day, while many other states have special holidays commemorating historical events, the birthdays of state or regional heroes, religious festival days, or other occasions deemed worthy of celebration. See also Legal holiday.

Hológrafo /h(ɔ)wɫógráf/. In Spanish law, a holograph. An instrument (particularly a will) wholly in the handwriting of the person executing it; or which, to be valid, must be so written by his own hand.

Holograph /h(ɔ)wɫgræf/. A will or deed written entirely by the testator or grantor with his own hand and not witnessed (attested). State laws vary widely with respect to the status of self-written "holographic" wills. Some states categorically refuse to recognize any will not meeting the formal statutory requirements relating to attestation clause, witnesses, etc. Others will recognize a holographic will if all or certain portions are in the handwriting of the testator. And many states that do not recognize holographic wills executed by their own citizens within their borders will nevertheless recognize such wills if valid under other jurisdictions. Under the Uniform Probate Code (as adopted by several states), such will is valid, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator. § 2-503.

Holy Orders. In ecclesiastical law, the orders of bishops (including archbishops), priests, and deacons in the Church of England. The Roman canonists had the orders of bishop (in which the pope and archbishops were included), priest, deacon, subdeacon, psalmist, acolyte, exorcist, reader, ostiarius. One of the seven sacraments of the Roman Catholic Church.

lyte, exorcist, reader, ostiarius. One of the seven sacraments of the Roman Catholic Church.

Homage /h(ɔ)məj/. In feudal law, a service (or the ceremony of rendering it) which a tenant was bound to perform to his lord on receiving investiture of a fee, or succeeding to it as heir, in acknowledgment of the tenure. It is described as the most honorable service of reverence that a free tenant might do to his lord. The ceremony was as follows: The tenant, being ungiirt and with bare head, knelt before the lord, the latter sitting, and held his hands extended and joined between the hands of the lord, and said: "I become your man [*homo*] from this day forward, of life and limb and earthly honor, and to you will be faithful and loyal, and bear you faith, for the tenements that I claim to hold of you, saving the faith that I owe unto our sovereign lord the king, so help me God." The tenant then received a kiss from the lord. Homage could be done only to the lord himself. "Homage" is to be distinguished from "fealty," another incident of feudalism, and which consisted in the solemn oath of fidelity made by the vassal to the lord, whereas homage was merely an acknowledgment of tenure. If the homage was intended to include fealty, it was called "liege homage;" but otherwise it was called "simple homage."

Homage ancestral. In feudal law, homage was called by this name where a man and his ancestors had immemorially held of another and his ancestors by the service of homage, which bound the lord to warrant the title, and also to hold the tenant clear of all services to superior lords. If the tenant aliened in fee, his alienee was a tenant by homage, but not by homage ancestral. 2 Bl.Comm. 300.

Homage jury. In feudal law, a jury in a court-baron, consisting of tenants that do homage, who are to inquire and make presentments of the death of tenants, surrenders, admittances, and the like.

Homage liege /h(ɔ)məj líj/. In feudal law, that kind of homage which was due to the sovereign alone as supreme lord, and which was done without any saving or exception of the rights of other lords.

Homager /h(ɔ)məjər/. In feudal law, one who does or is bound to do homage.

Homagio respectuando /həméj(iy)ow rəspəktɪwændow/. A writ to the escheator commanding him to deliver seisin of lands to the heir of the king's tenant, notwithstanding his homage not done.

Homagium /həméj(iy)əm/. L. Lat. Homage (*q.v.*)

Homagium ligium /həméj(iy)əm láj(iy)əm/. In feudal law, liege homage; that kind of homage which was due to the sovereign alone as supreme lord, and which was done without any saving or exception of the rights of other lords. So called from *ligando* (binding), because it could not be renounced like other kinds of homage.

Homagium, non per procuratores nec per literas fieri potuit, sed in propria persona tam domini quam tenentis capi debet et fieri /həméj(iy)əm, nɔn pər prɔkɪjʊrətɔriɪz nək pər lítərəs fájərəj pótuwət, sɛd in

prowpriə pərsównə tæm dómənay kwəm tənéntəs kəpəy débət èt fáyərəy/. Homage cannot be done by proxy, nor by letters, but must be paid and received in the proper person, as well of the lord as the tenant.

Homagium planum /həméj(iy)əm pléynəm/. In feudal law, plain homage; a species of homage which bound him who did it to nothing more than fidelity, without any obligation either of military service or attendance in the courts of his superior.

Homagium reddere /həméj(iy)əm rédəriy/. In feudal law, to renounce homage. This was when a vassal made a solemn declaration of disowning and defying his lord; for which there was a set form and method prescribed by the feudal laws.

Homagium simplex /həméj(iy)əm símplèks/. In feudal law, simple homage; that kind of homage which was merely an acknowledgment of tenure, with a saving of the rights of other lords.

Hombre bueno /(h)ómbrey bwéynow/. In Spanish law, the judge of a district. Also an arbitrator chosen by the parties to a suit. Also a man in good standing; one who is competent to testify in a suit.

Home. One's own dwelling place; the house in which one lives, especially the house in which one lives with his family; the habitual abode of one's family; a dwelling house. *Mann v. Haines*, 146 Kan. 988, 73 P.2d 1066, 1072. That place in which one in fact resides with the intention of residence, or in which he has so resided, and with regard to which he retains residence or to which he intends to return. Place where a person dwells and which is the center of his domestic, social and civil life. *Restatement of Conflicts*, Second, § 12. As relating to deductions of expenses for carrying on a trade or business while living away from home, "home" within I.R.C. § 162(a)(2) is defined as taxpayer's principal place of business. *Ellwein v. U.S.*, C.A.N.D., 778 F.2d 506, 509. *See also* Domicile; Residence; Tax home.

Home brew. An intoxicating beverage made at home or on general premises. *Moonshine*.

Home loan bank. *See* Federal Home Loan Banks.

Home ne sera puny pur suer des briefes en court le roy, soit il a droit ou a tort. A man shall not be punished for suing out writs in the king's court, whether he be right or wrong.

Home office. The department of state through which the English sovereign administers most of the internal affairs of the kingdom, especially the police, and communicates with the judicial functionaries. As applied to a corporation, its principal office or corporate headquarters.

Homeowner's association. An association of people who own homes in a given area, formed for the purpose of improving or maintaining the quality of the area.

An association formed by a land developer or the builder of condominiums or planned unit developments to provide management for and maintenance of property in which they own undivided, common interest. The

builder's participation as well as the duties of the association are controlled by statute in certain states. Such non-profit associations are commonly formed pursuant to a restrictive covenant or a declaration of restrictions.

Homeowner's equity loan. *See* Equity loan.

Homeowners policy. In insurance, multi-peril type policy available to homeowners, combining coverage for fire, water, burglary, liability, etc.

