

# I

**Ib.** See *Ibidem*.

**Ibidem** /ibədəm/əbáydəm/. Lat. In the same place; in the same book; on the same page, etc. Abbreviated to "*ibid.*" or "*ib.*"

**Ibi semper debet fieri triatio ubi juratores meliorem possunt habere notitiam** /ibay sémpər débət fáyərəy triyéysh(iy)ow yúwbay júrətóriyz pósənt həbíriy nɔwtish(iy)əm/. A trial should always be had where the jurors can be the best informed.

**I.C.C.** Interstate Commerce Commission.

**I—ctus.** An abbreviation for "*jurisconsultus*," one learned in the law; a jurisconsult. See *Jurisconsultus*.

**Ictus orbis** /iktəs órɔəs/. A maim, a bruise, or swelling; any hurt without cutting the skin. When the skin is cut, the injury is called a "wound."

**Id.** See *Idem*.

**I.D.** Identification.

**Id certum est quod certum reddi potest** /id sértəm èst kwòd sértəm réday pówtəst/. That is certain which can be made certain. 2 Bl.Comm. 143; 1 Bl.Comm. 78.

**Id certum est quod certum reddi potest, sed id magis certum est quod de semetipso est certum** /id sértəm èst kwòd sértəm réday pówtəst, sèd id méyjəs sértəm èst kwòd diy siymətípsow èst sértəm/. That is certain which can be made certain, but that is more certain which is certain of itself.

**Idem** /áydəm/. Lat. The same; used to indicate a reference previously made. According to Lord Coke, "*idem*" has two significations, *sc.*, *idem syllabis seu verbis* (the same in syllabus or words), and *idem re et sensu* (the same in substance and in sense).

**Idem agens et patiens esse non potest** /áydəm éyɔənz èt péysh(iy)ənz ésiy nòn pówtəst/. The same person cannot be both agent and patient; *i.e.*, the doer and person to whom the thing is done.

**Idem est facere, et non prohibere cum possis; et qui non prohibet, cum prohibere possit, in culpa est (aut jubet)** /áydəm èst féysəriy èt nòn pròwhəbíriy, kəm pósəs, èt kwáy nòn prów(h)əbət kəm pròwhəbíriy pósət in kálpə èst/. To commit, and not to prohibit when in your power, is the same thing; and he who does not prohibit when he can prohibit is in fault, or does the same as ordering it to be done.

**Idem est nihil dicere, et insufficienter dicere** /áydəm èst náy(h)əl díəsəriy èt insəfis(h)iyéntər díəsəriy/. It is the

same thing to say nothing, and to say a thing insufficiently. To say a thing in an insufficient manner is the same as not to say it at all. Applied to the plea of a prisoner.

**Idem est non esse, et non apparere** /áydəm èst nòn ésiy èt nòn əpəriy/. It is the same thing not to be as not to appear. Not to appear is the same thing as not to be.

**Idem est non probari et non esse; non deficit jus, sed probatio** /áydəm èst nòn prɔbəray èt nòn ésiy, nòn défəsət jəs sèd prɔbéysh(iy)ow/. What is not proved and what does not exist are the same; it is not a defect of the law, but of proof.

**Idem est scire aut scire debere aut potuisse** /áydəm èst sáyriy òt sáyriy dəbíriy òt pòtuwísiy/. To be bound to know or to be able to know is the same as to know.

**Idem per idem** /áydəm pər áydəm/. The same for the same. An illustration of a kind that really adds no additional element to the consideration of the question.

**Idem semper antecedenti proximo refertur** /áydəm sémpər əntəsədéntay prɔksəmow rəfərtər/. "The same" is always referred to its next antecedent.

**Idem sonans** /áydəm sównənz/. Sounding the same or alike; having the same sound. A term applied to names which are substantially the same, though slightly varied in the spelling, as "Lawrence" and "Lawrance," and the like. *State v. Culbertson*, 6 N.C.App. 327, 170 S.E.2d 125, 127. Under the rule of "*idem sonans*," variance between allegation and proof of a given name is not material if the names sound the same or the attentive ear finds difficulty in distinguishing them when pronounced. *Martin v. State*, Tex.Cr.App., 541 S.W.2d 605, 606.

Two names are said to be "*idem sonantes*" if the attentive ear finds difficulty in distinguishing them when pronounced, or if common and long-continued usage has by corruption or abbreviation made them identical in pronunciation. The rule of "*idem sonans*" is that absolute accuracy in spelling names is not required in a legal document or proceedings either civil or criminal; that if the name, as spelled in the document, though different from the correct spelling thereof, conveys to the ear, when pronounced according to the commonly accepted methods, a sound practically identical with the correct name as commonly pronounced, the name thus given is a sufficient identification of the individual referred to, and no advantage can be taken of the clerical error. The doctrine of "*idem sonans*" has

been much enlarged by decisions, to conform to the growing rule that a variance, to be material, must be such as has misled the opposite party to his prejudice.

**Identical.** Exactly the same for all practical purposes.

**Identification.** Proof of identity. The proving that a person, subject, or article before the court is the very same that he or it is alleged, charged, or reputed to be; as where a witness recognizes the prisoner as the same person whom he saw committing the crime; or where handwriting, stolen goods, counterfeit coin, etc., are recognized as the same which once passed under the observation of the person identifying them.

The requirement of identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Fed.Evid.R. 901.

See also Authentication; Blood test evidence; DNA identification; Eyewitness identification; Lineup; Mug book; Voice identification; Voiceprint.

**Identification of goods.** The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. U.C.C. § 2-501.

**Identitas vera colligitur ex multitudine signorum** /ədéntatəs vírə kəlǰjətər əks məltətýúwdəniy səgnórəm/. True identity is collected from a multitude of signs.

**Identitate nominis** /ədéntətétýtiy nóménəs/. In English law, an ancient writ (now obsolete) which lay for one taken and arrested in any personal action, and committed to prison, by mistake for another man of the same name.

**Identity.** Evidence. Sameness; the fact that a subject, person, or thing before a court is *the same* as it is represented, claimed, or charged to be. See Authentication; Identification.

**Patent Law.** Such sameness between two designs, inventions, combinations, etc., as will constitute the one an infringement of the patent granted for the other. To constitute "identity of invention," and therefore infringement, not only must the result obtained be the same, but, in case the means used for its attainment is a combination of known elements, the elements combined in both cases must be the same, and combined in the same way, so that each element shall perform the same function; provided that the differences alleged are not merely colorable according to the rule forbidding the use of known equivalents. *Electric Railroad Signal Co. v. Hall Railroad Signal Co.*, 114 U.S. 87, 5 S.Ct. 1069, 29 L.Ed. 96. "Identity of design" means sameness of appearance, or, in other words, sameness of effect upon the eye,—not the eye of an expert, but of an ordinary intelligent observer. *Smith v. Whitman Saddle Co.*, 148 U.S. 674, 13 S.Ct. 768, 37 L.Ed. 606.

**Identity of interests.** In civil procedure, an amendment (addition) of a party will be allowed if the party sought to be joined is so closely related in business operations or other activities that the institution of an action against one serves as notice of litigation to the other, and hence the amendment will relate back. *Grooms v. Greyhound Corp.*, C.A.Ohio, 287 F.2d 95; Fed.R.Civil P. 15(c). See also Identity of parties; Privity.

**Identity of parties.** Refers to condition of persons in relation to each other so that a former judgment against one bars action against others because of *res adjudicata*; hence, same parties and those in privity are so barred. See *Res (Res judicata)*.

**Ideo** /áydiyow/. Lat. Therefore.

**Ideo consideratum est** /áydiyow kənsidəréytəm èst/. Lat. Therefore it is considered. These were the words used at the beginning of the entry of judgment in an action, when the forms were in Latin. They are also used as a name for that portion of the record.

**Ides** /áydz/. A division of time among the Romans. In March, May, July, and October, the Ides were on the 15th of the month; in the remaining months, on the 13th. This method of reckoning is still retained in the chancery of Rome, and in the calendar of the breviary.

**Id est** /íd èst/. Lat. That is. Commonly abbreviated "i.e."

**Idiochira** /idiyowkáyrə/. Græco-Lat. In the civil law, an instrument privately executed, as distinguished from such as were executed before a public officer.

**Idiocy, idiopathic insanity** /íd(i)yəsiy, idiyowpæθək insənétiy/. See *Insanity*.

**Idiota** /idiyówtə/. In the civil law, an unlearned, illiterate, or simple person. A private man; one not in office.

**Idiota inquirendo, writ de** /rít diy idiyówtə íŋkwəréndow/. This is the name of an old writ which directs the sheriff to inquire whether a man be an idiot or not. The inquisition is to be made by a jury of twelve men. And, if the man were found an idiot, the profits of his lands and the custody of his person might be granted by the king to any subject who had interest enough to obtain them. 1 Bl.Comm. 303.

**Idoneitas** /idəniyətəs/. In old English law, ability or fitness (of a person).

**Idoneum se facere; idoneare se** /idówniyəm siy féysəriy/idən(i)yériy siy/. To purge one's self by oath of a crime of which one is accused.

**Idoneus** /idówniyəs/. Lat. In the civil and common law, sufficient; competent; fit or proper; responsible; unimpeachable. *Idoneus homo*, a responsible or solvent person; a good and lawful man. Sufficient; adequate; Satisfactory. *Idonea cautio*, sufficient security.

**Id perfectum est quod ex omnibus suis partibus constat** /íd pərféktəm èst kwód əks ómnəbəs s(y)úwəs pərtəbəs kónstət/. That is perfect which consists of all its parts.

**Id possumus quod de jure possumus** /id pɔsəməs kwɔd dij juri pɔsməs/. We may do only that which by law we are allowed to do.

**Id quod est magis remotum, non trahit ad se quod est magis junctum, sed e contrario in omni casu** /id kwɔd ɛst méyjas rəmówtəm, nɔn tréy(h)ət æd síy kwɔd ɛst méyjas jɔŋktəm, sɛd íy kɔntrériyow ín ómnay kéys(y)uw/. That which is more remote does not draw to itself that which is nearer, but the contrary in every case.

**Id quod nostrum est sine facto nostro ad alium transferri non potest** /id kwɔd nóstrəm ɛst sáyniy fáktow nóstrow æd éyl(i)yəm tránsfəray nɔn pówtəst/. That which is ours cannot be transferred to another without our act.

**Id solum nostrum quod debitis deductis nostrum est** /id sówlm nóstrəm kwɔd débətəs dádəktəs nóstrəm ɛst/. That only is ours which remains to us after deduction of debts.

**I.e.** An abbreviation for "*id est*," that is; that is to say.

**If.** In deeds and wills, this word, as a rule, implies a condition precedent, unless it be controlled by other words. *Hughes v. John Hancock Mut. Life Ins. Co.*, 163 Misc. 31, 297 N.Y.S. 116, 122.

**I.F.B.** Invitation for Bids.

**Ignis judicium** /ignəs jədɪʃ(i)yəm/. Lat. The old judicial trial by fire.

**Ignitegium** /ignətɪj(i)yəm/. In old English law, the curfew, or evening bell. *See* Curfew.

**Ignominy** /ignəminiy/. Public disgrace; infamy; reproach; dishonor. Ignominy is the opposite of esteem.

**Ignoramus** /ignərəyməs/. Lat. "We are ignorant;" "We ignore it." Formerly the grand jury wrote this word on bills of indictment when, after having heard the evidence, they thought the accusation against the prisoner was groundless, intimating that, though the facts might possibly be true, the truth did not appear to them; but now they usually write in English the words "No bill", "Not a true bill," or "Not found," if that is their verdict. But they are still said to *ignore* the bill.

**Ignorance.** The want or absence of knowledge, unaware or uninformed.

Ignorance of *law* is want of knowledge or acquaintance with the laws of the land in so far as they apply to the act, relation, duty, or matter under consideration. Ignorance of *fact* is want of knowledge of some fact or facts constituting or relating to the subject-matter in hand.

Ignorance is not a state of the mind in the sense in which sanity and insanity are. When the mind is ignorant of a fact, its condition still remains sound; the power of thinking, of judging, of willing, is just as complete before communication of the fact as after. The essence or texture, so to speak, of the mind, is not, as in the case of insanity, affected or impaired. Ignorance of a particular fact consists in this: that the mind, al-

though sound and capable of healthy action, has never acted upon the fact in question, because the subject has never been brought to the notice of the perceptive faculties.

In criminal law, ignorance as to a fact may be a defense, but ignorance as to law generally is no defense. *See* Model Penal Code, § 2.04.

*See also* Mistake (*Mistake of fact and law*).

### Synonyms

"Ignorance" and "error" or "mistake" are not convertible terms. The former is a lack of information or absence of knowledge; the latter, a misapprehension or confusion of information, or a mistaken supposition of the possession of knowledge. Error as to a fact may imply ignorance of the truth; but ignorance does not necessarily imply error.

### General Types

*Culpable ignorance* is that which results from a failure to exercise ordinary care to acquire knowledge, and knowledge which could be acquired by the exercise of ordinary care is by law imputed to the person and he is held to have constructive knowledge. *Luck v. Buffalo Lakes, Tex.Civ.App.*, 144 S.W.2d 672, 676.

*Essential ignorance* is ignorance in relation to some essential circumstance so intimately connected with the matter in question, and which so influences the parties, that it induces them to act in the business.

*Involuntary ignorance* is that which does not proceed from choice, and which cannot be overcome by the use of any means of knowledge known to a person and within his power; as the ignorance of a law which has not yet been promulgated.

*Nonessential or accidental ignorance* is that which has not of itself any necessary connection with the business in question, and which is not the true consideration for entering into the contract.

*Voluntary ignorance* exists when a party might, by taking reasonable efforts, have acquired the necessary knowledge. For example, every man might acquire a knowledge of the laws which have been promulgated.

**Ignorantia** /ignərənsh(i)yə/. Lat. Ignorance; want of knowledge. Distinguished from mistake (error), or wrong conception. Divided by Lord Coke into *ignorantia facti* (ignorance of fact) and *ignorantia juris* (ignorance of law). And the former, he adds, is twofold—*lectionis et linguæ* (ignorance of reading and ignorance of language). *See* Ignorance.

**Ignorantia eorum quæ quis scire tenetur non excusat** /ignərənsh(i)yə iyɔrəm kwiy kwis sáyriy tənítər nɔn əksk(y)úwzət/. Ignorance of those things which one is bound to know excuses not.

**Ignorantia facti excusat** /ignərənsh(i)yə fáktay əksk(y)úwzət/. Ignorance of fact excuses or is a ground of relief. Acts done and contracts made under mistake or

ignorance of a material fact are voidable and relievable in law and equity.

**Ignorantia facti excusat, ignorantia juris non excusat** /ignərə́nsh(iy)ə fáktay əkskyúwzət, ignərə́nsh(iy)ə júras nòn əkskyúwzət/. Ignorance of the fact excuses; ignorance of the law excuses not. Every man must be taken to be cognizant of the law; otherwise there is no saying to what extent the excuse of ignorance may not be carried.

**Ignorantia juris quod quisque tenetur scire, neminem excusat** /ignərə́nsh(iy)ə júras kwòd kwiskwiy təniytər sáyriy, némə́nəm əkskyúwzət/. Ignorance of the [or a] law, which every one is bound to know, excuses no man. A mistake in point of law is, in criminal cases, no sort of defense. And, in civil cases, ignorance of the law, with a full knowledge of the facts, furnishes no ground, either in law or equity, to rescind agreements, or reclaim money paid, or set aside solemn acts of the parties.

**Ignorantia juris sui non præjudicat juri** /ignərə́nsh(iy)ə júris s(y)úway nòn præjúwdəkət júray/. Ignorance of one's right does not prejudice the right.

**Ignorantia legis neminem excusat** /ignərə́nsh(iy)ə líyjas némə́nəm əkskyúwzət/. Ignorance of law excuses no one.

**Ignorantia præsumitur ubi scientia non probatur** /ignərə́nsh(iy)ə præz(y)úwmətər yúwbay sayə́nsh(iy)ə nòn præbéytər/. Ignorance is presumed where knowledge is not proved.

**Ignorare legis est lata culpa** /ignərəriy líyjas èst léytə kəlpə/. To be ignorant of the law is gross neglect.

**Ignoratio elenchi** /ignərəriysh(iy)ow əléŋkay/. Lat. A term of logic, sometimes applied to pleadings and to arguments on appeal, which signifies a mistake of the question, that is, the mistake of one who, failing to discern the real question which he is to meet and answer, addresses his allegations or arguments to a collateral matter or something beside the point.

**Ignoratis terminis artis, ignoratur et ars** /ignərériydəs tər̀mənəs ártəs, ignərériytər èd árz/. Where the terms of an art are unknown, the art itself is unknown also.

**Ignore.** To be ignorant of, or unacquainted with. To disregard willfully; to refuse to recognize; to decline to take notice of.

To reject as groundless, false or unsupported by evidence; as when a grand jury *ignores* a bill of indictment.

**Ignoscitur ei qui sanguinem suum qualiter redemptum voluit** /ignósetar íyay kwáy sə́ŋgwə́nəm s(y)úwəm kwólətər rədém(p)təm vól(y)uwət/. The law holds him excused from obligation who chose to redeem his blood (or life) upon any terms. Whatever a man may do under the fear of losing his life or limbs will not be held binding upon him in law. 1 Bl.Comm. 131.

**Ikbal.** Acceptance (of a bond, etc.).

**Ikbal dawa.** Confession of judgment.

**Ikraah.** Compulsion; especially constraint exercised by one person over another to do an illegal act, or to act contrary to his inclination.

**Ikrar.** Agreement, assent, or ratification.

**Ikrar nama.** A deed of assent and acknowledgment.

**Ill.** In old pleading, bad; defective in law; null; naught; the opposite of good or valid.

**Illegal.** Against or not authorized by law.

**Illegal contract.** Contract is illegal where its formation or performance is expressly forbidden by a civil or criminal statute or where penalty is imposed for doing act agreed upon. *Hiltbold v. T-Shirts Plus, Inc., App., 98 Wis.2d 711, 298 N.W.2d 217, 220.*

**Illegal entry.** An alien is guilty of illegal entry if: (1) he enters the country at the wrong time or place, or (2) eludes an examination by immigration officers, or (3) obtains entry by fraud, or (4) knowingly enters into a marriage for the purpose of evading any provision of the immigration laws. 8 U.S.C.A. § 1325.

**Illegal interest.** Usury; interest at a higher rate than the law allows.

**Illegality** /ilə́gə́lə́tiy/. That which is contrary to the principles of law, as contradistinguished from mere rules of procedure.

**Illegally obtained evidence.** Evidence which is obtained in violation of defendant's rights because officers had no warrant and no probable cause to arrest or because the warrant was defective and no valid grounds existed for seizure without a warrant. Evidence secured in violation of statutes or constitutional guarantee against unreasonable searches; U.S. Constitution, 4th Amendment. Such evidence is inadmissible in criminal trial of victim of such search. *Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081.* See Exclusionary Rule; Fruit of poisonous tree doctrine; Suppression hearing; Suppression of evidence.

**Illegal per se.** Unlawful in and of itself and not because of some extraneous circumstance, e.g. a contract to assassinate a public official.

**Illegal trade.** Such traffic or commerce as carried on in violation of federal, state, or local laws; e.g. trade in violation of antitrust laws; trade in stolen goods.

**Illegitimacy** /ilə́jítəmə́siy/. The condition before the law, or the social status, of a child born out of wedlock; condition of one whose parents were not intermarried at the time of his or her birth.

**Illegitimate** /ilə́jítəmə́t/. That which is contrary to law; term is usually applied to children born out of lawful wedlock. See *Illegitimate child.*

**Illegitimate child.** Child who is born at a time when his parents, though alive, are not married to each other. Such child however is legitimate if they were married after his conception and before his birth. *Home of Holy Infancy v. Kaska, Tex., 397 S.W.2d 208.* An illegitimate child has a constitutionally protected right to inherit from his or her father. *Trimble v. Gordon, 430 U.S. 762,*

97 S.Ct. 1459, 52 L.Ed.2d 31. Since the Supreme Court's decision in *Trimble*, many state statutes dealing with the inheritance rights have been amended to avoid unjustified discrimination against illegitimate children. *E.g.*, *Reed v. Campbell*, 476 U.S. 852, 106 S.Ct. 2234, 90 L.Ed.2d 858. *See also* Person.

**Ill fame.** Evil repute; notorious bad character. Houses of prostitution, gaming houses, and other such disorderly places are called "houses of ill fame," and a person who frequents them is a person of ill fame.

**Illicenciatus** /iləsənsiyétəs/. In old English law, without license.

**Illicit** /əlísət/. Not permitted or allowed; prohibited; unlawful; as an illicit trade; illicit intercourse.

**Illicit cohabitation.** The living together as man and wife of two persons who are not lawfully married, with the implication that they habitually practice fornication. *Thomas v. United States*, D.C.Mass., 14 F.2d 228, 229. At common law and by statutes in many states, living together either in adultery or fornication is a crime, though at common law such cohabitation had to be open and notorious so as to cause a public scandal. Such statutes are seldom enforced. *See* Adultery.

**Illicit connection.** Unlawful sexual intercourse. *See* Illicit relations.

**Illicit distillery.** One carried on in violation of the laws of the United States relating to the distribution and taxation of spirituous liquor.

**Illicit relations.** Any form of unlawful sexual intercourse such as fornication or adultery. *See* Illicit cohabitation.

**Illicit trade.** Policies of marine insurance usually contain a covenant of warranty against "illicit trade", meaning thereby trade which is forbidden, or declared unlawful, by the laws of the country where the cargo is to be delivered.

**Illicitum collegium** /əlísətəm kəlīj(i)yəm/. Lat. An illegal corporation.

**Illinois land trust.** *See* Land trust.

**Illiteracy.** The condition of one who cannot read or write and, in general, of one who is unlettered or unlearned.

**Illness.** Sickness, disease or disorder of body or mind. In insurance law, a disease or ailment of such a character as to affect the general soundness and healthfulness of the system seriously, and not a mere temporary indisposition which does not tend to undermine or weaken the constitution of the insured. *Zogg v. Bankers' Life Co. of Des Moines*, Iowa, C.C.A.W.Va., 62 F.2d 575, 578. For mental illness, *see* Insanity. *See also* Serious illness.

**Illocable** /iló(w)kəbəl/. Incapable of being placed out or hired.

**Illud** /iləd/. Lat. That.

**Illud, quod alias licitum non est, necessitas facit licitum; et necessitas inducit privilegium quoad**

**jura privata** /iləd kwòd éyliyas lisətəm nòn èst nəsésətəs féysət lisətəm; èt nəsésətəs ənd(y)úwsət prívəlīj(iy)əm kwówəd júrə prəvéytə/. That which is otherwise not permitted, necessity permits; and necessity makes a privilege as to private rights.

**Illud, quod alteri unitur, extinguitur, neque amplius per se vacare licet** /iləd, kwòd óltəray yúwnətər, əkstíngwətər, nékwiy əmpliyəs pər síy vəkəriy láysət/. That which is united to another is extinguished, nor can it be any more independent.

**Illusion** /əl(y)úwzhən/. Distorted or misinterpreted sensory impression which, in contrast to hallucinations, arises from an actual stimulus, *i.e.*, shadow is taken to be a man, specks on window are seen as a swarm of mosquitos. Prevalent in delirious states. The misinterpretation of a real, external sensory experience.

An image or impression in the mind, excited by some external object addressing itself to one or more of the senses, but which, instead of corresponding with the reality, is perverted, distorted, or wholly mistaken, the error being attributable to the imagination of the observer, not to any defect in the organs of sense. *See* Hallucination.

**Illusory** /əl(y)úwsəriy/°uwz°. Deceiving by false appearances; nominal, as distinguished from substantial; fallacious; illusive. *Bolles v. Toledo Trust Co.*, 144 Ohio St. 195, 58 N.E.2d 381, 390.

**Illusory appointment.** Nominal, overly restrictive or conditional transfer of property under power of appointment; lacking in substantial existence.

Formerly the appointment of a merely nominal share of the property to one of the objects of a power, in order to escape the rule that an exclusive appointment could not be made unless it was authorized by the instrument creating the power, was considered illusory and void in equity. This rule has been abolished in England. *Brown v. Fidelity Union Trust Co.*, 126 N.J.Eq. 406, 9 A.2d 311. *See* Illusory Appointment Act.

**Illusory Appointment Act.** This English statute provided that no appointment made after its passing (July 16, 1830), in exercise of a power to appoint property, real or personal, among several objects, shall be invalid, or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only was thereby appointed, or left unappointed, to devolve upon any one or more of the objects of such power; but that the appointment shall be valid in equity, as at law. *See now* Law of Property Act (1925), § 158.

**Illusory contract.** An expression cloaked in promissory terms, but which, upon closer examination, reveals that the promisor has not committed himself in any manner. *Harrington v. Harrington*, N.D., 365 N.W.2d 552, 555. *See also* Illusory promise.

**Illusory promise.** A purported promise that actually promises nothing because it leaves to speaker the choice of performance or nonperformance. When promise is illusory, there is no actual requirement upon promisor that anything be done because promisor has an alterna-

tive which, if taken, will render promisee nothing. When provisions of supposed promise leave promisor's performance optional or entirely within discretion, pleasure and control of promisor, the promise is illusory. *Interchange Associates v. Interchange, Inc.*, 16 Wash. App. 359, 557 P.2d 357, 358.

An illusory promise is an expression cloaked in promissory terms, but which, upon closer examination, reveals that the promisor has really not committed himself to anything. If performance of an apparent promise is entirely optional with the provisor, the promise is illusory.

**Illusory tenant.** A straw man who, as landlord's alter ego, subleases apartment to permit landlord to circumvent or evade obligations under rent laws, or prime tenant who is individual entrepreneur trafficking in stabilized or controlled apartments which he subleases as business. *Conti v. Citrin, Sup.*, 132 Misc.2d 834, 505 N.Y.S.2d 481, 482.

**Illusory trust.** Where a settlor *in form* either declares himself trustee of, or transfers to a third party, property in trust, but by the terms of the trust, or by his dealings with the trust property, *in substance* exercises so much control over the trust property that it is clear that he did not intend to relinquish any of his rights in the trust property, the trust is invalid as illusory. A trust arrangement which takes the form of a trust, but because of powers retained in the settlor has no real substance and in reality is not a completed trust. *In re Herron's Estate, Fla.App.*, 237 So.2d 563, 566.

**Illustrious** /ə'ləstri:əs/. The prefix to the title of a prince of the blood in England.

**Imagine.** In old English law, in cases of treason the law made it a crime to imagine the death of the king. But, in order to complete the crime, this act of the mind must have been demonstrated by some overt act. The terms "imagining" and "compassing" are in this connection synonymous. 4 Bl.Comm. 78.

**Embargo.** An old form of "embargo" (*q.v.*)

**Imbecility.** See *Insanity*.

**Embezzle.** An occasional or obsolete form of "embezzle" (*q.v.*)

**Imbracery.** See *Embracery*.

**Imitation.** The making of one thing in the similitude or likeness of another; as, counterfeit coin is said to be made "in imitation" of the genuine. That which is made or produced as a copy; an artificial likeness; a counterfeit; simulating something superior. *Coffee-Rich, Inc. v. Kansas State Bd. of Health*, 192 Kan. 431, 388 P.2d 582, 585, 587.

An imitation of a trademark is that which so far resembles the genuine trademark as to be likely to induce the belief that it is genuine, whether by the use of words or letters similar in appearance or in sound, or by any sign, device, or other means. The test of "colorable imitation" is, not whether a difference may be recognized between the names of two competing articles

when placed side by side, but whether the difference will be recognized by the purchaser with no opportunity for comparison. *The Best Foods v. Hemphill Packing Co.*, D.C.Del., 5 F.2d 355, 357.

See *Counterfeit; Forgery*.

**Immaterial.** Not material, essential, or necessary; not important or pertinent; not decisive; of no substantial consequence; without weight; of no material significance. See also *Impertinence; Irrelevancy; Irrelevant allegation. Compare Material; Material fact; Relevant.*

**Immaterial averment.** In pleading, an averment alleging with needless particularity or unnecessary circumstances what is material and necessary, and which might properly have been stated more generally, and without such circumstances and particulars; or, in other words, a statement of unnecessary particulars in connection with and as descriptive of what is material. Such immaterial matter may be ordered stricken from the pleading. Fed.R.Civil P. 12(f). See also *Irrelevant allegation*.

**Immaterial evidence.** Evidence which lacks probative weight and is unlikely to influence the tribunal in resolving the issue before it. Such evidence is commonly objected to by opposing counsel, and disallowed by the court. See also *Irrelevancy. Compare Relevant evidence.*

**Immaterial facts.** Those which are not essential to the right of action or defense. See *Immaterial averment. Compare Material fact.*

**Immaterial issue.** In pleading, an issue taken on an immaterial point; that is, a point not proper to decide the action.

**Immaterial variance.** Discrepancy between the pleading and proof of a character so slight that the adverse party cannot say that he was misled thereby. One in which difference between allegations and proof is so slight and unimportant that adverse party is not misled or prejudiced in maintaining his defense. *Strimiska v. Yates*, 158 Conn. 179, 257 A.2d 814, 817. See also *Variance*.

**Immediacy.** The state or quality of being immediately and directly perceived; urgency; occurring without delay.

**Immediate.** Present; at once; without delay; not deferred by any interval of time. In this sense, the word, without any very precise signification, denotes that action is or must be taken either instantly or without any considerable loss of time. A reasonable time in view of particular facts and circumstances of case under consideration. Next in line or relation; directly connected; not secondary or remote. Not separated in respect to place; not separated by the intervention of any intermediate object, cause, relation, or right. Thus we speak of an action as prosecuted for the "immediate benefit" of A., of a devise as made to the "immediate issue" of B., etc.

**Immediate cause.** The last of a series or chain of causes tending to a given result, and which, of itself, and without the intervention of any further cause, directly produces the result or event. A cause may be immediate in this sense, and yet not "proximate;" and conversely, the proximate cause (that which directly and efficiently brings about the result) may not be immediate. The familiar illustration is that of a drunken man falling into the water and drowning. His intoxication is the proximate cause of his death, if it can be said that he would not have fallen into the water when sober; but the immediate cause of death is suffocation by drowning. *See also* Proximate cause.

**Immediate control.** Such constant control as would enable driver to instantly govern vehicle's movements, including the power to stop within a distance in which such a vehicle, in good mechanical condition, driven by a reasonably skillful driver, and traveling at a lawful rate of speed, could be stopped.

**Immediate danger.** Definition of "immediate danger" as part of humanitarian doctrine contemplates that there be some inexorable circumstance, situation or agency bearing down on plaintiff with reasonable probability of danger prior to negligent act of defendant. *Curran v. Bi-State Development Agency, Mo.App., 522 S.W.2d 98, 100. See also* Imminent danger; Imminent peril.

**Immediate descent.** *See* Descent.

**Immediate family.** Term generally referring to one's parents, wife or husband, children, and brothers and sisters.

**Immediately.** Without interval of time, without delay, straightway, or without any delay or lapse of time. *Drumbar v. Jeddo-Highland Coal Co., 155 Pa.Super. 57, 37 A.2d 25, 27.* When used in contract is usually construed to mean "within a reasonable time having due regard to the nature of the circumstances of the case", although strictly, it means "not deferred by any period of time". *Integrated, Inc. v. Alec Fergusson Elec. Contractors, 250 C.A.2d 287, 58 Cal.Rptr. 503, 508, 509.* The words "immediately" and "forthwith" have generally the same meaning. They are stronger than the expression "within a reasonable time" and imply prompt, vigorous action without any delay. *Alsam Holding Co. v. Consolidated Taxpayers' Mut. Ins. Co., 4 N.Y.S.2d 498, 505, 167 Misc. 732.*

**Immediate notice.** As required by insurance policy as for proof of loss means within a reasonable time. *Lydon v. New York Life Ins. Co., C.C.A.Mo., 89 F.2d 78, 82.*

**Immemorial.** Beyond human memory; time out of mind.

**Immemorial usage.** A practice which has existed time out of mind; custom; prescription.

**Immeubles** /im'yúwblə/. Fr. These are, in French law, the immovables of English law. Things are *immeubles* from any one of three causes: (1) From their own nature, *e.g.*, lands and houses; (2) from their destination, *e.g.*, animals and instruments of agriculture when sup-

plied by the landlord; or (3) by the object to which they are annexed, *e.g.*, easements.

**Immigrant.** An alien in a country except, in United States, one within a specified class within the Immigration and Nationality Act. 8 U.S.C.A. § 1101(a)(15). One who leaves a country to permanently settle in another.

**Immigration.** The coming into a country of foreigners for purposes of permanent residence. The correlative term "emigration" denotes the act of such persons in leaving their former country.

**Immigration and Nationality Act.** A comprehensive federal law which deals with immigration, naturalization and exclusion of aliens. 8 U.S.C.A. § 1101 *et seq.*

**Immigration and Naturalization Service.** Such Service is responsible for administering the immigration and naturalization laws relating to the admission, exclusion, deportation, and naturalization of aliens. Specifically, the Service inspects aliens to determine their admissibility into the United States; adjudicates requests of aliens for benefits under the law; guards against illegal entry into the United States; investigates, apprehends, and removes aliens in this country in violation of the law; and examines alien applicants wishing to become citizens.

**Immigration Appeals Board.** The Board of Immigration Appeals, the highest administrative tribunal in the immigration field, is charged with the interpretation and administration of the immigration laws. The Board has jurisdiction, defined by regulation, to hear appeals from certain decisions of the Immigration and Naturalization Service. Most of the cases reaching the Board consist of appeals from formal orders of the Service's Immigration Judges entered in due process deportation hearings against aliens. These usually also involve applications by aliens for discretionary relief from deportation.

**Imminent.** Near at hand; mediate rather than immediate; close rather than touching; impending; on the point of happening; threatening; menacing; perilous. Something which is threatening to happen at once, something close at hand, something to happen upon the instant, close although not yet touching, and on the point of happening. *Continental Illinois Nat. Bank & Trust Co. of Chicago v. U.S., C.A.Ill., 504 F.2d 586, 588.*

**Imminent danger.** In relation to homicide in self-defense, this term means immediate danger, such as must be instantly met, such as cannot be guarded against by calling for the assistance of others or the protection of the law. Or, as otherwise defined, such an appearance of threatened and impending injury as would put a reasonable and prudent man to his instant defense. *See* Self-defense.

**Imminently dangerous article.** One that is reasonably certain to place life or limb in peril. *Employers' Liability Assur. Corporation v. Columbus McKinnon Chain Co., D.C.N.Y., 13 F.2d 128.*

**Imminent peril.** Such peril under humanitarian doctrine means certain, immediate, and impending, and not

remote, uncertain, or contingent; and likelihood or bare possibility of injury is not sufficient to create "imminent peril." *Hastings v. Coppage, Mo.*, 411 S.W.2d 232, 236. That position of danger to the plaintiff in which—if the existing circumstances remain unchanged—injury to him is reasonably certain. *Elam v. Allbee, Mo.App.*, 432 S.W.2d 379, 381. Doctrine of "imminent peril" is properly applied only in cases where an unexpected physical danger is presented so suddenly as to deprive driver of his power of using reasonable judgment, and a party will be denied benefit of the doctrine where that party's negligence causes or contributes to creation of the perilous situation. *Pittman v. Boiven*, 249 C.A.2d 207, 57 Cal.Rptr. 319, 325. See also Emergency doctrine; Humanitarian doctrine.

**Immiscere** /imískeri/. Lat. In the civil law, to mix or mingle with; to meddle with; to join with.

**Immobilia situm sequuntur** /imóbil(i)yə sáytm sək-wántər/. Immovable things follow their site or position; are governed by the law of the place where they are fixed. Cf. *Mobilia Sequuntur Personam*.

**Immobilis** /imówbəles/. Lat. Immovable. *Immobilia* or *res immobiles*, immovable things, such as lands and buildings.

**Immoderate** /imódərət/. Exceeding just, usual, or suitable bounds; not within reasonable limits.

**Immoral**. Contrary to good morals; inconsistent with the rules and principles of morality; inimical to public welfare according to the standards of a given community, as expressed in law or otherwise. Morally evil; impure; obscene; unprincipled; vicious; or dissolute. *U. S. v. One Book, Entitled "Contraception,"* by Marie C. Stopes, D.C.N.Y., 51 F.2d 525, 527. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is wilful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community, and as an inconsiderate attitude toward good order and public welfare. *Clarke v. Board of Educ. of School Dist. of Omaha, in Douglas County, in State of Neb.*, 215 Neb. 250, 338 N.W.2d 272, 277.

**Immoral act or conduct**. Within rules authorizing disbarment of attorney is that conduct which is wilful, flagrant, or shameless, and which shows a moral indifference to the opinions of the good and respectable members of the community. In *re Monaghan*, 126 Vt. 53, 222 A.2d 665, 674.

**Immoral consideration**. One contrary to good morals, and therefore invalid. Contracts based upon an immoral consideration are generally void.

**Immoral contracts**. Contracts founded upon considerations *contra bonos mores* are void.

**Immorality**. That which is *contra bonos mores*. See Immoral.

**Immovables**. In the civil law, property which, from its nature, destination, or the object to which it is applied, cannot move itself, or be removed.

In conflicts of law, refers to land and those things so firmly attached thereto that they may be regarded as part of it and the law of the situs governs in choice of law. Restatement, Second, Conflict of Laws, § 223.

**Immunity**. Exemption, as from serving in an office, or performing duties which the law generally requires other citizens to perform; e.g. exemption from paying taxes. Freedom or exemption from penalty, burden, or duty. Special privilege. See also Exemption; Judicial immunity; Legislative immunity; Parent-child immunity; Privilege; Sovereign immunity.

*Governmental tort immunity*. The federal, and derivatively, the state and local governments are free from liability for torts committed except in cases in which they have consented by statute to be sued; e.g. Federal Tort Claims Act; state tort claims acts. Most states, either by statute or court decision, have abolished or greatly restricted the doctrine of sovereign immunity at both the state and local levels.

The Supreme Court has held that local governments can be sued directly under 42 U.S.C.A. § 1983 for monetary, declaratory, or injunctive relief where "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Department of Social Services of N. Y.*, 429 U.S. 1071, 97 S.Ct. 807, 50 L.Ed.2d 789. A state law that immunizes government conduct otherwise subject to suit under 42 U.S.C.A. § 1983 is preempted. *Felder v. Casey*, 487 U.S. 131, 108 S.Ct. 2302, 101 L.Ed.2d 123.

See also Color of law; Federal Tort Claims Act; Official immunity doctrine; Sovereign immunity.

*Immunity from prosecution*. By state and federal statutes, a witness may be granted immunity from prosecution for his or her testimony (e.g. before grand jury). States either adopt the "use" or the "transactional" immunity approach. The federal government replaced the later with the former approach in 1970. The distinction between the two is as follows: "Use immunity" prohibits witness' compelled testimony and its fruits from being used in any manner in connection with criminal prosecution of the witness; on the other hand, "transactional immunity" affords immunity to the witness from prosecution for offense to which his compelled testimony relates. *People v. Henson, Colo.App.*, 705 P.2d 996. See 18 U.S.C.A. §§ 6001-6005.

Protection from prosecution must be commensurate with privilege against self incrimination, but it need not be any greater and hence a person is entitled only to protection from prosecution based on the use and derivative use of his testimony; he is not constitutionally entitled to protection from prosecution for everything arising from the illegal transaction which his testimony concerns (transactional immunity). *Kastigar v. U. S.*, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212.



*Interspousal immunity.* See Husband-wife tort actions.

*Qualified immunity.* Affirmative defense which shields public officials performing discretionary functions from civil damages if their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known. *Lowe v. Letsinger*, C.A.Ind., 772 F.2d 308.

*Property law.* A freedom on the part of one person against having a given legal relation altered by a given act or omission to act on the part of another person. Restatement of Property, § 4.

**Immunization.** The condition of being, or the act rendering one, immunized or protected, especially from communicable diseases.

**Impacted area.** An area whose school population has been burdened because of attendance by a large number of federal employees' children and which may at the same time be losing school tax revenue because of the United States Government's immunity from land taxes. *Douglas Independent School Dist. v. Jorgenson*, D.C.S.D., 293 F.Supp. 849, 850.

**Impact rule.** Rule formerly prevailing in many jurisdictions which required a blow or impact from without as a condition for recovering damages in negligence for emotional distress. Such rule has been abandoned in most jurisdictions today.

**Impair.** To weaken, to make worse, to lessen in power, diminish, or relax, or otherwise affect in an injurious manner. To diminish in quality, value, excellence or strength, and not every change that affects contract constitutes an impairment. *Beaumont v. Faubus*, 239 Ark. 801, 394 S.W.2d 478, 482.

**Impaired capital.** Condition of a business when the surplus account shows a negative balance and hence the capital is reduced below its value from when the stock was issued (*i.e.* less than the stated or par value of business' capital stock).

**Impairing the obligation of contracts.** A law which impairs the obligation of a contract is one which renders the contract in itself less valuable or less enforceable, whether by changing its terms and stipulations, its legal qualities and conditions, or by regulating the remedy for its enforcement.

To "impair the obligation of a contract", within prohibition of Art. I, § 10, U.S.Const., is to weaken it, lessen its value, or make it worse in any respect or in any degree, and any law which changes the intention and legal effect of the parties, giving to one a greater and to the other a less interest or benefit, or which imposes conditions not included in the contract or dispenses with the performance of those included, impairs the obligation of the contract.

A statute "impairs the obligation of a contract" when by its terms it nullifies or materially changes existing contract obligations.

**Impanel.** The act of the clerk of the court in making up a list of the jurors who have been selected for the trial of

a particular cause. All the steps of ascertaining who shall be the proper jurors to sit in the trial of a particular case up to the final formation. See also Jury-list; Jury panel.

**Imparcare** /'imparkéri/. In old English law, to impound. To shut up, or confine in prison. *Inducti sunt in carcerem et imparcati*, they were carried to prison and shut up.

**Imparl** /əmpárl/. To have license to settle a litigation amicably; to obtain delay for adjustment.

**Imparance** /əmpárlən(t)s/. In early practice, imparance meant time given to either of the parties to an action to answer the pleading of the other. It thus amounted to a continuance of the action to a further day. Literally the term signified leave given to the parties to *talk together*; *i.e.*, with a view to settling their differences amicably. But in modern practice it denotes a time given to the defendant to plead.

A *general imparance* is the entry of a general prayer and allowance of time to plead till the next term, without reserving to the defendant the benefit of any exception; so that after such an imparance the defendant cannot object to the jurisdiction of the court, or plead any matter in abatement. This kind of imparance is always from one term to another.

A *general special imparance* contains a saving of all exceptions whatsoever, so that the defendant after this may plead not only in abatement, but he may also plead a plea which affects the jurisdiction of the court, as privilege. He cannot, however, plead a tender, and that he was always ready to pay, because by craving time, he admits that he is not ready, and so falsifies his plea.

A *special imparance* reserves to the defendant all exceptions to the writ, bill, or count; and therefore after it the defendant may plead in abatement, though not to the jurisdiction of the court.

**Impartial.** Favoring neither; disinterested; treating all alike; unbiased; equitable, fair, and just.

**Impartial expert.** Witness appointed by tribunal for unbiased opinion on matter addressed to the court. Commonly, Worker's Compensation Board will appoint an impartial physician to examine and report his findings to Board. Similar usage of experts is made in social security disability hearings. Also, a court may appoint an expert witness (see *e.g.*, Fed.R.Evid. 706).

**Impartial jury.** The provision of the Bill of Rights (Sixth Amendment to Const. of U.S.) requiring that the accused shall have a fair trial by an impartial jury, means that the jury must be not partial, not favoring one party more than another, unprejudiced, disinterested, equitable, and just, and that the merits of the case shall not be prejudged. Term refers to a jury which is of impartial frame of mind at beginning of trial, is influenced only by legal and competent evidence produced during trial, and bases its verdict upon evidence connecting defendant with the commission of the crime charged. *Houston v. State*, Tenn., 593 S.W.2d 267, 272.

For Fair and impartial jury, and Fair and impartial trial, see those titles.

**Impartible feud** /impártəbəl fyúwd/. See Feudum individuum.

**Impeach.** To accuse; to charge a liability upon; to sue. To dispute, disparage, deny, or contradict; as, to impeach a judgment or decree, or impeach a witness; or as used in the rule that a jury cannot "impeach their verdict". To proceed against a public officer for crime or misfeasance, before a proper court, by the presentation of a written accusation called "articles of impeachment". See Impeachment.

**Impeachment.** A criminal proceeding against a public officer, before a quasi political court, instituted by a written accusation called "articles of impeachment"; for example, a written accusation by the House of Representatives of the United States to the Senate of the United States against the President, Vice President, or an officer of the United States, including federal judges. Such federal power of impeachment is provided for in Art. II, § 4 of the Constitution. Under Art. I, § 2, cl. 5, the House of Representatives "shall have the sole Power of Impeachment", and under § 3, cl. 6, "The Senate shall have the sole Power to try all Impeachments". A two thirds vote of the Senate is required for impeachment.

*Articles of impeachment.* The formal written allegation of the causes for an impeachment, answering the same purpose as an indictment in an ordinary criminal proceeding. Under the above cited constitutional provisions, Articles of Impeachment are initiated by the House of Representatives with the trial conducted by the Senate. See also Address (*Bill of address*).

*Collateral impeachment.* See Collateral attack.

*Impeachment of verdict.* Attack on verdict because of alleged improprieties in the jury's deliberations or conduct.

*Impeachment of witness.* To call in question the veracity of a witness, by means of evidence adduced for such purpose, or the adducing of proof that a witness is unworthy of belief. *McWethy v. Lee*, 1 Ill.App.3d 80, 272 N.E.2d 663, 666. In general, though there are variations from state to state, a witness may be impeached with respect to prior inconsistent statements, contradiction of facts, bias, or character. A witness, once impeached, may be rehabilitated with evidence supporting credibility. *State v. Peterson*, Iowa, 219 N.W.2d 665, 671.

Fed.R.Civil P. 32(a)(1) permits the use at trial of a witness's prior deposition to discredit or impeach testimony of the deponent as a witness.

Fed.Evid.R. 607 provides that the "credibility of a witness may be attached by any party, including the party calling him." Rule 608 governs impeachment by evidence of character and conduct of witness, and Rule 609 impeachment by evidence of conviction of crime.

See also Address (*Bill of address*); Cross-examination; Jenks Act or Rule; Prior inconsistent statements.

**Impechiare** /əmpiychiyáriy/. To impeach, to accuse, or prosecute for felony or treason.

**Impede.** To obstruct; hinder; check; delay.

**Impediens** /impiydiyenz/. In old English practice, one who hinders; an impedient. The defendant or deforciant in a fine was sometimes so called.

**Impedimento** /impèyðiméntow/. In Spanish law, a prohibition to contract marriage, established by law between certain persons.

**Impediments** /impédəmənts/. Disabilities, or hindrances to the making of contracts, such as infancy, want of reason, etc.

*Civil law.* *Absolute impediments* are those which prevent the person subject to them from marrying at all, without either the nullity of marriage or its being punishable. *Diriment impediments* are those which render a marriage void; as where one of the contracting parties is unable to marry by reason of a prior undissolved marriage. *Prohibitive impediments* are those which do not render the marriage null, but subject the parties to a punishment. *Relative impediments* are those which regard only certain persons with respect to each other; as between two particular persons who are related within the prohibited degrees.

**Impediment to marriage.** Legal obstacle to contracting a valid marriage such as relationship of blood within prohibited degree of consanguinity between parties. See also Impediments.

**Impeditor** /impédətər/. In old English law, a disturber in the action of *quare impedit*.

**Impensæ** /impénsiy/. Lat. In the civil law, expenses; outlays. Divided into necessary (*necessariæ*), useful (*utiles*), and tasteful or ornamental (*voluptuariæ*).

**Imperative.** Mandatory. See Directory.

**Imperator** /impərəytər/. Emperor. The title of the Roman emperors, and also of the Kings of England before the Norman conquest. 1 Bl.Comm. 242. See Emperor.

**Imperfect.** As used in various legal compound terms, this word means defective or incomplete; wanting in some legal or formal requisite; wanting in legal sanction or effectiveness; as in speaking of imperfect "obligations," "ownership," "rights," "title," "usufruct," or "war." See those nouns.

**Imperii majestas est tutelæ salus** /impiriyay majéstàs èst t(y)uwtiyliy séləs/. The majesty of the empire is the safety of its protection.

**Imperitia** /impərish(iy)ə/. Lat. Unskillfulness; want of skill.

**Imperitia culpæ adnumeratur** /impərish(iy)ə kálpuy adn(y)üwmərəytər/. Want of skill is reckoned as *culpa*; that is, as blamable conduct or neglect.

**Imperitia est maxima mechanicorum pœna** /impərish(iy)ə èst mæksəmæ məkænəkórəm píynə/. Unskillfulness is the greatest punishment of mechanics [that is,

from its effect in making them liable to those by whom they are employed]. The word "*pæna*" in some translations is erroneously rendered "fault."

**Imperium** /impɪriyəm/. The right to command, which includes the right to employ the force of the state to enforce the laws. This is one of the principal attributes of the power of the executive.

**Impersonalitas** /impɜrsənɛlylætəs/. Lat. Impersonality. A mode of expression where no reference is made to any person, such as the expression "*ut dicitur*" (as is said).

**Impersonalitas non concludit nec ligat** /impɜrsənɛlylætəs nɔn kɔŋkly(ɹ)úwdət nek lɪgət/. Impersonality neither concludes nor binds.

**Impersonation.** False impersonation is representing oneself to be a public officer or employee or a person licensed to practice or engage in any profession or vocation for which a license is required by state law with knowledge that such representation is false. The act of pretending or representing oneself to be another, commonly a crime if the other is a public official or police officer. *People v. Vaughn*, 196 Cal.App.2d 622, 16 Cal. Rptr. 711. See 18 U.S.C.A. § 911 et seq. See also *Personate*.

**Impertinence.** Irrelevancy; the fault of not properly pertaining to the issue or proceeding. The introduction of any matters into a bill, complaint, answer, or other pleading or proceeding in a suit, which are not properly before the court for decision, at any particular stage of the suit. *Harrison v. Perea*, 168 U.S. 311, 18 S.Ct. 129, 42 L.Ed. 478. See *Impertinent*.

A question propounded to a witness, or evidence offered or sought to be elicited, is called "impertinent" when it has no logical bearing upon the issue, is not necessarily connected with it, or does not belong to the matter in hand. See also *Immaterial evidence*.

**Impertinent.** That which does not belong to a pleading, interrogatory, or other proceeding; out of place; superfluous; irrelevant. A term applied to matter not necessary to constitute the cause of action or ground of defense. Such matter may be ordered stricken from the pleading. Fed.R.Civil P. 12(f). See also *Immaterial averment*; *Surplusage*.

**Impescare** /impɜskəriy/. In old records, to impeach or accuse. *Impescatus*, impeached.

**Impetio vasti** /impɜtɪsh(iy)ow vɛstəy/. Impeachment of waste (*q.v.*).

**Impetrare** /impɜtrəriy/. In old English practice, to obtain by request, as a writ or privilege. This application of the word seems to be derived from the civil law.

**Impetration** /impɜtrɛyshən/. In old English law, the obtaining anything by petition or entreaty. Particularly, the obtaining of a benefice from Rome by solicitation, which benefice belonged to the disposal of the king or other lay patron.

**Impier** /impay(ə)r/. Umpire (*q.v.*).

**Impierment** /impɜrmənt/. Impairing or prejudicing.

**Impignorata** /əmpignərəydə/. Pledged; given in pledge (*pignori data*); mortgaged.

**Impignoration** /əmpignərəyshən/. The act of pawning or putting to pledge.

**Impius et crudelis iudicandus est qui libertati non favet** /impiyəs èt kruwdɪyləs jùwdəkændəs èst kwày libɜrtɛytay nɔn féyvət/. He is to be judged impious and cruel who does not favor liberty.

**Implacitare** /implɜsətəriy/. Lat. To implead; to sue.

**Implead.** To sue; to prosecute. To bring a new party into action on ground that new party is, or may be, liable to party who brings him in, for all or part of the subject matter claim. Fed.R.Civil P. 14. See *Third-party practice*.

**Impleader.** Procedure by which party is impleaded. See *Implead*; *Third-party practice*; *Vouching-in*. Compare *Interpleader*; *Joinder*.

**Implements** /impləmənts/. Such things as are used or employed for a trade, or furniture of a house. Particularly applied to tools, utensils, instruments of labor; as the implements of trade or of farming.

**Implication.** Intendment or inference, as distinguished from the actual expression of a thing in words. In a will, an estate may pass by mere *implication*, without any express words to direct its course.

An inference of something not directly declared, but arising from what is admitted or expressed. Act of implying or condition of being implied.

"Implication" is also used in the sense of "inference"; *i.e.*, where the existence of an intention is inferred from acts not done for the sole purpose of communicating it, but for some other purpose.

See also *Inference*.

**Implied.** This word is used in law in contrast to "express"; *i.e.*, where the intention in regard to the subject-matter is not manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances, the general language, or the conduct of the parties. Term differs from "inferred" to the extent that the hearer or reader "infers" while the writer or speaker "implies".

As to *implied* Abrogation; Agency; Agreement; Assumpsit; Condition; Confession; Consent; Consideration; Contract; Covenant; Dedication; Easement; Invitation; Malice; Notice; Obligation; Power; Trust; Use; Waiver; and Warranty, see those titles.

**Implied assertions.** Statements which, while not expressed, may be deduced from what is written or spoken.

**Implied authority.** In law of agency, power given by principal to agent which necessarily follows from the express authority given though such power is not expressly asserted. The power of an agent to act on behalf of his principal which is inferred from the responsibilities imposed on the agent or necessary to carry out an agent's express authority. Actual authority may be either express or implied, "implied authority" being that

which is necessary, usual and proper to accomplish or perform the main authority expressly delegated to an agent. *Clark v. Gneiting*, 95 Idaho 10, 501 P.2d 278, 280.

