

# S

**S.** As an abbreviation, this letter stands for "section," "statute," and various other words of which it is the initial.

**S-1.** A form that must be filed with the Securities and Exchange Commission before a company's securities may be listed and traded on a national securities exchange. See Registration of securities.

**Sabbath.** One of the names of the first day of the week; more properly called "Sunday" (*q.v.*). The day of rest and religious worship. Named in the Ten Commandments as Saturday, the seventh day, and observed thereon by the Jews and some Christian sects; but observed on Sunday, the first day, by most Christian churches.

**Sabbath-breaking.** The offense of violating the laws prescribed for the observance of Sunday; *i.e.* violation of Sunday closing laws (Blue-laws).

**Sabotage** /səbətəʒh/. Term has reference to the wilful destruction or injury of, or defective production of, war material or national-defense material, or harm to war premises or war utilities. 18 U.S.C.A. § 2151 et seq. Term also refers to wilful and malicious destruction of employer's property during a labor dispute or interference with his normal operations. *Burns v. U. S.*, 274 U.S. 328, 47 S.Ct. 650, 71 L.Ed. 1077.

**Sac** /sæk/. In old English law, a liberty of holding pleas; the jurisdiction of a manor court; the privilege claimed by a lord of trying actions of trespass between his tenants, in his manor court, and imposing fines and amerancements in the same.

**Sacaburth, sacabere, sakabere** /sækəbər(θ)/. In old English law, he that was robbed, or by theft deprived of his money or goods, and put in surety to prosecute the felon with fresh suit.

**Saccabor** /sækəbər/. In old English law, the person from whom a thing had been stolen, and by whom the thief was freshly pursued.

**Sacramentales** /sækraməntéliy/. L. Lat. In feudal law, compurgators; persons who came to purge a defendant by their oath that they believed him innocent.

**Sacramentum** /sækraméntəm/. Lat. *Common law.* An oath.

*Roman law.* An oath, as being a very sacred thing; more particularly, the oath taken by soldiers to be true to their general and their country.

In one of the formal methods of beginning an action at law (*legis actiones*) known to the early Roman jurispru-

dence, the *sacramentum* was a sum of money deposited in court by each of the litigating parties, as a kind of wager or forfeit, to abide the result of the suit. The successful party received back his stake; the losing party forfeited his, and it was paid into the public treasury, to be expended for sacred objects (*in sacris rebus*), whence the name.

**Sacramentum decisionis** /sækraméntəm dəsizhiy-ównəs/. The voluntary or decisive oath of the civil law, where one of the parties to a suit, not being able to prove his case, offers to refer the decision of the cause to the oath of his adversary, who is bound to accept or make the same offer on his part, or the whole is considered as confessed by him.

**Sacramentum fidelitatis** /sækraméntəm fədèlétýtəs/. In old English law, the oath of fealty.

**Sacramentum habet in se tres comites,—veritatem, justitiam, et judicium; veritas habenda est in jurato; justitia et judicium in iudice.** An oath has in it three component parts,—truth, justice, and judgment; truth in the party swearing; justice and judgment in the judge administering the oath.

**Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium** /sækraméntəm sây fétýuwəm f(y)úwérət, láysət fòlsəm, támən nòn kəmitət pəjrjúryəm/. A foolish oath, though false, makes not perjury.

**Sacrilege** /sækrləj/. In old English criminal law, larceny from a church. The crime of breaking a church or chapel, and stealing therein. The desecration of anything considered holy; the alienation to lay-men or to profane or common purposes of what was given to religious persons and to pious uses.

**Sacrilegium** /sækrlíj(iy)əm/. Lat. In the civil law, the stealing of sacred things, or things dedicated to sacred uses; the taking of things out of a holy place.

**Sacrilegus** /sækrlégəs/. Lat. In the civil and common law, a sacrilegious person; one guilty of sacrilege.

**Sacrilegus omnium prædonum cupiditatem et scelera superat** /sækrlégəs ómn(i)yəm prædównəm kyuwpidétýtəm èt sélərə s(y)úwpərat/. A sacrilegious person transcends the cupidity and wickedness of all other robbers.

**Sacristan** /sækkrəstən/. A sexton, anciently called "sagerson", or "sagiston", the keeper of things belonging to divine worship.

**Sadism** /sɛydizəm/sæd/. A form of satisfaction, commonly sexual, derived from inflicting harm on another. It is a type of mental disease or disorder. The opposite of *masochism* (q.v.).

**Sæmend.** In old English law, an umpire, or arbitrator.

**Sæpe constitutum est, res inter alios iudicatas aliis non præjudicare** /sɪpiy kɔnstət(y)úwtəm ést riyz întər éyl(i)yows júwdækéytəs éyliyəs nɔn præjúwdækériy/. It has often been settled that matters adjudged between others ought not to prejudice those who were not parties.

**Sæpenumero ubi proprietates verborum attenditur, sensus veritatis amittitur** /sɪpiynámərow yúwbay præpráyətəs vɔrbórəm sténdətər sénsəs vèhrstéyds émitətər/. Oftentimes where the propriety of words is attended to, the true sense is lost.

**Sævitia** /səvish(iy)ə/. Lat. In the law of divorce, cruelty; anything which tends to bodily harm, and in that manner renders cohabitation unsafe.

**Safe.** A metal receptacle for the preservation of valuables. Untouched by danger; not exposed to danger; secure from danger, harm or loss.

One of the papers usually carried by vessels in time of war, and necessary to the safety of neutral merchantmen. It is in the nature of a license to the vessel to proceed on a designated voyage, and commonly contains the name of the master, the name, description, and nationality of the ship, the voyage intended, and other matters. A distinction is sometimes made between a *passport*, conferring a general permission to travel in the territory belonging to, or occupied by, the belligerent, and a *safe-conduct*, conferring permission upon an enemy subject or others to proceed to a particular place for a defined object.

**Safe deposit box.** A metal container kept by a customer in a bank in which he deposits papers, securities and other valuable items. Generally, there are two keys required to open, one retained by the bank and the other by the customer.

**Safe deposit company.** A company which maintains vaults for the deposit and safe-keeping of valuables in which compartments or boxes are rented to customers who have exclusive access thereto, subject to the oversight and under the rules and regulations of the company. *See* Depository; Safe deposit box.

**Safe Harbor rule.** A provision in the tax code which gives a taxpayer protection as long as efforts were made to comply with the law. An example would be with estimated taxes. If an individual pays 100% of their prior year tax liability in estimated installments, they may avoid the underpayment penalty.

**Safe limit of speed.** As regards limitation on speed of automobiles at crossings, the limit at which one may discern an approaching train and stop before he is in the danger zone. *Horton v. New York Cent. R. Co.*, 205 App.Div. 763, 200 N.Y.S. 365, 366.

**Safe place to work.** In the law of master and servant (employer and employee), a place in which the master has eliminated all danger which in the exercise of reasonable care the master should remove or guard against. Master's duty to provide a "safe place" to work includes places to and from which the employee might be required or expected to go. *High Splint Coal Co. v. Ramey's Adm'x.*, 271 Ky. 532, 112 S.W.2d 1007, 1008.

Federal, state, and local regulations and regulatory bodies require health and safety standards for workers. *See e.g.* Occupational Safety and Health Act.

**Safety Appliance Act.** Federal Act regulating safety of equipment used by common carriers engaged in interstate commerce. 45 U.S.C.A. § 1 *et seq.*

**Sagibaro** /sægəbərəw/. In old European law, a judge or justice; literally, a man of causes, or having charge or supervision of causes. One who administered justice and decided causes in the *mallum*, or public assembly.

**Said.** Before mentioned. This word is frequently used in contracts, pleadings, and other legal papers, with the same force as "aforesaid." *Greeley Nat. Bank v. Wolf*, C.C.A.Colo., 4 F.2d 67, 69.

**Sail.** To put to sea; to begin a voyage. To get ship under way in complete readiness for voyage, with purpose of proceeding without further delay.

**Sailors.** Seamen; mariners.

**Sailors' Relief Act.** *See* Soldiers' and Sailors' Civil Relief Act.

**Sailors' will.** A nuncupative or oral will which the law allows in the case of a sailor at sea. It has the power to pass personal property at death but not real estate. *See also* Nuncupative will.

**Saisie** /sèyzíy/. Fr. In French law, a judicial seizure or sequestration of property, of which there are several varieties. *See* terms next following for various types of such seizure.

**Saisie-arrêt.** An attachment of property in the possession of a third person.

**Saisie-exécution.** A writ resembling that of *fieri facias*; defined as that species of execution by which a creditor places under the hand of justice (custody of the law) his debtor's movable property liable to seizure, in order to have it sold, so that he may obtain payment of his debt out of the proceeds.

**Saisie-foraine.** A permission given by the proper judicial officer to authorize a creditor to seize the property of his debtor in the district which the former inhabits. It has the effect of an attachment of property, which is applied to the payment of the debt due.

**Saisie-gagerie.** A conservatory act of execution, by which the owner or principal lessor of a house or farm causes the furniture of the house or farm leased, and on which he has a lien, to be seized; similar to the *distress* of the common law.

**Saisie-immobilière.** The proceeding by which a creditor places under the hand of justice (custody of the law) the

immovable property of his debtor, in order that the same may be sold, and that he may obtain payment of his debt out of the proceeds.

**Sake.** In old English law, a lord's right of amercing his tenants in his court.

Acquittance of suit at county courts and hundred courts.

**Salable.** Merchantable; fit for sale in usual course of trade, at usual selling prices. *See* Marketable title; Merchantability.

**Salable value.** Usual selling price at place where property is situated when its value is to be ascertained. *Fort Worth & D. N. Ry. Co. v. Sugg*, Tex.Civ.App., 68 S.W.2d 570, 572. *See also* Value.

**Salarium** /sə'leriəm/. Lat. In the civil law, an allowance of provisions. A stipend, wages, or compensation for services. An annual allowance or compensation.

**Salary.** A reward or recompense for services performed. In a more limited sense, a fixed periodical compensation paid for services rendered. A stated compensation paid periodically as by the year, month, or other fixed period, in contrast to wages which are normally based on an hourly rate. *See also* Fixed salary; Wages.

**Sale.** A contract between two parties, called, respectively, the "seller" (or vendor) and the "buyer" (or purchaser), by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property. Transfer of property as providing of services for consideration. A transfer of property for a fixed price in money or its equivalent. *Grinnell Corp. v. U.S.*, 390 F.2d 932, 945, 947, 182 Ct.Cl. 702. Passing of title from seller to buyer for a price. U.C.C. § 2-106(1).

A revenue transaction where goods or services are delivered to a customer in return for cash or a contractual obligation to pay. Term comprehends transfer of property from one party to another for valuable recompense. *Herskovitz v. Vespico*, 238 Pa.Super. 529, 362 A.2d 394, 396.

The general law governing the sale of goods is the Uniform Commercial Code (Art. 2).

A contract whereby property is transferred from one person to another for a consideration of value, implying the passing of the general and absolute title, as distinguished from a special interest falling short of complete ownership.

To constitute a "sale," there must be parties standing to each other in the relation of buyer and seller, their minds must assent to the same proposition, and a consideration must pass. *Commissioner of Internal Revenue v. Freihofer*, C.C.A.3, 102 F.2d 787, 789, 790.

The term "sale" includes any contract to sell or otherwise dispose of. Securities Exchange Act, § 3.

"Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. Any securi-

ty given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. Investment Company Act, § 2.

Sale, as applied to relation between landowner and real estate broker working to secure purchaser of land, means procuring purchaser able, ready and willing to buy on terms fixed by seller.

*See also* Approval sales; Auction; Bargain and sale; Bargain sale or purchase; Bootstrap sale; Bulk sale; Buy and sell agreement; Cash sale; Casual sale; Consignment; Contract of sale; Credit sale; Fire sale; Forced sale; Installment sale; Isolated sale; Judicial sale; Scalper; Sheriff's sale; Simulated sale; Symbolic delivery; Tax sale; Wash sale.

### Other Terms Distinguished

The contract of "sale" is distinguished from "barter" (which applies only to goods) and "exchange" (which is used of both land and goods), in that both the latter terms denote a commutation of property for property; *i.e.*, the price or consideration is always paid in money if the transaction is a sale, but, if it is a barter or exchange, it is paid in specific property susceptible of valuation. "Sale" differs from "gift" in that the latter transaction involves no return or recompense for the thing transferred. But an onerous gift sometimes approaches the nature of a sale, at least where the charge it imposes is a payment of money. "Sale" is also to be distinguished from "bailment," and the difference is to be found in the fact that the contract of bailment always contemplates the return to the bailor of the specific article delivered, either in its original form or in a modified or altered form, or the return of an article which, though not identical, is of the same class, and is equivalent. But sale never involves the return of the article itself, but only a consideration in money. This contract differs also from "accord and satisfaction," because in the latter the object of transferring the property is to compromise and settle a claim, while the object of a sale is the price given.

The cardinal difference between the relation of seller and buyer and that of principal and factor is that in a "sale" title passes to the buyer, while in a "consignment" by principal to factor title remains in principal, and only possession passes to factor. Also, a "sale" is distinguished from a mortgage, in that the former is a transfer of the absolute property in the goods for a price, whereas a mortgage is at most a conditional sale of property as security for the payment of a debt or performance of some other obligation, subject to the condition that on performance title shall revert in the mortgagor.

An abandonment must be made without any desire that any other person shall acquire the thing abandoned, since if it is made for a consideration it is a "sale" or "barter," and if made without consideration, but with an intention that some other person shall

become the possessor, it is a "gift." *Del Giorgio v. Powers*, 27 Cal.App.2d 668, 81 P.2d 1006, 1014.

### General Classification

*Absolute and conditional sales.* An absolute sale is one where the property in chattels passes to the buyer upon the completion of the bargain. A conditional sale is one in which the transfer of title is made to depend on the performance of a condition, usually the payment of the price; it is a purchase for a price paid or to be paid, to become absolute on a particular event, or a purchase accompanied by an agreement to resell upon particular terms. Under a conditional sale the seller reserves title as security for payment for goods. *See also* Conditional sale contract; Secured transaction.

*Auction sale.* *See* Auction.

*Bill of sale.* *See* Bill.

*Bulk sale.* The sale of all or a substantial part of the seller's materials, supplies, merchandise, other inventory or in some cases equipment not in the ordinary course of business. U.C.C. § 6-102. Statutes prescribe the procedure for such sales because of the danger of fraud on the creditors of the seller.

*Cash sale.* A transaction whereby payment is to be in full on receipt of the goods. A sale where title is not to pass until the price is paid, or where title has passed, but possession is not to be delivered until payment is made. *Compare* Sale on credit, below.

*Conditional sale.* *See* Absolute and conditional sales, above.

*Consignment sale.* *See* Consignment.

*Credit sale.* *See* Sale on credit, below.

*Exclusive sale.* With respect to a real estate broker, an agreement by the owner that he will not sell the property during the life of the contract to any purchaser not procured by the broker in question. *See* Exclusive agency listing; Listing.

*Executed and executory sales.* An *executed* sale is one which is final and complete in all its particulars and details, nothing remaining to be done by either party to effect an absolute transfer of the subject-matter of the sale. An *executory* sale is one which has been definitely agreed on as to terms and conditions, but which has not yet been carried into full effect in respect to some of its terms or details, as where it remains to determine the price, quantity, or identity of the thing sold, or to pay installments of purchase-money, or to effect a delivery.

*Execution sale.* *See* Execution sale.

*Fair sale.* *See* Fair sale.

*Forced sale.* A sale made without the consent or concurrence of the owner of the property, but by virtue of judicial process, such as resulting from a writ of execution or an order under a decree of foreclosure. *See* Judicial sale; Sheriff's sale; Tax-sale, below.

*Foreclosure sale.* *See* Foreclosure.

*Fraudulent sale.* One made for the purpose of defrauding the creditors of the owner of the property, by covering up or removing from their reach and converting into cash property which would be subject to the satisfaction of their claims. Such sales may be voided by Bankruptcy Court.

*Gross sale.* In accounting, the total sales before deduction for return sales and allowances.

*Installment sale.* A sale in which the buyer makes periodic payments and generally the seller reserves title until full payment has been made. *See* Retail installment sale; Sale on credit, below.

*Judicial sale.* One made under the process of a court having competent authority to order it, by an officer duly appointed and commissioned to sell, as distinguished from a sale by an owner in virtue of his right of property. *See also* Sheriff's sale; Tax-sale, below.

*Memorandum sale.* That form of conditional sale in which the goods are placed in the possession of the vendee subject to his approval; the title remaining in the seller until they are either accepted or rejected by the vendee.

*Net sale.* Gross sales (*q.v.*) less returns and allowances.

*Private sale.* One negotiated and concluded privately between buyer and seller, and not made by advertisement and public notice or auction or through a broker or agent. *See* U.C.C. § 2-706.

*Public sale.* A sale made in pursuance of a notice, by auction or sheriff. *See* U.C.C. § 2-706. *See also* Judicial sale, above; Sheriff's sale; Tax-sale, below.

*Retail installment sale.* Sale of goods or the furnishing of services by a retail seller to a retail buyer for a deferred payment price payable in installments.

*Sale and return.* A species of contract by which the seller (usually a manufacturer or wholesaler) delivers a quantity of goods to the buyer, on the understanding that, if the latter should desire to retain or use or resell any portion of such goods, he will consider such part as having been sold to him, and will pay their price, and the balance he will return to the seller, or hold them, as bailee, subject to his order. *Sturm v. Boker*, 150 U.S. 312, 14 S.Ct. 99, 37 L.Ed. 1093. Under "contract of sale and return" title vests immediately in buyer, who has privilege of rescinding sale, and until privilege is exercised title remains in him. *See* U.C.C. § 2-326.

*Sale by auction.* *See* Auction.

*Sale by sample.* A sales contract in which it is the understanding of both parties that the goods exhibited constitute the standard with which the goods not exhibited correspond and to which deliveries should conform. Any sample which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model. U.C.C. § 2-313. *See also* Sample, sale by.

**Sale in gross.** A sale by the tract, without regard to quantity; it is in that sense a contract of hazard. *See also Gross sale, above.*

**Sale-note.** A memorandum of the subject and terms of a sale, given by a broker or factor to the seller, who bailed him the goods for that purpose, and to the buyer, who dealt with him. Also called "bought and sold notes."

**Sale on approval.** A species of conditional sale, which is to become absolute only in case the buyer, on trial, approves or is satisfied with the article sold. The approval, however, need not be express; it may be inferred from his keeping the goods beyond a reasonable time. *See also Sale or return, below; and Approval sales.*

A sale is a sale on approval if the goods may be returned by the buyer though they conform to the contract and if they are primarily delivered for use. Generally, such goods are not subject to the claims of the creditors of the buyer until acceptance. U.C.C. §§ 2-326, 2-327.

**Sale on credit.** A sale of property accompanied by delivery of possession, but where payment of the price is deferred to a future day. *See Credit; also, Installment sale, above.*

**Sale or return.** A type of conditional sale wherein the goods may be returned to the seller though they conform to the contract if the goods are delivered primarily for resale. U.C.C. §§ 2-326(1), (3), 2-327. A contract for sale of goods whereby title passes immediately to buyer subject to his option to rescind or return goods if he does not resell them. *American Nat. Bank of Denver v. Christensen*, 28 Colo.App. 501, 476 P.2d 281, 285. *See also Sale on approval, above.*

**Sale per aversionem.** In the civil law, a sale where the goods are taken in bulk, or not by weight or measure, and for a single price, or where a piece of land is sold for a gross sum, to be paid for the whole premises, and not at a fixed price by the acre or foot. A sale per aversionem is sale of either distinct or separate immovable, such as a field enclosed or island in a river, or an immovable property sold by certain bounds or limits. *Cornish v. Kinder Canal Co.*, La.App., 267 So.2d 625, 629. In such a sale, purchaser acquires property located within boundaries designated in sales agreement, irrespective of stated acreage in agreement; description of property by boundaries thus prevails over description referring to specific quantity or measurement. *Deshotel v. Lachney*, La.App. 3 Cir., 465 So.2d 974, 977.

**Sale with all faults.** Under what is called a "sale with all faults," or "sale as is", unless the seller fraudulently and inconsistently represents the article sold to be faultless, or contrives to conceal any fault from the purchaser, the latter must take the article for better or worse.

**Sale with right of redemption.** A sale in which vendor reserves right to take back property by returning price paid. *See also Sale on approval; Sale or return, above.*

**Sheriff's sale.** A sale of property, conducted by a sheriff, or sheriff's deputy by virtue of his authority as an

officer holding process. *See Forced sale; Judicial sale, above, also, Foreclosure; Sheriff's sale.*

**Short sale.** *See Short sale.*

**Tax-sale.** A sale of land for unpaid taxes; a sale of property, by authority of law, for the collection of a tax assessed upon it, or upon its owner, which remains unpaid.

**Voluntary sale.** One made freely, without constraint, by the owner of the thing sold. *Contrast Forced sale, above.*

**Wash sale.** In security trading, a spurious transaction in which the same stock is sold and bought by the same person to create the impression of market activity or to establish a market for the stock. Such transactions are forbidden.

**Sale against the box.** A species of short sale (*q.v.*) at a time when the taxpayer owns substantially identical shares.

**Sale and leaseback.** A lease that is initiated when a firm sells an asset it owns to another firm and simultaneously leases the asset back for its own use. A sale of an asset to a vendee who immediately leases back to the vendor. The usual objectives are (1) to free cash in the amount of the purchase price for other uses by the vendor, (2) for benefits not otherwise available such a deduction by the vendor of the full value of the property for income tax purposes as rental payments over a period of time shorter than would be in depreciation where the base period is the allowable depreciable life. The rental payments total the purchase price plus interest less an estimated salvage value. Although the lease actually follows the sale, both are agreed to as part of the same transaction.

**Sale of land.** *See Conveyance; Conveyancing.*

**Sale or exchange.** The term used in taxation in reference to a transaction which results in a gain or loss recognized for federal tax purposes. I.R.C. § 1001.

**Sales agreement or contract.** A contract to sell goods. A contract by means of which the ownership of goods is transferred from a seller to a buyer for a fixed price in money, paid or agreed to be paid by the buyer. It may refer to a contract for sale which includes both a present sale and a contract to sell goods at a future time. U.C.C. § 2-106(1). Also, term used to describe a contract for the sale of real estate, including a contract for deed. *See also Conditional sale contract; Sale.*

**Sales contract.** *See Sale; Sales agreement or contract.*

**Sales finance company.** A business engaged primarily in the purchase of accounts receivable at a discount. The company then undertakes to collect them.

**Sales invoice.** *See Invoice.*

**Salesman.** *See Commercial traveler; Dealer; Drummer; Hawker; Peddler.*

**Sales tax.** A state or local-level tax on the retail sale of specified property or services. It is a percentage of the cost of such. Generally, the purchaser pays the tax, but the seller collects it, as an agent for the government.

Various taxing jurisdictions allow exemptions for purchases of specified items, including certain foods, services, and manufacturing equipment. If the purchaser and seller are in different states, a *use tax* usually applies.

**Saloon.** A place of refreshment. *Hinton v. State*, 137 Tex.Cr.R. 352, 129 S.W.2d 670, 673. In common parlance, a place where intoxicating liquors are sold and consumed.

**Salus** /sæləs/. Lat. Health; prosperity; safety.

**Salus populi suprema lex** /sæləs póp(y)əlay səpriymə léks/. The welfare of the people is the supreme law. *Lingo Lumber Co. v. Hayes*, Tex.Civ.App., 64 S.W.2d 835, 839.

**Salvage.** In general, that portion of goods or property which has been saved or remains after a casualty such as fire or other loss.

In business, any property which is no longer useful (e.g. obsolete equipment) but which has scrap value.

In insurance, that portion of property which is taken over by the insurance company after payment of a claim for the loss. The insurance company may deduct the salvage value from the amount of the claim paid and leave the property with the insured.

In maritime law, a compensation allowed to persons by whose assistance a ship or its cargo has been saved, in whole or in part, from impending danger, or recovered from actual loss, in cases of shipwreck, derelict, or recapture. *Cope v. Vallette Dry-Dock Co.*, 119 U.S. 625, 7 S.Ct. 336, 30 L.Ed. 501. Elements necessary to valid "salvage" are marine peril, with service voluntarily rendered, when not required as existing duty, or from a special contract, and success in whole or in part, and that service rendered contributed to such success. *Robert R. Sizer & Co. v. Chiarello Bros.*, D.C.N.Y., 32 F.2d 333, 335.

**Equitable salvage.** By analogy, the term "salvage" is sometimes also used in cases which have nothing to do with maritime perils, but in which property has been preserved from loss by the last of several advances by different persons. In such a case, the person making the last advance is frequently entitled to priority over the others, on the ground that, without his advance, the property would have been lost altogether. This right, which is sometimes called that of "equitable salvage," and is in the nature of a lien, is chiefly of importance with reference to payments made to prevent leases or policies of insurance from being forfeited, or to prevent mines and similar undertakings from being stopped or injured.

**Salvage charges.** This term includes all the expenses and costs incurred in the work of saving and preserving the property which was in danger. The salvage charges ultimately fall upon the insurers.

**Salvage loss.** That kind of loss which it is presumed would, but for certain services rendered and exertions made, have become a total loss. In the language of marine underwriters, this term means the difference

between the amount of salvage, after deducting the charges, and the original value of the property insured.

**Salvage service.** A service voluntarily rendered to a vessel in need of assistance, and is designed to relieve her from distress or danger, either present or to be reasonably apprehended and for which a salvage reward is allowed by the maritime law. It is distinguished from "towage service," in that the latter is rendered for the mere purpose of expediting a vessel's voyage, without reference to any circumstances of danger, though the service in each case may be rendered in the same way. *The Emanuel Stavroudis*, D.C.Md., 23 F.2d 214, 216.

**Salvage value.** That value of an asset which remains after the useful life of the asset has expired. It is commonly equivalent to scrap value and in most cases must be deducted in computing depreciation. Actual or estimated selling price, net of removal or disposal costs, of a used plant asset to be sold or otherwise retired.

It may consist of the actual resale price which taxpayer can expect to realize upon disposition of asset when taxpayer's use of it in his business terminates; it is not some nominal or junk value. *Hibernia Nat. Bank in New Orleans, Trust Div. v. U.S.*, C.A.La., 740 F.2d 382, 386.

The value of a building or portion of a building to be moved from one location for use at another site. Occurs in condemnation, especially for highway purposes, where large tracts of land must be cleared.

**Salvo** /sælvow/. Lat. Saving; excepting; without prejudice to. *Salvo me et hæredibus meis*, except me and my heirs. *Salvo jure cujuslibet*, without prejudice to the rights of any one.

**Salvor** /sælvər/. A person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a volunteer adventurer, without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship.

**Salvus plegius** /sælvəs plíj(y)əs/. L. Lat. A safe pledge; called, also, "*certus plegius*," a sure pledge.

**Same.** Identical, equal, equivalent. The word "same", however, does not always mean "identical." It frequently means of the kind or species, not the specific thing. When preceded by the definite article, means the one just referred to.

Two offenses are "the same" under the double jeopardy clause of the Federal Constitution unless each requires proof of an additional fact that the other does not. *Ex parte Joseph*, Tex.Cr.App., 558 S.W.2d 891, 893. *See also* Jeopardy; Same offense.

**Same evidence test.** The "same-evidence test" used in determining issue of double jeopardy is whether facts alleged in second indictment, if introduced in evidence, would have sustained a conviction under the first indictment or whether the same evidence would support a conviction in each case. *U.S. v. Liotard*, C.A.N.J., 817 F.2d 1074, 1077. *See* Double jeopardy; Same offense.

**Same invention.** Within reissue statute, refers to whatever invention was described in original letters patent, and appears therein to have been intended to be secured thereby. *Morgan v. Drake*, Cust. & Pat.App., 36 F.2d 511, 512. It is not to be determined by the claims of the original patent but from the description and such other evidence as the commissioner may deem relevant. *Detrola Radio & Television Corporation v. Hazeltine Corporation*, C.C.A.Mich., 117 F.2d 238, 241.

**Same offense.** As used in Constitution, providing that no person shall be twice put in jeopardy for the same offense, does not signify the same offense *eo nomine*, but the same criminal act, transaction, or omission. Term "same offense" as used in statute relating to enhancement of punishment for subsequent conviction of same offense means a similar offense, one of the same character or nature. *Cherry v. State*, Tex.Cr.App., 447 S.W.2d 154, 158. However, under "same offense" test of double jeopardy, if there is any difference in elements to be proven, two instances are not the same offense. *U.S. v. Martino*, C.A.Fla., 648 F.2d 367, 382. *See also* Jeopardy; Same; Same evidence test.