Home Owners Warranty (HOW). A warranty and insurance protection program offered by many home builders in the United States. The program was developed by the Home Owners Warranty Corporation, a subsidiary of the National Association of Home Builders. The major provisions of the program are that a new home is protected for ten years against major structural defects. Similar warranty protection is provided by statute in many states.

Home port. In maritime law, the home port of a vessel is either the port where she is registered or enrolled, or the port at or nearest to which her owner usually resides, or, if there be more than one owner, the port at or nearest to which the husband, or acting and managing owner resides. But for some purposes any port where the owner happens at the time to be with his vessel is its home port. Under the shipping laws, every vessel has what is called her "home port," to which she belongs, and which constitutes her legal abiding place or residence, regardless of her actual absence therefrom. *See also* Port.

Home port doctrine. Under "home-port" doctrine vessels engaged in interstate and foreign commerce are taxable at their home port only. *Scandinavian Airlines System, Inc. v. Los Angeles County*, 56 Cal.2d 11, 14 Cal.Rptr. 25, 29, 363 P.2d 25. Under this doctrine a vessel plying the high seas may be taxed at its full value in its home port or in true domicile of its owner, and no other jurisdiction, including those ports visited by the vessel during its voyages, has power to tax it. *Star-Kist Foods, Inc. v. Byram*, 241 C.A.2d 313, 50 Cal.Rptr. 381, 382, 385.

Where repairs have been made, or necessities furnished to a foreign ship, or to a ship in a port of the State to which she does not belong, the general maritime law, following the civil law, gives the party a lien on the ship itself for his security; and he may well maintain a suit in rem in the Admiralty to enforce his right. But in respect to repairs and necessities in the port or State to which the ship belongs, the case is governed altogether by the municipal law of that State; and no lien is implied, unless it is recognized by that law. *The General Smith*, 17 U.S. (4 Wheat.) 438, 442, 4 L.Ed. 609.

Home rule. State constitutional provision or type of legislative action which results in apportioning power between state and local governments by providing local cities and towns with a measure of self government if such local government accepts terms of the state legislation. *See also* Local option.

Home rule charter. The organizational plan or framework of a municipal corporation, analogous to a constitution of a state or nation, drawn by the municipality itself and adopted by popular vote of its people.

Homestead. The dwelling house and the adjoining land where the head of the family dwells; the home farm. The fixed residence of the family, with the land, usual and customary appurtenances, and buildings surrounding the main house.

Technically, and under the modern homestead laws, an artificial estate in land, devised to protect the possession and enjoyment of the owner against the claims of his creditors, by withdrawing the property from execution and forced sale, so long as the land is occupied as a home. *See Homestead exemption laws, below.*

Homestead corporations. Corporations organized for the purpose of acquiring lands in large tracts, paying off incumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes.

Homestead entry. *See* Entry.

Homestead exemption laws. Laws passed in most states allowing a householder or head of a family to designate a house and land as his homestead, and exempting the same homestead from execution by creditors for his general debts (in, for example, bankruptcy proceedings). Property tax reductions or exemptions (for all or part of the tax) are also available in some states for homesteaded property. Statutory requirements to establish a homestead may include a formal declaration to be recorded annually.

Homestead right. The personal right to the beneficial, peaceful and uninterrupted use of the home property free from claims of creditors.

Probate homestead. A homestead set apart by the probate court for the use of a surviving husband or wife and the minor children out of the common property, or out of the real estate belonging to the deceased.

Homicidal. Pertaining, relating, or impelling to homicide, as a homicidal mania.

Homicide. The killing of one human being by the act, procurement, or omission of another. A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being. Criminal homicide is murder, manslaughter or negligent homicide. Model Penal Code, § 210.1; 18 U.S.C.A. § 1111 et seq. *See* Manslaughter; Murder.

Homicide is not necessarily a crime. It is a necessary ingredient of the crimes of murder and manslaughter, but there are other cases in which homicide may be committed without criminal intent and without criminal consequences, as, where it is done in the lawful execution of a judicial sentence, in self-defense, or as the only possible means of arresting an escaping felon. The term "homicide" is neutral; while it describes the act, it pronounces no judgment on its moral or legal quality.

People v. Mahon, 77 Ill.App.3d 413, 395 N.E.2d 950, 958. *See* Excusable homicide; Justifiable homicide, below.

Classification

Homicide is ordinarily classified as "justifiable," "excusable," and "felonious." For the definitions of these terms, and of some other compound terms, see below.

Culpable homicide. Described as a crime varying from the very lowest culpability, up to the very verge of murder.

Excusable homicide. The killing of a human being, either by misadventure or in self-defense. Such homicide consists of a perpetrator's acting in a manner which the law does not prohibit, such as self-defense or accidental homicide. *Law v. State*, 21 Md.App. 13, 318 A.2d 859, 869. The name itself imports some fault, error, or omission, so trivial, however, that the law excuses it from guilt of felony, though in strictness it judges it deserving of some little degree of punishment. It is of two sorts,—either *per infortunium*, by misadventure, or *se defendendo*, upon a sudden affray. Homicide *per infortunium* is where a man, doing a lawful act, without any intention of hurt, unfortunately kills another; but, if death ensue from any unlawful act, the offense is manslaughter, and not misadventure. Homicide *se defendendo* is where a man kills another upon a sudden affray, merely in his own defense, or in defense of his wife, child, parent, or servant, and not from any vindictive feeling. *See* Self-defense; also *Justifiable homicide, below.*

Felonious homicide. The wrongful killing of a human being, of any age or either sex, without justification or excuse in law; of which offense there are two degrees, manslaughter and murder.

Homicide by misadventure. The accidental killing of another, where the slayer is doing a lawful act, unaccompanied by any criminally careless or reckless conduct. The same as "homicide *per infortunium*." *See* Manslaughter.

Homicide by necessity. A species of justifiable homicide, because it arises from some unavoidable necessity, without any will, intention, or desire, and without any inadvertence or negligence in the party killing, and therefore without any shadow of blame. *See* Self-defense.

Homicide per infortunium. Homicide by misfortune, or accidental homicide; as where a man doing a lawful act without any intention of hurt, accidentally kills another; a species of excusable homicide. *See* Negligent homicide.

Homicide se defendendo. Homicide in self-defense; the killing of a person in self-defense upon a sudden affray, where the slayer had no other possible (or, at least, probable) means of escaping from his assailant. A species of excusable homicide. *See* Self defense.

Justifiable homicide. Such as is committed intentionally, but without any evil design, and under such circumstances of necessity or duty as render the act proper, and relieve the party from any shadow of blame; as where a sheriff lawfully executes a sentence of death

upon a malefactor, or where the killing takes place in the endeavor to prevent the commission of felony which could not be otherwise avoided, or, as a matter of right, such as self-defense or other causes provided for by statute. See *Self-defense*; also *Excusable homicide*, *above*.