**Implied consent.** See Consent.

**Implied intent.** Intent which necessarily arises from language used in an instrument or from conduct of parties.

**Implied promise.** Fiction which the law creates to render one liable on contract theory so as to avoid fraud or unjust enrichment. See also Equitable estoppel.

**Implied reservation.** Type of easement created by grantor for benefit of land retained by him and not included in conveyance. *Wolek v. Di Feo*, 60 N.J.Super. 324, 159 A.2d 127.

**Implied reservation of water doctrine.** When Federal Government withdraws its land from public domain and reserves it for a federal purpose, the government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. However, it reserves only that amount of water necessary to fulfill the purpose of the reservation, and no more. *Cappaert v. U. S.*, 426 U.S. 128, 96 S.Ct. 2062, 2071, 48 L.Ed.2d 523.

**Implied warranty.** See Warranty.

**Import.** A product manufactured in a foreign country, and then shipped to and sold in this country. See also Importation.

**Importation.** The act of bringing goods and merchandise into a country from a foreign country. *Cunard Steamship Co. v. Mellon*, 262 U.S. 100, 43 S.Ct. 504, 67 L.Ed. 894. See Customs duties.

**Importer.** Person who brings (*i.e.*, imports) goods into country from foreign country and pays customs duties. See Customs duties.

**Import-export clause.** Provision in U.S. Constitution, Art. I, § 10, cl. 2, to the effect that no state shall, without the consent of Congress, lay imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.

**Import quota.** A quantitative restriction on the importation of an article into the United States. 19 U.S.C.A. § 22.53(a)(3)(C). The establishment of a quota is one of the remedies available to the President upon his determination that an imported article threatens serious injury to a domestic industry. See also Dumping; Most favored nation clause.

**Imports clause.** See Import-export clause.

**Importunity.** Pressing solicitation; urgent request; application for a claim or favor which is urged with troublesome frequency or pertinacity.

**Impose.** To levy or exact as by authority; to lay as a burden, tax, duty or charge.

**Imposition.** An impost; tax; contribution. Unreasonable request or burden. Act of imposing.

**Impossibility.** That which, in the constitution and course of nature or the law, no person can do or perform.

Impossibility is of the following several sorts:

An act is *physically* impossible when it is contrary to the course of nature. Such an impossibility may be either *absolute*, *i.e.*, impossible in any case, (*e.g.*, to stop earth rotation) or *relative* (sometimes called "impossibility in fact"), *i.e.*, arising from the circumstances of the case (*e.g.*, for A. to make a payment to B., he being a deceased person). To the latter class belongs what is sometimes called "*practical* impossibility," which exists when the act *can* be done, but only at an excessive or unreasonable cost. An act is *legally* or juridically impossible when a rule of law makes it impossible to do it; *e.g.*, for A. to make a valid will before his majority. This class of acts must not be confounded with those which are possible, although forbidden by law, as to commit a theft. An act is *logically* impossible when it is contrary to the nature of the transaction, as where A. gives property to B. expressly for his own benefit, on condition that he transfers it to C. See also Legal impossibility.

*Impossibility of performance of contract.* A doctrine under which a party to a contract is relieved of his or her duty to perform when performance has become impossible or totally impracticable (through no fault of the party). As a defense to nonperformance, such arises when performance is not possible because of, for example, destruction of subject of contract or death of person necessary for performance or where act contracted for has become illegal. The doctrine of "impossibility of performance" is an exception to the general rule that the promisor must either perform, or pay damages for his failure to perform, no matter how burdensome his performance has become because of unforeseen circumstances. While the doctrine has evolved around various specific categories, one basic part of the doctrine is that the impossibility of performance must be objective rather than merely subjective.

It is now recognized that a thing is impossible in legal contemplation when it is not practicable; and a thing is impracticable when it can only be done at an excessive and unreasonable cost. *Transatlantic Fin. Corp. v. United States*, 363 F.2d 312, 315. When the issue is raised, the court is asked to construct a condition of performance based on changed circumstances, a process which involves at least three reasonably definable steps. First, a contingency—something unexpected—must have occurred. Second, the risk of the unexpected occurrence must not have been allocated either by agreement or by custom. Finally, occurrence of the contingency must have rendered performance commercially impracticable. Although impossibility or impracticability of performance may arise in many different ways, the tendency has been to classify the cases into several categories. These are: 1) Destruction, deterioration or unavailability of the subject matter or the tangible means of performance; 2) Failure of the contemplated mode of delivery or payment; 3) Supervening prohibition or prevention by law; 4) Failure of the intangible means of

performance and 5) Death or illness. The basic U.C.C. sections dealing with impossibility of performance are §§ 2-613, 2-615, 2-616. See in this regard, Commercial frustration; Commercial impracticability; Frustration of contract; Impracticability.

*Impossible contract.* One which the law will not hold binding upon the parties, because of the natural or legal impossibility of the performance by one party of that which is the consideration for the promise of the other.

**Impossibilium nulla obligatio est** /impòsabil(i)yəm nàlè òbləgəysh(i)yow èst/. There is no obligation to do impossible things.

**Imposter.** One who pretends to be somebody other than who he is, with intent to deceive; a faker, charlatan; mountebank. See also Impersonation; Personate.

**Impostor rule.** Refers to a UCC Article 3 provision, § 3-405(1)(a), that renders effective any person's indorsement of a check drawn payable to an impostor.

**Imposts.** Taxes, duties, or impositions levied for divers reasons. *Crew Levick Co. v. Commonwealth of Pennsylvania*, 245 U.S. 292, 38 S.Ct. 126, 62 L.Ed. 295. Generic term for taxes. See Customs duties; Duty; Excise tax.

**Impotence.** The inability to have sexual intercourse; it is not sterility. *T. v. M.*, 100 N.J.Super. 530, 242 A.2d 670, 673. Properly used of the male. Impotency as a ground for divorce means want of *potentia copulandi* or incapacity to consummate the marriage, and not merely incapacity for procreation. *Reed v. Reed*, 26 Tenn.App. 690, 177 S.W.2d 26, 27.

**Impotentia excusat legem** /impòténsh(i)yè ækskyúwzət líyəm/. The impossibility of doing what is required by the law excuses from the performance.

**Impotentiam, property propter** /própərtiy pròptər impòténsh(i)yəm/. A qualified property, which may subsist in animals *feræ naturæ* on account of their inability, as where hawks, herons, or other birds build in a person's trees, or conies, etc., make their nests or burrows in a person's land, and have young there, such person has a qualified property in them till they can fly or run away, and then such property expires.

**Impound.** To shut up stray animals or distrained goods in a pound. To seize and take into the custody of the law or of a court. Thus, a court will sometimes *impound* a suspicious document produced at a trial or a vehicle, funds, records, or other items used in commission of a crime. The term, in its application to funds, means to take or retain in the custody of the law, and that obligation, as is an escrow, is to hold and deliver property intact. *U.S. v. Louisiana*, 446 U.S. 253, 100 S.Ct. 1618, 1625, 64 L.Ed.2d 196. See also Confiscate; Forfeiture; Seizure; Sequestered account.

**Impound account.** Accumulated funds (normally collected monthly from mortgagor or trustor) held by a lender for payment of taxes, insurance, or other periodic debts against real property. The lender pays the tax bill, premium, etc. from the accumulated funds when due. See also Escrow.

**Impoundment.** Action, or inaction, by President or other offices of U.S. Government, that precludes the obligation or expenditure of budget authority by Congress.

**Impracticability.** The term "impracticability" in federal rule (Fed.R.Civ.P. 23) providing for class action if class is so numerous that joinder of all members is impracticable does not mean "impossibility" but only the difficulty of inconvenience of joining all members of the class. *Union Pac. R. Co. v. Woodahl*, D.C.Mont., 308 F.Supp. 1002, 1008.

*Commercial impracticability.* A broadened interpretation of the doctrine of impossibility which holds that a party to a contract for the sale of goods will be relieved of his or her duty to perform when the premise (e.g., existence of certain goods) on which the contract was based no longer exists due to unforeseeable events. See U.C.C. § 2-615. See also Commercial frustration; Commercial impracticability; Impossibility.

**Imprescriptibility.** The state or quality of being incapable of prescription; not of such a character that a right to it can be gained by prescription.

**Imprescriptible rights.** Such rights as a person may use or not, at pleasure, since they cannot be lost to him by the claims of another founded on prescription.

**Impression, case of first.** One without a precedent; one presenting a wholly new state of facts; one involving a question never before determined.

**Impressment.** A power possessed by the English crown of taking persons or property to aid in the defense of the country, with or without the consent of the persons concerned. It is usually exercised to obtain hands for the royal ships in time of war, by taking seamen engaged in merchant vessels, but in former times impressment of merchant ships was also practiced. The admiralty issues protections against impressment in certain cases, either under statutes passed in favor of certain callings or voluntarily.

**Imprest fund.** Petty cash fund used by business for small, routine expenses.

**Imprest money.** Money paid on enlisting or impressing soldiers or sailors.

**Impretiabilis** /əmprèshiyébələs/. Lat. Beyond price; invaluable.

**Imprimatur** /imprəméytər/. Lat. Let it be printed. A license or allowance, granted by the constituted authorities, giving permission to print and publish a book. This allowance was formerly necessary, in England, before any book could lawfully be printed, and in some other countries is still required.

**Imprimere** /impriməriy/. To press upon; to impress or press; to imprint or print.

**Imprimery** /impriməriy/. In some of the ancient English statutes this word is used to signify a printing-office, the art of printing, a print or impression.

**Imprimis** /impráymas/. Lat. In the first place; first of all.

**Imprison.** To put in a prison; to put in a place of confinement. To confine a person, or restrain his liberty, in any way.

**Imprisonment.** The detention of a person contrary to his will. The act of putting or confining a person in prison. The restraint of a person's personal liberty; coercion exercised upon a person to prevent the free exercise of his powers of locomotion. It is not a necessary part of the definition that the confinement should be in a place usually appropriated to that purpose; it may be in a locality used only for the specific occasion; or it may take place without the actual application of any physical agencies of restraint (such as locks or bars), as by verbal compulsion and the display of available force. Every confinement of the person is an "imprisonment," whether it be in a prison, or in a private house, or even by forcibly detaining one in the public streets. Any unlawful exercise or show of force by which person is compelled to remain where he does not wish to be. *McKendree v. Christy*, 29 Ill.App.2d 866, 172 N.E.2d 380, 381. *See also* Solitary confinement.

**False imprisonment.** The unlawful arrest or detention of a person without warrant, or by an illegal warrant, or a warrant illegally executed, and either in a prison or a place used temporarily for that purpose, or by force and constraint without confinement. False imprisonment consists in the unlawful detention of the person of another, for any length of time, whereby he is deprived of his personal liberty. *Dupler v. Seubert*, 69 Wis.2d 626, 230 N.W.2d 626, 631. The unlawful detention of the occupant of an automobile may be accomplished by driving so rapidly that he cannot alight.

A person commits a misdemeanor if he knowingly restrains another unlawfully so as to interfere substantially with his liberty. Model Penal Code, § 212.3.

The tort of "false imprisonment" is the nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short. *City of Newport Beach v. Sasse*, 9 Cal.App.3d 803, 88 Cal.Rptr. 476, 480. Restatement, Second, Torts § 35.

*See also* False arrest; False imprisonment.

**Impristi** /impristay/. Adherents; followers. Those who side with or take the part of another, either in his defense or otherwise.

**Improbable.** Unlikely to be true, or to occur, not to be readily believed. *Johnson v. Tregle*, La.App., 8 So.2d 755, 758.

**Improper.** Not suitable; unfit; not suited to the character, time, and place. *Godbey v. Godbey*, 70 Ohio App. 455, 44 N.E.2d 810, 813. Not in accordance with fact, truth, or right procedure and not in accord with propriety, modesty, good taste, or good manners. *Landry v. Daley*, D.C.Ill., 280 F.Supp. 968, 970.

**Improper cumulation of actions.** In common law pleading, an attempt to join in one proceeding inconsis-

ent causes of action. *Toms v. Nugent*, La.App., 12 So.2d 713, 715. This is permitted under Rule of Civil Procedure 8(e)(2).

**Improper feuds.** In old English law, these were derivative feuds; as, for instance, those that were originally bartered and sold to the feudatory for a price, or were held upon base or less honorable services, or upon a rent in lieu of military service, or were themselves alienable, without mutual license, or descended indifferently to males or females.

**Improper influence.** Undue influence (*q.v.*).

**Improperly obtained evidence.** *See* Illegally obtained evidence.

**Improper rector.** In ecclesiastical law, commonly signifies a lay rector as opposed to a spiritual rector; just as inappropriate tithes are tithes in the hands of a lay owner, as opposed to appropriate tithes, which are tithes in the hands of a spiritual owner.

**Impropriation.** In ecclesiastical law, the annexing an ecclesiastical benefice to the use of a lay person, whether individual or corporate, in the same way as *appropriation* is the annexing of any such benefice to the proper and perpetual use of some spiritual corporation, whether sole or aggregate, to enjoy forever.

**Improve.** To meliorate, make better, to increase the value or good qualities of, mend, repair, as to "improve" a street by grading, parking, curbing, paving, etc.

**Improved land.** Real estate whose value has been increased by landscaping and addition of sewers, roads, utilities, and the like.

**Improved value.** Appraisal term encompassing the total value of land and improvements rather than the separate values of each.

**Improvement.** A valuable addition made to property (usually real estate) or an amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes. Generally has reference to buildings, but may also include any permanent structure or other development, such as a street, sidewalks, sewers, utilities, etc. An expenditure to extend the useful life of an asset or to improve its performance over that of the original asset. Such expenditures are capitalized as part of the asset's cost. *Contrast* with Maintenance and Repair. *See also* Betterment; Internal improvements; Leasehold improvements.

In the law of patents, an addition to, or modification of, a previous invention or discovery, intended or claimed to increase its utility or value. *Steiner Sales Co. v. Schwartz Sales Co.*, C.C.A.Utah, 98 F.2d 999, 1010. It includes two necessary ideas: the idea of a complete and practical operative art or instrument and the idea of some change in such art or instrument not affecting its essential character but enabling it to produce its appropriate results in a more perfect or economical manner.

**Improvement bonds.** *See* Bond.

**Improvvidence.** As used in a statute excluding one found incompetent to execute the duties of an administrator by reason of improvidence, means that want of care and foresight in the management of property which would be likely to render the estate and effects of the intestate unsafe, and liable to be lost or diminished in value, in case the administration should be committed to the improvident person.

**Improvvidently.** A judgment, decree, rule, injunction, etc., when given or rendered without adequate consideration by the court, or without proper information as to all the circumstances affecting it, or based upon a mistaken assumption or misleading information or advice, is sometimes said to have been "improvvidently" given or issued.

**Impruiare** /imprúwiyériy/. In old English law, to improve land. *Impruiamentum*, the improvement so made of it.

**Impubes** /impyúwbiyz/. Lat. In the civil law, a minor under the age of puberty; a male under fourteen years of age; a female under twelve.

**Impulse.** Sudden urge or inclination; thrusting or impelling force within a person. *See also* Insanity; Irresistible impulse.

**Impunitas continuum affectum tribuit delinquendi** /impyúwnatàs kántínyuwəm aféktəm tríbyuwət délŋkwénday/. Impunity confirms the disposition to commit crime.

**Impunitas semper ad deteriora invitata** /impyúwnatàs sémpər əd dətiriyóra ənváyət/. Impunity always invites to greater crimes.

**Impunity.** Exemption or protection from penalty or punishment. *See also* Immunity.

**Imputability.** The state or condition rendering one chargeable for an act. Liability or responsibility for conduct or omission. *See* Liability.

**Imputatio** /impyətéysh(iy)ow/. Lat. In the civil law, legal liability.

**Imputation of payment.** In the civil law, the application of a payment made by a debtor to his creditor.

**Imputed.** As used in legal phrases, this word means attributed vicariously; that is, an act, fact, or quality is said to be "imputed" to a person when it is ascribed or charged to him, not because he is personally cognizant of it or responsible for it, but because another person is, over whom he has control or for whose acts or knowledge he is responsible. *See also* Estoppel.

**Imputed cost.** *See* Cost.

**Imputed income.** *See* Income.

**Imputed interest.** *See* Interest.

**Imputed knowledge.** This phrase is sometimes used as equivalent to "implied notice," *i.e.*, knowledge attributed or charged to a person because the facts in question were open to his discovery and it was his duty to inform himself as to them. In law of agency, notice of facts

brought to the attention of an agent within the scope of his authority or employment is chargeable to his principal in most cases. *See* Imputed notice.

**Imputed negligence.** The negligence of one person may be chargeable to another depending upon the relationship of the parties, as for example, the negligence of an agent acting within the scope of his employment is chargeable to the principal. Negligence which is not directly attributable to the person himself, but which is the negligence of a person who is in privity with him, and with whose fault he is chargeable. *See also* Negligence.

**Imputed notice.** Information as to a given fact or circumstance charged or attributed to a person, and affecting his rights or conduct on the ground that actual notice was given to some person whose duty was to report it to the person to be affected, as, his agent or his attorney of record. *See also* Notice.

**In.** In the law of real estate, this preposition is used to denote the fact of seisin, title, or possession, and serves as an elliptical expression for some such phrase as "in possession," or as an abbreviation for "intitled" or "invested with title."

An elastic preposition in other cases, expressing relation of presence, existence, situation, inclusion, action, etc.; inclosed or surrounded by limits, as in a room; also meaning for, in and about, on, within etc.; and is synonymous with expressions "in regard to", "respecting", "with respect to", and "as is".

**In action.** Attainable or recoverable by action; not in possession. A term applied to property of which a party has not the possession, but only a right to recover it by action. Things in action are rights of personal things, which nevertheless are not in possession. *See* Chose in action.

**Inadequate.** Insufficient; disproportionate; lacking in effectiveness or in conformity to a prescribed standard or measure.

**Inadequate consideration.** One not adequate or equal in value to the thing conveyed. *Farrell v. Third Nat. Bank*, 20 Tenn.App. 540, 101 S.W.2d 158, 163.

**Inadequate damages.** *See* Damages.

**Inadequate price.** A term applied to indicate the want of a sufficient consideration for a thing sold, or such a price as would ordinarily be entirely incommensurate with its intrinsic value.

**Inadequate remedy at law.** Within the meaning of the rule that equity will not entertain a suit if there is an adequate remedy at law, this does not mean that there must be a failure to collect money or damages at law, but the remedy is considered inadequate if it is, in its nature and character, unfitted or not adapted to the end in view, as, for instance, when the relief sought is preventive (*e.g.* injunction) rather than compensatory. *Cruickshank v. Bidwell*, 176 U.S. 73, 20 S.Ct. 280, 44 L.Ed. 377. *Compare* Adequate remedy.

**Inadmissible.** That which, under the established rules of law, cannot be admitted or received; *e.g.*, parol evidence to contradict a written contract; evidence obtained from illegal search and seizure; certain types of hearsay evidence.

**In adversum** /in ædvørsəm/. Against an adverse, unwilling, or resisting party. "A decree not by consent, but *in adversum*."

**Inadvertence.** Heedlessness; lack of attention; want of care; carelessness; failure of a person to pay careful and prudent attention to the progress of a negotiation or a proceeding in court by which his rights may be affected. Used chiefly in statutory and rule enumerations of the grounds on which a judgment or decree may be vacated or set aside; as, "mistake, inadvertence, surprise, or excusable neglect." Fed.R. Civil P. 60(b). State ex rel. Regis v. District Court of Second Judicial Dist. in and for Silver Bow County, 102 Mont. 74, 55 P.2d 1295, 1298.

**In ædificatio** /in iydəfəkéysh(iy)ow/. Lat. In the civil law, building on another's land with one's own materials, or on one's own land with another's materials.

**In æquali jure** /in ækwéylay júriy/. In equal right; on an equality in point of right.

**In æquali jure melior est conditio possidentis** /in ækwéylay júriy miyliyar èst kændish(iy)ow pəsidi-yéntəs/. In [a case of] equal right the condition of the party in possession is the better.

**In æquali manu** /in ækwéylay mænyuw/. In equal hand; held equally or indifferently between two parties. Where an instrument was deposited by the parties to it in the hands of a third person, to keep on certain conditions, it was said to be held *in æquali manu*.

**In æqua manu** /in iykwə mænyuw/. In equal hand.

**Inalienable** /inéyl(i)yənəbəl/. Not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another, such as rivers and public highways, and certain personal rights; *e.g.*, liberty.

**Inalienable interests.** Type of interest in property which cannot be sold or traded.

**Inalienable rights.** Rights which are not capable of being surrendered or transferred without the consent of the one possessing such rights; *e.g.*, freedom of speech or religion, due process, and equal protection of the laws. *Morrison v. State, Mo.App., 252 S.W.2d 97, 101. See Bill of rights.*

**In alieno solo** /in àliyiynow sólow/. In another's land.

**In alio loco** /in éyl(i)yow lówkow/. In another place.

**In alta prodicione nullus potest esse accessorius sed principalis solummodo** /in æltə prədishiyówniy nələs pówtəst ésiy æksəsóriyəs sèd prinsəpéyləs sówləmwōdow/. In high treason no one can be an accessory but only principal.

**In alternativis electio est debitoris** /in oltàrnətáyvəs əléksh(iy)ow èst dèbətórəs/. In alternatives the debtor has the election.

**In ambigua voce legis ea potius accipienda est significatio quæ vitio caret, præsertim cum etiam voluntas legis ex hoc colligi possit** /in æmbígyuwə wóvsiy líyjas iyə pówsh(iy)əs əksipiýəndə èst signəfəkéysh(iy)ow kwiy vísh(iy)ow kérət, præsərdəm kəm ésh(iy)əm vélántəs líyjas èks hók kólajáy pəsət/. In an ambiguous expression of law, that signification is to be preferred which is consonant with equity, especially when the spirit of the law can be collected from that.

**In ambiguis casibus semper præsumitur pro rege** /in æmbígyuwəs kéysəbəs sémpər prəz(y)úwmətar prów rijjiy/. In doubtful cases the presumption is always in favor of the king.

**In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset** /in æmbígyuwəs arəysh-iyównəbəs máksəmiy sènténsh(iy)ə spèktəndə èst iyjas kwáy iyəs pròwtlísət/. In ambiguous expressions, the intention of the person using them is chiefly to be regarded.

**In ambiguo** /in æmbígyuwow/. In doubt.

**In ambiguo sermone non utrumque dicimus sed id duntaxat quod volumus** /in æmbígyuwow sərmówniy nòn yuwtrémkwiy dísəməs sèd id dàntəksət kwòd vól(y)əməs/. When the language we use is ambiguous, we do not use it in a double sense, but in the sense in which we mean it.

**In anglia non est interregnum** /in ængliyə nòn est intərəgnəm/. In England there is no interregnum.

**In aperta luce** /in əpártə l(y)úwsiy/. In open daylight; in the day-time.

**In apicibus juris** /in əpísəbəs júrəs/. Among the subtleties or extreme doctrines of the law.

**In arbitrium judicis** /in arbítriyəm júwdəsəs/. At the pleasure of the judge.

**In arcta et salva custodia** /in árktə èt sálvə kəs-tówd(i)yə/. In close and safe custody.

**In articulo** /in artíkyəlow/. In a moment; immediately.

**In articulo mortis** /in artíkyəlow mórtəs/. In the article of death; at the point of death.

**In atrocioribus delictis punitur affectus licet non sequatur effectus** /in atróws(h)iyórəbəs dəlíktəs pyúwnətar əféktəs láysət nòn səkweýtər əféktəs/. In more atrocious crimes the intent is punished, though an effect does not follow.

**Inauguration.** The act of installing or inducting into office with formal ceremonies, as the coronation of a sovereign, the inauguration of a president or governor, or the consecration of a prelate. A word applied by the Romans to the ceremony of dedicating a temple, or raising a man to the priesthood, after the *augurs* had been consulted.



**In autre droit** /in ówtrə dróyt/. L. Fr. In another's right. As representing another. An executor, administrator, or trustee sues *in autre droit*.

**In banc.** See En banc.

**In banco** /in bæŋkow/. In bank; in the bench. A term applied to proceedings in the court in bank, as distinguished from the proceedings at *nisi prius*. Also, in the English court of common bench. See Banc; En banc.

**In being.** In existence or life at a given moment of time, as, in the phrase "life or lives in being" in the rule against perpetuities. An unborn child may, in some circumstances be considered as "in being."

**In blank.** A term applied to the indorsement of a bill or note where it consists merely of the indorser's name, without restriction to any particular indorsee. U.C.C. § 3-204(2).

**Inblaura** /inblóhrə/. In old records, profit or product of ground.

**Inboard.** In maritime law, and particularly with reference to the stowage of cargo, this term is contrasted with "outboard." It does not necessarily mean under deck, but is applied to a cargo so piled or stowed that it does not project over the "board" (side or rail) of the vessel.

**In bonis** /in bównəs/. Among the goods or property; in actual possession. *In bonis defuncti*, among the goods of the deceased.

**Inborh** /inbörg/. In Saxon law, a security, pledge, or *hypotheca*, consisting of the chattels of a person unable to obtain a personal "borg," or surety.

**Inbound common.** An uninclosed common, marked out, however, by boundaries.

**In bulk.** As a whole; as an entirety, without division into items or physical separation in packages or parcels. See also Bulk.

**Inc.** Incorporated.

**In cahoots** /in kəhúwts/. Jointly interested in property; or, common participants in enterprise or illegal act.

**In camera** /in kæm(ə)rə/. In chambers; in private. A judicial proceeding is said to be heard *in camera* either when the hearing is had before the judge in his private chambers or when all spectators are excluded from the courtroom. See also In chambers.

**In camera inspection.** Under certain circumstances, a trial judge may inspect a document which counsel wishes to use at trial in his chambers before ruling on its admissibility or its use; e.g. grand jury testimony. See, e.g., Fed.R.Crim. P. 14.

**In camera proceedings.** Trial or hearing held in a place not open to the public such as the judge's lobby or chambers.

**Incapacitated person.** Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to

the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. Uniform Probate Code, § 5-101. See also Incapacity.

**Incapacity.** Want of legal, physical, or intellectual capacity; want of power or ability to take or dispose; want of legal ability to act. Inefficiency; incompetency; lack of adequate power. The quality or state of being incapable, want of capacity, lack of physical or intellectual power, or of natural or legal qualification; inability, incapability, disability, incompetence. *Bole v. Civil City of Ligonier*, 130 Ind.App. 362, 161 N.E.2d 189, 194. See also Incompetency; Partial incapacity.

**Legal incapacity.** This expression implies that the person in view has the right vested in him, but is prevented by some impediment from exercising it; as in the case of minors, committed persons, prisoners, etc. See Civil death; Minority.

**Total incapacity.** In workers' compensation acts, such disqualification from performing the usual tasks of a worker that he or she cannot procure and retain employment. Incapacity for work is total not only so long as the injured employee is unable to do any work of any character, but also while he remains unable, as a result of his injury, either to resume his former occupation or to procure remunerative employment at a different occupation suitable to his impaired capacity. Such period of total incapacity may be followed by a period of partial incapacity, during which the injured employee is able both to procure and to perform work at some occupation suitable to his then-existing capacity, but less remunerative than the work in which he was engaged at the time of his injury. That situation constitutes "partial incapacity." Synonymous with "total disability." See Disability.

**In capita** /in káptə/. To the heads; by heads or polls. Persons succeed to an inheritance *in capita* when they individually take equal shares. So challenges to individual jurors are challenges *in capita*, as distinguished from challenges to the array. See also Challenge; Per capita.

**In capite** /in káptiy/. In chief. Tenure *in capite* was a holding directly from the king.

**Incarceration** /inkársəréyshən/. Imprisonment; confinement in a jail or penitentiary. See Imprisonment.

**In case.** If; in the event.

**In casu extremæ necessitatis omnia sunt communia** /in kéys(y)uw əkstriymiy nəsésətéytəs ómniyə sént kəmyúwn(i)yə/. In cases of extreme necessity, everything is in common.

**In casu proviso** /in kéys(y)uw prəváyzo/. In a (or the) case provided. *In tali casu editum et provisum*, in such case made and provided.

**Incaute factum pro non facto habetur** /inkótiy fáktəm prów nóń fáktow həbýtər/. A thing done unwarily (or unadvisedly) will be taken as not done.

**Incendiary** /insénd(i)yəriy/. A house-burner; one guilty of arson; one who maliciously and willfully sets another person's building on fire.

**Incendium ære alieno non exiit debitorem** /insénd(i)yəm iriy æliyiynow nòn égzýuwæt débətórəm/. A fire does not release a debtor from his debt.

**Incentive pay plans.** Compensation programs whereby wages increase as productivity increases above a set standard or base.

**Incentive stock option.** An option granted to an employee of a corporation to purchase stock of such corporation at a specified price for a specified period of time. Generally, there are no tax consequences until such time as the stock is sold.

**Inception.** Commencement; opening; initiation. The beginning of the operation of a contract or will, or of a note, mortgage, lien, etc.; the beginning of a cause or suit in court. *Oriental Hotel Co. v. Griffiths*, 88 Tex. 574, 33 S.W. 652.

**Incertæ personæ** /insértiý pərsówniý/. Uncertain persons, as posthumous heirs, a corporation, the poor, a juristic person, or persons who cannot be ascertained until after the execution of a will.

**Incerta pro nullis habentur** /insértə prów náləs hóbéntər/. Uncertain things are held for nothing.

**Incerta quantitas vitiat actum** /insértə kwóntatəs víshiyət áktəm/. An uncertain quantity vitiates the act.

**Incest.** The crime of sexual intercourse or cohabitation between a man and woman who are related to each other within the degrees wherein marriage is prohibited by law.

A person is guilty of incest, a felony of the third degree, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood [or an uncle, aunt, nephew or niece of the whole blood]. "Cohabit" means to live together under the representation or appearance of being married. The relationships referred to herein includes blood relationships without regard to legitimacy, and relationship of parent and child by adoption. Model Penal Code, § 230.2.

**Incestuosi** /insèstyuwówsay/. Those offspring incestuously begotten.

**Incestuous adultery.** The elements of this offense are that defendant, being married to one person, has had sexual intercourse with another related to the defendant within the prohibited degrees.

**Incestuous bastards.** Incestuous bastards are those who are produced by the illegal connection of two persons who are relations within the degrees prohibited by law.

**Inch.** A measure of length, containing one-twelfth part of a foot; originally supposed equal to three barleycorns. Its metric equivalent is 2.540 centimeters.

**Miner's inch.** A unit of measurement of the rate of discharge of water, appearing in deeds to water rights and fixed by statute in most Western States, being the amount of water passing through a specified orifice under a prescribed pressure.

1 cubic ft. per sec. = 50 miner's inches (Idaho, Kansas, Nebraska, N. Mexico, N. Dakota, S. Dakota)

1 cubic ft. per sec. = 40 miner's inches (Arizona, California, Montana, Oregon)

1 cubic ft. per sec. = 38.4 miner's inches (Colorado)

1 miner's inch = .02 cubic ft. per sec. (Idaho, Kansas, Nebraska, N. Mexico, N. Dakota, S. Dakota)

1 miner's inch = .025 cubic ft. per sec. (Arizona, California, Montana, Oregon)

1 miner's inch = .026 cubic ft. per sec. (Colorado)

**In chambers.** While a common meaning of word "chambers" is room adjacent to courtroom in which judge performs the duties of his office when court is not in session, it also connotes fact that judicial action was taken when court was not in session. Thus, when judge performs judicial act while court is not in session in the matter acted upon, it is said that he acted "in chambers" whether the act was performed in the judge's chambers, the library, at his home, or elsewhere. *Morris v. State*, 573 P.2d 1130, 1132, 2 Kan.App.2d 34. See also *In camera*.

**In charge of.** Means in the care or custody of, under control of, or intrusted to the management or direction of. See *Guardian*; *Ward*.

**Inchartare** /inkartériy/. To give, or grant, and assure anything by a written instrument.

**In chief.** Principal; primary; directly obtained. A term applied to the evidence obtained from a witness upon his examination in court by the party producing him; *i.e.* direct examination of witness.

Tenure in chief, or *in capite*, is a holding directly of the king or chief lord.

**Inchmaree clause.** In marine insurance, provision in policy protecting one from perils resulting from negligence of master, or from any latent defect in machinery or hull, charterer, mariners, engineers and pilots.

**Inchoate** /inkówət/. Imperfect; partial; unfinished; begun, but not completed; as a contract not executed by all the parties. *State ex rel. McCubbin v. McMillian*, Mo.App., 349 S.W.2d 453, 462.

**Inchoate crimes.** An incipient crime which generally leads to another crime. An assault has been referred to as an inchoate battery, though the assault is a crime in and of itself. The Model Penal Code classifies attempts, solicitation and conspiracy as such. §§ 5.01-5.03.

**Inchoate dower.** A wife's interest in the lands of her husband during his life, which may become a right of dower upon his death. A contingent claim or possibility of acquiring dower by outliving husband and arises, not out of contract, but as an institution of law constituting a mere chose in action incapable of transfer by separate grant but susceptible of extinguishment, which is effect-

ed by wife joining with husband in deed, which operates as release or satisfaction of interest and not as conveyance.

**Inchoate instrument.** Instruments which the law requires to be registered or recorded are said to be "inchoate" prior to registration, in that they are then good only between the parties and privies and as to persons having notice.

**Inchoate interest.** An interest in real estate which is not a present interest, but which may ripen into a vested estate, if not barred, extinguished, or divested.

**Inchoate lien.** The lien of a judgment, from the day of its entry, subject to be defeated by its vacation, becoming a consummate lien if the motion for a new trial is thereafter overruled; such lien then relating back to the original entry of the judgment.

**Inchoate right.** In patent law, the right of an inventor to his invention while his application is pending which matures as "property" when the patent issues. *Mullins Mfg. Co. v. Booth*, C.C.A.Mich., 125 F.2d 660, 664.

**Incident.** Something dependent upon, appertaining or subordinate to, or accompanying something else of greater or principal importance, something arising or resulting from something else of greater or principal importance. *Mola v. Reiley*, 100 N.J.Super. 343, 241 A.2d 861, 864. Used both substantively and adjectively of a thing which, either usually or naturally and inseparably, depends upon, appertains to, or follows another that is more worthy. Used as a noun, it denotes anything which inseparably belongs to, or is connected with, or inherent in, another thing, called the "principal". Also, less strictly, it denotes anything which is usually connected with another, or connected for some purposes, though not inseparably. Thus, the right of alienation is incident to an estate in fee-simple, though separable in equity.

**Incident of ownership.** An element of ownership or degree of control over a life insurance policy. The retention by an insured of an incident of ownership in a life insurance policy will cause the policy proceeds to be included in the insured's gross estate upon death. I.R.C. § 2042(2).

In estate taxation, if decedent retains control or right in property, as for example the right to change beneficiary of insurance policy, the property falls into his gross estate for estate tax purposes. In *re Lumpkin's Estate*, C.A.Tex., 474 F.2d 1092.

**Incidental.** Depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose. *Davis v. Pine Mountain Lumber Co.*, 273 C.A.2d 218, 77 Cal.Rptr. 825.

**Incidental beneficiary.** Person who may derive benefit from performance of contract, though he is neither the promisee nor the one to whom performance is to be rendered. *Salzman v. Holiday Inns, Inc.*, 48 A.D.2d 258, 369 N.Y.S.2d 238, 242. A person who is a donee or

creditor (third party) beneficiary of a contract is entitled, in certain circumstances, to enforce such contract. Since there will often be many people indirectly or even directly benefitted by any given contractual performance, the term "incidental beneficiary" is used to describe those persons who would benefit by the performance but who were not intended by the parties to be benefitted and who thus cannot enforce the contract.

A person is not a beneficiary of a trust if the settlor does not manifest an intention to give him a beneficial interest, although he may incidentally benefit from the performance of the trust. *Restatement, Second, Trusts*, § 126.

**Incidental damages.** See *Damages*.

**Incidental powers.** This term, within the rule that a corporation possesses only those powers which its charter confers upon it, either expressly or as incidental to its existence, means such powers as are directly and immediately appropriate to the execution of the powers expressly granted and exist only to enable the corporation to carry out the purpose of its creation.

**Incident to arrest.** A search can be "incident to arrest" only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. *James v. State of La.*, La., 382 U.S. 36, 86 S.Ct. 151, 15 L.Ed.2d 30. See also *Search incident to arrest*.

**Incidental to employment.** A risk is "incidental to employment" within Worker's Compensation Act, when it belongs to or is connected with what a worker has to do in fulfilling the duties of his or her employment.

**Incidental use.** In zoning, use of premises which is dependent on or affiliated with the principal use of such premises. *Needham v. Winslow Nurseries, Inc.*, 330 Mass. 95, 111 N.E.2d 453.

**Incidere** /insítariy/. Lat. In the civil and old English law, to fall into; to fall out; to happen; to come to pass. To fall upon or under; to become subject or liable to. *Incidere in legem*, to incur the penalty of a law.

**Incipitur** /insípətər/. Lat. It is begun; it begins. In old practice, when the pleadings in an action at law, instead of being recited at large on the issue-roll, were set out merely by their commencements, this was described as entering the *incipitur*; i.e., the beginning.

**Incite** /insáyt/. To arouse; urge; provoke; encourage; spur on; goad; stir up; instigate; set in motion; as, to "incite" a riot. Also, generally, in criminal law to instigate, persuade, or move another to commit a crime; in this sense nearly synonymous with "abet."

**Inciter.** In criminal law, an aider or abettor; an accessory.

**Incivile** /insivəliy/. Lat. Irregular; improper; out of the due course of law.

**Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita, judicare, vel respondere** /insivəliy est, náysay tówtə líjij pərsépktə, yúwnə ələkəwə partíkylə íjəs prəpózətə, júwdəkəriy, vəl rəspóndíriy/. It is improper, without looking at the

whole of a law, to give judgment or advice, upon a view of any one clause of it.

**Incivile est, nisi tota sententia inspecta, de aliqua parte judicare** /insivily èst, náysay tówtə səntəns(h)iyə inspékta, diy ələkwa pártiy júwdəkériy/. It is irregular, or legally improper, to pass an opinion upon any part of a sentence, without examining the whole.

**In civilibus ministerium excusat, in criminalibus non item** /in səvilyəbəs minəstíriyəm əkskyúwzət, in krimənyəlyəbəs nòn áytəm/. In civil matters agency (or service) excuses, but not so in criminal matters.

**Incivism** /insəviziəm/. Unfriendliness to the state or government of which one is a citizen.

**In claris non est locus conjecturis** /in klérəs nòn èst lówkəs kónjekt(y)úrəs/. In things obvious there is no room for conjecture.

**Inclausa** /inklózə/. In old records, a home close or inclosure near the house.

**Inclose.** To surround; to encompass; to bound; fence, or hem in, on all sides. To shut up.

**Inclosed lands.** Lands which are actually inclosed and surrounded with fences.

**Inclosure.** In old English law, act of freeing land from rights of common, commonable rights, and generally all rights which obstruct cultivation and the productive employment of labor on the soil.

Land surrounded by some visible obstruction. An artificial fence around one's estate. *See* Close.

**Include.** (Lat. *Includere*, to shut in, keep within.) To confine within, hold as in an inclosure, take in, attain, shut up, contain, inclose, comprise, comprehend, embrace, involve. Term may, according to context, express an enlargement and have the meaning of *and* or *in addition to*, or merely specify a particular thing already included within general words theretofore used. "Including" within statute is interpreted as a word of enlargement or of illustrative application as well as a word of limitation. *Premier Products Co. v. Cameron*, 240 Or. 123, 400 P.2d 227, 228.

**Included offense.** In criminal law, a crime which is part of another crime; e.g. included in every murder is assault and battery. One which is established by proof of the same or less than all of the facts, or a less culpable mental state, or both, than that which is required to establish commission of offense charged. *People v. Lyons*, 26 Ill.App.3d 193, 324 N.E.2d 677, 680. To be an "included offense", all elements of the lesser offense must be contained in the greater offense, the greater containing certain elements not contained in the lesser. *Gaskin v. State*, 244 Ark. 541, 426 S.W.2d 407, 409. It is impossible to commit a greater offense without necessarily committing included offense. *State v. Muisse*, App., 103 N.M. 382, 707 P.2d 1192, 1202. The defendant may be found guilty of an offense necessarily included in the offense charged. Fed.R.Crim.P. 31.

**Inclusionary approach.** Under the "inclusionary approach", evidence of prior crimes, wrongs, or acts is admissible for any purpose other than to show defendant's criminal propensity, as long as it is relevant to

some disputed issue in trial, and satisfies probative-prejudice balancing test. *U.S. v. Brennan*, C.A.N.Y., 798 F.2d 581, 589.

**Inclusio unius est exclusio alterius** /inklúwzh(iy)ow yənáyəs èst əksklúwzh(iy)ow óltəráyəs/. The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others. *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325. This doctrine decrees that where law expressly describes particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded. *Kevin McC v. Mary A*, 123 Misc.2d 148, 473 N.Y.S.2d 116, 118.

**Inclusive.** Embraced; comprehended; comprehending the stated limits or extremes. Opposed to "exclusive."

**Inclusive survey.** In land law, one which includes within its boundaries prior claims excepted from the computation of the area within such boundaries and excepted in the grant.

**Incognito.** Status of person who appears or travels without disclosing his true identity.

**Incola.** Lat. In the civil law, an inhabitant; a dweller or resident. Properly, one who has transferred his domicile to any country.

**Incolas domicilium facit** /ínkələs dòməsíl(i)yəm féysət/. Residence creates domicile.

**Income.** The return in money from one's business, labor, or capital invested; gains, profits, salary, wages, etc.

The gain derived from capital, from labor or effort, or both combined, including profit or gain through sale or conversion of capital. Income is not a gain accruing to capital or a growth in the value of the investment, but is a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and coming in, being derived, that is, received or drawn by the recipient for his separate use, benefit, and disposal. *Goodrich v. Edwards*, 255 U.S. 527, 41 S.Ct. 390, 65 L.Ed. 758. The true increase in amount of wealth which comes to a person during a stated period of time. That which comes in or is received from any business, or investment of capital, without references to outgoing expenditures. *City of Fitzgerald v. Newcomer*, 162 Ga.App. 646, 291 S.E.2d 766, 768.

*See also* Allocation of income; Blocked income; Clear reflection of income; Constructive receipt of income; Deferred income; Earned income; Earnings; Fixed income; Gross income; Income averaging; Income basis; Income in respect of decedent; Income tax; Net income; Net operating income; Personal income; Profit; Real income; Split income; Taxable income; and *Unearned income, below.*

**Accrued income.** Income earned during a certain accounting period but not received.

**Adjusted gross income.** The difference between the taxpayers' gross income and allowable adjustments. Adjustments include but are not limited to; contributions to an individual retirement account, alimony payments

and reimbursed employee business expenses. I.R.C. § 162.

*Deferred income.* Income received before it is earned, such as rents received in one accounting period for use of the premises in the following period.

*Earned income.* Income derived from one's own labor or through active participation in a business as distinguished from income from, for example, dividends or investments. *See also* Earnings.

*Fixed income.* That type of income which is stable over a considerable period of time such as a pension or annuity.

*Gross income.* The total income of a business or individual before deductions; including salary, commissions, royalties, gains from dealings in property, interest, dividends, etc. I.R.C. § 61.

*Imputed income.* Value assigned to property or income, sometimes artificially for tax purposes, as in the case of a non-interest bearing or low interest bearing loan between persons or organizations related to each other. I.R.C. § 483. The value of property enjoyed by the taxpayer as part of his salary; *e.g.* use of home provided by employer to employee.

The monetary value of goods and services which someone produces and is consumed within the immediate family unit as well as the monetary value of the use of property which someone within the family unit owns. Imputed income is not included in gross income.

*Investment income.* *See Unearned income, below.*

*Net (business) income.* The profit of a business arrived at by deducting operating expenses and taxes from gross receipts. Income after costs and taxes.

*Nonoperating income.* Income of a business from investments and not from operations.

*Operating income.* Income derived from operations of business in contrast to income from investments.

*Ordinary income.* *See Ordinary.*

*Personal income.* In taxation, the total of income received by individuals from all sources.

*Unearned income.* Income derived from investments, such as dividends and interest, as distinguished from income derived from personal labor.

Income received but not yet earned. Normally, such income is taxed when received, even for accrual basis taxpayers.

**Income averaging.** Method of computing tax by averaging an individual's current income with that of the three preceding years. Income averaging was common with individuals such as athletes, or actors whose income may be very high in a given year in contrast to prior years. The tax benefits of income averaging were repealed with the Tax Reform Act of 1986.

**Income basis.** Method of computing the rate of return on a security based on the dividend or interest and on the price paid rather than on its face or par value.

**Income beneficiary.** The party entitled to income from property. A typical example would be a trust where A is to receive the income for life with corpus or principal passing to B upon A's death. In this case, A would be the income beneficiary of the trust.

**Income bond.** *See Bond.*

**Income exclusions.** Items of income which are not subject to federal taxes. An example of such includes interest earned on municipal bonds, as well as money or property received by gift or inheritance.

**Income in respect of decedent.** Income earned by a decedent at the time of death but not reportable on the final income tax return because of the method of accounting utilized. Typically it includes any accrued income to date of death for cash basis decedent/taxpayer. *Estate of Rose*, 465 Pa. 53, 348 A.2d 113, 116. Such income is included in the gross estate and will be taxed to the eventual recipient (*i.e.*, either the estate or heirs). The recipient will, however, be allowed an income tax deduction for the death tax attributable to the income. I.R.C. § 691.

In estate taxation, term refers to inclusion of certain income in estate as if it had been collected by decedent in his or her lifetime, *Grill v. U. S.*, 157 Ct.Cl. 804, 303 F.2d 922, 927, *e.g.* payments received toward satisfaction of a right or expectancy created almost entirely through the efforts or status of the decedent and which, except for his death and without further action on his part, the decedent would have realized as gross income.

**Income property.** Property which produces income; *e.g.* rental property. Such property can be either residential, commercial, or industrial.

**Income security.** Government programs to maintain the income of people, including Social Security, government pensions, unemployment compensation, welfare, food stamps, disability benefits, subsidized housing, and energy assistance. Medicare and Medicaid are categorized as health programs.

**Income shifting.** An attempt by a taxpayer to transfer money to one or many family members in an effort to reduce the transferors' tax liability. The Tax Reform Act of 1986 has reduced the benefits of income shifting by such regulations as; taxing children under the age of 14 on unearned income (interest and dividends) at the parents' highest rate. *See Kiddie tax.*

**Income splitting.** *See Joint tax return.*

**Income statement.** The statement of revenues, expenses, gains, and losses for the period ending with net income (or loss) for the period. A financial statement that indicates how a firm performed during a period of time. *See also Balance (Balance sheet); Earnings report; Profit and loss statement.*

**Income tax.** A tax on the annual profits arising from property, business pursuits, professions, trades, or offices. A tax on a person's income, wages, salary, commissions, emoluments, profits, and the like, or the excess thereof over a certain amount. Tax levied by the U.S.

Government, and by some state governments, on an individual, corporation, or other taxable unit's income. *See also* Tax.

**Income tax deficiency.** Such exists whenever taxpayer has failed to pay sufficient taxes on income, notwithstanding lack of determination by commissioner or his agents. *Moore v. Cleveland Ry. Co.*, C.C.A.Ohio, 108 F.2d 656, 659. 26 U.S.C.A. § 6211 et seq. *See* Deficiency notice; Ninety day letter.

**Income tax return.** Forms required by federal and state taxing authority to be completed by taxpayer, disclosing all items necessary for computation of tax and the computation itself. *See also* Return.

**In commendam** /in kəméndəm/. In commendation; as a commended living. *See* Commenda.

A term applied in Louisiana to a limited partnership, answering to the French "*en commandite*".

**In commerce.** The words "in commerce" normally mean in interstate commerce. *Rose v. Vulcan Materials Co.*, 282 N.C. 643, 194 S.E.2d 521, 528. *See* In commerce test; Interstate commerce.

**In commerce test.** Jurisdiction under the Sherman Act is conferred if the acts complained of occur in the flow of commerce or if those acts, though local in nature, substantially affect interstate commerce. With the "in commerce test," the impact on interstate commerce is judged according to a qualitative standard, even insubstantial activity placed directly in the flow of commerce satisfies the jurisdictional requirements. *McLain v. Real Estate Bd. of New Orleans, Inc.*, C.A.La., 583 F.2d 1315, 1318.

**In commodato hæc pactio, ne dolus præstetur, rata non est** /in kómədétow híyk pæksh(iy)ow, niy dówlæs præstiytær, réytæ nòn ést/. In the contract of loan, a stipulation not to be liable for fraud is not valid.

**Incommodum non solvit argumentum** /inkómədəm nòn sólvæt argyaméntəm/. An inconvenience does not destroy an argument.

**In common.** Shared in respect to title, use, or enjoyment; without apportionment or division into individual parts. Held by several for the equal advantage, use, or enjoyment of all. *See* Condominium.

**In communi** /in kəmyúwnay/. In common.

**Incommunicado.** A person accused of a crime who does not have the right of communicating with other than the ones in charge of his custody or the one investigating the crime.

**Incommunication.** In Spanish law, the condition of a prisoner who is not permitted to see or to speak with any person visiting him during his confinement. A person accused cannot be subjected to this treatment unless it be expressly ordered by the judge, for some grave offense, and it cannot be continued for a longer period than is absolutely necessary. This precaution is resorted to for the purpose of preventing the accused from knowing beforehand the testimony of the witnesses, or from attempting to corrupt them and concert such

measures as will efface the traces of his guilt. As soon, therefore, as the danger of his doing so has ceased, the interdiction ceases likewise.

**Incommutable.** Not capable of or entitled to be commuted. *See* Commutation.

**Incompatibility.** Incapability of existing or being exercised together. As ground for divorce, refers to such deep and irreconcilable conflict in personalities or temperments of parties as makes it impossible for them to continue normal marital relationship. Such conflict of personalities and dispositions must be so deep as to be irreconcilable and irremediable. *Berry v. Berry*, 215 Kan. 47, 523 P.2d 342, 345. Such condition is a ground for divorce in states with no-fault divorce statutes. *See* Irretrievable breakdown of marriage.

**Incompetency.** Lack of ability, knowledge, legal qualification, or fitness to discharge the required duty or professional obligation. A relative term which may be employed as meaning disqualification, inability or incapacity and it can refer to lack of legal qualifications or fitness to discharge the required duty and to show want of physical or intellectual or moral fitness. *County Bd. of Ed. of Clarke County v. Oliver*, 270 Ala. 107, 116 So.2d 566, 567. *See also* Guardian; Incapacity; Insanity; Non compos mentis. *Compare* Competency.

**Incompetent evidence.** Evidence which is not admissible under the established rules of evidence; *e.g.* Fed. Rules of Evidence. Evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself. *See e.g.* Hearsay. *See also* Inadmissible.

**Incomplete transfer.** A transfer made by a decedent during lifetime which, because of certain control or enjoyment retained by the transferor, will not be considered complete for Federal death tax purposes. Thus, some or all of the fair market value of the property transferred will be included in the transferor's gross estate. I.R.C. §§ 2036-2038. *See also* Revocable transfer.

**Inconclusive.** That which may be disproved or rebutted; not shutting out further proof or consideration. Applied to evidence and presumptions. *See* Presumption.

**In conjunction with** /in kənʃəŋkshən wíθ/. In association with.

**In conjunctivis, oportet utramque partem esse veram** /in kənʃəŋktáyvəs, əpórtæt ywtrámkwiy pártəm ésiy vírəm/. In conjunctives it is necessary that each part be true. In a condition consisting of divers parts in the copulative, both parts must be performed.

**In consideratione inde** /in kənsidərəyshiyówniy índiy/. In consideration thereof.

**In consideratione legis** /in kənsidərəyshiyówniy líyʃəs/. In consideration or contemplation of law; in abeyance.

**In consideratione præmissorum** /in kənsidərəyshiyówniy prēməsórəm/. In consideration of the premises.

**In consimili casu** /in kənsíməlay kéys(y)uw/. See *Consimili casu*.

**In consimili casu, consimile debet esse remedium** /in kənsíməlay kéys(y)uw, kənsíməliý débət ésiý rəmiyd(i)yəm/. In a similar case the remedy should be similar.

**Inconsistent.** Mutually repugnant or contradictory. Contrary, the one to the other, so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other; as, in speaking of "inconsistent defenses," or the repeal by a statute of "all laws inconsistent herewith." *Berry v. City of Fort Worth, Tex.Civ.App., 110 S.W.2d 95, 103.*

**Inconsistent statement.** See *Prior inconsistent statements*.

**In conspectu ejus** /in kənspékt(y)uw íyəs/. In his sight or view.

**In consuetudinibus, non diuturnitas temporis sed soliditas rationis est consideranda** /in kənswət(y)u-wdínəbəs, nòn dàytərnətəs témpərəs sèd səlídətəs rəyshiyównəs èst kənsidərándə/. In customs, not length of time, but solidity of reason, is to be considered. The antiquity of a custom is to be less regarded than its reasonableness.

**In contemplation of death.** In taxation and property law, a transaction, commonly a transfer or gift of property, made by the donor with a view towards his death. For federal estate tax purposes, a transfer made within three years of the decedent's death is deemed to be made in contemplation of death and the value of the property is included in his or her estate for such tax purposes. I.R.C. § 2035(b). See also *Contemplation of death*.

**Incontestability clause.** A clause in a life or health insurance policy providing that after the policy has been in force for a given length of time (e.g. two or three years) the insurer shall not be able to contest it as to statements contained in the application; and, in the case of health insurance, the provision also states that no claim shall be denied or reduced on the grounds that a condition not excluded by name at the time of issue existed prior to the effective date.

**Incontinence** /inkóntənəns/. Want of chastity; indulgence in unlawful carnal connection.

**In continenti** /in kóntənəntay/. Immediately; without any interval or intermission. Sometimes written as one word "*incontinenti*."