**Sample.** A specimen. A small quantity of any commodity, presented for inspection or examination as evidence of the quality of the whole; as a sample of cloth or of wheat.

**Sample, sale by.** A sale at which only a sample of the goods sold is exhibited to the buyer. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model. U.C.C. § 2-313(1)(c). *See also* Sale.

**Sanæ mentis** /séyniy méntəs/. Lat. In old English law, of sound mind.

**Sanctio** /sæŋksh(iy)ow/. Lat. In the civil law, that part of a law by which a penalty was ordained against those who should violate it.

**Sanction, v.** To assent, concur, confirm, reprimand, or ratify. *U. S. v. Tillinghast*, D.C.R.I., 55 F.2d 279, 283. Approval or ratification.

**Sanction, n.** Penalty or other mechanism of enforcement used to provide incentives for obedience with the law or with rules and regulations. That part of a law which is designed to secure enforcement by imposing a penalty for its violation or offering a reward for its observance. For example, Fed.R.Civil P. 37 provides sanctions for failure to comply with discovery orders, and Rule 11 empowers court to impose disciplinary sanctions on attorneys for other types of improper conduct. *See also* Contempt; Criminal sanctions.

A punitive act taken by one nation against another nation which has violated a treaty or international law.

**Sanctuary.** In old English law, a consecrated place which had certain privileges annexed to it, and to which offenders were accustomed to resort for refuge, because they could not be arrested there, nor the laws be executed. In general, any holy or consecrated place.

**Sandwich lease.** The first lease of property from lessor to lessee who in turn subleases to another. *See* Sublease.

**Sane.** Of natural and normal mental condition; healthy in mind. One who knows the difference between right and wrong, and appreciates the consequences of his acts. *Stout v. State*, 142 Tex.Civ.R. 537, 155 S.W.2d 374, 377. *Compare* Insanity.

**Sanguis** /sæŋgwəs/. Lat. In the civil and old English law, blood; consanguinity. The right or power which the chief lord of the fee had to judge and determine cases where blood was shed.

**Sanipractic** /sænəpræktək/. A method of drugless healing. *Martin v. Department of Social Security*, 12 Wash.2d 329, 121 P.2d 394, 395.

**Sanipractors** /sænəpræktərz/. Drugless healers. *State v. Lydon*, 170 Wash. 354, 16 P.2d 848, 851.

**Sanitary.** That which pertains to health, with especial reference to cleanliness and freedom from infective and deleterious influences.

**Sanitary code.** Municipal ordinances regulating sanitary conditions of establishments which produce, distribute or serve food, or provide medical services.

**Sanitation.** Devising and applying of measures for preserving and promoting public health; removal or neutralization of elements injurious to health; practical application of sanitary science. *See* Sanitary code.

**Sanity.** Sound understanding; the normal condition of the human mind; the reverse of insanity (*q.v.*).

**Sanity hearing.** A preliminary inquiry into the mental competency of a person to stand trial, though it may be held at any time within the criminal proceeding. *See* 18 U.S.C.A. § 4241 et seq.; Fed.R.Crim.P. 12.2.

A proceeding to determine whether one should be confined under a civil commitment to an institution.

**Sanity trial.** In some states the issues of sanity and guilt may be tried separately in a bifurcated trial.

**Sans ce que** /sænz sý kə/. L. Fr. Without this. *See* Absque hoc.

**Sans frais** /sòn fréy/. Fr. Without expense.

**Sans impeachment de wast** /sænz æmpíychmønt də wéyst/. L. Fr. Without impeachment of waste. *See* Absque impetitione vasti.

**Sans jour** /sòn zhúr/sænz júr/. Fr. Without day; *sine die*.

**Sans recours** /sòn rækúr/sænz\*/. Fr. Without recourse. *See* Indorsement.

**Sap.** A general term which, as applied to weapons, includes a "blackjack," "slung shot," "billy," "sandbag," or "brass knuckles". *People v. Mulherin*, 140 Cal.App. 212, 35 P.2d 174, 175, 176.

**Sapiens incipit a fine, et quod primum est in intentione, ultimum est in executione** /séyp(i)enz ənsípət èy fáyniy, èt kwód práyməm èst in intènshiyówniy

áltəməm èst in èksəkýùwshiyówniy/. A wise man begins with the last, and what is first in intention is last in execution.

**Sapiens omnia agit cum consilio** /séyp(i)yenz ómn(i)yə éyjt kəm kənsíl(i)yow/. A wise man does everything advisedly.

**Sapientia legis nummario pretio non est æstimanda** /sæpiyéns(i)yə líyəs namér(i)yow prэш(i)yow nón èst ètəmándə/. The wisdom of the law cannot be valued by money.

**Sapientis iudicis est cogitare tantum sibi esse permissum, quantum commissum et creditum** /sæpiyéntəs júwdəsəs èst kòjtériy tántəm síbay ésiy pərmísəm kwóntəm kəmísəm èt krédətəm/. It is the part of a wise judge to think that a thing is permitted to him, only so far as it is committed and intrusted to him. That is, he should keep his jurisdiction within the limits of his commission.

**Satisdare** /sætəsédériy/. Lat. In the civil law, to guaranty the obligation of a principal.

**Satisdatio** /sætəsédéysh(i)yow/. Lat. In the civil law, security given by a party to an action, as by a defendant, to pay what might be adjudged against him.

**Satisfaction.** Act of satisfying; the state of being satisfied. *Seago v. New York Cent. R. Co.*, 349 Mo. 1249, 164 S.W.2d 336, 341. The discharge of an obligation by paying a party what is due to him (as on a mortgage, lien, note, or contract), or what is awarded to him, by the judgment of a court or otherwise. Thus, a judgment is satisfied by the payment of the amount due to the party who has recovered such judgment, or by his levying the amount. The execution or carrying into effect of an accord. *Jones v. Whiteley*, 112 Idaho 886, 736 P.2d 1340, 1344. The performance of a substituted obligation in return for the discharge of the original obligation.

A legacy is deemed satisfied if the testator makes an inter vivos gift to the legatee with the intent that it be in lieu of the legacy.

An entry made on the record, by which a party in whose favor a judgment was rendered declares that he has been satisfied and paid.

*See also* Accord and satisfaction; Payment; Performance.

**Accord and satisfaction.** An "accord" is an agreement whereby one of parties undertakes to give or perform, and other to accept in satisfaction of liquidated or disputed claim arising in either contract or tort something different from what he is or considers himself entitled to; and "satisfaction" is execution or performance of agreement. *Harris, Upham & Co., Inc. v. Ballantyne*, Tex.Civ.App., 538 S.W.2d 153, 158.

**Equity.** The doctrine of satisfaction in equity is somewhat analogous to performance in equity, but differs from it in this respect: that satisfaction is always something given either in whole or in part as a substitute or equivalent for something else, and not (as in perform-

ance) something that may be construed as the identical thing covenanted to be done.

**Satisfaction, contracts to.** A class of contracts in which one party agrees to perform his promise to the satisfaction of the other. A contract for construction work "to the entire satisfaction of the owners" imports that the construction be to the satisfaction of a reasonable man and not to the personal satisfaction of owners.

**Satisfaction of debt.** *See* Satisfaction.

**Satisfaction of judgment.** A document such as an execution enforced by the judgment creditor and indicating that the judgment has been paid. *See* Execution.

**Satisfaction of lien.** Document signed by a lien holder in which he releases the property subject to the lien.

**Satisfaction of mortgage.** A discharge signed by the mortgagee or holder of the mortgage indicating that the property subject to the mortgage is released or that the mortgage debt has been paid and that all terms and conditions of the mortgage have been satisfied. *See also* Redemption.

**Satisfaction piece.** A memorandum in writing, entitled in a cause, stating that satisfaction is acknowledged between the parties, plaintiff and defendant. Upon this being duly acknowledged and filed in the office where the record of the judgment is, the judgment becomes satisfied, and the defendant discharged from it. *See* New York CPLR § 5020. Also referred to as "Certificate of Discharge." *See* Discharge.

**Satisfactory.** Where a contract provides that it is to be performed in a manner "satisfactory" to one of the parties, the provision must be construed as meaning that the performance must be such that the party, as a reasonable person, should be satisfied with it.

**Satisfactory evidence.** Such evidence as is sufficient to produce a belief that the thing is true; credible evidence. Such evidence as, in respect to its amount or weight, is adequate or sufficient to justify the court or jury in adopting the conclusion in support of which it is adduced. Sometimes called "sufficient evidence," means that amount of proof which ordinarily satisfies an unprejudiced mind beyond a reasonable doubt. *See* Relevant evidence; Sufficient evidence.

**Satisfied term.** A term of years in land is thus called when the purpose for which it was created has been satisfied or executed before the expiration of the set period.

**Satisfy.** To answer or discharge, as a claim, debt, legal demand or the like. *Swaner v. Union Mortg. Co.*, 99 Utah 298, 105 P.2d 342, 345. To comply actually and fully with a demand; to extinguish, by payment or performance. To convince, as to satisfy a jury. *See also* Satisfaction.

**Satius est petere fontes quam sectari rivulos** /séysh(i)yəs èst pétériy fóntiyz kwəm sektéray rívyəslows/. It is better to seek the source than to follow the streamlets.



**Saturday night special.** In corporate law, a surprise tender offer which expires in one week. Designed to capitalize on panic and haste, such an offer may be made Friday afternoon to take advantage of the fact that markets and most offices are closed on Saturday and Sunday. Saturday night specials have been effectively prohibited by the Williams Act, § 14(e), 15 U.S.C.A. § 78n(e). Term also used in reference to type of handgun weapon used in armed crimes.

**Saunkefin** /səŋfæn/. L. Fr. End of blood; failure of the direct line in successions.

**Sauvagine** /sóvəjɪn/. L. Fr. Wild animals.

**Save.** To except, reserve, or exempt; as where a statute "saves" vested rights. To toll, or suspend the running or operation of; as to "save" the statute of limitations. See Saving clause.

**Save harmless clause.** A provision in a document by which one party agrees to indemnify and hold harmless another party as to claims and suits which may be asserted against him. In some states, such clauses in leases are deemed against public policy and, hence, void. See also Hold harmless agreement.

**Saver default.** L. Fr. In old English practice, to excuse a default.

**Saving.** Preservation from danger or loss; economy in outlay; prevention of waste; something laid up or kept from becoming expended or lost; a reservation. *Oklahoma Tax Commission v. Sisters of the Sorrowful Mother*, 186 Okl. 339, 97 P.2d 888, 892.

**Saving clause.** In a statute, an exception of a special thing out of the general things mentioned in the statute. Ordinarily a restriction in a repealing act, which is intended to save rights, pending proceedings, penalties, etc., from the annihilation which would result from an unrestricted repeal. That provision in a statute which rescues the balance of the statute from a declaration of unconstitutionality if one or more clauses or parts are invalidated. It is sometimes referred to as the severability clause. Such clause continues in force the law repealed as to existing rights. *Dade County v. Wisheart*, Fla.App., 198 So.2d 94, 97. See also Separability clause; Severable statute.

**Savings account.** Accounts maintained in commercial and savings banks for purpose of accumulating money, in contrast to a checking account. Savings accounts generally yield interest on the deposited funds, though the trend is to also pay interest on checking account balances.

**Savings account trust.** An account opened in the name of one person in trust for another; e.g. A in trust for B. See also Trust (*Totten Trust*).

**Savings and loan association.** One of a number of types of mutually-owned, cooperative, savings associations, originally established for the primary purpose of making loans to members and others, usually for the purchase of real estate or homes; though in the 1980's S & L's expanded into commercial and other non-mortgage

loans and services. Such may be chartered by the state, or by the federal government, in which case it is known as a "Federal Savings and Loan Association." The deposits are insured by the Federal Deposit Insurance Corporation. The Financial Institution's Reform, Recovery and Enforcement Act of 1989 significantly changed the capital requirements, loan powers, and regulatory control of S & L's. See also Building and loan association.

A bank chartered by the Federal Home Loan Bank Board and engaged primarily in making home loan mortgages from the savings accounts of the depositors. Associations at the federal level are regulated by the Federal Home Loan Bank System.

**Savings bank.** See Bank.

**Savings bank trust.** See Trust.

**Savings bond.** See Bond.

**Savings notes.** Short term paper issued by a bank and bearing interest. The U.S. government issues such notes on a 90 day basis and for other periods of time.

**Saving to suitors clause.** That provision in 28 U.S.C.A. § 1333(1) which gives the U.S. District Courts original jurisdiction, "exclusive of the courts of the state" of any civil case of admiralty or maritime jurisdiction, "saving to suitors in all cases all other remedies to which they are otherwise entitled." The "saving to suitors" clause of the section of the Judiciary Act implementing constitutional provision extending federal judicial powers to cases of admiralty and maritime jurisdiction means that a suitor asserting an in personam admiralty claim may elect to sue in a "common law" state court through an ordinary civil action, and in such actions, the state courts must apply the same substantive law as would be applied had the suit been instituted in admiralty in a federal court. *Shannon v. City of Anchorage, Alaska*, 478 P.2d 815, 818.

**Savour** /séyvər/. To partake the nature of; to bear affinity to.

**Say about.** This phrase, like "more or less," is frequently introduced into conveyances or contracts of sale, to indicate that the quantity of the subject-matter is uncertain, and is only estimated, and to guard the vendor against the implication of having warranted the quantity.

**S.B.** Abbreviation for "Senate Bill."

**S.B.A.** Small Business Administration.

**S.B.I.C.** Small Business Investment Company.

**S.C.** Abbreviation for "same case." Inserted between two citations, it indicates that the same case is reported in both places. Also an abbreviation for "supreme court."

**Sc.** An abbreviation for "scilicet"; that is to say.

**Scab.** Person who works for lower wages than or under conditions contrary to those prescribed by a trade union; also one who takes the place of a worker who is on strike. Non-union workers who pass through a union

picket line. A worker who works under non-union conditions.

**Scabini** /skəbáynay/. In old European law, the judges or assessors of the judges in the court held by the count. Assistants or associates of the count; officers under the count. The permanent selected judges of the Franks. Judges among the Germans, Franks, and Lombards, who were held in peculiar esteem.

**Scalam** /skéyləm/. At the scale; the old way of paying money into the exchequer.

**Scale order.** An order to buy (or sell) a security which specifies the total amount to be bought (or sold) and the amount to be bought (or sold) at specified price variations.

**Scale tolerance.** Nominal variation between different scales in respect of the mass or weight of the same goods.

**Scaling laws.** A term used to signify statutes establishing the process of adjusting the difference in value between depreciated paper money and specie. Such statutes were rendered necessary by the depreciation of paper money necessarily following the establishment of American independence. And, thereafter, to discharge those debts which were made payable in Confederate money. The statutes are now obsolete.

**Scalper.** In securities business, a small operator who takes his profits on slight fluctuations in the market. A small scale speculator. One who sells tickets to sporting, theatre and other entertainment events at prices in excess of face price (*i.e.* box office price) of ticket.

**Scandal.** Defamatory reports or rumors; aspersion or slanderous talk, uttered recklessly or maliciously. Scandalous matter may be ordered stricken from the pleadings by a motion to strike. Fed.R.Civ.P. 12(f). *See also* Defamation.

**Scandalous matter.** Within federal rule providing for striking scandalous matter from pleadings, "scandalous matter" is matter which improperly casts a derogatory light on someone, usually a party to the action, with respect to moral character or uses repulsive language. *Gilbert v. Eli Lilly & Co., Inc., D.C.Puerto Rico, 56 F.R.D. 116, 120.*

**Scandalum magnatum** /skændələm məgnéytəm/. In English law, scandal or slander of great men or nobles. Words spoken in derogation of a peer, a judge, or other great officer of the realm, for which an action lies, though it is now rarely resorted to. 3 Bl.Comm. 123. This offense has not existed in America since the formation of the United States.

**Scenes a faire.** Fr. A copyright law doctrine referring to incidents, characters or settings which are as a practical matter indispensable, or at least standard, in the treatment of a given topic. *Alexander v. Haley, D.C. N.Y., 460 F.Supp. 40, 45.* Such material, in an otherwise copyrightable work, is considered unprotected by copyright because it would be natural for it to appear in works dealing with similar subjects or situations. Data

*East USA, Inc. v. Epyx, Inc., C.A.Cal., 862 F.2d 2104, 2108. See 17 U.S.C.A. § 102(b).*

**Schedule.** A sheet of paper annexed to a statute, deed, deposition, tax return, or other instrument, exhibiting in detail the matters mentioned or referred to in the principal document; *e.g.* schedule of assets and liabilities (debts) in bankruptcy proceeding. *See* Tax rate schedules.

Any list of planned events to take place on a regular basis such as a train schedule or a schedule of work to be performed in a factory.

**Scheduled injuries.** Certain types of injuries involving partial disability that are specifically covered in state workers' compensation statutes, each of which has a predetermined amount of compensation that will be paid for an employee experiencing that injury.

**Scheduled property.** In insurance, a list of property and the value of each piece of such property for which the insurer will pay in the event of loss or damage.

**Scheme.** A design or plan formed to accomplish some purpose; a system. *Snider v. Leatherwood, Tex.Civ. App., 49 S.W.2d 1107, 1110.* When used in a bad sense, term corresponds with "trick" or "fraud".

**Scheme or artifice to defraud.** For purposes of fraudulent representation statutes, consists of forming plan or devising some trick to perpetrate fraud upon another. *State v. Smith, 121 Ariz. 106, 588 P.2d 848.* Such connotes a plan or pattern of conduct which is intended to or is reasonably calculated to deceive persons of ordinary prudence and comprehension. *U.S. v. Washita Const. Co., C.A.Okl., 789 F.2d 809, 817.* "Scheme to defraud" within meaning of mail fraud statute (18 U.S.C.A. § 1341) is the intentional use of false or fraudulent representations for the purpose of gaining a valuable undue advantage or working some injury to something of value held by another. *U.S. v. Mandel, D.C.Md., 415 F.Supp. 997, 1005. See also* Artifice; Fraud; Mail fraud.

**Schism** /sízəm/. A division of a union into two factions resulting in one group leaving the union. In ecclesiastical law, a division or separation in a church or denomination of Christians, occasioned by a diversity of faith, creed, religious opinions, or repudiation of ecclesiastical authority.

**School.** An institution or place for instruction or education.

*Common schools.* Schools maintained at the public expense and administered by a bureau of the state, district, or municipal government, for the gratuitous education of the children of all citizens without distinction. *See also* Public schools, below.

*Consolidated school district.* A common school district where two or more existing schools have consolidated into one single district.

*District school.* A common or public school for the education at public expense of the children residing within a given district; a public school maintained by a "school district." *See* School district, below.

**Private school.** One maintained by private individuals, religious organizations, or corporations, not at public expense, and open only to pupils selected and admitted by the proprietors or governors, or to pupils of a certain religion or possessing certain qualifications, and generally supported, in part at least, by tuition fees or charges.

**Public schools.** Schools established under the laws of the state (and usually regulated in matters of detail by the local authorities), in the various districts, counties, or towns, maintained at the public expense by taxation, and open, usually without charge, to the children of all the residents of the city, town or other district. Schools belonging to the public and established and conducted under public authority.

**School board or committee.** A board of municipal officers charged with the administration of the affairs of the public schools. They are commonly organized under the general laws of the state, and fall within the class of *quasi* corporations, sometimes coterminous with a county or district, but not necessarily so. The members of the school board or committee are usually elected by the voters of the school district. The circuit of their territorial jurisdiction is called a "school district," and each school district is commonly a separate taxing district for school purposes.

**School directors.** See *School board or committee, above.*

**School district.** A public and quasi municipal corporation, organized by legislative authority or direction, comprising a defined territory, for the erection, maintenance, government, and support of the public schools within its territory in accordance with and in subordination to the general school laws of the state, invested, for these purposes only, with powers of local self-government and generally of local taxation, and administered by a board of officers, usually elected by the voters of the district, who are variously styled "school directors", "school boards", "school committees", "trustees", "commissioners", or "supervisors" of schools.

**School lands.** Public lands of a state set apart by the state (or by congress in a territory) to create, by the proceeds of their sale, a fund for the establishment and maintenance of public schools.

**Sciendum est** /sayéndəm èst/. Lat. It is to be known; be it remarked. In the books of the civil law, this phrase is often found at the beginning of a chapter or paragraph, by way of introduction to some explanation, or directing attention to some particular rule.

**Scienter** /sayéntər/. Lat. Knowingly. The term is used in pleading to signify an allegation (or that part of the declaration or indictment which contains it) setting out the defendant's previous knowledge of the cause which led to the injury complained of, or rather his previous knowledge of a state of facts which it was his duty to guard against, and his omission to do which has led to the injury complained of. The term is frequently used to signify the defendant's guilty knowledge.

Knowledge by the misrepresenting party that material facts have been falsely represented or omitted with an

intent to deceive. *Myzel v. Fields*, C.A.Minn., 386 F.2d 718, 734.

The term "scienter," as applied to conduct necessary to give rise to an action for civil damages under Securities Exchange Act of 1934 and Rule 10b-5 refers to a mental state embracing intent to deceive, manipulate or defraud. *Ernst and Ernst v. Hochfelder*, Ill., 425 U.S. 185, 96 S.Ct. 1375, 1381, 47 L.Ed.2d 668.

**Scientia scilorum est mixta ignorantia** /sayénsh(iy)ə sáyəlórəm èst miktə ignérəns(iy)ə/. The knowledge of smatterers is diluted ignorance.

**Scientia utrimque par pares contrahentes facit** /sayénsh(iy)ə yuwtrimkiwiy pær périy z kònròhéntiyz féysət/. Equal knowledge on both sides makes contracting parties equal. An insured need not mention what the underwriter knows, or what he ought to know.

**Scienti et volenti non fit injuria** /sayéntay èt vóléntay nòn fit injúriyə/. An injury is not done to one who knows and wills it.

**Sci. fa.** /sáy féy/. An abbreviation for "*scire facias*" (*q.v.*).

**Scilicet** /síləsət/sáyləsət/. Lat. To-wit; that is to say. A word used in pleadings and other instruments, as introductory to a more particular statement of matters previously mentioned in general terms.

**Scintilla** /sintilə/. Lat. A spark; a remaining particle; a trifle; the least particle.

**Scintilla juris** /sintilə júrs/. In real property law, a spark of right or interest. By this figurative expression was denoted the small particle of interest, which, by a fiction of law, was supposed to remain in a feoffee to uses, sufficient to support contingent uses afterwards coming into existence, and thereby enable the statute of uses (27 Hen. VIII, c. 10) to execute them.

**Scintilla of evidence rule** /sintilə əv évədəns/. A spark of evidence. A metaphorical expression to describe a very insignificant or trifling item or particle of evidence; used in the statement of the common-law rule that if there is any evidence at all in a case, even a mere *scintilla*, tending to support a material issue, the case cannot be taken from the jury, but must be left to their decision.

The "scintilla evidence rule" requires that if there is even a scintilla of evidence presented to support the nonmoving party's position, summary judgment should not be granted. *Chiniche v. Smith*, Ala., 374 So.2d 872, 873. With regard to precluding summary judgment for defendant, "scintilla rule" requires only that the evidence, or reasonable inferences therefrom, furnish a mere gleam, glimmer, spark, the least bit, the smallest trace, in support of plaintiff's complaint. *Wilson v. Liberty Nat. Life Ins. Co.*, Ala., 331 So.2d 617, 619.

Any material evidence that, if true, would tend to establish issue in mind of reasonable juror. Something of substance and relevant consequence and not vague, uncertain, or irrelevant matter not carrying quality of proof or having fitness to induce conviction. *Wiggin-*

ton's Adm'r v. Louisville Ry. Co., 256 Ky. 287, 75 S.W.2d 1046, 1051. Courts differ as to what constitutes a "scintilla," and some courts do not accept the rule. For example, it has been held that while the cogency of evidence is not dependent on its quantity, if the party with the burden of proof has introduced only a *scintilla* of evidence on an essential element of his case, a judge may direct a verdict against him. Such evidence is inadequate as a matter of law. It has also been held that it is the duty of trial court to instruct a verdict, though there is slight testimony, if its probative force is so weak that it only raises suspicion of existence of facts sought to be established, since such testimony falls short of being "evidence". Texas Pacific Coal & Oil Co. v. Wells, Tex.Civ.App., 151 S.W.2d 927, 929.

**Scire debes cum quo contrahis** /sáyriy díybiyz kəm kwów kənréy(h)əs/. You ought to know with whom you deal.

**Scire et scire debere æquiparantur in jure** /sáyriy èt sáyriy dábíriy èkwəpərántər in júriy/. To know a thing, and to be bound to know it, are regarded in law as equivalent.

**Scire facias** /sáyriy féysh(iy)əs/. Lat. A judicial writ, founded upon some matter of record, such as a judgment or recognizance and requiring the person against whom it is brought to show cause why the party bringing it should not have advantage of such record, or (in the case of a *scire facias* to repeal letters patent) why the record should not be annulled and vacated. The name is used to designate both the writ and the whole proceeding. City of St. Louis v. Miller, 235 Mo.App. 987, 145 S.W.2d 504, 505. A judicial writ directing a debtor to appear and show cause why a dormant judgment against him should not be revived. The most common application of this writ is as a process to revive a judgment, after the lapse of a certain time, or on a change of parties, or otherwise to have execution of the judgment, in which cases it is merely a continuation of the original action. It is used more rarely as a mode of proceeding against special bail on their recognizance, and as a means of repealing letters patent, in which cases it is an original proceeding. Under current rules practice in most states, this writ has been abolished; e.g. Mass.R.Civil P. 81.

A legal, as opposed to equitable, form of judicial foreclosure. After mortgagor default, the mortgagee obtains a writ of *Scire Facias*, which is an order to show cause why the mortgaged property should not be sold to satisfy the mortgage debt. If mortgagee prevails, the court will issue a writ of *levari facias* directing an execution sale of the mortgaged real estate.

**Scire facias ad audiendum errores** /sáyriy féysh(iy)əs əd òdiyéndəm əróriyz/. The name of a writ which is sued out after the plaintiff in error has assigned his errors.

**Scire facias ad disprobandum debitum** /sáyriy féysh(iy)əs əd disprəbándəm dètədəm/. The name of a writ which lies by a defendant in foreign attachment against the plaintiff, in order to enable him, within a

year and a day ensuing the time of payment to the plaintiff in the attachment, to disprove or avoid the debt recovered against him.

**Scire facias ad rehabendam terram** /sáyriy féysh(iy)əs əd riyhəbéndəm téhrəm/. Lies to enable a judgment debtor to recover back his lands taken under an *elegit* when the judgment creditor has satisfied or been paid the amount of his judgment.

**Scire facias quare restitutionem non** /sáyriy féysh(iy)əs kwériy rəstət(y)úwshiyównəm nón/. This writ lies where execution on a judgment has been levied, but the money has not been paid over to the plaintiff, and the judgment is afterwards reversed in error or on appeal; in such a case a *scire facias* is necessary before a writ of restitution can issue.

**Scire facias sur mortgage** /sáyriy féysh(iy)əs sər mórgəj/. A writ issued upon the default of a mortgagor to make payments or observe conditions, requiring him to show cause why the mortgage should not be foreclosed, and the mortgaged property taken and sold in execution.

**Scire facias sur municipal claim** /sáyriy féysh(iy)əs sər myuwnísəpəl kléym/. A writ authorized to be issued as a means of enforcing payment of a municipal claim (*q.v.*) out of the real estate upon which such claim is a lien.

**Scire feci** /sáyriy fíysay/. Lat. The name given to the sheriff's return to a writ of *scire facias* that he has caused notice to be given to the party or parties against whom the writ was issued.

**Scire fieri inquiry** /sáyriy fáyarəy ənkwáryi/°inkwəriy/. In old English law, the name of a writ formerly used to recover the amount of a judgment from an executor.

**Scire leges non hoc est verba earum tenere, sed vim ac potestatem** /sáyriy líyjiyz nòn hók èst vérbə iyérəm taníriy səd vím ək pòwtəstéytəm/. To know the laws is not to observe their mere words, but their force and power [that is, the essential meaning in which their efficacy resides].

**Scire proprie est rem ratione et per causam cognoscere** /sáyriy prówpriyiy èst rém rəshiyówniy èt pər kózəm kəgnósəriy/. To know properly is to know a thing in its reason, and by its cause. We are truly said to know anything, where we know the true cause thereof.