Negligent homicide. Criminal homicide constitutes negligent homicide when it is committed negligently. Model Penal Code, § 210.4. See *Negligent homicide*; also *Vehicular homicide*, *below*.

Reckless homicide. See that title.

Vehicular homicide. The killing of a human being by the operation of an automobile, airplane, motorboat or other motor vehicle in a manner which creates an unreasonable risk of injury to the person or property of another and which constitutes a material deviation from the standard of care which a reasonable person would observe under the same circumstances.

Homicidium /hóməsáydiyəm/. Lat. Homicide (*q.v.*)

Homicidium ex casu, homicide by accident.

Homicidium ex justitia, homicide in the administration of justice, or in the execution of the sentence of the law.

Homicidium ex necessitate, homicide from inevitable necessity, as for the protection of one's person or property.

Homicidium ex voluntate, voluntary or willful homicide.

Hominatio /hómənəysh(iy)ow/. The mustering of men; the doing of homage.

Homine capto in withernamium /hóməniy káptow in wiðərnəymiyəm/. A writ to take him that had taken any bond man or woman, and led him or her out of the country, so that he or she could not be replevied according to law.

Homine eligendo /hóməniy ələjəndow/. In old English law, a writ directed to a corporation, requiring the members to make choice of a man to keep one part of the seal appointed for statutes merchant, when a former is dead, according to the statute of Acton Burnell.

Homine replegiando /hóməniy rəpliyiyəndow/. In old English law, a writ which lay to replevy a man out of prison, or out of the custody of any private person, in the same manner that chattels taken in distress may be replevied.

Homines /hóməniyz/. Lat. In feudal law, men; feudatory tenants who claimed a privilege of having their causes, etc., tried only in their lord's court.

Homines ligii /hóməniyz láyjiyay/. Liege men; feudal tenants or vassals, especially those who held immediately of the sovereign. 1 Bl.Comm. 367.

Hominum causa jus constitutum est /hómənəm kózá jás kònstatyúwtəm èst/. Law is established for the benefit of man.

Homiplagium /hóməpléyjiyəm/. In old English law, the maiming of a man.

Homme /óm/. Fr. Man; a man. The term "man" as sometimes used may include a woman or women.

Hommes de fief. Fr. In feudal law, men of the fief; feudal tenants; the peers in the lords' courts.

Hommes feudaux. Fr. Feudal tenants; the same with *hommes de fief* (*q.v.*).

Homo /hówmow/. Lat. A man; a human being, male or female; a vassal, or feudal tenant; a retainer, dependent, or servant.

Homo chartularius /hówmow kártýləríyəs/. A slave manumitted by charter.

Homo commendatus /hówmow kòməndéytəs/. In feudal law, one who surrendered himself into the power of another for the sake of protection or support. See *Commendation*.

Homo ecclesiasticus /hówmow əkliyziyástəkəs/. A church vassal; one who was bound to serve a church, especially to do service of an agricultural character.

Homo exercitalis /hówmow əgzərs(h)ətéyləs/. A man of the army (*exercitus*); a soldier.

Homo feodalis /hówmow fyúwdéyləs/. A vassal or tenant; one who held a fee (*feodum*), or part of a fee.

Homo fiscalis, or **fiscalinus** /hówmow fəskéyləs/°fiskəláyənəs/. A servant or vassal belonging to the treasury or *fiscus*.

Homo francus /hówmow fránkəs/. In old English law, a freeman. A Frenchman.

Homo ingenuus /hówmow injényuwəs/. A freeman. A free and lawful man. A yeoman.

Homo liber /hówmow láybər/. A free man; a freeman lawfully competent to act as juror. An allodial proprietor, as distinguished from a vassal or feudatory. This was the sense of the term in the laws of the barbarous nations of Europe.

Homo ligius /hówmow láyj(iy)əs/. A liege man; a subject; a king's vassal. The vassal of a subject.

Homologación /h(ə)ðwmowlógàs(i)yówn/. In Spanish law, the tacit consent and approval inferred by law from the omission of the parties, for the space of ten days, to complain of the sentences of arbitrators, appointment of syndics, or assignees of insolvents, settlements of successions, etc. Also the approval given by the judge of certain acts and agreements for the purpose of rendering them more binding and executory.

Homologare /hómələgériy/. In the civil law, to confirm or approve; to consent or assent; to confess.

Homologate /həmóləgeyt/. In civil law, to approve; to confirm; as a court *homologates* a proceeding. See *Homologation*. Literally, to use the *same words* with another; to say the like. To assent to what another says or writes.

Homologation /həmòlégéyshən/. In the civil law, approbation; confirmation by a court of justice; a judgment which orders the execution of some act.

In English law, an estoppel *in pais*.

Homo novus /hówmow nówvəs/. In feudal law, a new tenant or vassal; one who was invested with a new fee. Also one who, after conviction of a crime, had been pardoned, thus "making a new man of him."

Homonymiæ /hómónimiyiy/. A term applied in the civil law to cases where a law was repeated, or laid down in the same terms or to the same effect, more than once. Cases of iteration and repetition.

Homo pertinens /hówmow pártənənz/. In feudal law, a feudal bondman or vassal; one who *belonged* to the soil (*qui glebæ adscribitur*).

Homo potest esse habilis et inhabilis diversis temporibus /hówmow pówtəst ésiy hábələs èt inhábələs dəvərsəs tempórəbəs/. A man may be capable and incapable at different times.

Homo regius /hówmow riyj(iy)əs/. A king's vassal.

Homo romanus /hówmow rəméynəs/. A Roman. An appellation given to the old inhabitants of Gaul and other Roman provinces, and retained in the laws of the barbarous nations.

Homo trium litterarum /hówmow tráyəm litérérəm/. A man of the three letters; that is, the three letters, "f," "u," "r;" the Latin word *fur* meaning "thief."

Homo vocabulum est naturæ; persona juris civilis /hówmow vəkəbyələm èst nətýúriy, pərsónnə júrs sívələs/'səváyələs/. Man (*homo*) is a term of nature; person (*persona*) of civil law.

Hondhabend /hóndhəbənd/. Sax. Having in hand. See Handhabend.

Honeste vivere /h)anéstiy vívəriy/. Lat. To live honorably, creditably, or virtuously. One of the three general precepts to which Justinian reduced the whole doctrine of the law, the others being *alterum non lædere* (not to injure others), and *suum cuique tribuere* (to render to every man his due).

Honestus /h)anéstəs/. Lat. Of good character or standing. *Coram duobus vel pluribus viris legalibus et honestis*, before two or more lawful and good men.

Honi /h)ówniy/. See Hony.