**In contractibus, benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio faciendi est** /in kənráktəbəs, bənígnə, in tɛstəməntəs, bənígniyər, in rɛstət(y)úwshiyównəbəs, bənígnísəmə intəprətéysh(i)yow fəs(h)iyéndə èst/. In contracts, the interpretation is to be liberal; in wills, more liberal; in restitutions, most liberal.

**In contractibus, rei veritas potius quam scriptura perspicui debet** /in kənráktəbəs, riyay véhrətəs pówsh(i)yəs kwəm skriptiyúrə párspəsay débət/. In con-

tracts, the truth of the matter ought to be regarded rather than the writing.

**In contractibus, tacite insunt [veniunt] quae sunt moris et consuetudinis** /in kənráktəbəs, tásətiý insənt kwiy sənt mórəs èt kənswət(y)úwdənəs/°víyn(i)y-ənt°/. In contracts, matters of custom and usage are tacitly implied. A contract is understood to contain the customary clauses, although they are not expressed.

**In contrahenda venditione, ambiguum pactum contra venditorem interpretandum est** /in kənrəhéndə vəndishiyówniy əmbígyuwəm páktəm kənrə vèndətórəm intəprətándəm èst/. In the contract of sale, an ambiguous agreement is to be interpreted against the seller.

**Inconvenience.** In the rule that statutes should be so construed as to avoid "inconvenience," this means, as applied to the public, the sacrifice or jeopardizing of important public interests or hampering the legitimate activities of government or the transaction of public business, and, as applied to individuals, serious hardship or injustice.

**In conventionibus, contrahentium voluntas potius quam verba spectari placuit** /in kənvənsiyównəbəs, kənrəhéns(h)iyəm valəntəs pówsh(i)yəs kwəm vərbə spəktéray plák(y)uwət/. In agreements, the intention of the contracting parties, rather than the words used, should be regarded.

**Incopolitus** /inkəpólətəs/. A proctor or vicar.

**Incorporalia bello non adquirentur** /inkərpərəyl(i)yə bəlow nòn ədkwərəntər/. Incorporal things are not acquired by war.

**Incorporamus** /inkərpərəyməs/. We incorporate. One of the words by which a corporation may be created in England. 1 Bl.Comm. 473.

**Incorporate.** To create a corporation; to confer a corporate franchise upon determinate persons. See *Incorporation*.

To declare that another document shall be taken as part of the document in which the declaration is made as much as if it were set out at length therein. See *Incorporation by reference*.

**Incorporation.** The act or process of forming or creating a corporation. The formation of a legal or political body, with the quality of perpetual existence and succession, unless limited by the act of incorporation. *Abbott v. Limited Mut. Compensation Ins. Co., 30 Cal.App.2d 157, 85 P.2d 961, 964.* Incorporation procedure and requisites are governed by state statutes; a number of which are patterned on the Model Business Corporation Act. See also *Incorporator*.

In the civil law, the union of one domain to another.

See also *Articles of incorporation; Certificate of incorporation*.

**Incorporation by reference.** The method of making one document of any kind become a part of another separate document by referring to the former in the latter, and declaring that the former shall be taken and

considered as a part of the latter the same as if it were fully set out therein. If the one document is copied at length in the other, it is called "actual incorporation."

**Incorporator.** Person who joins with others to form a corporation and the successors of those who actually sign the papers of incorporation. The person or persons who execute the articles of incorporation. In modern corporation statutes only a single incorporator is required. Under such statutes the role of the incorporator is largely limited to the act of execution of the articles of incorporation, and restrictions on who may serve as incorporators have largely been eliminated. See, e.g., Rev. Model Bus. Corp. Act, § 2.01.

**In corpore** /in kórpəriy/. In body or substance; in a material thing or object.

**Incorporeal** /inkərpəriyəl/. Without body; not of material nature; the opposite of "corporeal" (*q.v.*)

**Incorporeal chattels.** A class of incorporeal rights growing out of or incident to things *personal*; such as patent-rights and copyrights.

**Incorporeal hereditaments.** See Hereditaments.

**Incorporeal property.** In the civil law, that which consists in legal right merely. The same as choses in action at common law.

**Incorporeal rights.** Rights to intangibles, such as legal actions, rather than rights to property (rights to possession or use of land).

**Incorporeal things.** Things that have no body, but are comprehended by the understanding, such as rights of inheritance, servitudes, obligations, and right of intellectual property. *Webb v. State Through Dept. of Transp. & Development, La.App. 1 Cir., 470 So.2d 994, 996.*

**Incorrigible** /inkórəjəbəl/. Incapable of being corrected, reformed, amended, or improved. With respect to juvenile offenders, unmanageable by parents or guardians. *Shinn v. Barrow, Tex.Civ.App., 121 S.W.2d 450, 451. See Delinquent child; Disobedient child.*

**Incorruptible** /inkərəptəbəl/. That which cannot be affected by immoral or debasing influences, such as bribery or the hope of gain or advancement.

**Increase.** Enlargement, growth, development, increment, addition, accession, extension, production, profit, interest, issue. The produce of land; the offspring of animals.

**Increase, affidavit of.** Affidavit of payment of increased costs, produced on taxation.

**Increase, costs of.** In old English law, it was formerly a practice with the jury to award to the successful party in an action the nominal sum of 40s. only for his costs; and the court assessed by their own officer the actual amount of the successful party's costs; and the amount so assessed, over and above the nominal sum awarded by the jury, was thence called "costs of increase." The practice has now wholly ceased.

**Increment** /inkrəmənt/. An increasing in quantity, number, value, etc. That which is gained or added; the

act or process of increasing, augmenting, or growing; enlargement, that which is added; increase; opposed to decrement. In *re Corning's Will, 160 Misc. 434, 289 N.Y.S. 1101, 1103.*

**Incremental cost.** Additional or increased costs. For example, as applied to cost of gas, includes cost of gas to distributors plus transportation costs and taxes. *Fuels Research Council Inc. v. Federal Power Commission, C.A.Ill., 374 F.2d 842.*

**Incrementum** /inkrəməntəm/. Lat. Increase or improvement, opposed to *decrementum* or abatement.

**In criminalibus, probationes debent esse luce clariores** /in krimənəyləbəs, prələyshiyowniyz débənt ésiy l(y)úwsiy kləriyóriy/. In criminal cases, the proofs ought to be clearer than light.

**In criminalibus, sufficit generalis malitia intentionis, cum facto paris gradus** /in krimənəyləbəs, sáfəsət jənərəyləs məlish(iy)ə intənsiyównəs kəm fáktow páras gréydəs/. In criminal matters or cases, a general malice of intention is sufficient [if united], with an act of equal or corresponding degree.

**In criminalibus, voluntas reputabitur pro facto** /in krimənəyləbəs vələntàs rəpyətəybətər pròw fáktow/. In criminal acts, the will will be taken for the deed.

**Incriminate** /inkríməneyt/. To charge with crime; to expose to an accusation or charge of crime; to involve oneself or another in a criminal prosecution or the danger thereof; as, in the rule that a witness is not bound to give testimony which would tend to incriminate him. In *re Dendy, Tex.Civ.App., 175 S.W.2d 297, 302. See Inculpatory; Self-incrimination.*

**Incriminating admission.** An acknowledgment of facts tending to establish guilt.

**Incriminating circumstance.** A fact or circumstance, collateral to the fact of the commission of a crime, which tends to show either that such a crime has been committed or that some particular person committed it.

**Incriminating evidence.** Evidence which tends to establish guilt of the accused or from which, with other evidence, his or her guilt may be inferred. *See also Inculpatory. Compare Exculpatory statement or evidence.*

**Incrimination.** *See Incriminate; Self-incrimination.*

**Incriminating statement.** A statement which tends to establish guilt of the accused or from which, with other facts, his guilt may be inferred, or which tends to disprove some defense.

**Encroachment** /inkrówchmənt/. An unlawful gaining upon the right or possession of another. *See Encroachment; Trespass.*

**In ejus rei testimonium** /in kyúwjs riyay tístəmówn(i)yəm/. In testimony whereof. The initial words of the concluding clause of ancient deeds in Latin, literally translated in the English forms.

**Inculpate** /inkálpeyt/inkálpəyt/. To impute blame or guilt; to accuse; to involve in guilt or crime. *See Incriminate.*



**Inculpatory** /inkálpət(ə)riy/. In the law of evidence, going or tending to establish guilt; that which tends to incriminate. *People v. White*, 35 Cal.App.2d 61, 94 P.2d 617, 621. While a "confession" admits commission of a crime, an "inculpatory statement" admits a fact, circumstance or involvement which tends to establish guilt or from which guilt may be inferred. *State v. Brumfield*, La., 329 So.2d 181, 188. *See also* Incriminate; Incriminating evidence. *Compare* Exculpatory statement or evidence.

**Incumbent** /inkámbənt/. A person who is in present possession of an office, and it is not limited, qualified or restricted by the method by which one attained office. *Keller v. Smith*, 170 Mont. 399, 553 P.2d 1002, 1007. One who is legally authorized to discharge the duties of an office. *Hilliard v. Park*, 212 Tenn. 588, 370 S.W.2d 829, 839.

In ecclesiastical law, the term signifies a clergyman who is in possession of a benefice.

**Incumber.** *See* Encumbrance.

**Incumbrance.** *See* Encumbrance.

**Incumbrances, covenant against.** *See* Covenant.

**Incur.** To have liabilities cast upon one by act or operation of law, as distinguished from contract, where the party acts affirmatively. To become liable or subject to, to bring down upon oneself, as to incur debt, danger, displeasure and penalty, and to become through one's own action liable or subject to. *Com. v. Benoit*, 346 Mass. 294, 191 N.E.2d 749, 751.

**Incurable disease.** Any disease which has reached an incurable stage in the patient afflicted therewith, according to general state of knowledge of the medical profession. Disease for which there is no known cure.

**Incurramentum** /inkərəməntəm/. L. Lat. The liability to a fine, penalty, or amercement.

**Incurred risk.** A defense to a claim of negligence, separate and distinct from defense of contributory negligence. It contemplates acceptance of a specific risk of which the plaintiff has actual knowledge. *Power v. Brodie*, Ind.App. 1 Dist., 460 N.E.2d 1241. *See also* Assumption of risk.

**In custodia legis** /in kəstəwd(i)yə liyjəs/. In the custody or keeping of the law, as when a defendant's property is seized through the remedy of attachment and is held by the sheriff pending resolution of the main action between the parties.

**In custody.** A suspect is "in custody" for purpose of determining necessity of *Miranda* warnings if police, by word or by conduct, have manifested to suspect that he is not free to leave. *Hammill v. U.S.*, D.C.App., 498 A.2d 551, 558. Such custody exists when the suspect has been deprived of his freedom in a significant way, and the place where the interrogation takes place does not conclusively establish presence or absence of custody. *U.S. v. Jones*, C.A.Ark., 630 F.2d 613, 615. *See also* *Miranda Rule*.

**Inde** /'indi/. Lat. Thence; thenceforth; thereof; thereupon; for that cause.

**Indebitatus** /indébətéytəs/. Lat. Indebted. *Nunquam indebitatus*, never indebted. The title of the plea substituted in England for *nil debet*.

**Indebitatus assumpsit** /indébətéytəs əsəm(p)sət/. Lat. Being indebted, he promised or undertook. That form of the action of *assumpsit* in which the declaration alleges a debt or obligation to be due from the defendant, and then avers that, in consideration thereof, he promised to pay or discharge the same.

**Indebiti solutio** /indébətəy səlyúwsh(iy)ow/. Lat. In the civil and Scotch law, a payment of what is not due. When made through ignorance or by mistake, the amount paid might be recovered back by an action termed "*conditio indebiti*."

**Indebitum** /indébətəm/. In the civil law, not due or owing.

**Indebtedness.** The state of being in debt, without regard to the ability or inability of the party to pay the same. The owing of a sum of money upon a certain and express agreement. Obligations yet to become due constitute indebtedness, as well as those already due. And in a broad sense and in common understanding the word may mean anything that is due and owing. *See also* Debt.

**Indecent.** Offensive to common propriety; offending against modesty or delicacy; grossly vulgar; obscene; lewd; unseemly; unbecoming; indecorous; unfit to be seen or heard. *See* Obscene.

**Indecent assault.** The act of a male person taking indecent liberties with the person of a female, without her consent and against her will, but with no intent to commit the crime of rape.

**Indecent exhibition.** Any exhibition *contra bonos mores*, as the taking a dead body for the purpose of dissection or public exhibition.

**Indecent exposure.** Exposure to sight of the private parts of the body in a lewd or indecent manner in a public place. It is an indictable offense at common law, and by statute in most states. Term refers to exhibition of those private parts which instinctive modesty, human decency or self-respect require shall be kept covered in presence of others. Exposure of person becomes indecent when it occurs at such time and place where reasonable person knows or should know his act will be open to observation of others. *State v. Borchard*, 24 Ohio App.2d 95, 264 N.E.2d 646, 650.

A person commits a misdemeanor if, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm. Model Penal Code, § 213.5.

**Indecent liberties.** In the statutory offense of "taking indecent liberties with the person of a female child," this phrase means such liberties as the common sense of society would regard as indecent and improper. According to some authorities, it involves an assault or attempt

at sexual intercourse, but according to others, it is not necessary that the liberties or familiarities should have related to the private parts of the child. *See* Obscene.

**Indecent publications.** Such as are offensive to modesty and delicacy; obscene; lewd; tending to the corruption of morals. *Dunlop v. U. S.*, 165 U.S. 486, 17 S.Ct. 375, 41 L.Ed. 799. *See* Obscene.

**Public indecency.** This phrase has no fixed legal meaning, is vague and indefinite, and cannot, in itself, imply a definite offense. The courts, by a kind of judicial legislation, in England and the United States, have usually limited the operation of the term to public displays of the naked person, the publication, sale, or exhibition of obscene books and prints, or the exhibition of a monster,—acts which have a direct bearing on public morals, and affect the body of society. *Irven v. State*, 138 Tex.Cr.R. 368, 136 S.W.2d 608, 609. *See* Obscene; also, *Indecent exposure, above*.

**Indecimable** /'indés(ə)məbəl/. In old English law, that which is not titheable, or liable to pay tithe.

**Inde data leges ne fortior omnia posset** /'indiy déytiy liyjiz niy fôrsh(iy)ər ómn(iy)ə pösət/. Laws are made to prevent the stronger from having the power to do everything.

**Indefeasible** /'indəfiyzəbəl/. That which cannot be defeated, revoked, or made void. This term is usually applied to an estate or right which cannot be defeated.

**Indefensus** /'indəfənsəs/. Lat. In old English practice, undefended; undenied by pleading. A defendant who makes no defense or plea.

**Indefinite.** Without fixed boundaries or distinguishing characteristics; not definite, determinate, or precise. Term is more synonymous with temporary than with permanent; indefinite contemplates that condition will end at unpredictable time, whereas "permanent" does not contemplate that condition will cease to exist. *Twisdale v. Womack & Martel, Fla.*, 148 So.2d 21, 23.

**Indefinite failure of issue.** A failure of issue not merely at the death of the party whose issue are referred to, but at any subsequent period, however remote. A failure of issue whenever it shall happen, sooner or later, without any fixed, certain, or definite period within which it must happen.

**Indefinite legacy.** *See* Legacy.

**Indefinite number.** A number which may be increased or diminished at pleasure.

**Indefinitum æquipollet universalis** /'indəfəniytəm èkwəpólət yúwnəvərséylas/. The undefined is equivalent to the whole.

**Indefinitum supplet locum universalis** /'indəfəniytəm sáplət lówkəm yúwnəvərséylas/. The undefined or general supplies the place of the whole.

**In delicto** /in dəliktow/. In fault. *See* In pari delicto.

**Indemnification.** In corporate law, the practice by which corporations pay expenses of officers or directors who are named as defendants in litigation relating to

corporate affairs. In some instances corporations may indemnify officers and directors for fines, judgments, or amounts paid in settlement as well as expenses. *See also* Indemnify; Indemnity; Insurance (*Directors' and officers' (D&O) liability insurance*).

**Indemnify** /'indémnəfay/. To restore the victim of a loss, in whole or in part, by payment, repair, or replacement. To save harmless; to secure against loss or damage; to give security for the reimbursement of a person in case of an anticipated loss falling upon him. To make good; to compensate; to make reimbursement to one of a loss already incurred by him. Several states by statute have provided special funds for compensating crime victims. *See also* Contribution; Hold harmless agreement; Indemnity; Reparation; Restitution; Subrogation.

**Indemnis** /'indémnəs/. Lat. Without hurt, harm, or damage; harmless.

**Indemnatee** /'indémnətiy/. The person who, in a contract of indemnity, is to be indemnified or protected by the other.

**Indemnitor** /'indémnətər/. The person who is bound, by an indemnity contract, to indemnify or protect the other.

**Indemnity** /'indémnədiy/. Reimbursement. An undertaking whereby one agrees to indemnify another upon the occurrence of an anticipated loss. *Dawson v. Fidelity & Deposit Co. of Md.*, D.C.S.D., 189 F.Supp. 854, 865. A contractual or equitable right under which the entire loss is shifted from a tortfeasor who is only technically or passively at fault to another who is primarily or actively responsible. *Moorhead v. Waelde, La.App.*, 499 So.2d 387, 389. *Compare* Contribution; Subrogation. *See also* Double indemnity; Exoneration; Indemnify.

The benefit payable under an insurance policy.

Immunity from the punishment of past offenses. *Lawson v. Halifax-Tonopah Min. Co.*, 36 Nev. 591, 135 P. 611, 613.

The term is also used to denote the compensation given to make a person whole from a loss already sustained; as where the government gives indemnity for private property taken by it for public use. *See* Condemnation; Eminent domain; Expropriation; Just compensation.

**Indemnity against liability.** As contrasted with indemnity against loss, which is an obligee's right to compensation for a loss already sustained, it is an obligee's right to indemnification at the time a liability arises. The claim arises upon the obligor's default, regardless of whether the obligee has suffered loss. *Central National Bank of Poteau v. McDaniel, Okl.App.*, 734 P.2d 1314, 1316. *See also* Subrogation.

**Indemnity bond.** An undertaking given by an obligor to reimburse an obligee for any loss suffered due to the conduct of the obligor or a third person. *State Street Bank v. U.S. Fid. & Guar.*, 181 Ill.App.3d 1081, 132 Ill.Dec. 216, 539 N.E.2d 779, 780.

**Indemnity insurance.** See Insurance.

**Indemnity lands.** Lands granted to railroads, in aid of their construction, being portions of the public domain, to be selected in lieu of other parcels embraced within the original grant, but which were lost to the railroad by previous disposition or by reservation for other purposes. See Land grant.

**Indemnity policy.** See *Indemnity insurance* and *Liability insurance* under Insurance.

**Indenization** /ɪndɛnəzɛɪʃən/. The act of making a denizen, or of naturalizing.

**Indent, n.** A certificate or indented certificate issued by the government of the United States at the close of the Revolution for the principal or interest of the public debt.

**Indent, v.** To cut in a serrated or wavy line. In old conveyancing, if a deed was made by more parties than one, it was usual to make as many copies of it as there were parties, and each was cut or indented (either in acute angles, like the teeth of a saw, or in a wavy line) at the top or side, to tally or correspond with the others, and the deed so made was called an "indenture". Anciently, both parts were written on the same piece of parchment, with some word or letters written between them through which the parchment was cut, but afterwards, the word or letters being omitted, indenting came into use, the idea of which was that the genuineness of each part might be proved by its fitting into the angles cut in the other. But at length even this was discontinued, and eventually the term served only to give name to the species of deed executed by two or more parties, as opposed to a deed-poll (*q.v.*). 2 Bl.Comm. 295.

**Indenture** /ɪndɛntʃər/. In business financing, a written agreement under which bonds and debentures are issued, setting forth form of bond, maturity date, amount of issue, description of pledged assets, interest rate, and other terms. Typically, the contract is entered into between the corporation and an indenture trustee whose responsibility is to protect the bondholders. The indenture often constitutes a mortgage on specified corporate property to secure the bonds. See *Debenture*; *Trust indenture*; *Trust Indenture Act*.

In real estate conveyancing, a deed to which two or more persons are parties, and in which these enter into reciprocal and corresponding grants or obligations towards each other; whereas a deed-poll is properly one in which only the party making it executes it, or binds himself by it as a deed, though the grantors or grantees therein may be several in number. See *Indent, v.*

In bankruptcy law, indenture means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor. Bankruptcy Code, § 101.

**Indenture of a fine.** In old English law, indentures made and engrossed at the chirographer's office and delivered to the cognizor and the cognizee, usually be-

ginning with the words: "*Hæc est finalis concordia.*" And then reciting the whole proceedings at length. 2 Bl.Comm. 351.

**Indenture of trust.** See *Trust indenture*.

**Indenture trustee.** Person or institution named in a trust indenture and charged with holding legal title to the trust property and with carrying out the terms of the indenture. Trustee under an indenture. Bankruptcy Code, § 101.

**Independence.** The state or condition of being free from dependence, subjection, or control. Political independence is the attribute of a nation or state which is entirely autonomous, and not subject to the government, control, or dictation of any exterior power.

**Independent.** Not dependent; not subject to control, restriction, modification, or limitation from a given outside source.

**Independent adjuster.** A person, firm or corporation who holds himself or itself out for employment as claims adjuster to more than one insurance company, is not a regular employee of the company, does not work exclusively for one company and is paid in each case assigned for time consumed and expenses incurred.

**Independent advice.** Concerning a trust deed or will which must be shown where a fiduciary relationship exists, means that the donor had the preliminary benefit of conferring fully and privately upon the subject of his intended gift with a person who was not only competent to inform him correctly as to its legal effect, but who was, furthermore, so disassociated from the interests of the donee as to be in a position to advise with the donor impartially and confidentially as to the consequences to himself of his proposed benefaction.

**Independent contract.** See *Contract*.

**Independent contractor.** Generally, one who, in exercise of an independent employment, contracts to do a piece of work according to his own methods and is subject to his employer's control only as to end product or final result of his work. *Hammes v. Suk*, 291 Minn. 233, 190 N.W.2d 478, 480, 481. One who renders service in course of self employment or occupation, and who follows employer's desires only as to results of work, and not as to means whereby it is to be accomplished. *Sparks v. L. D. Folsom Co.*, 217 Cal.App.2d 279, 31 Cal.Rptr. 640, 643.

An independent contractor is a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking. He may or may not be an agent. Restatement, Second, Agency, § 2.

**Independent counsel.** The Ethics in Government Act, 28 U.S.C.A. § 591 et seq., provides for a Special Division with authority to appoint independent counsel to investigate possible criminal misconduct by high level government officials. The constitutionality of this Act was

upheld in *Morrison v. Olson et al.*, 487 U.S. 654, 108 S.Ct. 2597, 101 L.Ed.2d 569.

**Independent covenant.** *See* Covenant.

**Independent intervening cause.** A conclusory label used by the common law to refer to a cause that intervenes between the defendant's behavior and a given result such that it is regarded as unfair to hold the defendant responsible for the result. *See also* Intervening cause.

**Independenter se habet assicuratio a viaggio navis** /indəpəndəntər siy hēybat əsəkəyərəysh(iy)ow èy viyèyj(iy)ow néyvəs/. The voyage insured is an independent or distinct thing from the voyage of the ship.

**Independent significance.** An act or document is said to have independent legal significance so as to carry out the wishes of the testator or decedent if it is not executed solely to avoid the requirements of a will; and, hence, what may appear to be a testamentary disposition without observing the requirements of the statutes on wills will be given effect.

**Independent source rule.** In connection with evidence, if the evidence to be introduced can be traced to a source independent of the originally illegally obtained fruits of interrogation or arrest, it is admissible. *Wong Sun v. U. S.*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441. This exception to exclusionary rule allows admission of evidence which was gained through independent source as well as tainted source. *U.S. v. Silvestri*, C.A.Mass., 787 F.2d 736, 740.

**Indestructible trust.** A trust which, inter alia, does not permit the invasion of principal by the trustees but which provides for income to A for life, with remainder to A's son's issue and for failure to A's daughter or issue. *Application of Renn*, 177 Misc. 95, 29 N.Y.S.2d 410, 412.

**Indeterminate.** That which is uncertain, or not particularly designated.

**Indeterminate conditional release.** Type of release from penal confinement after fulfillment of conditions but subject to revocation for breach of conditions of release. *See also* Parole.

**Indeterminate obligation.** *See* Obligation.

**Indeterminate sentence.** A sentence to imprisonment for the maximum period defined by law, subject to termination by the parole board or other agency at any time after service of the minimum period. Such a sentence is invalid unless specifically authorized by statute.

A sentence of imprisonment the duration of which is not fixed by the court but is left to the determination of penal authorities within minimum and maximum time limits fixed by the court of law. *See also* Sentence; Sentencing guidelines.

**Index.** A book containing references, alphabetically arranged, to the contents of a series or collection of documents or volumes; or a section (normally at the end) of a single volume or set of volumes containing such references to its contents.

Statistical indexes are also used to track or measure changes in the economy (*see, e.g.*, Consumer Price Index) and movement in stock markets (*e.g.*, Standard & Poor's Index). Such indexes are usually keyed to a base year, month, or other period of comparison.

In mortgage financing, term used to determine adjustable-rate mortgage interest rates after the discount period ends. Common indexes for ARMs are one-year Treasury securities and the national average cost of funds to savings and loan associations.

**Index animi sermo** /indəks ənəməy sérmow/. Language is the exponent of the intention. The language of a statute or instrument is the best guide to the intention.

**Index fund.** *See* Mutual fund.

**Indexing.** Adjusting or tying wages, pensions, mortgages, or other debt issues to some measure of inflation (*e.g.*, Consumer Price Index) to preserve the purchasing power of future benefits and investment earnings.

**Index offenses.** The term designating the eight classes of offenses reported annually by the FBI in its Uniform Crime Reports. They include: murder, forcible rape, robbery, burglary, aggravated assault, larceny over a specified amount, arson, and motor vehicle theft.

**Index options.** *See* Option.

**Indian Claims Commission.** The Indian Claims Commission hears and determines claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the United States.

**Indian country.** Part of public domain set apart for use, occupancy and protection of Indian peoples. *Youngbear v. Brewer*, 415 F.Supp. 807, 809. *See* Indian lands; Indian reservation; Indian tribal property.

**Indian lands.** Real property ceded to the U.S. by Indians, commonly to be held in trust for Indians. *See* Indian country; Indian reservation; Indian tribal property; Indian tribe.

**Indian reservation.** A part of public domain set aside by proper authority for use and occupation of tribe or tribes of Indians, *United States v. Parton*, D.C.N.C., 46 F.Supp. 843, 844, and under superintendence of the government which retains title to the land, *Healing v. Jones*, D.C.Ariz., 210 F.Supp. 125, 180. *See also* Executive order Indian reservation.

**Indian title.** Claim of Indian tribes of right, because of immemorial occupancy, to occupy certain territory to exclusion of any other Indians. *Northwestern Bands of Shoshone Indians v. U. S.*, Ct.Cl., 324 U.S. 335, 65 S.Ct. 690, 692, 89 L.Ed. 985. Permissive right of occupancy granted by federal government to aboriginal possessors of the land; it is mere possession not specifically recognized as ownership and may be extinguished by federal government at any time. *U. S. v. Gemmill*, C.A.Cal., 535 F.2d 1145, 1147.

**Indian tribal property.** Property in which an Indian tribe has a legally enforceable interest. Such term

refers to real property, the title to which is vested in United States but held in trust for the Indian tribe. Such property, depending on context in which the term is used, may or may not be "public property" of the United States. Chief Seattle Properties, Inc. v. Kitsap County, 86 Wash.2d 7, 541 P.2d 699, 704. See Indian lands; Indian reservation.

**Indian tribe.** A separate and distinct community or body of the aboriginal Indian race of men found in the United States. *Montoya v. U. S.*, 180 U.S. 261, 21 S.Ct. 358, 45 L.Ed. 521. An "Indian tribe" within meaning of Indian Nonintercourse Act is a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular, though sometimes ill-defined, territory. *Mashpee Tribe v. New Seabury Corp.*, D.C.Mass., 427 F.Supp. 899, 902.

For purpose of statute governing federal court jurisdiction of actions brought by Indian tribe or band, "Indian tribes or bands" are separate communities of citizens of Indian descent, possibly with a common racial origin, possessing the power of a sovereign to regulate their internal and social relations. *Navajo Tribal Utility Authority v. Arizona Dept. of Revenue*, C.A.Ariz., 608 F.2d 1228, 1231.

**Indicare** /indəkəriy/. Lat. In the civil law, to show or discover. To fix or tell the price of a thing. To inform against; to accuse.

**Indicatif.** An abolished English writ by which a prosecution was in some cases removed from a court-christian to the queen's bench.

**Indication.** In the law of evidence, a sign or token; a fact pointing to some inference or conclusion. See Inference.

**Indicative evidence.** This is not evidence properly so called, but the mere suggestion of evidence proper, which may possibly be procured if the suggestion is followed up. See Inference.

**Indicavit** /indəkéyvat/. In old English practice, a writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by the clerk of another patron, for tithes amounting to a fourth part of the value of the living. 3 Bl.Comm. 91. So termed from the emphatic word of the Latin form.

**Indicia** /indís(h)(i)yə/. Signs; indications. Circumstances which point to the existence of a given fact as probable, but not certain. For example, "*indicia* of partnership" are any circumstances which would induce the belief that a given person was in reality, though not ostensibly, a member of a given firm. See Circumstantial evidence.

The term is much used in the civil law in a sense nearly or entirely synonymous with circumstantial evidence. It denotes facts which give rise to inferences, rather than the inferences themselves.

**Indicia of title.** Generally, a document evidencing title to property, real or personal; e.g. carbon copy of bill of sale to automobile. *Edwards v. Central Motor Co.*, 38 Tenn.App. 577, 277 S.W.2d 413, 416.

**Indicium** /indís(h)(i)yəm/. In the civil law, a sign or mark. A species of proof, answering very nearly to the circumstantial evidence of the common law.

**Indict** /indáyť/. See Indictment.

**Indictable offense** /indáyťəbəl/. Subject to being indicted. An offense, the nature of which is proper or necessary to be prosecuted by process of indictment. Indictable offenses embrace common-law offenses or statutory offenses the punishments for which are infamous. See also Indictment.

**Indicted** /indáyťəd/. Charged in an indictment with a criminal offense. See Indictment; Jury.

**Indictee** /indáyťiy/. A person indicted.

**Indictio** /indíksh(i)yow/. In old public law, a declaration; a proclamation. *Indictio belli*, a declaration or indiction of war. An indictment.

**Indictment** /indáyťmənt/. An accusation in writing found and presented by a grand jury, legally convoked and sworn, to the court in which it is impaneled, charging that a person therein named has done some act, or been guilty of some omission, which by law is a public offense, punishable on indictment. A formal written accusation originating with a prosecutor and issued by a grand jury against a party charged with a crime. An indictment is referred to as a "true bill", whereas failure to indict is called a "no bill".

An indictment is merely a charge which must be proved at trial beyond a reasonable doubt before defendant may be convicted. *U. S. v. Zovluck*, D.C.N.Y., 274 F.Supp. 385, 390. An indictment is only an accusation; it is the physical means by which a defendant is brought to trial. Its sole purpose is to identify defendant's alleged offense, and it is not evidence that offense charged was committed and may not be considered as evidence by jury during its deliberations. *U. S. v. Glaziou*, C.A.N.Y., 402 F.2d 8, 15.

An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information. Fed.R.Crim.P. 7.

See also Grand jury; Information; Presentment; True bill.

*Joinder of indictments.* See Joinder.

*Joint indictment.* When several offenders are joined in the same indictment, as when principals in the first and second degree, and accessories before and after the fact, are all joined in the same indictment.

**Indictment de felony est contra pacem domini regis, coronam et dignitatem suam, in genere et non in individuo; quia in Anglia non est interregnum** /indáyťmənt diy féloniy ést kóntrə péysəm dóməny ríyəs, kərównəm èt dignətéytəm s(y)úwəm, in jéneriy èt nón in indəvidyúwəw, kwáyə in éngliyə nón ést intərəgnəm/. Indictment for felony is against the peace

of our lord the king, his crown and dignity in general, and not against his individual person; because in England there is no interregnum.

**Indictor** /indáytor/. He who causes another to be indicted. The latter is sometimes called the "indicttee."

**In diem** /in dáyem/. For a day; for the space of a day. *See also* Per diem.

**Indifferent**. Impartial; unbiased; disinterested.

**Indigena** /indijənə/. In old English law, a subject born; one born within the realm, or naturalized by act of parliament. The opposite of "*alienigena*" (*q.v.*).

**Indigent** /indajənt/. In a general sense, one who is needy and poor, or one who has not sufficient property to furnish him a living nor anyone able to support him to whom he is entitled to look for support. Term commonly used to refer to one's financial ability, and ordinarily indicates one who is destitute of means of comfortable subsistence so as to be in want. Powers v. State, 194 Kan. 820, 402 P.2d 328, 332.

**Indigent defendant**. A person indicted or complained of who is without funds or ability to hire a lawyer to defend him is, in most instances, entitled to appointed counsel to represent him at every stage of the criminal proceedings, through appeal, consistent with the protection of the Sixth and Fourteenth Amendments to U.S. Const. Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799; Fed.R.Crim.P. 44; 18 U.S.C.A. § 3006A. Provision also may be made for waiver of court costs and fees for indigent defendants in appealing a case (*e.g.* Fed.R.App.P. 24); and, the financial condition of the defendant will be considered in imposing fines (see 18 U.S.C.A. § 3572). *See also* Counsel, right to; In forma pauperis; Pauper's oath.

**Indignity** /indignəti/. In the law of divorce, a species of cruelty addressed to the mind, sensibilities, self-respect, or personal honor of the subject, rather than to the body. "Indignities" justifying grant of divorce may consist of vulgarity, unmerited reproach, habitual contumely, studied neglect, intentional incivility, manifest disdain, abusive language, or malignant ridicule. Hargrove v. Hargrove, Pa.Super., 381 A.2d 143, 148. *See* Mental cruelty.

**Indirect**. Not direct in relation or connection; not having an immediate bearing or application; not related in the natural way. Circuitous, not leading to aim or result by plainest course or method or obvious means, roundabout, not resulting directly from an act or cause but more or less remotely connected with or growing out of it. Cahen Trust v. U.S., C.A.III., 292 F.2d 33, 36. Almost always used in law in opposition to "direct," though not the only antithesis of the latter word, as the terms "collateral" and "cross" are sometimes used in contrast with "direct."

As to *indirect* Confession; Contempt; Costs, and Tax, see those titles.

**Indirect attack**. *See* Collateral attack.

**Indirect evidence**. Such evidence which only tends to establish the issue by proof of various facts sustaining by

their consistency the hypothesis claimed. It consists of both inferences and presumptions. Proof of collateral circumstances, from which a fact in controversy, not directly attested to by direct evidence (witnesses or documents), may be inferred. Proof of some other fact or facts from which, taken either singly or collectively, existence of particular fact in question may be inferred as necessary or probable consequence. United Textile Workers of America, AFL-CIO, Local Union No. 120 v. Newberry Mills, Inc., D.C.S.C., 238 F.Supp. 366, 372. *See also* Circumstantial evidence; Inference; Presumption.

**Indirect tax**. A tax upon some right or privilege or corporate franchise; *e.g.* privilege tax; franchise tax. Madison Suburban Utility Dist. of Davidson County v. Carson, 191 Tenn. 300, 232 S.W.2d 277, 280. A tax laid upon the happening of an event as distinguished from its tangible fruits. Chickering v. Commissioner of Internal Revenue, C.C.A.Mass., 118 F.2d 254, 258.

**In disjunctivis sufficit alteram partem esse veram** /in disjəŋ(k)táyvəs sɔ́fəsət óltərəm pártəm ésiy vírəm/. In disjunctives it is sufficient that either part be true. Where a condition is in the disjunctive, it is sufficient if either part be performed.

**Indispensable**. That which cannot be spared, omitted, or dispensed with.

**Indispensable evidence**. That without which a particular fact cannot be proved.

**Indispensable parties**. One without whose presence no adequate judgment can be entered determining rights of parties before a court. Insurance Co. of North America v. Allied Crude Vegetable Oil Refining Corp., 89 N.J.Super. 518, 215 A.2d 579, 588. Those who have such an interest in the controversy that the court cannot render a final decree without affecting their interests. Ohmart v. Dennis, 188 Neb. 260, 196 N.W.2d 181, 184. Those who must be joined because nonjoinder prejudices their rights and those of parties already joined such that the action cannot continue without them. Wright Farms Const., Inc. v. Kreps, D.C.Vt., 444 F.Supp. 1023, 1028. Those without whom the action cannot proceed, and must be joined even if by such joinder the court loses jurisdiction over the controversy. Milligan v. Anderson, C.A.Okl., 522 F.2d 1202, 1205. Fed.R.Civil P. 19. *See* Joinder (*Joinder of parties*); Necessary Parties; Parties.

**Indistanter** /indəstántər/. Forthwith; without delay.

**Inditee** /indayti/. L. Fr. In old English law, a person indicted.

**Individual**. As a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons. *See also* Person.

As an adjective, "individual" means pertaining or belonging to, or characteristic of, one single person, either in opposition to a firm, association, or corporation, or considered in his relation thereto.

**Individual assets.** In the law of partnership, property belonging to a member of a partnership as his separate and private property, apart from the assets or property belonging to the firm as such or the partner's interest therein.

**Individual debts.** Such as are due from a member of a partnership in his private or personal capacity, as distinguished from those due from the firm or partnership.

**Individually.** Separately and personally, as distinguished from jointly or officially, and as opposed to collective or associate action or common interest.

**Individual proprietorship.** See Sole proprietorship.

**Individual retirement account (I.R.A.).** Individuals with earned income are permitted, under certain circumstances, to set aside a limited amount of such income per year for a retirement account. The amount so set aside can be deducted by the taxpayer and is subject to income tax only upon withdrawal. The Internal Revenue Code limits the amount of this contribution that can be deducted for adjusted gross income depending upon (1) whether the taxpayer or spouse is an active participant in an employer-provided qualified retirement plan and (2) the magnitude of the taxpayer's adjusted gross income before the IRA contribution is considered. I.R.C. § 219. Specific statutory requirements are established for the establishment of the trust or custodial account, contributions, and withdrawal of such amounts with penalties provided for failure to comply. I.R.C. § 408(a). See also Keogh Plan.

**Individual system of location.** A term formerly used in some states to designate the location of public lands by surveys, in which the land called for by each warrant was separately surveyed.

**Indivisible.** Not susceptible of division or apportionment; inseparable; entire. Thus, a contract, covenant, consideration, etc., may be divisible or indivisible; *i.e.*, separable or entire. See also Contract.

**Indivisum** /ɪndəˈvɪzəm/. Lat. That which two or more persons hold in common without partition; undivided.

**Indorsee** /ɪndɔːrsi/ɪndɔːrsi/. The person to whom or for whose benefit an instrument, document or other commercial paper is indorsed, usually referring to the indorser's transferee.

**Indorsee in due course.** An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

**Indorsement** /ɪndɔːsmənt/. The act of a payee, drawee, accommodation indorser, or holder of a bill, note, check, or other negotiable instrument, in writing his name upon the back of the same, with or without further or qualifying words, whereby the property in the same is assigned and transferred to another. U.C.C. § 3-202 et seq.

The signature on an instrument of a person who has the liability thereon of an indorser. Any signature in an ambiguous capacity is an indorsement. U.C.C. § 3-402. As applied to documents, the term means the signature thereon of a person to whose order the document runs.

An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof. An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment. U.C.C. § 3-202.

**Accommodation indorsement.** In the law of negotiable instruments, one made by a third person without any consideration, but merely for the benefit of the holder of the instrument, or to enable the maker to obtain money or credit on it. Unless otherwise explained, it is understood to be a loan of the indorser's credit without restriction. Accommodation indorser is not liable to party accommodated. U.C.C. § 3-415.

**Blank indorsement.** One made by the mere writing of the indorser's name on the back of the note or bill, without mention of the name of any person in whose favor the indorsement is made, but with the implied understanding that any lawful holder may fill in his own name above the indorsement if he so chooses. An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. U.C.C. § 3-204(2), (3).

**Collection indorsement.** See that title.

**Conditional indorsement.** An indorsement that is restrictive because it purports to limit when the instrument can be paid or further transferred, or to condition payment or further transfer on the occurrence of a specified event. One by which the indorser annexes some condition (other than the failure of prior parties to pay) to his liability. The condition may be either present or subsequent. Special indorsement with additional words of condition. U.C.C. § 3-205(a).

**Full indorsement.** One by which the indorser orders the money to be paid to some particular person by name; it differs from a blank indorsement, which consists merely in the name of the indorser written on the back of the instrument.

**General indorsement.** See *Blank indorsement, above.*

**Irregular indorsement.** An indorsement out of the chain of title which is ordinarily added to an instrument prior to delivery to the payee. Also known as an anomalous indorsement. *E.g.*, M makes a note payable to P; M is the maker and P is the payee. If when the note is executed by M, I also signs in the margin of the instru-

ment, or on the back of it, its indorsement is irregular. An irregular indorsement is notice of accommodation status. U.C.C. § 3-415(4).

**Qualified indorsement.** One which restrains or limits, or qualifies or enlarges, the liability of the indorser, in any manner different from what the law generally imports as his true liability, deducible from the nature of the instrument. *Stover Bank v. Welpman*, Mo.App., 284 S.W. 177, 180. A transfer of a bill or promissory note to an indorsee, without any liability to the indorser. Such is accomplished by adding after signature words such as "without recourse" or the like. U.C.C. §§ 3-414(1), 3-417(2)(3).

**Restrictive indorsement.** One which stops the negotiability of the instrument, or which contains such a definite direction as to the payment as to preclude the indorsee from making any further transfer of the instrument. An indorsement is restrictive which either: (a) is conditional; or (b) purports to prohibit further transfer of the instrument; or (c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or (d) otherwise states that it is for the benefit or use of the indorser or of another person. U.C.C. § 3-205.

**Special indorsement.** An indorsement that specifies a person to whom or to whose order the instrument is thereafter payable, U.C.C. § 3-204(1), or, in the case of a document, as the person to whom or to whose order the goods should be delivered. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

**Trust indorsement.** An indorsement of an instrument that is restrictive because it states that it is for the benefit or use of the indorser or of another person. U.C.C. § 3-205(d).

**Unauthorized indorsement.** One made without actual, implied or apparent authority and includes a forgery. U.C.C. § 3-404.

**Without recourse.** See *Qualified indorsement, above.*

**Indorser** /əndórsər/. Person who indorses; *i.e.*, being the payee or holder, writes his name on the back of a negotiable instrument. One who signs his name as payee on the back of a check to obtain the cash or credit represented on its face.

A signer of an instrument who engages to pay it only upon dishonor and any necessary notice of dishonor and protest. U.C.C. § 3-414(1). As applied to documents, the term means the person who signs a document that runs to her order.

**In dorso** /in dórsow/. On the back. 2 Bl.Comm. 468. *In dorso recordi*, on the back of the record. Hence the English *indorse, indorsement, etc.*

**In dubiis, benigniora praeferenda sunt** /in d(y)úwbiyəs, bəniɡniyórə prəfərəndə sənt/. In doubtful cases, the more favorable views are to be preferred; the more liberal interpretation is to be followed.

**In dubiis, magis dignum est accipiendum** /in d(y)úwbiyəs, méyʒəs díɡnəm èst əksipiýəndəm/. In doubtful cases, the more worthy is to be accepted.

**In dubiis, non praesumitur pro testamento** /in d(y)úwbiyəs, nòn prəz(y)úwmətər pròw tɛstaméntow/. In cases of doubt, the presumption is not in favor of a will.

**In dubio** /in d(y)úwbiyow/. In doubt; in a state of uncertainty, or in a doubtful case.

**In dubio, hæc legis constructio quam verba ostendunt** /in d(y)úwbiyow, híyk líyʒəs kənstráks(h)iyow kwəm vérbə əsténdənt/. In a case of doubt, that is the construction of the law which the words indicate.

**In dubio, pars mitior est sequenda** /in d(y)úwbiyow, párz máysh(iy)ər èst səkúwəndə/. In doubt, the milder course is to be followed.

**In dubio, pro lege fori** /in d(y)úwbiyow, pròw líyji fòray/. In a doubtful case, the law of the forum is to be preferred. "A false maxim."

**In dubio, sequendum quod tutius est** /in d(y)úwbiyow, səkúwəndəm kwòd t(y)úwsh(iy)əs èst/. In doubt, the safer course is to be adopted.

**Indubitable proof** /ind(y)úwbətəbəl prúwf/. Evidence which is not only found credible, but is of such weight and directness as to make out the facts alleged beyond a doubt. See *Prima facie*.

**Induce.** To bring on or about, to affect, cause, to influence to an act or course of conduct, lead by persuasion or reasoning, incite by motives, prevail on. See also *Seduce*.

**Inducement.** In contracts, the benefit or advantage which the promisor is to receive from a contract is the inducement for making it. To cause party to choose one course of conduct rather than another. *Stoltz v. Delaware Real Estate Com'n*, Del.Super., 473 A.2d 1258, 1264.

In criminal law, motive; that which leads or tempts to the commission of crime. For purposes of entrapment defense, may be defined as government conduct which creates substantial risk that undisposed person or otherwise law-abiding citizen would commit the offense. *U.S. v. Ortiz*, C.A.Utah, 804 F.2d 1161, 1165. See *Entrapment*.

**Induciæ** /ind(y)úws(h)iyiy/. In international law, a truce; a suspension of hostilities; an agreement during war to abstain for a time from warlike acts.

**Induct.** To put in enjoyment or possession, especially to introduce into possession of an office or benefice, with customary ceremonies. To bring in, initiate; to put formally in possession; to enter formerly into military service; to inaugurate or install. See *Induction*.

**Inductio** /indəksh(iy)ow/. Lat. In the civil law, obliteration, by drawing the pen over the writing.

**Induction.** Act or process of inducting; *e.g.* process of inducting civilian into military service.

**Inducti sunt in carcerem et imparcati** /indəktay sánt in kársərəm èt imparkéytay/. See *Imparcare*.



**Indulto** /indóltow/. In Ecclesiastical law, a dispensation granted by the pope to do or obtain something contrary to the common law.

In old Spanish law, the condonation or remission of the punishment imposed on a criminal for his offense. This power was exclusively vested in the king.

**Indument** /indyúwmənt/. Endowment (*q.v.*)

**In duplo** /in d(y)úwplow/. In double. *Damna in duplo*, double damages.

**Industrial development bonds.** See Bond.

**Industrial disease.** In law of worker's compensation, physical disorder which is caused by or is incident to particular occupation. Lumbermen's Mut. Cas. Co. v. Rozan, 92 N.H. 328, 30 A.2d 474, 475. See also Occupational disease.

**Industrial goods.** Goods which are destined and designed to produce other goods as contrasted with consumer goods.

**Industrial relations.** Term includes all phases of relations between employer and employee, including collective bargaining, safety, employee benefits, etc.

**Industrial revenue bond.** See Bond.

**Industriam, per** /pər indástriyám/. Lat. A qualified property in animals *feræ naturæ* may be acquired *per industriam*, i.e., by a man's reclaiming and making them tame by art, industry, and education; or by so confining them within his own immediate power that they cannot escape and use their natural liberty.

**Industry.** Any department or branch of art, occupation, or business conducted as a means of livelihood or for profit; especially, one which employs much labor and capital and is a distinct branch of trade. *Dessen v. Department of Labor and Industries of Washington*, 190 Wash. 69, 66 P.2d 867, 869.

Term is susceptible of more than one meaning: it may be defined in terms of end uses for which various products compete; it may also denote an aggregate of enterprises employing similar production and marketing facilities and producing products having markedly similar characteristics. *U.S. v. Continental Can Co.*, N.Y., 378 U.S. 441, 84 S.Ct. 1738, 1740, 12 L.Ed.2d 953.

**Industry wide liability.** See Enterprise liability.

**In eadem causa** /in iyédəm kóza/. In the same state or condition.

**Inebriate** /əniybriyət/. A person under the influence of or addicted to the use of intoxicating liquors.

**Ineligibility.** Disqualification or legal incapacity to be elected to an office or appointed to a particular position. Thus, an alien or naturalized citizen is ineligible to be elected president of the United States. This incapacity arises from various causes, and a person may be incapable of being elected to one office who may be elected to another; the incapacity may also be perpetual or temporary. See also Incapacity.

**In emulationem vicini** /in èm(y)àlèyshiyównəm vésáy-nay/. In envy or hatred of a neighbor. Where an act is done, or action brought, solely to hurt or distress another, it is said to be *in emulationem vicini*.

**In eo quod plus sit, semper inest et minus** /in iyow kwòd plás sít, sémpər inèst èt máynəs/. In the greater is always included the less also.

**In equity.** In a court of equity, as distinguished from a court of law; in the purview, consideration, or contemplation of equity; according to the doctrines of equity. See Equitable; Equity.

**Inescapable peril.** Within last clear chance doctrine, means peril which the plaintiff is helpless to avoid by his own efforts, but which requires action on part of defendant to avert it. *Melenson v. Howell*, 344 Mo. 1137, 130 S.W.2d 555, 560.

**In esse** /in ésy/. In being. Actually existing. Distinguished from *in posse*, which means "that which is not, but may be." A child before birth is *in posse*; after birth, *in esse*.

**Inesse potest donationi, modus, conditio sive causa; ut modus est; si conditio; quia causa** /inésy pówtəst dənèyshiyównay, mówdəs, kəndísh(iy)ow sáyviy kóza; št mówdəs èst; sáy kəndísh(iy)ow; kwáyə kóza/. In a gift there may be manner, condition, and cause; as [*ut*] introduces a manner; if [*si*], a condition; because [*quia*], a cause.

**In est de jure** /inèst diy júriy/. (Lat.) It is implied of right or by law.

**In evidence.** Included in the evidence already adduced. The "facts in evidence" are such as have already been proved in the cause.

**Inevitable.** Incapable of being avoided; fortuitous; transcending the power of human care, foresight, or exertion to avoid or prevent, and therefore suspending legal relations so far as to excuse from the performance of contract obligations, or from liability for consequent loss.

**Inevitable accident.** An unavoidable accident; one produced by an irresistible physical cause; an accident which cannot be prevented by human skill or foresight, but results from natural causes, such as lightning or storms, perils of the sea, inundations or earthquakes, or sudden death or illness. By irresistible force is meant an interposition of human agency, from its nature and power absolutely uncontrollable.

An accident is "inevitable", so as to preclude recovery on ground of negligence, if person by whom it occurs neither has nor is legally bound to have sufficient power to avoid it or prevent its injuring another. *Stephens v. Virginia Elec. & Power Co.*, 184 Va. 94, 34 S.E.2d 374, 377.

The highest degree of caution that can be used is not required. It is enough that it is reasonable under the circumstances; such as is usual in similar cases, and has been found by long experience to be sufficient to answer the end in view,—the safety of life and property. Inev-

itable accident is only when the disaster happens from natural causes, without negligence or fault on either side, and when both parties have endeavored, by every means in their power, with due care and caution, and with a proper display of nautical skill, to prevent the occurrence of the accident. The Philip J. Kenny, C.C.A. N.J., 60 F.2d 457, 458.

See also Act of God; Unavoidable accident.

**Inevitable discovery rule.** An exception to the exclusionary rule which permits evidence to be admitted in a criminal case, even though it was obtained unlawfully, when the government can show that discovery of the evidence by lawful means was inevitable. U.S. v. Gorski, C.A.Conn., 852 F.2d 692, 695.

**In excambio** /in əkskæmb(i)yow/. In exchange. Formal words in old deeds of exchange.

**Inexcusable neglect.** Such neglect which will preclude setting aside of default judgment, implies something more than the unintentional inadvertence or neglect common to all who share the ordinary frailties of mankind. Montez v. Tonkawa Village Apartments, 215 Kan. 59, 523 P.2d 351, 356.

**In execution and pursuance of** /in əksəkyúwshən ənd pərs(y)úwəns òv/. Words used to express the fact that the instrument is intended to carry into effect some other instrument, as in case of a deed in execution of a power.

**In exitu** /in égzət(y)uw/. In issue. *De materia in exitu*, of the matter in issue.

**In expositione instrumentorum, mala grammatica, quod fieri potest, vitanda est** /in èkspəzishiyówniy instrəməntórəm, mælə grəmətəkə, kwòd fáyərəy pówtəst, vətəndə èst/. In the construction of instruments, bad grammar is to be avoided as much as possible.

**In extenso** /in əkstənsow/. In extension; at full length; from beginning to end, leaving out nothing.

**In extremis** /in əkstriyməs/. In extremity; in the last extremity; in the last illness. *Agens in extremis*, being in extremity. Declarations *in extremis*, dying declarations. In extremis does not always mean in articulo mortis. In re Mallery's Will, 127 Misc. 784, 217 N.Y.S. 489, 492.

**In facie curiæ** /in féys(h)iy(iy) kyúriy(iy)/. In the face of the court.

**In facie ecclesiæ** /in féys(h)iy(iy) əklízyiy(iy)/. In the face of the church. A term applied in the law of England to marriages, which are required to be solemnized in a parish church or public chapel, unless by dispensation or license.

**In faciendo** /in fèys(h)iyéndow/. In doing; in feaſance; in the performance of an act.

**In fact.** Actual, real; as distinguished from implied or inferred. Resulting from the acts of parties, instead of from the act or intendment of law.

**In facto** /in fáktow/. In fact; in deed. *In facto dicit*, in fact says.

**In facto quod se habet ad bonum et malum, magis de bono quam de malo lex intendit** /in fáktow kwòd siy héybat əd bównəm èt mæləm, méyjas diy bównow kwəm diy mælow léks ənténdət/. In an act or deed which admits of being considered as both good and bad, the law intends more from the good than from the bad; the law makes the more favorable construction.

**Infamia** /inféym(i)yə/. Lat. Infamy; ignominy or disgrace.

By *infamia juris* is meant infamy established by law as the consequence of crime; *infamia facti* is where the party is supposed to be guilty of such crime, but it has not been judicially proved.