**Scirewite** /sháyrwáyt/. In old English law, a tax or prestation paid to the sheriff for holding the assizes or county courts.

**Scite or site** /sáyt/. The sitting or standing on any place; the seat or situation of a capital message, or the ground whereon it stands.

**Scold**. At common law, a troublesome and angry person who, by brawling and wrangling among his or her neighbors, breaks the public peace, increases discord, and becomes a public nuisance to the neighborhood. A quarrelsome, brawling, vituperative person.

**Scope of a patent.** The boundaries or limits of the invention protected by the patent, which are not matters of metes and bounds and can never be defined in the definite sense employed in thinking of physical things, but must be determined by methods based upon established principles of patent law. *Smith v. Mid-Continent Inv. Co.*, C.C.A.Mo., 106 F.2d 622, 624.

**Scope of authority.** In law of agency, includes not only actual authorization conferred upon agent by his principal, but also that which has apparently or impliedly been delegated to agent. *Angerosa v. White Co.*, 248 App.Div. 425, 290 N.Y.S. 204, 208. Under doctrine of respondeat superior (*q.v.*) a principal is liable for the contracts of his agent if the agent contracted within the scope of his actual or apparent authority. *See also* Authority; Scope of employment.

**Scope of employment.** The activities in which an employee engages in the carrying out of the employer's business which are reasonably foreseeable by the employer. Under doctrine of respondeat superior (*q.v.*), a principal is liable for the torts of his agent committed within the scope, actual or apparent, of his employment.

An employee acts in scope of his employment, for purpose of invoking a doctrine of respondeat superior, when he is doing something in furtherance of duties he owes to his employer and where employer is, or could be, exercising some control, directly or indirectly, over employee's activities. *Lundberg v. State*, 255 N.E.2d 177, 179, 25 N.Y.2d 467, 306 N.Y.S.2d 947. Employee is in "scope of employment," such that corporate employer is liable to third party for his torts, whenever he is engaged in activities that fairly and reasonably may be said to be incident of the employment or logically and naturally connected with it. *Daughdrill v. Diamond M. Drilling Co.*, C.A.La., 447 F.2d 781, 785.

*See also* Respondeat superior; Vicarious liability.

**Scorn.** To hold in extreme contempt; to reject as unworthy of regard; to despise, to contemn, to disdain.

**S Corporation.** *See* Corporation (*S Corporation*).

**Scot.** In old English law, a tax, or tribute; one's *share* of a contribution.

**Scotal** /skótèyl/. In old English law, an extortionate practice by officers of the forest who kept alehouses, and compelled the people to drink at their houses for fear of their displeasure. Prohibited by the Charter of the Forest, c. 7. *See* Charta (*Charta de foresta*).

**Scot and lot.** In old English law, the name of a customary contribution, laid upon all subjects according to their ability.

**Scottare** /skotèriy/. To pay scot, tax, or customary dues.

**Scoundrel** /skáwndrəl/. An opprobrious epithet, implying rascality, villainy, or a want of honor or integrity. In slander, this word is not actionable *per se*.

**Scrambling possession.** *See* Possession.

**Scratching the ticket.** Exists where partisan voters support and vote for one or more of nominees of opposite

political party. *Swindall v. State Election Board*, 168 Okl. 97, 32 P.2d 691, 696.

**Scrawl.** *See* Scroll or scrawl.

**Scriba** /skráybə/. Lat. A scribe; a secretary. *Scriba regis* /skráybə riyjəs/, a king's secretary; a chancellor.

**Scribere est agere** /skráybəriy èst éjèriy/. To write is to act. Treasonable words set down in writing amount to overt acts of treason.

**Scrip.** A document which entitles the holder to receive something of value. It is ultimately exchanged for money or some privilege. In corporations, when a stock dividend is declared, scrip is issued in place of fractional shares and when the holder has sufficient scrip he may exchange the scrip for a share.

Paper money issued for temporary use.

The term has also formerly been applied to warrants, certificates, or other like orders drawn on a municipal treasury showing the holder to be entitled to a certain portion or allotment of public or state lands, and also to the fractional paper currency issued by the United States during the period of the Civil War.

**Scrip dividend.** Type of deferred dividend commonly in the form of a promissory note which is redeemable in stock or cash at a future time. *See also* Dividend.

**Script.** Something written (*e.g.* manuscript). The original of an instrument or document. Where instruments are executed in part and counterpart, the original or principal is so called.

**Scriptæ obligationes scriptis tolluntur, et nudi consensus obligatio contrario consensu dissolvitur** /skriptiý obləgèyshiyówniyz skriptəs tolántar, èt n(y)úw-day kənsénsəs obləgèysh(iy)ow kəntrériyow kənséns(y)uw dəzòlvətər/. Written obligations are superseded by writings, and an obligation of naked assent is dissolved by assent to the contrary.

**Scriptum** /skriptəm/. Lat. A writing; something written.

**Scriptum indentatum** /skriptəm indèntéytəm/. A writing indented; an indenture or deed.

**Scriptum obligatorium** /skriptəm obləgətóriyəm/. A writing obligatory. The technical name of a bond in old pleadings. Any writing under seal.

**Scrivener** /skriv(ə)nər/. A writer; scribe; conveyancer. One whose occupation is to draw contracts, write deeds and mortgages, and prepare other species of written instruments. Also an agent to whom property is intrusted by others for the purpose of lending it out at an interest payable to his principal, and for a commission or bonus for himself, whereby he gains his livelihood. Term is seldom used in United States.

**Money scrivener.** A money broker. The name was also formerly applied in England to a person (generally an attorney or solicitor) whose business was to find investments for the money of his clients, and see to perfecting the securities, and who was often intrusted with the

custody of the securities and the collection of the interest and principal.

**Scroll or scrawl.** A mark intended to supply the place of a seal, made with a pen or other instrument of writing.

A paper or parchment containing some writing, and rolled up so as to conceal it.

**Scruet-roll** /skrúwət ról/. In old practice, a species of roll or record, on which the bail on *habeas corpus* was entered.

**Scrutator** /skruwtéytər/. Lat. In old English law, a searcher or bailiff of a river; a water-bailiff, whose business was to look to the king's rights, as to his wrecks, his flotsam, jetsam, water-strays, royal fishes.

**Scurrilous** /skérələs/. Low and indecent language; low indecency or abuse; mean; foul; vile. Synonymous with vulgar, foul or foul-mouthed.

**Scutage** /sk(y)úwtəj/. In feudal law, a tax or contribution raised by those that held lands by knight's service, towards furnishing the king's army, at the rate of one, two or three marks for every knight's fee.

A pecuniary composition or commutation made by a tenant by knight-service in lieu of actual service.

A pecuniary aid or tribute originally reserved by particular lords, instead or in lieu of personal service, varying in amount according to the expenditure which the lord had to incur in his personal attendance upon the king in his wars.

**Scutagio habendo** /sk(y)ətéyj(iy)ow hóbéndow/. A writ that anciently lay against tenants by knight's service to serve in the wars, or send sufficient persons, or pay a certain sum.

**Scyra** /sháyrə/. In old English law, shire; county; the inhabitants of a county.

**Scyregemote** /sháyrɡəmówt/. In Saxon law, the meeting or court of the shire. This was the most important court in the Saxon polity, having jurisdiction of both ecclesiastical and secular causes. Its meetings were held twice in the year. Its Latin name was "*curia comitatis*".

**S.D.** Southern District; e.g. U.S. District Court for Southern District of New York.

**S/D B/L.** The abbreviation "S/D B/L" in a contract of sale means sight draft—bill of lading attached.

**SDWA.** Safe Drinking Water Act. 42 U.S.C.A. §§ 300h-1 to 5.

**Sea.** The ocean; the great mass of water which surrounds the land. In marine insurance "sea" includes not only the high seas but the bays, inlets, and rivers as high up as the tide ebbs and flows. The "navigable sea" is divided into three zones: (1) nearest to the nation's shores are its internal or "inland waters"; (2) beyond the inland waters, and measured from their seaward edge, is a belt known as the marginal or "territorial sea"; and (3) outside the territorial sea are the "high

seas". U. S. v. State of La., 89 S.Ct. 773, 781. See also Seaworthy.

**High seas.** The ocean; public waters. According to the English doctrine, the high sea begins at the distance of three miles from the coast of any country; according to the American view, at low-water mark, except in the case of small harbors and roadsteads inclosed within the *fauces terræ*. U. S. v. Rodgers, 150 U.S. 249, 14 S.Ct. 109, 37 L.Ed. 1071. The open ocean outside of the *fauces terræ*, as distinguished from arms of the sea; the waters of the ocean without the boundary of any country. Any waters on the sea-coast which are without the boundaries of low-water mark. Waters outside of territorial jurisdiction of nation.

**Main sea.** The open, uninclosed ocean; or that portion of the sea which is without the *fauces terræ* on the sea-coast, in contradistinction to that which is surrounded or inclosed between narrow headlands or promontories. U. S. v. Rodgers, 150 U.S. 249, 14 S.Ct. 109, 37 L.Ed. 1071.

**Sea bed.** All that portion of land under the sea that lies beyond the sea-shore.

**Sea-brief.** See *Sea letter, below*.

**Sea laws.** Laws relating to the sea, as the laws of Oleron, etc.

**Sea letter.** A species of manifest, containing a description of the ship's cargo, with the port from which it comes and the port of destination. This is one of the documents necessary to be carried by all neutral vessels, in the merchant service, in time of war, as an evidence of their nationality. The last sea letter was issued at the Port of New York in 1806, and the use of sea letters was discontinued by proclamation of President Madison in 1815. See *Manifest*.

**Sea-reeve.** An officer in maritime towns and places who took care of the maritime rights of the lord of the manor, and watched the shore, and collected wrecks for the lord.

**Sea-rovers.** Pirates and robbers at sea.

**Sea-shore.** The margin of the sea in its usual and ordinary state. When the tide is out, low-water mark is the margin of the sea; and, when the sea is full, the margin is high-water mark. The sea-shore is therefore all the ground between the ordinary high-water mark and low-water mark. It cannot be considered as including any ground always covered by the sea, for then it would have no definite limit on the sea-board. Neither can it include any part of the upland, for the same reason. Commonwealth of Massachusetts v. State of New York, 271 U.S. 65, 46 S.Ct. 357, 362, 70 L.Ed. 838. That space of land over which the waters of the sea are spread in the highest water during the winter season.

**Seal.** An impression upon wax, wafer, or some other tenacious substance capable of being impressed. In current practice, a particular sign (e.g. L.S.) or the word "seal" is made in lieu of an actual seal to attest the execution of the instrument.

As regards sealing of records, means to close by any kind of fastening that must be broken before access can be obtained. *See* Sealing of records.

*See also* Contract under seal.

**Corporate seal.** A seal adopted and used by a corporation for authenticating its corporate acts and executing legal instruments.

**Great seal.** The United States and also each of the states has and uses a seal, always carefully described by law, and sometimes officially called the "great" seal, though in some instances known simply as "the seal of the United States," or "the seal of the state."

**Private seal.** The seal (however made) of a private person or corporation, as distinguished from a seal employed by a state or government or any of its bureaus or departments.

**Public seal.** A seal belonging to and used by one of the bureaus or departments of government, for authenticating or attesting documents, process, or records. An impression made of some device, by means of a piece of metal or other hard substance, kept and used by public authority. *See also* State seal.

**Sealed.** Authenticated by a seal; executed by the affixing of a seal.

**Sealed and delivered.** These words, followed by the signatures of the witnesses, constitute the usual formula for the attestation of conveyances.

**Sealed bid.** A method for submitting a bid to buy or to perform work on a proposed contract. In general, each party interested submits a bid in a sealed envelope, and all such bids are opened at the same time and the most favorable responsible bid is accepted.

**Sealed instrument.** An instrument of writing to which the party to be bound has affixed not only his name, but also his seal. *See also* Seal.

The affixing of a seal to a contract for sale or an offer to buy or sell goods does not make the writing a sealed instrument and the law of sealed instruments does not apply to such contract. U.C.C. § 2-203.

**Sealed verdict.** When the jury have agreed upon a verdict, if the court is not in session at the time, they are permitted (usually) to put their written finding in a sealed envelope, and then separate. This verdict they return when the court again convenes. The verdict thus returned has the same effect, and must be treated in the same manner, as if returned in open court before any separation of the jury had taken place.

**Sealing.** In matters of succession, the placing, by the proper officer, of seals on the effects of a succession for the purpose of preserving them, and for the interest of third persons. The seals are affixed by order of the judge having jurisdiction.

**Sealing of records.** Statutes in some states permit a person's criminal record to be sealed and thereafter such records cannot be examined except by order of the court

or by designated officials. Such statutes commonly pertain to juvenile offenders.

**Seaman's will.** *See* Sailors' will.

**Seamen.** Sailors; mariners; persons whose business is navigating ships, or who are connected with the ship as such and in some capacity assist in its conduct, maintenance or service. Commonly exclusive of the officers of a ship. *The Lillian*, D.C.Me., 16 F.2d 146, 148. One whose occupation is to navigate vessels upon the sea including all those on board whose labor contributes to the accomplishment of the main object in which the vessel is engaged. *Osland v. Star Fish & Oyster Co.*, C.C.A.Ala., 107 F.2d 113, 114. Term includes anyone who, in course of his work about a ship, exposes himself to risks traditionally associated with maritime duties of a member of ship's crew. *Garrett v. Gutzeit*, C.A.Va., 491 F.2d 228, 233.

Worker is "seaman" within meaning of Jones Act if he is assigned permanently to vessel in navigation or performs substantial part of his work on vessel, contributing to function of vessel or to accomplishment of its mission. *Garret v. Dean Shank Drilling Co., Inc.*, C.A. La., 799 F.2d 1007, 1009. To determine whether injured workman is a seaman with Jones Act rights, vessel he is on must be in navigation, there must be a more or less permanent connection with vessel, and he must be aboard primarily to aid in navigation. *Sandoval v. Mitsui Sempaku K. K. Tokyo*, D.C.Canal Zone, 313 F.Supp. 719, 725. *See also* Longshoreman.

**Seance /seyóns/séyons/.** In French law, a session; as of some public body.

**Search.** "Search" consists of looking for or seeking out that which is otherwise concealed from view. *People v. Carlson*, Colo., 677 P.2d 310, 316. An examination of a person's house or other buildings or premises, or of his person, or of his vehicle, aircraft, etc., with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged. *State v. Woodall*, 16 Ohio Misc. 226, 241 N.E.2d 755, 757. A "search" implies prying into hidden places for that which is concealed and that the object searched for had been hidden or intentionally put out of the way; merely looking at that which is open to view is not a search. *People v. Harris*, 256 C.A.2d 455, 63 Cal.Rptr. 849, 852. It consists of probing or exploration for something that is concealed or hidden from searcher; an invasion, a quest with some sort of force, either actual or constructive. *People v. Carroll*, 12 Ill.App.3d 869, 299 N.E.2d 134, 140. Visual observation which infringes upon a person's reasonable expectation of privacy constitutes a "search" in the constitutional sense. *People v. Harfmann*, Colo.App., 555 P.2d 187, 189.

A "search" to which the exclusionary rule may apply is one in which there is a quest for, a looking for, or a seeking out of that which offends against the law by law enforcement personnel or their agents. *Vargas v. State*, Tex.Cr.App., 542 S.W.2d 151, 153.

Unreasonable searches and seizures are prohibited by the Fourth Amendment, U.S. Const.

*See also* Border search; Consent search; Exclusionary Rule; Exigent circumstances; Fruit of poisonous tree doctrine; Illegally obtained evidence; Incidental to arrest; Inspection searches; Inventory search; Knock and announce rule; Mapp v. Ohio; McNabb-Mallory Rule; Mere evidence rule; Plain view doctrine; Poisonous tree doctrine; Probable cause; Reasonable suspicion; Search warrant; Seizure; Stop and frisk; Totality of circumstances test; Warrant.

**International law.** The right of search is the right on the part of ships of war to visit and search merchant vessels during war, in order to ascertain whether the ship or cargo is liable to seizure. Resistance to visitation and search by a neutral vessel makes the vessel and cargo liable to confiscation. Numerous treaties regulate the manner in which the right of search must be exercised.

**Title search.** An examination of the official books, records and dockets, made in the process of investigating a title to land, for the purpose of discovering if there are any mortgages, judgments, tax-liens, or other incumbrances upon it. *See also* Abstract of title.

**Unlawful or unreasonable search.** Within constitutional immunity (Fourth Amendment) from unreasonable searches and seizures, an examination or inspection without authority of law of premises or person with view to discovery of stolen, contraband, or illicit property, or for some evidence of guilt to be used in prosecution of criminal action. *Bush v. State*, 64 Okl.Cr. 161, 77 P.2d 1184, 1187. *See* Exclusionary Rule; Fruit of poisonous tree doctrine; Probable cause; Search warrant.

**Voluntary search.** As used in context of consent to search, means that consent was not result of duress or coercion, express or implied, or any other form of undue influence exercised against defendant. *People v. Thiret*, Colo., 685 P.2d 193, 200. *See* Consent search.

**Search incident to arrest.** A police officer who has the right to arrest a person either with or without a warrant may search his person and the immediate area of the arrest for weapons. *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685.

**Search warrant.** An order in writing, issued by a justice or other magistrate, in the name of the state, directed to a sheriff, constable, or other officer, authorizing him to search for and seize any property that constitutes evidence of the commission of a crime, contraband, the fruits of crime, or things otherwise criminally possessed; or, property designed or intended for use or which is or has been used as the means of committing a crime. A warrant may be issued upon an affidavit or sworn oral testimony. *Fed.R.Crim.P.* 41; 18 U.S.C.A. § 3101 et seq.

The Fourth Amendment to U.S. Constitution provides that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly de-

scribing the place to be searched, and the persons or things to be seized."

*See also* Anticipatory search warrant; Blanket search warrant; Exclusionary Rule; Exigent circumstances; Probable cause; Search.

**General search warrant.** A "general warrant" for search is one which fails to sufficiently specify place or person to be searched or things to be seized and is illegal (under Fourth Amendment) as authorizing random or blanket search in discretion of police. *Frey v. State*, 3 Md.App. 38, 237 A.2d 774, 779, 780.

**Search without warrant.** A search without a warrant but incidental to an arrest is permitted if it does not extend beyond the person of the accused and the area into which the accused might reach in order to grab a weapon or other evidentiary items. *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685. *See also* Search incident to arrest; Stop and frisk.

**Seashore.** That portion of land adjacent to the sea which is alternately covered and left dry by the ordinary flux and reflux of the tides.

**Seasonable.** An action is seasonable when taken within the time agreed or if no time is agreed within a reasonable time. U.C.C. § 1-204.

**Seasonal employment.** As used in compensation laws, as basis for determining right to and amount of compensation, refers to occupations which can be carried on only at certain seasons or fairly definite portions of the year, and does not include such occupations as may be carried on throughout entire year.

**Seat.** Membership on securities or commodities exchange.

**Seated land.** Land that is occupied, cultivated, improved, reclaimed, farmed, or used as a place of residence. Residence without cultivation, or cultivation without residence, or both together, impart to land the character of being seated.

**Seat of government.** The state capitol or the town within a district or county where the principal government offices and officers are located; *e.g.* "county seat."

**Seawan.** The name used by the Algonquin Indians for the shell beads (or wampum) which passed among the Indians as money.

**Seaworthy.** Ability to withstand ordinary stress of wind, waves and other weather which the vessel might normally be expected to encounter. *Miles v. Royal Indem. Co.*, Tex.Civ.App., 589 S.W.2d 725, 729. This adjective, as applied to a vessel, signifies that she is properly constructed, prepared, manned, equipped, and provided, for the voyage intended. *Robichaux v. Kerr McGee Oil Industries*, D.C.La., 317 F.Supp. 587, 591. A seaworthy vessel must, in general, be sufficiently strong and staunch and equipped with appropriate appurtenances to allow it to safely engage in trade for which it was intended. *Texaco v. Universal Marine, Inc.*, D.C. La., 400 F.Supp. 311, 320.



It is an implied condition of all policies of marine insurance, unless otherwise expressly stipulated, that the vessel shall be seaworthy. In marine insurance, a warranty of seaworthiness means that the vessel is competent to resist the ordinary attacks of wind and weather, and is competently equipped and manned for the voyage, with a sufficient crew, and with sufficient means to sustain them, and with a captain of general good character and nautical skill.

A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as ballast, cables and anchors, cordage and sails, food, water, fuel, and lights, and other necessary or proper stores and implements for the voyage.

*See also* Unseaworthy.

**S.E.C.** Securities and Exchange Commission.

**Secession.** The act of withdrawing from membership in a group. Certain states attempted unsuccessfully to secede from the United States at the time of the Civil War.

**Seck.** A want of remedy by distress. Want of present fruit or profit, as in the case of the reversion without rent or other service, except fealty. *See* Rent.

**Second.** This term, as used in law, may denote either sequence in point of time or inferiority or postponement in respect to rank, lien, order, or privilege.

As to *second* Cousin; Deliverance; Distress; Mortgage; and Surcharge, see those titles.

**Second Amendment.** The Second Amendment to the U.S. Constitution provides that a well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. State and federal laws however regulate the sale, transportation and possession of firearms.

**Secondary, n.** In English practice, an officer of the courts of king's bench and common pleas; so called because he was *second* or next to the chief officer. In the king's bench he was called "Master of the King's Bench Office," and was a deputy of the prothonotary or chief clerk. By St. 7 Wm. IV, and 1 Vict., c. 30, the office of secondary was abolished.

**Secondary, adj.** Of a subsequent, subordinate, or inferior kind or class; generally opposed to "primary."

As to *secondary* Conveyance; Easement; Evidence; Franchise; Meaning; Use; and Vein, see those titles.

**Secondary beneficiary.** The beneficiary next in line to collect should the primary beneficiary be unable to do so.

**Secondary boycott.** Any combination if its purpose and effect are to coerce customers or patrons, or suppliers through fear of loss or bodily harm, to withhold or withdraw their business relations from employer who is under attack. *Wright v. Teamsters' Union Local No. 690*, 33 Wash.2d 905, 207 P.2d 662, 665. Term refers to

refusal to work for, purchase from or handle products of secondary employer with whom union has no dispute, with object of forcing such employer to stop doing business with primary employer with whom union has dispute. *C. Comella, Inc. v. United Farm Workers Organizing Committee*, 33 Ohio App.2d 61, 292 N.E.2d 647, 656. While secondary boycotts are generally prohibited by federal labor laws, such are allowed by transportation workers under the National Railway Labor Act. *See also* Boycott; Secondary picketing.

**Secondary distribution.** In securities, the new distribution of stock after it has been initially sold by the issuing corporation. It is not a new issue, but rather a public sale of stock which has previously been issued and held by large corporations and investors. Also, the sale of a large block of stock after the close of business of the exchange. *See also* Offering; Secondary offering.

**Secondary easement.** An easement to accomplish the intended purposes of the primary easement. One which is appurtenant to the primary or actual easement.

**Secondary evidence.** That which is inferior to primary or best evidence. Thus, a copy of an instrument, or oral evidence of its contents, is secondary evidence of the instrument and contents. It is that species of evidence which becomes admissible, when the primary or best evidence of the fact in question is lost or inaccessible; as when a witness details orally the contents of an instrument which is lost or destroyed. *See also* Circumstantial evidence; Hearsay; Second-hand evidence. *Compare* Best evidence.

**Secondary lender.** A wholesale mortgage buyer who purchases first mortgages from banks and savings and loan associations, enabling them to restock their money supply and loan more money.

**Secondary liability.** A liability which does not attach until or except upon the fulfillment of certain conditions; as that of a surety, or that of an accommodation indorser.

**Secondary market.** Securities exchanges and over-the-counter markets where securities are bought and sold after their original issue (which took place in the primary market). Proceeds of secondary market sales accrue to selling investors not to the company that originally issued the securities. *See also* Primary market.

**Secondary meaning.** Some words or other devices used as trademarks may not be distinctive when first adopted, but may acquire distinctiveness over time. When such a mark has come to signify that an item is produced or sponsored by a particular merchant it is said that the mark has secondary meaning. Types of marks requiring secondary meaning before they will be protected include (1) descriptive and misdescriptive terms; (2) geographically descriptive and misdescriptive terms and (3) surnames. Under the Lanham Act, five years of exclusive use of a mark is deemed prima facie evidence of secondary meaning. *Perfect Fit Industries, Inc. v. Acme Quilting Co., Inc.*, C.A.N.Y., 618 F.2d 950, 952.

**Secondary mortgage market.** A national market in which existing mortgages are bought and sold; usually on a package basis. Contrasts with the primary market where mortgages are originated.

**Secondary offering.** *See* Offering; Secondary distribution.

**Secondary parties.** In negotiable instruments, a drawer or endorser. U.C.C. § 3-102(1)(d).

**Secondary picketing.** A form of picketing in which pressure is put on one business establishment with which there is no dispute in order to induce such business to put pressure on the business establishment with which the employees have a primary dispute. *See also* Secondary boycott; Secondary strike.

**Secondary strike.** A strike against firms which supply goods and materials to the firm with which there is a primary dispute. *See also* Secondary boycott.

**Second degree crime.** A crime of lesser gravity than a first degree crime. Some states have first, second and third degree crimes and the punishment for each varies according to the degree. *See e.g.* Second degree murder.

**Second degree murder.** The unlawful taking of human life with malice, but without the other aggravating elements of first degree murder; *i.e.* without deliberation or premeditation.

**Second-hand evidence.** Evidence which has passed through one or more media before reaching the witness; hearsay evidence. *See also* Circumstantial evidence; Hearsay; Secondary evidence.

**Second lien.** One which takes rank immediately after a first lien on the same property and is next entitled to satisfaction out of the proceeds.

**Second mortgage.** A mortgage on property which ranks in priority below a first mortgage. In title states, it is the transfer of the mortgagor's equity of redemption to secure a debt.

**Secrecy.** The quality or condition of being concealed or secret, as the proceedings of a grand jury are to be held in secrecy.

**Secret.** Concealed; hidden; not made public; particularly, in law, kept from the knowledge or notice of persons liable to be affected by the act, transaction, deed, or other thing spoken of. Something known only to one or a few and kept from others.

As to *secret* Committee; Equity; Partnership, and Trust, see those titles. *See also* *Secrete*; Trade secret.

**Secretary.** In reference to a corporation or association, refers to an officer charged with the direction and management of that part of the business of the company which is concerned with keeping the records, the official correspondence, with giving and receiving notices, countersigning documents, etc. Also known sometimes as clerk of the corporation.

Also a name given to several of the heads of executive departments in the government of the United States; as the "Secretary of State", "Secretary of the Interior," etc.

**Secretary General.** The chief administrative officer of the United Nations, who is nominated by the Security Council and elected by the General Assembly.

**Secretary of Embassy.** A diplomatic officer appointed as secretary or assistant to an ambassador or minister plenipotentiary.

**Secretary of Legation.** An officer employed to attend a foreign mission and to perform certain duties as clerk.

**Secretary of State.** The Secretary of State, as principal foreign policy adviser to the President, is responsible for the overall direction, coordination, and supervision of U.S. foreign relations and for the interdepartmental activities of the U.S. Government overseas. The Secretary is the first-ranking member of the Cabinet, a member of the National Security Council, and is in charge of the operations of the Department, including the Foreign Service.

In most state governments, the official who is responsible for many types of formal state business, such as the licensing of corporations, filing of security agreements, etc.

**Secrete.** To conceal or hide away. Particularly, to put property out of the reach of creditors, either by corporally hiding it, or putting the title in another's name, or otherwise hindering creditors from levying on it or attaching it.

**Secret lien.** A lien reserved by the vendor of chattels, who has delivered them to the vendee, to secure the payment of the price, which is concealed from all third persons.

**Secret Service.** The major powers and responsibilities of the U.S. Secret Service are defined in section 3056, Title 18, United States Code. The investigative responsibilities are to detect and arrest persons committing any offense against the laws of the United States relating to coins obligations, and securities of the United States and of foreign governments; and to detect and arrest persons violating certain laws relating to the Federal Deposit Insurance Corporation, Federal land banks, electronic fund transfer frauds, credit and debit card frauds, false identification documents. The protective responsibilities include protection of the President of the United States and the members of his immediate family; the President-elect and the members of his immediate family unless the members decline such protection; the Vice President or other officer next in the order of succession to the Office of the President, and the members of his immediate family unless the members decline such protection; the Vice President-elect, and the members of his immediate family unless the members decline such protection; a former President and his wife during his lifetime; the widow of a former President until her death or remarriage; the minor children of a former President until they reach 16 years of age, unless such protection is declined; a visiting head of a foreign state or foreign government and, at the direction of the President, other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad.