Honor, v. To accept a bill of exchange, or to pay a note, check, or accepted bill, at maturity and according to its tenor. To pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the draft. U.C.C. § 1-201(21). See also Dishonor.

Honor, n. In old English law, a seigniorship of several manors held under one baron or lord paramount. Also those dignities or privileges, degrees of nobility, knighthood, and other titles, which flow from the crown as the fountain of honor.

In America, the customary title of courtesy given to judges, and occasionally to some other officers; as, "his honor," "your honor," "honorable".

Act of honor. When a bill has been protested, and a third person wishes to take it up, or accept it, for the "honor" (credit) of one or more of the parties, the notary draws up an instrument, evidencing the transaction, which is called by this name. Such acts of honor have been eliminated by the U.C.C.

Honor courts. In old English law, tribunals held within honors or seigniorships.

Office of honor. As used in constitutional and statutory provisions, this term denotes a public office of considerable dignity and importance, to which important public trusts or interests are confided, but which is not compensated by any salary or fees, being thus contrasted with an "office of profit."

Honorable. A title of courtesy given in England to the younger children of earls, and the children of viscounts and barons; and, collectively, to the house of commons. In America, the word is used as a title of courtesy for various classes of officials and judges, but without any clear lines of distinction.

Honorable discharge. A formal final judgment passed by the government upon the entire military record of a soldier, and an authoritative declaration by the government that he has left the service in a status of honor. *Zearing v. Johnson*, 10 Cal.App.2d 654, 52 P.2d 1019, 1020. Full veterans benefits are only given to those with an "honorable discharge" status.

Honorarium /ónərəriyam/. In the civil law, an honorary or free gift; a gratuitous payment, as distinguished from hire or compensation for service.

A voluntary reward for that for which no remuneration could be collected by law. *Cunningham v. Commissioner of Internal Revenue*, C.C.A., 67 F.2d 205. A voluntary donation, in consideration of services which admit of no compensation in money.

A payment of money or anything of value made to a person for services rendered for which fees cannot legally or are not traditionally made. Federal laws place restrictions on the payment of honoraria to members of Congress. 2 U.S.C.A. § 31-1. See also Gratuity.

Honorary. As applied to public offices and other positions of responsibility or trust, this term means either that the office or title is bestowed upon the incumbent as a mark of honor or compliment, without intending to charge him with the active discharge of the duties of the place, or else that he is to receive no salary or other compensation in money, the honor conferred by the incumbency of the office being his only reward. In other contents or usages, it means attached to or growing out of some honor or dignity or honorable office, or else it imports an obligation or duty growing out of honor or trust only, as distinguished from legal accountability.

Honorary canons. Those without emolument.

Honorary feuds. In old English law, titles of nobility, descendible to the eldest son, in exclusion of all the rest. 2 Bl.Comm. 56.

Honorary services. In feudal law, special services to be rendered to the king in person, characteristic of the tenure by grand serjeanty; such as to carry his banner, his sword, or the like or to be his butler, champion, or other officer, at his coronation.

Honorary trust. See Trust.

Honorary trustees. Trustees to preserve contingent remainders, so called because they are bound, in honor only, to decide on the most proper and prudential course.

Honoris respectum /h)onóras raspéktam/. By reason of honor or privilege. See Challenge.

Hontfongenethef /hontfónənthéyf/. In Saxon law, a thief taken with *hondhabend*; i.e., having the thing stolen in his hand.

Hony /h)ówniy/. L. Fr. Shame; evil; disgrace. *Hony soit qui mal y pense*, evil be to him who evil thinks. Preferably written *honi*.

Hootch. Slang for intoxicating liquor illicitly distilled for beverage purposes. State v. Cook, 318 Mo. 1233, 3 S.W.2d 365, 369. Also called "moonshine."

Hope, v. A desire or expectation. As used in a will, this term is a precatory word, rather than mandatory or dispositive, but it is sufficient, in proper cases, to create a trust in or in respect to the property spoken of.

Horæ juridicæ or **judiciæ** /hóriy jəridásiy/°juwdishiyiy/. Hours during which the judges sat in court to attend to judicial business.

Hora non est multum de substantia negotii, licet in appello de ea aliquando fiat mentio /hórə nón èst máltəm diy səbstənsihiyə nəgówshiyay, láysət in əpélow diy iyə ələkwóndow fáyət ménsh(iy)ow/. The hour is not of much consequence as to the substance of business, although in appeal it is sometimes mentioned.

Horca /h)órka/. In Spanish law, a gallows; the punishment of hanging.

Hordera /hórdərə/. In old English law, a treasurer.

Horderium /hordíriyəm/. In old English law, a hoard; a treasurer, repository.

Horizontal agreements. Agreements among competitors at same level of distribution. Gilchrist Machinery Co., Inc. v. Komatsu America Corp., D.C.Miss., 601 F.Supp. 1192, 1199. See Horizontal restraints of trade.

Horizontal merger. A combination of two or more companies that compete directly with each other. Merger of one company with another company producing same product or similar product and selling it in same geographic market. U.S. v. International Tel. & Tel. Corp., D.C.Conn., 306 F.Supp. 766, 774. See Merger. Compare Vertical merger.

Horizontal price-fixing. Agreements between producers, wholesalers, or retailers as to sale or resale prices.

Price fixing among businesses on the same level the effect of which is to eliminate competition based on price. Such agreements are prohibited by federal and state antitrust laws. See also Price-fixing.

Horizontal property acts. Statutes dealing with cooperatives and condominiums.

Horizontal restraints of trade. A restraint of trade involving businesses at the same level of operation. A "horizontal restraint" is an agreement between competitors to refuse to deal with one or more persons, while a "vertical restraint" involves combinations of parties on different levels of the distribution system. Both types of restraints constitute per se violations of Sherman Antitrust Act. Sakamoto v. Duty Free Shoppers, Ltd., D.C. Guam, 613 F.Supp. 381, 391. See also Horizontal price-fixing.

Hornbook. A primer; a book explaining the basics, fundamentals or rudiments of any science or branch of knowledge. The phrase "hornbook law" is a colloquial designation of the rudiments or general principles of law.

Popular reference to a series of textbooks which review various fields of law in summary, narrative form, as opposed to casebooks which are designed as primary teaching tools and include many reprints of court opinions.

Horner. A narcotic addict who inhales or snuffs heroin rather than one who takes it by injection. People v. Carner, 117 Cal.App.2d 362, 255 P.2d 835, 836.

Horngled. Sax. In old English law, a tax within a forest, paid for horned beasts.

Hornswoggle. To triumph over; overcome; beat; bedevil.

Horn tenure. In old English law, tenure by cornage; that is, by the service of winding a horn when the Scots or other enemies entered the land, in order to warn the king's subjects. This was a species of grand serjeanty. 2 Bl.Comm. 74.