**Infamis** /inféyməs/. Lat. In Roman law, a person whose right of reputation was diminished (involving the loss of some of the rights of citizenship) either on account of his infamous avocation or because of conviction for crime.

**Infamous** /infəməs/. Shameful or disgraceful. Possessing notorious reputation. Famous or well known in a derogatory sense.

**Infamous crime.** See Crime.

**Infamous punishment.** See Punishment.

**Infamy** /infəmiy/. Condition of being infamous. A qualification of a man's legal status produced by his conviction of an infamous crime and the consequent loss of honor and credit, which, at common law, rendered him incompetent as a witness, and by statute in some jurisdictions entails other disabilities. See Civil death.

**Infancy.** Minority; the state of a person who is under the age of legal majority,—at common law, twenty-one years; now, generally 18 years. According to the sense in which this term is used, it may denote the condition of the person merely with reference to his years, or the contractual disabilities which non-age entails, or his status with regard to other powers or relations.

At common law, children under the age of seven are conclusively presumed to be without criminal capacity, those who have reached the age of fourteen are treated as fully responsible, while as to those between the ages of seven and fourteen there is a rebuttable presumption of criminal incapacity. Many states have made some change by statute in the age of criminal responsibility for minors. In addition, all jurisdictions have adopted juvenile court legislation providing that some or all criminal conduct by those persons under a certain age (usually eighteen) must or may be adjudicated in the juvenile court rather than in a criminal prosecution.

See also Child; Children; Minor.

**Infangenthef** /infəŋənθiyf/. In old English law, a privilege of lords of certain manors to judge any thief taken within their fee. See Outfangthef.

**Infans** /infənz/. Lat. In the civil law, a child under the age of seven years; so called "*quasi impos fandi*" (as not having the faculty of speech).

**Infant.** See Child; Children; Infancy; Minor.

**Infantia** /infəns(h)iyə/. Lat. In the civil law, the period of infancy between birth and the age of seven years.

**Infanticide** /infəntəsəyd/. The murder or killing of an infant soon after its birth. The fact of the birth distinguishes this act from "feticide" or "procuring abortion," which terms denote the destruction of the *fetus* in the womb. See also Prolicide.

**Infanzon** /infənsówn/. In Spanish law, a person of noble birth, who exercises within his domains and inheritance no other rights and privileges than those conceded to him.

**In favorabilibus magis attenditur quod prodest quam quod nocet** /in fəyvrəbíləbəs méyʃəs əténdətər kwəd prówdést kwəm kwód nósət/. In things favored, what profits is more regarded than what prejudices.

**In favorem libertatis** /in fəvórəm libértéytəs/. In favor of liberty.

**In favorem vitæ** /in fəvórəm váytiy/. In favor of life.

**In favorem vitæ, libertatis, et innocentia, omnia præsumuntur** /in fəvórəm váytiy, libértéytəs, éd inəsénshiyiy, ómniyə priyzyémántər/. In favor of life, liberty, and innocence, every presumption is made.

**Infensare curiam** /infənsəriy kyúriyəm/. Lat. An expression applied to a court when it suggested to an advocate something which he had omitted through mistake or ignorance.

**In feodo** /in fyúwdow/. In fee. *Seisitus in feodo*, seised in fee.

**Infieffment** /infyífmənt/°féf°. The act or instrument of fieffment.

**Inference**. In the law of evidence, a truth or proposition drawn from another which is supposed or admitted to be true. A process of reasoning by which a fact or proposition sought to be established is deduced as a logical consequence from other facts, or a state of facts, already proved or admitted. A logical and reasonable conclusion of a fact not presented by direct evidence but which, by process of logic and reason, a trier of fact may conclude exists from the established facts. *State v. Hyde*, Mo.App., 682 S.W.2d 103, 106. *Computer Identics Corp. v. Southern Pacific Co.*, C.A.Mass., 756 F.2d 200, 204. Inferences are deductions or conclusions which with reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

See also Reasonable inference rule. Compare Presumption.

**Inference on inference, rule of**. Means that one presumption or inference may not be based upon another. *McManimen v. Public Service Co. of Northern Illinois*, 317 Ill.App. 649, 47 N.E.2d 385.

**Inferential**. In the law of evidence, operating in the way of inference; argumentative. Presumptive evidence is sometimes termed "inferential".

**Inferential facts**. Such as are established not directly by testimony or other evidence, but by inferences or conclusions drawn from the evidence. See Inference.

**Inferior**. One who, in relation to another, has less power and is below him; one who is bound to obey another. He who makes the law is the superior; he who is bound to obey it, the inferior.

**Inferior court**. This term may denote any court subordinate to the chief appellate tribunal in the particular judicial system (e.g. trial court); but it is also commonly used as the designation of a court of special, limited, or statutory jurisdiction, whose record must show the existence and attaching of jurisdiction in any given case, in order to give presumptive validity to its judgment.

**Infieudation** /infyúwdéyshən/. The placing in possession of a freehold estate; also the granting of tithes to laymen.

**Inficiari** /infis(h)iyéray/. Lat. In the civil law, to deny; to deny one's liability; to refuse to pay a debt or restore a pledge; to deny the allegation of a plaintiff; to deny the charge of an accuser.

**Inficiatio** /infis(h)iyéysh(iy)ow/. Lat. In the civil law, denial; the denial of a debt or liability; the denial of the claim or allegation of a party plaintiff.

**In fictione juris semper æquitas existit** /in fikshiyówniy júrs sémpər iykwətəs əgzistət/. In the fiction of law there is always equity; a legal fiction is always consistent with equity.

**Infidel**. One who does not believe in the existence of a God who will reward or punish in this world or in that which is to come. One who professes no religion that can bind his conscience to speak the truth. One who does not recognize the inspiration or obligation of the Holy Scriptures, or generally recognized features of the Christian religion.

**Infidelis** /infədíyləs/°dél°. In old English law, an infidel or heathen.

In feudal law, one who violated fealty.

**Infidelitas** /infədélətəs/. In feudal law, infidelity; faithlessness to one's feudal oath.

**Infidelity**. Unfaithfulness in marriage; usually referring to commission of adultery by one spouse.

**Infiduciare** /infəd(y)úws(h)iyériy/. In old European law, to pledge property.

**In fieri** /in fáyeray/. In being made; in process of formation or development; hence, incomplete or inchoate. Legal proceedings are described as *in fieri* until judgment is entered.

**Infight** /infayt/. Sax. An assault made on a person inhabiting the same dwelling.

**In fine** /in fáyn(iy)/. Lat. At the end. Used, in references, to indicate that the passage cited is at the *end* of a book, chapter, section, etc.

**Infinitum in jure reprobatur** /infənáyɾəm in júriy rèprábéyɾar/. As applied to litigation, that which is endless is reprobated in law.

**Infirm.** Weak, feeble. Lacking moral character or weak of health. The testimony of an "infirm" witness may be taken *de bene esse* in some circumstances. *See also* Incapacity.

**Infirmative.** In the law of evidence, having the quality of diminishing force; having a tendency to weaken or render infirm. Exculpatory is used by some authors as synonymous.

**Infirmative consideration.** In the law of evidence, a consideration, supposition, or hypothesis of which the criminative facts of a case admit, and which tends to weaken the inference or presumption of guilt deducible from them.

**Infirmative fact.** In the law of evidence, a fact set up, proved, or even supposed, in opposition to the criminative facts of a case, the tendency of which is to weaken the force of the inference of guilt deducible from them.

**Infirmative hypothesis.** A term sometimes used in criminal evidence to denote an hypothesis or theory of the case which assumes the defendant's innocence, and explains the criminative evidence in a manner consistent with that assumption.

**Infirmity.** Disability; feebleness. In an application for insurance is an ailment or disease of a substantial character, which apparently in some material degree impairs the physical condition and health of the applicant and increases the chance of his death or sickness and which if known, would have been likely to deter the insurance company from issuing the policy. *See also* Incapacity.

**Inflation.** An overall rise in prices which results in a decline in the real value of the dollar.

**Inflation rate.** Rate of change in prices of goods and services as measured for a particular period. The primary indexes for measuring the rate of change are the Consumer Price Index and Producer Price Index.

**Influence.** Power exerted over others. To affect, modify or act upon by physical, mental or moral power, especially in some gentle, subtle, and gradual way. *State v. Robertson*, 241 La. 249, 128 So.2d 646, 648. *See also* Coercion; Duress; Undue influence.

**Informal.** Deficient in legal form; inartificially drawn up.

**Informal contract.** A contract that does not require a specified form or formality for its validity. Generally refers to an oral contract as contrasted with a written contract or specialty instrument. *See* Contract.

**Informality.** Want of legal form.

**Informal proceedings.** Proceedings less formal than a normal trial; *e.g.* small claims or conciliation court, administrative hearings, etc. Those conducted without prior notice to interested persons by an officer of the Court acting as registrar for probate of a will or appoint-

ment of a personal representative. Uniform Probate Code, § 1-201(19).

**Informant.** *See* Informer.

**In forma pauperis** /in fórmə pópəras/. In the character or manner of a pauper. Describes permission given to a poor person (*i.e.* indigent) to proceed without liability for court fees or costs. An indigent will not be deprived of his rights to litigate and appeal; if the court is satisfied as to his indigence he may proceed without incurring costs or fees of court. Fed.R.App.P. 24. *See also* Counsel, right to; Indigent defendant; Pauper's oath.

**Information.** An accusation exhibited against a person for some criminal offense, without an indictment. An accusation in the nature of an indictment, from which it differs only in being presented by a competent public officer on his oath of office, instead of a grand jury on their oath. A written accusation made by a public prosecutor, without the intervention of a grand jury. *Salvail v. Sharkey*, 108 R.I. 63, 271 A.2d 814, 817. Function of an "information" is to inform defendant of the nature of the charge made against him and the act constituting such charge so that he can prepare for trial and to prevent him from being tried again for the same offense. *People v. Cooper*, 35 Misc.2d 90, 229 N.Y.S.2d 287, 288.

While Fifth Amendment of U.S. Constitution requires federal government to prosecute infamous crimes only upon presentment of grand jury indictment, in most states the information may be used in place of grand jury indictment to bring a person to trial. As regards federal crimes, see Fed.R.Crim.P. 7. *See also* Arraignment; Indictment; Preliminary hearing. As to joinder of informations, *see* Joinder.

**Information and belief.** A standard legal term which is used to indicate that the allegation is not based on the firsthand knowledge of the person making the allegation, but that person nevertheless, in good faith, believes the allegation to be true. A request for a search warrant may be based upon information and belief. *U.S. v. Gaertner*, C.A.Wis., 705 F.2d 210, 211. *See* Probable cause.

**Informed consent.** A person's agreement to allow something to happen (such as surgery) that is based on a full disclosure of facts needed to make the decision intelligently; *i.e.*, knowledge of risks involved, alternatives, etc. Informed consent is the name for a general principle of law that a physician has a duty to disclose what a reasonably prudent physician in the medical community in the exercise of reasonable care would disclose to his patient as to whatever grave risks of injury might be incurred from a proposed course of treatment, so that a patient, exercising ordinary care for his own welfare, and faced with a choice of undergoing the proposed treatment, or alternative treatment, or none at all, may intelligently exercise his judgment by reasonably balancing the probable risks against the probable benefits. *Ze Barth v. Swedish Hospital Medical Center*, 81 Wash.2d 12, 499 P.2d 1, 8.

**Informers.** An undisclosed person who confidentially discloses material information of a law violation, thereby supplying a lead to officers for their investigation of a crime. *Jackson v. State*, Wyo., 522 P.2d 1286, 1288. This does not include persons who supply information only after being interviewed by police officers, or who give information as witnesses during course of investigation. *Gordon v. U.S.*, C.A.Fla., 438 F.2d 858, 874. Rewards for information obtained from informers is provided for by 18 U.S.C.A. § 3059. See also Citizen informant.

**Informers's privilege.** The government's privilege to withhold from disclosure the identity of persons who furnish information on violations of law to officers charged with enforcement of that law. *Roviaro v. United States*, 353 U.S. 53, 59, 77 S.Ct. 623, 627, 1 L.Ed.2d 639. In the exercise of its power to formulate evidentiary rules for federal criminal cases, the Supreme Court has consistently declined to hold that an informer's identity need always be disclosed in a federal criminal trial or in a preliminary hearing. *McCray v. Illinois*, 386 U.S. 300, 312, 87 S.Ct. 1056, 1063, 18 L.Ed.2d 62. A defendant is entitled to a veracity hearing if he makes a substantial preliminary showing that an affiant knowingly and intentionally, or with reckless disregard for the truth, included in a warrant affidavit a false statement necessary to the finding of probable cause. However, the deliberate falsity or reckless disregard whose impeachment is permitted is only that of the affiant, not of any nongovernmental informant. *Franks v. Delaware*, 438 U.S. 154, 171, 98 S.Ct. 2674, 2684, 57 L.Ed.2d 667.

**In foro** /in fórow/. In a (or the) forum, court, or tribunal.

**In foro conscientiae** /in fórow kòns(h)iyénshiy(iy)/. In the tribunal of conscience; conscientiously, considered from a moral, rather than a legal, point of view.

**In foro contentioso** /in fórow kəntənsiyówsow/. In the forum of contention or litigation.

**In foro ecclesiastico** /in fórow əkliyziyástəkow/. In an ecclesiastical forum; in the ecclesiastical court.

**In foro sæculari** /in fórow səkyléray/. In a secular forum or court.

**Infortunium, homicide per** /hóməsayd pər infartyúwn(iy)əm/. Where a man doing a lawful act, without intention of hurt, unfortunately kills another.

**Infra** /infrə/. (Lat.) Below, under, beneath, underneath. The opposite of *supra*, above. Thus, we say, *primo gradu est—supra, pater, mater, infra, filius, filia*: in the first degree of kindred in the ascending line, above is the father and the mother, below, in the descending line, son and daughter.

In another sense, this word signifies *within*; as, *infra corpus civitatis*, within the body of the country; *infra præsidia*, within the guards. So of time, *during: infra furorem*, during the madness. This use is not classical. The use of *infra* for *intra* seems to have sprung up among the barbarians after the fall of the Roman empire.

**Infra ætatem** /infrə étéytəm/. Under age; not of age. Applied to minors.

**Infra annos nubiles** /infrə énows n(y)úwbəliyz/. Under marriageable years; not yet of marriageable age.

**Infra annum** /infrə énəm/. Under or within a year.

**Infra annum luctus** /infrə énəm lóktəs/. (Within the year of mourning.) The phrase is used in reference to the marriage of a widow within a year after her husband's death, which was prohibited by the civil law.

**Infra brachia** /infrə bréyk(i)yə/. Within her arms. Used of a husband *de jure*, as well as *de facto*. Also *inter brachia*. It was in this sense that a woman could only have an appeal for murder of her husband *inter brachia sua*.

**Infra civitatem** /infrə sivétytəm/. Within the state.

**Infra corpus comitatus** /infrə kórpəs kómətéytəs/. Within the body (territorial limits) of a county. In English law, waters which are *infra corpus comitatus* are exempt from the jurisdiction of the admiralty.

**Infraction.** A breach, violation, or infringement; as of a law, a contract, a right or duty. A violation of a statute for which the only sentence authorized is a fine and which violation is expressly designated as an infraction.

**Infra dignitatem curiæ** /infrə dignatéytəm kyúriy(iy)/. Beneath the dignity of the court; unworthy of the consideration of the court. Where a bill in equity is brought upon a matter too trifling to deserve the attention of the court, it is demurrable, as being *infra dignitatem curiæ*.

**Infra furorem** /infrə fyórórəm/. During madness; while in a state of insanity.

**Infra hospitium** /infrə hospish(iy)əm/. Within the inn. When a traveler's baggage comes *infra hospitium*, i.e., in the care and under the custody of the innkeeper, the latter's liability attaches. *Davidson v. Madison Corporation*, 231 App.Div. 421, 247 N.Y.S. 789, 795.

**Infra jurisdictionem** /infrə jürəsdikshiyównəm/. Within the jurisdiction.

**Infra præsidia** /infrə præsid(iy)ə/. Within the protection; within the defenses. In international law, when a prize, or other captured property, is brought into a port of the captors, or within their lines, or otherwise under their complete custody, so that the chance of rescue is lost, it is said to be *infra præsidia*.

**In fraudem creditorum** /in fródəm krédstórəm/. In fraud of creditors; with intent to defraud creditors.

**In fraudem legis** /in fródəm liyjas/. In fraud of the law. With the intent or view of evading the law.

**Infringement** /infrínjmənt/. A breaking into; a trespass or encroachment upon; a violation of a law, regulation, contract, or right. Used especially of invasions of the rights secured by patents, copyrights, and trademarks. See also Encroachment; Trespass.

**Contributory infringement.** The intentional aiding of one person by another in the unlawful making or selling

of a patented invention; usually done by making or selling one part of the patented invention, or one element of the combination, with the intent and purpose of so aiding.

**Criminal infringement.** Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain is subject to a fine and/or imprisonment. Copyright Act, § 506 (17 U.S.C.A.).

**Infringement of copyright.** Unauthorized use of copyrighted material; *i.e.* use without permission of copyright holder. In determining whether there is a copyright infringement, and not a "fair use" exemption, the factors to be considered include: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. Copyright Act, § 107 (17 U.S.C.A.).

Remedies for copyright infringement include injunctive relief, impounding and disposition of infringing articles, and recovery of actual damages and profits. In lieu of actual damages, the federal Copyright Act provides for statutory damages which will vary as to whether the infringement was willful or unintentional. Copyright Act, § 504 (17 U.S.C.A.).

See also Fair use doctrine; Fragmented literal similarity.

**Infringement of patent.** The unauthorized making, using, or selling for practical use, or for profit, of an invention covered by a valid claim of a patent during the life of the patent. It may involve any one or all of the acts of making, using, and selling. Phillips Electronic & Pharmaceutical Industries Corp. v. Thermal & Electronics Industries, Inc., D.C.N.J., 311 F.Supp. 17, 39. To constitute infringement of a patent claim there must be present in the infringing device or combination every element of such claim or its equivalent, so combined as to produce substantially the same result operating in substantially the same way. Montgomery Ward and Co. v. Clair, C.C.A.Mo., 123 F.2d 878, 881. See 35 U.S.C.A. § 100 et seq. See also Contributory infringement.

**Infringement of trademark.** The unauthorized use, or colorable imitation of the mark already appropriated by another, on goods of a similar class. Northam Warren Corporation v. Universal Cosmetic Co., C.C.A.Ill., 18 F.2d 774, 775. It exists if words or designs used by defendant are identical with or so similar to plaintiff's that they are likely to cause confusion, or deceive or mislead others. One who affixes the trademark of another to similar articles in such way that his use of it is liable to cause confusion in the trade, or is calculated to mislead purchasers and induce them to buy infringer's articles as goods of the other thus depriving the latter of the full benefit of his property. James Heddon's Sons v. Millsite Steel & Wire Works, C.C.A.Mich., 128 F.2d 6, 8.

See 15 U.S.C.A. § 1051 et seq. See also Likelihood of confusion.

**Infringer.** One who infringes the rights secured by copyright, patent or trademark holders. See Infringement.

**In full.** Relating to the whole or *full* amount; as a receipt in full. Complete; giving all details.

**In full life.** Continuing in both physical and civil existence; that is, neither actually dead nor *civilliter mortuus*.

**In futuro** /in f(y)ətyúrow/. In future; at a future time; the opposite of *in praesenti*.

**In generalibus versatur error** /in jènərəyləbəs vørsəytər éhrər/. Error dwells in general expressions.

**In generali passagio** /in jènərəylay pásəyj(iy)ow/. In the general passage; that is, on the journey to Palestine with the general company or body of Crusaders. This term was of frequent occurrence in the old law of essoins, as a means of accounting for the absence of the party, and was distinguished from *simplex passagium*, which meant that he was performing a pilgrimage to the Holy Land alone.

**In genere** /in jènəriy/. In kind; in the same *genus* or class; the same in quantity and quality, but not individually the same. For example, laws on the same subject. See *In pari materia*. In the Roman law, things which may be given or restored *in genere* are distinguished from such as must be given or restored *in specie*; that is, identically.

For easement in gross, see Easement.

**Ingenuitas** /injən(y)úwətàs/. Lat. Freedom; liberty; the state or condition of one who is free. Also liberty given to a servant by manumission.

**Ingenuitas regni** /injən(y)úwətàs régnay/. In old English law, the freemen, yeomanry, or commonalty of the kingdom. Applied sometimes also to the barons.

**Ingenuus** /injényuwəs/. In Roman law, a person who, immediately that he was born, was a free person. He was opposed to *libertinus*, or *libertus*, who, having been born a slave, was afterwards manumitted or made free. It is not the same as the English law term "*generosus*", which denoted a person not merely free, but of good family. There were no distinctions among *ingenui*; but among *libertini* there were (prior to Justinian's abolition of the distinctions) three varieties, namely: Those of the highest rank, called "*Cives Romani*"; those of the second rank, called "*Latini Juniani*"; and those of the lowest rank, called "*Dediticii*".

**Ingratitude.** In Roman law, ingratitude was accounted a sufficient cause for revoking a gift or recalling the liberty of a freedman. Such is also the law of France with respect to the first case. But the English and American law has left the matter entirely to the moral sense. Ungrateful.

**In gremio legis** /in gríym(i)yow líjjes/. In the bosom of the law; in the protection of the law; in abeyance.

**Ingress.** The act, or right of, entering. Access; entrance.

**Ingress, egress, and regress.** These words express the right (*e.g.* of a lessee) to enter, go upon, and return from the lands in question.

**Ingressu** /ingrés(y)uw/. In English law, an ancient writ of entry, by which the plaintiff or complainant sought an entry into his lands. Abolished in 1833.

**Ingressus** /ingrésəs/. In old English law, ingress; entry. The relief paid by an heir to the lord was sometimes so called.

**In gross.** In a large quantity or sum; without deduction, division, or particulars; by wholesale. At large, in one sum; not annexed to or dependent upon another thing. Common in gross is such as is neither appendant nor appurtenant to land, but is annexed to a man's person. *See also* In bulk.

For easement in gross, *see* Easement.

**Ingrossator** /ingrəséytər/. In old English law, an engrosser. *Ingrossator magni rotuli* /ingrəséytər mægnaý rötýalay/, engrosser of the great roll; called "clerk of the pipe".

**Ingrossing.** The act of making a fair and perfect copy of any document from a rough draft of it, in order that it may be executed or put to its final purpose. *See* Engrossment.

**Inhabit.** Synonymous with dwell, live, reside, sojourn, stay, rest. *See also* Domicile; Residence.

**Inhabitant.** One who resides actually and permanently in a given place, and has his domicile there. *Ex parte Shaw*, 145 U.S. 444, 12 S.Ct. 935, 36 L.Ed. 768.

The words "inhabitant," "citizen," and "resident," as employed in different constitutions to define the qualifications of electors, means substantially the same thing; and, in general, one is an inhabitant, resident, or citizen at the place where he has his domicile or home. But the terms "resident" and "inhabitant" have also been held not synonymous, the latter implying a more fixed and permanent abode than the former, and importing privileges and duties to which a mere resident would not be subject. A corporation can be an inhabitant only in the state of its incorporation. *Sperry Products v. Association of American Railroads*, C.C.A.N.Y., 132 F.2d 408, 411. *See also* Domicile; Residence.

**In hac parte** /in háç pártiy/. In this behalf; on this side.

**In hac verba** /in híyk vérbə/. In these words; in the same words.

**In hæredes non solent transire actiones quæ pœnales ex maleficio sunt** /in hæriydiyz nõn sówłant tranzáýriy ækshiyówniyz kwiy pœnéyliyz èks øfsh(iy)ow sànt/. Penal actions arising from anything of a criminal nature do not pass to heirs.

**Inhere** /inhír/. To exist in and inseparable from something else; to stick fast. To be inherent.

**Inherently dangerous.** Danger inhering in instrumentality or condition itself at all times, so as to require special precautions to prevent injury; not danger arising from mere casual or collateral negligence of others with respect thereto under particular circumstances. *Brown v. City of Craig*, 350 Mo. 836, 168 S.W.2d 1080, 1082. An object which has in itself the potential for causing harm or destruction, against which precautions must be taken. Dangerous per se, without requiring human intervention to produce harmful effects; *e.g.*, explosives.

Product is "inherently dangerous" where danger of an injury arises from product itself, and not from defect in product. *General Bronze Corp. v. Kostopulos*, 203 Va. 66, 122 S.E.2d 548, 551. Work is "inherently dangerous" when in ordinary course of events its performance would probably, and not merely possibly, cause injury if proper precautions are not taken. *Palaidis v. U.S.*, D.C.Fla., 564 F.Supp. 1397, 1401.

*See also* Dangerous instrumentality; Dangerous weapon; Strict liability.

**Inherent or latent defect.** Fault or deficiency in a thing, no matter the use made of such, which is not easily discoverable and which is fixed in the object itself and not from without. *See also* Latent defect; Strict liability.

**Inherent powers** /inhírənt páwərz/. An authority possessed without its being derived from another. A right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another. Powers originating from the nature of government or sovereignty, *i.e.*, powers over and beyond those explicitly granted in the Constitution or reasonably to be implied from express grants; *e.g.* in the foreign policy area, the Executive's inherent powers have been held to confer authority upon the President to settle the claims of American nationals against a foreign state as part of a diplomatic agreement. *Charles T. Main Int'l, Inc. v. Khuzestan Water & Power Author.*, C.A.Mass., 651 F.2d 800, 809-10. *See also* Power.

*Inherent powers of court.* The "inherent power" of a court is that which is necessary for the proper and complete administration of justice and such power is resident in all courts of superior jurisdiction and essential to their existence; *e.g.*, sentencing and contempt powers. *People v. Cirillo*, 100 Misc.2d 527, 419 N.Y.S.2d 820, 824; power to enjoin vexatious litigation, *In re Martin-Trigona v. Lavien, et al.*, C.A.Conn., 737 F.2d 1254.

**Inherent right.** One which abides in a person and is not given from something or someone outside itself. A right which a person has because he is a person. *See* Inalienable rights.

**Inheretrix** /inhéhretriks/. The old term for "heiress".

**Inherit** /inhéhret/. To take or receive by inheritance; to take by descent as a matter of law as heir on death of ancestor; though this item has also come to mean to receive by devise (*i.e.*, by will). Acquisition of property by descent and distribution. The word is also used in its

popular sense as the equivalent of to take or receive. *See also* Descent; Inheritance.

**Inheritable blood.** Blood which has the purity (freedom from attainer) and legitimacy necessary to give its possessor the character of a lawful heir. That which is capable of being the medium for the transmission of an inheritance.

**Inheritance** /inhéhrədəns/. That which is inherited or to be inherited. Property which descends to heir on the intestate death of another. An estate or property which a person has by descent, as heir to another, or which he may transmit to another, as his heir. *See* Bequest; Descent; Heirs; Inherit; Legacy.

*Civil law.* The succession of the heir to all the rights and property of the estate-leaver. It is either testamentary, where the heir is created by will, or *ab intestato*, where it arises merely by operation of law.

**Inheritance tax.** Tax imposed in some states upon the privilege of receiving property from a decedent at death as contrasted with an estate tax which is imposed on the privilege of transmitting property at death. A tax on the transfer or passing of estates or property by legacy, devise, or intestate succession; not a tax on the property itself, but on the right to acquire it by descent or testamentary gift. *Compare* Estate tax.

**Inhibition** /in(h)əbɪʃən/. Restraining or holding back.

In Ecclesiastical law, a writ issuing from a superior ecclesiastical court, forbidding an inferior judge to proceed further in a cause pending before him. In this sense it is closely analogous to the writ of *prohibition* at common law. Also the writ of a bishop or ecclesiastical judge that a clergyman shall cease from taking any duty.

In old English law, the name of a writ which forbids a judge from further proceeding in a cause pending before him; it was in the nature of a prohibition.

In the civil law, a prohibition which the law makes or a judge ordains to an individual. *See* Immigration.

**In his enim quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti** /in his éném kwíy sánt féyvərəbɪl(i)yə énámiy, kwámvəs sánt dæmnówsə ríybəs, fáyət ələkwændow əksténsh(i)yow stətyúwtay/. In things that are favorable to the spirit, though injurious to property, an extension of the statute should sometimes be made.

**In his quæ de jure communi omnibus conceduntur, consuetudo alicujus patriæ vel loci non est alleganda** /in his kwíy díy júriy kəmyúwnay ómnəbəs kónsədántər, kónswət(y)úwdow ələkyúwəs pətriyyíy vèl lówsay nón èst ələjéndə/. In those things which by common right are conceded to all, the custom of a particular district or place is not to be alleged.

**In hoc** /in hók/. In this; in respect to this.

**Inhonestus** /inhənéstəs/. In old English law, unseemly; not in due order.

**Inhuman treatment.** In the law of divorce, such mental or physical cruelty or severity as endangers the life or

health of the party to whom it is addressed, or creates a well-founded apprehension of such danger. The phrase commonly employed in statutes is "cruel and inhuman treatment," from which it may be inferred that "inhumanity" is an extreme or aggravated "cruelty." Such treatment commonly constitutes a ground for divorce. *See also* Cruel and inhuman treatment; Cruelty; Mental cruelty.

**In iisdem terminis** /in iyáysdəm tərmenəs/. In the same terms.

**In iis quæ sunt meræ facultatis nunquam præscribitur** /in áyəs kwíy sánt míriy fækáltéytəs nɔ́kwəm prəskríbətər/. Prescription does not run against a mere power or faculty to act.

**In individuo** /in indəvid(y)uwow/. In the distinct, identical, or individual form; *in specie*.

**In infinitum** /in infənáyətəm/. Infinitely; indefinitely. Imports indefinite succession or continuance.

**In initio** /in ənɪʃ(i)yow/. In or at the beginning. *In initio litis*, at the beginning, or in the first stage of the suit.

**In integrum** /in əntégrəm/. To the original or former state.

**In invidiam** /in ənvíd(i)yəm/. To excite a prejudice.

**In invitum** /in ənváyətəm/. Against an unwilling party; against one not assenting. A term applied to proceedings against an adverse party, to which he does not consent.

**In ipsis faucibus** /in ípsəs fósəbəs/. In the very throat or entrance. *In ipsis faucibus* of a port, actually entering a port.

**Iniquissima pax est anteponenda justissimo bello** /inikwísəmə pæks èst əntəpənéndə jústisəməw bélow/. The most unjust peace is to be preferred to the justest war.

**Iniquum est alios permitttere, alios inhibere mercatorem** /inákwəm èst éyl(i)yows pərmitəriy, éyl(i)yows in(h)əbəriy məkətəyúram/. It is inequitable to permit some to trade and to prohibit others.

**Iniquum est aliquem rei sui esse judicem** /inákwəm èst ələkwəm ríyay s(y)úway ésiy júwdəsəm/. It is wrong for a man to be a judge in his own cause.

**Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem** /inákwəm èst injén-yuwəs həmínəbəs nón ésiy líbərəm rírəm s(y)uwérəm éyliyéshiyównəm/. It is unjust that freemen should not have the free disposal of their own property.

**Initial.** That which begins or stands at the beginning. The first letter of a person's name.

**Initial appearance.** After arrest, the first appearance of the accused before a judge or magistrate. *See* Arraignment; Preliminary hearing.

**Initial carrier.** In the law of bailments, the carrier who first receives the goods and begins the process of their transportation, afterwards delivering them to another



carrier for the further prosecution or completion of their journey. But it has also been defined as the one contracting with the shipper, and not necessarily the one whose line constitutes the first link in transportation.

**Initial determination.** With respect to social security benefit claims, refers to first determination of agency of claimants' application for benefits. Several levels of appeal are provided for from an initial claim denial. 42 U.S.C.A. § 405(b).

**Initiate.** Commence; start; originate; introduce; inchoate. *Curtesy initiate* is the interest which a husband has in the wife's lands after a child is born who may inherit, but before the wife dies. To propose for approval—as schedule of rates. *Idaho Power Co. v. Thompson*, D.C. Idaho, 19 F.2d 547, 579.

**Initiation fee.** The sum paid on joining an organization or club for privileges of membership. *Derby v. U. S.*, D.C. Mass., 17 F.2d 119, 120.

**Initiative.** An electoral process whereby designated percentages of the electorate may initiate legislative or constitutional changes through the filing of formal petitions to be acted on by the legislature or the total electorate. The power of the people to propose bills and laws, and to enact or reject them at the polls, independent of legislative assembly. *Hughes v. Bryan*, Okl., 425 P.2d 952, 954. Not all state constitutions provide for initiative. *See also* Referendum.

**In itinere** /in aytínəriy/. In eyre; on a journey or circuit. In old English law, the justices *in itinere* (or in eyre) were those who made a circuit through the kingdom once in seven years for the purposes of trying causes. In course of transportation; on the way; not delivered to the vendee. In this sense the phrase is equivalent to "*in transitu*."

**Iniurcolleguia** /inyürkalyégyiä/. A body of Soviet lawyers in Moscow organized and constituted pursuant to statute under jurisdiction and control of the U.S.S.R. Ministry of Justice for the purpose of exclusive representation of Soviet nationals in foreign legal matters. In *re Mitzkel's Estate*, 36 Misc.2d 671, 233 N.Y.S.2d 519, 524; In *re Kapocius' Estate*, 36 Misc.2d 1087, 234 N.Y.S.2d 346, 348.

**In judgment.** In a court of justice; in a seat of judgment.

**In iudiciis, minori ætati succurritur** /in jädís(h)iyäs, mənöray ætytay sækórætär/. In courts or judicial proceedings, infancy is aided or favored.

**In iudicio** /in jädís(h)(i)yow/. In Roman law, in the course of an actual trial; before a judge (*judex*). A cause, during its preparatory stages, conducted before the prætor, was said to be *in iure*; in its second stage, after it had been sent to a *judex* for trial, it was said to be *in iudicio*.

**In iudicio non creditur nisi juratis** /in jädís(h)(i)yow nön krédætär náysay jöréytäs/. In a trial, credence is given only to those who are sworn.

**Injunction.** A court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury. A prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter from doing some act which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law. A judicial process operating in personam, and requiring person to whom it is directed to do or refrain from doing a particular thing. *Gainsburg v. Dodge*, 193 Ark. 473, 101 S.W.2d 178, 180. Generally, it is a preventive and protective remedy, aimed at future acts, and is not intended to redress past wrongs. *Snyder v. Sullivan*, Colo., 705 P.2d 510, 513. Fed.R.Civil P. 65. *See also* Temporary restraining order.

**Interlocutory injunction.** Interlocutory injunctions are those issued at any time during the pendency of the litigation for the short-term purpose of preventing irreparable injury to the petitioner prior to the time that the court will be in a position to either grant or deny permanent relief on the merits. In accordance with their purpose, interlocutory injunctions are limited in duration to some specified length of time, or at the very outside, to the time of conclusion of the case on the merits. Within the category of interlocutory injunctions there are two distinct types which must be considered individually. The first is generally referred to as a preliminary injunction, and includes any interlocutory injunction granted after the respondent has been given notice and the opportunity to participate in a hearing on whether or not that injunction should issue. The second is generally referred to as a temporary restraining order, and differs from a preliminary injunction primarily in that it is issued *ex parte*, with no notice or opportunity to be heard granted to the respondent. Temporary restraining orders supply the need for relief in those situations in which the petitioner will suffer irreparable injury if relief is not granted immediately, and time simply does not permit either the delivery of notice or the holding of a hearing. Fed.R.Civil P. 65. *See also* Injury (*Irreparable injury*); Temporary restraining order.

**Mandatory injunction.** One which (1) commands the defendant to do some positive act or particular thing; (2) prohibits him from refusing (or persisting in a refusal) to do or permit some act to which the plaintiff has a legal right; or (3) restrains the defendant from permitting his previous wrongful act to continue operative, thus virtually compelling him to undo it.

**Permanent injunction.** One intended to remain in force until the final termination of the particular suit.

**Perpetual injunction.** An injunction which finally disposes of the suit, and is indefinite in point of time.

**Preliminary injunction.** An injunction granted at the institution of a suit, to restrain the defendant from doing or continuing some act, the right to which is in

dispute, and which may either be discharged or made perpetual, according to the result of the controversy, as soon as the rights of the parties are determined. Fed. R. Civil P. 65.

**Preventive injunction.** One which prohibits the defendant from doing a particular act or commands him to refrain from it.

**Prohibitory injunction.** An order of a court in the form of a judgment which directs one not to do a certain thing; sometimes called a restraining order. See Restraining order.

**Provisional injunction.** Another name for a preliminary or temporary injunction or an injunction pendente lite.

**Restraining order.** See Order; Restraining order; Temporary restraining order.

**Temporary injunction.** A preliminary or provisional injunction, or one granted pendente lite; as opposed to a final or perpetual injunction. A provisional remedy to preserve subject matter of controversy pending trial. *Electronic Data Systems Corp. v. Powell*, Tex. Civ. App., 508 S.W.2d 137, 139. It is one which operates until dissolved by interlocutory order or until final hearing on matter. *Brines v. McIlhane*, Tex., 596 S.W.2d 519, 523. See also Temporary restraining order.

**In jure** /in júriy/. In law; according to law.

In the Roman practice, the procedure in an action was divided into two stages. The first was said to be *in jure*; it took place before the praetor, and included the formal and introductory part and the settlement of questions of law. The second stage was committed to the *judex*, and comprised the investigation and trial of the facts; this was said to be *in judicio*.

**Injure.** To violate the legal right of another or inflict an actionable wrong. To do harm to, damage, or impair. To hurt or wound, as the person; to impair the soundness of, as health; to damage. *Ziolkowski v. Continental Casualty Co.*, 284 Ill. App. 505, 1 N.E.2d 410, 412. As applied to a building, "injure" means to materially impair or destroy any part of the existing structure. See Injury.

**In jure alterius** /in júriy òltáráyəs/. In another's right.

**In jure, non remota causa sed proxima spectatur** /in júriy, nòn ramówtə kózə sèd próksəmə spēktéytər/. In law, the proximate, and not the remote, cause is regarded.

**In jure proprio** /in júriy prówpriyow/. In one's own right.

**Injures graves** /injəriyɜ gréyɜvz/ænzhyúr gráv/. Fr. In French law, grievous insults or injuries, including personal insults and reproachful language, constituting a just cause of divorce.

**Injuria** /ənjúri(y)ə/. Lat. Injury; wrong; the privation or violation of right.

**Injuria absque damno** /ənjúri(y)ə əbskwiy dæmnow/. Injury or wrong without damage. A wrong done, but

from which no loss or damage results, and which, therefore, will not sustain an action.

**Injuria fit ei cui convicium dictum est, vel de eo factum carmen famosum** /ənjúri(y)ə fit iyay k(yúw)ay kənvís(h)(i)yəm diktəm èst, vèl diy iyow fáktəm kárməm fə mówsəm/. An injury is done to him of whom a reproachful thing is said, or concerning whom an infamous song is made.

**Injuria illata judici, seu locum tenenti regis, videtur ipsi regi illata maxime si fiat in exercentem officium** /ənjúri(y)ə əléytə júwdəsay, s(y)úw lówkəm tənéntay ríjɜs, vədiytər ípsay ríjɜy əléytə máksəmiy sày fáyt in ègzərséntəm əfish(i)yəm/. An injury offered to a judge, or person representing the king, is considered as offered to the king himself, especially if it be done in the exercise of his office.

**Injuria non excusat injuriam** /ənjúri(y)ə nòn əkskyúwzət ənjúri(y)əm/. One wrong does not justify another.

**Injuria non praesumitur** /ənjúri(y)ə nòn prəz(y)úwmətər/. Injury is not presumed. Cruel, oppressive, or tortious conduct will not be presumed.

**Injuria propria non cadet in beneficium facientis** /ənjúri(y)ə prówpriyə nòn kéydət ən bènəfish(i)yəm fəs(h)(i)yéntəs/. One's own wrong shall not fall to the advantage of him that does it. A man will not be allowed to derive benefit from his own wrongful act.

**Injuria servi dominum pertingit** /ənjúri(y)ə sórvay dómənəm pərtínjət/. The master is liable for injury done by his servant.

**Injurious exposure.** Such exposure as will render employer liable for occupational disease of employee, is concentration of toxic material which would be sufficient to cause disease in event of prolonged exposure to such concentration regardless of length of exposure required actually to cause the disease. *Union Carbide Corp. v. Industrial Commission*, 196 Colo. 56, 581 P.2d 734, 736. See also Occupational disease.

**Injurious falsehood.** In law of slander and libel, a defamation which does actual damage. See Libel; Slander.

**Injurious words** /ənjúriyəs wárdz/. Slander, or libelous words. See Libel; Slander.

**Injury.** Any wrong or damage done to another, either in his person, rights, reputation, or property. The invasion of any legally protected interest of another. Restatement, Second, Torts, § 7.

**Absolute injuries.** Injuries to those rights which a person possesses as being a member of society.

**Accidental injury.** A bodily injury by accident.

Within worker's compensation acts, one which occurs in the course of the employment, unexpectedly, and without the affirmative act or design of the employee; it being something which is unforeseen and not expected by the person to whom it happens. Any injury to an employee in the course of his employment due to any

occurrence referable to a definite time, and of the happening of which he can give notice to his employer, regardless of whether the injury is a visible hurt from external force, or disease or infection induced by sudden and catastrophic exposure. *Lerner v. Rump Bros.*, 212 App.Div. 747, 209 N.Y.S. 698, 701. The term is to receive a broad and liberal construction with a view to compensating injured employes where injury resulted through some accidental means, was unexpected and undesigned and may be the result of mere mischance or miscalculation as to effect of voluntary action. It includes an accident causing injury to the physical structure of the body, notwithstanding a natural weakness predisposing to injury. For purposes of workers' compensation act, a "pain" can be classified as an "injury," *Herndon v. Albuquerque Public Schools*, App., 92 N.M. 635, 593 P.2d 470, 475; as can mental ailments or nervous conditions directly resulting from physical injury, *Campbell v. Kiser Corp. & Diecast*, 137 Ind.App. 366, 208 N.E.2d 727, 730. The words indicate, not so much the existence of an accident, but rather the idea that the injury was unexpected or unintended.

*See also* Accident; Compensable injury; Continuous injury; Damages; Disability; Great bodily injury; Harm; Loss; Malicious injury; Pain and suffering; Pecuniary injury.

*Bankruptcy law.* Willful and malicious conversion is an "injury" within meaning of Bankruptcy Code section stating that individual is not discharged from debt for willful and malicious "injury" by debtor. Bankruptcy Code § 523. In *re Holtz*, Bkrcty.N.D.Iowa, 62 B.R. 782, 785.

*Bodily injury.* Physical pain, illness or any impairment of physical condition. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Model Penal Code, § 210.0.

*Civil injury.* Injuries to person or property, resulting from a breach of contract, delict, or criminal offense, which may be redressed by means of a civil action. An infringement or privation of the civil rights which belong to individuals considered as individuals.

*Injury in fact.* Such as is required to give a plaintiff standing to sue means concrete and certain harm and, to warrant granting of standing, there must also be reason to think that the harm can be redressed by relief the court can grant. *National Collegiate Athletic Ass'n v. Califano*, C.A.Kan., 622 F.2d 1382, 1386.

*Irreparable injury.* This phrase does not mean such an injury as is beyond the possibility of repair, or beyond possible compensation in damages, or necessarily great damage, but includes an injury, whether great or small, which ought not to be submitted to, on the one hand, or inflicted, on the other; and which, because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages, cannot receive reasonable redress in a court of law. Wrongs of a repeated and continuing character, or which occasion damages that

are estimated only by conjecture, and not by any accurate standard, are included. The remedy for such is commonly in the nature of injunctive relief. "Irreparable injury" justifying an injunction is that which cannot be adequately compensated in damages or for which damages cannot be compensable in money. *Caffery v. Powell*, La.App., 320 So.2d 223, 226. Contrast *Reparable injury*, below. *See* Injunction; Temporary restraining order.

*Permanent injury.* An injury that, according to every reasonable probability, will continue throughout the remainder of one's life.

*Personal injury.* In a narrow sense, a hurt or damage done to a man's *person*, such as a cut or bruise, a broken limb, or the like, as distinguished from an injury to his property or his reputation. The phrase is chiefly used in this connection with actions of tort for negligence and under worker's compensation statutes. But the term is also used (usually in statutes) in a much wider sense, and as including any injury which is an invasion of personal rights, and in this signification it may include such injuries to the person as libel or slander, criminal conversation, malicious prosecution, false imprisonment, and mental suffering. *Gray v. Wallace*, 319 S.W.2d 582.

In worker's compensation acts, "personal injury" means any harm or damage to the health of an employee, however caused, whether by accident, disease, or otherwise, which arises in the course of and out of his employment, and incapacitates him in whole or in part. The occurrence of disability or impairment. Such includes the aggravation of a preexisting injury.

*Private injuries.* Infringements of the private or civil rights belonging to individuals considered as individuals.

*Public injuries.* Breaches and violations of rights and duties which affect the whole community as a community.

*Real injury.* A *real injury* is inflicted by any act by which a person's honor or dignity is affected.

*Relative injuries.* Injuries to those rights which a person possesses in relation to the person who is immediately affected by the wrongful act done.

*Reparable injury.* The general principle is that an injury, the damage from which is merely in the nature of pecuniary loss, and can be exactly and fully repaired by compensation in money, is a "reparable injury". Contrast *Irreparable injury*, above.

*Unknown injury rule.* Under this rule, release of claims for personal injuries may be avoided on the ground of mutual mistake if parties at the time of signing the agreement were mistaken as to the existence of injury, as opposed to unknown consequences of known injuries. *LaFleur v. C.C. Pierce Co., Inc.*, et al., 398 Mass. 254, 496 N.E.2d 827.

*Verbal injury.* *See* Libel; Slander.

*Violation of constitutional rights.* "Injury" within meaning of state Tort Claims Act includes damage caused by violation of constitutional rights. *Lloyd v.*

Borough of Stone Harbor, 179 N.J.Super. 496, 432 A.2d 572, 580.

**Injustice.** The withholding or denial of justice. In law, almost invariably applied to the act, fault, or omission of a court, as distinguished from that of an individual. "Fraud" is deception practiced by the party; "injustice" is the fault or error of the court. They are not equivalent words in substance, or in a statute authorizing a new trial on a showing of fraud or injustice. Fraud is always the result of contrivance and deception; injustice may be done by the negligence, mistake, or omission of the court itself. *Silvey v. U. S.*, 7 Ct.Cl. 305, 324.

**Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere** /injustəm ɛst, nájsey tówtə líjji inspéktə, díy yúwnə ɛləkwə íjjes partík(y)ələ prəpózətə jùwdəkériy vél rəspóndíriy/. It is unjust to decide or respond as to any particular part of a law without examining the whole of the law.

**In jus vocare** /in jəs vòwkériy/. To call, cite, or summon to court. *In jus vocando*, summoning to court.

**In kind.** Of the same species or category. In the same kind, class, or genus. A loan is returned "in kind" when not the identical article, but one corresponding and equivalent to it, is given to the lender. *See* Distribution in kind; In genere; Like-kind exchange.

**Inlagare** /inləgériy/. In old English law, to restore to protection of law. To restore a man from the condition of outlawry. Opposed to *utlagare*.

**Inlagation** /inləgəyshən/. Restoration to the protection of law. Restoration from a condition of outlawry.

**Inlagh** /inlə/. A person within the law's protection; contrary to *utlagh*, an outlaw.

**Inland.** Within a country, state or territory; within the interior part of a land mass.

In old English law, inland was used for the demesne (*q.v.*) of a manor; that part which lay next or most convenient for the lord's mansion-house, as within the view thereof, and which, therefore, he kept in his own hands for support of his family and for hospitality; in distinction from outland or utland, which was the portion let out to tenants.

**Inland bill of exchange.** A bill of which both the drawer and drawee reside within the same state or country. Otherwise called a "domestic bill," and distinguished from a "foreign bill." *See* Bill.

**Inland marine insurance.** *See* Insurance.

**Inland navigation.** Within the meaning of the legislation of congress upon the subject, this phrase means navigation upon inland waters (*q.v.*)

**Inland trade.** Trade wholly carried on at home; as distinguished from foreign commerce. *See* Commerce.

**Inland waters.** Such waters as canals, lakes, rivers, watercourses, inlets and bays, within, or partly within, the United States, exclusive of the open sea, though the water in question may open or empty into the ocean.

*United States v. Steam Vessels of War*, 106 U.S. 607, 1 S.Ct. 539, 27 L.Ed. 286.

**Inlantal, inlantale** /inləntəl, inləntéyliy/. Demesne or inland, opposed to *delantal*, or land tenanted.

**Inlaughe** /inlə/. Sax. In old English law, under the law (*sub lege*), in a frank-pledge, or decennary.

**Inlaw.** To place under the protection of the law.

**In law.** In the intendment, contemplation, or inference of the law; implied or inferred by law; existing in law or by force of law. *See* In fact.

**In laws.** Persons related by marriage rather than blood; *e.g.* relationship of parents of wife to husband.

**In lecto mortali** /in léktow mòrtéylay/. On the deathbed.

**Inlet.** A narrow strip of water running into the land or between islands. *Burns v. Coastal Petroleum Co.*, Fla. App., 194 So.2d 71, 75.

**In liberam elemosinam** /in libərəm iyləmósənam/. In free alms. Land given for a charitable motive was said to be so given. *See* Frankalmoign.

**In lieu of** /in lyúw əv/. Instead of; in place of; in substitution of. It does not mean "in addition to." *Glassman Const. Co. v. Baltimore Brick Co.*, 246 Md. 478, 228 A.2d 472, 474.

**In limine** /in líməniy/. On or at the threshold; at the very beginning; preliminarily. Any motion, whether used before or during trial, by which exclusion is sought of anticipated prejudicial evidence. *Braden v. Hendricks*, Okl., 695 P.2d 1343, 1348. *See* Motion in limine.

**In litem** /in láytəm/. For a suit; to the suit.

**In loco** /in lókwow/. In place; in lieu; instead; in the place or stead.

**In loco parentis** /in lókwow paréntəs/. In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities.

"Loco parentis" exists when person undertakes care and control of another in absence of such supervision by latter's natural parents and in absence of formal legal approval, and is temporary in character and is not to be likened to an adoption which is permanent. *Griego v. Hogan*, 71 N.M. 280, 377 P.2d 953, 955.

**In majorem cautelam** /in məjórəm kòtiyləm/. For greater security.

**In majore summa continetur minor** /in məjóriy sɛmə kòntəniytər máynər/. In the greater sum is contained the less.

**In malam partem** /in mæləm pártəm/. In a bad sense, so as to wear an evil appearance.

**In maleficiis voluntas spectatur, non exitus** /in mæləfíis(h)iyəs vəlántəs spèktéytər, nòn égzətəs/. In evil deeds regard must be had to the intention, and not to the result.

**In maleficio, rati habitio mandato comparatur** /in mæləfíis(h)(i)yow, rýtəyhəbísh(i)yow mändéytow

kòmpréyētər/. In a case of malfeasance, ratification is equivalent to command.

**Inmate.** A person confined to a prison, penitentiary, or the like. A person who lodges or dwells in the same house with another, occupying different rooms, but using the same door for passing in and out of the house.

**In maxima potentia minima licentia** /in máksmə pəténsh(i)yə mínəmə lésénsh(i)yə/. In the greatest power there is the least freedom.

**In medias res** /in míydiyəs ríyz/. Into the heart of the subject, without preface or introduction.

**In mercibus illicitis non sit commercium** /in mársəbəs əlísətəs nón sit kəmárs(h)(i)yəm/. There should be no commerce in illicit or prohibited goods.

**In mercy.** To be in mercy is to be at the discretion of the king, lord, or judge in respect to the imposition of a fine or other punishment. *See* Clemency.

**In misericordia** /in mizəkórd(i)yə/. The entry on the record where a party was in mercy was, "*Ideo in misericordia,*" etc. Sometimes "*miseriordia*" means the being quit of all amerements.

**In mitiori sensu** /in mishiyóray séns(y)uw/. In the milder sense; in the less aggravated acceptance.

In actions of slander, it was formerly the rule that, if the words alleged would admit of two constructions, they should be taken in the less injurious and defamatory sense, or *in mitiori sensu*.

**In modum assisæ** /in mówdəm əsáyziy/. In the manner or form of an assize. *In modum juratæ*, in manner of a jury.

**In mora** /in móré/. In default; literally, in delay. In the civil law, a borrower who omits or refuses to return the thing loaned at the proper time is said to be *in mora*.

**In mortua manu** /in mórtuywə mányuw/. Property owned by religious societies was said to be held *in mortua manu*, or in mortmain, since religious men were *civiliter mortui*.

**Inn.** A public lodging establishment. A lodging house where all who conduct themselves properly, and who are able and ready to pay for their entertainment, are received, if there is accommodation for them, and who, while there, are supplied at a reasonable charge with their meals, their lodging, and such services and attention as are necessarily incident to the use of the house as a temporary home. A place where the public will be received and accommodations provided to guests for compensation. *Edwards v. City of Los Angeles*, 48 Cal. App.2d 62, 119 P.2d 370, 373, 374. A hotel, tavern, motel, or hostel.

**Innamium** /inéymiyəm/. In old English law, a pledge.

**Innavigability.** In insurance law, the condition of being *innavigable* (*q.v.*). The term is also applied to the condition of streams which are not large enough or deep enough, or are otherwise unsuited, for navigation.

**Innavigable.** As applied to streams, not capable of or suitable for navigation; impassable by ships or vessels. As applied to vessels in the law of marine insurance, it means unfit for navigation; so damaged by misadventures at sea as to be no longer capable of making a voyage. *Compare* Navigable waters.

**Inner barrister.** A serjeant or king's counsel, in England, who is admitted to plead within the bar. *See also*, Outer Bar.

**Innings.** In old records, lands recovered from the sea by draining and banking.

**Innkeeper.** One who keeps an inn, hotel, motel or house for the lodging and entertainment of travelers.

**Innocence.** The absence of guilt. *See also* Presumption of innocence.

**Innocent.** Free from guilt; acting in good faith and without knowledge of incriminatory circumstances, or of defects or objections. *See* Not guilty.