In addition, 18 U.S.C.A. § 3056 authorizes the Secret Service to protect major Presidential and Vice Presidential candidates, unless such protection is declined; the spouse of a major Presidential or Vice Presidential nominee, except that such protection shall not commence more than 120 days prior to the general Presidential election.

**Sect.** As applied to religious bodies, a party or body of persons who unite in holding certain special doctrines or opinions concerning religion, which distinguish them from others holding the same general religious belief.

**Secta** /séktə/. In old English law, suit; attendance at court; the plaintiff's suit or following, *i.e.*, the witnesses whom he was required, in the ancient practice, to bring with him and produce in court, for the purpose of confirming his claim, before the defendant was put to the necessity of answering the declaration. A survival from this proceeding is seen in the formula still used at the end of declarations, "and therefore he brings his suit" (*et inde producit sectam*). This word, in its secondary meaning, signifies suit in the courts; lawsuit.

**Secta curiæ** /séktə kúryiy/. In old English law, suit of court; attendance at court. The service, incumbent upon feudal tenants, of attending the lord at his court, both to form a jury when required, and also to answer for their own actions when complained of.

**Secta est pugna civilis; sicut actores armantur actionibus, et, quasi, gladiis accinguntur, ita rei munitur exceptionibus, et defenduntur, quasi, clypeis** /séktə èst pŕgnə sívələs: síkət æktóryz armántər ækshiyównəbəs, èt, kwéyzay, gládiyəs æksingántər, áytə riyay myúwniyántər æksèpshiyównəbəs, et dèfèdántər, kwéyzay clípiyəs/. A suit is a civil warfare; for as the plaintiffs are armed with actions, and, as it were, girded with swords, so the defendants are fortified with pleas, and are defended, as it were, by shields.

**Secta facienda per illam quæ habet eniciam partem** /séktə fæshiyéndə pèr iləm kwiy héybət ənish(iy)əm pártəm/. A writ to compel the heir, who has the elder's part of the co-heirs, to perform suit and services for all the coparceners.

**Secta quæ scripto nititur a scripto variari non debet** /séktə kwiy skríptow nítətər èy skríptow vəriyéray nòn débət/. A suit which is based upon a writing ought not to vary from the writing.

**Secta regalis** /séktə rægéyləs/. In old English law, a suit so called by which all persons were bound twice in the year to attend in the sheriff's tourn, in order that they might be informed of things relating to the public peace. It was so called because the sheriff's tourn was the king's leet, and it was held in order that the people might be bound by oath to bear true allegiance to the king.

**Sectarian.** Denominational; devoted to, peculiar to, pertaining to, or promotive of, the interest of a sect, or sects. In a broader sense, used to describe the activities of the followers of one faith as related to those of

adherents of another. The term is most comprehensive in scope. *See also* Sect.

**Sectatores** /séktatóryz/. Suitors of court who, among the Saxons, gave their judgment or verdict in civil suits upon the matter of fact and law.

**Secta unica tantum facienda pro pluribus hæreditatibus** /séktə yúwnəkə tántəm fæshiyéndə prów pl(y)úrəbəs hæredátéytəbəs/. In old English law, a writ for an heir who was distrained by the lord to do more suits than one, that he should be allowed to do one suit only in respect of the land of divers heirs descended to him.

**Section.** In text-books, codes, statutes, and other juridical writings, the smallest distinct and numbered subdivisions are commonly called "sections," sometimes "articles," and occasionally "paragraphs."

**Section of land.** A division or parcel of land, on the government survey, comprising one square mile or 640 acres. Each "township" (six miles square) is divided by straight lines into thirty-six sections, and these are again divided into half-sections and quarter-sections. *See also* Quarter section.

**Sectis non faciendis** /séktəs nòn fæshiyéndəs/. In old English law, a writ which lay for a dowress, or one in wardship, to be free from suit of court.

**Sectores** /sektóryz/. Lat. In Roman law, purchasers at auction, or public sales.

**Secular.** Not spiritual; not ecclesiastical; relating to affairs of the present (temporal) world.

**Secular business.** As used in Sunday closing laws, this term includes all forms of activity in the business affairs of life, the prosecution of a trade or employment, and commercial dealings, such as the making of promissory notes, lending money, and the like.

**Secular clergy.** In ecclesiastical law, the parochial clergy, who perform their ministry *in seculo* (in the world), and who are thus distinguished from the monastic or "regular" clergy.

**Secundum** /səkándəm/. Lat. Next to; beside; immediately after. In the civil and common law, according to. Occurring in many phrases of familiar use, as follows:

**Secundum æquum et bonum** /səkándəm iykwəm èt bównəm/. According to what is just and right.

**Secundum allegata et probata** /səkándəm èlègéytə èt prəbéytə/. According to what is alleged and proved; according to the allegations and proofs.

**Secundum artem** /səkándəm ártəm/. According to the art, trade, business, or science.

**Secundum bonos mores** /səkándəm bównows móryz/. According to good usages; according to established custom; regularly; orderly.

**Secundum consuetudinem manerii** /səkándəm kònswət(y)úwdənəm məniriyay/. According to the custom of the manor.

**Secundum formam chartæ** /səkándəm fórməm kártiy/. According to the form of the charter (deed).

**Secundum formam doni** /səkándəm fórməm dównay/. According to the form of the gift or grant. *See* Formedon.

**Secundum formam statuti** /səkándəm fórməm státywtay/. According to the form of the statute.

**Secundum legem communem** /səkándəm líyjem kəmyúwnəm/. According to the common law.

**Secundum naturam est commoda cuiusque rei eum sequi, quem sequuntur incommoda** /səkándəm nət(y)úrəm ɛst kómədə k(y)uwjəskwiý ríyay iyəm sékway kwém səkwántar ínkómədə/. It is according to nature that the advantages of anything should attach to him to whom the disadvantages attach.

**Secundum normam legis** /səkándəm nórməm líyjes/. According to the rule of law; by the intendment and rule of law.

**Secundum regulam** /səkándəm régyələm/. According to the rule; by rule.

**Secundum subjectam materiam** /səkándəm səbjéktəm mətíriyəm/. According to the subject-matter. All agreements must be construed *secundum subjectam materiam* if the matter will bear it.

**Secure.** To give security; to assure of payment, performance, or indemnity; to guaranty or make certain the payment of a debt or discharge of an obligation. One "secures" his creditor by giving him a lien, mortgage, pledge, or other security, to be used in case the debtor fails to make payment.

Also, not exposed to danger; safe; so strong, stable or firm as to insure safety and financial security.

*See also* Security.

**Secured.** Supported or backed by security or collateral such as a secured debt for which property has been pledged or mortgaged. *See* Security.

**Secured bond.** Bond backed by collateral, mortgage, or other type of security. *Compare* Debenture.

**Secured creditor.** A creditor who holds some special pecuniary assurance of payment of his debt, such as a mortgage, collateral, or lien. *See* Secured party; Security interest.

**Secured loan.** A loan for which some form of property has been pledged or mortgaged, as in the case of an automobile loan in which title to the vehicle is held as security by lender. *See* Collateral; Mortgage.

**Secured party.** A lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party. Section 9-105(1)(m) of the 1972 U.C.C. Code; § 9-105(1)(i) of the 1962 U.C.C. Code. The term also includes the assignee of the right to proceeds under a letter of credit. U.C.C. § 5-116(2).

**Secured transaction.** Any transaction, regardless of its form, that is intended to create a security interest in

personal property or fixtures, including goods, documents, and other intangibles. A transaction which is founded on a security agreement. Such agreement creates or provides for a security interest. U.C.C. § 9-105(h). *See* Security agreement.

**Securitas** /səkyúrətəs/. In old English law, security; surety. In the civil law, an acquittance or release.

**Securitatem inveniendi** /səkyúrətéytəm ənvíyniyénday/. An ancient writ, lying for the sovereign, against any of his subjects, to stay them from going out of the kingdom to foreign parts; the ground whereof is that every man is bound to serve and defend the commonwealth as the crown shall think fit.

**Securitatis pacis** /səkyúrətéytəs péysəs/. In old English law, security of the peace. A writ that lay for one who was threatened with death or bodily harm by another, against him who so threatened.

**Securities.** Stocks, bonds, notes, convertible debentures, warrants, or other documents that represent a share in a company or a debt owed by a company or government entity. Evidences of obligations to pay money or of rights to participate in earnings and distribution of corporate assets. Instruments giving to their legal holders rights to money or other property; they are therefore instruments which have intrinsic value and are recognized and used as such in the regular channels of commerce. *U.S. v. Canton, C.A.N.Y., 470 F.2d 861, 865.*

*See also* Bond; Consolidated securities; Convertible securities; Debenture; Distribution; Growth stock; Letter stock; Listed security; Marketable securities; Municipal securities; Registration of securities; Security; Stock; Treasury stock; Watered stock. For marshalling of securities, *see* Marshalling assets.

*Coupon securities.* *See* Coupons.

*Exempt securities.* Those securities which need not be registered under provisions of Securities Act of 1933, § 3; 15 U.S.C.A. §§ 77c, 78c(12).

**Securities Act of 1933.** Federal law which provides for registration of securities which are to be sold to the public and for complete information as to the issuer and the stock offering. 15 U.S.C.A. § 77a *et seq.* *See also* Registration of securities; Securities Exchange Act of 1934.

**Securities Acts.** Federal and state statutes governing the registration, offering, sale, etc. of securities. Major federal acts include the Securities Act of 1933 and the Securities Exchange Act of 1934 (*q.v.*). Such federal acts are administered by the Securities and Exchange Commission. The majority of the states have adopted the Uniform Securities Act. *See* Registration of securities.

**Securities and Exchange Commission.** The federal agency which administers such laws as the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935, the Investment Adviser's Act of 1940 and the Investment Company Act of 1940. 15 U.S.C.A. § 78(d).

**Securities broker.** *See* Broker.

**Securities Exchange Act of 1934.** A federal law which governs the operation of stock exchanges and over the counter trading. It requires, among other things, publication of information concerning stocks which are listed on these exchanges. 15 U.S.C.A. § 78 *et seq.* See also Securities Act of 1933.

**Securities exchanges.** Markets for the purchase and sale of traditional securities at which brokers for purchasers and sellers may affect transactions. The best known and largest securities exchange is the New York Stock Exchange.

**Securities Investor Protection Act.** Federal law which established Securities Investor Protection Corp., which, though not an agency of the U.S. Government, is designed to protect investors and help brokers and dealers in financial trouble. 15 U.S.C.A. §§ 78aaa *et seq.*

**Securities offering.** See Issue (*Securities*); Offering; Registration of securities; Underwrite.

**Security.** Protection; assurance; indemnification. The term is usually applied to an obligation, pledge, mortgage, deposit, lien, etc., given by a debtor in order to assure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation. Collateral given by debtor to secure loan. Document that indicates evidence of indebtedness. The name is also sometimes given to one who becomes surety or guarantor for another.

Test for a "security" under securities laws is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others so that whenever an investor relinquishes control over his funds and submits their control to another for the purpose and hopeful expectation of deriving profits therefrom he is in fact investing his funds in a security. *Investment Co. Institute v. Camp*, D.C.D.C., 274 F.Supp. 624, 642. "Security" under Securities Act of 1933, means investment in common enterprise in which investors are purchasing interest and where growth of that investment is to result from efforts of promoter, *Neuwirth Inv. Fund, Ltd., v. Swanton*, D.C.N.Y., 422 F.Supp. 1187, 1194; and the label attached to the transaction is not determinative. *McGovern Plaza Joint Venture v. First of Denver Mortg. Investors*, 562 F.2d 645, 646.

"Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. Uniform Probate Code, § 1-201.

For purposes of the Securities Act of 1933 and the Securities Exchange Act of 1934, the term "security" embraces all investment contracts, and the test is

whether the investment is made in a common enterprise which is premised upon the reasonable expectation of profits solely from the managerial or entrepreneurial efforts of others; such test contains three elements: the investment of money; a common enterprise; and profits or returns derived solely from efforts of others. *Felts v. National Account Systems Ass'n., Inc.*, D.C.Miss., 469 F.Supp. 54, 63. See 15 U.S.C.A. §§ 77b(1), 78c(10).

A note may be a security, and subject to federal securities laws, even if it has no fixed term and is payable on demand, depending on the economic realities of the transaction. *Reves v. Ernst & Young*, 110 S.Ct. 945, 108 L.Ed.2d 47.

The term "security" means any bond, debenture, note or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money. I.R.C. § 6323(h)(4).

As defined in the Bankruptcy Code § 101, "security" includes: note, stock, treasury stock, bond, debenture, collateral trust certificate, preorganization certificate or subscription, transferable share, voting-trust certificate, certificate of deposit, investment contract or certificate of interest, etc.

Under the U.C.C. (§ 8-102), a security is either a "certificated" or "uncertificated" security. See these terms below.

See also Collateral; Equity security; Hybrid securities; Internal security acts; Investment security; Junior security issue; Lien; Listed security; Pledge; Risk capital test; Securities; Stock.

**Assessable security.** A security on which a charge or assessment for the obligations of the issuing company may be made. In many instances, bank and insurance company stocks are assessable.

**Certificated security.** A "certificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is (i) represented by an instrument issued in bearer or registered form; (ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and (iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations. U.C.C. § 8-102(1)(a).

**Collateral security.** Property which has been pledged or mortgaged to secure a loan or a sale.

**Convertible security.** See Convertible securities.

**Equity security.** The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or pur-

chase such a security; or any such warrant or right; or any other security which the Securities and Exchange Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security. Securities Exchange Act, § 3; 15 U.S.C.A. § 78c(11).

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security; (B) interest of a limited partner in a limited partnership; or (C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph. Bankruptcy Code § 101.

*Exempted security.* A security which is not required to be registered under the provisions of the Securities Exchange Act. 15 U.S.C.A. §§ 77c, 78c(12).

*Government security.* Any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing. Investment Company Act, § 2; 15 U.S.C.A. § 80a-2(a)(16).

*Hybrid security.* A security which combines features of both debt and equity; *i.e.* of both bond and stock. *See also* Hybrid securities.

*Junior security.* Security with priority claim on assets and income subordinate to senior security.

*Listed security.* A security which has been listed for trading on one of the stock exchanges or which has been listed with the Securities and Exchange Commission.

*Marketable security.* A security which is of reasonable investment caliber and which can be easily sold on the market.

*Non-marketable security.* A security which cannot be sold on the market such as certain government bonds and notes. It can only be redeemed by the holder. Also, a security which is not of investment quality.

*Outstanding security.* A security which is held by an investor and which has not been redeemed or purchased back by the issuing corporation.

*Personal security.* An obligation to repay a debt evidenced by a pledge, note or bond in contrast to collateral security. Evidences of debt which bind the person of the debtor, not real property. *Merrill v. National Bank*, 173 U.S. 131, 19 S.Ct. 360, 43 L.Ed. 640.

A person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. 1 Bl.Comm. 129.

*Public security.* Bonds, notes, certificates of indebtedness, and other negotiable or transferable instruments evidencing the public debt of a state or government.

*Real security.* The security of mortgages or other liens or encumbrances upon land. *See Merrill v. National Bank*, 173 U.S. 131, 19 S.Ct. 360, 43 L.Ed. 640. *See also* Collateral.

*Redeemable security.* Any security, other than short-term paper, under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Investment Company Act, § 2; 15 U.S.C.A. § 80a-2(a)(32).

*Security for costs.* *See* Security for costs.

*Security for good behavior.* A bond or recognizance which the magistrate exacts from a defendant brought before him on a charge of disorderly conduct or threatening violence, conditioned upon his being of good behavior, or keeping the peace, for a prescribed period, towards all people in general and the complainant in particular. A peace bond.

*Senior security.* A security with rights that take precedence over those of other securities in a given capital structure.

*Short term security.* A bond or note which matures in and is payable within a short span of time. Such securities are purchased by institutional investors for income rather than for growth potential.

*Treasury securities.* *See* Treasury stock.

*Uncertificated security.* An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is (i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer; (ii) of a type commonly dealt in on securities exchanges or markets; and (iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations. U.C.C. § 8-102(1)(b).

*Unlisted security.* An over the counter security which is not listed on a stock exchange.

*Voting security.* Any security presently entitling the owner or holder thereof to vote for the election of directors of a company. Investment Company Act, § 2; 15 U.S.C.A. § 80a-2(a)(42).

**Security agreement.** An agreement which creates or provides for a security interest between the debtor and a secured party. U.C.C. § 9-105(h); Bankruptcy Code § 101. An agreement granting a creditor a security interest in personal property, which security interest is normally perfected either by the creditor taking possession of the collateral or by filing financing statements in the proper public records. *See* Perfection of security interest; Purchase money security interest; Secured transaction; Security interest.

**Security Council.** The executive body of the United Nations, charged with the duty of preventing or stopping wars by diplomatic, economic or military ac-

tion. It is composed of five permanent members and six additional members elected at stated intervals.

**Security deposit.** Money deposited by tenant with landlord as security for full and faithful performance by tenant of terms of lease, including damages to premises. It is refundable unless the tenant has caused damage or injury to the property or has breached the terms of the tenancy or the laws governing the tenancy. Such deposits are regulated by statute in most states. Certain states also require the landlord to make a security deposit to cover essential repairs required on rental property.

**Security for costs.** Payment into court in the form of cash, property or bond by a plaintiff or an appellant to secure the payment of costs if such person does not prevail; e.g. Fed.R.Civ.P. 65(c) requires adequate security when restraining order or preliminary injunction is issued. *See also* Costs.

**Security fund.** *See* Client security fund.

**Security interest.** Interest in property obtained pursuant to security agreement. In *re* Wilson, Bkrtcy.Pa., 25 B.R. 61, 63. A form of interest in property which provides that the property may be sold on default in order to satisfy the obligation for which the security interest is given. A mortgage is used to grant a security interest in real property. An interest in personal property or fixtures which secures payment or performance of an obligation, U.C.C. §§ 1-201(37), 9-102, including the interest of an assignee of the proceeds of a letter of credit, § 5-116(2). Lien created by an agreement. Bankruptcy Code § 101.

Often, the term "lien" is used as a synonym, although lien most commonly refers only to interests providing security that are created by operation of law, not through agreement of the debtor and creditor. *Compare* Lien.

The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time, (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth. I.R.C. § 6323(h).

*Purchase money security interest.* A secured interest which is created when a buyer uses the money of the lender to make the purchase and immediately gives to the lender a security interest. U.C.C. § 9-107. *See* Mortgage (*Purchase money mortgage*).

**Securius expediuntur negotia commissa pluribus, et plus vident oculi quam oculus** /sekyúriyəs əkspiydiyəntər nəgówsh(iy)ə kəmisə pl(y)úrəbəs, èt pləs váyđant ók(y)əlay kwəm ókyələs/. Matters intrusted to several are more securely dispatched, and eyes see more than eye [*i.e.*, "two heads are better than one"].

**Secus** /síykəs/. Lat. Otherwise; to the contrary. This word is used to indicate the converse of a foregoing proposition, or the rule applicable to a different state of facts, or an exception to a rule before stated.

**Sedato animo** /sədéytow ənəməw/. Lat. With settled purpose.

**Se defendendo** /siy dəfèndéndow/. Lat. In defending himself; in self-defense. Homicide committed *se defendendo* is excusable.

**Sedente curia** /sədèntiy kyúr(i)yə/. Lat. The court sitting; during the sitting of the court.

**Sede plena** /síydiy plíynə/. Lat. The see being filled. A phrase used when a bishop's see is not vacant.

**Sedes** /síydiy/. Lat. A see; the dignity of a bishop.

**Sedge flat** /séj flæt/. A tract of land below high-water mark.

**Sedimentation.** The deposition of soil that has been transported from its site of origin by water, ice, wind, gravity or other natural means as a product of erosion.

**Sedition.** Communication or agreement which has as its objective the stirring up of treason or certain lesser commotions, or the defamation of the government. Sedition is advocating, or with knowledge of its contents knowingly publishing, selling or distributing any document which advocates, or, with knowledge of its purpose, knowingly becoming a member of any organization which advocates the overthrow or reformation of the existing form of government of this state by violence or unlawful means. An insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state. *See* 18 U.S.C.A. § 2383 *et seq.* *See also* Alien and sedition laws; Smith Act.

**Seditious conspiracy.** Under federal statute, it is a crime for two or more persons in any State or Territory to conspire to overthrow or put down or destroy by force the Government of the United States. 18 U.S.C.A. § 2384.

**Seditious libel.** A communication written with the intent to incite the people to change the government otherwise than by lawful means, or to advocate the overthrow of the government by force or violence. Smith Act, 18 U.S.C.A. § 2385. *See* Alien and sedition laws.

**Seditious speech.** Oral advocacy of the overthrow of the government by force or violence. *See* Sedition.

**Sed non allocatur** /səd nón ələkáyətər/. Lat. But it is not allowed. A phrase used in the old reports, to signify that the court disagreed with the arguments of counsel.

**Sed per curiam** /séd pər kyúriyəm/. Lat. But by the court. This phrase is used in the reports to introduce a statement made by the court, on the argument, at variance with the propositions advanced by counsel, or the opinion of the whole court, where that is different from the opinion of a single judge immediately before quoted.

**Sed quære** /səd kwíry/. Lat. But inquire; examine this further. A remark indicating, briefly, that the particular statement or rule laid down is doubted or challenged in respect to its correctness.

**Seduce.** To induce to surrender chastity. To lead away or astray. *See also* Seduction.

**Seduction.** The act of seducing. Act of man enticing woman to have unlawful intercourse with him by means of persuasion, solicitation, promises, bribes or other means without employment of force. *Lynn v. Shaw*, Okl., 620 P.2d 899, 902. *See e.g.* Model Penal Code § 213.3(1)(d) (inducement by promise of marriage). Many statutes provide that a subsequent marriage is a bar to prosecution. Also, by statute in some states, actions for seduction of a person over age of legal consent are prohibited. *See* Heart balm statutes.

**Sed vide** /səd váydíy/. Lat. But see. This remark, followed by a citation, directs the reader's attention to an authority or a statement which conflicts with or contradicts the statement or principle laid down.

**See.** The circuit of a bishop's jurisdiction; or his office or dignity, as being bishop of a given diocese.

**Seed money.** A venture capitalist's initial contribution toward the financing or capital requirements of a new business. Seed money frequently takes the form of a subordinated loan or an investment in convertible bonds or convertible preferred shares. Seed money provides the basis for additional capitalization to accommodate growth. *See also* Venture capital.

**Segregation.** The act or process of separation. The unconstitutional policy and practice of separating people on the basis of color, nationality, religion, etc. in housing and schooling. *See* De facto segregation; De jure segregation.

**Seignior** /séyn(i)yər/. In its general signification, means "lord," but in law it is particularly applied to the lord of a fee or of a manor; and the fee, dominions, or manor of a seignior is thence termed a "seignior," *i.e.*, a lordship. He who is a lord, but of no manor, and therefore unable to keep a court, is termed a "seignior in gross."

**Seigniorage** /séynyərəj/. A royalty or prerogative of the sovereign, whereby an allowance of gold and silver, brought in the mass to be exchanged for coin, is claimed. Mintage; the charge for coining bullion into money at the mint.

A sum equivalent to the difference between interest payable upon a mortgage held by a title insurance and mortgage company at the rate named therein for any period and the interest payable for such period on securities issued by the company with respect to such mortgage, at the rate named in such securities. *Commissioner of Insurance v. Conveyancers Title Ins. & Mortg. Co.*, 300 Mass. 457, 15 N.E.2d 820, 822.

**Seignioress** /séynyərəs/. A female superior.

**Seignior** /séynyərəy/. In English law, a lordship; a manor. The rights of a lord, as such, in lands.

**Seisi** /siyzay/. In old English law, seised; possessed.

**Seisin** /siyzən/. Possession of real property under claim of freehold estate. The completion of the feudal investiture, by which the tenant was admitted into the feud, and performed the rights of homage and fealty. Possession with an intent on the part of him who holds it to claim a freehold interest. Right to immediate possession according to the nature of the estate. *Williams v. Swango*, 365 Ill. 549, 7 N.E.2d 306, 309.

**Actual seisin.** Possession of the freehold by the *pedis positio* of one's self or one's tenant or agent, or by construction of law, as in the case of a state grant or a conveyance under the statutes of uses, or (probably) of grant or devise where there is no actual adverse possession; it means actual possession as distinguished from constructive possession or possession in law.

**Constructive seisin.** Seisin in law where there is no seisin in fact; as where the state issues a patent to a person who never takes any sort of possession of the lands granted, he has constructive seisin of all the land in his grant, though another person is at the time in actual possession.

**Covenant of seisin.** *See* Covenant.

**Equitable seisin.** A seisin which is analogous to legal seisin; that is, seisin of an equitable estate in land. Thus a mortgagor is said to have equitable seisin of the land by receipt of the rents.

**Livery of seisin.** Delivery of possession; called, by the feudists, "investiture."

**Primer seisin.** In old English law, the right which the king had, when any of his tenants died seised of a knight's fee, to receive of the heir, provided he were of full age, one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if the lands were in reversion, expectant on an estate for life. 2 Bl.Comm. 66.

**Quasi seisin.** A term applied to the possession which a copyholder has of the land to which he has been admitted. The freehold in copyhold lands being in the lord, the copyholder cannot have seisin of them in the proper sense of the word, but he has a customary or *quasi* seisin analogous to that of a freeholder.

**Seisin in deed.** Actual possession of the freehold; the same as actual seisin or seisin in fact. *Roetzel v. Beal*, 196 Ark. 5, 116 S.W.2d 591, 593.

**Seisin in fact.** Possession with intent on the part of him who holds it to claim a freehold interest; the same as actual seisin.

**Seisin in law.** A right of immediate possession according to the nature of the estate. As the old doctrine of corporeal investiture is no longer in force, the delivery of a deed gives seisin in law.

**Seisina** /siyzənə/. L. Lat. Seisin.

**Seisina facit stipitem** /siyzənə féysət stípətəm/. Seisin makes the stock. 2 Bl.Comm. 209.

**Seisina habenda** /siyzənə həbéndə/. A writ for delivery of seisin to the lord, of lands and tenements, after the



sovereign, in right of his prerogative, had had the year, day, and waste on a felony committed, etc.

**Seize** /siyz/. To put in possession, invest with fee simple, be seized of or in, be legal possessor of, or be holder in fee simple. *Hanley v. Stewart*, 155 Pa.Super. 535, 39 A.2d 323, 326. To "seize" means to take possession of forcibly, to grasp, to snatch or to put in possession. *State v. Dees*, Fla.App., 280 So.2d 51, 52. See *Seisin*.

**Seized**. A person is "seized" within Fourth Amendment when police officer restrains person's freedom to walk away. *State v. Ochoa*, 112 Ariz. 582, 544 P.2d 1097, 1099. It exists when reasonable person would feel that he was not free to leave. *U.S. v. Albert*, C.A.N.C., 816 F.2d 958, 960. See *Seizure*.

The status of legally owning and possessing real estate. See *Seisin*.

**Seizin** /siyzən/. See *Seisin*.

**Seizure**. The act of taking possession of property, e.g., for a violation of law or by virtue of an execution of a judgment. Term implies a taking or removal of something from the possession, actual or constructive, of another person or persons. *Molina v. State*, 53 Wis.2d 662, 193 N.W.2d 874, 877.

The act performed by an officer of the law, under the authority and exigence of a writ, in taking into the custody of the law the property, real or personal, of a person against whom the judgment of a competent court has passed, condemning him to pay a certain sum of money, in order that such property may be sold, by authority and due course of law, to satisfy the judgment. Or the act of taking possession of goods in consequence of a violation of public law.

A "seizure" of property (under Fourth Amendment) occurs when there is some meaningful interference with an individual's possessory interest in that property. *U.S. v. Jacobsen*, U.S.Min., 466 U.S. 109, 104 S.Ct. 1652, 1656, 80 L.Ed.2d 85.