Hors de son fee. Out of his fee. In old common law pleading, this was the name of a plea in an action for rent or services, by which the defendant alleged that the land in question was out of the compass of the plaintiff's fee.

Horse power. A unit of power capable of lifting 33,000 pounds a foot a minute.

Hospes /hóspiyz/. Lat. A guest.

Hospes generalis /hóspiyz jènərəyləs/. A great chamberlain.

Hospital. An institution for the treatment and care of sick, wounded, infirm, or aged persons; generally incorporated, and then of the class of corporations called "eleemosynary" or "charitable." Also the building used for such purpose. Hospitals may be either public or private, and may be limited in their functions or services; e.g. children's hospital.

Base hospital. One established at a definite military or naval base of operations.

Field hospital. One set up near the field of operations. It is generally equipped to care for emergency cases and can be moved readily.

Hospitallers. The knights of a religious order, so called because they built a hospital at Jerusalem, wherein pilgrims were received. All their lands and goods in England were given to the sovereign by 32 Hen. VIII, c. 24.

Hospitator. A host or entertainer. *Hospitator communis.* An innkeeper. *Hospitator magnus.* The marshal of a camp.

Hospitia /hòspish(iy)ə/. Inns. *Hospitia communia*, common inns. *Hospitia curiæ*, inns of court. *Hospitia cancellariæ*, inns of chancery.

Hospiticide /hòspitəsàyd/. One that kills his guest or host.

Hospitium /hòspish(iy)əm/. An inn; a household.

Host. L. Fr. An army. A military expedition; war.

Hostage. An innocent person held captive by one who threatens to kill or harm him if his demands are not met. A person who is given into the possession of the enemy, in time of war, his freedom (or life) to stand as security for the performance of some contract or promise made by the belligerent power giving the hostage with the other.

Hostage taking is a federal crime. 18 U.S.C.A. § 1203.

Term, when used with reference to person and in context in which it is used in kidnapping statute, implies unlawful taking, restraining or confining of person with intent that person, or victim, be held as security for performance, or forbearance, of some act by third person. *State v. Crump*, N.M., 82 N.M. 487, 484 P.2d 329, 334. See Kidnapping.

Hostelagium /hòstələj(iy)əm/. A right to receive lodging and entertainment, anciently reserved by lords in the houses of their tenants.

Hosteler. An innkeeper. See also *Hostler*.

Hostes /hòstiyz/. Lat. Enemies. *Hostes humani generis*, enemies of the human race; *i.e.*, pirates.

Hostes sunt qui nobis vel quibus nos bellum decernimus; cæteri proditores vel prædones sunt /hòstiyz sànt kwày nówbəs vèl kwibəs nõws bèləm dəsárnəməs; sètəray pròwdətóriy vèl prədówniyz sànt/. Enemies are those with whom we declare war, or who declare it against us; all others are traitors or pirates.

Hosticide /hòstəsàyd/. One who kills an enemy.

Hostilaria, hospitalaria /hòs(pə)təlériyə/. A place or room in religious houses used for the reception of guests and strangers.

Hostile. Having the character of an enemy; standing in the relation of an enemy. Feeling or displaying enmity

or antagonism such as a hostile witness. See *Hostile or adverse witness*.

Within requirement for adverse possession that possession be asserted in hostile manner, "hostile" means that it is asserted against claim of ownership of all others, including record owner, but does not mean that adverse possessor display a subjective evil intent or emotion against title owner. *Steller v. David*, Del.Super., 257 A.2d 391, 395. See also *Adverse possession*; *Notorious possession*.

Hostile embargo. One laid upon the vessels of an actual or prospective enemy.

Hostile fire. In fire insurance law, a fire which breaks out in place not anticipated; fire which escapes into area not expected. One which becomes uncontrollable or breaks out from where it was intended to be and becomes hostile element. *Reliance Ins. Co. v. Naman*, 118 Tex. 21, 6 S.W.2d 743, 744.

Hostile or adverse witness. A witness who manifests so much hostility or prejudice under examination in chief that the party who has called him, or his representative, is allowed to cross-examine him, *i.e.*, to treat him as though he had been called by the opposite party. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. Fed.Evid. R. 611. See also *Adverse witness*.

Hostile possession. See *Possession*.

Hostility. State of enmity between individuals or nations. An act or series of acts displaying antagonism. Hostile act or state. Acts of war.

Hostler /hòstlər/. In Norman and old English law, this was the title of the officer in a monastery charged with the entertainment of guests. It was also applied (until about the time of Queen Elizabeth) to an innkeeper, and afterwards, when the keeping of horses at livery became a distinct occupation, to the keeper of a livery stable, and then (under the modern form "ostler") to the groom in charge of the stables of an inn.

Hot blood. In criminal law, condition of one whose passions have been aroused to an uncontrollable degree and whose homicide may be reduced, therefore, from murder to manslaughter. See also *Heat of passion*; *Manslaughter*.

Hot cargo. In labor law, goods produced or handled by employer with whom union has dispute.

Hot cargo agreement. Voluntary agreement between union and neutral employer by which latter agrees to exert pressure on another employer with whom union has a dispute; by, for example, ceasing or refraining from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer the union has labeled as unfair or "hot". *N. L. R. B. v. Amalgamated Lithographers of America, C.C.A.Ind.*, 309 F.2d 31. See *Landrum-Griffin Act*.

Hotchpot. The blending and mixing property belonging to different persons, in order to divide it equally. An-

ciently applied to the mixing and blending of lands given to one daughter in frank marriage, with those descending to her and her sisters in fee-simple, for the purpose of dividing the whole equally among them; without which the daughter who held in frank marriage could have no share in the lands in fee-simple. 2 Bl.Comm. 190.

Hotchpot, or the *putting in hotchpot*, is applied in modern law to the throwing the amount of an advancement made to a particular child, in real or personal estate, into the common stock, for the purpose of a more equal division, or of equalizing the shares of all the children. This answers to or resembles the *collatio bonorum*, or *collation* of the civil law.

Hotel. A building held out to the public as a place where all transient persons who come will be received and entertained as guests for compensation and it opens its facilities to the public as a whole rather than limited accessibility to a well-defined private group. *Ambassador Athletic Club v. Utah State Tax Commission*, 27 Utah 2d 377, 496 P.2d 883.

Hotel divorce. Form of collusive divorce in which by agreement of both spouses, one spouse stages a fake adultery scene.

Hotelkeeper's lien. A possessory or statutory lien allowing the hotelkeeper or innkeeper to take the personal property of a guest, brought into the hotel, as security for nonpayment of the guest's bill.

Hot issue. See *Issue (Securities)*.

Hot pursuit. See *Fresh pursuit*.

Hot-water ordeal. In old English law, this was a test, in cases of accusation, by hot water; the party accused and suspected being appointed by the judge to put his arms up to the elbows in seething hot water, which, after sundry prayers and invocations, he did, and was, by the effect which followed, judged guilty or innocent.