**Innocent agent.** In criminal law, one who, being ignorant of any unlawful intent on the part of his principal, is merely the instrument of the guilty party in committing an offense; one who does an unlawful act at the solicitation or request of another, but who, from defect of understanding or ignorance of the inculpatory facts, incurs no legal guilt.

**Innocent construction rule.** In libel law, this rule requires that allegedly libelous words that are capable of being read innocently must be so read and declared nonactionable as matter of law. *Belmonte v. Rubin*, 68 Ill.App.3d 700, 25 Ill.Dec. 430, 386 N.E.2d 904.

**Innocent conveyances.** A technical term of the old English law of conveyancing, used to designate such conveyances as may be made by a leasehold tenant without working a forfeiture. These are said to be lease and re-lease, bargain and sale, and, in case of a life-tenant, a covenant to stand seised.

**Innocent party.** Person who did not consciously or intentionally participate in event, transaction, etc.

**Innocent purchaser.** One who, by an honest contract or agreement, purchases property or acquires an interest therein, without knowledge, or means of knowledge sufficient to charge him in law with knowledge, of any infirmity in the title of the seller. *Treit v. Oregon Auto. Ins. Co.*, 262 Or. 549, 499 P.2d 335, 336. Person is "innocent purchaser" when he purchases without notice, actual or constructive, of any infirmity and pays valuable consideration and acts in good faith. *Morehead v. Harris*, 262 N.C. 330, 137 S.E.2d 174, 182, 185. *See also* Good faith purchaser.

**Innocent trespass.** A trespass to land, committed, not recklessly, but through inadvertence or mistake, or in good faith, under an honest belief that the trespasser was acting within his legal rights.

**Innocent trespasser.** One who enters another's land unlawfully, but inadvertently or unintentionally, or in the honest, reasonable belief of his own right so to do,

and removes sand or other material therefrom, is an "innocent trespasser." Restatement, Second, Torts, § 164.

**Innominate** /inóməneyt/. In the civil law, not named or classed; belonging to no specific class; ranking under a general head. A term applied to those contracts for which no certain or precise remedy was appointed, but a general action on the case only.

**Innominate contracts.** Literally, are the "unclassified" contracts of Roman law. They are contracts which are neither *re*, *verbis*, *litteris*, nor *consensu* simply, but some mixture of or variation upon two or more of such contracts. They are principally the contracts of *permutatio*, *de aestimato*, *precarium*, and *transactio*.

**In nomine Dei, Amen** /in nóməniy díyay, èymén/. In the name of God, Amen. A solemn introduction, anciently used in wills and many other instruments. The translation is often used in wills at the present day.

**Innotescimus** /inótésəməs/. Lat. We make known. A term formerly applied to letters patent, derived from the emphatic word at the conclusion of the Latin forms. It was a species of exemplification of charters of feoffment or other instruments not of record.

**In novo casu, novum remedium apponendum est** /in nóvwow kéys(y)uw, nóvwəm rəmiyd(i)yəm əpənéndəm èst/. A new remedy is to be applied to a new case.

**Innoxiare** /ənòks(h)iyériy/. In old English law, to purge one of a fault and make him innocent.

**Inns of Chancery.** So called because anciently inhabited by such clerks as chiefly studied the framing of writs, which regularly belonged to the cursitors, who were officers of the Court of Chancery. There were nine of them,—Clement's, Clifford's, and Lyon's Inn; Furnival's, Thavies', and Symond's Inn; New Inn; and Barnard's and Staples' Inn. These were formerly preparatory colleges for students, and many entered them before they were admitted into the inns of court. They consist chiefly of solicitors, and possess corporate property, hall, chambers, etc., but perform no public functions like the inns of court.

**Inns of Court.** These are certain private unincorporated associations, in the nature of collegiate houses, located in London, and invested with the exclusive privilege of calling people to the bar; that is, conferring the rank or degree of a barrister. They were founded probably about the beginning of the fourteenth century. The principal inns of court are the Inner Temple, Middle Temple, Lincoln's Inn, and Gray's Inn. (The two former originally belonged to the Knights Templar; the two latter to the earls of Lincoln and Gray respectively.) These bodies now have a "common council of legal education," for giving lectures and holding examinations. The inns of chancery, distinguishable from the foregoing, but generally classed with them under the general name, are the buildings known as "Clifford's Inn," "Clement's Inn," "New Inn," "Staples' Inn," and "Barnard's Inn." They were formerly a sort of collegiate houses in which law students learned the elements

of law before being admitted into the inns of court, but they have long ceased to occupy that position. The Inns of Court (governed by officers called "benchers") hold the exclusive privilege of conferring the degree of barrister-at-law which is required to practice as an advocate or counsel in the superior courts.

**In nubibus** /in n(y)úwbəbəs/. In the clouds; in abeyance; in custody of law. *In nubibus, in mare, in terrâ, vel in custodiâ legis*, in the air, sea, or earth, or in the custody of the law. In case of abeyance, the inheritance is figuratively said to rest *in nubibus*, or *in gremio legis*.

**Innuendo** /inyuwéndow/. This Latin word (commonly translated "meaning") was the technical beginning of that clause in a declaration or indictment for slander or libel in which the meaning of the alleged libelous words was explained, or the application of the language charged to the plaintiff was pointed out; hence it gave its name to the whole clause. Indirect or subtle implication in words or expression, usually derogatory.

An "innuendo" in pleading in libel action is a statement by plaintiff of construction which he puts upon words which are alleged to be libelous and which meaning he will induce jury to adopt at trial. Its function is to set a meaning upon words or language of doubtful or ambiguous import which alone would not be actionable.

The word is also used (though more rarely) in other species of pleadings, to introduce an explanation of a preceding word, charge, or averment. *Guide Pub. Co. v. Futrell*, 175 Va. 77, 7 S.E.2d 133, 138.

**In nullius bonis** /in nəláyəs bównəs/. Among the goods or property of no person; belonging to no person, as treasure-trove and wreck were anciently considered.

**In nullo est erratum** /in nəlów èst èréytəm/. In nothing is there error. The name of the common plea or joinder in error, denying the existence of error in the record or proceedings; which is in the nature of a demurrer, and at once refers the matter of law arising thereon to the judgment of the court.

**In obscura voluntate manumittentis, favendum est libertati** /in əbskyúərə vóləntéytiy mən(y)əmaténdəs, fəvéndəm èst libərtéytay/. Where the expression of the will of one who seeks to manumit a slave is ambiguous, liberty is to be favored.

**In obscuris, inspicere solere quod verisimilius est, aut quod plerumque fieri solet** /in əbskyúərəs, inspəsay səliəriy kwòd vèhrəsəmiliyəs èst, òt kwòd plərəmkwiy fáyəray sówłət/. In obscure cases, we usually look at what is most probable, or what most commonly happens.

**In obscuris, quod minimum est sequimur** /in əbskyúərəs, kwòd mínəməm èst sékwəmər/. In obscure or doubtful cases, we follow that which is the least.

**In odium spoliatoris** /in ówd(i)yəm spòwl(i)yətórəs/. In hatred of a despoiler, robber, or wrongdoer.

**In odium spoliatoris omnia præsumuntur** /in ówd(i)yəm spòwl(i)yətórəs ómniyə priyz(y)əmántər/. To the prejudice (in condemnation) of a despoiler all things

are presumed; every presumption is made against a wrongdoer.

**Inofficiosum** /inəfis(h)iyówsəm/. In the civil law, inofficious; contrary to natural duty or affection. Used of a will of a parent which disinherited a child without just cause, or that of a child which disinherited a parent, and which could be contested by *querela inofficiosi testamenti*.

**Inofficious testament** /inəfishəs téstəmənt/. A will not in accordance with the testator's natural affection and moral duties. But particularly, in the civil law, a will which deprives the heirs of that portion of the estate to which the law entitles them, and of which they cannot legally be disinherited. A testament contrary to the natural duty of the parent, because it totally disinherits the child, without expressly giving the reason therefor.

**Inoficiosidad** /inowfiosiyówsiyóád/. In Spanish law, everything done contrary to a duty or obligation assumed, as well as in opposition to the piety and affection dictated by nature: *inofficiosum dicitur id omne quod contra pietatis officium factum est*. The term applies especially to testaments, donations, dower, etc., which may be either revoked or reduced when they affect injuriously the rights of creditors or heirs.

**In omni actione ubi duæ concurrunt distractiones, videlicet, in rem et in personam, illa distractio tendenda est quæ magis timetur et magis ligat** /in ómnay ækshiyówniy yúwbay d(y)úwiy kənkáhrənt distriksiyówniy, vəydiylisət in rém èt in pərsównəm, ðlə distriks(h)iyow tənéndə èst kwiy méyjəs təmiytər èt méyjəs ligət/. In every action where two distresses concur, that is, *in rem* and *in personam*, that is to be chosen which is most dreaded, and which binds most firmly.

**In omnibus** /in ómnəbəs/. In all things; on all points. "A case parallel *in omnibus*."

**In omnibus contractibus, sive nominatis sive innominatis, permutatio continetur** /in ómnəbəs kənráktəbəs, sáyviy nómənétəs sáyviy inómənétəs, pərmuywtéysh(iy)ow kóntəniydər/. In all contracts, whether nominate or innominate, an exchange [of value, *i.e.*, a consideration] is implied.

**In omnibus obligationibus in quibus dies non ponitur, præsentī die debetur** /in ómnəbəs óbləgəyshiyównəbəs in kwibəs dáyiyz nòn pównətər, prəzəntay dáyi dybiytər/. In all obligations in which a date is not put, the debt is due on the present day; the liability accrues immediately.

**In omnibus [fere] pœnalibus judiciis, et ætati et imprudentiæ succurritur** /in ómnəbəs (ffriy) pənəyləbəs jədishiyəs, èd stéytay èt impruwéns(h)iy) səkáhrətər/. In nearly all penal judgments, immaturity of age and imbecility of mind are favored.

**In omnibus quidem, maxime tamen in jure, æquitas spectanda sit** /in ómnəbəs kwáydəm máksəmiy téymən in júriy, iykwətəs spəktəndə sit/. In all things, but especially in law, equity is to be regarded.

**In omni re nascitur res quæ ipsam rem exterminat** /in ómnay riý nəsətər riýz kwiy ípsəm rém ækstór-mənət/. In everything there arises a thing which destroys the thing itself. Everything contains the element of its own destruction.

**Inops consilii** /inops kənsiliyay/. Lat. Destitute of counsel; without legal counsel. A term applied to the acts or condition of one acting without legal advice, as a testator drafting his own will.

**Inordinatus** /inórdənétəs/. An intestate.

**In pacato solo** /in pəkéytow sówlow/. In a country which is at peace.

**In pace Dei et regis** /in péysiy díyay èt riýjəs/. In the peace of God and the king. Formal words in old appeals of murder.

**In pais** /in péy(s)/. This phrase, as applied to a legal transaction, primarily means that it has taken place without legal proceedings. Thus a widow was said to make a request *in pais* for her dower when she simply applied to the heir without issuing a writ. So conveyances are divided into those by matter of record and those by matter *in pais*. In some cases, however, "matters *in pais*" are opposed not only to "matters of record," but also to "matters in writing," *i.e.*, deeds, as where estoppel by deed is distinguished from estoppel by matter *in pais*. See also Pais.

**In pais, estoppel** /əstópəl in péy(s)/. An estoppel not arising from deed or record or written contract. The doctrine is that a person may be precluded by his act or conduct or silence, when it is his duty to speak, from asserting a right which he otherwise would have had. *Marshall v. Wilson*, 175 Or. 506, 154 P.2d 547, 551. The effect of a party's voluntary conduct whereby he is precluded from asserting rights as against another person who has in good faith relied upon such conduct and has been led thereby to change his condition for the worse and who acquires some corresponding right of property or contract. *Oswego Falls Corporation v. City of Fulton*, 148 Misc. 170, 265 N.Y.S. 436.

Elements or fundamentals of "estoppel in pais" include admission, statement, or act inconsistent with claim afterwards asserted, *National Match Co. v. Empire Storage & Ice Co.*, 227 Mo.App. 1115, 58 S.W.2d 797; change of position to loss or injury of party claiming estoppel, *Malloy v. City of Chicago*, 369 Ill. 97, 15 N.E.2d 861, 865; circumstances such that party estopped knew or should have known facts to be otherwise or pretended to know facts which he did not know; false representation or concealment of material facts, *Pickens v. Maryland Casualty Co.*, 141 Neb. 105, 2 N.W.2d 593, 596; inducement to alter position; intention that false representation or concealment be acted on, *Peterson v. City of Parsons*, 139 Kan. 701, 33 P.2d 715, 720; knowledge of facts, by party to be estopped; lack of knowledge or means of knowledge of party claiming estoppel, *Sinclair Refining Co. v. Jenkins Petroleum Process Co.*, C.C.A. Me., 99 F.2d 9, 13, 14; misleading of one person by another person to his prejudice or injury, *Current News Features v. Pulitzer Pub. Co.*, C.C.A.Mo., 81 F.2d 288,

292; prejudice or loss or injury to party claiming estoppel, *City of St. Louis v. Mississippi River Fuel Corporation*, D.C.Mo., 57 F.Supp. 549, 554; reliance by one party on belief induced by other party, *Strand v. State*, 16 Wash.2d 107, 132 P.2d 1011, 1016.

See also *Equitable estoppel*.

**In paper.** In old English law, a term formerly applied to the proceedings in a cause before the record was made up. Probably from the circumstance of the record being always on parchment. The opposite of "on record."

**In pari causa** /in páray kózə/°péray°. In equal fault or guilt; equally culpable or criminal. A common law defense that prohibited a plaintiff from suing if it had been a participant in the contract or conspiracy that led to the violation of law at issue. As a general rule, the defense of *in pari delicto* is not recognized in the anti-trust laws. See also *Unclean hands doctrine*.

**In pari causa possessor potior haberi debet** /in páray kózə pazésər pówsh(iy)ər həbírəy débət/. In an equal cause he who has the possession should be preferred.

**In pari delicto** /in páray dəlíktow/°péray°. In equal fault; equally culpable or criminal; in a case of equal fault or guilt. A person who is *in pari delicto* with another differs from a *particeps criminis* in this, that the former term always includes the latter, but the latter does not always include the former.

**In pari delicto potior est conditio possidentis [defendentis]** /in páray dəlíktow pówsh(iy)ər èst kəndish(iy)ow pösədéntəs/°dəféndéntəs/. In a case of equal or mutual fault [between two parties] the condition of the party in possession [or defending] is the better one. Where each party is equally in fault, the law favors him who is actually in possession. Where the fault is mutual, the law will leave the case as it finds it.

**In pari materia** /in páray mətír(iy)ə/. Upon the same matter or subject. Statutes "in pari materia" are those relating to the same person or thing or having a common purpose. *Undercofler v. L.C. Robinson & Sons, Inc.*, 111 Ga.App. 411, 141 S.E.2d 847, 849. This rule of statutory construction, that statutes which relate to the same subject matter should be read, construed and applied together so that the legislature's intention can be gathered from the whole of the enactments, applies only when the particular statute is ambiguous. *Kimes v. Bechtold*, W.Va., 342 S.E.2d 147, 150.

**In patiendo** /in pəshiyéndow/. In suffering, permitting, or allowing.

**In pectore iudicis** /in péktəriy júwdəsəs/. In the breast of the judge. A phrase applied to a judgment.

**In peiorem partem** /in pəjórəm pártəm/. In the worst part; on the worst side.

**Inpeny and outpeny** /inpeniy ànd áwtpeniy/. In old English law, a customary payment of a penny on entering into and going out of a tenancy (*pro exitu de tenura, et pro ingressu*).

**In perpetuam rei memoriam** /in pərpétyuwəm riyay məmóriyəm/. In perpetual memory of a matter; for

preserving a record of a matter. Applied to depositions taken in order to preserve the testimony of the deponent.

**In perpetuity** /in pərpətyúwətiy/. Endless duration; lasting; forever.

**In perpetuum rei testimonium** /in pərpétyuwəm riyay téstəmówn(iy)əm/. In perpetual testimony of a matter; for the purpose of declaring and settling a thing forever.

**In person.** A party, plaintiff or defendant, who sues out a complaint, writ or other process, or appears to conduct his case in court himself, instead of through a solicitor or counsel, is said to act and appear *in person*. See *Pro se*.

**In personam** /in pərsównəm/. Against the person. Action seeking judgment against a person involving his personal rights and based on jurisdiction of his person, as distinguished from a judgment against property (*i.e.* in rem). Type of jurisdiction or power which a court may acquire over the defendant himself in contrast to jurisdiction over his property. See also *In personam jurisdiction*; *In rem*; *Jurisdiction in personam*.

**In personam actio est, qua cum eo agimus qui obligatus est nobis ad faciendum aliquid vel dandum** /in pərsównəm áksh(iy)ow èst, kwéy kəm iyow ájəməs kwày óbləgétəs èst nówbəs àd fèys(h)iyéndəm ələkwid vèl dəndəm/. The action *in personam* is that by which we sue him who is under obligation to us to do something or give something.

**In personam jurisdiction.** Power which a court has over the defendant himself in contrast to the court's power over the defendant's interest in property (*quasi in rem*) or power over the property itself (*in rem*). A court which lacks personal jurisdiction is without power to issue an *in personam* judgment. *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565. See also *In rem*; *Jurisdiction in personam*.

**In pios usus** /in páyəs yúwzəs/. For pious uses; for religious purposes. 2 Bl.Comm. 505.

**In plena vita** /in plíynə váytə/. In full life.

**In pleno comitatu** /in plíynow kòmátéyt(y)uw/. In full county court. 3 Bl.Comm. 36.

**In pleno lumine** /in plíynow l(y)úwməniy/. In public; in common knowledge; in the light of day.

**In pœnalibus causis benignius interpretandum est** /in pənəyləbəs kózəs bəniǵn(iy)əs intərpətəndəm èst/. In penal causes or cases, the more favorable interpretation should be adopted.

**In posse** /in pósiy/. In possibility; not in actual existence. See *In esse*.

**In potestate parentis** /in pòwtəstéytiy pərəntəs/. In the power of a parent. 2 Bl.Comm. 498.

**In præmissorum fidem** /in prēməsórəm fáydəm/. In confirmation or attestation of the premises. A notarial phrase.



**In præparatoriis ad iudicium favetur actori** /in præpæratóriyəs æd juwdish(iy)əm fəviytər æktóray/. In things preceding judgment the plaintiff is favored.

**In præsentí** /in præzéntay/. At the present time. 2 Bl.Comm. 166. Used in opposition to *in futuro*. Van Wyck v. Knevals, 106 U.S. 360, 1 S.Ct. 336, 27 L.Ed. 201.

**In præsentia majoris potestatis, minor potestas cessat** /in præzénsh(iy)ə mājórəs pòwtəstéytəs, máynər pətéstəts sésət/. In the presence of the superior power, the inferior power ceases. The less authority is merged in the greater.

**In prender** /in préndər/. L. Fr. In taking. A term applied to such incorporeal hereditaments as a party entitled to them was to *take* for himself; such as common. 3 Bl.Comm. 15. See *In render*.

**In pretio emptionis et venditionis, naturaliter licet contrahentibus se circumvenire** /in présh(iy)ow ém(p)sh(iy)ównəs èt vëndishiyównəs, nàtyərəylətər láysst kòntrehéntəbəs síy sàrkəmvənyáryi/. In the price of buying and selling, it is naturally allowed to the contracting parties to overreach each other.

**In primis** /in práyməs/impr°. In the first place. A phrase used in argument.

**In principio** /in prənsíp(i)yow/. At the beginning.

**In promptu** /in próm(p)t(y)uw/impr°. In readiness; at hand. Usually written *impromptu*.

**In propria causa nemo iudex** /in prówpriyə kózə níymow júwdəks/. No one can be judge in his own cause.

**In propria persona** /in prówpriyə pərsównə/. In one's own proper person. It was formerly a rule in pleading that pleas to the jurisdiction of the court must be plead *in propria persona*, because if pleaded by attorney they admit the jurisdiction, as an attorney is an officer of the court, and he is presumed to plead after having obtained leave, which admits the jurisdiction. See *Pro se*.

**Inquest.** The inquiry by a coroner or medical examiner, sometimes with the aid of a jury, into the manner of the death of any one who has been killed, or has died suddenly under unusual or suspicious circumstances, or by violence, or while in prison.

A body of men appointed by law to inquire into certain matters. The grand jury is sometimes called the "grand inquest." The judicial inquiry made by a jury summoned for the purpose is called an "inquest." The finding of such men, upon an investigation, is also called an "inquest."

See also *Inquisition*.

*Coroner's inquest.* See *Coroner*.

*Inquest, arrest of.* See *Arrest*.

*Inquest jury.* See *Jury*.

*Inquest of office.* In old English practice, an inquiry made by the king's (or the queen's) officer, his sheriff, coroner, or escheator, *virtute officii*, or by writ sent to them for that purpose, or by commissioners specially

appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels; as to inquire whether the king's tenant for life died seised, whereby the reversion accrues to the king; whether A., who held immediately of the crown, died without heir, in which case the lands belong to the king by escheat; whether B. be attainted of treason, whereby his estate is forfeited to the crown; whether C., who has purchased land, be an alien, which is another cause of forfeiture, etc. 3 Bl.Comm. 258. These *inquests of office* were most frequent in practice during the continuance of the military tenures; and were devised by law as an authentic means to give the king his right by solemn matter of record. Id. 258, 259. Sometimes simply termed "*office*," as in the phrase "*office found*" (*q.v.*). *Atlantic & P. R. Co. v. Mingus*, 165 U.S. 413, 17 S.Ct. 348, 41 L.Ed. 770.

**Inquilinus** /inkwəláynəs/. In Roman law, a tenant; one who hires and occupies another's house; but particularly, a tenant of a hired house in a city, as distinguished from *colonus*, the hirer of a house or estate in the country.

**Inquirendo** /inkwərəndow/. An authority given to some official person to institute an inquiry concerning the crown's interests.

**Inquiry court.** See *Court of inquiry*; *Inquest*.

**Inquiry notice.** Information which is charged to a person where a duty is imposed upon him by law to make a reasonable investigation; the information which such investigation would have revealed is imputed to such person.

**Inquiry, writ of.** A common law writ (now obsolete), sued out by a plaintiff in a case where the defendant had let the proceedings go by default, and an interlocutory judgment had been given for damages generally, where the damages did not admit of calculation. It issued to the sheriff of the county in which the *venue* was laid, and commanded him to inquire, by a jury of twelve men, concerning the amount of damages. The sheriff thereupon tried the cause in his sheriff's court, and some amount was always returned to the court. But the return of the inquest merely informed the court, which could, if it chose, in all cases assess damages and thereupon give final judgment.

**Inquisitio** /inkwəzish(iy)ow/. In old English law, an inquisition or inquest. *Inquisitio post mortem*, an inquisition after death. An inquest of office held, during the continuance of the military tenures, upon the death of every one of the king's tenants, to inquire of what lands he died seised, who was his heir, and of what age, in order to entitle the king to his marriage, wardship, relief, primer seisin, or other advantages, as the circumstances of the case might turn out. 3 Bl.Comm. 258. *Inquisitio patriæ*, the inquisition of the country; the ordinary jury, as distinguished from the grand assise.

**Inquisition** /inkwəzishən/. An inquiry or inquest; particularly, an investigation of certain facts made by a sheriff, together with a jury impaneled by him for the

purpose. The instrument of writing on which their decision is made is also called an inquisition. In its broadest sense, "inquisition," includes any judicial inquiry. See *Inquest*.

**Inquisition after death.** See *Inquest*; *Inquisitio*.

**Inquisitor** /ɛnkwizətər/. A designation of sheriffs, coroners *super visum corporis*, and the like, who have power to inquire into certain matters.

In Ecclesiastical law, the name of an officer who is authorized to inquire into heresies, and the like, and to punish them. A judge.

**In quo quis delinquit, in eo de jure est puniendus** /in kwów kwis dəlɪŋkwət, in iyow diy júriy èst pyùwni-yéndəs/. In whatever thing one offends, in that is he rightfully to be punished. The punishment shall have relation to the nature of the offense.

**In re** /in ríy/. In the affair; in the matter of; concerning; regarding. This is the usual method of entitling a judicial proceeding in which there are not adversary parties, but merely some *res* concerning which judicial action is to be taken, such as a bankrupt's estate, an estate in the probate court, a proposed public highway, etc. It is also sometimes used as a designation of a proceeding where one party makes an application on his own behalf, but such proceedings are more usually entitled "*Ex parte* —"

**In rebus** /in ríybəs/. (Lat.) In things, cases, or matters.

**In rebus manifestis, errat qui auctoritates legum allegat; quia perspicua vera non sunt probanda** /in ríybəs mənəféstəs, éhrət kwáy októrtéyiyz líygəm ələgət; kwáyə pərspíkyuwə vírə nón sənt prəbəndə/. In clear cases, he mistakes who cites legal authorities; for obvious truths are not to be proved. Applied to cases too plain to require the support of authority; "because," says the report, "he who endeavors to prove them obscures them."

**In rebus quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti** /in ríybəs kwíy sənt féyvarəbíl(iy)ə ənəmiy, kwəmvəs sənt dæmnówsə ríybəs, fáyt ələkwəndow əksténs(h)iyow stətyúwtay/. In things that are favorable to the spirit, though injurious to things, an extension of a statute should sometimes be made.

**In re communi melior est conditio prohibentis** /in ríy kəmyúwnay míyl(i)yər èst kəndísh(iy)ow pròwhəbéntəs/. In common property the condition of the one prohibiting is the better. In other words, either co-owner has a right of veto against the acts of the other. *Gulf Refining Co. of Louisiana v. Carroll*, 145 La. 299, 82 So. 277, 279.

**In re communi neminem dominorum jure facere quicquam, invito altero, posse** /in ríy kəmyúwnay némanəm dómənórəm júriy féysəriy kwáykwəm, ənváy-tow óltərow, pósiy/. One co-proprietor can exercise no authority over the common property against the will of the other. In other words, either co-owner has a right of veto against the acts of the other.

**In re communi potior est conditio prohibentis** /in ríy kəmyúwnay pówsh(iy)ər èst kəndísh(iy)ow pròwhəbéntəs/. In a partnership the condition of one who forbids is the more favorable.

**In re dubia, benigniorem interpretationem sequi, non minus justius est quam tutius** /in ríy d(y)úwbíyə, bənígniyórəm əntərpətéyshiyównəm sékway, nón máynəs jəst(i)yəs èst kwəm tyúwsh(iy)əs/. In a doubtful matter, to follow the more liberal interpretation is not less the juster than the safer course.

**In re dubia, magis inficiatio quam affirmatio intelligenda** /in ríy d(y)úwbíyə, méyjs ənfis(h)iyéysh(iy)ow kwəm əfərméysh(iy)ow əntələjéndə/. In a doubtful matter, the denial or negative is to be understood [or regarded], rather than the affirmative.

**In regard to** /in rəgárd túw/. Concerning; relating to; in respect of; with respect to; about. *Hart v. Hart*, 181 Iowa 527, 164 N.W. 849, 850.

**In re lupanari, testes lupanares admittentur** /in ríy l(y)úwpənəray, téstiyz l(y)úwpənəriy ədməténtər/. In a matter concerning a brothel, prostitutes are admitted as witnesses.

**In rem** /in rém/. A technical term used to designate proceedings or actions instituted *against the thing*, in contradistinction to personal actions, which are said to be *in personam*.

"In rem" proceedings encompass any action brought against person in which essential purpose of suit is to determine title to or to affect interests in specific property located within territory over which court has jurisdiction. *ReMine ex rel. Liley v. District Court for City and County of Denver, Colo.*, 709 P.2d 1379, 1382. It is true that, in a strict sense, a proceeding *in rem* is one taken directly against property, and has for its object the disposition of property, without reference to the title of individual claimants; but, in a larger and more general sense, the terms are applied to actions between parties, where the direct object is to reach and dispose of property owned by them, or of some interest therein. Such are cases commenced by attachment against the property of debtors, or instituted to partition real estate, foreclose a mortgage, or enforce a lien. *Pennyoy v. Neff*, 95 U.S. 714, 24 L.Ed. 565. In the strict sense of the term, a proceeding "in rem" is one which is taken directly against property or one which is brought to enforce a right in the thing itself.

Actions in which the court is required to have control of the thing or object and in which an adjudication is made as to the object which binds the whole world and not simply the interests of the parties to the proceeding. *Flesch v. Circle City Excavating & Rental Corp.*, 137 Ind.App. 695, 210 N.E.2d 865.

See also *In personam*; *In rem jurisdiction*; *Quasi in rem jurisdiction*.

*Judgment in rem.* See that title.

*Quasi in rem.* A term applied to proceedings which are not strictly and purely *in rem*, but are brought against the defendant personally, though the real object is to deal with particular property or subject property to the

discharge of claims asserted; for example, foreign attachment, or proceedings to foreclose a mortgage, remove a cloud from title, or effect a partition. *Freeman v. Alderson*, 119 U.S. 185, 7 S.Ct. 165, 30 L.Ed. 372. An action in which the basis of jurisdiction is the defendant's interest in property, real or personal, which is within the court's power, as distinguished from *in rem* jurisdiction in which the court exercises power over the property itself, not simply the defendant's interest therein.

**In rem actio est per quam rem nostram quæ ab alio possidetur petimus, et semper adversus eum est qui rem possidet.** /in rém áksh(iy)ow ést pâr kwæm rém nóstræm kwíy æb éyliow pòsædiytær pêtæmæs, èt sémpær ædvársæs iyæm ést kwây rém pòsædæt/. The action *in rem* is that by which we seek our property which is possessed by another, and is always against him who possesses the property.

**In rem jurisdiction.** Refers to an action that is taken directly against the defendant's property. The term may be contrasted with *in personam* jurisdiction. Power over a thing possessed by a court which allows it to seize and hold the object for some legal purpose; *e.g.* boat on which narcotics are found. *Calero Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 94 S.Ct. 2080, 40 L.Ed.2d 452. See also Jurisdiction *in rem*; Jurisdiction quasi *in rem*.

**In rem mortgage.** Foreclosure of mortgage is in the nature of an *in rem* proceeding but it approximates more closely a quasi *in rem* action because it is directed to the extinguishment of the rights of mortgagor as well as all others.

**In render.** A thing is said to lie *in render* when it must be rendered or given by the tenant; as rent. It is said to lie *in prender* when it consists in the right in the lord or other person to take something. See *In prender*.

**In re pari potioem causam esse prohibentis constat** /in ríy péray pòwshiyóræm kózæm ésiy pròwhæbéntæs kónstæt/. In a thing equally shared [by several] it is clear that the party refusing [to permit the use of it] has the better cause. A maxim applied to partnerships, where one partner has a right to withhold his assent to the acts of his copartner.

**In re propria iniquum admodum est alicui licentiam tribuere sententiæ** /in ríy prówpriyæ ənáykwæm ædmædæm ést ælæk(yuw)ay læsénsh(iy)æm trəbyúwəriy senténshiyi/. It is extremely unjust that any one should be judged in his own cause.

**In republica maxime conservanda sunt jura belli** /in rəpəbləkə məksəmiy kənsərvændə sənt júrə bélay/. In a state the laws of war are to be especially upheld.

**In rerum natura** /in ríræm nətyúræ/. In the nature of things; in the realm of actuality; in existence. In a dilatory plea, an allegation that the plaintiff is not *in rerum natura* is equivalent to averring that the person named is fictitious. 3 Bl.Comm. 301.

**In respect of decedent.** See *Income* in respect of decedent.

**In restitutionem, non in pœnam hæres succedit** /in rɛstæt(y)úwshiyównæm, nón in píynæm híriyz sæksíydæt/. The heir succeeds to the restitution, not to the penalty. An heir may be compelled to make restitution of a sum unlawfully appropriated by the ancestor, but is not answerable criminally, as for a penalty.

**In restitutionibus benignissima interpretatio facienda est** /in rɛstæt(y)úwshiyównæbæs bɛnəgnisəmə intəprætéysh(iy)ow fɛys(h)iyéndə ést/. The most benignant interpretation is to be made in restitutions.

**Inroll.** A form of "enroll," used in the old books. See *Enroll*.

**Inrollment.** See *Enrollment*.

**I.N.S.** Immigration and Naturalization Service.

**Insane delusion.** An "insane delusion" is a conception of a disordered mind which imagines facts to exist of which there is no evidence and belief in which is adhered to against all evidence and argument to contrary, and which cannot be accounted for on any reasonable hypothesis. In *re Nigro's Estate*, 243 Cal.App.2d 152, 52 Cal.Rptr. 128, 133.

**Insanity.** The term is a social and legal term rather than a medical one, and indicates a condition which renders the affected person unfit to enjoy liberty of action because of the unreliability of his behavior with concomitant danger to himself and others. The term is more or less synonymous with mental illness or psychosis. In law, the term is used to denote that degree of mental illness which negates the individual's legal responsibility or capacity.

#### Insanity as Defense to Crime

There are various tests used by the courts to determine criminal responsibility, or lack thereof, of a defendant who asserts the defense that he or she was insane at the time of the crime. A frequently used test as provided in Section 4.01 of the Model Penal Code is as follows: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law." Under this test there must be a sufficient causal link between the defendant's mental disease or defect and his inability to control his behavior. *U.S. v. Jackson*, 553 F.2d 109, 113, 179 U.S.App.D.C. 375. This test, as defined by the American Law Institute, has been adopted (sometimes with slight modifications) by a number of states and also in most federal courts. See 18 U.S.C.A. § 4241.

If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, he is required to notify the attorney for the government of such intention. Fed.R.Crim.P. 12.2.; 18 U.S.C.A. § 4242.

It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of

his acts. Mental disease or defect does not otherwise constitute a defense. 18 U.S.C.A. §§ 17(a), 4241.

In certain states, once the insanity defense is made the burden is on the prosecution to prove that the defendant is mentally competent, while in others the burden is on the defense to prove the defendant is insane. In federal criminal cases, the defendant has the burden of proving the defense of insanity by clear and convincing evidence. 18 U.S.C.A. § 17.

*See also* Automatism; Diminished responsibility doctrine; Durham rule; Irresistible impulse; M'Naghten Rule and Right and wrong test, for various other tests used by courts to determine criminal responsibility of defendant who asserts insanity defense. *See also* Competency; Incompetency; Insane delusion; Lucid interval; Lunacy; Melancholia; Sanity hearing; Substantial capacity test; Uncontrollable impulse.

### Insanity as Affecting Capacity

Capacity to make a will includes an intelligent understanding of the testator's property, its extent and items, and of the nature of the act he is about to perform, together with a clear understanding and purpose as to the manner of its distribution and the persons who are to receive it. Lacking these, the testator is not mentally competent. The presence of insane delusions is not inconsistent with testamentary capacity, if they are of such a nature that they cannot reasonably be supposed to have affected the dispositions made by the will; and the same is true of the various forms of monomania and of all kinds of eccentricity and personal idiosyncrasy. But imbecility, senile dementia, and all forms of systematized mania which affect the understanding and judgment generally disable the person from making a valid will. To constitute "senile dementia," incapacitating one to make a will, there must be such a failure of the mind as to deprive the testator of intelligent action. *See also* Capacity.

As a ground for voiding or annulling a contract or conveyance, insanity does not mean a total deprivation of reason, but an inability, from defect of perception, memory, and judgment, to do the act in question or to understand its nature and consequences. The insanity must have entered into and induced the particular contract or conveyance; it must appear that it was not the act of the free and untrammelled mind, and that on account of the diseased condition of the mind the person entered into a contract or made a conveyance which he would not have made if he had been in the possession of his reason.

Most state statutes provide for annulment of a marriage because of insanity. Insanity sufficient to justify the annulment of a marriage means such a want of understanding at the time of the marriage as to render the party incapable of assenting to the contract of marriage. Also, under most state statutes, insanity, if sufficient in degree and/or duration, constitutes a ground for divorce. In general, the same degree of mental capacity which enables a person to make a valid deed or will is sufficient to enable him to marry.

As a ground for restraining the personal liberty of the person (*i.e.* commitment), it may be said in general that the form of insanity from which he suffers should be such as to make his going at large a source of danger to himself or to others, though this matter is largely regulated by statute, and in many places the law permits the commitment of persons whose insanity does not manifest itself in homicidal or other destructive forms of mania, but who are incapable of caring for themselves and their property or who are simply fit subjects for treatment in hospitals and other institutions specially designed for the care of such patients. *See* Commitment.

To constitute insanity such as will authorize the appointment of a guardian or conservator, there must be such a deprivation of reason and judgment as to render him incapable of understanding and acting with discretion in the ordinary affairs of life; a want of sufficient mental capacity to transact ordinary business and to take care of and manage his property and affairs.

Insanity as a plea or proceeding to avoid the effect of the statute of limitations means practically the same thing as in relation to the appointment of a guardian. On the one hand, it does not require a total deprivation of reason or absence of understanding. On the other hand, it does not include mere weakness of mind short of imbecility. It means such a degree of derangement as renders the subject incapable of understanding the nature of the particular affair and his rights and remedies in regard to it and incapable of taking discreet and intelligent action. The time of sanity required in order to allow the statute to begin to run is such as will enable the party to examine his affairs and institute an action, and is for the jury.

There are a few other legal rights or relations into which the question of insanity enters, such as the capacity of a witness or of a voter; but they are governed by the same general principles. The test is capacity to understand and appreciate the nature of the particular act and to exercise intelligence in its performance. A witness must understand the nature and purpose of an oath and have enough intelligence and memory to relate correctly the facts within his knowledge. So a voter must understand the nature of the act to be performed and be able to make an intelligent choice of candidates. In either case, eccentricity, feeble-mindedness not amounting to imbecility, or insane delusions which do not affect the matter in hand, do not disqualify. *District of Columbia v. Armes*, 107 U.S. 519, 2 S.Ct. 840, 27 L.Ed. 618.

**Insanus est qui, abjecta ratione, omnia cum impetu et furore facit** /inséynəs èst kwáy əbjéktə rəyshiyówniy ómniyə kəm impət(y)uw èt fyəróriy féysət/. He is insane who, reason being thrown away, does everything with violence and rage.

**In satisfactionibus non permittitur amplius fieri quam semel factum est** /in sətəsɸækshiyównəbəs nɔn pərmítətər əmpliyəs fáyrəy kwəm séməl fáktəm èst/. In payments, more must not be received than has been received once for all.

**Inscribed.** Entered (*e.g.* a name) on a list or in a register. Type of government bonds, such as Series E, whose records are kept by the Federal Reserve Bank rather than by the Treasury Dept.

**Inscribere** /inskribəriy/. Lat. In the civil law, to subscribe an accusation. To bind one's self, in case of failure to prove an accusation, to suffer the same punishment which the accused would have suffered had he been proved guilty.

**Inscriptio** /inskripsh(iy)ow/. Lat. In the civil law, a written accusation in which the accuser undertakes to suffer the punishment appropriate to the offense charged, if the accused is able to clear himself of the accusation.

**Inscription.** In evidence, anything written or engraved upon a metallic or other solid substance, intended for great durability; as upon a tombstone, pillar, tablet, medal, ring, etc.

The entry of a mortgage, lien, or other document at large in a book of public records; corresponding to "recording" or "registration."

In civil law, an engagement which a person who makes a solemn accusation of a crime against another enters into that he will suffer the same punishment, if he has accused the other falsely, which would have been inflicted upon him had he been guilty.

**Inscriptiones** /inskripshiyówniyz/. The name given by the old English law to any written instrument by which anything was granted.

**Insecure.** Unsafe and dangerous. Not secure or safe; not certain. Impairment or loss of security. *See* Acceleration clause; Insecurity clause.

**Insecurity clause.** Provision in contract that allows a creditor to make an entire debt come due if there is good reason to believe that the debtor cannot or will not pay. *See also* Acceleration clause.

**In separali** /in sèpərəilyay/. In several; in severalty.

**Insider.** With respect to federal regulation of purchase and sale of securities, refers to anyone who has knowledge of facts not available to the general public (*e.g.*, officers, directors, key employees, relatives). 15 U.S.C.A. § 78p(a). An insider is liable for insider stock trading under section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 only where he or she fails to disclose material non-public information before trading on it and thus makes secret profits. *Dirks v. S.E.C.*, 463 U.S. 646, 103 S.Ct. 3255, 77 L.Ed.2d 911. In determining whether a person, not a director or officer, is a corporate "insider" who as a purchaser of stock has a duty to disclose material facts unknown to seller, the test is whether he had such a relationship to corporation that he had access to information which should be used only for corporate purposes and not for personal benefit of anyone. *Ross v. Licht*, D.C.N.Y., 263 F.Supp. 395, 409. *See also* Insider information; Insider reports; Insider trading; Rule 10b-5; Short swing profits; Tippees.

For purposes of Bankruptcy Code, "insider" is entity or person with sufficiently close relationship with debtor that his conduct is made subject to closer scrutiny than those dealing at arm's length with debtor. In re *Acme-Dunham Inc.*, D.C.Me., 50 B.R. 734, 739; Bankruptcy Code § 101.

**Insider information.** Information about a company's financial situation that is obtained by insiders (officers, directors, employees, etc.), before the public obtains it. True inside information is usually only known by corporate officials or other "insiders." SEC rules and court decisions restrict stock trading by insiders on the basis of such information. *See also* Insider; Insider trading; Tippees.

**Insider reports.** Monthly reports required by Securities and Exchange Commission from directors, officers and stockholders of their transactions in stock of which they own more than 10% of such shares. 15 U.S.C.A. § 78p(a).

**Insider trading.** Term refers to transactions in shares of publicly held corporations by persons with inside or advance information on which the trading is based. Usually the trader himself is an insider with an employment or other relation of trust and confidence with the corporation. Such transactions must be reported monthly to Securities and Exchange Commission (*see* Insider reports).

The Supreme Court has established rules governing liability for insider trading under section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5. Two elements for establishing a violation of section 10(b) and Rule 10b-5 by corporate insiders are the existence of a relationship affording access to inside information intended to be available only for a corporate purpose, and the unfairness of allowing a corporate insider to take advantage of that information by trading without disclosure. *Chiarella v. United States*, 445 U.S. 222, 100 S.Ct. 1108, 63 L.Ed.2d 348; *Dirks v. S.E.C.*, 463 U.S. 646, 103 S.Ct. 3255, 77 L.Ed.2d 911. *See* Insider.

**Insidiatores viarum** /insidiyətóriyz vayérəm/. Lat. Highwaymen; persons who lie in wait in order to commit some felony or other misdemeanor.

**Insignia** /insign(i)yə/. Ensigns or arms; distinctive marks; badges; *indicia*; characteristics.

**Insiliarius** /insiliyériyəs/. An evil counsellor.

**Insilium** /insil(i)yəm/. Evil advice or counsel.

**In simili materia** /in síməlay mətír(i)yə/. Dealing with the same or a kindred subject-matter.

**Insimul** /insəməl/. Lat. Together; jointly.

**Insimul computassent** /insəməl kòmpyətəsənt/. They accounted together. In common law pleading, the name of the count in *assumpsit* upon an account stated; it being averred that the parties had settled their accounts together, and defendant engaged to pay plaintiff the balance.

**Insimul tenuit** /insəməl tényuwət/. One species of the writ of *formedon* brought against a stranger by a coparcener on the possession of the ancestor, etc.

**Insinuación** /iynsiynuwasýown/. In Spanish law, the presentation of a public document to a competent judge, in order to obtain his approbation and sanction of the same, and thereby give it judicial authenticity.

**Insinuare** /insinyuwéry/. Lat. In the civil law, to put into; to deposit a writing in court, answering nearly to the modern expression "to file." *Si non mandatum actis insinuatum est*, if the power or authority be not deposited among the records of the court. To declare or acknowledge before a judicial officer; to give an act an official form.

**Insinuatio** /insinyuwéysh(iy)ow/. Lat. In old English law, information or suggestion. *Ex insinuatione*, on the information.

**Insinuation.** To hint or suggest doubt or suspicion.

In the civil law, the transcription of an act on the public registers like our recording of deeds. It was not necessary in any other alienation but that appropriated to the purpose of donation.

**Insinuation of a will.** In the civil law, the first production of a will, or the leaving it with the registrar, in order to its probate.

**In solido** /in sóladow/. In the civil law, for the whole; as a whole. An obligation *in solido* is one where each of the several obligors is liable for the whole; that is, it is joint and several. *Henderson v. Wadsworth*, 115 U.S. 264, 6 S.Ct. 40, 29 L.Ed. 377. Possession *in solidum* is exclusive possession. When several persons obligate themselves to the obligee by the terms "*in solido*," or use any other expressions which clearly show that they intend that each one shall be separately bound to perform the whole of the obligation, it is called an "obligation *in solido*" on the part of the obligors.

**In solidum** /in sólédəm/. For the whole. *Si plures sint fidejussores, quotquot erunt numero, singuli in solidum tenentur*, if there be several sureties, however numerous they may be, they are individually bound for the whole debt. *In parte sive in solidum*, for a part or for the whole.

**In solo** /in sówlow/. In the soil or ground. *In solo alieno*, in another's ground. *In solo proprio*, in one's own ground.

**Insolvency.** The condition of a person or business that is insolvent; inability or lack of means to pay debts. Such a relative condition of a person's or entity's assets and liabilities that the former, if all made immediately available, would not be sufficient to discharge the latter. Under bankruptcy law, the condition of a person or firm that is unable to pay debts as they fall due, or in the usual course of trade or business. Financial condition such that businesses' or person's debts are greater than aggregate of such debtor's property at a fair valuation. *American Nat. Bank & Trust Co. of Chicago, Ill. v. Bone*, C.A.Mo., 333 F.2d 984, 987. In general, state insolvency

laws have been superseded by the Federal Bankruptcy Code (11 U.S.C.A.). See Bankruptcy proceedings.

"Insolvency" under the Bankruptcy Code is defined in § 101.

"Technical" insolvency is a situation in which a firm is unable to meet its current obligations as they come due, even though the value of its assets may exceed its liabilities.

Under U.C.C., a person is insolvent who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they fall due or is insolvent within the meaning of the Federal Bankruptcy Law. U.C.C. § 1-201(23).

**Insolvency proceeding.** Any proceeding intended to liquidate or rehabilitate the estate of the person involved, including any assignment for the benefit of creditors and any chapter proceeding under federal bankruptcy law. U.C.C. § 1-201(22). See Bankruptcy proceedings.

**In specie** /in spíys(h)iy(iy)/. Specific; specifically. Thus, to decree performance *in specie* is to decree specific performance. In kind; in the same or like form. A thing is said to exist *in specie* when it retains its existence as a distinct individual of a particular class.

**Inspector.** A prosecutor or adversary.

**Inspection.** To examine; scrutinize; investigate; look into; check over; or view for the purpose of ascertaining the quality, authenticity or conditions of an item, product, document, residence, business, etc. Word has broader meaning than just looking, and means to examine carefully or critically, investigate and test officially, especially a critical investigation or scrutiny. *State ex rel. State Farm Mutual Auto. Ins. Co. v. Rickhoff, Mo. App.*, 509 S.W.2d 485, 487. See also Freedom of Information Act; In camera inspection; Privacy laws.

**Discovery practice.** Rights of parties in civil actions to inspect papers, documents, land, etc. of opposing party are governed by Fed.R. Civil P. 26 and 34. Similar rights of prosecutor and defendant in criminal cases are governed by Fed.R.Crim.P. 16. Under discovery rules and statutes, "inspection" is sufficiently broad to include testing of evidence, and is not necessarily confined to visual observation but is ordinarily understood to embrace tests and examinations. *State ex rel. Remington Arms Co., Inc. v. Powers, Okl.*, 552 P.2d 1150, 1152. See also Inspection of documents; Jencks Act; Subpoena duces tecum.

**Reasonable inspection.** As relates to duty of employer to provide employee with proper instrumentalities with which to work, does not mean such an inspection as would necessarily or infallibly disclose a defect if one existed, but only such inspection as reasonably prudent man, in the exercise of ordinary care, would make.

**Inspection laws.** Laws authorizing and directing the inspection and examination of various kinds of merchandise intended for sale, especially food, with a view to ascertaining its fitness for use, and excluding unwholesome or unmarketable goods from sale that do not conform to standards prescribed by regulations, and

directing the appointment of official inspectors for that purpose; e.g. grain or meat inspection laws. *Patapsco Guano Co. v. Board of Agriculture*, 171 U.S. 345, 18 S.Ct. 862, 43 L.Ed. 191. State and federal inspection laws may also be concerned with employment safety conditions (e.g. Occupational Safety and Health Act (OSHA)); building construction safety (e.g. building ordinances); health conditions of restaurants or food processors; and safety conditions of motor vehicles. See *Food and Drug Administration*; *Occupational Safety and Health Administration*.

If a resident refuses permission to a fire, health, building, etc. inspector to inspect the premises, a search warrant will be required. *Camara v. Municipal Court of etc. San Francisco*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930. A warrant is likewise required for inspection of business premises by OSHA inspectors. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816, 56 L.Ed.2d 305.

See also Freedom of Information Act; Inspection rights; Inspection searches; Privacy laws.

**Inspection of documents.** This phrase refers to the right of a party, in a civil action, to inspect and make copies of documents which are essential or material to the maintenance of his cause, and which are either in the custody of an officer of the law or in the possession of the adverse party. Fed.R. Civil P. 26, 34 and 37. Such opportunity for inspection in criminal cases is afforded both the prosecutor and defendant under Fed. R.Crim.P. 16. See also Subpoena duces tecum.

**Inspection rights.** Buyer of goods has right to inspect them before payment or acceptance at any reasonable place and time and in any reasonable manner. U.C.C. § 2-513(1). See also Inspection.

With respect to discovery in civil actions, Fed.R. Civil P. 26 and 34 affords a party the right to inspect documents, records, land, etc. of the other party. Similar rights are afforded the prosecutor and defendant under Fed.R.Crim.P. 16. See also Inspection of documents; Subpoena duces tecum.

**Inspection searches.** Administrative searches conducted by local or state authorities for health or building law enforcement must be based on a warrant issued on probable cause. *Camara v. Municipal Court of etc. San Francisco*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930. A warrant is likewise required for inspection of business premises by OSHA inspectors. *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816, 56 L.Ed.2d 305. An exception to the warrant requirement is in cases involving closely regulated industries where the commercial operator's privacy interest is adequately protected by detailed regulatory schemes authorizing warrantless inspections. *Donovan v. Dewey*, 452 U.S. 594, 101 S.Ct. 2534, 69 L.Ed.2d 262; *New York v. Burger*, 482 U.S. 691, 107 S.Ct. 26, 36, 96 L.Ed.2d 601. See also Inspection laws.

**Inspection, trial by.** A mode of trial formerly in use in England, by which the judges of a court decided a point in dispute, upon the testimony of their own senses, without the intervention of a jury. This took place in

cases where the fact upon which issue was taken must, from its nature, be evident to the court from ocular demonstration, or other irrefragable proof; and was adopted for the greater expedition of a cause.

**Inspector.** The name given to certain officers whose duties are to examine and inspect things over which they have jurisdiction. Officers whose duty it is to examine the quality of certain articles of merchandise, food, weights and measures, working conditions of business, structural soundness of building, etc.; e.g. federal grain or meat inspectors; OSHA inspectors; building inspectors; health inspectors. See also Inspection laws.

**Inspector general.** Various agencies of the federal government have an office of Inspector General whose primary function is to conduct and supervise audits and investigations relating to programs and operations of the particular agency. 5 U.S.C.A.App.

**Inspectorship, deed of.** In old English law, an instrument entered into between an insolvent debtor and his creditors, appointing one or more persons to inspect and oversee the winding up of such insolvent's affairs on behalf of the creditors.

**Inspeximus** /inspéksəməs/. (Lat.) We have seen. A word sometimes used in letters patent, reciting a grant, *inspeximus* such former grant, and so reciting it verbatim; it then grants such further privileges as are thought convenient.

**Install.** To place in a seat, give a place to; to set, place, or instate in an office, rank, or order, etc. To set up or fix in position for use or service.

**Installation.** The ceremony of inducting or investing with any charge, office, or rank, as the placing a bishop into his see, a dean or prebendary into his stall or seat, or a knight into his order. The act by which an officer is put in public possession of the place he is to fill. The President of the United States, or a governor, is installed into office, by being sworn agreeably to the constitution and laws.

**Installment.** Partial payment of a debt or collection of a receivable. Different portions of the same debt payable at different successive periods as agreed. Partial payments on account of a debt due. *Kenney v. Los Feliz Inv. Co.*, 121 Cal.App. 378, 9 P.2d 225, 228. See Installment loan.

**Installment contract.** Type of agreement calling for periodic performances and payments.

An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent. U.C.C. § 2-612.

See Installment land contract; Installment sale; Retail installment contract.

**Installment credit.** Commercial arrangement in which buyer undertakes to pay in more than one payment and seller agrees to sell on such basis and in which a finance charge may be exacted. Such agreements are common-

ly subject to statutory disclosure regulation; e.g. Truth-in-Lending laws. See also Annual percentage rate.

**Installment land contract.** Type of contract by which buyer is required to make periodic payments towards purchase price of land and only on the last payment is the seller required to deliver a deed. Also called a "contract for deed" or "long-term land contract." See also Land contract.

**Installment loan.** A loan made to be repaid in specified, usually equal, amounts over a certain number of months. The contract specifies the amount and method of payment. Consumer installment loan contracts are subject to disclosure requirements of Truth-in-Lending Act (*q.v.*). See also Annual percentage rate; Balloon payment; Installment credit; Installment sale.

**Installment method.** A method of accounting enabling a taxpayer to spread the recognition of gain on the sale of property over the payout period. Under this elective procedure, the seller computes the gross profit percentage from the sale (*i.e.*, the gain divided by the selling price) and applies it to each payment received to arrive at the gain to be recognized. Effective for tax years beginning after 1987, a restriction has been placed on the use of the installment method and dealers in real estate or personal property are not permitted to use the installment method to report gains from the sale of property. I.R.C. § 453.