Seizure of an individual, within the Fourth Amendment, connotes the taking of one physically or constructively into custody and detaining him, thus causing a deprivation of his freedom in a significant way, with real interruption of his liberty of movement. *U.S. v. Albert*, C.A.N.C., 816 F.2d 958. Such occurs not only when an officer arrests an individual, but whenever he restrains the individual's freedom to walk away. *Robins v. Harum*, C.A.Wash., 773 F.2d 1004, 1009. See *Fed.R. Crim.P.* 41; 18 U.S.C.A. § 3101 et seq. See also *Search*.

See also *Attachment*; *Capture*; *Confiscate*; *Forfeiture*; *Garnishment*; *Impound*; *Levy*.

*"Search" distinguished*. A "search" is a probing or exploration for something that is concealed or hidden from the searcher, whereas a "seizure" is a forcible or secretive dispossession of something against the will of the possessor or owner. *U. S. v. Marti*, D.C.N.Y., 321 F.Supp. 59, 63. See also *Search*.

**Select**. To take by preference from among others; to pick out; to cull.

**Select council**. The name given, in some states, to the upper house or branch of the council of a city.

**Selecti judices** /sələktay jūwdəsiyz/. Lat. In Roman law, judges who were selected very much like our juries. They were returned by the praetor, drawn by lot, subject to be challenged, and sworn. 3 Bl.Comm. 366.

**Selective service system**. An executive branch agency charged with the registration, examination, classification, selection, assignment, delivery for induction, and maintenance of records of persons subject to military service. It is maintained as an active standby organization when military personnel needs are met by a volunteer program. 50 U.S.C.A.App. § 460.

**Selectmen**. The name of certain municipal officers, in the New England states, elected by the towns to transact their general public business, and possessing certain executive powers.

**Self-dealing**. Exists where person in fiduciary or confidential relationship uses property of another for his own personal benefit. For example, where a trustee, acting for himself and also as "trustee," a relation which demands strict fidelity to others, seeks to consummate a deal wherein self-interest is opposed to duty. *Cestui que trust* has in such case the election to affirm or disaffirm, unless countervailing equities have intervened. See also *Conflict of interest*; *Insider*; *Insider trading*.

**Self-defense**. The protection of one's person or property against some injury attempted by another. The right of such protection. An excuse for the use of force in resisting an attack on the person.

Various state criminal statutes define the conditions of self defense. The Model Penal Code provides: "A person is justified in the use of force against an aggressor when and to the extent it appears to him and he reasonably believes that such conduct is necessary to defend himself or another against such aggressor's imminent use of unlawful force. One who is not the aggressor in an encounter is justified in using a reasonable amount of force against his adversary when he reasonably believes: (a) that he is in immediate danger of unlawful bodily harm from his adversary and (b) that the use of such force is necessary to avoid this danger. It may be reasonable to use nondeadly force against the adversary's nondeadly attack (i.e., one threatening only bodily harm), and to use deadly force against his deadly attack (an attack threatening death or serious bodily harm), but it is never reasonable to use deadly force against his nondeadly attack." Model Penal Code § 3.04.

The principles of self-defense as a justification for the torts or assault and battery are very similar to those governing self-defense as a justification in the criminal law. See *Restatement, Second, Torts*, §§ 633, 65, 67 (1965).

See also *Apparent danger*; *Defense of others*; *Imminent danger*; *Justification*; *Reasonable force*.

**Self-employment tax**. The social security tax imposed on the net earnings of a self-employed individual. The

self-employment tax is assessed in addition to an income tax up to an annual maximum, which is reduced by any wages previously subject to social security taxes.

**Self-executing.** Anything (*e.g.*, a document or legislation) which is effective immediately without the need of intervening court action, ancillary legislation, or other type of implementing action.

**Self-executing constitutional provision.** Term has reference to provisions which are immediately effective without the necessity of ancillary legislation. Constitutional provision is "self-executing" if it supplies sufficient rule by which right given may be enjoyed or duty imposed enforced; constitutional provision is not "self-executing" when it merely indicates principles without laying down rules giving them force of law.

**Self-executing judgments.** Those requiring no affirmative action of the court or action under process issued by the court to execute them.

**Self-help.** Taking an action in person or by a representative outside of the normal legal process with legal consequences, whether the action is legal or not; for example, a "self-help eviction" may be a landlord's removing the tenant's property from an apartment and locking the door against the tenant. Self-help repossession (*i.e.* without judicial process) of goods by creditor on default is permitted under U.C.C. § 9-503, if such can be done "without breach of the peace."

**Self-incrimination.** Acts or declarations either as testimony at trial or prior to trial by which one implicates himself in a crime. The Fifth Amendment, U.S.Const., as well as provisions in many state constitutions and laws, prohibit the government from requiring a person to be a witness against himself involuntarily or to furnish evidence against himself. It is the burden of the government to accuse and to carry the burden of proof of guilt. The defendant cannot be compelled to aid the government in this regard. See 18 U.S.C.A. § 6001 *et seq.* See also Compulsory self-incrimination; Link-in-chain; Privilege against self-incrimination; Taking the Fifth.

**Self-insurance.** The practice of setting aside a fund to meet losses instead of insuring against such through insurance. A common practice of business is to self-insure up to a certain amount, and then to cover any excess with insurance. Workers' compensation obligations may also be met through this method if statutory requirements are met.

**Self-murder, self-destruction, or self-slaughter.** See *Felo de se*; Suicide.

**Self serving declaration.** A species of hearsay evidence consisting of an extrajudicial declaration by a party to an action, the import of which is to prove an essential element of his case. Such statements are inadmissible unless they fall under a recognized category of exception to the hearsay rule such as a business entry, declaration of a deceased party, etc., or unless they are offered for a non-hearsay purpose such as the fact that the party made the statement and not for the truth of the statement. Statement, oral or written, or equivalent act, by

or on behalf of a party which if admitted would constitute evidence in his favor. *Werdell v. Turzynski*, 128 Ill.App.2d 139, 262 N.E.2d 833, 838. See *Fed.Evid.R.* 803.

**Sell.** To dispose of by sale (*q.v.*). To transfer title or possession of property to another in exchange for valuable consideration. *K.C.S., Ltd. v. East Main Street Land Development Corp.*, 40 Md.App. 196, 388 A.2d 181, 183.

**Seller.** Vendor; one who has contracted to sell property. A person who sells or contracts to sell goods. U.C.C. § 2-103(1)(d).

One who sells anything; the party who transfers property in the contract of sale. The correlative is "buyer," or "purchaser." These terms are, however, generally not used in reference to the persons concerned in a transfer of real estate, it being more customary to use "vendor" and "purchaser," or "vendee" in that case.

Test of whether a person is a "seller" of unregistered securities, so as to be liable to the buyer under the Securities Act, is whether such person is the "proximate cause" of the sale. *Lewis v. Walston & Co., Inc.*, C.A. Fla., 487 F.2d 617, 621.

**Seller's market.** A description of a market in which there is more demand for a security, product, or property than there is available supply. Prices rise in a seller's market.

**Selling stocks short.** See *Short sale*.

**Semble.** L. Fr. It seems; it would appear. This expression is often used in the reports to preface a statement by the court upon a point of law which is not directly decided, when such statement is intended as an intimation of what the decision would be if the point were necessary to be passed upon. It is also used to introduce a suggestion by the reporter, or his understanding of the point decided when it is not free from obscurity.

**Semel civis semper civis** /séməl sívəs sémpər sívəs/. Once a citizen always a citizen.

**Semel malus semper præsumitur esse malus in eodem genere** /séməl máləs sémpər præz(y)úwmətər ésiy máləs in iyówdəm jénariy/. Whoever is once bad is presumed to be so always in the same kind of affairs.

**Semestria** /səméstriyə/. Lat. In the civil law, the collected decisions of the emperors in their councils.

**Semi-matrimonium** /səmiymätřəmówn(i)yəm/. Lat. In Roman law, half-marriage. Concubinage was so called.

**Seminary.** A place of training; formerly, a school for young women; an educational institution for training priests; an institution of education. A school, academy, college, or university in which young persons are instructed in the several branches of learning which may qualify them for their future employment, and the origin of the word seems to imply a place where the seeds of education are sown and implanted.

**Seminafragium** /səmiynofréj(iy)əm/. Lat. In maritime law, half-shipwreck, as where goods are cast over-

board in a storm; also where a ship has been so much damaged that her repair costs more than her worth.

**Semi-plena probatio** /sēmiplīynā prōbēysh(iy)ow/. Lat. In the civil law, half-full proof; half-proof. See Half-proof.

**Semper** /sēmpər/. Lat. Always. A word which introduces several Latin maxims, of which some are also used without this prefix.

**Semper in dubiis benigniora praeferenda sunt** /sēmpər in d(y)ūwbīyās bənīgnīyōrā prēfērēndā sēnt/. In doubtful cases, the more favorable constructions are always to be preferred.

**Semper in dubiis id agendum est, ut quam tutissimo loco res sit bona fide contracta, nisi quum aperte contra leges scriptum est** /sēmpər in d(y)ūwbīyās id əjēndəm èst, át kwəm t(y)uwttisəmow lówkow rīyz sīt bównā fāydiy kənrəktə, nāysay k(w)əm əpərtiy kóntrə lījīyz skríptəm èst/. In doubtful cases, such a course should always be taken that a thing contracted *bona fide* should be in the safest condition, unless when it has been openly made against law.

**Semper in obscuris, quod minimum est sequimur** /sēmpər in əbskyúrəs kwəd mínəməm èst sékwəmər/. In obscure constructions we always apply that which is the least obscure.

**Semper in stipulationibus, et in ceteris contractibus, id sequimur quod actum est** /sēmpər in stīpyələyshiyównəbəs, èt in sētérəs kənrəktəbəs, id sékwəmər kwəd əktəm èst/. In stipulations and in other contracts we follow that which was done [we are governed by the actual state of the facts].

**Semper ita fiat relatio ut valeat dispositio** /sēmpər áytə fāyət rələysh(iy)ow át vāliyat dispəzīsh(iy)ow/. Reference [of a disposition in a will] should always be so made that the disposition may have effect.

**Semper necessitas probandi incumbit ei qui agit** /sēmpər nəsēsətəs prōbənday inkəmbət iyay kwāy əyjət/. The claimant is always bound to prove [the burden of proof lies on the actor].

**Semper paratus** /sēmpər pərəytəs/. Lat. Always ready. The name of a plea by which the defendant alleges that he has always been ready to perform what is demanded of him.

**Semper praesumitur pro legitimatione puerorum** /sēmpər prəz(y)úwmtər prów ləjtəməyshiyówniy p(y)úwərórəm/. The presumption always is in favor of the legitimacy of children.

**Semper praesumitur pro matrimonio** /sēmpər prəz(y)úwmtər prów mətrəmówn(i)yow/. The presumption is always in favor of the validity of a marriage.

**Semper praesumitur pro negante** /sēmpər prəz(y)úwmtər prów nəgántiy/. The presumption is always in favor of the one who denies.

**Semper praesumitur pro sententia** /sēmpər prəz(y)úwmtər prów sēntēnsh(iy)ə/. The presumption always is in favor of a sentence.

**Semper qui non prohibet pro se intervenire, mandare creditur** /sēmpər kwāy nōn prów(h)əbət prów síy intərvənáyriy, mändériy krédətər/. He who does not prohibit the intervention of another in his behalf is supposed to authorize it.

**Semper sexus masculinus etiam femininum sexum continet** /sēmpər séksəs məskyaláynəs iysh(iy)əm fēmənáynam séksəm kóntənət/. The masculine sex always includes the feminine.

**Semper specialia generalibus insunt** /sēmpər spēshiyéyl(iy)ə jənərəyləbəs insənt/. Specials are always included in generals.

**Senage** /síynəj/. Money paid for synodals.

**Senate**. The name of the upper chamber, or less numerous branch, of the Congress of the United States. Also the name of a similar body in the legislatures of most of the states.

The U.S. Senate is composed of 100 Members, 2 from each State, who are elected to serve for a term of 6 years. Senators were originally chosen by the State legislatures. This procedure was changed by the Seventeenth Amendment to the Constitution, adopted in 1913, which made the election of Senators a function of the people. One-third of the Senate is elected every 2 years.

**Senator**. One who is a member of a senate, either of the United States or of a state. See Seventeenth Amendment.

**Senatus** /sənáyts/. Lat. In Roman law, the senate; the great national council of the Roman people. The place where the senate met.

**Senatus consultum** /sənáyts kənsəltəm/. In Roman law, a decision or decree of the Roman senate, having the force of law, made without the concurrence of the people. These enactments began to take the place of laws enacted by popular vote, when the commons had grown so great in number that they could no longer be assembled for legislative purposes.

**Senatus consultum ultimae necessitatis** /sənáyts kənsəltəm nəsēsətéytəs/. A decree of the senate of the last necessity. The name given to the decree which usually preceded the nomination of a dictator. 1 Bl. Comm. 136.

**Senatus decreta** /sənáyts dəkriytə/. Lat. In the civil law, decisions of the senate. Private acts concerning particular persons merely.

**Send**. Term in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending. U.C.C. § 1-201(38).

**Senescallus** /sənəskələs/. In old English law, a seneschal; a steward; the steward of a manor.

**Seneschal** /sénəshəl/. In old European law, a title of office and dignity, derived from the middle ages, answering to that of steward or high steward in England. Seneschals were originally the lieutenants of the dukes and other great feudatories of the kingdom, and sometimes had the dispensing of justice and high military commands.

**Senility** /sənilətɪ/. Quality of being senile; an infirmity resulting from deterioration of mind and body experienced in old age. Feebleness of body and mind incident to old age; and an incapacity to contract arising from the impairment of the intellectual faculties by old age.

**Senior**. The elder. An addition to the name of the elder of two persons in the same family having the same name.

With reference to debt or security interests, means preference over junior obligations as to claims and payment.

**Senior counsel**. Of two or more counsel retained on the same side of a cause, he is the "senior" who is the elder, or more important in rank or estimation, or who is charged with the more difficult or important parts of the management of the case. May also refer to "lead" counsel in a class or multi-district action.

**Senior interest**. A debt security or preferred share that has a claim prior to that of junior obligations or common shares on a corporation's assets and earnings. An interest or right that takes effect or has preference over that of others; e.g. a person with a perfected security interest has a senior interest over other security holders in same property. *Compare* Junior interest.

**Seniority**. Precedence or preference in position over others similarly situated. As used, for example, with reference to job seniority, worker with most years of service is first promoted within range of jobs subject to seniority, and is the last laid off, proceeding so on down the line to the youngest in point of service. *Dooley v. Lehigh Valley R. Co. of Pennsylvania*, 130 N.J.Eq. 75, 21 A.2d 334, 338, 339. Term may also refer to the priority of a lien or encumbrance. *See also* Dovetail seniority; Priority.

**Seniority system**. Any system or arrangement which recognizes length of service in promotions, layoffs, etc.

**Senior judge**. Of several judges composing a court, the one who holds the oldest commission, or who has served the longest time under his present commission. A judge in the federal system who qualifies for senior status and who chooses such status rather than retirement; e.g. senior judge of U.S. District Court or Court of Appeals. *See* 28 U.S.C.A. § 136.

**Senior lien**. A prior lien which has precedence as to the property under the lien over another lien or encumbrance. *Compare* Junior lien. *See also* Senior interest.

**Senior mortgage**. A mortgage which is of superior priority over others; above those which are often referred to as junior mortgages. *Compare* Junior mortgage.

**Sensus** /sénsəs/. Lat. Sense, meaning, signification. *Malo sensu*, in an evil or derogatory sense. *Mitiori sensu*, in a milder, less severe, or less stringent sense. *Sensu honesto*, in an honest sense; to interpret words *sensu honesto* is to take them so as not to impute impropriety to the persons concerned.

**Sensus verborum est anima legis** /sénsəs vərbórəm èst énmə líjəs/. The meaning of the words is the spirit of the law.

**Sensus verborum est duplex—mitis et asper; et verba semper accipienda sunt in mitiori sensu** /sénsəs vərbórəm èst d(y)úwpleks—máytəs èt áspər, èt vərbə sémpər əksipiyéndə sánt in mishiyóray séns(y)uw/. The meaning of words is twofold,—mild and harsh; and words are always to be received in their milder sense.

**Sensus verborum ex causa dicendi accipiendus est; et sermones semper accipiendi sunt secundum subjectam materiam** /sénsəs vərbórəm əks kəzə dəsénday əksipiyéndəs èst; èt sərmówniyz sémpər əksipiyénday sánt səkándəm səbjéktəm mətiriyəm/. The sense of words is to be taken from the occasion of speaking them; and discourses are always to be interpreted according to the subject-matter.

**Sentence**. The judgment formally pronounced by the court or judge upon the defendant after his conviction in a criminal prosecution, imposing the punishment to be inflicted, usually in the form of a fine, incarceration, or probation. *See e.g.* 18 U.S.C.A. § 3551. Judgment of court formally advising accused of legal consequences of guilt which he has confessed or of which he has been convicted. Sentencing may be carried out by a judge, jury, or sentencing council (panel or judges), depending on the statutes of the jurisdiction. The word is properly confined to criminal proceedings. In *Civil* cases, the terms "judgment," "decision," "award," "finding," etc., are used. *Archer v. Snook*, D.C.Ga., 10 F.2d 567, 569.

For review of sentence of federal prisoner, *see* Post-conviction remedies.

*See also* Accumulative sentence; Community service; Commutation; Concurrent sentences; Consecutive sentences; Cumulative sentence; Definite sentence; Diversion program; Jail credit; Pardon; Pre-sentence hearing; Pre-sentence investigation; Pre-sentence report; Probation; Punishment; Reprieve; Sentencing; Sentencing guidelines; Split sentence; Suspended sentence.

**Concurrent sentence**. A sentence imposed which is to be served at the same time as another sentence imposed earlier or at the same proceeding.

**Consecutive sentence**. *See* Cumulative sentences, below.

**Cumulative sentences**. Separate sentences (each additional to the others) imposed upon a defendant who has been convicted upon an indictment containing several counts, each of such counts charging a distinct offense, or who is under conviction at the same time for several distinct offenses; one of such sentences being made to begin at the expiration of another. *Carter v. McClaughey*, 183 U.S. 365, 22 S.Ct. 181, 46 L.Ed. 236.

*Deferred sentence.* A sentence, the execution of which is postponed until a future time.

*Definite sentence.* Sentence set by law with no discretion for the judge or correctional officials to individualize punishment. *See Fixed sentence, below.*

*Determinate sentence.* A sentence for a fixed period of time. Also called *Definite sentence, above.* *See Fixed sentence, below.*

*Ecclesiastical sentence.* In ecclesiastical procedure, analogous to "judgment" (*q.v.*) in an ordinary action.

*Final sentence.* One which puts an end to a case. Distinguished from interlocutory.

A definite sentence is one which puts an end to the suit, and regards the principal matter in question as concluded. An interlocutory sentence determines only some incidental matter in the proceedings.

*Fixed sentence.* Fixed sentencing statutes specify the exact penalty that will follow conviction of each offense. *See Mandatory sentence, below.* *See also* Sentencing guidelines.

*Indeterminate (indefinite) sentence.* A form of sentence to imprisonment upon conviction of crime, authorized by statute in several states, which, instead of fixing rigidly the duration of the imprisonment, declares that it shall be for a period "not less than" so many years "nor more than" so many years, or not less than the minimum period prescribed by statute as the punishment for the particular offense nor more than the maximum period, the exact length of the term being afterwards fixed, within the limits assigned by the court or the statute, by an executive authority (the governor, board of pardons, etc.), on consideration of the previous record of the convict, his behavior while in prison or while out on parole, the apparent prospect of reformation and other such considerations. *See also Presumptive sentence, below.*

A sentence to incarceration with a spread of time between a minimum date of parole eligibility and a maximum discharge date. A completely indeterminate sentence has a minimum of one day and a maximum of natural life.

*Interlocutory sentence.* A temporary sentence imposed pending final sentencing. In the civil law, a sentence on some indirect question arising from the principal cause.

*Life sentence.* The disposition of a serious criminal case (*e.g.* capital offenses) by which the convicted defendant is sentenced to spend the rest of his natural life in prison.

*Mandatory sentence.* Statutes in some jurisdictions require a judge to sentence a convicted defendant to a penal institution for a prescribed time for the specific crime and furnish little or no room for discretion. These statutes generally provide that the sentence may not be suspended and that no probation may be imposed, leaving the judge with no alternative but commitment. *See Fixed sentence, above,* and Sentencing guidelines.

*Maximum sentence.* A maximum sentence sets the outer limit beyond which a prisoner cannot be held in custody.

*Merger of sentences.* *See* Merger.

*Minimum sentence.* The minimum time which an offender must spend in prison before becoming eligible for parole or release. A "minimum term" is a maximum term less good conduct time. *Birch v. Anderson*, 358 F.2d 520, 526, 123 U.S.App.D.C. 153.

*Presumptive sentence.* A sentence in which the judge is given guidelines that control the extent of the prison term. There is a presumptive average sentence for each type of offense which can be raised or lowered depending on the presence of mitigating or aggravating circumstances. *See also Indeterminate (indefinite) sentence, above.*

*Sentence in absentia.* Sentencing of defendant in his absence.

*Split sentence.* A sentence in which part of the time is served in confinement and the balance is served on probation or on terms imposed by the court. *See also* Split sentence.

*Straight or flat sentence.* Fixed sentence without a maximum or minimum.

*Suspension of sentence.* This term may mean either a withholding or postponing the sentencing of a prisoner after the conviction, or a postponing of the execution of the sentence after it has been pronounced. In the latter case, it may, for reasons addressing themselves to the discretion of the court, be indefinite as to time, or during the good behavior of the prisoner. *See* Suspended sentence.

*Withheld sentence.* Sentence not imposed.

**Sentencing.** The postconviction stage of the criminal justice process in which the defendant is brought before the court for imposition of sentence. Usually a trial judge imposes sentence, but in some jurisdictions sentencing is performed by jury or by sentencing councils.

For federal crimes, an individual may be sentenced either to a term of probation, a term of imprisonment, or be required to pay a fine. 18 U.S.C.A. § 3551.

Sentencing has been held to be a "critical stage" of a criminal proceeding requiring assistance of appointed counsel. *Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254, 19 L.Ed.2d 336.

*See also* Pre-sentence hearing; Pre-sentence investigation; Pre-sentence report; Sentencing guidelines; Victim impact statement.

*Imposition of sentence.* Sentence shall be imposed without unreasonable delay. Before imposing sentence, the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The attorney for the government shall have an equivalent opportunity to speak to the court. Fed.R.Crim.P. 32(a).

For federal crimes, the court, in determining the particular sentence to be imposed, shall consider: the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed; and the kinds and sentencing range established under the sentencing guidelines. 18 U.S.C.A. § 3553. *See also* Sentencing guidelines.

**Sentencing council.** A panel of three or more judges which confers to determine a criminal sentence. Sentencing councils are not as commonly used as sentencing by a trial judge.

**Sentencing guidelines.** Guidelines established by the U.S. Sentencing Commission to be followed by federal courts in the sentencing of those convicted of federal offenses. The Guidelines prescribe a range of sentences for each class of convicted persons as determined by categories of offense behavior and offender characteristics. 18 U.S.C.A. § 3551 et seq. *Mistretta v. U.S.*, 109 S.Ct. 647, 102 L.Ed.2d 714.

**Sentencing hearings.** *See* Pre-sentencing hearing.

**Sententia** /sentésh(iy)ə/. Lat. In the civil law, sense; import; as distinguished from mere words. The deliberate expression of one's will or intention. The sentence of a judge or court.

**Sententia a non iudice lata nemini debet nocere** /sentésh(iy)ə éy nòn júwdasiy léytə némanay débət nəsíríy/. A sentence pronounced by one who is not a judge should not harm any one.

**Sententia contra matrimonium numquam transit in rem iudicatam** /sentésh(iy)ə kóntrə mátrəmówn(iy)əm námkwəm tréznət in rém júwdakéydám/. A sentence against marriage never becomes a matter finally adjudged, *i.e.*, *res iudicata*.

**Sententia facit jus, et legis interpretatio legis vim obtinet** /sentésh(iy)ə féysət jás, èt líyjes intèrpratéy-sh(iy)ow líyjes vim óbtánət/. Judgment creates right, and the interpretation of the law has the force of law.

**Sententia facit jus, et res iudicata pro veritate accipitur** /sentésh(iy)ə féysət jás, èt ríyз júwdakéytə prów véhratéytyy áksípétər/. Judgment creates right, and what is adjudicated is taken for truth.

**Sententia interlocutoria revocari potest, definitiva non potest** /sentésh(iy)ə interlók(y)étór(iy)ə ríyvekéray pówtást, dáfnátáyvə nòn pówtást/. An interlocutory judgment may be recalled, but not a final.

**Sententia non fertur de rebus non liquidis** /sentésh(iy)ə nòn fártər díy ríybəs nòn líkwédəs/. Sentence is not given upon matters that are not clear.

**SEP.** *See* Simplified Employee Pension Plan.

**Separability clause.** A clause commonly found in contracts which provides that in the event that one or more provisions are declared void the balance of the contract remains in force. Such a provision is also commonly found in legislation. *See also* Saving clause; Severable contract; Severable statute.

**Separable.** Capable of being separated, disjoined, or divided. *In re Babcock*, 27 C.C.P.A. 1097, 110 F.2d 665, 667.

**Separable controversy.** With respect to removal of case from state to federal court, 28 U.S.C.A. § 1441(c) provides: "Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction." *See American Fire & Casualty Company v. Finn*, 341 U.S. 6, 71 S.Ct. 534, 95 L.Ed. 702.

**Separaliter** /sèparéylədər/. Lat. Separately. Used in indictments to indicate that two or more defendants were charged separately, and not jointly, with the commission of the offense in question.

**Separate, v.** To disunite, divide, disconnect, or sever. *See* Sever.

**Separate.** Individual; distinct; particular; disconnected. Generally used in law as opposed to "joint," though the more usual antithesis of the latter term is "several." Either of these words implies division, distribution, disconnection, or aloofness. As to *separate* Acknowledgment and Covenant, see those titles.

**Separate action.** As opposed to a *joint* action, an action brought for himself alone by each of several complainants who are all concerned in the same transaction, but cannot legally join in the suit. *See also* Joinder; Separate trial.

**Separate and apart.** Parties begin to live "separate and apart," for purpose of divorce statute, only where separation is coupled with independent intent by one of parties to dissolve marital union. *Sinha v. Sinha*, 515 Pa. 14, 526 A.2d 765, 767.

**Separate but equal doctrine.** The doctrine first enunciated in *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256, to the effect that equality of treatment is accorded when the races are provided substantially equal facilities even though these facilities be separate. This rule was declared to be unconstitutional with respect to educational facilities in *Brown v. Board of Education, et al.*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, and as to other public facilities by other Supreme Court decisions and by various Civil Rights Acts.

**Separate counts.** Two or more criminal charges contained within one indictment, each count, in actuality, constituting a separate indictment for which the accused may be tried.

**Separate demise in ejectment.** A demise in a declaration in ejectment used to be termed a "separate demise" when made by the lessor separately or individually, as distinguished from a demise made jointly by two or more persons, which was termed a "joint demise." No such demise, either separate or joint, is now necessary in this action.

**Separate estate.** The individual property of one of two persons who stand in a marital or business relation, as distinguished from that which they own jointly or are jointly interested in. *See also* Community property; Separate property.

**Separate examination.** The interrogation of a married woman, who appears before an officer for the purpose of acknowledging a deed or other instrument, conducted by such officer in private or out of the hearing of her husband in order to ascertain if she acts of her own will and without compulsion or constraint of the husband. Also the examination of a witness in private or apart from, and out of the hearing of, the other witnesses in the same cause.

**Separate maintenance.** Money paid by one married person to the other for support if they are no longer living as husband and wife. Commonly it is referred to as separate support and follows from a court order. *See also* Alimony; Support.

**Separate offenses.** A person may be tried, convicted and sentenced for offenses which, though sharing many elements, are distinct. A particular act may offend more than one law and hence a person may be subjected to more than one punishment for acts arising out of the same event.

**Separate property.** Property owned by married person in his or her own right during marriage. State statutes commonly protect such separate property rights of each spouse. *See e.g.* Mass.Gen.L.A. c. 209, § 1. *See also* Separate and marital property, below.

Under statute governing distribution of property in marital dissolution proceeding includes property owned before marriage and maintained in separate names during marriage, property acquired during marriage solely from exchange of premarriage property and separately retained, any increase in value of separate property, gift or inheritance received and separately held, and property described in statute. *Weast v. Weast*, Mo.App., 655 S.W.2d 752, 755. *See* Equitable distribution.