Hour. The twenty-fourth part of a natural day; sixty minutes of time.

Office hours. See *Office*.

Hours of labor. Time period in which employees work and which is governed in part by state and federal (*e.g.* Adamson Act; Fair Labor Standards Act) laws enacted under police power insofar as such legislation deals with the safety and welfare of laborers and the public. See *Child labor laws*; *Fair Labor Standards Act*; *Wage and hour laws*.

House. Structure that serves as living quarters for one or more persons or families. See also *Curtilage*; *Domicile*; *Home*; *Residence*.

A legislative assembly, or (where the bicameral system obtains) one of the two branches of the legislature; also the "house of lords" or "house of representatives". Also a quorum of a legislative body.

The name "house" is also given to some collections of persons other than legislative bodies, to some public institutions, and (colloquially) to commercial firms or joint-stock companies (*e.g.* publishing or securities businesses).

Ancient house. In old English law, one which has stood long enough to acquire an easement of support against the adjoining land or building.

Bawdy house. A brothel; a house maintained for purposes of prostitution.

Disorderly house. See that title.

Duplex house. A double house.

Dwelling house. See *Dwelling*.

House-bote. In old English law, a species of estovers, belonging to a tenant for life or years, consisting in the right to take from the woods of the lessor or owner such timber as may be necessary for making repairs upon the house.

House-burning. See *Arson*.

House-duty. In England, a tax on inhabited houses imposed by 14 & 15 Vict., c. 36, in lieu of window-duty, which was abolished.

House of Commons. One of the constituent houses of the British parliament, composed of representatives of the counties, cities, and boroughs. The lower house, so called because the commons of the realm, that is, the knights, citizens, and burgesses returned to parliament, representing the whole body of the commons, sit there. Its jurisdiction is limited to bills of attainder and pains and penalties, and breach of privileges of the House and its members. See also *House of Lords*, below.

House of correction. A reformatory. A place for the confinement of juvenile offenders, or those who have committed crimes of lesser magnitude.

House of Delegates. The official title of the lower branch of the legislative assembly of several of the states, *e.g.*, Maryland and Virginia.

House of ill fame. A bawdy house; house of prostitution; a brothel; a dwelling allowed by its chief occupant to be used as a resort of persons desiring unlawful sexual intercourse. *People v. Lee*, 307 Mich. 743, 12 N.W.2d 418, 421. See *Bawdy-house*.

House of Lords. The upper chamber of the British parliament. It comprises the lords spiritual and the lords temporal, and a certain number of Scottish peers. The House of Lords is also the court of final appeal in most civil cases and has jurisdiction over impeachment. See *Privy council*; also *House of Commons*, above.

House of refuge. A prison for juvenile delinquents. A house of correction or reformatory.

House of Representatives. See *House of Representatives*.

House of worship. A building or place set apart for and devoted to the holding of religious services or exercises or public worship; a church or chapel or place similarly used.

Mansion house. See *Mansion-house*.

Public house. An inn or tavern; a house for the entertainment of the public, or for the entertainment of all who come lawfully and pay regularly. A place of public

resort, particularly for purposes of drinking or gaming. In a more general sense, any house made public by the occupation carried on in it and the implied invitation to the public to enter, such as inns, taverns, drinking saloons, gambling houses, and perhaps also shops and stores. This term is now generally obsolete.

Tippling house. A place where intoxicating liquors are sold to be drunk on the premises.

Houseage. A fee paid for housing goods by a carrier, or at a wharf, etc.

Housebreaking. Burglary. Breaking and entering a dwelling-house with intent to commit any felony therein. *See* Burglary.

Under some statutes housebreaking may consist in "breaking out" of a house after access had been gained without breaking.

House counsel. Lawyer who acts as attorney for business though carried as an employee of that business and not as an independent lawyer. Generally, such lawyer advises business on day to day matters. Larger businesses have legal departments with attorneys assigned to specialized areas of law affecting their particular business; *e.g.* labor law, taxes, personal injury litigation, corporate law, etc.

Household, adj. Belonging to the house and family; domestic.

Household, n. A family living together. *Schurler v. Industrial Commission*, 86 Utah 284, 43 P.2d 696, 699. Those who dwell under the same roof and compose a family.

Term "household" is generally synonymous with "family" for insurance purposes, and includes those who dwell together as a family under the same roof. *Van Overbeke v. State Farm Mut. Auto. Ins. Co.*, 303 Minn. 387, 227 N.W.2d 807, 810. Generally, the term "household" as used in automobile policies is synonymous with "home" and "family." *Bartholet v. Berkness*, 291 Minn. 123, 189 N.W.2d 410, 412.

For Family, see that title.

Householder. The occupier of a house. More correctly, one who keeps house with his or her family; the head or master of a family. *Berghean v. Berghean*, 113 Ind.App. 412, 48 N.E.2d 1001, 1003. One who has a household; the head of a household. *See also* Head of household.

House law. A peculiar type of regulatory code, now largely obsolete, promulgated by the head of a royal or noble family, or of a prominent private family, governing intra-family relationships and acts with respect to policies of marriage, disposition of property, inheritance and the like. Usually these codes had no legal authority but were enforced within the family by sufficient personal and economic sanctions.

House of delegates. When used in connection with the American Bar Association, the House of Delegates is the body in which is vested the control and administration of the ABA. *See* ABA Constitution, Art. VI.

House of prostitution. *See* Bawdy-house.

House of Representatives. The House of Representatives of Congress comprises 435 representatives. The number representing each State is determined by population but every State is entitled to at least one representative. Members are elected by the people by district for 2-year terms, all terms running for the same period. Representatives must be at least 25 years of age, citizens of United States for at least seven years, and live in the state they represent. Art. I, § 2 of U.S.Const.

Housing code. *See* Building code.

Housing courts. Such courts, as existing in a number of cities, deal primarily with landlord and tenant matters, including disputes concerning maintenance of premises, terms of lease, building and fire codes, and the like.

HOW. *See* Home Owners Warranty.

H.R. House of Representatives; House Report.

H.R. 10 Plans. *See* Keogh Plan.

H.T. An abbreviation for *hoc titulo*, this title, or under this title; used in references to books.

Huckster /hákstər/. A petty hawker or peddler.

Hucusque /hákáskwiy/. In old pleading, hitherto.

HUD. Department of Housing and Urban Development.

Hude-geld /háy(n)dgèld/. In old English law, an acquittance for an assault upon a trespassing servant. Also, the price on one's skin, or the money paid by a servant to save himself from a whipping.

Hue and cry. In old English law, a loud outcry with which felons (such as robbers, burglars, and murderers) were anciently pursued, and which all who heard it were bound to take up, and join in the pursuit, until the malefactor was taken. 4 Bl.Comm. 293. A written proclamation issued on the escape of a felon from prison, requiring all officers and police to assist in retaking him.