**Installment note.** See Installment loan.

**Installment plan.** Commercial sales arrangement by which goods are sold and buyer pays for them in periodic payments. See also Installment contract; Installment credit; Installment loan; Installment sale.

**Installment sale.** Commercial arrangement by which buyer makes initial down payment and signs a contract for payment of the balance in installments over a period of time. In accounting for such sales, the seller may either account for the profits on basis of each installment payment received or the entire amount in the period of the sale; in latter case, reserves are established for bad debts, collection expenses and costs of reconditioning returned merchandise. See also Installment contract; Installment credit; Installment loan; Installment method; Truth-in-Lending Act.

**Retail installment sale.** The sale of goods or the furnishing of services by a retail seller to a retail buyer for a deferred payment price payable in installments. Retail installment sales contracts are governed with respect to disclosure of terms and finance charges by Truth-in-Lending Act (*q.v.*). See also Annual percentage rate.

**Instance court.** In English law, that division or department of the court of admiralty which exercised all the ordinary admiralty jurisdiction, with the single exception of prize cases, the latter belonging to the branch called the "Prize Court." Now part of High Court.

**Instancia** /iynstánsiya/. In Spanish law, the institution and prosecution of a suit from its commencement until definitive judgment. The first instance, *primera in-*

*stancia*," is the prosecution of the suit before the judge competent to take cognizance of it at its inception; the second instance, *"secunda instancia*," is the exercise of the same action before the court of appellate jurisdiction; and the third instance, *"tercera instancia*," is the prosecution of the same suit, either by an application of revision before the appellate tribunal that has already decided the cause, or before some higher tribunal, having jurisdiction of the same.

**Instans est finis unius temporis et principium alterius** /instãnz èst fáynas yonáyas témparəs èt prinsíp(i)yəm öltaráyəs/. An instant is the end of one time and the beginning of another.

**Instant.** Present, current, as instant case.

**Instantaneous crime.** An "instantaneous" crime is one which is fully consummated or completed in and by a single act (such as arson or murder) as distinguished from one which involves a series or repetition of acts.

**Instantaneous death.** See Death.

**Instanter** /instãntər/. Immediately; instantly; forthwith; without delay. Trial *instanter* was had where a prisoner between attainder and execution pleaded that he was not the same who was attainted. When a party was ordered to plead *instanter*, he was required to plead the same day. The term was usually understood to mean within twenty-four hours.

**Instantly.** Immediately; directly; without delay; at once.

**Instar** /instàr/. Lat. Likeness; the likeness, size, or equivalent of a thing. *Instar dentium*, like teeth. *Instar omnium*, equivalent or tantamount to all.

**In statu quo** /in stéyt(y)uw kwów/˚stæt(y)˚/. In the condition in which it was. Status quo.

**Instigate** /instəgeyt/. To stimulate or goad to an action, especially a bad action; one of its synonyms is "abet". Hughes v. Van Bruggen, 44 N.M. 534, 105 P.2d 494, 499. See Aid and abet; Entrapment.

**Instigation** /instəgeýshən/. Incitation; urging; solicitation. The act by which one incites another to do something, as to commit some crime or to commence a suit. See Aid and abet; Entrapment; Incite.

**In stipulationibus cum quæritur quid actum sit verba contra stipulatorem interpretanda sunt** /in stípyələýshiyónəbəs kəm kwíretər kwíd éktəm sít vərbə kóntrə stípyələtórəm intəprætəndə sânt/. In the construction of agreements words are interpreted against the person using them. Thus, the construction of the *stipulatio* is against the stipulator, and the construction of the *promissio* against the promissor.

**In stipulationibus, id tempus spectatur quo contrahimus** /in stípyələýshiyónəbəs íd témpəs spèktéytər kwów kóntráhəməs/. In stipulations, the time when we contract is regarded.

**Instirpare** /instəpəriy/. To plant or establish.

**In stirpes** /in stérpiyz/. In the law of intestate succession, according to the roots or stocks; by representation;



as distinguished from succession *per capita*. See *Per capita*; *Per stirpes*.

**Institor** /instətər/. Lat. In the civil law, a clerk in a store; an agent.

**Institoria actio** /instətór(i)yə áksh(iy)ow/. Lat. In the civil law, the name of an action given to those who had contracted with an institor (*q.v.*) to compel the principal to performance.

**Institorial power** /instətór(i)yəl páwər/. In the civil law, the charge given to a clerk to manage a shop or store.

**Institute, v.** To inaugurate or commence, as to institute an action. *Post v. U. S.*, 161 U.S. 583, 16 S.Ct. 611, 40 L.Ed. 816. To set up; to originate; to initiate; to start; to introduce. To nominate, constitute, or appoint, as to institute an heir by testament. See *Institution*.

**Institute, n.** Act of instituting; something that is instituted. A principle recognized as authoritative; also the organization which drafts and authors such authoritative principles; *e.g.* American Law Institute. See also *Institution*.

In the civil law, a person named in the will as heir, but with a direction that he shall pass over the estate to another designated person, called the "substitute."

**Instituted executor.** An instituted executor is one who is appointed by the testator without any condition.

**Institutes.** A name sometimes given to textbooks containing the elementary principles of jurisprudence, arranged in an orderly and systematic manner. For example, the *Institutes of Justinian*, of *Gaius*, of *Lord Coke*.

*Institutes of Gaius.* An elementary work of the Roman jurist *Gaius*; important as having formed the foundation of the *Institutes of Justinian* (*q.v.*). These *Institutes* were discovered by *Niebuhr* in 1816, in a *codex rescriptus* of the library of the cathedral chapter at Verona, and were first published at Berlin in 1820.

*Institutes of Justinian.* One of the four component parts or principal divisions of the *Corpus Juris Civilis*, being an elementary treatise on the Roman law, in four books. This work was compiled from earlier sources (resting principally on the *Institutes of Gaius*), by a commission composed of *Tribonian* and two others, by command and under direction of the emperor *Justinian*, and was first published November 21, A.D. 533.

*Institutes of Lord Coke.* The name of four volumes by *Lord Coke*, published A.D. 1628. The first is an extensive comment upon a treatise on tenures, compiled by *Littleton*, a judge of the common pleas, *temp.* Edward IV. This comment is a rich mine of valuable common-law learning, collected and heaped together from the ancient reports and *Year Books*, but greatly defective in method. It is usually cited by the name of "Co. Litt.," or as "1 Inst." The second volume is a comment upon old acts of parliament, without systematic order; the third a more methodical treatise on the pleas of the crown; and the fourth an account of the several species of courts.

These are cited as 2, 3, or 4 "Inst.," without any author's name.

*Theophilus' Institutes.* A paraphrase of *Justinian*, made, it is believed, soon after A.D. 533. This paraphrase maintained itself as a manual of law until the eighth or tenth century. This text was used in the time of *Hexabiblos of Harmenipulus*, the last of the Greek jurists. It is also conjectured that *Theophilus* was not the editor of his own paraphrase, but that it was drawn up by some of his pupils after his explanations and lectures, inasmuch as it contains certain barbarous phrases, and the texts of the manuscripts vary greatly from each other.

**Institutio hæredis** /instət(y)úwsh(iy)ow hæriydəs/. Lat. In Roman law, the appointment of the *hæres* in the will. It corresponds very nearly to the nomination of an executor in English law. Without such an appointment the will was void at law, but the *prætor* (*i.e.*, equity) would, under certain circumstances, carry out the intentions of the testator.

**Institution.** The commencement or inauguration of anything, as the commencement of an action. The first establishment of a law, rule, rite, etc. Any custom, system, organization, etc., firmly established. An elementary rule or principle. See also *Institute*.

An establishment, especially one of eleemosynary or public character or one affecting a community. An established or organized society or corporation. It may be private in its character, designed for profit to those composing the organization, or public and charitable in its purposes, or educational (*e.g.* college or university). In *re Peabody's Estate*, 21 Cal.App.2d 690, 70 P.2d 249, 250. A foundation, as a literary or charitable institution. *Prescott Courier v. Board of Sup'rs of Yavapai County*, 49 Ariz. 423, 67 P.2d 483, 486.

*Civil law.* The appointment of an heir; the act by which a testator nominates one or more persons to succeed him in all his rights active and passive.

*Political law.* A law, rite, or ceremony enjoined by authority as a permanent rule of conduct or of government. An organized society, established either by law or the authority of individuals, for promoting any object, public or social.

A system or body of usages, laws, or regulations, of extensive and recurring operation, containing within itself an organism by which it effects its own independent action, continuance, and generally its own further development. Its object is to generate, effect, regulate, or sanction a succession of acts, transactions, or productions of a peculiar kind or class. We are likewise in the habit of calling single laws or usages "institutions," if their operation is of vital importance and vast scope, and if their continuance is in a high degree independent of any interfering power.

*Practice.* Commencement of civil action or criminal prosecution. See *Commence*.

**Public institution.** One which is created and exists by law or public authority, for benefit of public in general; e.g., a public hospital, charity, college, university, etc.

**Institutional investors.** Large investors, such as mutual funds, pension funds, insurance companies, and others who largely invest other people's money.

**Institutional lender.** Banks, savings and loan associations, and other businesses which make loans in the ordinary course of business, rather than individuals, credit unions, or companies which may make loans to employees.

**Institutiones** /ɪnstət(y)ʊwshiyówniyz/. Lat. Works containing the elements of any science; institutions or institutes. One of Justinian's principal law collections, and a similar work of the Roman jurist Gaius, are so entitled. See Institutes.

**Instruct.** To convey information as a client to an attorney, or as an attorney to a counsel, or as a judge to a jury. To authorize one to appear as advocate; to give a case in charge to the jury.

**Instructions to jury.** See Jury instructions.

**Instrument.** A formal or legal document in writing, such as a contract, deed, will, bond, or lease. A writing that satisfies the requisites of negotiability prescribed by U.C.C. Art. 3. A negotiable instrument (defined in U.C.C. § 3-104), or a security (defined in U.C.C. § 8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. U.C.C. § 9-105(1).

Anything reduced to writing, a document of a formal or solemn character, a writing given as a means of affording evidence. A document or writing which gives formal expression to a legal act or agreement, for the purpose of creating, securing, modifying, or terminating a right. A writing executed and delivered as the evidence of an act or agreement. *Moore v. Diamond Dry Goods Co.*, 47 Ariz. 128, 54 P.2d 553, 554. Anything which may be presented as evidence to the senses of the adjudicating tribunal.

**Incomplete instrument.** A paper whose contents show, at the time of signing, that it is intended to become an instrument but that is not an instrument because a necessary element is missing. See U.C.C. § 3-115(1).

See also Bearer instrument; Bill; Commercial paper; Negotiable instruments; Note.

**Instrumenta** /ɪnstrəməntə/. Lat. That kind of evidence which consists of writings not under seal; as court-rolls, accounts, and the like.

**Instrumental.** Serviceable, helpful; serving as a means or agent; something by which an end is achieved.

**Instrumentality.** Something by which an end is achieved; a means, medium, agency. *Perkins v. State*, 61 Wis.2d 341, 212 N.W.2d 141, 146.

**Instrumentality rule.** Under this rule, corporate existence will be disregarded where a corporation (subsidiary) is so organized and controlled and its affairs so conducted as to make it only an adjunct and instrumentality of another corporation (parent corporation), and parent corporation will be responsible for the obligations of its subsidiary. *Taylor v. Standard Gas & Electric Co.*, C.C.A.Okl., 96 F.2d 693, 704.

The so-called "instrumentality" or "alter ego" rule states that when a corporation is so dominated by another corporation that the subservient corporation becomes a mere instrument and is really indistinct from controlling corporation, then the corporate veil of dominated corporation will be disregarded, if to retain it results in injustice. *National Bond Finance Co. v. General Motors Corp.*, D.C.Mo., 238 F.Supp. 248, 255.

**Instrument of appeal.** The document by which an appeal is brought in an English matrimonial cause from the president of the probate, divorce, and admiralty division to the full court. It is analogous to a petition.

**Instrument of evidence.** Instruments of evidence are the *media* through which the evidence of facts, either disputed or required to be proved, is conveyed to the mind of a judicial tribunal; and they comprise persons and living things as well as writings. Demonstrative evidence.

**Insubordination.** State of being insubordinate; disobedience to constituted authority. Refusal to obey some order which a superior officer is entitled to give and have obeyed. Term imports a wilful or intentional disregard of the lawful and reasonable instructions of the employer. *Porter v. Pepsi-Cola Bottling Co. of Columbia*, 247 S.C. 370, 147 S.E.2d 620, 622.

**Insufficiency of evidence to support verdict.** This phrase in a motion for new trial, motion for directed verdict, or for judgment notwithstanding the verdict, means that there is some evidence, but not enough in light of the evidence to the contrary to support a verdict. *Arnold v. Haskins*, 147 S.W.2d 469, 472, 347 Mo. 320. It does not mean that evidence is factually insufficient to support affirmative finding on an issue, but that there is no evidence to warrant submission of the issue. *Gannett Outdoor Co. of Texas v. Kubeczka, Tex.App.—Hous.* (14 Dist.), 710 S.W.2d 79, 87. See also Directed verdict; Dismissal; Judgment (*Judgment notwithstanding verdict*). Compare Sufficiency of evidence.

**Insufficient.** Not sufficient; inadequate to some need, purpose, or use; wanting in needful value, ability, or fitness; incompetent; unfit, as insufficient food; insufficient means. It is the antonym of "sufficient." *Nissen v. Miller*, 44 N.M. 487, 105 P.2d 324, 325.

**Insufficient funds.** Bank term meaning that the drawers deposit balance is less than the amount of the check drawn on such account. See Bad check.

**Insula** /ɪns(y)ələ/. Lat. An island; a house not connected with other houses, but separated by a surrounding space of ground.

**Insular courts.** Federal courts established by Congress with jurisdiction over insular possessions of the United States.

**Insular possessions.** Island territories of the U.S., e.g. Puerto Rico.

**Insulation period.** The sixty days immediately preceding the expiration of a collective bargaining agreement when no representation petition may be filed. This is to permit the employer and incumbent union the opportunity to negotiate a new contract without rival claims for recognition.

**Insuper** /ins(y)úwpər/. Lat. Moreover; over and above.

An old English exchequer term, applied to a charge made upon a person in his account.

**Insurable.** Capable of being insured against loss, damage, illness, death, etc.; proper to be insured as based on standards of insurer; affording a sufficient ground for insurance. *Greenberg v. Continental Casualty Co.*, 24 Cal.App.2d 506, 75 P.2d 644, 649.

**Insurable interest.** Such a real and substantial interest in specific property as will prevent a contract to indemnify the person interested against its loss from being a mere wager policy. Such an interest as will make the loss of the property of pecuniary damage to the insured. A right, benefit, or advantage arising out of the property or dependent thereon, or any liability in respect thereof, or any relation thereto or concern therein, of such a nature that it might be so affected by the contemplated peril as to directly damnify the insured. Generally, an "insurable interest" exists where insured derives pecuniary benefit or advantage by preservation and continued existence of property or would sustain pecuniary loss from its destruction. *Hinojosa v. Allstate Ins. Co.*, Tex. Civ.App., 520 S.W.2d 936, 938.

In the case of life insurance, a reasonable expectation of pecuniary benefit from the continued life of another; also, a reasonable ground, founded upon the relation of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Connecticut Mut. Life Insurance Co. v. Schaefer*, 94 U.S. 457, 460, 24 L.Ed. 251. Essential thing being that policy be obtained in good faith, not for purpose of speculating on hazard of life in which insured has no interest. *Alexander v. Griffith Brokerage Co.*, 228 Mo.App. 773, 73 S.W.2d 418, 423.

**Insurable value.** Value of property for insurance purposes. Based on the value of the property, less indestructible parts (land) for fire insurance. For title insurance purposes, the sales price (market value) is used.

**Insurance.** A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils. The party agreeing to make the compensation is usually called the "insurer" or "underwriter;" the other, the "insured" or "assured;" the agreed consideration, the "premium;" the written contract, a "policy;" the events insured against, "risks" or "perils;" and the subject,

right, or interest to be protected, the "insurable interest." A contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event and is applicable only to some contingency or act to occur in future. An agreement by which one party for a consideration promises to pay money or its equivalent or to do an act valuable to other party upon destruction, loss, or injury of something in which other party has an interest.

See also Additional insurance; Insurable interest; Lloyd's insurance; Lloyd's of London; Loss; Named insured; Partial limitation; Participation; Policy of insurance; Premium; Pro rata clause; Reinsurance; Replacement insurance; Self-insurance.

### Classification

**Accident insurance.** Form of insurance which undertakes to indemnify the assured against expense, loss of time, and suffering resulting from accidents causing him physical injury, usually by payment at a fixed rate per month while the consequent disability lasts, and sometimes including the payment of a fixed sum to his heirs in case of his death by accident within the term of the policy. See also, *Casualty insurance below*.

**Accounts receivable insurance.** Insurance coverage designed to protect against inability to collect because of damage to records which support the accounts.

**Additional insured.** A person other than the named insured, such as the insured's spouse, who is protected under the terms of the contract.

**Air travel insurance.** Form of life insurance which may be purchased by air travelers according to the terms of which the face value of the policy is paid to the named beneficiary in the event of death resulting from a particular flight.

**All-risk insurance.** Type of insurance policy which ordinarily covers every loss that may happen, except by fraudulent acts of the insured. *Miller v. Boston Ins. Co.*, 218 A.2d 275, 278, 420 Pa. 566. Type of policy which protects against all risks and perils except those specifically enumerated.

**Annuity insurance.** An insurance contract calling for periodic payments to the insured or annuitant for a stated period or for life.

**Assessment insurance.** A species of mutual insurance in which the policyholders are assessed as losses are incurred. A contract by which payments to insured are not unalterably fixed, but dependent on collection of assessments necessary to pay amounts insured, while an "old-line policy" unalterably fixes premiums and definitely and unchangeably fixes insurer's liability.

**Automobile insurance** may embrace insurance against loss of or damage to a motor vehicle caused by fire, windstorm, theft, collision, or other insurable hazards, and also against legal liability for personal injuries or damage to property resulting from operation of the vehicle. Policy of indemnity to protect the operator and owner from liability to third persons as a result of the

operation of the automobile. *See also Collision insurance;* and *No-fault auto insurance, below,* this topic.

*Business insurance.* Type of insurance which protects a business on the disability or death of a key employee. *See also Key man life insurance, below.*

*Business interruption insurance.* Type of insurance which protects a business from losses due to inability to operate because of fire or other hazards.

*Cargo insurance.* Insures risk that cargo will not be delivered in the same condition in which it was initially shipped.

*Casualty insurance.* That type of insurance that is primarily concerned with losses caused by injuries to persons and legal liability imposed upon the insured for such injury or for damage to the property of others.

*Coinsurance.* Provision in a policy that the liability of the insurer is limited to that proportion of the loss which the amount of insurance bears to a particular percentage of the value of property at the time of the loss. *See also Coinsurance.*

*Collision insurance.* A form of automobile insurance that covers loss to the insured vehicle from its collision with another vehicle or object, but not covering bodily injury or liability also arising out of the collision. Type of coverage which protects insured for damage to his own property in an accident as contrasted with liability insurance which protects him in an action or claim for loss to another's property.

*See also Convertible collision insurance, below.*

*Commercial insurance.* Indemnity agreements, in the form of insurance bonds or policies, whereby parties to commercial contracts are to a designated extent guaranteed against loss by reason of a breach of contractual obligations on the part of the other contracting party. To this class belong policies of contract credit and title insurance.

*Comprehensive insurance.* *See All-risk insurance, above.*

*Concurrent insurance.* Insurance coverage under two or more similar policies of varying dates and amounts.

*Convertible collision insurance.* Type of collision coverage generally carrying lower premium but requiring higher premium after first loss or claim; an alternative form of deductible collision coverage.

*Convertible insurance.* A policy that may be changed to another form by contractual provision and without evidence of insurability. Usually used to refer to term life insurance convertible to permanent insurance.

*Convertible life insurance.* Generally a form of term life insurance which gives the insured the right to change policy to permanent life insurance without medical examination.

*Cooperative insurance.* Type of non-stock mutual insurance in which the policyholders are the owners; may be assessable or nonassessable.

*Credit insurance.* Type of insurance protection against losses due to death, disability, insolvency or bankruptcy of debtor. Policy covers balance of debt due, with proceeds payable to creditor. Commonly offered by banks and other lenders. Terms and conditions of such are regulated by federal and state statutes; *e.g.* Truth-in-Lending laws. *See also Credit insurance.*

*Crime insurance.* Type of insurance which protects insured from losses due to criminal acts against insured such as burglary, etc. Such insurance is sponsored by federal government for residents of certain high-crime localities.

*Crop insurance.* Insurance coverage against financial loss due to destruction of agricultural products resulting from rain, hail, and other elements of nature. Such insurance is sponsored by Federal Crop Insurance Corporation.

*Decreasing term insurance.* A term insurance policy where the premiums are uniform throughout its life, but the face value of the policy declines. Sometimes called a home protection plan because the face value declines much in the same way a mortgage due on a house declines. A form of life insurance that provides a death benefit of amount declining throughout the term of the contract to zero at the end of the term.

*Deposit insurance.* Federally sponsored (Federal Deposit Insurance Corp.) insurance coverage against loss of deposits due to bank or savings and loan closings.

*Directors' and officers' (D & O) liability insurance.* Such insures corporate directors and officers against claims based on negligence, failure to disclose, and to a limited extent, other defalcations. Such insurance provides coverage against expenses and to a limited extent fines, judgments and amounts paid in settlement.

*Disability insurance.* *See Disability insurance.*

*Employer's liability insurance.* In this form of insurance the risk insured against is the liability of the assured to make compensation or pay damages for an accident, injury, or death occurring to a servant or other employee in the course of his employment, either at common law or under statutes imposing such liability on employers. Coverage which protects employer as to claims not covered under worker's compensation insurance.

*Endowment insurance.* Type of protection which combines life insurance and investment so that if the insured outlives the policy the face value is paid to him. If he does not outlive it, the face value is paid to his beneficiary.

*Errors and omissions insurance.* Insurance that indemnifies the insured for any loss sustained because of an error or oversight on his part.

*Excess insurance.* Coverage against loss in excess of a stated amount or in excess of coverage provided under another insurance contract.

*Extended term insurance.* A non-forfeiture provision in most policies which continues the existing amount of life

insurance for as long a period of time as the contract's cash value will purchase term coverage.

*Family income insurance.* Type of term insurance designed to give maximum coverage during the period of maximum family dependency.

*Fidelity insurance.* Form of insurance in which the insurer undertakes to guaranty the fidelity of an officer, agent, or employee of the assured, or rather to indemnify the latter for losses caused by dishonesty or a want of fidelity on the part of such a person. *See also* Fidelity and guaranty insurance.

*Fire insurance.* A contract of insurance by which the underwriter, in consideration of the premium, undertakes to indemnify the insured against all losses in his houses, buildings, furniture, ships in port, or merchandise, by means of accidental fire happening within a prescribed period. *See also* Loss payable clause; Pro rata distribution clause.

*First party insurance.* Insurance which applies to the insured's own property or person.

*Fleet policy insurance.* Type of blanket policy covering a number of vehicles of the same insured; *e.g.* covers pool or fleet of vehicles owned by business.

*Floater insurance.* A form of insurance that applies to moveable property whatever its location, if within the territorial limits imposed by the contract.

*Flood insurance.* Insurance indemnifying against loss by flood damage. Required by lenders in areas designated as potential flood areas. The insurance is privately issued but federally subsidized.

*Fraternal insurance.* The form of life or accident insurance furnished by a fraternal beneficial association, consisting in the undertaking to pay to a member, or his heirs in case of death, a stipulated sum of money, out of funds raised for that purpose by the payment of dues or assessments by all the members of the association.

*Government insurance.* Life insurance underwritten and offered by Federal government to war veterans. *See also* National service life insurance; War risk insurance, below.

*Group health insurance.* Provides protection to employees or other members covered under group policy for hospital, surgical and other medical expenses.

*Group insurance.* A form of insurance whereby individual lives of a group of persons, usually employees, are in consideration of a flat periodical premium based on average age and paid either by employer in whole or partially by both employer and employee, insured each in a definite sum so long as insured remains in such employment and the premiums are paid. *Holland v. Lincoln Nat. Life Ins. Co.*, 45 N.J.Super. 66, 131 A.2d 428, 429. Coverage of number of individuals by means of single or blanket policy. *McFarland v. Business Men's Assur. Co. of America*, 105 Ga.App. 209, 124 S.E.2d 432, 433. Type of insurance (life, medical, dental, automobile, legal) offered to employees or other homogeneous group under a single master policy. Generally,

each employee receives a certificate of participation instead of a policy.

*Group term life insurance.* Life insurance coverage permitted by an employer for a group of employees. Such insurance is renewable on a year-to-year basis and does not accumulate in value (*i.e.*, no cash surrender value is built up). The premiums paid by the employer on such insurance are not taxed to an employee on coverage of up to a specified amount per year.

*Guaranty or fidelity insurance.* A contract whereby one, for a consideration, agrees to indemnify another against loss arising from the want of integrity or fidelity of employees and persons holding positions of trust, or embezzlements by them, or against the insolvency of debtors, losses in trade, loss by non-payment of notes, or against breaches of contract.

*Hail insurance.* Type of insurance which provides protection against loss of crops, grain, etc. because of hail storms. *See also* Crop insurance, above.

*Health insurance.* A contract or agreement whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the bodily injury, disablement, sickness, death by accident or accidental means of a human being, or because of any expense relating thereto, or because of any expense incurred in prevention of sickness, and includes every risk pertaining to any of the enumerated risks.

*Homeowners insurance.* Policy insuring individuals against any, some, or all of the risks of loss to personal dwellings or the contents thereof or the personal liability pertaining thereto.

*Hull insurance.* Marine or aviation insurance covering loss to vessel or plane or its machinery or equipment.

*Indemnity insurance.* Insurance which provides indemnity against loss, in contrast to contracts which provide for indemnity against liability. The latter are known as liability contracts or policies, and the former as indemnity contracts or policies.

*Inland marine insurance.* Originally, a form of insurance protection for goods transported other than on the ocean. Now, term applies to a variety of coverages on floating personal property and to general liability as a bailee.

*Joint life insurance.* Form of life insurance on two or more persons and payable on the death of the first to die.

*Key man life insurance.* Type of life insurance written on the life of an important or key officer or employee in a business organization. The business is the beneficiary and is entitled to the proceeds on his death. *See also* Key man insurance.

*Last survivor insurance.* Life insurance on two or more persons, the benefits of which are payable on the death of the last survivor.

**Lease insurance.** Protects against the loss sustained through the termination of a lease by hazards specifically insured against such as, for example, fire.

**Level premium insurance.** Type of insurance in which the cost is spread evenly over the premium paying period.

**Liability insurance.** Insurance that covers suits against the insured for such damages as injury or death to other drivers or passengers, property damage, and the like. It is insurance for those damages for which the driver can be held liable.

Liability insurance is that form of insurance which indemnifies against liability on account of injuries to the person or property of another. It is distinguished from "indemnity insurance" (see that title, *above*), and may be issued to cover the liability of, for example, carriers, contractors, employers, landlords, manufacturers, drivers.

**Life insurance.** A contract between the holder of a policy and an insurance company (*i.e.*, the carrier) whereby the company agrees, in return for premium payments, to pay a specified sum (*i.e.*, the face value or maturity value of the policy) to the designated beneficiary upon the death of the insured.

That kind of insurance in which the risk contemplated is the death of a particular person; upon which event (if it occurs within a prescribed term, or, according to the contract, whenever it occurs) the insurer engages to pay a stipulated sum to the legal representatives of such person, or to a third person having an insurable interest in the life of such person.

See also Life insurance proceeds; Life insurance trust; Term insurance (this topic).

**Group life insurance.** Type of life insurance commonly offered by companies to their employees in which there is a master insurance contract providing life insurance benefits to each covered employee who holds a certificate indicating his participation. See also *Group term life insurance, above*.

**Limited payment life insurance.** Type of life insurance for which premiums are payable for a definite period after which the policy is fully paid.

**Straight life insurance or whole life insurance** is insurance for which premiums are collected so long as the insured may live, whereas, term insurance is insurance which promises payment only within a stipulated term covered by the policy; though such term policies are commonly renewed each term. The premium for whole life insurance remains the same whereas the premium for term insurance increases with the age of the insured, *i.e.* as the risk increases. Also, whole life policies build up cash reserves, whereas term policies do not. See also *Term insurance, below*.

**Universal life insurance.** Insurance over a specified period of time, which builds a cash value for policyholders over time. This coverage emphasizes the separation of the portion of the premium that is used to cover the insurance protection from the portion of the premium allocated to an investment that is used to build the

policy's cash value. Investments are usually selected with a view to maximizing the rate of return.

**Variable life insurance.** A distinct type of whole-life insurance in which some amount of death benefit is guaranteed by the insurer, but the total death benefit and the cash-value of the insurance before death depend on the investment performance of that portion of the premium which is allocated to a separate fund. Some variable-life insurance policies allow the insured to decide how the separate account is to be invested.

**Whole life insurance.** A life insurance policy in which the insured pays a level premium for his or her entire life and in which there is a constantly accumulating cash value against which the insured can withdraw or borrow. Sometimes referred to as straight life insurance.

**Limited policy insurance.** Type of coverage which offers protection against specific perils or accidents and against no others.

**Major medical insurance.** Insurance protection against large medical, surgical and hospital expenses of the insured.

**Malpractice insurance.** Type of liability insurance which protects professional people (*e.g.* doctors, lawyers, accountants) against claims of negligence brought against them.

**Manual rating insurance.** Type of insurance in which the premium is set from a manual classifying types of risk on a general basis such as a particular industry without reference to the individual case.

**Marine insurance.** A contract whereby one party, for a stipulated premium, undertakes to indemnify the other against certain perils or sea-risks to which his ship, freight, and cargo, or some of them, may be exposed during a certain voyage, or a fixed period of time. An insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property may be exposed during a certain voyage or a fixed period of time. See also *Inland marine insurance, above*.

**Mortgage insurance.** Insurance from which the benefits are intended by the policyowner to pay off the balance due on a mortgage upon the death of the insured or to meet the payments on a mortgage as they fall due in case of the death or disability of the insured. Insurance against loss to the mortgagees in the event of default and a failure of the mortgaged property to satisfy the balance owing plus costs of foreclosure.

**National service life insurance.** Life insurance on servicemen. The contract is between the U.S. Government and private insurers for benefit of servicemen.

**No-fault auto insurance.** Type of automobile insurance in which claims for personal injury (and sometimes property damage) are made against the claimant's own insurance company (no matter who was at fault) rather than against the insurer of the party at fault. Under such state "no-fault" statutes only in cases of serious personal injuries and high medical costs may the injured

bring an action against the other party or his insurer. No-fault statutes vary from state to state in terms of scope of coverage, threshold amounts, threshold types (e.g. monetary or verbal), etc.

*Nonassessable insurance.* Type of insurance in which the rate of premium is guaranteed and no additional assessments may be made against the policyholder.

*Old line life insurance.* Insurance on a level or flat rate plan where, for a fixed premium payable without condition at stated intervals, a certain sum is to be paid upon death without condition.

*Ordinary life insurance.* Whole life and permanent insurance as distinguished from term, group and industrial insurance.

*Paid-up insurance.* Insurance policy on which all premiums have been paid and on which no further premiums are due and for which benefits company is liable.

*Participating insurance.* Type of insurance issued by a mutual company on which policyholder may participate in dividend distributions.

*Partnership insurance.* Life insurance on lives of partners designed to enable surviving partners to buy out deceased partner's estate. Life or health insurance sold to a partnership, usually for guaranteeing business continuity in case of disability or death of a partner.

*Patent insurance.* Insurance against loss due to infringement of the insured's patent, or due to claim of infringement of the other's patent by the insured.

*Product liability insurance.* Type of liability coverage which protects manufacturers and suppliers from claims for accidents arising out of the use of their products.

*Profits insurance.* Policy that pays the insured for loss of profits he would have had if the damage or loss had not occurred.

*Public liability insurance.* Insurance liability protection against claims arising out of the insured's property, conduct or the conduct of his agent.

*Reciprocal insurance.* Type of insurance plan administered by an exchange rather than an insurance company and in which each insured is the insurer of the other members of the plan.

*Renewable term insurance.* Type of term insurance in which the premiums are level during each term, but increases at each new term with the age of the insured. The insured generally has the right to renew for additional terms without a medical examination.

*Retirement income insurance.* Type of insurance in which the insurer guarantees payment of the policy if the insured dies before a certain age and an annuity if the insured survives beyond the specified period.

*Self insurance.* Plan in which the insured (e.g. business) places aside in a fund sufficient sums to cover liability losses that may be sustained. Commonly, under such plan the business will self-insure itself up to a certain amount and then carry regular liability insurance to cover any excesses.

*Single premium insurance.* Type of policy on which the insured makes but one premium payment.

*Social insurance.* A comprehensive welfare plan established by law, generally compulsory in nature, and based on a program which spreads the cost of benefits among the entire population rather than on individual recipients. The federal government began to use social insurance programs in 1935 with the passage of the Social Security Act. The basic federal and state approaches to social insurance presently in use are: Old Age, Survivors, and Disability Insurance (i.e. social security); Medicare and Medicaid; unemployment insurance; and worker's compensation.

*Split dollar insurance.* Type of insurance in which the insurer divides the premium dollar between life insurance protection and investment for the benefit of the insured.

*Step-rate premium insurance.* Type of insurance in which the premium may vary from time to time at the option of the insurer.

*Surety and fidelity insurance.* Form of insurance which more approximates a bond which protects the insured against dishonesty of employees, agents and the public.

*Term insurance.* Form of pure life insurance having no cash surrender or loan value and generally furnishing insurance protection for only a specified or limited period of time; though such policy is usually renewable from term to term. See also *Convertible life*; *Decreasing term*; *Extended term*; *Family income*; *Group term*; *Renewable term insurance*, above.

*Title insurance.* A policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of its search against claims of title defects. Insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty, or from the enforcement of liens existing against it at the time of the insurance. This form of insurance is taken out by a purchaser of the property or one loaning money on mortgage, and is furnished by companies specially organized for the purpose, and which keep complete sets of abstracts or duplicates of the records, employ expert title-examiners, and prepare conveyances and transfers of all sorts. A "certificate of title" furnished by such a company is merely the formally expressed professional opinion of the company's examiner that the title is complete and perfect (or otherwise, as stated), and the company is liable only for a want of care, skill, or diligence on the part of its examiner; whereas an "insurance of title" warrants the validity of the title in any and all events. It is not always easy to distinguish between such insurance and a "guaranty of title" given by such a company, except that in the former case the maximum limit of liability is fixed by the policy, while in the latter case the undertaking is to make good any and all loss resulting from defect or failure of the title. See also *Back title letter*.

*Trust insurance.* A trust, the res of which consists in whole or in part of insurance policies.

*Unemployment insurance.* Form of taxation collected from business to fund unemployment payments and benefits.

*War risk insurance.* Insurance offered by the federal government to protect persons against wartime loss of vessels and property on the high seas, and death or injury while in the armed forces. Insurance covering damage caused by acts of war. War risk insurance refers to those contracts which were brought into being by the United States government during the first World War to replace ordinary life and accident insurance which was no longer available to those in the hazardous occupation of military service. *See also National service life insurance, above.*

*Worker's compensation insurance.* Type of protection purchased by employers to cover payments to employees who are injured in accidents arising out of and in the course of their employment; governed by statutes in all jurisdictions. *See also Employer's liability insurance, above.*

### Other Insurance Terms

*Aviation clause.* Insurance clause limiting the liability of the insurer in case of death or injury is connected in a specified degree with aviation.

*Blanket policy.* Policy covering more than one type of property in one location, or one or more types of property at more than one location.

*Claims made policy.* Under this type policy the insured is indemnified for claims made during the policy period regardless of when the acts giving rise to those claims occur. *Appalachian Ins. Co. v. Liberty Mut. Ins. Co., C.A.Pa., 676 F.2d 56, 59.* Also called "discovery" policy. *Compare Occurrence policy, below.*

*Comprehensive coverage.* A simple and convenient form of indemnity now commonly available in contracts of automobile insurance. It includes not only the conventional coverages against loss caused by fire, theft, wind, water, or malicious mischief, but is generally designed to protect against all damage to the insured vehicle except collision or upset.

*Concurrent insurance.* That which to any extent insures the same interest against the same casualty, at the same time, as the primary insurance, on such terms that the insurers would bear proportionately the loss happening within the provisions of both policies.

*Contract of insurance.* *See Contract of insurance.*

*Discovery policy.* *See Claims made policy, above.*

*Double insurance.* *See Double.*

*Excess insurance.* *See Excess insurance, above.*

*General and special insurance.* In marine insurance, a general insurance is effected when the perils insured against are such as the law would imply from the nature of the contract considered in itself and supposing none to be specified in the policy. In the case of special

insurance, further perils (in addition to implied perils) are expressed in the policy.

*Insurance adjuster.* One undertaking to ascertain and report the actual loss to the subject-matter of insurance due to the peril insured against. The adjuster also settles claims against the insurer. Such adjuster may be employed either by the insurer or the insured. *See Adjuster.*

*Insurance agent.* Person authorized to represent insurer in dealing with third parties in matters relating to insurance. *Travelers Indem. Co. v. National Indem. Co., C.A.Minn., 292 F.2d 214, 219.* An agent employed by an insurance company to solicit insurance business. Agents of insurance companies are called "general agents" when clothed with the general oversight of the companies' business in a state or large section of country, and "local agents" when their functions are limited and confined to some particular locality. *See also Insurance broker, below.*

*Insurance binder.* A memorandum of the insurance coverage agreement. It extends temporary protection pending issuance of the formal policy, while the insurer is investigating the risks and setting appropriate premium rates. *Blackburn v. Crum & Forster, C.A.Tex., 611 F.2d 102, 103.*

*Insurance broker.* One who acts as middleman between insured and company, and who solicits insurance from public under no employment from any special company and places order of insurance with company selected by insurer or, in absence of any selection, with company selected by such broker. Broker is agent for insured though at same time for some purposes he may be agent for insurer, and his acts and representations within scope of his authority as such agent are binding on insured. An "insurance agent" is tied to his company, whereas an "insurance broker" is an independent middleman not tied to a particular company. *Osborn v. Ozlin, Va., 310 U.S. 53, 60 S.Ct. 758, 761, 84 L.Ed. 1074.*

*Insurance commissioner.* A public officer in most states, whose duty is to supervise the business of insurance as conducted in the state by foreign and domestic companies, for the protection and benefit of policy-holders, and especially to issue licenses, approve rates, make periodical examinations into the condition of such companies, and receive, file, and publish periodical statements of their business as furnished by them.

*Insurance company.* A corporation or association whose business is to make contracts of insurance. They are generally either mutual companies or stock companies. A "mutual" insurance company is one whose fund for the payment of losses consists not of capital subscribed or furnished by outside parties, but of premiums mutually contributed by the parties insured, or in other words, one in which all persons insured become members of the association and contribute either cash or assessable premium notes, or both, to a common fund, out of which each is entitled to indemnity in case of loss. A "stock" company is one organized according to the usual form of business corporations, having a capital



stock divided into shares, which, with current income and accumulated surplus, constitutes the fund for the payment of losses, policy-holders paying fixed premiums and not being members of the association unless they also happen to be stockholders. *See also* Joint-stock insurance company.

*Insurance contract.* *See* Policy of insurance.

*Insurance policy.* *See* Policy of insurance.

*Insurance pool.* Combining together of several insurers to share premiums and losses so as to spread risks.

*Insurance premium.* The consideration paid by insured to insurer for insurance protection. *Alyea-Nichols Co. v. U. S., D.C.Ill., 12 F.2d 998, 1005. See* Premium.

*Insurance rating.* Process by which the premium for a policy is set after considering the risks involved.

*Insurance trust.* An agreement between insured and trustee, whereby proceeds of policy are paid directly to trustee for investment and distribution to designated beneficiaries in manner and at such time as insured has directed in trust agreement. *See also* Trust.

*Insuring clause.* Provision in insurance policy or bond which recites the agreement of the insurer to protect the insured against some form of loss or damage.

*Interinsurance.* Insurance system whereby several individuals, partnerships, or corporations, through common attorney in fact, underwrite one another's risks against loss under agreement that underwriters act separately and severally. *Hoopston Canning Co. v. Cullen, 318 U.S. 313, 63 S.Ct. 602, 604, 87 L.Ed. 777.* It is distinguishable from all other forms of insurance, in that every insured is interinsurer, and every insurer is insured.

*Loss.* *See* Loss.

*Mutual insurance company.* *See* that term.

*Occurrence policy.* This type policy provides for indemnity, regardless of when claim is made or reported, if act giving rise to the claim occurred during policy period. *Yazoo County, Miss. v. International Surplus Lines Inc. Co., D.C.Miss., 616 F.Supp. 153, 154. Compare Claims made policy, above.*

*Over-insurance.* Insurance effected upon property, either in one or several companies, to an amount which, separately or in the aggregate, exceeds the actual value of the property. *See Excess insurance, above.*

*Policy of insurance.* *See* that title.

*Reinsurance.* Insurance of an insurer; a contract by which an insurer procures a third person (usually another insurance company) to insure it against loss or liability, or a portion of such, by reason of the original insurance.

*Standard policy.* A form of insurance contract which is required, or recommended, to be issued in a particular state. Such is regulated by various state statutes and administrative officials.

*Umbrella policy.* A form of insurance protection against losses in excess of the amount covered by other liability insurance policies. Type of supplemental or excess liability policy that provides coverage above basic or normal limits of liability.

*Under-insurance.* Insurance coverage for less than the value of the property. Under such policy, coverage for loss or damage to property will be reduced by percentage of under-insurance.

*Underwriter.* Party (insurer) who assumes a risk in return for the payment of a premium. *See* Insurer; Underwriter.

**Insure.** To make sure or secure, to guarantee, as, to insure safety to any one. To engage to indemnify a person against pecuniary loss from specified perils or possible liability. To provide insurance. *See also* Underwrite.

**Insured.** The person who obtains or is otherwise covered by insurance on his health, life, or property. The "insured" in a policy is not limited to the insured named in the policy, but applies to anyone who is insured under the policy. *Midwest Contractors Equipment Co. v. Bituminous Cas. Corp., 112 Ill.App.2d 134, 251 N.E.2d 349, 352.* The owner of a policy of insurance. *Detrick v. Aetna Cas. & Sur. Co., Iowa, 158 N.W.2d 99, 104.*

**Insurer.** The underwriter or insurance company with whom a contract of insurance is made. The one who assumes risk or underwrites a policy, or the underwriter or company with whom contract of insurance is made. *National Securities, Inc. v. Johnson, 14 Ariz.App. 31, 480 P.2d 368, 370. See also* Underwriter.

**Insurgent.** One who participates in an insurrection; one who opposes the execution of law by force of arms, or who rises in revolt against the constituted authorities. An enemy.

**Insurrection.** A rebellion, or rising of citizens or subjects in resistance to their government. Insurrection consists in any combined resistance to the lawful authority of the state, with intent to cause the denial thereof, when the same is manifested, or intended to be manifested, by acts of violence. It is a federal crime to incite, assist, or engage in a rebellion or insurrection against the United States. 18 U.S.C.A. § 2383. *See also* Internal security acts.

**Intakes.** In old English law, temporary inclosures made by customary tenants of a manor under a special custom authorizing them to inclose part of the waste until one or more crops have been raised on it.

**In tali casu editum et provisum** /in téylay kéys(y)uw édtəm èt prāváyəm/. *See* In casu proviso.

**Intangible asset.** Property that is a "right" such as a patent, copyright, trademark, etc., or one which is lacking physical existence, such as goodwill. A nonphysical, noncurrent asset which exists only in connection with something else, such as the goodwill of a business. An intangible asset generally has a life longer than one

year, and is amortized over the period benefited, not to exceed forty years. *See* Amortization; Intangible property.

**Intangible drilling costs.** Costs incurred incident to and necessary for the drilling and preparation of oil or gas wells for production that have no salvage value. Under I.R.C. § 263, such costs may be deducted in the year paid rather than capitalized and depreciated.

**Intangible property.** As used chiefly in the law of taxation, this term means such property as has no intrinsic and marketable value, but is merely the representative or evidence of value, such as certificates of stock, bonds, promissory notes, copyrights, and franchises. *See* Intangible asset. *Compare* Tangible property.

**Intangibles.** Property that is a "right" such as a patent, copyright, trademark, etc., or one which is lacking physical existence; such as goodwill. *See* Amortization; General intangibles; Intangible asset.

**Intangibles tax.** In certain states such tax is imposed on every resident for right to exercise following privileges: (a) Signing, executing and issuing intangibles; (b) selling, assigning, transferring, renewing, removing, consigning, mailing, shipping, trading in and enforcing intangibles; (c) receiving income, increase, issues and profits of intangibles; (d) transmitting intangibles by will or gift or under state laws of descent; (e) having intangibles separately classified for taxes.

**Intangible value.** Nonphysical value of such assets as patents, copyrights, goodwill.

**Integer** /intəjər/. Lat. Whole; untouched. *Res integra* /riyz ɪntəgrə/ means a question which is new and undecided.

**Integral.** Term in ordinary usage means part or constituent component necessary or essential to complete the whole. *Matczak v. Secretary of Health, Ed. and Welfare, D.C.N.Y.*, 299 F.Supp. 409, 413.

**Integrated agreement.** *See* Integrated contract; Integrated writing.

**Integrated bar.** The act of organizing the bar of a state into an association, membership in which is a condition precedent to the right to practice law. Integration is generally accomplished by enactment of a statute conferring authority upon the highest court of the state to integrate the bar, or by rule of court in the exercise of its inherent power. *Integration of Bar Case*, 244 Wis. 8, 11 N.W.2d 604.

A "unified bar" or an "integrated bar" is qualitatively different from a "voluntary bar"; membership in a unified or integrated bar is compulsory, whereas membership in a voluntary bar is voluntary, and in effect, one is not at liberty to resign from a unified bar, for, by so doing, one loses the privilege to practice law. *Petition of Chapman*, 128 N.H. 24, 509 A.2d 753, 756.

**Integrated contract.** Contract which contains within its four corners the entire agreement of the parties and parol evidence tending to contradict, amend, etc., is inadmissible; the parties having made the contract the final expression of their agreement.

An agreement is integrated where the parties thereto adopt the writing or writings as the final and complete expression of the agreement and an "integration" is the writing or writings so adopted. *Wilson v. Viking Corporation*, 134 Pa.Super. 153, 3 A.2d 180, 183. *See* Integrated writing.

**Partial integration.** Such exists where only a certain part of transaction is embodied in writing and the remainder is left in parol. *Schwartz v. Shapiro*, 299 C.A.2d 238, 40 Cal.Rptr. 189, 197.

**Integrated property settlements.** Contract commonly made on separation or divorce of spouses wherein the parties intend that the contract become part of the court order, decree or judgment.

**Integrated writing.** The writing or writings adopted by the parties to an agreement as the final and complete expression of the agreement. *Restatement, Second, Contracts*, § 209. *Pettett v. Cooper*, 62 Ohio App. 377, 24 N.E.2d 299, 302. *See also* Integrated contract.

**Integration.** The act or process of making whole or entire. Bringing together different groups (as races) as equals.

**Horizontal integration.** Combination of two or more businesses of the same type such as manufacturers of the same type of products. Such combinations may violate antitrust laws under certain conditions. *See also* Merger.

**Vertical integration.** Combination of two or more businesses on different levels of operation such as manufacturing, wholesaling and retailing the same product. *See also* Merger.

**Integrity.** As used in statutes prescribing the qualifications of public officers, trustees, etc., this term means soundness or moral principle and character, as shown by one person dealing with others in the making and performance of contracts, and fidelity and honesty in the discharge of trusts; it is synonymous with "probity," "honesty," and "uprightness."

**Intelligibility.** In pleading, the statement of matters of fact directly (excluding the necessity of inference or argument to arrive at the meaning) and in such appropriate terms, so arranged, as to be comprehensible by a person of common or ordinary understanding. "Each averment of a pleading shall be simple, concise, and direct." *Fed.R. Civil P.* 8(e).

**Intemperance.** A lack of moderation. Habitual intemperance is that degree of intemperance from the use of intoxicating liquor which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon an innocent party. Habitual or excessive use of liquor. *See* Intoxication.

**Intend.** To design, resolve, propose. To plan for and expect a certain result. To apply a rule of law in the nature of presumption; to discern and follow the probabilities of like cases. *See also* Intent.

**Intendant.** One who has the charge, management, or direction of some office, department, or public business.

Used in the constitutional and statutory law of some European governments to designate a principal officer of state corresponding to the cabinet or secretaries of the various departments of the United States government, as, "intendant of marine," "intendant of finance."

**Intended to be recorded.** Phrase used in conveyances, when reciting some other conveyance which has not yet been recorded, but which forms a link in the chain of title.

**Intended use doctrine.** In determining "intended use" for which products must be reasonably safe, manufacturer has duty to take into consideration the environment in which product will be used. *Larsen v. General Motors Corp.*, C.A.Minn., 391 F.2d 495, 501. In product liability cases, two factors are considered: the marketing scheme of the maker, and the foreseeability of the risks which are inherent in the product when used for the purposes intended. *Helene Curtis Industries, Inc. v. Pruitt*, C.A.Tex., 385 F.2d 841.

**Intendente** /intendénte/. In Spanish law, the immediate agent of the minister of finance, or the chief and principal director of the different branches of the revenue, appointed in the various departments in each of the provinces into which the Spanish monarchy is divided.

**Intendment of law.** The true meaning, the correct understanding or intention of the law. A presumption or inference made by the courts.

*Common intendment.* The natural and usual sense; the common meaning or understanding; the plain meaning of any writing as apparent on its face without straining or distorting the construction.

**Intent.** Design, resolve, or determination with which person acts. *Witters v. United States*, 70 U.S.App.D.C. 316, 106 F.2d 837, 840. A state of mind in which a person seeks to accomplish a given result through a course of action. As used in intentional torts, "intent" is desire to bring about result that will invade interests of another. *Wager v. Pro*, C.A., 603 F.2d 1005, 1010, 195 U.S.App.D.C. 423. A mental attitude which can seldom be proved by direct evidence, but must ordinarily be proved by circumstances from which it may be inferred. *State v. Gantt*, 26 N.C.App. 554, 217 S.E.2d 3, 5. A state of mind existing at the time a person commits an offense and may be shown by act, circumstances and inferences deducible therefrom. *State v. Evans*, 219 Kan. 515, 548 P.2d 772, 777.

The word "intent" is used throughout the Restatement of Torts, 2nd, to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it. Sec. 8A. See *Intentional tort*.

Intent and motive should not be confused. Motive is what prompts a person to act, or fail to act. Intent refers only to the state of mind with which the act is done or omitted.

See also *Aforethought*; *Constructive intent*; *Intention*; *Larcenous intent*; *Legislative intent*; *Malice aforethought*; *Manifestation of intention*; *Mens rea*; *Predatory intent*; *Premeditation*; *Presumed intent*; *Scienter*; *Specific intent*; *Willful*.

*Common intent.* The natural sense given to words.

*Criminal intent.* See *Criminal*; *Knowingly*; *Mens rea* *Premeditation*.

*General intent.* In criminal law, the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated.

*Specific intent.* In criminal law, the intent to accomplish the precise act which the law prohibits; e.g. assault with intent to rape.

*Transferred intent.* In tort law, if A, intending to strike B, misses B and hits C instead, the intent to strike B is transferred and supplies the necessary intent for the tort against C. See also *Transferred intent doctrine*.

**Intentio** /intésh(iy)ow/. Lat. In the civil law, the formal complaint or claim of a plaintiff before the prætor.

In old English law, a count or declaration in a real action (*narratio*).

**Intentio cæca mala** /intésh(iy)ow siykə méæl/. A blind or obscure meaning is bad or ineffectual. Said of a testator's intention.

**Intentio inservire debet legibus, non leges intentioni** /intésh(iy)ow insərváyriy débət liyjəbəs, nòn liyjiz intéshiyównay/. The intention [of a party] ought to be subservient to [or in accordance with] the laws, not the laws to the intention.

**Intentio mea imponit nomen operi meo** /intésh(iy)ow miyə impównət nówmən ópəray miyəw/. My intent gives a name to my act.

**Intention.** Determination to act in a certain way or to do a certain thing. Meaning; will; purpose; design. "Intention," when used with reference to the construction of wills and other documents, means the sense and meaning of it, as gathered from the words used therein. When used with reference to civil and criminal responsibility, a person who contemplates any result, as not unlikely to follow from a deliberate act of his own, may be said to intend that result, whether he desires it or not. See also *Four corners rule*; *Intent*; *Intentionally*.

**Intentional.** See *Intent*; *Intention*.

**Intentionally.** To do something purposely, and not accidentally. *State v. Marshall*, 15 Ohio App.2d 187, 239 N.E.2d 755, 758. Person acts "intentionally" if he desires to cause consequences of his act or he believes consequences are substantially certain to result. *State v. Bright*, 78 App. 239, 337 S.E.2d 87, 89. For purposes of criminal statute means willfully or purposely, and not accidentally or involuntarily. *State v. Schott*, 222 Neb. 456, 384 N.W.2d 620, 624. See also *Intent*; *Intention*.

**Intentional tort.** A tort in which the actor is expressly or impliedly judged to have possessed intent or purpose to injure.

**Intentione** /intēnshiyówniy/. In old English law, a writ that lay against him who entered into lands after the death of a tenant in dower, or for life, etc., and held out to him in reversion or remainder.

**Intent to kill.** An element in certain aggravated assaults and batteries which requires the prosecution to prove the intent to kill in addition to the other elements of the assault and battery. See Aggravated assault; Malice aforethought; Premeditation.

**Inter** /int̄r. Lat. Among; between.

**Inter alia** /int̄r éyl(i)yə/°éliyə/. Among other things. A term anciently used in pleading, especially in reciting statutes, where the whole statute was not set forth at length. *Inter alia enactatum fuit*, among other things it was enacted.