**Community property.** In a community property jurisdiction, separate property is that property which belongs entirely to one of the spouses. Generally, it is property acquired before marriage or acquired after marriage by gift or inheritance. For purposes of community property settlement, "separate property" consists of all property brought to marriage by either spouse or acquired during marriage by gift, bequest, devise or descent, together with its rents, issues and profits. *Portillo v. Shappie*, 97 N.M. 59, 636 P.2d 878, 880. *See also* Community property.

**Separate and marital property.** A number of state divorce statutes use the concept of separate and marital property for purposes of dividing assets of the spouses on divorce. Such statutes generally define separate property as those assets owned by either spouse prior to the marriage and those acquired afterwards by gift, devise, or exchange for other separate property, and as marital property all assets acquired by either spouse during marriage except those which can be shown to be sepa-

rate. On divorce, the court is required to set aside to each spouse his or her separate property, and make an equitable division of marital property.

**Separate return.** *See* Tax return.

**Separate support.** *See* Separate maintenance.

**Separate trial.** The separate and individual trial of each of several persons jointly accused of a crime. Fed. R.Crim.P. 14. Court may also order separate trials in civil actions (*e.g.* Fed.R.Civil P. 42) in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy. *Compare* Bifurcated trial; Severance of actions or claims.

**Separatim** /səpəreýtəm/. Lat. In old conveyancing, severally. A word which made a several covenant.

**Separation.** The living apart of a husband and wife. If court ordered it is a "legal separation," in which event the details of support and maintenance are often spelled out specifically in a document issued by the court.

**Separation agreement.** Written arrangements concerning custody, child support, alimony and property division made by a married couple who are usually about to get a divorce or legal separation.

**Separation a mensa et thoro** /səpəreýshan èy ménso èt ðórow/. A partial dissolution of the marriage relation.

**Separation from bed and board.** A species of separation not amounting to a dissolution of the marriage. Same as separation a mensa et thoro (*q.v.*).

**Separation of jury.** After a case has been given to the jury for deliberation, they are not permitted to separate until a verdict is reached except under the control of the court through officers and sheriffs. In civil cases in some jurisdictions this rule is relaxed generally with admonition from the judge not to discuss the case with anybody. *See also* Sequester.

**Separation of patrimony.** In Louisiana probate law, the creditors of the succession may demand, in every case and against every creditor of the heir, a separation of the property of the succession from that of the heir. This is what is called the "separation of patrimony." The object of a separation of patrimony is to prevent property out of which a particular class of creditors have a right to be paid from being confounded with other property, and by that means made liable to the debts of another class of creditors.

**Separation of powers.** The governments of states and the United States are divided into three departments or branches: the legislative, which is empowered to make laws, the executive which is required to carry out the laws, and the judicial which is charged with interpreting the laws and adjudicating disputes under the laws. Under this constitutional doctrine of "separation of powers, one branch is not permitted to encroach on the domain or exercise the powers of another branch. *See* U.S. Constitution, Articles I-III. *See also* Power (*Constitutional powers*).

**Separation of spouses.** A cessation of cohabitation of husband and wife by mutual agreement, or, in the case of "judicial separation," under the decree of a court. Separation of spouses for a statutorily prescribed period is a prerequisite to "no-fault" divorce in many states. *See also* Living separate and apart; Separation agreement; Separation order.

**Separation of witnesses.** An order of the court requiring all witnesses, except the plaintiff and defendant, to remain outside the courtroom until each is called to testify.

**Separation order.** A decree or judgment of a court authorizing spouses to separate and generally included is an order respecting custody of children and support.

**Sequamur vestigia patrum nostrorum** /səkwéymər vestij(i)ə pətrəm nostrórəm/. Let us follow the footsteps of our fathers.

**Sequatur sub suo periculo** /səkwéytər səb s(y)úwəw pərik(y)əsləw/. In old English practice, a writ which issued where a sheriff had returned *nihil*, upon a *summons ad warrantandum*, and after an *alias* and *pluries* had been issued. So called because the tenant lost his lands without any recovery in value, unless upon that writ he brought the vouchee into court.

**Sequela** /səkwíylə/. L. Lat. In old English law, suit; process or prosecution. *Sequela causæ*, the process of a cause.

**Sequela curiæ** /səkwíylə kyúriiy/. Suit of court.

**Sequela villanorum** /səkwíylə vilánórəm/. The family retinue and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the lord.

**Sequester, v.** To separate or isolate; *e.g.* to sequester jurors is to isolate them from contact with the public during the course of a sensational trial. *See* Jury.

*Civil law.* To renounce or disclaim, etc.; as, for example, when a widow came into court and disclaimed having anything to do with her deceased husband's estate, she was said to sequester. The word more commonly signifies the act of taking in execution under a writ of sequestration.

To deposit a thing which is the subject of a controversy in the hands of a third person, to hold for the contending parties.

To take a thing which is the subject of a controversy out of the possession of the contending parties, and deposit it in the hands of a third person.

*Equity practice.* To take possession of the property of a defendant, and hold it in the custody of the court, until he purges himself of a contempt.

*International law.* To confiscate; to appropriate private property to public use; to seize the property of the private citizens of a hostile power, as when a belligerent nation sequesters debts due from its own subjects to the enemy.

**Sequester, n.** /səkwéstər/. Lat. In the civil law, a person with whom two or more contending parties deposited the subject-matter of the controversy.

**Sequestered account.** In accounting, an account which has been ordered separated and impounded by order of the court. No disbursements may be made from this account without order of the court.

**Sequestrari facias** /səkwəstréray féysh(i)yəs/. In English ecclesiastical practice, a process in the nature of a *levari facias*, commanding the bishop to enter into the rectory and parish church, and to take and sequester the same, and hold them until, of the rents, tithes, and profits thereof, and of the other ecclesiastical goods of a defendant, he having levied the plaintiff's debt. 3 Bl. Comm. 418.

**Sequestratio** /səkwəstréysh(i)yow/. Lat. In the civil law, the separating or setting aside of a thing in controversy, from the possession of both parties that contend for it. It is two-fold,—*voluntary*, done by consent of all parties; and *necessary*, when a judge orders it.

**Sequestration** /səkwəstréyshən/siy°. In general, the process by which property or funds are attached pending the outcome of litigation. *See also* Sequester.

Order of "sequestration" is intended to assure that a witness will testify concerning his own knowledge of the case without being influenced by testimony of prior witnesses and to strengthen role of cross-examination in developing facts. *State v. James*, La.App. 3 Cir., 447 So.2d 580, 583.

The separation or removal of property from the person in possession, pending some further action or proceedings affecting the property.

Term is also used to refer to impoundment or stoppage of use of budget funds by governmental agencies as a result of, for example, spending restrictions. *See* Gramm-Rudman-Hollings amendment.

*Contracts.* A species of deposit which two or more persons, engaged in litigation about anything, make of the thing in contest with an indifferent person who binds himself to restore it, when the issue is decided, to the party to whom it is adjudged to belong. Civ.Code La. art. 2973.

*Debtor-creditor relations.* In the law of creditors' rights, most often refers to an equitable form of attachment, although occasionally used (or misused) to identify a replevin-like process; very broad meaning implies any setting aside of a person's property to answer for the demands of another.

*English ecclesiastical law.* The act of the ordinary in disposing of the goods and chattels of one deceased, whose estate no one claims.

*Equity practice.* A writ authorizing the taking into the custody of the law of the real and personal estate (or rents, issues, and profits) of a defendant who is in contempt, and holding the same until he shall comply.



*International law.* The seizure of the property of an individual, and the appropriation of it to the use of the government. Expropriation.

*Jury.* See Jury; Sequester.

**Sequestrator** /sékwəstrəyər/siy<sup>o</sup>/. One to whom a sequestration is made. One appointed or chosen to perform a sequestration, or execute a writ of sequestration.

**Sequestro habendo** /səkwestrow həbэндow/. In English ecclesiastical law, a judicial writ for discharging of a sequestration of the profits of a church benefice, granted by the bishop at the sovereign's command, thereby to compel the parson to appear at the suit of another. Upon his appearance, the parson may have this writ for the release of the sequestration.

**Sequi debet potentia justitiam non præcedere** /sýk-way débət pəténsh(iy)ə jəstish(iy)əm nòn prəsiydəriy/. Power should follow justice, not precede it.

**Serf.** In the feudal polity, a class of persons whose social condition was servile, and who were bound to labor and perform onerous duties at the will of their lords. They differed from slaves only in that they were bound to their native soil, instead of being the absolute property of a master.

**Sergeant.** Noncommissioned officer in armed forces. Officer in police force with rank below captain or lieutenant.

**Sergeant-at-arms.** Officer appointed by, and attending on, a legislative body or court, whose principal duties are to preserve order during the sessions of such body.

**Serial bonds.** A serial bond issue consists of a number of bonds issued at the same time but with different maturity dates (serially due), usually with interest rates varying for the different maturity dates. To be distinguished from the *series bonds* (*q.v.*). An issue of bonds that mature in part on one date, another part on another date, and so on; the various maturity dates usually are equally spaced. Compare Series bonds.

**Serial note.** A promissory note payable in installments.

**Serial right.** A right reserved in a publishing contract between author and publisher giving the author or publisher the right to have the manuscript published in installments in a magazine or periodical before or after the publication of the book.

**Seriately** /sihriyətliy/. In series, or following one after another. In re Flint, 32 C.C.P.A. 1116, 150 F.2d 126, 131.

**Seriatim** /siriyétəm/. Lat. Severally; separately; individually; one by one.

**Series bonds.** Groups of bonds (for example, series A, series B) usually issued at different times and with different maturities but under the authority of the same indenture. To be distinguished from *serial bonds* (*q.v.*).

**Serious.** Important; weighty; momentous, grave, great, as in the phrases "serious bodily harm," "serious personal injury," etc.

**Serious and wilful misconduct.** In worker's compensation law, the intentional doing of something with the knowledge that it is likely to result in a serious injury, or with a wanton and reckless disregard of its probable consequences.

**Serious bodily injury.** For purposes of first degree assault prosecution, is defined as any bodily injury which involves a substantial risk of death. *People v. Ybarra*, Colo.App., 543 P.2d 529, 532.

**Serious crime.** For purpose of determining right to jury trial, crimes carrying more than six-month sentences are "serious crimes" and those carrying less are "petty crimes." *Maita v. Whitmore*, C.A.Cal., 508 F.2d 143, 145. See Felony.

**Serious illness.** In life insurance, an illness that permanently or materially impairs, or is likely to permanently or materially impair, the health of the applicant. Not every illness is serious. An illness may be alarming at the time, or thought to be serious by the one afflicted, and yet not be serious in the sense of that term as used in insurance contracts. An illness that is temporary in its duration, and entirely passes away, and is not attended, nor likely to be attended, by a permanent or material impairment of the health or constitution, is not a serious illness. It is not sufficient that the illness was thought serious at the time it occurred, or that it might have resulted in permanently impairing the health.

**Serjeant-at-arms.** See Sergeant-at-arms.

**Serjeant at law.** In England, the highest degree of the legal profession, having a monopoly of audience at the Court of Common Pleas until 1846 when the Court was abolished.

**Serjeanty** /sárjəntiy/. A species of tenure by knight service, which was due to the king only, and was distinguished into grand and petit serjeanty. The tenant holding by *grand* serjeanty was bound, instead of attending the king generally in his wars, to do some honorary service to the king in person, as to carry his banner or sword, or to be his butler, champion, or other officer at his coronation. *Petit* serjeanty differed from grand serjeanty, in that the service rendered to the king was not of a personal nature, but consisted in rendering him annually some small implement of war, as a bow, sword, arrow, lance, or the like.

**Serment** /sármənt/. In old English law, oath; an oath.

**Sermo index animi** /sármow índeks ánəməy/. Speech is an index of the mind.

**Sermones semper accipiendi sunt secundum subjectam materiam, et conditionem personarum** /sərmón-w-niyz sémpər əksipiýénday sənt səkóndəm səbjéktəm mətíríyəm/. Language is always to be understood according to its subject-matter, and the condition of the persons.

**Sermo relatus ad personam intelligi debet de conditione personæ** /sármow rəléytəs əd pərsónwənm intéləjay débət diy kəndishiyówniy pərsówniy/. Lan-

guage which is referred to a person ought to be understood of the condition of the person.

**Serological test.** A laboratory test required in many states to determine the presence of venereal disease prior to marriage.

**Serrated.** Notched on the edge; cut in notches like the teeth of a saw. This was anciently the method of trimming the top or edge of a deed of indenture. *See* Indent, *v.*

**Servage** /sérvəj/. In feudal law, where a tenant, besides payment of a certain rent, found one or more workmen for his lord's service.

**Servanda est consuetudo loci ubi causa agitur** /sərvændə èst kònswat(y)úwdow lówsay yúwbay kóza éjətər/. The custom of the place where the action is brought is to be observed.

**Servant.** An employee. One employed to perform service in master's affairs, whose physical conduct in performance of the service is controlled or is subject to right to control by the master. *Reiling v. Missouri Ins. Co.*, 236 Mo.App. 164, 153 S.W.2d 79; *Restatement, Second, Agency*, § 2. A person in the employ of another and subject to his control as to what work shall be done and the means by which it shall be accomplished. *Hinson v. Culbeson-Stowers Chevrolet, Inc.*, 244 Ark. 853, 427 S.W.2d 539, 542. One who is employed to render personal service to another otherwise than in the pursuit of an independent calling, and who, in such service, remains entirely under control and direction of employer. *Henley v. State*, 59 Ga.App. 595, 2 S.E.2d 139, 142. A person of whatever rank or position in employ and subject to direction or control of another in any department of labor or business. A servant, for purposes of doctrine of vicarious liability, is one who is employed to perform services for another, and who is subject to such other's "control" or "right to control" as regards his physical conduct in the performance of such services. *Gifford-Hill & Co. v. Moore*, Tex.Civ.App., 479 S.W.2d 711, 714.

The term is often given special meanings by statutes and like other words is greatly influenced by context in wills and other documents.

*See also* Agent; Employee; Fellow servant; Master and servant; Subservant. *Compare* Independent contractor.

**Servi** /sérvay/. Lat. Slaves. In old English law, bondmen; servile tenants; persons over whom their masters had absolute dominion.

**Service.** This term has a variety of meanings, dependent upon the context or the sense in which used. *Central Power & Light Co. v. State*, Tex.Civ.App., 165 S.W.2d 920, 925.

**Contracts.** Duty or labor to be rendered by one person to another, the former being bound to submit his will to the direction and control of the latter. The act of serving the labor performed or the duties required. Occupation, condition, or status of a servant, etc. Performance of labor for benefit of another, or at another's command; attendance of an inferior, hired helper, etc.

*Claxton v. Johnson County*, 194 Ga. 43, 20 S.E.2d 606, 610. "Service" and "employment" generally imply that the employer, or person to whom the service is due, both selects and compensates the employee, or person rendering the service.

The term is used also for employment in one of the offices, departments, or agencies of the government; as in the phrases "civil service," "public service," "military service," etc.

**Domestic relations.** The "services" of a wife, for the loss of which occasioned by an injury to the wife, the husband may recover in an action against the tort-feasor include whatever of aid, assistance, comfort, and society the wife would be expected to render to bestow upon her husband in the circumstances in which they were situated. *See* Consortium.

**Feudal law.** The consideration which the feudal tenants were bound to render to the lord in recompense for the lands they held of him. The services, in respect of their quality, were either free or base services, and, in respect of their quantity and the time of exacting them, were either certain or uncertain. 2 Bl.Comm. 60.

**Practice.** The exhibition or delivery of a writ, summons and complaint, criminal summons, notice, order, etc., by an authorized person, to a person who is thereby officially notified of some action or proceeding in which he is concerned, and is thereby advised or warned of some action or step which he is commanded to take or to forbear. *Fed.R.Civil Proc.* 4 and 5; *Fed.R.Crim.P.* 4 and 49. Pleadings, motions, orders, etc., after the initial summons are normally served on the party's attorney unless otherwise ordered by court. *See Service of process, below.*

### General Classification

**Civil service.** *See* that title.

**Public utilities.** The furnishing of water, heat, light and power, etc., services by utility. *Claxton v. Johnson County*, 194 Ga. 43, 20 S.E.2d 606, 610.

**Salvage service.** *See* Salvage.

**Secular service.** Worldly employment or service, as contrasted with spiritual or ecclesiastical.

**Service of process.** The service of writs, complaints, summonses, etc., signifies the delivering to or leaving them with the party to whom or with whom they ought to be delivered or left; and, when they are so delivered, they are then said to have been served. In the pleading stage of litigation, is the delivery of the complaint to the defendant either to him personally or, in most jurisdictions, by leaving it with a responsible person at his place of residence. Usually a copy only is served and the original is shown. The service must furnish reasonable notice to defendant of proceedings to afford him opportunity to appear and be heard. *Chemical Specialties Sales Corp. Industrial Div. v. Basic Inc.*, D.C.Conn., 296 F.Supp. 1106, 1107. *Fed.R.Civil P.* 4; *Fed.R.Crim.P.* 4. The various types of service of process are as follows:

**Constructive service of process.** Any form of service other than actual personal service. Notification of an action or of some proceeding therein, given to a person affected by sending it to him in the mails or causing it to be published in a newspaper. Fed.R.Civil P. 4(e). *See also Service by publication; Substituted service, below.*

**Long arm statutes.** Laws enacted in most states which permit courts to acquire personal jurisdiction of non-residents by virtue of activity within the state. *See Foreign service; Long arm statutes; Minimum contacts.*

**Personal service.** Actual delivery of process to person to whom it is directed or to someone authorized to receive it in his behalf. *Green Mountain College v. Levine*, 120 Vt. 332, 139 A.2d 822, 824. Personal service is made by delivering a copy of the summons and complaint to the person named or by leaving copies thereof at his dwelling or usual place of abode with some responsible person or by delivering a copy to an agent authorized to receive such. Special rules are also provided for service on infants, incompetents, corporations, the United States or officers or agencies thereof, etc. Fed.R.Civil P. 4(d); Fed.R.Crim.P. 4(d). *See also Found.*

**Proof of service.** *See Proof.*

**Service by publication.** Service of a summons or other process upon an absent or nonresident defendant, by publishing the same as an advertisement in a designated newspaper, with such other efforts to give him actual notice as the particular statute may prescribe. *See also Substituted service, below.*

**Substituted service.** Any form of service of process other than personal service, such as service by mail or by publication in a newspaper; service of a writ or notice on some person other than the one directly concerned, for example, his attorney of record, who has authority to represent him or to accept service for him. Fed.R. Civil P. 4(d). *See also Long arm statutes.*

**Service charge.** That charge assessed by bank against the expense of maintaining a customer's demand deposit or checking account, and is calculated on basis of a formula whereby bank's cost of maintaining account for customer is determined. *U. S. v. First Nat. Bank of Jackson*, D.C.Miss., 301 F.Supp. 1161, 1207.

"Credit service charge" means the sum of (1) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and (2) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted. Uniform Consumer Credit Code, § 2.109.

**Service contract.** A written agreement to perform maintenance or repair (or both) service on a consumer product for a specified duration. 15 U.S.C.A. § 2301. *See Warranty (Extended service warranty).*

**Service establishment.** Within Fair Labor Standards Act, an establishment which has ordinary characteristics of retail establishments except that services instead of goods are sold. An establishment the principal activity of which is to furnish service to the consuming public, and includes barber shops, beauty parlors, shoe shining parlors, clothes pressing clubs, laundries and automobile repair shops. *Fleming v. A. B. Kirschbaum Co.*, C.C.A. Pa., 124 F.2d 567, 572.

**Service life.** Period of expected usefulness of an asset; such may not necessarily coincide with depreciable life for income tax purposes.

**Service mark.** A mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. *West & Co., Inc. v. Arica Institute, Inc.*, C.A.N.Y., 557 F.2d 338, 340.

The term "service mark" means any word, name, symbol, or device, or any combination thereof—(1) used by a person, or (2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by the Trademark Act, to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor. 15 U.S.C.A. § 1127. *Compare Trademark; Tradename.*

**Service occupation tax.** Tax imposed on persons making sales of service and is computed as a percentage of net cost to servicemen of tangible personal property transferred as an incident to such sale. *Hagerty v. General Motors Corp.*, 14 Ill.App.3d 33, 302 N.E.2d 678, 681.

**Service of process.** *See Service.*

**Services.** Things purchased by consumers that do not have physical characteristics (e.g., services of doctors, lawyers, dentists, repair personnel).

**Service warranty.** *See Warranty (Extended service warranty).*

**Servicing.** *See Service charge.*

**Serviens narrator** /s'rv(i)enz n'or'eyər/. A serjeant-at-law (*q.v.*).

**Servient** /s'rv(i)yənt/. Serving; subject to a service or servitude. A *servient* estate is one which is burdened with a servitude.

**Servient tenement** /s'rv(i)yənt t'énəmənt/. The person whose land is subject to an easement. An estate in respect of which a service is owing, as the *dominant tenement* is that to which the service is due. *Northwestern Improvement Co. v. Lowry*, 104 Mont. 289, 66 P.2d

792, 795. An estate burdened with a servitude. Most commonly a parcel of land subject to an easement for the benefit of another parcel (dominant tenement). *See also* Dominant estate or tenement.

**Servitia personalia sequuntur personam** /sərvɪʃ(i)ə pərsənəl(i)yə səkʷántər pərsównəm/. Personal services follow the person.

**Servitiis acquietandis** /sərvɪʃ(i)əs əkwàytəndəs/. A judicial writ for a man distrained for services to one, when he owes and performs them to another, for the acquittal of such services.

**Servitium** /sərvɪʃ(i)əm/. Lat. In feudal and old English law, the duty of obedience and performance which a tenant was bound to render to his lord, by reason of his fee.

**Servitium feudale et prædiale** /sərvɪʃ(i)əm fyúwdé-lyi èt prædiyéliy/. A personal service, but due only by reason of lands which were held in fee.

**Servitium forinsecum** /sərvɪʃ(i)əm fərinzəkəm/. Forinsec, foreign, or extra service; a kind of service that was due to the king, over and above (*foris*) the service due to the lord.

**Servitium, in lege Angilæ, regulariter accipitur pro servitio quod per tenentes dominis suis debetur ratione feodi sui** /sərvɪʃ(i)əm, in liyjy ængliyi, rægylérətər əksípətər pròw sərvɪʃ(i)əw kwòd pər tənéntiyz dómənəs s(y)úwəs dəbiytər rəshiyówniy fyú-*day* s(y)úway/. Service, by the law of England, means the service which is due from the tenants to the lords, by reason of their fee.

**Servitium intrinsicum** /sərvɪʃ(i)əm intrínzəkəm/. Intrinsic or ordinary service; the ordinary service due the chief lord, from tenants within the fee.

**Servitium liberum** /sərvɪʃ(i)əm libərəm/. A service to be done by feudatory tenants, who were called "*liberi homines*," and distinguished from vassals, as was their service, for they were not bound to any of the base services of plowing the lord's land, etc., but were to find a man and horse, or go with the lord into the army, or to attend the court, etc.

**Servitium regale** /sərvɪʃ(i)əm rægéliy/. Royal service, or the rights and prerogatives of manors which belong to the king as lord of the same, and which were generally reckoned to be six, viz.: Power of judicature, in matters of property; power of life and death, in felonies and murder; a right to waifs and strays; assessments; minting of money; and assise of bread, beer, weights, and measures.

**Servitium scuti** /sərvɪʃ(i)əm sk(y)úwtay/. Service of the shield; that is, knight-service.

**Servitium socæ** /sərvɪʃ(i)əm sówsiy/. Service of the plow; that is, socage.

**Servitors of bills** /sərvətərz əv bílz/. In old English practice, servants or messengers of the marshal of the king's bench, sent out with bills or writs to summon

persons to that court. Thereafter commonly called "tip-staves."

**Servitude**. The state of a person who is subjected, voluntarily or otherwise, to another person as his servant. A charge or burden resting upon one estate for the benefit or advantage of another; a species of incorporeal right derived from the civil law (see *Servitus*) and closely corresponding to the "easement" of the common-law, except that "servitude" rather has relation to the burden or the estate burdened, while "easement" refers to the benefit or advantage or the estate to which it accrues.

#### Classification

All servitudes which affect lands may be divided into two kinds,—*personal* and *real*. Personal servitudes are those attached to the person for whose benefit they are established, and terminate with his life. This kind of servitude is of three sorts,—usufruct, use, and habitation. Real servitudes, which are also called "predial" or "landed" servitudes, are those which the owner of an estate enjoys on a neighboring estate for the benefit of his own estate. They are called "predial" or "landed" servitudes because, being established for the benefit of an estate, they are rather due to the estate than to the owner personally. *Frost-Johnson Lumber Co. v. Salling's Heirs*, 150 La. 756, 91 So. 207, 245; *Tide-Water Pipe Co. v. Bell*, 280 Pa. 104, 124 A. 351, 354.

Real servitudes are divided, in the civil law, into *rural* and *urban* servitudes. Rural servitudes are such as are established for the benefit of a landed estate; such, for example, as a right of way over the servient tenement, or of access to a spring, a coal-mine, a sand-pit, or a wood that is upon it. Urban servitudes are such as are established for the benefit of one building over another. (But the buildings need not be in the city, as the name would apparently imply.) They are such as the right of support, or of view, sewer, or the like.

Servitudes are also classed as *positive* and *negative*. A positive servitude is one which obliges the owner of the servient estate to permit or suffer something to be done on his property by another. A negative servitude is one which does not bind the servient proprietor to permit something to be done upon his property by another, but merely restrains him from making a certain use of his property which would impair the easement enjoyed by the dominant tenement. *Rowe v. Nally*, 81 Md. 367, 32 A. 198.

*Involuntary servitude*. See that title.

**Servitus** /sərvətəs/. Lat. In the civil law, slavery; bondage; the state of service. An institution of the conventional law of nations, by which one person is subjected to the dominion of another, contrary to natural right.

Also a service or servitude; an easement.

**Servitus actus** /sərvətəs əktəs/. The servitude or right of walking, riding, or driving over another's ground. A species of right of way.

**Servitus altius non tollendi** /sárvætəs əlsh(iy)əs nòn tolənday/. The servitude of not building higher. A right attached to a house, by which its proprietor can prevent his neighbor from building his own house higher.

**Servitus aquæ ducendæ** /sárvætəs əkwiy d(y)uwséndiy/. The servitude of leading water; the right of leading water to one's own premises through another's land.

**Servitus aquæ educendæ** /sárvætəs əkwiy iyd(y)uwséndiy/. The servitude of leading off water; the right of leading off the water from one's own onto another's ground.

**Servitus aquæ hauriendæ** /sárvætəs əkwiy hòhriyéndiy/. The servitude or right of draining water from another's spring or well.

**Servitus fumi immittendi** /sárvætəs fyúwmay iməténday/. The servitude or right of leading off smoke or vapor through the chimney or over the ground of one's neighbor.

**Servitus itineris** /sárvætəs aytínərəs/. The servitude or privilege of walking, riding, and being carried over another's ground. A species of right of way.

**Servitus luminum** /sárvætəs l(y)úwmənəm/. The servitude of lights; the right of making or having windows or other openings in a wall belonging to another, or in a common wall, in order to obtain light for one's building.

**Servitus ne luminibus officiatur** /sárvætəs niy l(y)umínəbəs əfishiyétər/. A servitude not to hinder lights; the right of having one's lights or windows unobstructed or darkened by a neighbor's building, etc.

**Servitus ne prospectus offendatur** /sárvætəs niy prəspéktəs òfendétər/. A servitude not to obstruct one's prospect, *i.e.*, not to intercept the view from one's house.

**Servitus oneris ferendi** /sárvætəs ównərəs fərənday/. The servitude of bearing weight; the right to let one's building rest upon the building, wall, or pillars of one's neighbor.

**Servitus pascendi** /sárvætəs pəsénday/. The servitude of pasturing; the right of pasturing one's cattle on another's ground; otherwise called "*jus pascendi*."

**Servitus pecoris ad aquam adpulsam** /sárvætəs pékərəs əd əkwəm ədpəlsəm/. A right of driving one's cattle on a neighbor's land to water.

**Servitus prædii rustici** /sárvætəs priydiyay rístəsay/. The servitude of a rural or country estate; a rural servitude.

**Servitus prædii urbani** /sárvætəs priydiyay ərbéynay/. The servitude of an urban or city estate; an urban servitude.

**Servitus prædiorum** /sárvætəs priydiyórəm/. A prædial servitude; a service, burden, or charge upon one estate for the benefit of another.