Hui /húwiy/. Under the law of Hawaii, an association of persons in the ownership of land, members of which ordinarily hold the property as tenants in common. *De Fries v. Scott*, C.C.A.Hawaii, 268 F.2d 952.

Huissiers /wisyéy/. In French law, marshals; ushers; process-servers; sheriff's officers. Ministerial officers attached to the courts, to effect legal service of process required by law in actions, to issue executions, etc., and to maintain order during the sitting of the courts.

Hulks. A place of punishment for convicts in England, abandoned with the reform in the punishment of convicts which began in England about 1840.

Humanitarian doctrine. Doctrine evolved from *Missouri (Wonnack v. Missouri Pacific R. Co.)*, 337 Mo. 1160, 88 S.W.2d 368) in which a plaintiff is relieved of responsibility for his negligence if he can show that the defendant (generally one operating a train or motor vehicle while plaintiff is pedestrian) had last opportunity to avoid the accident. It is only when plaintiff comes into a position of imminent, impending and immediate danger in which injury to plaintiff is reasonably certain if

the existing circumstances remain unchanged that the "humanitarian doctrine" seizes upon the situation and imposes upon defendant a duty to thereafter exercise proper care to avoid the threatened injury. *Finch v. Kegevic*, Mo.App., 486 S.W.2d 515, 518, 519, 521. Only a very few states follow this doctrine.

See also Immediate danger; Imminent peril; Last clear chance doctrine.

Hundred. Under the Saxon organization of England, each county or shire comprised of an indefinite number of *hundreds*, each hundred containing ten *tithings*, or groups of ten families of freeholders or frankpledges. The hundred was governed by a high constable, and had its own court; but its most remarkable feature was the corporate responsibility of the whole for the crimes or defaults of the individual members. The introduction of this plan of organization into England is commonly ascribed to Alfred, but the idea, as well of the collective liability as of the division, was probably known to the ancient German peoples, as we find the same thing established in the Frankish kingdom under Clothaire, and in Denmark. 1 Bl.Comm. 115; 4 Bl.Comm. 411.

Hundredarius /hándrædériyəs/. In old English law, a hundredary or hundredor. A name given to the chief officer of a hundred, as well as to the freeholders who composed it.

Hundredary /hándrædèriy/. The chief or presiding officer of a hundred.

Hundred Court. In English law, a larger court-baron, being held for all the inhabitants of a particular *hundred*, instead of a manor. The free suitors were the judges, and the steward the registrar, as in the case of a court-baron. It was not a court of record, and resembled a court-baron in all respects except that in point of territory it was of greater jurisdiction. These courts no longer exist. 3 Bl.Comm. 34, 35.

Hundredes earldor, or hundredes man /hándrædz árdar/hándrædzmán/. The presiding officer in the hundred court.

Hundred-fecta /hándræd fèktə/. The performance of suit and service at the hundred court.

Hundred gemote /hándræd gəmòwt/. Among the Saxons, a meeting or court of the freeholders of a hundred, which assembled, originally, twelve times a year, and possessed civil and criminal jurisdiction and ecclesiastical powers.

Hundred lagh /hándræd lò/. The law of the hundred, or hundred court; liability to attend the hundred court.

Hundredors /hándrædərz/. In English law, the inhabitants or freeholders of a hundred, anciently the suitors or judges of the hundred court. Persons impaneled or fit to be impaneled upon juries, dwelling within the hundred where the cause of action arose. It was formerly necessary to have some of these upon every panel of jurors. 3 Bl.Comm. 359, 360. The term "hundredor" was also used to signify the officer who had the jurisdic-

tion of a hundred, and held the hundred court, and sometimes the bailiff of a hundred.

Hundred penny. In old English law, a tax collected from the hundred, by the sheriff or lord of the hundred.

Hundred rolls. In England, rolls embodying the result of investigations made by the commissioners in 1274 as to usurpations of the royal rights.

Hundred secta /hándræd sèktə/. The performance of suit and service at the hundred court.

Hundred setena /hándræd sətìynə/. In Saxon law, the dwellers or inhabitants of a hundred.

Hundredweight. A denomination of weight containing, according to the English system, 112 pounds; but in this country, generally, it consists of 100 pounds avoirdupois.

Hung jury. A jury so irreconcilably divided in opinion that they cannot agree upon any verdict by the required unanimity. *See* Dynamite instruction.

Huntley hearing. In New York, a separate proceeding in a criminal case wherein the admissibility of an accused's extrajudicial statements is determined. *People v. Huntley*, 15 N.Y.2d 72, 255 N.Y.S.2d 838, 204 N.E.2d 179.

Hurdereferst /hórdærfærst/. A domestic; one of a family.

Hurt. In such phrases as "to the hurt or annoyance of another," or "hurt, molested, or restrained in his person or estate," this word is not restricted to physical injuries, but includes also mental pain, as well as discomfort or annoyance. *See also* Damage; Injury.

Hurto /húrtow/. In Spanish law, theft.

Husband. A married man; one who has a lawful wife living. The correlative of "wife."

Etymologically, the word signified the "house bond;" the man who, according to Saxon ideas and institutions, held around him the family, for whom he was in law responsible.

Husbandman. A farmer, a cultivator or tiller of the ground. The word "farmer" is colloquially used as synonymous with "husbandman", but originally meant a tenant who cultivates *leased* ground.

Husband of a ship. *See* Ship (*Ship's husband*).

Husbandria /həzbændríyə/. In old English law, husbandry.

Husbandry. Agriculture; farming; cultivation of the soil for food. Farming, in the sense of operating land to raise crops and livestock. *State ex rel. Boynton v. Wheat Farming Co.*, 137 Kan. 697, 22 P.2d 1093. Care of household. Careful management of resources.

Husband-wife privilege. Term refers to privilege extended to confidential marital communications. While state statutes vary, in general such provide that a spouse has a privilege to refuse to disclose, and to prevent the other from disclosing, a confidential communication made while spouses were married. There are

certain exceptions to this privilege, the major one being where one spouse is the victim of a crime by the other.

Husband-wife tort actions. The common law rule, carried forward by statute in many states, prohibits tort actions between spouses. The current trend however is to abolish this interspousal immunity doctrine, thus permitting such suits between spouses. Some states have abolished the doctrine only insofar as automobile tort actions. *See also* Consortium.

Husbrec /húwsbrèyk/. In Saxon law, the crime of housebreaking or burglary.

Huscarle /húwskarl/. In old English law, a house servant or domestic; a man of the household. A king's vassal, thane, or baron; an earl's man or vassal.

Husfastne /húwsfæs(t)ən/. He who holds house and land.