**Inter alias causas acquisitionis, magna, celebris, et famosa est causa donationis** /int̄r éyl(i)yəs kózəs ækwəzishiyównəs, méagnə, sélbrəs, èt fəmówsə èst kózá dənéyshiyównəs/. Among other methods of acquiring property, a great, much-used, and celebrated method is that of gift.

**Inter alios** /int̄r éyliyəs/. Between other persons; between those who are strangers to a matter in question.

**Inter alios res gestas aliis non posse præjudicium facere sæpe constitutum est** /int̄r éyliyəs riyz jéstəs éliyəs nòn pósiy præjúwdəkændəm fásəriy siyiyi kónstátýúwtəm èst/. It has been often settled that things which took place between other parties cannot prejudice.

**Inter apices juris** /int̄r éypəsiy júres/. Among the subtleties of the law. See Apex juris.

**Inter arma silent leges** /int̄r ármə sáylənt líyjiy/. In time of war the laws are silent. It applies as between the state and its external enemies; and also in cases of civil disturbance where extrajudicial force may supersede the ordinary process of law.

**Inter brachia** /int̄r bréykiyə/. Between her arms.

**Inter ceteros** /int̄r sétərows/. Among others; in a general clause; not by name (*nominatim*). A term applied in the civil law to clauses of disinheritance in a will.

**Intercalare** /int̄rkalériy/. Lat. In the civil law, to introduce or insert among or between others; to introduce a day or month into the calendar; to intercalate.

**Intercedere** /int̄rəsiydəriy/. Lat. In the civil law, to become bound for another's debt.

**Intercept.** As used in federal wiretapping statute, means the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device. 18 U.S.C.A. § 2510. See Eavesdropping; Interception; Wiretapping.

**Interception.** Within Federal Communications Act, prohibiting interception of communication by wire or radio, indicates taking or seizure by the way or before arrival at destined place, and does not ordinarily connote obtaining of what is to be sent before, or at the moment, it leaves the possession of the proposed sender, or after, or at the moment, it comes into possession of intended receiver. Communications Act of 1934, § 605, 47 U.S.C.A. § 605; Goldman v. United States, N.Y., 316 U.S. 129, 62 S.Ct. 993, 995, 86 L.Ed. 1322. See Eavesdropping; Wiretapping.

**Interchangeably.** By way of exchange or interchange. This term properly denotes the method of signing deeds, leases, contracts, etc., executed in duplicate, where each party signs the copy which he delivers to the other.

**Inter conjuges** /int̄r kónjəgiy/. Between husband and wife.

**Intercourse.** Communication; literally, a *running* or passing *between* persons or places; commerce; sexual relations.

**Interdict** /int̄rdikt/. A prohibitory decree.

*Ecclesiastical law.* An ecclesiastical censure, by which divine services (*i.e.* sacraments) are prohibited to be administered either to particular persons or in particular places.

*Roman and civil law.* A decree of the prætor by means of which, in certain cases determined by the edict, he himself directly commanded what should be done or omitted, particularly in causes involving the right of possession or a *quasi* possession. In the modern civil law, interdicts are regarded precisely the same as actions, though they give rise to a summary proceeding.

Interdicts are either prohibitory, restorative, or exhibitory; the first being a prohibition, the second a decree for restoring possession lost by force, the third a decree for the exhibiting of accounts, etc.

An interdict was distinguished from an "action" (*actio*), properly so called, by the circumstance that the prætor himself decided in the first instance (*principaliter*), on the application of the plaintiff, without previously appointing a *judex*, by issuing a decree commanding what should be done, or left undone. It might be adopted as a remedy in various cases where a regular action could not be maintained, and hence interdicts were at one time more extensively used than were the *actiones* themselves. Afterwards, however, they fell into disuse, and in the time of Justinian were generally dispensed with.

**Interdiction** /int̄rdikshən/. *French law.* Every person who, on account of insanity, has become incapable of controlling his own interests, can be put under the control of a guardian, who shall administer his affairs with the same effect as he might himself. Such a person is said to be "*interdit*," and his *status* is described as "interdiction."

*Civil law.* A judicial decree, by which a person is deprived of the *exercise* of his civil rights.

*French-Canadian law.* A proceeding instituted for the purpose of obtaining a curator of the person and property, and includes the calling of a family council and a petition to the court or its prothonotary, followed by a hearing.

*International law.* An "interdiction of commercial intercourse" between two countries is a governmental prohibition of commercial intercourse, intended to bring about an entire cessation for the time being of all trade whatever. The Edward, 1 Wheat. 272, 4 L.Ed. 86.

**Interdum evenit ut exceptio quæ prima facie justa videtur, tamen inique noceat** /intárdəm əvíynət ət əkséps(h)iy)ow kwíy práymə féyshiy(iy) jástə vədíytər, támən ənáykwíy nósiyat/. It sometimes happens that a plea which seems *prima facie* just, nevertheless is injurious and unequal.

**Interesse** /intərəsíy/. Lat. Interest. The interest of money; also an interest in lands.

*Interesse termini.* An interest in a term. That species of interest or property which a lessee for years acquires in the lands demised to him, before he has actually become possessed of those lands; as distinguished from that property or interest vested in him by the demise, and also reduced into possession by an actual entry upon the lands and the assumption of ownership therein, and which is then termed an "estate for years."

*Pro interesse suo.* For his own interest; according to, or to the extent of, his individual interest. Used (in practice) to describe the intervention of a party who comes into a suit for the purpose of protecting interests of his own which may be involved in the dispute between the principal parties or which may be affected by the settlement of their contention.

**Interest.** The most general term that can be employed to denote a right, claim, title, or legal share in something. In its application to real estate or things real, it is frequently used in connection with the terms "estate," "right," and "title." More particularly it means a right to have the advantage accruing from anything; any right in the nature of property, but less than title.

The word "interest" is used throughout the Restatement of Torts, Second, to denote the object of any human desire. Sec. 1.

The word "interest" is used in the Restatement of Property both generically to include varying aggregates of rights, privileges, powers and immunities and distributively to mean any one of them. Sec. 5.

"Interest" which may disqualify a judge from hearing a suit is a personal proprietary or pecuniary interest or one affecting individual rights of the judge, and liability, gain or relief to judge must turn on outcome of suit. *Mears v. Hall*, 263 Ark. 827, 569 S.W.2d 91, 94.

See also Add on interest; Adverse interest; Against interest; Beneficial interest; Community of interest; Compelling state interest; Compound interest; Conflict of interest; Contingent interest in personal property; Coupons; Equitable interest; Executory interests; Future interests; Identity of interests; Insurable interest; Leasehold interest;

Legal interest; Lessee's interest; Lessor's interest; New York interest; Ownership; Pecuniary interest; Possessory interest; Public interest; Security interest; Senior interest; Terminable interest; Usury; Vested interest.

*Absolute interest.* Person has absolute interest in property when such is so completely vested in individual that no contingency can deprive him of it without his consent. So, too, he is the owner of such absolute interest who must necessarily sustain the loss if the property is destroyed. See also Fee simple; Title.

*Easement.* An easement is an "interest" in land and involves the title. *Allen v. Smith*, Mo.App., 375 S.W.2d 874, 878. See Easement.

*For use of money.* Interest is the compensation allowed by law or fixed by the parties for the use or forbearance of borrowed money. *Jones v. Kansas Gas & Electric Co.*, 222 Kan. 390, 565 P.2d 597, 604. Basic cost of borrowing money or buying on installment contract. Payments a borrower pays a lender for the use of the money. Cost of using credit or funds of another. A corporation pays interest on its bonds to the bondholders.

*Accrued interest.* Interest earned but not yet paid. See also Accruing interest.

*Accumulated interest.* Interest on bonds and other debts which is due or overdue but not yet paid.

*Boston interest.* See Boston interest.

*Compound interest.* Interest upon interest; *i.e.* interest paid on principal plus accrued interest. Exists where accrued interest is added to the principal sum, and the whole treated as a new principal for the calculation of the interest for the next period. Interest added to principal as interest becomes due and thereafter made to bear interest. *Wieland v. Loon*, 79 S.D. 608, 116 N.W.2d 391, 393.

*Conventional interest.* Interest at the rate agreed upon and fixed by the parties themselves, as distinguished from that which the law would prescribe in the absence of an explicit agreement.

*Excessive interest.* See Usury.

*Ex-interest.* In the language of stock exchanges, a bond or other interest-bearing security is said to be sold "ex-interest" when the seller reserves to himself the interest already accrued and payable (if any) or the interest accruing up to the next interest day.

*Gross interest.* The total interest paid by the borrower which includes administrative costs and expenses to lender.

*Interest rate.* See Interest rate.

*Interest upon interest.* See Compound interest, above.

*Legal interest.* See Legal interest.

*New York interest.* Computation of interest on the exact number of days in a month and not on a thirty day month. See also Boston interest.

*Nominal interest.* The interest stated on the security and not the rate based on the price of the security.

**Ordinary interest.** Interest computed entirely on the principal with no interest computed on the interest past due.

**Simple interest.** That which is paid for the principal or sum lent, at a certain rate or allowance, made by law or agreement of parties. Interest calculated on principal where interest earned during periods before maturity of the loan is neither added to the principal nor paid to the lender. That paid on the principal lent as distinguished from compound interest which is interest paid on unpaid interest. *B. F. Saul Co. v. West End Park North, Inc.*, 250 Md. 707, 246 A.2d 591, 598. Difference between "simple interest" and "compound interest" is that "simple interest" does not merge with principal and thus does not become part of base on which future interest is calculated. *Stewart v. Isbell*, 155 Mich.App. 65, 399 N.W.2d 440, 446.

**Imputed interest.** In taxation, taxable income resulting from the purchase at a bargain of assets for less than their fair value; such occurs when one is so placed as to take advantage of an opportunity not available to others. An estimated charge for interest for use of capital though no cash payment is provided. *See also Cost (Imputed cost)*.

For certain long-term sales of property, the IRS has the authority to convert some of the gain from the sale into interest income if the contract does not provide for a minimum rate of interest to be paid by the purchaser. The application of this procedure has the effect of forcing the seller to recognize less long-term capital gain and more ordinary income (*i.e.*, interest income). I.R.C. § 483. *See also Cost (Imputed cost)*.

**Insurance.** *See* Insurable interest.

**Intervention.** Word "interest" as used in provision of Federal Rule of Civil Procedure that on timely application anyone shall be permitted to intervene in an action when representation of his "interest" by existing parties is or may be inadequate and he is or may be bound by judgment in action means specific legal or equitable interest in case. *Toles v. U. S.*, C.A.N.M., 371 F.2d 784, 785, 786. *See Fed.R.Civil P. 24*.

Interest sufficient to support intervention as of right must be significant, must be direct rather than contingent, and must be based on a right which belongs to the proposed intervenor rather than to an existing party to the suit. *Vazman, S. A. v. Fidelity Intern. Bank.*, D.C. N.Y., 418 F.Supp. 1084, 1085. An "interest" in the subject of an action so as to render the holder thereof a necessary party or a proper intervenor does not include a mere, consequential, remote or conjectural possibility of being in some manner affected by the result of the action but must be such a direct claim upon the subject matter of the action that the holder will either gain or lose by direct operation of the judgment to be rendered. *Bunting v. McDonnell Aircraft Corp.*, Mo., 522 S.W.2d 161, 169.

**Penalty.** Interest as a penalty is exaction for past-due obligations; it is compensation for delay in payment (*e.g.* interest imposed by IRS on overdue taxes). *Wayne Tp. in*

*Passaic County v. Ricmin, Inc.*, 124 N.J.Super. 509, 308 A.2d 27, 30. *See also Penalty*.

**Interested party.** For purposes of administrative hearing, are those who have a legally recognized private interest, and not simply a possible pecuniary benefit. *First Nat. Bank v. Oklahoma Sav. and Loan Bd.*, Okl., 569 P.2d 993, 996.

**Interest equalization tax.** Tax imposed on each acquisition by a U.S. person of stock of a foreign issuer, or of a debt obligation of a foreign obligor if such obligation has a period remaining to maturity of a year or more. I.R.C. § 4911(a). This tax expired in 1974.

**Interest-free loans.** Bona fide loans that carry no interest (or a below-market rate). If made in a nonbusiness setting, the imputed interest element is treated as a gift from the lender to the borrower. If made by a corporation to a shareholder, a constructive dividend could result. In either event, the lender may have interest income to recognize. I.R.C. § 7872.

**Interest rate.** The percentage of an amount of money which is paid for its use for a specified time. Commonly expressed as an annual percentage rate (APR). Federal and state laws regulate interest rate amounts and disclosures on consumer loans. *See Annual percentage rate; Coupon rate of interest; Truth-in-Lending Act; Usury*.

**Lock rate.** An interest rate established at the time of the mortgage application and guaranteed for a specified period, usually until closing. A rate can be "locked" for varying periods—30, 60 or 90 days, in most cases.

**Nominal interest rate.** The periodic rate of interest that is stated in a loan agreement or security. Frequently the *effective interest rate* is greater than the nominal rate because of factors like the frequency of compounding and the deduction of interest in advance.

**Prime rate.** The most favorable interest rates charged by a commercial bank on short-term loans to its best (*i.e.* most credit worthy) customers.

**Real interest rate.** The inflation-adjusted rate charged for borrowing funds.

**Variable interest rate.** A flexible rate of interest which increases or decreases according to current market rates.

**Interest reipublicæ ne maleficia remaneant impunita** /intərəst riyappəbləsiy nıy mələfis(h)(i)yə rəmənıyənt ımpyənäytə/. It concerns the state that crimes remain not unpunished.

**Interest reipublicæ ne sua quis male utatur** /intərəst riyappəbləsiy nıy s(y)úwə kwıs məliy yətəytər/. It concerns the state that persons do not misuse their property.

**Interest reipublicæ quod homines conserventur** /intərəst riyappəbləsiy kwód hóməniyz kónsərvəntər/. It concerns the state that [the lives of] men be preserved.

**Interest reipublicæ res judicatas non rescindi** /intərəst riyappəbləsiy rıyz juwdəkəytas nòn rəsınday/. It concerns the state that things adjudicated be not

rescinded. It is matter of public concern that solemn adjudications of the courts should not be disturbed.

**Interest reipublicæ suprema hominum testamenta rata haberi** /intərəst riyaypəbləsiy s(y)əpriymə hómənəm tɛstəmɛntə réytə həbíray/. It concerns the state that men's last wills be held valid (or allowed to stand).

**Interest reipublicæ ut carceres sint in tuto** /intərəst riyaypəbləsiy ət kársariyz sint in t(y)úwtow/. It concerns the state that prisons be safe places of confinement.

**Interest (imprimis) reipublicæ ut pax in regno conservetur, et quæcunque paci adversentur provide declinentur** /intərəst əmpráyməs riyaypəbləsiy ət páks in régnow kónsərvétər ət kwíykáŋkwíy péysay ədvərséntər prəváydiy dɛklɛnɛntər/. It especially concerns the state that peace be preserved in the kingdom, and that whatever things are against peace be prudently avoided.

**Interest reipublicæ ut quilibet re sua bene utatur** /intərəst riyaypəbləsiy ət kwáyləbət ríy s(y)úwə bíyniy yətéytər/. It is the concern of the state that every one uses his property properly.

**Interest reipublicæ ut sit finis litium** /intərəst riyaypəbləsiy ət sit fáynəs láysh(iy)əm/. It concerns the state that there be an end of lawsuits. It is for the general welfare that a period be put to litigation.

**Interfere.** To check; hamper; hinder; infringe; encroach; trespass; disturb; intervene; intermeddle; interpose. To enter into, or to take part in, the concerns of others. *People ex rel. Benefit Ass'n of Railway Employees v. Miner*, 387 Ill. 393, 56 N.E.2d 353, 356.

**Interference.** A Patent and Trademark Office proceeding to determine priority of invention between two or more parties claiming patentably indistinct subject matter. An interference may be between two or more patent applicants or one or more patentees and at least one patent applicant. It may be declared *sua sponte* by the Patent and Trademark Office or requested by a patent applicant. An interference is decided by the Board of Patent Appeals. 35 U.S.C.A. § 135. *See also* Infringement.

**Interference with business relationship.** The elements of this tort are the existence of a business relationship under which the plaintiff has legal rights, an intentional and unjustified interference with that relationship by defendant, and damage to plaintiff as result of breach of that business relationship. *Gerber v. Keyes Co.*, Fla.App. 3 Dist., 443 So.2d 199, 200.

**Interference with contractual relationship.** This tort has four elements: existence of valid contract, defendant's knowledge of that contract, defendant's intentional procuring of breach of that contract and damages. *Wegman v. Dairylea Cooperative, Inc.*, 50 A.D.2d 108, 376 N.Y.S.2d 728, 736.

**Interim** /intərəm/. Lat. In the meantime; meanwhile; temporary; between. An assignee *ad interim* is one

appointed between the time of bankruptcy and appointment of the regular assignee. *See also* Interlocutory.

**Interim committitur** /intərəm kəmitətər/. "In the meantime, let him be committed." An order of court (or the docket-entry noting it) by which a prisoner is committed to prison and directed to be kept there until some further action can be taken, or until the time arrives for the execution of his sentence.

**Interim curator** /intərəm kyərəytər/'kyúrətər/. In old English law, a person appointed by justices of the peace to take care of the property of a felon convict, until the appointment by the crown of an administrator or administrators for the same purpose.

**Interim financing.** A short-term loan secured to cover interim costs associated with building construction, corporate takeovers, or the like, until permanent financing (e.g., mortgage, bonds) is obtained. Also called a bridge loan.

**Interim officer.** One appointed to fill the office during a temporary vacancy, or during an interval caused by the absence or incapacity of the regular incumbent.

**Interim order.** One made in the meantime, and until something is done.

**Interim receipt.** A receipt for money paid by way of premium for a contract of insurance for which application is made. If the risk is rejected, the money is refunded, less the *pro rata* premium.

**Interim statements.** In accounting, statements issued for periods less than the regular, annual accounting period. Most corporations are required to issue interim statements on a quarterly basis.

**Interinsurance exchange** /intərəinshúrəns əkschéynj/. Reciprocal exchange (*q.v.*).

**Interior Department.** Executive level department of federal government overseeing agencies concerned with Indian affairs, mining, fish and wildlife, geologic research, land management, national parks and monuments, territories, flood control, conservation, public works, and related areas. *See also* Bureau of Land Management.

**Interlaqueare** /intərləkwiyériy/. In old English practice, to link together, or interchangeably. Writs were called "interlaqueata" where several were issued against several parties residing in different counties, each party being summoned by a separate writ to warrant the tenant, together with the other warrantors.

**Interlineation.** The act of writing between the lines of an instrument; also what is written between lines. *See also* Interpolate.

**Interlining.** The practice whereby a carrier, whose certificated routes do not reach the shipment destination, transfers the shipment to another carrier for delivery. *Gilbertville Trucking Co. v. U. S.*, Mass., 371 U.S. 115, 83 S.Ct. 217, 221, 9 L.Ed.2d 177. *See also* Joint through rate.

**Interlocking confession.** Confessions which are substantially the same and consistent concerning the major

elements of the crime involved. They are admissible in joint trials. *State v. Chaffee*, 285 S.C. 21, 328 S.E.2d 464, 469.

**Interlocking directors.** Persons who serve simultaneously on the boards of directors of two or more corporations that have dealings with each other. Federal antitrust law prohibits interlocking directors of competing businesses (15 U.S.C.A. § 19); such directors may also create problems involving fiduciary duties.

**Interlocutory** /*intərlök(y)ətəriy/*. Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy. An interlocutory order or decree is one which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits. *In re Merle's Inc.*, C.A.Wash., 481 F.2d 1016, 1018.

As to *interlocutory* Costs; Decree; Injunction; Judgment; Order; and Sentence, see those titles. *See also* Intermediate order.

**Interlocutory appeal.** An appeal of a matter which is not determinable of the controversy, but which is necessary for a suitable adjudication of the merits. *See also* Final decision rule.

**Interlocutory Appeals Act.** Federal Act which grants discretion to the courts of appeals to review any interlocutory order whatever in a civil case if the trial (*i.e.* federal district court) judge, in making the order, has stated in writing that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation. 28 U.S.C.A. § 1292.

**Interlocutory decision.** Any decision prior to a final decision. *See* Interlocutory. *Compare* Final decision or judgment.

**Interloper.** Persons who interfere or intermeddle into business to which they have no right. Persons who enter a country or place to trade without license. One who meddles in affairs which are none of his business and for which he has no responsibility; an intruder; an intermeddler. Encroachment on rights of others.

**Intermarriage.** *See* Miscegenation.

**Intermeddle.** To interfere wrongly with property or the conduct of business affairs officiously or without right or title. *See also* Interfere; Interloper.

Not a technical legal term, but sometimes used with reference to the acts of an executor *de son tort* or a *negotiorum gestor* in the civil law.

**Intermediary.** An arbitrator or mediator. A broker; one who is employed to negotiate a matter between two parties, and who for that purpose may be agent of both; *e.g.* insurance broker. *See also* Finder.

**Intermediary bank.** Any bank to which an item is transferred in the course of collection except the depository or payor bank. U.C.C. § 4-105(c).

**Intermediate.** Intervening; interposed during the progress of a suit, proceeding, business, etc., or between its beginning and end. *See* Interlocutory; Intervention.

**Intermediate account.** In probate law, an account of an executor, administrator, or guardian filed subsequent to his first or initial account and before his final account. An account filed with the court for the purpose of disclosing the acts of the person accounting and the state or condition of the fund in his hands, and not made the subject of a final judicial settlement.

**Intermediate courts.** Those courts which have general jurisdiction, either trial or appellate or both, but which are below the court of last resort in the jurisdiction.

**Intermediate order.** An order made between the commencement of the action and its final determination, incident to and during its progress, which does not determine the cause but only some intervening matter relating thereto; one that is not directly appealable. *See* Interlocutory.

**Intermediation.** A financial term which refers to the placement of funds with a bank or other financial institution, also known as an intermediary, with the objective of investing such funds in stocks, bonds, etc.

**In terminis terminantibus** /*in tərmonəs tərmonəntəbəs/*. In terms of determination; exactly in point. In express or determinate terms.

**Intermittent easement.** *See* Easement.

**Intermittent stream.** A stream, the flow of which in the state of nature is interrupted either from time to time during the year or at various places along its course, or both. *U. S. v. Fallbrook Public Utility Dist.*, D.C.Cal., 109 F.Supp. 28, 78.

**Intermixture of goods.** Confusion of goods; the confusing or commingling together of goods belonging to different owners in such a way that the property of no particular owner can be separately identified or extracted from the mass. *See also* Confusion of goods.

**Intern.** To restrict or confine a person or group of persons, particularly in time of war (*e.g.* enemy aliens). An advanced student or recent graduate in a professional field; *e.g.* one trained in a profession allied to medicine who undergoes a period of practical clinical experience prior to practicing his profession. *Regents of University of Mich. v. Michigan Employment Relations Commission*, 38 Mich.App. 55, 195 N.W.2d 875, 878. *See also* Internment.

**Internal.** Relating to the interior; comprised within boundary lines; of interior concern or interest; domestic, as opposed to foreign.

**Internal act.** That which transpires within a person or organization or government as contrasted with a happening outside such.

**Internal audit.** *See* Audit.



**Internal affairs of corporation.** In conflicts, the rights and liabilities of a corporation are determined by the local law of the state which has the most significant relationship to the occurrence and the parties. Restatement, Second, Conflicts, § 302(1). Such affairs are generally left to courts of the state of incorporation.

**Internal commerce.** See Commerce.

**Internal financing.** Financing of business from funds generated from normal operations in contrast to financing from borrowed funds or stock issues.

**Internal improvements.** With reference to governmental policy and constitutional provisions restricting taxation or the contracting of public debts, this term means works of general public utility or advantage, designed to promote facility of intercommunication, trade, and commerce, the transportation of persons and property, or the development of the natural resources of the state, such as railroads, public highways, turnpikes, and canals, bridges, the improvement of rivers and harbors, systems of artificial irrigation, and the improvement of water powers; but it does not include the building and maintenance of state institutions.

**Internal police.** A term sometimes applied to the police power, or power to enact laws in the interest of the public safety, health, and morality, which is inherent in the legislative authority of each state, is to be exercised with reference only to its domestic affairs and its own citizens, and is not surrendered to the federal government. See also Police power.

**Internal revenue.** Governmental revenues from internal sources by way of taxes as contrasted with revenues from customs and foreign sources.

**Internal Revenue Code (I.R.C.).** That body of law which codifies all federal tax laws including income, estate, gift, excise, etc. taxes. Such laws comprise Title 26 of the U.S. Code, and are implemented by the Internal Revenue Service and through it by Treasury Regulations; Revenue Rulings, etc. Because of the extensive revisions to the tax statutes that occurred with the Tax Reform Act of 1986, Title 26 of the U.S. Code is now known as the Internal Revenue Code of 1986.

**Internal Revenue Service.** The Internal Revenue Service (I.R.S.) is responsible for administering and enforcing the internal revenue laws, except those relating to alcohol, tobacco, firearms, explosives, and wagering. It is a part of the Department of the Treasury. Basic I.R.S. activities include providing taxpayer service and education; determination, assessment, and collection of internal revenue taxes; determination of pension plan qualification and exempt organization status; and preparation and issuance of rulings and regulations to interpret the provisions of the Internal Revenue Code.

**Internal security.** That branch of law and government (e.g. CIA, FBI) dealing with measures to protect the country from subversive activities.

**Internal security acts.** Federal Acts (Smith Act, 18 U.S.C.A. §§ 2385, 2386; McCarran Act, 50 U.S.C.A. § 781 et seq.) controlling and making illegal subversive activi-

ties of communist organizations and other groups whose purpose is to overthrow or disrupt the government.

**Internal waters.** Such as lie wholly within the body of the particular state or country. See also Inland waters.

**International agreements.** Treaties and other agreements of a contractual character between different countries or organizations of states (foreign) creating legal rights and obligations between the parties.

**International commerce.** See Commerce.

**International Court of Justice.** Judicial arm of the United Nations. It has jurisdiction to give advisory opinions on matters of law and treaty construction when requested by the General Assembly, Security Council or any other international agency authorized by the General Assembly to petition for such opinion. It has jurisdiction, also, to settle legal disputes between nations when voluntarily submitted to it. Its judgments may be enforced by the Security Council. Its jurisdiction and powers are defined by statute, to which all member states of the U.N. are parties. Judges of such court are elected by the General Assembly and Security Council of U.N.

**International jurisdiction.** Power of a court or other organization to hear and determine matters between different countries or persons of different countries or foreign states. See International Court of Justice.

**International law.** Those laws governing the legal relations between nations. Rules and principles of general application dealing with the conduct of nations and of international organizations and with their relations inter se, as well as with some of their relations with persons, whether natural or juridical. Restatement Foreign Relations (Third) § 101. Body of consensual principles which have evolved from customs and practices civilized nations utilize in regulating their relationships and such customs have great moral force. *Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, D.C.Pa., 494 F.Supp. 1161, 1178. International customs and treaties are generally considered to be the two most important sources of international law.

**International Monetary Fund.** Agency of United Nations established to stabilize international exchange and promote balanced international trade. See also World Bank.

**International Shoe Case.** Due process requires that a foreign corporation be "present" within a state by a measure of minimal activity within the state for suits to be maintained against it in the state. *International Shoe Co. v. State of Washington, etc.*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95. See also *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223; *Hanson v. Denckla*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283. See Minimum contacts.

**International Trade Court.** See Court of International Trade.

**Internment.** The detainment or confinement of enemy aliens or persons suspected of disloyalty in specially

designated areas; e.g. Japanese during World War II. *Johnson v. Eisentrager*, 339 U.S. 763, 70 S.Ct. 936, 94 L.Ed. 1255.

**Internuncio** /intərnəns(h)(i)yow/. A minister of a second order, charged with the affairs of the papal court in countries where that court has no nuncio.

**Internuncius** /intərnəns(h)(i)yəs/. A messenger between two parties; a go-between. Applied to a broker, as the agent of both parties.

**Inter pares** /intər pəriyz/. Between peers; between those who stand on a level or equality, as respects diligence, opportunity, responsibility, etc.

**Inter partes** /intər pɑrtiyz/. Between parties. Instruments in which two persons unite, each making conveyance to, or engagement with, the other, are called "papers *inter partes*."

*Judgment inter partes*. See Judgment in personam or inter partes.

**Interpellate** /intərpélejt/°pələyt/. To address with a question, especially when formal and public; originally used with respect to proceedings in the French legislature. Used in reference to questions by the court to counsel during an argument.

**Interpellation** /intərpələyʃən/. In the civil law, the act by which, in consequence of an agreement, the party bound declares that he will not be bound beyond a certain time.

**Interplea** /intərpli/. A plea by which a person sued in respect to property disclaims any interest in it and demands that rival claimants shall litigate their titles between themselves and relieve him from responsibility. See Interpleader.

A statutory proceeding, serving as a substitute for the action of replevin, by which a third person intervenes in an action of attachment, sets up his own title to the specific property attached, and seeks to recover the possession of it.

**Interpleader**. An equitable proceeding to determine the rights of rival claimants to property held by a third person having no interest therein. *Balish v. Farnham*, 92 Nev. 133, 546 P.2d 1297, 1299. When two or more persons claim the same thing (or fund) of a third, and he, laying no claim to it himself, is ignorant which of them has a right to it, and fears he may be prejudiced by their proceeding against him to recover it, he may join such claimants as defendants and require them to interplead their claims so that he may not be exposed to double or multiple liability. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. Interpleader in federal court is governed by the federal Interpleader Act, 28 U.S.C.A. § 1335, and Fed.R. Civil P. 22. Similar statutes and court rules govern interpleader in state courts.

*Statutory interpleader*. A federal statutory right (28 U.S.C.A. § 1335) whereby disinterested stakeholder from whom several people claim same proceeds may require claimants to litigate matter among themselves without

embroiling stakeholder. *Glens Falls Ins. Co. v. Strom*, D.C.Cal., 198 F.Supp. 450, 455.

**Interpol.** International Criminal Police Organization; a coordinating group for international law enforcement.

**Interpolate** /intərpəlejt/. To insert (additional or false) words in a complete instrument or document, thus altering meaning of such. See also Interlineation.

**Interpolated terminal reserve**. The method used in valuing insurance policies for gift and estate tax purposes when the policies are not paid-up at the time of their transfer.

**Interpolation** /intərpələyʃən/. The act of interpolating; the words interpolated. See also Interlineation; Interpretation.

**Interposition** /intərpəziʃən/. The doctrine that a state, in the exercise of its sovereignty, may reject a mandate of the federal government deemed to be unconstitutional or to exceed the powers delegated to the federal government. The doctrine denies constitutional obligation of states to respect Supreme Court decisions with which they do not agree. *Bush v. Orleans Parish School Bd.*, D.C.La., 188 F.Supp. 916. The concept is based on the 10th Amendment of the Constitution of the United States reserving to the states powers not delegated to the United States. Historically, the doctrine emanated from *Chisholm v. Georgia*, 2 U.S. (Dall.) 419, wherein the state of Georgia, when sued in the Supreme Court by a private citizen of another state, entered a remonstrance and declined to recognize the court's jurisdiction. The U.S. Supreme Court rejected this doctrine of interposition in *Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5.

**Interpret**. To construe; to seek out the meaning of language; to translate orally from one tongue to another.

**Interpretare et concordare leges legibus, est optimus interpretandi modus** /intərpətəriy èt kònkərdəriy liyjiy liyjbəs, èst óptəməs intərpətənday mówdəs/. To interpret, and [in such a way as] to harmonize laws with laws, is the best mode of interpretation.

**Interpretatio chartarum benigne facienda est, ut res magis valeat quam pereat** /intərpətəriyʃ(h)(i)yow kartəram bəniɡniy fəys(h)iyéndə èst út riyz méyʃəs vəliyət kwəm pəhriyət/. The interpretation of deeds is to be liberal, that the thing may rather have effect than fail.

**Interpretatio fienda est ut res magis valeat quam pereat** /intərpətəriyʃ(h)(i)yow fayéndə èst út riyz méyʃəs vəliyət kwəm pəhriyət/. Such an interpretation is to be adopted that the thing may rather stand than fall.

**Interpretation**. The art or process of discovering and ascertaining the meaning of a statute, will, contract, or other written document. The discovery and representation of the true meaning of any signs used to convey ideas.

It is said to be either "legal," which rests on the same authority as the law itself, or "doctrinal," which rests

upon its intrinsic reasonableness. Legal interpretation may be either "authentic," when it is expressly provided by the legislator, or "usual," when it is derived from unwritten practice. Doctrinal interpretation may turn on the meaning of words and sentences, when it is called "grammatical," or on the intention of the legislator, when it is described as "logical." When logical interpretation stretches the words of a statute to cover its obvious meaning, it is called "extensive;" when, on the other hand, it avoids giving full meaning to the words, in order not to go beyond the intention of the legislator, it is called "restrictive."

As to *strict* and *liberal* interpretation, see Construction. See also Broad interpretation; Last antecedent rule.

*Construction distinguished.* In the strict usage of this term, "construction" is a term of wider scope than "interpretation;" for, while the latter is concerned only with ascertaining the sense and meaning of the subject-matter, the former may also be directed to explaining the legal effects and consequences of the instrument in question. Hence interpretation precedes construction, but stops at the written text. Interpretation and construction of written instruments are not the same. A rule of construction is one which either governs the effect of an ascertained intention, or points out what the court should do in the absence of express or implied intention, while a rule of interpretation is one which governs the ascertainment of the meaning of the maker of the instrument. In *re Union Trust Co.*, 89 Misc. 69, 151 N.Y.S. 246, 249.

These two terms are however, commonly used interchangeably.

*Close or strict interpretation (interpretatio restricta)* is adopted if just reasons, connected with the formation and character of the text, induce us to take the words in their narrowest meaning. This species of interpretation has generally been called "literal."

*Extensive interpretation (interpretatio extensiva, called, also, "liberal interpretation")* adopts a more comprehensive signification of the word.

*Extravagant interpretation (interpretatio excedens)* is that which substitutes a meaning evidently beyond the true one. It is therefore not genuine interpretation.

*Free or unrestricted interpretation (interpretatio soluta)* proceeds simply on the general principles of interpretation in good faith, not bound by any specific or superior principle.

*Limited or restricted interpretation (interpretatio limitata)* is when we are influenced by other principles than the strictly hermeneutic ones.

*Predestined interpretation (interpretatio predestinata)* takes place if the interpreter, laboring under a strong bias of mind, makes the text subservient to his preconceived views or desires. This includes artful interpretation (*interpretatio vafér*), by which the interpreter seeks to give a meaning to the text other than the one he knows to have been intended.

In the civil law, *authentic* interpretation of laws is that given by the legislator himself, which is obligatory

on the courts. *Customary* interpretation (also called "usual") is that which arises from successive or concurrent decisions of the court on the same subject-matter, having regard to the spirit of the law, jurisprudence, usages, and equity; as distinguished from "authentic" interpretation, which is that given by the legislator himself.

**Interpretation clause.** A section of a statute which defines the meaning of certain words occurring frequently in the other sections.

**Interpretatio talis in ambiguis semper fienda est ut evitetur inconueniens et absurdum** /intèrpràtèysh(iy)-ow tàlès in æmbígyuwas sémpar fayénda èst út èvètíytar inkånvíyn(iyenz èt àbsàrdəm/. In cases of ambiguity, such an interpretation should always be made that what is inconvenient and absurd may be avoided.

**Interpreter.** A person sworn at a trial to interpret the evidence of a foreigner or a deaf person to the court.

**Interpretative rule.** Rule which is promulgated by administrative agency to interpret, clarify or explain statutory regulations under which agency operates. *Young v. South Carolina Dept. of Highways and Public Transp.*, 287 S.C. 108, 336 S.E.2d 879, 881.

**Inter quatuor parietes** /intèr kwótuwær paráyædiy/. Between four walls.

**Inter regalia** /intèr rægéyl(iy)ə/. In English law, among the things belonging to the sovereign. Among these are rights of salmon fishing, mines of gold and silver, forests, forfeitures, casualties of superiority, etc., which are called "*regalia minora*," and may be conveyed to a subject. The *regalia majora* include the several branches of the royal prerogative, which are inseparable from the person of the sovereign.

**Interregnum** /intèrègnəm/. An interval between reigns. The period which elapses between the death of a sovereign and the election of another. The vacancy which occurs when there is no government.

**Interrogation.** In criminal law, the process of questions propounded by police to person arrested or suspected to seek solution of crime. Such person is entitled to be informed of his rights, including right to have counsel present, and the consequences of his answers. If the police fail or neglect to give these warnings, the questions and answers are not admissible in evidence at the trial or hearing of the arrested person. *Miranda v. State of Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694. As conceptualized in the *Miranda* decision of the United States Supreme Court, constitutionally protected interrogation must reflect a measure of compulsion above and beyond that inherent in custody itself. *Rhode Island v. Innis*, R.I., 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297. See also Confession; Custodial interrogation; Exclusionary Rule; Investigatory interrogation; *Miranda* Rule.

**Custodial interrogation.** Questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. See also *Miranda* Rule.

**Interrogatoire** /interogatwár/. In French law, an act which contains the interrogatories made by the judge to the person accused, on the facts which are the object of the accusation, and the answers of the accused.

**Interrogatories** /intərogət(ə)riyz/. A set or series of written questions drawn up for the purpose of being propounded to a party, witness, or other person having information of interest in the case.

A pretrial discovery device consisting of written questions about the case submitted by one party to the other party or witness. The answers to the interrogatories are usually given under oath, *i.e.*, the person answering the questions signs a sworn statement that the answers are true. Fed.R. Civil P. 33.

The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. See Fed.R. Civil P. 49.

See also Deposition; Discovery; Special interrogatories.

**In terrorem** /in tɛhrórəm/. Lit. In fright or alarm or terror. In terror or warning; by way of threat. Applied to legacies given upon condition that the recipient shall not dispute the validity or the dispositions of the will; such a condition being usually regarded as a mere threat. See In terrorem clause.

**In terrorem clause.** A provision in a document such as a lease or will designed to frighten a beneficiary or lessee into doing or not doing something; *e.g.* clause in a will providing for revocation of a bequest or devise if the legatee or devisee contests the will. A condition "in terrorem" is a provision in a will which threatens beneficiaries with forfeiture of their legacies and bequests should they contest validity or dispositions of will. Taylor v. Rapp, 217 Ga. 654, 124 S.E.2d 271, 272. Such provisions are unenforceable in many states.

**In terrorem populi** /in tɛhrórəm pópýalay/. Lat. To the terror of the people. A technical phrase formerly necessary in indictments for riots.

**Interruptio** /intərpsh(iy)ow/. Lat. Interruption. A term used both in the civil and common law of prescription.

**Interruptio multiplex non tollit p̄scriptionem semel obtentam** /intərpsh(iy)ow máltoplɛks nòn tólt p̄skripshiyównəm séməl óbténtəm/. Frequent interruption does not take away a prescription once secured.

**Interruption.** A break in continuity or uniformity. The occurrence of some act or fact, during the period of prescription, which is sufficient to arrest the running of the statute of limitations. It is said to be either "natural" or "civil," the former being caused by the act of the party; the latter by the legal effect or operation of some fact or circumstance. Interruption of the possession is where the right is not enjoyed or exercised continuously; interruption of the right is where the person having or claiming the right ceases the exercise of it in such a manner as to show that he does not claim to be entitled to exercise it.

**Inter rusticos** /intər réstəkows/. Among the illiterate or unlearned.

**Intersection.** As applied to a street or highway means the space occupied by two streets at the point where they cross each other. Space common to both streets or highways, formed by continuing the curb lines. Western Union Tel. Co. v. Dickson, 27 Tenn.App. 752, 173 S.W.2d 714, 718.

*Point of intersection* of two roads is the point where their middle lines intersect. But the term may also mean the point which each of two approaching vehicles will reach at the same moment. "Intersection" may also apply where street or highway runs into but without crossing another; *e.g.* a "T" intersection.

**Inter se or inter sese** /intər síy(siy)/. Lat. Among or between themselves; used to distinguish rights or duties between two or more parties from their rights or duties to others.

**Interspousal.** Between husband and wife.

**Interspousal immunity.** See Husband-wife tort actions.

**Interstate.** Between two or more states; between places or persons in different states; concerning or affecting two or more states politically or territorially. Compare Intrastate commerce.

**Interstate agreements.** See Interstate compact.

**Interstate and foreign commerce.** Commerce between a point in one State and a point in another State, between points in the same State through another State or through a foreign country, between points in a foreign country or countries through the United States, and commerce between a point in the United States and a point in a foreign country or in a Territory or possession of the United States, but only insofar as such commerce takes place in the United States. The term "United States" means all the States and the District of Columbia. 49 U.S.C.A. § 10102.

**Interstate commerce.** Traffic, intercourse, commercial trading, or the transportation of persons or property between or among the several states of the Union, or from or between points in one state and points in another state; commerce between two states, or between places lying in different states. Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 6 L.Ed. 23; Wabash, etc. R. Co. v. Illinois, 118 U.S. 557, 7 S.Ct. 4, 30 L.Ed. 244. It comprehends all the component parts of commercial intercourse between different states. Furst v. Brewster, 282 U.S. 493, 51 S.Ct. 295, 296, 75 L.Ed. 478. See Balancing of interests.

**Interstate Commerce Act.** The act of congress of February 4, 1887 (49 U.S.C.A. § 10101 *et seq.*), designed to regulate commerce between the states, and particularly the transportation of persons and property, by carriers, between interstate points.

**Interstate Commerce Commission.** The Interstate Commerce Commission regulates interstate surface transportation, including trains, trucks, buses, water carriers, freight forwarders, transportation brokers, and

a coal slurry pipeline. The regulatory laws vary depending on the type of transportation; however, they generally involve certification of carriers seeking to provide transportation for the public, rates, adequacy of service, purchases, and mergers. The Commission assures that the carriers it regulates will provide the public with rates and services that are fair and reasonable. 49 U.S.C.A. § 10301 et seq.

**Interstate compact.** A voluntary agreement between two or more states which is designed to meet common problems of the parties concerned. Compacts on major matters must receive the consent of the U.S. Congress as specified in Article I, Section 10 of the Constitution. They usually relate to such things as conservation, boundary problems, education, port control, flood control, water rights, and penal matters.

**Interstate extradition.** The reclamation and surrender, according to due legal proceedings, of a person who, having committed a crime in one of the states of the Union, has fled into another state to evade justice or escape prosecution. Art. IV, § 2, U.S.Const.; 18 U.S.C.A. § 3181 et seq. See Extradition; Interstate rendition.

**Interstate Land Sales Full Disclosure Act.** Federal Act (15 U.S.C.A. § 1701 et seq.), the purpose of which is to provide purchasers and lessees of undeveloped land with the information they need in order to make an informed decision with regard to the land being sold or leased. As indicated by its title, this is a "disclosure" act.

**Interstate law.** That branch of law which affords rules and principles for the determination of controversies between citizens of different states in respect to mutual rights or obligations, in so far as the same are affected by the diversity of their citizenship or by diversity in the laws or institutions of the several states.

**Interstate rendition.** Right of one state to demand from asylum state surrender of a fugitive from justice from the demanding state when the fugitive is found in the asylum state. Art. IV, § 2, U.S.Const. Application of Dugger, 17 Ariz.App. 297, 497 P.2d 413. Nearly all states have adopted the Uniform Criminal Extradition Act. See Extradition; Interstate extradition.

**Interval ownership.** Type of ownership of second (*i.e.* vacation) home whereby the property is owned for only an interval (*e.g.* two weeks or a month) of the year. Each owner receives a deed covering his interval period. See also Timesharing.

**Intervening act.** Such act of third person in order to break chain of causation and obviate liability for original breach of duty must be a superseding cause and one which original wrongdoer was not bound to anticipate as the natural or ordinary result of his acts. *Littell v. Argus Production Co.*, C.C.A.Kan., 78 F.2d 955, 957. See also Intervening cause; Superseding cause.

**Intervening agency.** To render an original wrong a remote cause, an "intervening agency" must be independent of such wrong, adequate to produce the injury, so interrupting the natural sequence of events as to produce a result different from what would have been

produced, and one that could not have been reasonably expected from the original wrong. An independent "intervening agency" which will protect the original wrongdoer must be the efficient cause of the injury of which complaint is made, and not a negligent act or omission of such agency concurring with or succeeding the original negligence permitted by the original wrongdoer to continue and which in the natural course of events results in such injury. In short, the result prevented by the intervening agency must be the injury complained of, and not the requital for that injury. *Swanson v. Slagal*, 212 Ind. 394, 8 N.E.2d 993, 1000. See also Intervening cause.

**Intervening cause.** In tort law, as will relieve of liability for an injury, is an independent cause which intervenes between the original wrongful act or omission and the injury, turns aside the natural sequence of events, and produces a result which would not otherwise have followed and which could not have been reasonably anticipated. *Kopriva v. Union Pacific R. Co.*, 592 P.2d 711, 713. An act of an independent agency which destroys the causal connection between the negligent act of the defendant and the wrongful injury; the independent act being the immediate cause, in which case damages are not recoverable because the original wrongful act is not the proximate cause. An "intervening efficient cause" is a new and independent force which breaks the causal connection between the original wrong and injury, and itself becomes direct and immediate cause of injury. *Phillabaum v. Lake Erie & W. R. Co.*, 315 Ill. 131, 145 N.E. 806, 808.

In criminal law, a cause which comes between an antecedent and a consequence; it may be either independent or dependent, but in either case it is sufficient to negate criminal responsibility.

See also Intervening act; Intervening agency; Superseding cause.

**Intervening damages.** See Damages.

**Intervening force.** One which actively operates in producing harm to another after defendant's act or omission has been committed. Intervening force will not break a causal connection if that force was itself probable or foreseeable by the original wrongdoer. *Kerns v. Engelke*, 54 Ill.App.3d 323, 12 Ill.Dec. 270, 369 N.E.2d 1284, 1293. See Intervening cause.

**Intervenor.** An intervenor is a person who voluntarily interposes in an action or other proceeding with the leave of the court. See Intervention.

**Intervention.** The procedure by which a third person, not originally a party to the suit, but claiming an interest in the subject matter, comes into the case, in order to protect his right or interpose his claim. The grounds and procedure are usually defined by various state statutes or Rules of Civil Procedure; *e.g.*, Fed.R. Civil P. 24; 28 U.S.C.A. § 2403. Intervention may exist either as a matter of right (Rule 24(a)) or at the discretion of the court (Rule 24(b)).

In English ecclesiastical law, the proceeding of a third person, who, not being originally a party to the suit or proceeding, but claiming an interest in the subject-mat-

ter in dispute, in order the better to protect such interest, interposes his claim. *Stillwell Hotel Co. v. Anderson*, 16 Cal.App.2d 636, 61 P.2d 71, 72.

**Inter virum et uxorem** /*intər váyřəm èt àksórəm*/. Between husband and wife.

**Inter vivos** /*intər váyvovs*/. Between the living; from one living person to another. Where property passes by conveyance, the transaction is said to be *inter vivos*, to distinguish it from a case of succession or devise. So an ordinary gift from one person to another is called a "gift *inter vivos*," to distinguish it from a gift made in contemplation of death (*mortis causa*) or a testamentary gift.

**Inter vivos gift.** Gift made when donor is living and provides that gift take effect while donor is living as contrasted with testamentary gift which is to take effect on death of donor (testator).

**Inter vivos transfer.** A transfer of property during the life of the owner. To be distinguished from testamentary transfers where the property passes at death. *See e.g. Inter vivos gift.*

**Inter vivos trust.** Trust created during lifetime of settlor and to become effective in his lifetime as contrasted with a testamentary trust which takes effect at death of settlor or testator. *See also Trust.*

**Intestabilis** /*intestéybəls*/. Lat. A witness incompetent to testify.

**Intestable.** One who has not testamentary capacity; *e.g.*, an infant, lunatic, or person civilly dead.

**Intestacy** /*intéstəsiy*/. The state or condition of dying without having made a valid will, or without having disposed by will of a part of his property.

**In testamentis plenius testatoris intentionem scrutamur** /*in tɛstəməntəs plíyniyəs tɛstətórəs intənshiyównəm skřúwtéymər*/. In wills we more especially seek out the intention of the testator.

**In testamentis plenius voluntates testantium interpretantur** /*in tɛstəməntəs plíyniyəs voləntéytiyz tɛstəntsh(i)yəm intəřprətántər*/. In wills the intention of testators is more especially regarded.

**In testamentis ratio tacita non debet considerari, sed verba solum spectari debent; adeo per divinationem mentis a verbis recedere durum est** /*in tɛstəməntəs réysh(i)yów tásətə nɔn débət kənsidərəray, sɛd vərbə sówłəm spɛktéray débənt, ædiyow pər divənèyshiyównəm məntəs èy vərbəs rəsiydəriy d(y)úrəm èst*/. In wills an unexpressed meaning ought not to be considered, but the words alone ought to be looked to; so hard is it to recede from the words by guessing at the intention.

**Intestate.** To die without a will. A person is said to die intestate when he dies without making a will, or dies without leaving anything to testify what his wishes were with respect to the disposal of his property after his death. Under such circumstances, state law prescribes who will receive the decedent's property. The laws of

intestate succession generally favor the surviving spouse, children, and grandchildren and then move to parents and grandparents and to brothers and sisters.

The word is also often used to signify the person himself. Thus, in speaking of the property of a person who died intestate, it is common to say "the intestate's property;" *i.e.*, the property of the person dying in an intestate condition. *Compare Testate.*

**Intestate laws.** State statutes which provide and prescribe the devolution of estates of persons who die without disposing of their estates by will. *See Descent.*

**Intestate succession.** A succession is called "intestate" when the deceased has left no will or when his will has been revoked or annulled as irregular. In such case the property of the deceased will be disposed of under the laws of descent and distribution. *See Intestate.*

**Intestato** /*intestéytow*/. Lat. In the civil law, intestate; without a will.

**Intestatus** /*intestéytəs*/. Lat. In the civil and old English law, an intestate; one who dies without a will.

**Intestatus decedit, qui aut omnino testamentum non fecit; aut non jure fecit; aut id quod fecerat ruptum irritumve factum est; aut nemo ex eo hæres exstitit** /*intestéytəs dəsiydət kwáy òt omnáynow tɛstəməntəm nɔn fíysət, òt nɔn júriy fíysət, òt id kwòd fíysərət rəptəm irətəmvíy fáktəm est, òt níymow éks iyow híriyz ékstətət*/. A person dies intestate who either has made no testament at all or has made one not legally valid; or if the testament he has made be revoked, or made useless; or if no heir has come forward.

**In testimonium** /*in tɛstəmówn(i)yəm*/. Lat. In witness; in evidence whereof.

**In the course of employment.** The phrase "in the course of" employment, as used in workers' compensation acts, relates to time, place and circumstances under which accident occurred, and means injury happened while worker was at work in his or her employer's service. *Peter Kiewitt Sons' Co. v. Industrial Commission*, 88 Ariz. 164, 354 P.2d 28, 30. *See also Arising out of and in the course of own employment; Course of employment.*

**Intimacy** /*intəməsiy*/. As generally applied to persons, it is understood to mean a proper, friendly relation of the parties, but it is frequently used to convey the idea of an improper relation.

**Intimate.** Close in friendship or acquaintance, familiar, near, confidential. *Atkins Corporation v. Tourny*, 6 Cal.2d 206, 57 P.2d 480, 484. To communicate indirectly; to hint or suggest.

**Intimation.** In the civil law, a notification to a party that some step in a legal proceeding is asked or will be taken. Particularly, a notice given by the party taking an appeal, to the other party, that the court above will hear the appeal.

**Intimidation.** Unlawful coercion; extortion; duress; putting in fear.

To take, or attempt to take, "by intimidation" means willfully to take, or attempt to take, by putting in fear of bodily harm. Such fear must arise from the willful conduct of the accused, rather than from some mere temperamental timidity of the victim; however, the fear of the victim need not be so great as to result in terror, panic, or hysteria.

**Intitle.** An old form of "entitle."

**Into.** A preposition signifying to the inside of; within. It expresses entrance, or a passage from the outside of a thing to its interior, and follows verbs expressing motion. It has been held equivalent to, or synonymous with, "at," "inside of," and "to," and has been distinguished from the words "from" and "through."

**Intol and uttol** /*intəl ənd ətəl*/. Toll or custom paid for things imported and exported, or bought in and sold out.

**In totidem verbis** /*in tōwdáyðəm vərbəs*/. In so many words; in precisely the same words; word for word.

**In toto** /*in tówtow*/. In the whole; wholly; completely; as the award is void *in toto*.

**In toto et pars continetur** /*in tówtow èt párz kōntəniytər*/. In the whole the part also is contained.

**Intoxicated.** Affected by an intoxicant, under the influence of an intoxicating liquor. *Taylor v. Joyce*, 4 Cal. App.2d 612, 41 P.2d 967, 968. See Intoxication.

**Intoxicating liquor.** Any liquor used as a beverage, and which, when so used in sufficient quantities, ordinarily or commonly produces entire or partial intoxication. Any liquor intended for use as a beverage or capable of being so used, which contains alcohol, either obtained by fermentation or by the additional process of distillation, in such proportion that it will produce intoxication when imbibed in such quantities as may practically be drunk. *Frisvold v. Leahy*, 15 Cal.App.2d 752, 60 P.2d 151, 153. See also Alcoholic liquors.

**Intoxication.** Term comprehends situation where, by reason of taking intoxicants, an individual does not have the normal use of his physical or mental faculties, thus rendering him incapable of acting in the manner in which an ordinarily prudent and cautious man, in full possession of his faculties, using reasonable care, would act under like conditions. *Hendy v. Geary*, 105 R.I. 419, 252 A.2d 435, 441.

A disturbance of mental or physical capacities resulting from the introduction of substances into the body. Model Penal Code, § 2.08.