**Servitus projiciendi** /sárvætəs prəjishiyénday/. The servitude of projecting; the right of building a projection

from one's house in the open space belonging to one's neighbor.

**Servitus prospectus** /sárvætəs prəspéktəs/. A right of prospect. This may be either to give one a free prospect over his neighbor's land or to prevent a neighbor from having a prospect over one's own land.

**Servitus stillicidii** /sárvætəs stíləsidiyay/. The right of drip; the right of having the water drip from the eaves of one's house upon the house or ground of one's neighbor.

**Servitus tigni immittendi** /sárvætəs tignay iməténday/. The servitude of letting in a beam; the right of inserting beams in a neighbor's wall.

**Servitus viæ** /sárvætəs váyiy/. The servitude or right of way; the right of walking, riding, and driving over another's land.

**Servus** /sárvəs/. Lat. In the civil and old English law, a slave; a bondman.

**Sess** /sés/. In English law, a tax, rate, or assessment.

**Sessio** /səsh(iy)ow/. Lat. In old English law, a sitting; a session. *Sessio parliamenti*, the sitting of parliament.

**Session.** The sitting of a court, legislature, council, commission, etc., for the transaction of its proper business. Hence, the period of time, within any one day, during which such body is assembled in form, and engaged in the transaction of business, or, in a more extended sense, the whole space of time from its first assembling to its prorogation or adjournment *sine die*. Either a day or a period of days in which a court, legislature, etc. carries on its business.

Strictly speaking, the word "session," as applied to a court of justice, is not synonymous with the word "term." The "session" of a court is the time during which it actually sits for the transaction of judicial business, and hence terminates each day with the rising of the court. A "term", or "sitting" in current English practice, of court, is the period fixed by law, usually embracing many days or weeks, during which it shall be open for the transaction of judicial business and during which it may hold sessions from day to day. But this distinction is not always observed, many authorities using the two words interchangeably.

See also Extra session; Extraordinary session; Lane duck session; Term.

*Biennial session.* See that title.

*Joint session.* Meeting together and commingling of the two houses of a legislative body, sitting and acting together as one body, instead of separately in their respective houses.

*Quarter sessions.* See Quarter session courts.

*Regular session.* An ordinary, general, or stated session (as of a legislative body), as distinguished from a special or extra session.

**Session laws.** The name commonly given to the body of laws enacted by a state legislature at one of its annual or biennial sessions. So called to distinguish them from

the "compiled laws" or "revised statutes" of the state. Published laws of a state enacted by each assembly and separately bound for the session and for extra sessions. The session laws are normally published on a periodic basis, in a pamphlet format, throughout the legislative session and then at the end of the session are bound, in the order of their enactment, into a more permanent form. Such session laws in addition are incorporated into state and federal annotated or unannotated statute publications.

**Set aside.** To reverse, vacate, cancel, annul, or revoke a judgment, order, etc.

**Setback.** A distance from a curb, property line, or structure, within which building is prohibited. Setback requirements are normally provided for by ordinances or building codes. Provision in zoning ordinance regulating the distance from the lot line to the point where improvements may be constructed.

**Set down.** To "set down" a cause for trial or hearing at a given term is to enter its title in the calendar, list, or docket of causes which are to be brought on at that term.

**Seti.** As used in mining laws, a lease.

**Set of exchange.** In commercial law, foreign bills are usually drawn in duplicate or triplicate, the several parts being called respectively "first of exchange," "second of exchange," etc., and these parts together constitute a "set of exchange." Any one of them being paid, the others become void.

**Set-off.** A counter-claim demand which defendant holds against plaintiff, arising out of a transaction extrinsic of plaintiff's cause of action. Remedy employed by defendant to discharge or reduce plaintiff's demand by an opposite one arising from transaction which is extrinsic to plaintiff's cause of action. *Edmonds v. Stratton*, Mo.App., 457 S.W.2d 228, 232.

A claim filed by a defendant against the plaintiff when sued and in which he seeks to cancel the amount due from him or to recover an amount in excess of the plaintiff's claim against him. In equity practice it is commenced by a declaration in set-off, though under rules practice (which merged law and equity) it has been displaced by the counterclaim. *Fed.R.Civil P. 13*.

The equitable right to cancel or offset mutual debts or cross demands, commonly used by a bank in reducing a customer's checking or other deposit account in satisfaction of a debt the customer owes the bank.

For the distinction between set-off and recoupment, see *Recoupment*. See also *Counterclaim*; *Offset*.

**Set out.** To recite or narrate facts or circumstances; to allege or aver; to describe or to incorporate; as, to set out a deed or contract.

**Settle.** A word of equivocal meaning; meaning different things in different connections, and the particular sense in which it is used may be explained by the context or the circumstances. Accordingly, the term may be employed as meaning to agree, to approve, to arrange, to

ascertain, to liquidate, to come to or reach an agreement, to determine, to establish, to fix, to free from uncertainty, to place, or to regulate.

Parties are said to *settle* an account when they go over its items and ascertain and agree upon the balance due from one to the other. And, when the party indebted pays such balance, he is also said to settle it.

Under U.C.C. § 4-104(j), "settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final.

See also *Adjust*; *Liquidate*; *Settlement*.

*Settled estate.* See *Estate*.

*Settle up.* A term, colloquial rather than legal, which is applied to the final collection, adjustment, and distribution of the estate of a decedent, a bankrupt, or an insolvent corporation. It includes the processes of collecting the property, paying debts and charges, and turning over the balance to those entitled to receive it.

**Settlement.** Act or process of adjusting or determining; an adjusting; an adjustment between persons concerning their dealings or difficulties; an agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other; arrangement of difficulties; composure of doubts or differences; determination by agreement; and liquidation. *Sowers v. Robertson*, 144 Kan. 273, 58 P.2d 1105, 1107. Payment or satisfaction. *Ledbetter v. Hall*, 191 Ark. 791, 87 S.W.2d 996, 999. In legal parlance, implies meeting of minds of parties to transaction or controversy; an adjustment of differences or accounts; a coming to an agreement. *Ezmirian v. Otto*, 139 Cal.App. 486, 34 P.2d 774, 778. To fix or resolve conclusively; to make or arrange for final disposition. *Wager v. Burlington Elevators, Inc.*, 116 N.J.Super. 390, 282 A.2d 437, 441. Agreement to terminate or forestall all or part of a lawsuit. *Gorman v. Holte*, 2 Dist., 164 C.A.3d 984, 211 Cal.Rptr. 34, 37.

Closing; the culmination of a particular transaction involving real property, such as the purchase and sale of the property, the execution of a lease or the making of a mortgage loan. See also *Closing*.

See also *Adjust*; *Closing*; *Liquidate*; *Mary Carter agreement*; *Out-of-court settlement*; *Settle*.

*Contracts.* Adjustment or liquidation of mutual accounts; the act by which parties who have been dealing together arrange their accounts and strike a balance. Also full and final payment or discharge of an account.

*Equity of settlement.* The equitable right of a wife, when her husband sues in equity for the reduction of her equitable estate to his own possession, to have the whole or a portion of such estate settled upon herself and her children. Also a similar right now recognized by the equity courts as directly to be asserted against the husband. Also called the "wife's equity."

*Estates.* The settlement of an estate consists in its administration by the executor or administrator carried so far that all debts and legacies have been paid and the

individual shares of distributees in the corpus of the estate, or the residuary portion, as the case may be, definitely ascertained and determined, and accounts filed and passed, so that nothing remains but to make final distribution. "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing. Uniform Probate Code, § 1-201. *See also Final settlement, below.*

*Family settlement.* *See* Family settlement.

*Final settlement.* This term, as applied to the administration of an estate, is usually understood to have reference to the order of court approving the account which closes the business of the estate, and which finally discharges the executor or administrator from the duties of his trust.

*Structured settlement.* Type of damages settlement whereby Defendant agrees to make periodic payments to injured Plaintiff over his or her life. Commonly such settlement consists of an initial lump-sum payment with future periodic payments funded with an annuity.

*Voluntary settlement.* A settlement of property upon a wife or other beneficiary, made gratuitously or without valuable consideration.

**Settlement date.** In stock transactions, the date upon which an executed order must be settled by the buyer paying for the securities with cash and by the seller delivering the securities sold.

**Settlement option.** In life insurance, a provision for payment made by the insurer with the beneficiary or insured such as for lump sum, periodic payments, and the like.

**Settlement statement.** A statement prepared by an escrow agent or lender, giving a complete breakdown of costs involved in a real estate sale. A separate statement is prepared for the seller and buyer. Such statements are regulated by the federal Real Estate Settlement Procedures Act. *See also* Closing Statement; RES-PA.

**Settler.** A person who, for the purpose of acquiring a pre-emption right, has gone upon the land in question, and is actually resident there.

**Settlor.** The grantor or donor in a deed of settlement. Also, one who creates trust. Restatement, Second, Trusts § 3(1).

One who furnishes the consideration for the creation of a trust, though in form the trust is created by another. *Lehman v. Commissioner of Internal Revenue*, C.C. A.2, 109 F.2d 99, 100.

*See also* Donor; Grantor.

**Set up.** To bring forward or allege, as something relied upon or deemed sufficient. To propose or interpose, by way of defense, explanation, or justification; as, to set up the statute of limitations, *i.e.*, offer and rely upon it as a defense to a claim.

**Seventeenth Amendment.** An Amendment of 1913 to the U.S. Constitution which transferred the election of

U.S. Senators from the State legislature to the voters of the State, but provided that the legislature may empower the governor to make a temporary appointment to fill a vacancy until an election can be held.

**Seventh Amendment.** In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law. This constitutional right of trial by jury is preserved by Fed.R.Civil P. 38. *See also* Trial (*Trial by jury*).

**Seven years' absence.** When a person has been missing and his whereabouts unknown for seven or more years, he is presumed by law in most states to be dead.

**Sever.** To separate, as one from another; to cut off from something; to divide. To part in any way, especially by violence, as by cutting, rending, etc.; as, to sever the head from the body. To cut or break open or apart; to divide into parts. To cut through; to disjoin. In practice, to insist upon a plea distinct from that of other codefendants. To separate the cases of multiple defendants in such a way as to allow separate trials for each or for fewer than all.

*Relief from prejudicial joinder.* If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection *in camera* any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial. Fed.R.Crim.P. 14.

**Severability clause.** *See* Saving clause; Severable statute.

**Severability doctrine.** If promise sued on is related to an illegal transaction, but is not illegal in and of itself, "severability doctrine" applies, and recovery should not be denied, if aid of illegal transaction is not relied on or required, or if promise sued on is remote from or collateral to illegal transaction, or is supported by independent consideration. *Sherwood & Roberts-Yakima, Inc. v. Cohan*, 2 Wash.App. 703, 469 P.2d 574, 578, 582.

**Severable.** Admitting of severance or separation; capable of being divided; separable; capable of being severed from other things to which it was joined, and yet maintaining a complete and independent existence. Capable of carrying on an independent existence; for example, a severable statute is one that can still be valid even if one part of it is struck down as invalid by a court. It is common for statutes to have a severability or savings clause (*q.v.*).

**Severable contract.** A contract which includes two or more promises which can be acted on separately such that the failure to perform one promise does not neces-

sarily put the promisor in breach of the entire agreement. A contract, the nature and purpose of which is susceptible of division and apportionment, having two or more parts, in respect to matters and things contemplated and embraced by it, not necessarily dependent upon each other, or intended by parties as being dependent. *Gross v. Maytex Knitting Mills of Cal.*, 116 C.A.2d 705, 254 P.2d 163, 167. See Separability clause.

When a contract is severable, a breach may be found to constitute a default as to only the specific part breached, thus relieving the defaulting party from liability for damages for breach of the entire contract. See *e.g.*, U.C.C. § 2-612 with respect to installment contracts.

See also Installment contract.

**Severable statute.** A statute if after an invalid portion of it has been stricken out, that which remains is self-sustaining and capable of separate enforcement without regard to the stricken portion, in which case that which remains should be sustained. See Saving clause; Separability clause.

**Several.** More than two, often used to designate a number greater than one. *First Nat. Trust & Savings Bank of San Diego v. Industrial Accident Commission*, 213 Cal. 322, 2 P.2d 347, 351. Each particular, or a small number singly taken. *Nashville, C. & St. L. Ry. v. Marshall County*, 161 Tenn. 236, 30 S.W.2d 268. Separate; individual; independent; severable. In this sense the word is distinguished from "joint." Also exclusive; individual; appropriated. In this sense it is opposed to "common."

As to *several* Count; Covenant; Demise; Fishery; Tail, and Tenancy, see those titles. See also Contribution; Joint and several liability; Joint tort-feasors.

**Several actions.** Where a separate and distinct action is brought against each of two or more persons who are all liable to the plaintiff in respect to the same subject-matter, the actions are said to be "several." If all the persons are joined as defendants in one and the same action, it is called a "joint" action.

**Several inheritance.** An inheritance conveyed so as to descend to two persons severally, by moieties, etc.

**Several liability.** Liability separate and distinct from liability of another to the extent that an independent action may be brought without joinder of others. Exists where each of the parties specifically promises to be individually bound, using language such as "each of us makes this promise severally, not jointly."

**Severally.** Distinctly, separately, apart from others. When applied to a number of persons the expression *severally liable* usually implies that each one is liable alone.

**Severalty.** Owning real or personal property without anyone else sharing in the ownership. A state of separation. An estate in *severalty* is one that is held by a person in his own right only, without any other person being joined or connected with him, in point of interest, during his estate therein. 2 Bl.Comm. 179.

**Severalty, estate in.** An estate which is held by the tenant in his own right only, without any other being joined or connected with him in point of interest during the continuance of his estate. 2 Bl.Comm. 179.

**Severance.** Act of severing, or state of being severed; partition; separation; *e.g.* a claim against a party may be severed and proceeded with separately. Fed.R.Civil P. 21. Separation of cases so that they can be tried separately. Severance divides lawsuit into two or more independent causes, each of which terminates in separate, final and enforceable judgment. *Kansas University Endowment Ass'n v. King*, 162 Tex. 599, 350 S.W.2d 11, 19. See also Severance of actions or claims.

The conversion of a joint tenancy into a tenancy in common. The destruction of any one of the unities of a joint tenancy. It is so called because the estate is no longer a joint tenancy, but is severed. Term may also refer to cutting of the crops, such as corn, wheat, etc., or the separating of anything from the realty.

**Severance damages.** Essence of severance damages is the loss in value to the remainder tract by reason of a partial taking of land and this is predicated on the enhanced value of the remainder tract because of its relationship to whole prior to the taking. *U. S. v. 105.40 Acres of Land, More or Less in Porter County, State of Indiana, C.A.Ind.*, 471 F.2d 207, 211. If only part of single tract is taken, owner's compensation for taking includes any and all elements of value arising out of relation of part taken to entire tract and such damages are often called severance damages. *U. S. v. 26.81 Acres of Land, More or Less, in Benton County, Ark., D.C.Ark.*, 244 F.Supp. 831, 839.

**Severance of actions or claims.** An action of a court in separating the claims of multiple parties and permitting separate actions on each claim or on fewer than all claims at one time. Fed.R.Civ.P. 21. "Severance" divides lawsuit into two or more independent causes, each of which terminates in separate, final and enforceable judgment. *Kansas University Endowment Ass'n v. King*, 162 Tex. 599, 350 S.W.2d 11, 19. See also Severance. Compare Bifurcated trial; Separate trial.

**Severance pay.** Payment by an employer to employee beyond his wages on termination of his employment. Such pay represents a form of compensation for the termination of the employment relation, for reasons other than the displaced employee's misconduct, primarily to alleviate the consequent need for economic readjustment but also to recompense the employee for certain losses attributable to the dismissal. *Mace v. Condé Nast Publications, Inc.*, 155 Conn. 680, 237 A.2d 360, 361. Generally, it is paid when the termination is not due to employee's fault and many union contracts provide for it. See also Golden parachute.

**Severance tax.** A tax on mineral or forest products at the time they are removed or severed from the soil and usually regarded as a form of property taxation. Excise taxes upon privilege or right to sever natural resources from soil and are paid by owner of resource at time it is



produced. *United Gas Pipe Line Co. v. Whitman*, La. App., 390 So.2d 913, 918.

**Severe.** Sharp, grave, distressing, violent, extreme, torture, rigorous, difficult to be endured. *Traders & General Ins. Co. v. Crouch*, Tex.Civ.App., 113 S.W.2d 650, 652.

**Seward, or seaward** /s(y)úwærd/siywórd/. One who guards the sea-coast; *custos maris*.

**Sex.** The sum of the peculiarities of structure and function that distinguish a male from a female organism; the character of being male or female.

**Sexual abuse.** Illegal sex acts performed against a minor by a parent, guardian, relative, or acquaintance.

**Sexual harassment.** As type of employment discrimination, includes sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature prohibited by Federal law (Title VII of 1964 Civil Rights Act) and commonly by state statutes; e.g., Mass. G.L. c. 151B, § 1(18).

**S.F.S.** An abbreviation in the civil law for "*sine fraude sua*" (without fraud on his part).

**Shack.** In old English law, the straying and escaping of cattle out of the lands of their owners into other uninclosed land; an intercommoning of cattle.

**Shakedown.** Extortion of money with threats of physical harm or, in case of police officer, threat of arrest. *See also* Blackmail; Extortion.

**Shall.** As used in statutes, contracts, or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. The word in ordinary usage means "must" and is inconsistent with a concept of discretion. *People v. Municipal Court for Los Angeles Judicial Dist.*, 149 C.A.3d 951, 197 Cal.Rptr. 204, 206. It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears. *People v. O'Rourke*, 124 Cal.App. 752, 13 P.2d 989, 992.

But it may be construed as merely permissive or directory (as equivalent to "may"), to carry out the legislative intention and in cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense. *Wisdom v. Board of Sup'rs of Polk County*, 236 Iowa 669, 19 N.W.2d 602, 607, 608.

**Sham.** False. In taxation, a transaction without substance that will be disregarded for tax purposes. *See also* Dummy.

**Sham pleading.** Those which are inherently false and must have been known by interposing party to be un-

true. *Pentecostal Holiness Church, Inc. v. Mauney*, Fla.App., 270 So.2d 762, 769. A "sham pleading", subject to motion to strike (Fed.R.Civil P. 12(f)), is one that is good in form, but false in fact, and not pleaded in good faith. *Scott v. Meek*, 228 S.C. 29, 88 S.E.2d 768, 769. A pleading is "sham" only when it is so clearly false that it does not raise any bona fide issue. *Fontana v. Town of Hempstead*, 219 N.Y.S.2d 383, 384. Pleading may be stricken as "sham" when its allegations appear false on the face of the pleading. *Kashmir Corp. v. Nelson*, 37 Or.App. 887, 588 P.2d 133, 136.

**Shanghaiing sailors.** /shànháy/. Practice of drugging, tricking, intoxicating or otherwise forcing persons to become sailors—usually to secure advance money or a premium.

Under federal law, the offense of procuring or inducing, or attempting to do so, by force, or threats, or by representations which one knows or believes to be untrue, or while the person is intoxicated or under the influence of any drug, to go on board of any vessel, or agree to do so, to perform service or labor thereon, such vessel being engaged in interstate or foreign commerce, on the high seas or any navigable water of the United States, or knowingly to detain on board such vessel such person, so procured or induced, or knowingly aiding or abetting such things. 18 U.S.C.A. § 2194.

**Share, v.** To partake; enjoy with others; have a portion of.

**Share, n.** A part or definite portion of a thing owned by a number of persons in common and contemplates something owned in common by two or more persons and has reference to that part of the undivided interest which belongs to some one of them. A unit of stock representing ownership in a corporation. "Share" means the unit into which the proprietary interests in a corporation are divided. Rev. Model Bus. Corp. Act, § 1.40. *See also* Distributive share; Share of corporate stock; Stock.

**Share and share alike.** In equal shares or proportions. The words commonly indicate per capita division; and they may be applied to a division between classes as well as to a division among individuals. *See* Per capita.

**Share certificate.** An instrument of a corporation certifying that the person therein named is entitled to a certain number of shares; it is prima facie evidence of his title thereto. Document which evidences participation in a voting trust of shares of a corporation.

**Sharecropper.** Type of tenant farmer who lives on and works the land of another, his compensation being a portion of the crops minus any advances for seed, food, tools, etc.

**Sharecropping.** Type of agricultural arrangement in which the landowner leases land and equipment to tenant or sharecropper who, in turn, gives to the landlord a percentage of the crops as rent.

**Shareholder.** *See* Stockholder (Shareholder).

**Share of corporate stock.** The unit into which the proprietary interests in a corporation are divided. Rev.

Model Bus. Corp. Act. § 1.40. A proportional part of certain rights in a corporation during its existence, and in the assets upon dissolution, and evidence of the stockholder's ratable share in the distribution of the assets on the winding up of the corporation's business. Department of Treasury of Indiana v. Crowder, 214 Ind. 252, 15 N.E.2d 89, 91. See Share certificate; Stock.

**Share split.** See Stock (*Stock split*).

**Share-warrant to bearer.** A warrant or certificate of a corporation, stating that the bearer of the warrant is entitled to a certain number or amount of fully paid up shares or stock. Coupons for payment of dividends may be annexed to it. Delivery of the share-warrant operates as a transfer of the shares or stock.

**Shark repellent.** A slang term that refers to measures undertaken by a corporation to discourage unwanted takeover attempts. See also Poison pill; White knight.

**Sharp.** A "sharp" clause in a mortgage or other security (or the whole instrument described as "sharp") is one which empowers the creditor to take prompt and summary action upon default in payment or breach of other conditions.

**Shave.** Sometimes used to denote the act of obtaining the property of another by oppression and extortion. Also used in an innocent sense to denote the buying of existing notes and other securities for money, at a discount. Hence to charge a man with using money for shaving is not libelous *per se*.

**Shelf registration.** A procedure whereby a company is permitted to register (with SEC) all the debt and equity securities it plans to sell over the next several years. The company can then sell these securities whenever it chooses (*e.g.*, in the most favorable market) without a registration delay. See SEC Rule 415.

**Shelley's Case, Rule in.** "When the ancestor, by any gift or conveyance, taketh an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs in fee or in tail, 'the heirs' are words of limitation of the estate, and not words of purchase." 1 Co.Rep. 93b (1581). This rule has also been expressed as follows: "Where a person takes an estate of freehold, legally, or equitably, under a deed, will, or other writing, and in the same instrument there is a limitation by way of remainder, either with or without the interposition of another estate, of any interest of the same legal or equitable quality to his heirs, or heirs of his body, as a class of persons to take in succession from generation to generation, the limitation to the heirs entitles the ancestor to the whole estate." In re Thorne's Estate, 344 Pa. 503, 25 A.2d 811, 819.

Intimately connected with the quantity of estate which a tenant may hold in realty is the antique feudal doctrine generally known as the "Rule in Shelley's Case," which is reported by Lord Coke in 1 Coke, 93b (23 Eliz. in C.B.). This rule was not first laid down or established in that case, but was then simply admitted in argument as a well-founded and settled rule of law, and has always since been quoted as the "Rule in

Shelley's Case." The rule was adopted as a part of the common law of this country, though it has long since been abolished by most states.

**Shelter.** In statutes relating to the provision of food, clothing, and shelter for one's children, term generally refers to a home with proper environments, as well as protection from the weather.

**Sheriff.** Constitutionally elected officer having responsibilities of law enforcement and administration of sheriff's department. Durrell v. Franklin County Com'rs, Me., 532 A.2d 146, 147. The chief executive and administrative officer of a county, being chosen by popular election. His principal duties are in aid of the criminal courts and civil courts of record; such as serving process, summoning juries, executing judgments, holding judicial sales and the like. He is also the chief conservator of the peace within his territorial jurisdiction. When used in statutes, the term may include a deputy sheriff. He is in general charge of the county jail in most states. See also Constable; Marshal.

*Deputy sheriff.* See Deputy; Under-sheriff.

**Sheriff's deed.** A document giving ownership rights in property to a buyer at a sheriff's sale (*i.e.* a sale held by a sheriff to pay a court judgment against the owner of the property). Deed given at sheriff's sale in foreclosure of a mortgage. The giving of said deed begins a statutory redemption period.

**Sheriff's sale.** A sale, commonly by auction, conducted by a sheriff or other court officer to carry out a decree of execution or foreclosure issued by a court. Examples include sales pursuant to attachments, liens and mortgage defaults. See also Judicial sale.

**Sherman Antitrust Act.** Such Act (15 U.S.C.A. §§ 1-7) prohibits any unreasonable interference, by contract, or combination, or conspiracy, with the ordinary, usual and freely-competitive pricing or distribution system of the open market in interstate trade. See also Clayton Act; Monopoly; Price-fixing; Restraint of trade; Robinson-Patman Act; Rule (*Rule of reason*).

**Shield laws.** Statutes affording a privilege to journalists not to disclose in legal proceedings confidential information or sources of information obtained by them in their professional capacities. Most states have such laws. Cf. N.Y. McKinney's Civil Rights Law § 79-h.

Statutes which restrict or prohibit the use of evidence respecting the chastity of the victim of a rape or other sexual offense. Cf. Fed.R.Evid. 412.

**Shifting.** Changing; varying; passing from one person to another by substitution.

**Shifting clause.** In a settlement at common law, a clause by which some other mode of devolution is substituted for that primarily prescribed. Examples of shifting clauses are: The ordinary name and arms clause, and the clause of less frequent occurrence by which a settled estate is destined as the foundation of a second family, in the event of the elder branch becoming other-

wise enriched. These shifting clauses take effect under the statute of uses.

**Shifting income.** Device used by taxpayers in high tax brackets to move income from themselves to their children and others who are in a lower bracket. Short term or Clifford trusts, as well as gifts to minors, were among the devices used to accomplish this purpose. However, since the Tax Reform Act of 1986 the process of shifting income has become more restrictive. For example, unearned income in excess of a minimal amount of children under the age of 14 is taxed at their parents' highest rate. The Clifford Trust rules have also changed and earnings on assets put into a trust subsequent to March, 1986 is taxed at the grantor's rate.

**Shifting risk.** In insurance, a risk created by a contract of insurance on a stock of merchandise, or other similar property, which is kept for sale, or is subject to change in items by purchase and sale; the policy being conditioned to cover the goods in the stock at any and all times and not to be affected by changes in its composition.

**Shifting severalty.** See *Severalty*.

**Shifting stock of merchandise.** A stock of merchandise subject to change from time to time, in the course of trade by purchases, sales, or other transactions.

**Shifting the burden of proof.** Transferring it from one party to the other, or from one side of the case to the other, when he upon whom it rested originally has made out a *prima facie* case or defense by evidence, of such a character that it then becomes incumbent upon the other to rebut it by contradictory or defensive evidence. See *Burden of proof*.

**Shifting use.** See *Use*.

**Shilling.** Slang term for the act of posing as an innocent bystander at a confidence game but giving aid and assistance to the perpetrators of the scheme as a decoy.

**Shinney /shiniy/.** A local name for a homemade whisky. Moonshine.

**Shin-plaster.** Formerly, a jocose term for a bank-note greatly depreciated in value; also for paper money of a denomination less than a dollar.

**Ship, v.** To put on board a ship; to send by ship. *Harrison v. Fortlage*, 161 U.S. 57, 16 S.Ct. 488, 490, 40 L.Ed. 616. To place (goods) on board a vessel for the purchaser or consignee, to be transported at his risk. In a broader sense, to transport; to deliver to a carrier (public or private) for transportation. To send away, to get rid of. To send by established mode of transportation, as to "carry," "convey," or "transport," which are synonymous and defined, respectively, as "to bear or cause to be borne as from one place to another," and "to carry or convey from one place to another." *Chicago, R. I. & P. Ry. Co. v. Petroleum Refining Co.*, D.C.Ky., 39 F.2d 629, 630. See also *Send*; *Shipment*; *Shipping*.

**Ship, n.** A vessel of any kind employed in navigation.

**General ship.** Where a ship is not chartered wholly to one person, but the owner offers her generally to carry the goods of all comers, or where, if chartered to one person, he offers her to several subfreighters for the conveyance of their goods, she is called a "general" ship, as opposed to a "chartered" one. One which is employed by the charterer or owner on a particular voyage, and is hired to a number of persons, unconnected with each other to convey their respective goods to the place of destination. *Alexander Eccles & Co. v. Strachan Shipping Co.*, D.C.Ga., 21 F.2d 653, 655.