Husgablum /húwsgæbləm/. In old English law, house rent; or a tax or tribute laid upon a house.

Hush-money. A colloquial expression to designate a bribe to hinder information; pay to secure silence.

Hustings. Council; court; tribunal. Apparently so called from being held within a building, at a time when other courts were held in the open air. It was a local court. The county court in the city of London bore this name. There were hustings at York, Winchester, Lincoln, and in other places similar to the London hustings. Also the raised place from which candidates for seats in parliament address the constituency, on the occasion of their nomination. Courts of Husting in England no longer exist.

Hutesium et clamor /hətíyz(h)(i)yəm èt klámər/. Hue and cry.

H.V. An abbreviation for *hoc verbo* or *hac voce*, this word, under this word; used references to dictionaries and other works alphabetically arranged.

Hybrid class action. Term refers to type of actions where the right to be enforced is several but the object of the action is the adjudication of claims which do or may affect specific property in the action. *Eastham v. Public Emp. Retirement Ass'n Bd.*, 89 N.M. 399, 553 P.2d 679, 682. *See* Class or representative action.

Hybrid securities. Securities that have some of the attributes of both debt securities and equity securities. Type of security which, in the form of a debenture, contains elements of indebtedness and elements of equity stock. *J.S. Birtz Const. Co. v. C.I.R.*, C.A.Mo., 387 F.2d 451, 455.

Hypnosis. The act of inducing artificially a state of sleep or trance in a subject by means of verbal suggestion by the hypnotist or by the subject's concentration upon some object. It is generally characterized by extreme responsiveness to suggestions from the hypnotist.

A state of heightened concentration with diminished awareness of peripheral events. *State v. Hurd*, 86 N.J. 525, 432 A.2d 86. A majority of states have held that hypnotically induced testimony is admissible in a criminal

trial, *e.g.* *United States v. Awkard*, C.A.Cal., 597 F.2d 667 cert. den. 444 U.S. 885, 100 S.Ct. 179, 62 L.Ed.2d 116; *Clark v. State*, Fla.App., 379 So.2d 372. Some courts hold, however, that hypnotically refreshed testimony must satisfy the standard of acceptability for scientific evidence before it is admissible in a criminal trial. *E.g.* *State v. Hurd*, 86 N.J. 525, 432 A.2d 86, 91.

Hypobolium /həpóbələm/. In the civil law, the name of the bequest or legacy given by the husband to his wife, at his death, above her dowry.

Hypochondria; hypomania /həpəkóndriyə, hípə°/həpəméyn(i)yə, hípə°/. *See* Insanity.

Hypotheca /həpəθiýkə, hípə°/. "Hypotheca" was a term of the Roman law, and denoted a pledge or mortgage. As distinguished from the term "*pignus*," in the same law, it denoted a mortgage, whether of lands or of goods, in which the subject in pledge remained in the possession of the mortgagor or debtor; whereas in the *pignus* the mortgagee or creditor was in the possession. Such an hypotheca might be either express or implied; express, where the parties upon the occasion of a loan entered into express agreement to that effect; or implied, as, *e.g.*, in the case of the stock and utensils of a farmer, which were subject to the landlord's right as a creditor for rent; whence the Scotch law of hypothec.

The word has suggested the term "hypothecate," as used in the mercantile and maritime law of England. Thus, under the factor's act, goods are frequently said to be "hypothecated;" and a captain is said to have a right to hypothecate his vessel for necessary repairs.

Hypothecaria actio /həpəθəkériyə áksh(iy)ow/. Lat. In the civil law, an hypothecary action; an action for the enforcement of an *hypotheca*, or right of mortgage; or to obtain the surrender of the thing mortgaged.

Hypothecarii creditores /həpəθəkériyay krédətóriyz/. Lat. In the civil law, hypothecary creditors; those who loaned money on the security of an *hypotheca* (*q.v.*).

Hypothecary action /həpəθəkèhriy ákshən/. The name of an action allowed under the civil law for the enforcement of the claims of a creditor by the contract of *hypotheca* (*q.v.*). *Lovell v. Cragin*, 136 U.S. 130, 10 S.Ct. 1024, 34 L.Ed. 372.

Hypothecate /həpəθəkèyt/. To pledge property as security or collateral for a debt. Generally, there is no physical transfer of the pledged property to the lender, nor is the lender given title to the property; though he has the right to sell the pledged property upon default. *Moore v. Wardlaw*, C.C.A.Tex., 522 S.W.2d 552, 554. *See also* Pledge; Rehypothecation.

Hypothecation bond /həpəθəkéyshən bònd/. A bond given in the contract of bottomry or *respondentia*.

Hypothèque /iypowtéék/. In French law, hypothecation; a mortgage on real property; the right vested in a creditor by the assignment to him of real estate as security for the payment of his debt, whether or not it be accompanied by possession.

It corresponds to the mortgage of real property in English law, and is a real charge, following the property into whosoever hands it comes. It may be *legale*, as in the case of the charge which the state has over the lands of its accountants, or which a married woman has over those of her husband; *judiciaire*, when it is the result of a judgment of a court of justice; and *conventionelle*, when it is the result of an agreement of the parties.

Hypothesis /həpóθəsəs/. A supposition, assumption, or theory; a theory set up by the prosecution, on a criminal trial, or by the defense, as an explanation of the facts in evidence, and a ground for inferring guilt or innocence, as the case may be, or as indicating a probable or possible motive for the crime.

Hypothetical question. A hypothetical question is a form of question framed in such a manner as to call for an opinion from an expert based on a series of assumptions claimed to have been established as fact by the evidence in a case. It is a device which is used at trial to enable an expert witness to express an opinion concerning facts about which he did not have personal knowledge. It should be so framed as to recite all the facts in evidence which are relevant to the formation of an opinion and then, assuming the facts recited to be true, the witness should be asked whether he is able to

form an opinion therefrom and if so to state his opinion. *McMurrey v. State*, 145 Tex.Cr.R. 439, 168 S.W.2d 858, 860. Federal Rules of Evidence 705 and 703 eliminate the requirement that a hypothetical question must be used in Federal Court, but either the court or the questioner may decide that one should be used.

Hypothetical yearly tenancy. The basis, in England, of rating lands and hereditaments to the poor-rate, and to other rates and taxes that are expressed to be leviable or assessable in like manner as the poor-rate.

Hysteria. Disorder of the psychoneurotic system characterized by disturbances of the psychic, sensory, motor, and visceral functions. Extreme emotionalism, commonly characterized by attention-seeking, impulsive demonstrations.

Hysteropotmoi. Those who, having been thought dead, had, after a long absence in foreign countries, returned safely home; or those who, having been thought dead in battle, had afterwards unexpectedly escaped from their enemies and returned home. These, among the Romans, were not permitted to enter their own houses at the door, but were received at a passage opened in the roof.