The fact that a person charged with a crime was in an intoxicated condition at the time the alleged crime was committed is a defense only if such condition was involuntarily produced and rendered such person substantially incapable of knowing or understanding the wrongfulness of his conduct and of conforming his conduct to the requirements of law. An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular

crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

Under most state statutes dealing with driving while intoxicated, "intoxication" includes such by alcohol or by drug or by both. See Driving while intoxicated.

Confirmed habits of intoxication caused by voluntary and excessive use of liquor is a ground for divorce under many state divorce statutes.

See also Habitual drunkenness or intoxication; Intemperance.

**Public intoxication.** Public intoxication is being on a highway or street or in a public place or public building while under the influence of intoxicating liquor, narcotics or other drug to the degree that one may endanger himself or other persons or property, or annoy persons in his vicinity.

**Voluntary intoxication.** The voluntary introduction of any substances into the body which the defendant knows or should know are likely to have intoxicating effects. The Model Penal Code (§ 2.08) uses the term "self-induced intoxication" to refer to this idea. Evidence of voluntary or self-induced intoxication can be admitted in some circumstances but not others.

**Intoxilyzer.** Breath analysis. A device used to measure the concentration of alcohol in the blood of motorists suspected of driving while under the influence of intoxicating liquor. *California v. Trombetta*, 467 U.S. 479, 481, 104 S.Ct. 2528, 2530, 81 L.Ed.2d 413. See Breathalyzer test; Intoximeter.

**Intoximeter.** A trade name for scientific breath testing device that operates on assumption that concentration of blood alcohol bears fixed relation to concentration of alcohol in the deep lung, or alveolar air. Also commonly called breathalyzer test. See Breathalyzer test.

**Intra** /*intrə*/. Lat. In; near; within. "Infra" or "inter" has taken the place of "intra" in many of the more modern Latin phrases.

**Intra anni spatium** /*intrə énay spéysh(iy)əm*/. Within the space of a year.

**In traditionibus scriptorum, non quod dictum est, sed quod gestum est, inspicitur** /*in trədishiyownəbəs skriptórəm, nón kwòd díktəm èst, sèd kwòd jéstəm èst, ənspísətər*/. In the delivery of writings, not what is said, but what is done, is looked to.

**Intra fidem** /*intrə fáydəm*/. Within belief; credible.

**In trajectu** /*in trəjékt(y)uw*/. In the passage over; on the voyage over.

**Intraliminal** /*intrəlímənəl*/. In mining law, the term "intraliminal rights" denotes the right to mine, take, and possess all such bodies or deposits of ore as lie within the four planes formed by the vertical extension downward of the boundary lines of the claim; as distinguished from "extraliminal," or more commonly "extralateral," rights.

**Intra luctus tempus** /*intrə léktəs témpəs*/. Within the time of mourning.

**Intra mœnia** /intrə miyn(i)yə/. Within the walls (of a house). A term applied to domestic or *menial* servants.

**Intramural**. Within the walls. Existing within. The confines of an institution or governmental body. The powers of a municipal corporation are "intramural" and "extramural"; the one being the powers exercised within the corporate limits, and the other being those exercised without.

**In transitu** /in trānzət(y)uw/. In transit; on the way or passage; while passing from one person or place to another. In the course of transportation.

**Intra parietes** /intrə pərayətiyz/. Between walls; among friends; out of court; without litigation.

**Intra præsidia** /intrə præsidi(y)ə/. Within the defenses. See *Infra præsidia*.

**Intra quatuor maria** /intrə kwótuwər máriyə/. Within the four seas.

**Intrastate commerce**. Commerce within a state, as opposed to commerce between states (*i.e.* interstate). See also *Balancing of interests*; *Commerce*; *compare* *Interstate commerce*.

**Intra vires** /intrə váyriyz/. An act is said to be *intra vires* ("within the power") of a person or corporation when it is within the scope of his or its powers or authority. It is the opposite of *ultra vires* (*q.v.*).

**Intrinsecum servitium** /əntriŋzəkəm sərviʃ(i)yəm/. Lat. In old English law, common and ordinary duties with the lord's court.

**Intrinsic**. Internal; inherent. Pertaining to the essential nature of a thing.

**Intrinsic evidence**. Evidence brought out by the examination of the very witness testifying. *Compare* *Circumstantial evidence*; *Extrinsic evidence*.

**Intrinsic fraud**. That fraud which occurs within framework of actual conduct of trial and pertains to and affects determination of issues presented therein, and it may be accomplished by perjury, or by use of false or forged instruments, or by concealment or misrepresentation of evidence. *Auerbach v. Samuels*, 10 Utah 2d 152, 349 P.2d 1112, 1114. Fraud is "intrinsic fraud" where judgment is founded on fraudulent instruments or perjured evidence or the fraudulent actions pertain to an issue involved in original action and litigated therein. *Alleghany Corp. v. Kirby*, D.C.N.Y., 218 F.Supp. 164, 183.

Species of fraud which renders the document void as, for example, an instrument signed by one who had neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms, is not enforceable even by a holder in due course because such fraud is intrinsic. U.C.C. § 3-305(2)(c).

**Intrinsic value**. The true, inherent and essential value of thing, not depending upon accident, place or person but same everywhere and to everyone. *King v. U. S.*, D.C.Colo., 292 F.Supp. 767, 776. The value of the thing

itself, rather than any special features which make its market value different (*e.g.* value of silver in coin).

**Introduction**. The part of a writing which sets forth preliminary matter, or facts tending to explain the subject.

**Intromission**. Introduction; admission.

In English law, term means dealings in stock, goods, or cash of a principal coming into the hands of his agent, to be accounted for by the agent to his principal.

**Intruder**. One who enters upon land without either right of possession or color of title. In a more restricted sense, a stranger who, on the death of the ancestor, enters on the land, unlawfully, before the heir can enter. *Williams v. Alt*, 226 N.Y. 283, 123 N.E. 499, 500. Also one who intrudes on office and assumes to exercise its functions without legal title or color of right thereto. *Alleger v. School Dist. No. 16*, Newton County, Mo.App., 142 S.W.2d 660, 663. See *Encroachment*; *Intrusion*; *Trespass*.

**Intrusion**. Act of wrongfully entering upon or taking possession of property of another. See also *Encroachment*; *Trespass*.

At common law, a species of injury by ouster or amotion of possession from the freehold, being an entry of a stranger, after a particular estate of freehold is determined, before him in remainder or reversion. *Boylan v. Deinzer*, 45 N.J.Eq. 485, 18 A. 119, 121.

**Intrust**. To confer a trust upon; to deliver to another something in trust or to commit something to another with a certain confidence regarding his care, use or disposal of it. See also *Bailment*; *Fiduciary*; *Trust*.

**Intuitus** /əntiyúwtəs/. Lat. A view; regard; contemplation. *Diverso intuitu* (*q.v.*), with a different view.

**Inundation**. To flood or swamp. The overflow of waters by coming out of their natural bed or confines. See also *Backwater*; *Flood*; *Water*; *Water course*.

**Inure** /inyúr/. To take effect; to result. In property law, to come to the benefit of a person or to fix his interest therein.

**Inurement** /inyúrmənt/. Useful, beneficial; serving to the use or benefit of a person or thing. *Dickerson v. Colgrove*, 100 U.S. 578, 25 L.Ed. 618.

**Inutilis labor et sine fructu non est effectus legis** /inyúwtəlas léybər èt sáyniy frákt(y)uw nón èst əfèktəs liyjəs/. Useless and fruitless labor is not the effect of law. The law forbids such recoveries whose ends are vain, chargeable, and unprofitable.

**In utroque jure** /in ytrówkwiý júriy/. In both laws; *i.e.*, the civil and canon law.

**Invadiare** /invèydiyériy/. To pledge or mortgage lands.

**Invadiatio** /invèydiyéyʃ(i)yow/. A pledge or mortgage.

**Invadiatus** /invèydiyéytəs/. One who is under pledge; one who has had sureties or pledges given for him.



**Invalid.** Vain; inadequate to its purpose; not of binding force or legal efficacy; lacking in authority or obligation. *See also* Illegal; Void; Voidable.

**Invasion.** An encroachment upon the rights of another. The incursion of an army for conquest or plunder. Act of invading; intrusion; encroachment.

**Invasiones** /invèyz(h)iyówniyz/. The inquisition of serjeanties and knights' fees.

**Invasion of corpus principal.** Payments made from the sum created to generate income (e.g. trust res) and not from the income so generated.

**Invasion of privacy.** The unwarranted appropriation or exploitation of one's personality, publicizing one's private affairs with which public has no legitimate concern, or wrongful intrusion into one's private activities, in such a manner as to cause mental suffering, shame or humiliation to person of ordinary sensibilities. *Shorter v. Retail Credit Co.*, D.C.S.C., 251 F.Supp. 329, 330. Violation of right which one has to be left alone and unnoticed if he so chooses. Such invasion by an individual or the government may constitute an actionable tort; though public figures have less protection than private persons. *See* Eavesdropping; Privacy laws.

**Invecta et illata** /invéktə èd èléytə/. Lat. In the civil law, things carried in and brought in. Articles brought into a hired tenement by the hirer or tenant, and which became or were pledged to the lessor as security for the rent.

**Inveigle.** To "inveigle" means to lure or entice or lead astray, by false representations or promises, or other deceitful means.

**Inveniens libellum famosum et non corrumpens punitur** /invíyn(i)yènz ləbéləm fə mówsəm èt nòn kə rəmpənz pyúwnətər/. He who finds a libel and does not destroy it is punished.

**Invent.** To find out something new. To devise, contrive, and produce something not previously known or existing, by the exercise of independent investigation and experiment; particularly applied to machines, mechanical appliances, compositions, and patentable inventions of every sort. To create. *E. W. Bliss Co. v. United States*, 248 U.S. 37, 39 S.Ct. 42, 43, 63 L.Ed. 112. *See also* Invention; Patent.

**Inventio** /invénsh(iy)ow/. In the civil law, finding; one of the modes of acquiring title to property by occupancy.

In old English law, a thing found; as goods or treasure-trove. The plural, "*inventiones*," is also used.

**Invention.** In patent law, the act or operation of finding out something new; the process of contriving and producing something not previously known or existing, by the exercise of independent investigation and experiment. Also the article or contrivance or composition so invented. *Smith v. Nichols*, 88 U.S. (21 Wall.) 112, 22 L.Ed. 566; *Hollister v. Mfg. Co.*, 113 U.S. 59, 5 S.Ct. 717, 28 L.Ed. 901.

Invention is a concept; a thing involved in the mind; it is not a revelation of something which exists and was

unknown, but is creation of something which did not exist before, possessing elements of novelty and utility in kind and measure different from and greater than what the art might expect from skilled workers. *Pursche v. Atlas Scraper & Engineering Co.*, C.A.Cal., 300 F.2d 467, 472. The finding out—the contriving, the creating of something which did not exist, and was not known before, and which can be made useful and advantageous in the pursuits of life, or which can add to the enjoyment of mankind. Not every improvement is invention; but to entitle a thing to protection it must be the product of some exercise of the inventive faculties and it must involve something more than what is obvious to persons skilled in the art to which it relates. Mere adaptation of known process to clearly analogous use is not invention. *Firestone Tire and Rubber Co. v. U. S. Rubber Co.*, C.C.A.Ohio, 79 F.2d 948, 952, 953.

Inventive skill has been defined as that intuitive faculty of the mind put forth in the search for new results, or new methods, creating what had not before existed, or bringing to light what lay hidden from vision; it differs from a suggestion of that common experience which arose spontaneously and by a necessity of human reasoning in the minds of those who had become acquainted with the circumstances with which they had to deal. *Hollister v. Mfg. Co.*, 113 U.S. 59, 5 S.Ct. 717, 28 L.Ed. 901. Invention, in the nature of improvements, is the double mental act of discerning, in existing machines, processes or articles, some deficiency, and pointing out the means of overcoming it.

For *Examination of invention*, *see* Examination. *See also* Patent; Reduced to practice.

**Inventiones** /invénshiyówniyz/. *See* Inventio.

**Inventor.** One who invents or has invented. One who finds out or contrives some new thing; one who devises some new art, manufacture, mechanical appliance, or process; one who invents a patentable contrivance. *See* Invention.

**Inventory.** A detailed list of articles of property; a list or schedule of property and other assets, containing a designation or description of each specific article; quantity of goods or materials on hand or in stock; an itemized list of the various items or articles constituting a collection, estate, stock in trade, etc., with their estimated or actual values. In law, the term is often applied to such a list made by an executor, administrator, or trustee in bankruptcy.

In accounting, refers to segment of financial statement reflecting value of businesses' raw materials, work in process, and finished goods. The two primary types of inventory accounting methods are First-in, first-out, and Last-in, first-out. *See* FIFO and LIFO.

Goods held for sale or lease or furnished under contracts of service; also, raw materials, work in process or materials used or consumed in a business. U.C.C. § 9-109(4). Also, written schedule of such goods.

**Inventory search.** An inventory search is not an independent legal concept but rather an incidental administrative step following arrest and preceding incarceration.

tion. *Illinois v. Lafayette*, 462 U.S. 640, 644, 103 S.Ct. 2605, 2608, 77 L.Ed.2d 65. To determine whether such search is unreasonable, the court balances its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. *Delaware v. Prouse*, 440 U.S. 648, 654, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 650. See *Fed.R.Crim.P.* 41.

**In ventre sa mere** /in vèntriy sà mér/. L. Fr. In his mother's womb; spoken of an unborn child.

**Inventus** /invéntəs/. Lat. Found. *Thesaurus inventus*, treasure-trove. *Non est inventus*, [he] is not found.

**In veram quantitatem fidejussor teneatur, nisi pro certa quantitate accessit** /in vîrəm kwòntatétam fäytijásər tènîyéytər, náysay pròw sértə kwòntatétiytîy əksésət/. Let the surety be holden for the true quantity, unless he agree for a certain quantity.

**In verbis, non verba, sed res et ratio, quærenda est** /in vərbəs nòn vərbə, sèd rîyž èt réysh(iy)ow, kwærènda èst/. In the construction of words, not the mere words, but the thing and the meaning, are to be inquired after.

**Inveritare** /invèhrètériy/. To make proof of a thing.

**Inverse condemnation.** An action brought by a property owner seeking just compensation for land taken for a public use, against a government or private entity having the power of eminent domain. It is a remedy peculiar to the property owner and is exercisable by him where it appears that the taker of the property does not intend to bring eminent domain proceedings. *Ossman v. Mountain States Tel. & Tel. Co.*, 32 Colo.App. 230, 511 P.2d 517, 519. Such an action might result, for example, where use and value of property adjacent to new airport or freeway is materially diminished.

**Inverse order of alienation doctrine.** Under this doctrine, mortgage or other lienor, where land subject to lien has been aliened in separate parcels successively, shall satisfy his lien out of land remaining in grantor or original owner if possible, and, if that be insufficient, he shall resort to parcels aliened in inverse order of their alienation. *Fidelity & Casualty Co. of New York v. Massachusetts Mut. Life Ins. Co.*, C.C.A.N.C., 74 F.2d 881, 884.

**Invest.** See *Investment*.

**Investigate.** To follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry. See also *Discovery*; *Inspection*.

**Investigation.** The process of inquiring into or tracking down through inquiry. *Mason v. Peaslee*, 173 C.A.2d 587, 343 P.2d 805, 808.

**Investigatory interrogation.** An "investigatory interrogation" outside scope of *Miranda* Rule is questioning of persons by law enforcement officers in a routine manner in an investigation which has not reached an accusatory stage and where such persons are not in legal custody or deprived of their freedom of action in any

significant way. *State v. Price*, 233 Kan. 706, 664 P.2d 869, 874. See also *Interrogation*.

**Investigatory powers.** Authority conferred on governmental agencies to inspect and compel disclosure of facts germane to the investigation. See also *Inquest*; *Inspection laws*; *Search warrant*; *Subpoena*.

**Investigatory stop.** Such stop, which is limited to brief, nonintrusive detention during a frisk for weapons or preliminary questioning, is considered a "seizure" sufficient to invoke Fourth Amendment safeguards, but because of its less intrusive character requires only that the stopping officer have specific and articulable facts sufficient to give rise to reasonable suspicion that a person has committed or is committing a crime. *U.S. v. Black*, C.A.Ill., 675 F.2d 129, 133. See also *Stop and frisk*.

**Investitive fact** /invéstètəv fákt/. The fact by means of which a right comes into existence; e.g., a grant of a monopoly; the death of one's ancestor.

**Investiture** /invéstətyər/. A ceremony which accompanied the grant of lands in the feudal ages, and consisted in the open and notorious delivery of possession in the presence of the other vassals, which perpetuated among them the *æra* of their new acquisition at the time when the art of writing was very little known; and thus the evidence of the property was reposed in the memory of the neighborhood, who, in case of disputed title, were afterwards called upon to decide upon it.

In Ecclesiastical law, investiture is one of the formalities by which the election of a bishop is confirmed by the archbishop.

**Investment.** An expenditure to acquire property or other assets in order to produce revenue; the asset so acquired. The placing of capital or laying out of money in a way intended to secure income or profit from its employment. *Securities & Exchange Commission v. Wickham*, D.C.Minn., 12 F.Supp. 245, 247. To purchase securities of a more or less permanent nature, or to place money or property in business ventures or real estate, or otherwise lay it out, so that it may produce revenue or gain (or both) in the future. See also *Investment contract*.

To clothe one with the possession of a fief or benefice. See *Investiture*.

For *Capital investment*, see *Capital*. See also *Legal investments*; *Legal list*; *Prudent Man Rule*.

**Investment advisor.** Any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. *Uniform Securities Act*, § 401(f).

**Investment Advisors Act.** Federal statute which regulates activities of those who furnish investment advice and counselling. 15 U.S.C.A. § 80b. The Act is administered by the Securities and Exchange Commission

which, among other things, requires registration of investment advisors.

**Investment banker.** A financial institution that underwrites and sells new securities. In general, investment bankers assist firms in obtaining new financing. An underwriter, the middleman or broker between the corporation issuing new securities and the public. The usual practice is for one or more investment bankers to buy outright from a corporation a new issue of stocks or bonds. The group forms a syndicate to sell the securities to individuals and institutions. Investment bankers also distribute very large blocks of stocks or bonds—perhaps held by an estate. Thereafter the market in the security may be over-the-counter or on a stock exchange. *See also* Underwriter.

**Investment banking.** Underwriting and selling primarily new issues of stocks and bonds to investors. *See* Investment banker.

**Investment bill.** Type of bill of exchange purchased at a discount and intended to be held to maturity in the form of an investment.

**Investment company.** Any issuer which: (1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (2) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificates outstanding; or (3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percentum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Investment Company Act, § 3.

A company or trust which uses its capital to invest in other companies. The most common kind of investment company is the mutual fund. An investment company differs from a holding company in that the latter seeks control of the ventures in which it invests while an investment company seeks the investment for its own sake and normally diversifies its investments. There are two principal types: the closed-end and the open-end, or mutual fund. Shares in closed-end investment companies are readily transferable in the open market and are bought and sold like other shares. Capitalization of these companies remains the same unless action is taken to change. Open-end funds sell their own new shares to investors, stand ready to buy back their old shares, and are not listed. Open-end funds are so called because their capitalization is not fixed; they issue more shares as demanded. *See also* Mutual fund.

**Investment Company Act.** Federal statute passed in 1940 which regulates investment companies. 15 U.S.C.A. § 80a-1 et seq. *See* Investment company.

**Investment contract.** A contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. S. E. C. v.

W. J. Howey Co., 328 U.S. 293, 298, 66 S.Ct. 1100, 1103, 90 L.Ed. 1244, 1249. The placing of capital or laying out of money in a way intended to secure income or profit from its employment. State by Spannaus v. Coin Wholesalers, Inc., Minn., 250 N.W.2d 583.

To fall within scope of the federal securities acts an "investment contract" must involve three elements: (1) an investment of money, (2) in a common enterprise, and (3) an expectation of profits solely from the efforts of others. Hector v. Wiens, C.A.Mont., 533 F.2d 429, 432.

**Investment credit.** *See* Investment tax credit.

**Investment indebtedness.** Debt incurred to carry or acquire investments by the taxpayer in assets that will produce portfolio income. Limitations are placed upon interest deductions that are incurred with respect to such debt (*i.e.*, generally to the corresponding amount of investment income).

**Investment property.** Generally, any property purchased for the primary purpose of profit. The profit may be from income or from resale.

**Investment security.** Under U.C.C., an instrument issued in bearer or registered form as a type commonly recognized as a medium for investment and evidencing a share or other interest in the property or enterprise of the issuer. § 8-102(1)(a). *See also* Investment contract; Security.

**Investment tax credit.** Federal legislation designed to stimulate investment by business in capital goods and equipment by allowing a percentage of the purchase price as a credit against individual and corporate taxes due and not merely as a deduction from taxable income. The Tax Reform Act of 1986 generally repealed this credit retroactively for most property placed in service after January 1, 1986. *See also* Recapture of investment tax credit.

**Investment trust.** A company which sells its own stock and invests the money in stocks, real estate, and other investments. *See also* Investment company; Mutual fund; Real estate investment trust.

**Invidious discrimination.** Term "invidious" in context of claim that difference in treatment amounts to "invidious" discrimination in violation of the Fourteenth Amendment, means arbitrary, irrational and not reasonably related to a legitimate purpose. Eaton v. State, Del., 363 A.2d 440, 441.

**In vinculis** /in vɪŋk(y)ələs/. In chains; in actual custody. Applied also, figuratively, to the condition of a person who is compelled to submit to terms which oppression and his necessities impose on him.

**Inviolability** /invəyələbɪlədi/. The attribute of being secured against violation. Safe from trespass or assault.

**Inviolable.** Intact; not violated; free from substantial impairment. Com. v. Almeida, 362 Pa. 596, 68 A.2d 595.

**In viridi observantia** /in vɪrəday ɒbzərvənsɪ(i)yə/. Present to the minds of men, and in full force and operation.

**Invitation.** In the law of negligence, and with reference to trespasses on realty, invitation is the act of one who solicits or incites others to enter upon, remain in, or make use of, his property or structures thereon, or who so arranges the property or the means of access to it or of transit over it as to induce the reasonable belief that he expects and intends that others shall come upon it or pass over it. Thus the proprietor of a store, theatre or amusement park "invites" the public to come upon his premises for such purposes as are connected with its intended use.

The differences in duties of care owed as between and among licensees, business guests and social guests have been eliminated in many jurisdictions so that today reasonable care is owed to all lawful visitors and this phrase includes all but trespassers. *Mounsey v. Ellard*, 363 Mass. 693, 297 N.E.2d 43.

An invitation may be *express*, when the owner or occupier of the land by words invites another to come upon it or make use of it or of something thereon; or it may be *implied* when such owner or occupier by acts or conduct leads another to believe that the land or something thereon was intended to be used as he uses them, and that such use is not only acquiesced in by the owner or occupier, but is in accordance with the intention or design for which the way or place or thing was adapted and prepared and allowed to be used.

*See also* Attractive nuisance doctrine; Invitee.

**Invitation to bid.** Type of advertisement used by one who desires bids to be submitted for a particular job; it usually contains sufficient specifications to permit an intelligent bid.

**Invited error.** Doctrine of "invited error" provides that when the court acquiesces in course of conduct urged by defendant, defendant is estopped on appeal from raising as error that conduct or its result. *People v. Crespin*, Colo.App., 682 P.2d 58, 59. *See also* Error.

**Invitee.** A person is an "invitee" on land of another if (1) he enters by invitation, express or implied, (2) his entry is connected with the owner's business or with an activity the owner conducts or permits to be conducted on his land and (3) there is mutuality of benefit or benefit to the owner. *Madrazo v. Michaels*, 1 Ill.App.2d 583, 274 N.E.2d 635, 638. Person who is on property of another for economic benefit of owner or for the economic benefit of both parties. *Joseph v. Calvary Baptist Church*, Ind.App. 4 Dist., 500 N.E.2d 250, 253.

The leading English case of *Indermaur v. Dames* laid down the rule that as to those who enter premises upon business which concerns the occupier, and upon his invitation express or implied, the latter is under an affirmative duty to protect them, not only against dangers of which he knows, but also against those which with reasonable care he might discover. The case has been accepted in all common law jurisdictions, and the invitee, or as he is sometimes called the business visitor, is placed upon a higher footing than a licensee. The typical example, of course, is the customer in a store. There is however a conflict of decisions as to whether

certain visitors are to be included in the definition of invitee. The minority view is that there must be some economic benefit to the occupier before his duty to the visitor attaches. The majority view holds however that the basis of liability is not any economic benefit to the occupier, but a representation to be implied when he encourages others to enter to further a purpose of his own, that reasonable care has been exercised to make the place safe for those who come for that purpose; *e.g.* persons attending free public lectures, persons using municipal parks, playgrounds, libraries and the like. The element of "invitation" however must exist.

*See also* Guest; Licensee; Public invitee.

**Invito** /inváytoʊ/. Lat. Being unwilling. Against or without the assent or consent.

**Invito beneficium non datur** /inváytoʊ bənəfish(i)yəm nòn déytər/. A benefit is not conferred on one who is unwilling to receive it; that is to say, no one can be compelled to accept a benefit.

**In vocibus videndum non a quo sed ad quid sumatur** /in vówsəbəs vədéndəm nòn éy kwów sèd æd kwid səméytər/. In discourses, it is to be considered not from what, but to what, it is advanced.

**Invoice.** A written account, or itemized statement of merchandise shipped or sent to a purchaser, consignee, factor, etc., with the quantity, value or prices and charges annexed, and may be as appropriate to a consignment or a memorandum shipment as it is to a sale. *Joseph B. Cooper & Son, Inc. v. Finlay Depts., Inc.*, 11 Misc.2d 382, 174 N.Y.S.2d 265, 269. Document showing details of a sale or purchase transaction. A list sent to a purchaser, factor, consignee, etc., containing the items, together with the prices and charges of merchandise sent or to be sent to him. A writing made on behalf of an importer, specifying the merchandise imported, and its true cost or value. *See also* Consular invoice.

**Invoice book.** A book in which invoices are copied.

**Involuntary.** Without will or power of choice; opposed to volition or desire. An involuntary act is that which is performed with constraint (*q.v.*) or with repugnance, or without the will to do it. An action is involuntary, then, which is performed under duress, force, or coercion. *See* Coercion; Duress.

As to *involuntary* Dismissal; Indebtedness; Nonsuit; and Trust, see those titles. For *involuntary bankruptcy*, see Bankruptcy proceedings.

**Involuntary alienation.** A loss of or parting with property by attachment, levy, sale for taxes or other debts. *See also* Involuntary conveyance.

**Involuntary confession.** Confession is "involuntary" if it is not the product of an essentially free and unrestrained choice of its maker or where maker's will is overborne at the time of the confession. *People v. Pickerel*, 32 Ill.App.3d 822, 336 N.E.2d 778, 780. Term refers to confessions that are extracted by any threats of violence, or obtained by direct or implied promises, or by exertion of improper influence. *Phillips v. State*, Okl. Cr., 330 P.2d 209, 214.

An involuntarily obtained confession cannot be used in prosecuting a defendant. Such a confession is inadmissible both because it is likely to be unreliable and because of society's aversion to forced confessions, even if true. *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908. Coercive activity is a necessary predicate to the finding that a confession is not voluntary within the meaning of the Due Process Clause of the 14th Amendment. *Colorado v. Connelly*, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473. See 18 U.S.C.A. § 3501. See also Confession; Interrogation; Self-incrimination.

**Involutary conversion.** The loss or destruction of property through theft, casualty, or condemnation. Any gain realized on an involutory conversion can, at the taxpayer's election, be considered nonrecognizable for Federal income tax purposes if the owner reinvests the proceeds within a prescribed period of time in property that is similar or related in service or use. I.R.C. § 1033.

Involutary conversion for federal income tax purposes must result from (1) destruction of property in whole or in part; or (2) theft; or (3) actual seizure; or (4) requisition or condemnation or threat or imminence of requisition or condemnation. *Hitke v. C. I. R.*, C.A.III., 296 F.2d 639, 643, 644.

See also Condemnation.

**Involutary conveyance.** A transfer of real property without the consent of the owner, such as in a divorce, in condemnation, etc. See also Involutary alienation; Sheriff's sale.

**Involutary deposit.** In the law of bailments, one made by the accidental leaving or placing of personal property in the possession of another, without negligence on the part of the owner, or, in cases of fire, shipwreck, inundation, riot, insurrection, or the like extraordinary emergencies, by the owner of personal property committing it out of necessity to the care of any person.

**Involutary discontinuance.** A discontinuance is involutory where, in consequence of technical omission, misleading, or the like, the suit is regarded as out of court, as where the parties undertake to refer a suit that is not referable, or omit to enter proper continuances.

**Involutary lien.** A lien, such as a tax lien, judgment lien, etc., which attaches to property without the consent of the owner, rather than a mortgage lien, to which the owner agrees.

**Involutary manslaughter.** The unlawful killing of a human being in the commission of an unlawful act not amounting to felony, or in the commission of a lawful act which might produce death in an unlawful manner, or without due caution and circumspection. An unlawful homicide, unintentionally caused by an act which constitutes such disregard of probable harmful consequences to another as to constitute wanton or reckless conduct. *Com. v. McCauley*, 355 Mass. 554, 246 N.E.2d 425, 428. See also Manslaughter.

**Involutary payment.** One obtained by fraud, oppression, or extortion, or to avoid the use of force to coerce

it, or to obtain the release of the person or property from detention.

**Involutary servitude.** The condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not. *Ex parte Wilson*, 114 U.S. 417, 5 S.Ct. 935, 29 L.Ed. 89; *In re Slaughterhouse Cases*, 83 U.S. (16 Wall.) 69, 21 L.Ed. 394; *Robertson v. Baldwin*, 165 U.S. 275, 17 S.Ct. 326, 41 L.Ed. 715. Slavery, peonage, or compulsory labor for debts; all of which are prohibited by the 13th Amendment, U.S.Const.

**Involutary transfer.** See Involutary conveyance.

**Involutary trust.** An implied trust which arises because the law imposes trust-like consequences on certain transactions where, for example, an agent breaches his fiduciary duty and buys property in his own name which rightfully should have been purchased for the benefit of his principal (constructive trust) or A supplies the funds for purchase of property by B with the understanding that A will own it but title will be taken in the name of B (resulting trust).

**In witness whereof** /in wɪtnəs (h)wɛrɔv/. The initial words of the concluding clause in deeds: "In witness whereof the said parties have hereunto set their hands", etc. A translation of the Latin phrase "*in cujus rei testimonium*".

**IOlTA.** Interest on Lawyers' Trust Accounts. In some states, lawyers turn over such interest to public service institutions (e.g., Mass.).

**Iota.** The minutest quantity possible. Iota is the smallest Greek letter. The word "jot" is derived therefrom.

**IOU.** A memorandum of debt, consisting of these letters ("I owe you"), a sum of money and the debtor's signature, is termed an "IOU".

**Ipsæ leges cupiunt ut jure regantur** /ipsiy líyjiyz kyúwpiyǽnt ət júriy rɛgǽntǽr/. The laws themselves require that they should be governed by right.

**Ipse** /ipsiy/. Lat. He himself; the same; the very person.

**Ipse dixit** /ipsiy díksɪt/. He himself said it; a bare assertion resting on the authority of an individual.

**Ipsissimis verbis** /ipsísíməs vǽrbəs/. In the identical words; opposed to "substantially".

**Ipsò factò** /ipsow fáktow/. By the fact itself; by the mere fact. By the mere effect of an act or a fact.

**Ipsò jure** /ipsow júriy/. By the law itself; by the mere operation of law.

**IRA.** Individual Retirement Account.

**Ira furor brevis est** /áyrə fyúrər bríyvas ɛst/. Anger is a short insanity.

**Ira motus** /áyrə mówtəs/. Lat. Moved or excited by anger or passion. A term sometimes formerly used in the plea of *son assault demesne*.

**IRAN.** Individual Retirement Annuity.

**IRB.** Individual Retirement Bond.

**I.R.C.** Internal Revenue Code.

**I.R.D.** Income in respect of decedent.

**Ire ad largum** /áyriy æd lárġəm/. Lat. To go at large; to escape; to be set at liberty.

**Iron-safe clause.** A clause in policies of fire insurance, requiring the insured to preserve his books and inventory in an iron or fireproof safe, or in some secure place not exposed to a fire which would destroy the building. This provision casts on the insured the responsibility for the loss of books and records if due to the wrongful act or negligence of himself or his employees in failing to comply with the requirement.

**Irrational.** Unreasonable, foolish, illogical, absurd; a person may be irrational in such sense, and still not be insane in the legal sense.

**Irreconcilable differences.** No-fault ground for dissolution of marriage under many state divorce statutes. *See also* Irretrievable breakdown of marriage.

**Irrecusable** /irəkýúwzəbəl/. A term used to indicate a certain class of contractual obligations recognized by the law which are imposed upon a person without his consent and without regard to any act of his own. They are distinguished from recusable obligations which are the result of a voluntary act on the part of a person on whom they are imposed by law. A clear example of an irrecusable obligation is the obligation imposed on every man not to strike another without some lawful excuse. A recusable obligation is based upon some act of a person bound, which is a condition precedent to the genesis of the obligation. These terms were first suggested by Prof. Wigmore in 8 Harv.Law Rev. 200.

**Irregular.** Not regular; not according to established law, method, or usage; not conformable to nature, to rules of moral rectitude, or to established principles; not normal, disorderly. *Sultan Turkish Bath, Inc. v. Board of Police Com'rs of City of Los Angeles*, 169 C.A.2d 188, 337 P.2d 203, 210. As to *irregular* Deposit; Indorsement; Process; and Succession, see those titles.

**Irregularity.** The doing or not doing that, in the conduct of a suit at law, which, conformably with the practice of the court, ought or ought not to be done. Violation or nonobservance of established rules and practices. The want of adherence to some prescribed rule or mode of proceeding; consisting either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time or improper manner. The technical term for every defect in mechanics of proceedings, or the mode of conducting an action or defense, as distinguishable from defects in pleadings (see *e.g.* Fed.R.Civil P. 32(d), irregularities in taking of depositions). Term is not synonymous with "illegality."

In Canon law, any impediment which prevents a man from taking holy orders.

**Irregular judgment.** One rendered contrary to the method of procedure and practice allowed by the law in

some material respect. *Davidson Chevrolet, Inc. v. City and County of Denver*, 138 Colo. 171, 330 P.2d 1116, 1118, 1119.

**Irrelevancy.** The absence of the quality of relevancy, as in evidence or pleadings. The quality or state of being inapplicable or impertinent to a fact or argument. Irrelevancy, in an answer, consists in statements which are not material to the decision of the case; such as do not form or tender any material issue. Such irrelevancy in pleadings may be stricken on motion of party. Fed.R. Civil P. 12(f). *See also* Immaterial; Irrelevant allegation; Irrelevant evidence.

**Irrelevant allegation.** One which has no substantial relation to the controversy between the parties to the suit, and which cannot affect the decision of the court. *Wayte v. Bowker Chemical Co.*, 196 App.Div. 665, 187 N.Y.S. 276, 277; *Commander Milling Co. v. Westinghouse Electric and Mfg. Co.*, C.C.A.Minn., 70 F.2d 469, 472. The test of any allegation being whether it tends to constitute a cause of action or a defense. *Isaacs v. Salomon*, 159 App.Div. 675, 144 N.Y.S. 876, 877. *See also* Immaterial argument.

An allegation is irrelevant, where the issue made by its denial has no effect upon the cause of action or no connection with the allegation. In this connection, "redundant" is almost a synonym for "irrelevant". Irrelevant matters may be stricken from pleadings on motion of party. Fed.R.Civil P. 12(f).

**Irrelevant answer.** *See* Answer.

**Irrelevant evidence.** Not relevant; immaterial; not relating or applicable to the matter in issue; not supporting the issue or fact to be proved. Evidence is irrelevant where it has no tendency to prove or disprove any issue of fact involved. Irrelevant evidence is commonly objected to and disallowed at trial. Fed.Evid.R. 402. *See also* Immaterial; Impertinence; Irrelevancy.

**Irreparable damages.** *See* Damages.

**Irreparable harm.** *See* Injury (*Irreparable injury*).

**Irreparable injury.** *See* Damages; Injunction; Injury (*Irreparable injury*).

**Irrepleviable** /irəpléviyəbəl/. That cannot be replevied or delivered on sureties. Spelled, also, "irreplevisable" /irəplévəzəbəl/.

**Irresistible force.** A term applied to such an interposition of human agency as is, from its nature and power, absolutely uncontrollable; as the inroads of a hostile army. *See also* Act of God.

**Irresistible impulse.** As used as insanity defense, an "irresistible impulse" means an impulse to commit an unlawful or criminal act which cannot be resisted or overcome because mental disease has destroyed the freedom of will, the power of self-control, and the choice of actions. *Snider v. Smyth*, D.C.Va., 187 F.Supp. 299, 302. The "irresistible impulse" test for insanity is a test which is broader than the M'Naghten test. Under the "irresistible impulse" test a person may avoid criminal responsibility even though he is capable of distinguish-

ing between right and wrong, and is fully aware of the nature and quality of his acts, provided that he establishes that he was unable to refrain from acting. *Com. v. Walzack*, 468 Pa. 210, 360 A.2d 914, 919. *See also* Insanity; M'Naghten Rule.

**Irretrievable breakdown of marriage.** As a no-fault ground for divorce means a condition in which either or both spouses are unable or unwilling to cohabit as husband and wife and for which there are no prospects for reconciliation. *Harwell v. Harwell*, 233 Ga. 89, 209 S.E.2d 625. In some jurisdictions, it is the sole ground for so-called no-fault divorce. *See also* Irreconcilable differences.

**Irrevocable.** That which cannot be revoked or recalled. *Commissioner of Internal Revenue v. Strong Mfg. Co.*, C.C.A.Ohio, 124 F.2d 360, 363.

**Irrevocable letter of credit.** A confirmed irrevocable letter of credit, irrevocable letter, or a confirmed credit is a contract to pay on compliance with its terms, and needs no formal acknowledgment or acceptance other than is therein stated. *See also* Letter of credit.

**Irrevocable offer.** An offer which cannot be revoked or recalled by the offeror without liability. U.C.C. 2-205. *See* Firm offer.

**Irrevocable trust.** *See* Trust.

**Irrigation company.** A private corporation, authorized and regulated by statute in several states, having for its object to acquire exclusive rights to the water of certain streams or other sources of supply, and to convey it by means of ditches or canals through a region where it can be beneficially used for agricultural purposes, and either dividing the water among stockholders, or making contracts with consumers, or furnishing a supply to all who apply at fixed rates.

**Irrigation district.** A public and quasi-municipal corporation authorized by law in several states, comprising a defined region or area of land which is susceptible of one mode of irrigation from a common source and by the same system of works. These districts are created by proceedings in the nature of an election under the supervision of a court, and are authorized to purchase or condemn the lands and waters necessary for the system of irrigation proposed and to construct necessary canals and other works, and the water is apportioned ratably among the landowners of the district.

**Irrogare** /irégériy/. Lat. In the civil law, to impose or set upon, as a fine. To inflict, as a punishment. To make or ordain, as a law.

**Irrotulatio** /aròtyäléysh(iy)ow/. L. Lat. An enrolling; a record.

**I.R.S.** Internal Revenue Service.

**Is.** This word, although normally referring to the present, often has a future meaning, but is not synonymous with "shall have been." It may have, however, a past signification, as in the sense of "has been."

**Island.** A piece of land surrounded by water. Land in a navigable stream which is surrounded by water only in times of high water is not an island within the rule that the state takes title to newly formed islands in navigable streams.

**Isolated sale.** Isolated sale which does not entail implied warranty of merchantability is one which occurs only once or at least very infrequently within ordinary course of business. *McHugh v. Carlton*, D.C.S.C., 369 F.Supp. 1271, 1277.

**Is qui cognoscit** /is kwày kagnó(w)sət/. Lat. The cognizor in a fine. *Is cui cognoscitur* /is k(yúw)ay kagnósətər/, the cognizee.

**Issei** /iysèy/. Jap. A term used to describe alien Japanese residing in the United States.

**Issuable.** Leading or tending to, or producing, an issue; relating to an issue or issues.

**Issuable defense.** In common law pleading, a technical expression meaning a plea to the merits, properly setting forth a legal defense, as distinguished from a plea in abatement, or any plea going only to delay the case.

**Issuable plea.** In common law pleading, a plea to the merits; a traversable plea. A plea such that the adverse party can join issue upon it and go to trial. It is true a plea in abatement is a plea, and if it be properly pleaded, issues may be found on it. In the ordinary meaning of the word "plea", and of the word "issuable," such pleas may be called "issuable pleas," but, when these two words are used together, "issuable plea," or "issuable defense," they have a technical meaning, to-wit, pleas to the merits.

**Issuable terms.** In the former practice of the English courts, Hilary term and Trinity term were called "issuable terms," because the issues to be tried at the assizes were made up at those terms. But the distinction was superseded by the provisions of the judicature acts of 1873 and 1875.

**Issue, v.** To send forth; to emit; to promulgate; as, an officer issues orders, process issues from a court. To put into circulation; as, the treasury issues notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding. When used with reference to writs, process, and the like the term is ordinarily construed as importing delivery to the proper person, or to the proper officer for service, etc. With respect to securities, refers to act or process of offering stocks or bonds for sale to public or institutional investors.

In financial parlance the term "issue" has two phases of meaning. "Date of issue" when applied to notes, bonds, etc., of a series, usually means the arbitrary date fixed as the beginning of the term for which they run, without reference to the precise time when convenience or the state of the market may permit of their sale or delivery. When the securities are delivered to the purchaser, they will be "issued" to him, which is the other meaning of the term. *See also* "Securities", below.

**Issue, n.** The act of issuing, sending forth, emitting or promulgating; the giving a thing its first inception; as the issue of an order or a writ.

*See also* Date of issue.

### Pleading and Practice

A single, certain, and material point, deduced by the allegations and pleadings of the parties, which is affirmed on the one side and denied on the other. A fact put in controversy by the pleadings; such may either be issues of law or fact. An "issue" is a disputed point or question to which parties to action have narrowed their several allegations and upon which they are desirous of obtaining either decision of court on question of law or of court or jury on question of fact. *Muller v. Muller*, 235 Cal.App.2d 341, 45 Cal.Rptr. 182, 184.

*Real or feigned.* A real or actual issue is one formed in a regular manner in a regular suit for the purpose of determining an actual controversy. A feigned issue is one made up by direction of the court, upon a supposed case, for the purpose of obtaining the verdict of a jury upon some question of fact collaterally involved in the cause. Such issues are generally ordered by a court of equity, to ascertain the truth of a disputed fact. They are also used in courts of law, by the consent of the parties, to determine some disputed rights without the formality of pleading; and by this practice much time and expense are saved in the decision of a cause. The name is a misnomer, inasmuch as the *issue* itself is upon a real, material point in question between the parties, and the circumstances only are fictitious.

*Ultimate issue.* Signifies either such an issue as within itself is sufficient and final for the disposition of the entire case or one which in connection with other issues will serve such end. *First State Bank of Seminole v. Dillard*, Tex.Civ.App., 71 S.W.2d 407, 410.

*See also* Failure of issue; Feigned issue; Genuine issue; Issue of fact; Issue of law; Issue preclusion; Lawful issue; Legal issue; Ultimate issue.

### Commercial Transactions

*Issue.* The first delivery of an instrument to a holder or remitter. U.C.C. § 3-102(1)(a). The term also applies to documents and refers to the first delivery of a document by the person who created it. *See* U.C.C. § 7-102(1)(g) (definition of "issuer"). Also describes the act of the issuer of a letter of credit in sending the credit for the purpose of establishing it.

### Descendant's Estates

All persons who have descended from a common ancestor. Offspring; progeny; descent; lineage; lineal descendants. In this sense, the word includes not only a child or children, but all other descendants in whatever degree, and it is so construed generally in deeds. But, when used in wills, it is, of course, subject to the rule of construction that the intention of the testator, as ascertained from the language used by him; and hence issue may, in such a connection, be restricted to children, or

to descendants living at the death of the testator, where such an intention clearly appears.

The term "issue" and "descendants" have been held to be co-extensive and interchangeable. *In re Radt's Will*, 6 Misc.2d 716, 167 N.Y.S.2d 817, 818.

"Issue" within its normal usage in wills connotes at least all progeny or blood descendants. *In re Wolf's Estate*, 98 N.J.Super. 89, 236 A.2d 166, 170.

The word "issue" in a will is generally a word of limitation, and when so used, is sometimes said to be equivalent to "heirs of the body". But it has been pointed out in other cases that this word is not as strong a word of limitation as the words "heirs of the body", and yields readily to a context indicating its use as a work of purchase.

Formerly, this term included only legitimate issue. *Large v. National City Bank of Cleveland*, Ohio Prob., 170 N.E.2d 309, 312; *contra* *Will of Hoffman*, 53 A.D.2d 55, 385 N.Y.S.2d 49. This limitation, however, is changing as a result of Supreme Court cases which prohibit unjustified discrimination against children born out of wedlock. *Reed v. Campbell*, 476 U.S. 852, 106 S.Ct. 2234, 90 L.Ed.2d 858; *Trimble v. Gordon*, 430 U.S. 762, 97 S.Ct. 1459, 52 L.Ed.2d 31. In New York, for example, an illegitimate child shares in the intestate estate of the father. N.Y.EPTL 4-1.2(a)(2)(c). In Massachusetts, the word "issue" in a trust was formerly construed to mean legitimate children. In trusts executed after April 16, 1987, however, the word "issue" is to be construed to include all biological descendants unless the donor clearly expresses a contrary intent. *Powers v. Wilkinson*, 399 Mass. 650, 506 N.E.2d 842.

Many state intestacy statutes provide that an adopted child is "issue" of his or her adopted parents.

### Securities

Any of a corporation's or government's securities offered for sale at a certain time to the public, or the act or process of distributing (*i.e.* offering) such for sale by a corporation or government entity. A class or series of bonds, debentures, etc., comprising all that are emitted at one and the same time. *See also* Distribution; Issuer; Offering; Prospectus; Underwriter; When issued.

*Hot issue.* A public offering where securities, after their initial sale to the public, are resold in the open market at prices substantially higher than the original public offering price.

*New issue.* A stock or bond sold by a corporation for the first time. Proceeds may be used to retire outstanding securities of the company, for new plant or equipment, or for additional working capital.

**Issue of fact.** An issue of fact arises when a fact is maintained by one party and is controverted by the other in the pleadings. *General Elec. Co. v. Employment Relations Bd.*, 3 Wis.2d 227, 88 N.W.2d 691, 701. An issue which arises upon a denial in the answer of a material allegation of the complaint or in the reply of a material allegation in the answer.



**Issue of law.** An issue of law arises where evidence is undisputed and only one conclusion can be drawn therefrom. *Chaison v. Stark*, Tex.Civ.App., 29 S.W.2d 500, 503. An issue of law arises upon a demurrer to the complaint, cross-complaint, or answer, or to some part thereof; or, upon a motion to strike. Calif.C.C.P. § 589.

In making motion for summary judgment, party must show that only issues of law exist for court to consider; i.e. must show that there is no genuine issue of material facts. Fed.R.Civil P. 56.

In pleading, an issue upon matter of law, or consisting of matter of law, being produced by a demurrer on the one side, and a joinder in demurrer on the other. The term "issue" may be so used as to include one of law raised by demurrer to the complaint, as well as one raised by answer.

**Issue preclusion.** Term means that when a particular issue has already been litigated, further litigation of same issue is barred. *Hawkeye Sec. Ins. Co. v. Ford Motor Co.*, Iowa, 199 N.W.2d 373, 379. As it relates to civil actions, concept of "issue preclusion" is in substance that any fact, question or matter in issue and directly adjudicated or necessarily involved in determination of action before court of competent jurisdiction in which judgment or decree is rendered on merits, is conclusively settled by judgment therein and cannot be relitigated in any future action between parties or privies, either in same court or court of concurrent jurisdiction, while judgment remains unreversed or unvacated by proper authority, regardless of whether claim or cause of action, purpose or subject matter of two suits is same. *Palma v. Powers*, D.C.Ill., 295 F.Supp. 924, 933. See also Collateral estoppel doctrine; *Res (Res judicata)*.

**Issuer.** Corporation, governmental bodies, and other entities that issue and distribute securities. With respect to obligations on or defenses to investment securities "issuer" includes a person who: (a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or (b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or (c) becomes responsible for or in place of any other person described as an issuer in this section. U.C.C. § 8-201(1). Every person who issues or proposes to issue any securities; generally the legal entity owning the securities and which has the responsibility for causing the same to be offered publicly or privately. See also *Issue (Securities)*.

As regards letters of credit, means a bank or other person issuing a credit. U.C.C. § 5-103(1)(c).

As regards documents of title, means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstand-

ing that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions. U.C.C. § 7-102(g).

**Issue roll.** In English practice, a roll upon which the issue in actions at law was formerly required to be entered, the roll being entitled of the term in which the issue was joined. It was not, however, the practice to enter the issue at full length, if triable by the country, until after the trial, but only to make an *incipitur* on the roll. It was abolished by the rules of Hilary Term, 1834.

**Issues and profits.** As applied to real estate, comprehend every available return therefrom, whether it arise above or below the surface. "Issues" are goods and profits of the land. *Costanzo v. Harris*, 71 Wash.2d 254, 427 P.2d 963, 965.

**Ita est** /áytə èst/. Lat. So it is; so it stands. In modern civil law, this phrase is a form of attestation added to exemplifications from a notary's register when the same are made by the successor in office of the notary who made the original entries.

**Ita lex scripta est** /áytə léks skríptəm èst/. Lat. So the law is written. The law must be obeyed notwithstanding the apparent rigor of its application. 3 Bl.Comm. 430. We must be content with the law as it stands, without inquiring into its reasons. 1 Bl.Comm. 32.

**Ita semper fiat relatio ut valeat dispositio** /áytə sémpər fáyt rəléysh(iy)ow át véliyət dispəzish(iy)ow/. Let the interpretation be always such that the disposition may prevail.

**Ita te Deus adjuvet** /áytə tíy díyəs éjəvət/. Lat. So help you God. The old form of administering an oath in England, generally in connection with other words, thus: *Ita te Deus adjuvet, et sacrosancta Dei Evangelia*, So help you God, and God's holy Evangelists. *Ita te Deus adjuvet et omnes sancti*, So help you God and all the saints.

**Ita utere tuo ut alienum non lædas** /áytə yúwtəriy t(y)úwəw át əliyiynəm nòn líydəs/. Use your own property and your own rights in such a way that you will not hurt your neighbor, or prevent him from enjoying his. Frequently written "*Sic utere tuo*", etc. (*q.v.*).

**Item** /áytəm/. Also; likewise; in like manner; again; a second time. This word was formerly used to mark the beginning of a new paragraph or division after the first, whence is derived the common application of it to denote a separate or distinct particular of an account or bill. One of the portions, equal or unequal, into which anything is divided, or regarded as divided; something less than a whole; a number, quantity, mass, or the like, regarded as going to make up, with others or another, a larger number, quantity, mass, etc., whether actually separate or not; a piece, fragment, fraction, member or constituent. A separate entry in an account or a schedule, or a separate particular in an enumeration of a total. An "item" in an appropriation is an indivisible sum of money dedicated to a stated purpose. Common-

wealth v. Dodson, 176 Va. 281, 11 S.E.2d 120, 124, 127, 130, 131.

For commercial paper purposes, a negotiable or non-negotiable writing for the payment of money that is collected through the collection process governed by U.C.C. Article 4. U.C.C. § 4-104(1)(g).

**Itemize.** To set down by items. To state each item or article separately. Used commonly with reference to tax accounting.

**Itemized deductions.** Certain personal expenditures allowed by the Internal Revenue Code as deductions from adjusted gross income if an individual taxpayer chooses not to use the standard deduction and total itemized deductions exceed the standard deduction. Examples include certain medical expenses, interest on home mortgages, state income taxes, and charitable contributions.

**Iter** /áytər/. Lat. In the civil law, a way; a right of way belonging as a servitude to an estate in the country (*praedium rusticum*). The right of way was of three kinds: (1) *iter*, a right to walk, or ride on horseback, or in a litter; (2) *actus*, a right to drive a beast or vehicle; (3) *via*, a full right of way, comprising right to walk or ride, or drive beast or carriage. Or, as some think, they were distinguished by the width of the objects which could be rightfully carried over the way; *e.g.*, *via*, 8 feet; *actus*, 4 feet, etc.

In old English law, a journey, especially a circuit made by a justice in eyre, or itinerant justice, to try causes according to his own mission.

In maritime law, a way or route. The route or direction of a voyage; the route or way that is taken to make the voyage assured. Distinguished from the voyage itself.

**Iteratio** /itərəysh(iy)ow/. Lat. Repetition. In the Roman law, a bonitary owner might liberate a slave, and the quiritary owner's repetition (*iteratio*) of the process effected a complete manumission.

**Iter est jus eundi, ambulandi hominis; non etiam jumentum agendi vel vehiculum** /áytər èst jəs iyənday, əmbyələnday hómənəs, nòn iysh(iy)əm jəməntəm əjənday vəl vəhík(y)ələm/. A way is the right of going or walking, and does not include the right of driving a beast of burden or a carriage.

**Itinera** /aytínərə/. Eyres, or circuits.

**Itinerant.** Wandering or traveling from place to place; formerly applied to justices who made circuits. Also applied in various statutory and municipal laws (in the sense of traveling from place to place) to certain classes of merchants, traders, and salesmen.

**Itinerant peddling.** The going about of a merchant from place to place, meeting and dealing with his customers where he finds them. *Good Humor Corporation v. City of New York*, 264 App.Div. 620, 36 N.Y.S.2d 85, 91. *See Hawker.*

**Itinerant vendor.** This term is variously defined in statutes; *e.g.*, a person engaged in transient business either in one locality or in traveling from place to place selling goods. *See also Hawker; Peddler.*

**Ius cogens.** A peremptory norm of general international law. For the purposes of the present convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. (cf. Vienna Convention on the Law of Treaties, 1958, Article 53.)