**Ship broker.** An agent for the transaction of business between shipowners and charterers or those who ship cargoes.

**Ship-master.** The captain or master of a merchant ship, appointed and put in command by the owner, and having general control of the vessel and cargo, with power to bind the owner by his lawful acts and engagements in the management of the ship.

**Ship's husband.** In old maritime law, a person appointed by the several part-owners of a ship, and usually one of their number, to manage the concerns of the ship for the common benefit. Generally understood to be the general agent of the owners in regard to all the affairs of the ship in the home port.

**Ship's papers.** The papers which must be carried by a vessel on a voyage, in order to furnish evidence of her national character, the nature and destination of the cargo, and of compliance with the navigation laws. The ship's papers are of two sorts: Those required by the law of a particular country; such as the certificate of registry, license, charter-party, bills of lading and of health and the like. Those required by the law of nations to be on board neutral ships, to vindicate their title to that character; these are the pass-port, sea-brief, or sea-letter, proofs of property, the muster roll or *rôle d'équipage*, the charter-party, the bills of lading and invoices, the log-book or ship's journal, and the bill of health.

**Shipment.** The delivery of goods to a carrier and his issuance of a bill of lading therefor. The transportation of goods. *Pennsylvania R. Co. v. Carolina Portland Cement Co.*, C.C.A.S.C., 16 F.2d 760, 761. Also, the property which is the subject of transportation. *Pennsylvania R. Co. v. Carolina Portland Cement Co.*, C.C.A.S.C., 16 F.2d 760, 761. An order. A consignment of goods as delivered by the carrier. See also *Ship*; *Shipping*.

**Shipment contract.** Any agreement for the sale of goods under which the seller is authorized or required only to bear the expense of putting the goods in the hands of a common carrier and bears the risk of loss only up to that point. A contract for the sale of goods which is silent on a delivery term is presumed to be a shipment contract. See U.C.C. §§ 2-319, 2-504, 2-509(1).

**Ship Mortgage Act.** Federal statute regulating mortgages on ships registered as U.S. vessels. It provides for enforcement of maritime liens in favor of those who

furnish supplies or maintenance to such vessels. 46 U.S.C.A. § 911 *et seq.*

**Shipper.** One who ships goods to another. One who engages the services of a carrier of goods. One who tenders goods to a carrier for transportation; a consignee. The owner or person for whose account the carriage of goods is undertaken. *See also* Consignor.

**Shipping.** Ships in general; ships or vessels of any kind intended for navigation. Relating to ships; as, shipping interests, shipping affairs, shipping business, shipping concerns. Putting on board a ship or vessel, or receiving on board a ship or vessel.

*Law of shipping.* A comprehensive term for all that part of the maritime law which relates to ships and the persons employed in or about them. It embraces such subjects as the building and equipment of vessels, their registration and nationality, their ownership and inspection, their employment (including charter-parties, freight, demurrage, towage, and salvage), and their sale, transfer, and mortgage; also, the employment, rights, powers, and duties of masters and mariners; and the law relating to ship-brokers, ship-agents, pilots, etc. *See* Jones Act; Longshore and Harbor Workers' Compensation Act; Maritime.

**Shipping articles.** A written agreement between the master of a vessel and the mariners, specifying the voyage or term for which the latter are shipped, and the rate of wages. 46 U.S.C.A. § 564.

**Shipping document.** Generic term to describe all papers which cover a shipment in foreign or inland trade such as bill of lading, letter of credit, certificate of insurance and the like. *See also* Ship (*Ship's papers*).

**Shipping order.** Copy of bill of lading which carries shipper's instructions to carrier as to the disposition of the goods.

**Shipping papers.** *See* Shipping document.

**Shipwreck.** The demolition or shattering of a vessel, caused by her driving ashore or on rocks and shoals in the midseas, or by the violence of winds and waves in tempests.

**Shire** /shay(ə)r/. A Saxon word which signified a division; it was made up of an indefinite number of hundreds—later called a county (*Comitatus*).

In England, a county. So called because every county or shire is divided and parted by certain metes and bounds from another.

*Knights of the shire.* *See* that title.

*Shire-clerk.* He that keeps the county court.

*Shire-gemot, scire-gemote, scir-gemot.* (From the Saxon *scir* or *scyre*, county, shire, and *gemote*, a court, an assembly.) Variants of *scyregemote* (*q.v.*) *See also, Shire-mote, below.*

*Shire-man, or scyre-man.* Before the Conquest, the judge of the county, by whom trials for land, etc., were determined.

*Shire-mote.* The assize of the shire, or the assembly of the people, was so called by the Saxons. It was nearly if not exactly, the same as the *scyregemote*, and in most respects corresponded with what were afterwards called the "county courts."

*Shire-reeve* (spelled, also, *Shire rieve*, or *Shire reve*). In Saxon law, the reeve or bailiff of the shire. The *vis-count* of the Anglo-Normans, and the *sheriff* of later times. In early England, the senior law enforcement figure in a country; the forerunner of today's sheriff.

**Shock.** A sudden agitation of the physical or mental sensibilities. A sudden depression of the vital forces of the entire body, or a part of it, marking some profound impression produced upon the nervous system, as by severe injury, a surgical operation, profound emotion, or the like, or a prostration of the bodily functions, as from sudden injury or mental disturbance. *Provident Life & Accident Ins. Co. v. Campbell*, 18 Tenn.App. 452, 79 S.W.2d 292, 295. *See also* Trauma.

*Mental shock.* A sudden agitation of the mind; startling emotion, as the shock of a painful discovery, a shock of grief or joy. *Provident Life and Accident Ins. Co. v. Campbell*, 18 Tenn.App. 452, 79 S.W.2d 292, 295.

*Physical shock.* A blow, impact, collision, concussion, or violent shake or jar, or a violent collision of bodies, or the concussion caused by it; a sudden striking or dashing together or against something. *Provident Life and Accident Ins. Co. v. Campbell*, 18 Tenn.App. 452, 79 S.W.2d 292, 295.

**Shoot.** To strike with something shot; to hit, wound, or kill, with a missile discharged from a weapon. The term generally implies the use of firearms.

**Shop-book rule.** An exception to the hearsay evidence rule, permitting the introduction in evidence of books of original entry made in the usual course of business, and introduced by one with custody of them, and upon general authentication. *Clayton v. Metropolitan Life Ins. Co.*, 96 Utah 331, 85 P.2d 819, 822; *Fed.Evid.R.* 803(6), (7); 28 U.S.C.A. § 1732.

**Shop-books.** Books of original entry kept by trademen, shop-keepers, mechanics, and the like, in which are entered their accounts and charges for goods sold, work done, etc., commonly called "account-books," or "books of account." *See* Shop-book rule.

**Shoplifting.** Larceny of merchandise from a store or business establishment. Theft of goods displayed for sale. *State v. Boyd*, Cir.A.D., 5 Conn.Cir. 648, 260 A.2d 618, 622. Essential constituents of "shoplifting" are (1) willfully taking possession of merchandise offered for sale in mercantile establishment, (2) with intention of converting merchandise to taker's own use without paying purchase price thereof. *Yearwood v. State*, 2 Tenn. Cr.App. 552, 455 S.W.2d 612, 617.

**Shop right rule.** In patent law, the right of an employer to use employee's invention in employer's business without payment of royalty. The "shop right" doctrine is that, where an employee during his hours of employment working with his employer's materials and appli-

ances conceives and perfects an invention for which he obtains a patent, he must accord his employer a non-exclusive right to practice the invention. The employer, however, is not entitled to a conveyance of the invention, this remains the right of the employee-inventor. *U. S. v. Dubilier Condenser Corp.*, 289 U.S. 178, 189, 53 S.Ct. 554, 558, 77 L.Ed. 1114.

**Shop steward.** A union official elected to represent members in a plant or particular department. His duties include collection of dues, recruitment of new members and initial negotiations for settlement of grievances.

**Shore.** Strictly and technically, lands adjacent to the sea or other tidal waters. The lands adjoining navigable waters, where the tide flows and reflows, which at high tides are submerged, and at low tides are bare. *Shively v. Bowlby*, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331. The space bounded by the high and low water marks. *Borax Consolidated v. City of Los Angeles, Cal.*, 296 U.S. 10, 56 S.Ct. 23, 80 L.Ed. 9. And this is also true even though the lands may lie along nonnavigable bodies of water. The term is synonymous with the term "beach." *Littleton v. State*, 66 Haw. 55, 656 P.2d 1336, 1343.

Under the civil law the "shore line" boundary of lands adjoining navigable waters is the line marked by the highest tide.

In connection with salvage, "shore" means the land on which the waters have deposited things which are the subject of salvage, whether below or above ordinary high-water mark.

**Shore lands.** Those lands lying between the lines of high and low water mark. Lands bordering on the shores of navigable lakes and rivers below the line of ordinary high water.

**Short.** Not long; of brief length or duration; not coming up to a measure, standard, requirement, or the like.

A term of common use in the stock and commodity markets. To say that one is "short," in the vernacular of the exchanges, implies only that one has less of a commodity than may be necessary to meet demands and obligations. It does not imply that commodity cannot or will not be supplied upon demand.

In finance and commodity futures, a person is short when he has sold securities or commodities which he does not own at the time of the sale, though he expects to buy them back at a lower price than that at which he sold them. *See also* Short sale.

**Short covering.** Buying stock to return stock previously borrowed to make delivery on a short sale.

**Short form merger.** *See* Merger.

**Short interest.** A short sale is the sale of borrowed stock. The seller expects a price decline that would enable him to purchase an equal number of shares later at a lower price for return to the lender. The "short interest" is the number of shares that haven't been purchased for return to lenders. *See also* Short sale.

**Short lease.** A term applied colloquially, but without much precision, to a lease for a short term (as a month or a year), as distinguished from one running for a long period.

**Shortly after.** In point of time, a relative term, meaning in a short or brief time or manner; soon; presently; quickly.

**Short position.** A short position maybe created when an investor borrows a stock in order to sell it, figuring the price of the stock will decline. The investor is in a "short position" until he purchases stock to repay the lender. *See* Short sale.

**Short sale.** A contract for sale of shares of stock which the seller does not own, or certificates for which are not within his control, so as to be available for delivery at the time when, under rules of the exchange, delivery must be made. *Provost v. U. S.*, 269 U.S. 443, 46 S.Ct. 152, 153, 70 L.Ed. 352. A short sale occurs where a taxpayer sells borrowed property (usually stock) and repays the lender with substantially identical property either held on the date of the short sale or purchased after the sale (expecting to be able to buy the stocks later at a lower price). *See also* Short interest; Short position.

*Short sale against the box.* A short sale where the investor owns enough shares of the security involved to cover the borrowed securities, if necessary. The "box" referred to is the hypothetical safe deposit box in which the certificates are kept. A short sale against the box is not as risky as a regular short sale.

**Short summons.** A process, authorized in some of the states, to be issued against an absconding, fraudulent, or nonresident debtor, which is returnable within a less number of days than an ordinary writ of summons.

**Short swing profits.** Profits made by an "insider" on the purchase and sale of stock of a corporation within a six-month period. *See* Insider.

**Short-term.** Current; ordinarily, due within one year.

*Capital gains or losses.* *See* Capital (*Capital gain*); Capital (*Capital loss*).

**Short-term debt.** Debt obligations which are due and payable on demand or within a year of issuance. Bonds with short maturity dates (*e.g.* one or two years).

**Should.** The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from "ought." It is not normally synonymous with "may," and although often interchangeable with the word "would," it does not ordinarily express certainty as "will" sometimes does.

**Show, n.** Something that one views or at which one looks and at the same time hears.

**Show, v.** To make apparent or clear by evidence, to prove.

**Show cause order.** Court order, decree, execution, etc., to appear as directed, and present to the court such

reasons and considerations as one has to offer why a particular order, decree, etc., should not be confirmed, take effect, be executed, or as the case may be. See *e.g.* 28 U.S.C.A. § 2243 (habeas corpus).

An order to a person or corporation, on motion of opposing party, to appear in court and explain why the court should not take a proposed action. If the person or corporation fails to appear or to give sufficient reasons why the court should take no action, the court will take the action.

**Shower.** One who accompanies a jury to the scene to call the attention of the jurors to specific objects to be noted. *Snyder v. Mass.*, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674. See also *View*.

**Show-up.** One-to-one confrontation between suspect and witness to crime. A type of pre-trial identification procedure in which a suspect is confronted by or exposed to the victim of or witness to a crime. It is less formal than a lineup but its purpose is the same. Commonly, it occurs within a short time after the crime or under circumstances which would make a lineup impracticable or impossible. Due process standards must be met if evidence of such identification is to be admissible in court. *Stovall v. Denno*, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199; *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401. Compare *Lineup*.

**Shut down.** To stop work; usually said of a factory, etc.

**Shut-in royalty.** In oil and gas leases, a royalty payment made to keep the lease in force though there is no production.

**Shyster.** A trickish knave; one who carries on any business or profession in a deceitful, tricky or dishonest way.

**Si actio** /sây æksh(iy)ow/. Lat. The conclusion of a plea to an action when the defendant demands judgment, if the plaintiff ought to have his action, etc. Obsolete.

**Si a jure discedas, vagus eris, et erunt omnia omnibus incerta** /sây èy júriy dâsiydäs, véygäs éhräs, èd éhrânt ómn(i)yæ ómnøbäs insértæ/. If you depart from the law, you will go astray, and all things will be uncertain to everybody.

**Si alicujus rei societates sit et finis negotio impositus est, finitur societas** /sây ælëkyúwjes riyay säsáyætäs sit èt fáynäs nægówsh(iy)ow impózætäs èst, finëtär säsáyætäs/. If there is a partnership in any matter, and the business is ended, the partnership ceases.

**Si aliquid ex solemnibus deficiat, cum æquitas poscit, subveniendum est** /sây ælëkwäd èks sölëmnøbäs dëfîshiyæt, këm èkwëtäs pösæt, sëbvëniyëndäm èst/. If any one of certain required forms be wanting, where equity requires, it will be aided. The want of some of a neutral vessel's papers is strong presumptive evidence against the ship's neutrality, yet the want of any one of them is not absolutely conclusive.

**Si aliquid sapit** /sây ælëkwäd sèypæt/. Lat. If he knows anything; if he is not altogether devoid of reason.

**Si assuetis mederi possis, nova non sunt tentanda** /sây æswiytäs mädíray pösäs, nówvæ nón sànt tëntändæ/. If you can be relieved by accustomed remedies, new ones should not be tried. If an old wall can be repaired, a new one should not be made.

**Si a tutela removendus est** /sây èy t(y)uwtylæ riymowvëndäs èst/. If a guardian do fraud to his ward, he shall be removed from his guardianship.

**Sib** /sib/. Sax. A relative or kinsman. Used in the Scotch tongue, but not now in English.

**Sic** /sík/. Lat. Thus; so; in such manner.

**Sic enim debere quem meliorem agrum suum facere ne vicini deteriore faciat** /sík énëm dëbíriy kwëm miyl(i)yórëm ægrëm s(y)úwëm fäsəriy níy vésáynay dätiriyórëm féysh(iy)æt/. Every one ought so to improve his land as not to injure his neighbor's. A rule of the Roman law.

**Sic interpretandum est ut verba accipiantur cum effectu** /sík èntärprætändäm èst àt vérbæ æksipiyántär këm æfékt(y)uw/. [A statute] is to be so interpreted that the words may be taken with effect.

**Sick.** Affected with disease, ill, indisposed.

**Sick leave.** Period allowed by an employer to an employee for the employee's sickness either with or without pay but with no loss of seniority or other benefits.

**Sickness.** Illness; disease. An ailment of such a character as to affect the general soundness and health; not a mere temporary indisposition, which does not tend to undermine and weaken the constitution.

**Si constet de persona** /sây kónstæt diy përsównæ/. Lat. If it be certain who is the person meant.

**Si contingat** /sây kántíngæt/. Lat. If it happen. Words of condition in old conveyances.

**Sicut alias** /síkäd èyl(i)yæs/. Lat. As at another time, or heretofore. This was a second writ sent out when the first was not executed.

**Sic utere tuo ut alienum non lædas** /sík yúwtəriy t(y)úwów èt æliyiynëm nòn líydäs/. Common law maxim meaning that one should use his own property in such a manner as not to injure that of another. 1 Bl.Comm. 306. *Chapman v. Barnett*, 131 Ind.App. 30, 169 N.E.2d 212, 214.

**Sicut me deus adjuvet** /síkæt míy diyæs æjævæt/. Lat. So help me God.

**Sicut natura nil facit per saltum, ita nec lex** /síkæt netyúré nil féysæt pär sóltäm, áytæ nék léks/. In the same way as nature does nothing by a bound, so neither does the law.

**Side.** The margin, edge, verge, or border of a surface; any one of the bounding lines of the surface.

The party or parties collectively to a lawsuit considered in relation to his or their opponents, *i.e.*, the plaintiff side, or the defendant side.

A province or field of jurisdiction of courts. Thus, the same court is sometimes said to have different *sides*, as

an "equity side" and a "law side"; though with the procedural merger of law and equity in most states such side distinctions have been abolished.

**Side-bar.** Refers to position at side of the judge's bench where trial counsel and judge discuss matters out of hearing of jury. It is important that such conferences be recorded if they are to be considered on appeal. *New Jersey v. Green and Guida*, 129 N.J.Super. 157, 322 A.2d 495, 499.

**Side-bar rules.** In English practice, there are some rules which the courts authorize their officers to grant as a matter of course without formal application being made to them in open court, and these are technically termed "side-bar rules," because formerly they were moved for by the attorneys at the side bar in court; such, for instance, was the rule to plead, which was an order or command of the court requiring a defendant to plead within a specified number of days. Such also were the rules to reply, to rejoin, and many others, the granting of which depended upon settled rules of practice rather than upon the discretion of the courts, all of which have been rendered unnecessary by statutory changes.

**Side lines.** In commercial usage, lines of goods sold or businesses followed in addition to one's principal articles or occupation.

In mining law, the side lines of a mining claim are those which measure the extent of the claim on each side of the middle of the vein at the surface. They are not necessarily the side lines as laid down on the ground or on a map or plat; for if the claim, in its longer dimension, crosses the vein, instead of following it, the platted side lines will be treated in law as the end lines, and vice versa. *Argentine Min. Co. v. Terrible Min. Co.*, 122 U.S. 478, 7 S.Ct. 1356, 30 L.Ed. 1140; *Del Monte Min. Co. v. Last Chance Min. Co.*, 171 U.S. 55, 18 S.Ct. 895, 43 L.Ed. 72.

**Side reports.** A term sometimes applied to unofficial volumes or series of reports, as contrasted with those prepared by the official reporter of the court, or to collections of cases omitted from the official reports.

**Sidesmen.** In ecclesiastical law, these were originally persons whom, in the ancient episcopal synods, the bishops were wont to summon out of each parish to give information of the disorders of the clergy and people, and to report heretics. In process of time they became standing officers, under the title of "synodsmen," "sidesmen," or "questmen." The whole of their duties devolved by custom upon the church-wardens of a parish.

**Sidewalk.** That part of a public street or highway designed for the use of pedestrians, being exclusively reserved for them, and constructed somewhat differently than other portions of the street.

**Si duo in testamento pugnancia reperientur, ultimum est ratum** /sáy d(y)úwów in tĕstámĕntow pəgnánsh(iy)ə rəpĕhriyĕntər, áltəməm ěst réytəm/. If two conflicting provisions are found in a will, the last is observed.

**Si fecerit te securum** /sáy fĕsĕrĕt tĭy sĕkyúrĕm/. Lat. If he makes you secure. In practice. The initial and emphatic words of that description of original writ which directs the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gives the sheriff security effectually to prosecute his claim. 3 Bl.Comm. 274.

**Sight.** The power of seeing; the faculty of vision or of perceiving objects; or the act of seeing, and perception of objects through the eyes.

**Sight draft.** An instrument payable on proper presentment (*i.e.* payable on demand). U.C.C. § 3-108. A bill of exchange for the immediate collection of money. *United Ben. Fire Ins. Co. v. First Nat. Bank of Ariz.*, Phoenix, 1 Ariz.App. 550, 405 P.2d 488, 490.

Bills of exchange are frequently drawn payable at sight or certain number of days or months after sight. U.C.C. § 3-109(1)(b).

A demand for payment drawn by a person to whom money is owed. The draft is presented to the borrower's (the debtor's) bank in expectation that the borrower will authorize its bank to disburse the funds.

*See also Demand (Demand note).*

**Sigil** /sijəl/. In old English law, a seal, or a contracted or abbreviated signature used as a seal.

**Sigillum** /səjiləm/. Lat. In old English law, a seal; originally and properly a seal impressed upon wax.

**Sigla** /siglə/. Lat. In Roman law, marks or signs of abbreviation used in writing.

**Sign.** To affix one's name to a writing or instrument, for the purpose of authenticating or executing it, or to give it effect as one's act. To attach a name or cause it to be attached to a writing by any of the known methods of impressing a name on paper. To affix a signature to; to ratify by hand or seal; to subscribe in one's own handwriting. To make any mark, as upon a document, in token of knowledge, approval acceptance, or obligation. *See also Cross; Execution; Mark; Signature.*

All pleadings must be signed by attorney of record. Fed.R.Civil P. 11.

**Signa** /sínə/. The plural of *signum* (*q.v.*).

**Signal.** A means of communication, as between vessels at sea or between a vessel and the shore. The international code of signals for the use of all nations assigns arbitrary meanings to different arrangements of flags or displays of lights.

**Signatorius annulus** /sínətóriyəs ányĕləs/. Lat. In the civil law, a signet-ring; a seal-ring.

**Signatory** /sínət(ó)riy/. A term used in diplomacy to indicate a nation which is a party to a treaty. In general, a person who signs a document personally or through his agent and who becomes a party thereto.

**Signature.** The act of putting one's name at the end of an instrument to attest its validity; the name thus written. A signature may be written by hand, printed, stamped, typewritten, engraved, photographed, or cut from one instrument and attached to another, and a signature lithographed on an instrument by a party is

sufficient for the purpose of signing it; it being immaterial with what kind of instrument a signature is made. *Maricopa County v. Osborn*, 60 Ariz. 290, 136 P.2d 270, 274. And whatever mark, symbol, or device one may choose to employ as representative of himself is sufficient.

The name or mark of a person, written by that person at his or her direction. In commercial law, any name, word, or mark used with the intention to authenticate a writing constitutes a signature. UCC §§ 1-201(39), 3-401(2). *See also* Cross; Sign; Signed.

A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature. U.C.C. § 3-401.

The signature to a deed may be made either by the grantor affixing his own signature, or by adopting one written for him, or by making his mark, or impressing some other sign or symbol on the paper by which the signature, though written by another for him, may be identified.

*Public Officials.* Many states have adopted the Uniform Facsimile Signatures of Public Officials Act.

*Unauthorized signature.* One made without actual, implied or apparent authority and includes a forgery. U.C.C. § 1-201(43).

**Signature card.** A card which a bank or other financial institution requires of its customers and on which the customer puts his signature and other information. It becomes a permanent file and permits the bank to compare the signature on the card with a signature on checks, withdrawal slips and other documents.

**Signed.** Includes any symbol executed or adopted by a party with present intention to authenticate a writing. U.C.C. § 1-201(39). *See also* Signature.

**Signify.** To make known by signs or words; express; communicate; announce; declare.

**Signing judgment.** *See* Sign.

**Signum** /signəm/. Lat. *Roman and civil law.* A sign; a mark; a seal. The seal of an instrument.

A species of proof. By "*signa*" were meant those species of *indicia* which come more immediately under the cognizance of the senses; such as stains of blood on the person of one accused of murder, indications of terror at being charged with the offense, and the like.

*Saxon law.* The sign of a cross prefixed as a sign of assent and approbation to a charter or deed.

**Si ingratum dixeris, omnia dixeris** /sáy ingrétəm díksərəs, ómn(i)yə díksərəs/. If you affirm that one is ungrateful, in that you include every charge. A Roman maxim.

**Si ita est** /sáy áytə èst/. Lat. If it be so. Emphatic words in the old writ of mandamus to a judge, commanding him, if the fact alleged be truly stated (*si ita est*), to affix his seal to a bill of exceptions.

**Si judicas, cognosce** /sáy júwdəkəs kognósiy/. If you judge, understand.

**Silence.** The state of a person who does not speak, or of one who refrains from speaking. In the law of estoppel, "silence" implies knowledge and an opportunity to act upon it. *Pence v. Langdon*, 99 U.S. 578, 581, 25 L.Ed. 420; *Stewart v. Wyoming Cattle Ranch Co.*, 128 U.S. 383, 9 S.Ct. 101, 32 L.Ed. 439.

**Silence, estoppel by.** Such estoppel arises where person is under duty to another to speak or failure to speak is inconsistent with honest dealings.

An agreement inferred from silence rests upon principle of "estoppel." *Letres v. Washington Co-op. Chick Ass'n*, 8 Wash.2d 64, 111 P.2d 594, 596. Silence, to work "estoppel", must amount to bad faith, *Wise v. United States*, D.C.Ky., 38 F.Supp. 130, 134; and, elements or essentials of such estoppel include: change of position to prejudice of person claiming estoppel, *Sherlock v. Greaves*, 106 Mont. 206, 76 P.2d 87, 91; damages if the estoppel is denied, *James v. Nelson*, C.C.A.Alaska, 90 F.2d 910, 917; duty and opportunity to speak, *Merry v. Garibaldi*, 48 Cal.App.2d 397, 119 P.2d 768, 771; ignorance of facts by person claiming estoppel, *Nelson v. Chicago Mill & Lumber Corporation*, C.C.A.Ark., 76 F.2d 17; inducing person claiming estoppel to alter his position; knowledge of facts and of rights by person estopped, *Consolidated Freight Lines v. Groenen*, 10 Wash.2d 672, 117 P.2d 966, 968; misleading of party claiming estoppel, *Lincoln v. Bennett*, Tex.Civ.App., 135 S.W.2d 632, 636; reliance upon silence of party sought to be estopped, *New York Life Ins. Co. v. Talley*, C.C.A. Iowa, 72 F.2d 715, 718.

**Silence of accused.** A person under arrest may maintain silence as to all matters connected with the arrest and crime except that he must furnish his correct name, permit fingerprinting, as well as voice and writing exemplars. His silence may not be commented upon at trial nor may any inference be drawn from the fact of his silence. If a defendant refuses to plead, the court will enter a plea of not guilty. Fed.R.Crim.P. 11(a).

**Silentiarius** /səlènshiyériyəs/. In English law, one of the privy council; also an usher who keeps good order in court.

**Silent leges inter arma** /sáylənt líyjiy intər ármə/. The power of law is suspended during war.

**Silent partner.** An investor in a firm who takes no active part in its management but who shares in its profits and losses. A dormant or limited partner; one whose name does not appear in the firm, and who takes no active part in the business, but who has an interest in the concern, and shares the profits, and thereby becomes a partner, either absolutely, or as respects third persons. *See* Limited partner.

**Silent witness theory.** This theory permits admission of photographic evidence at trial as substantive, rather than merely demonstrative, evidence, where there is proof that photographs have not been altered, and no witness is required to testify that photograph accurately



represents what he or she observed. *Buck v. State, Ind.*, 453 N.E.2d 993, 996.

**Silver certificates.** Species of paper money formerly in circulation in this country and which was redeemable in silver. Silver certificates have been replaced by federal reserve notes.

**Silver platter doctrine.** Evidence obtained illegally by state officials was formerly admissible in federal prosecutions because no federal official had participated in the violation of the defendant's rights. However, this rule no longer obtains. *Elkins v. U. S.*, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669.

**Si meliores sunt quos ducit amor, plures sunt quos corrigit timor** /sây miylíyóriyz sânt kwòws d(y)úwsst éymor, pl(y)úriyz sânt kwòw kóràjet táymor/. If those are better who are led by love, those are the greater number who are corrected by fear.

**Similar.** Nearly corresponding; resembling in many respects; somewhat like; having a general likeness, although allowing for some degree of difference. *Gangi v. Sears, Roebuck & Co.*, 33 Conn.Sup. 81, 360 A.2d 907, 908. Word "similar" is generally interpreted to mean that one thing has a resemblance in many respects, nearly corresponds, is somewhat like, or has a general likeness to some other thing but is not identical in form and substance, although in some cases "similar" may mean identical or exactly alike. It is a word with different meanings depending on context in which it is used. *Guarantee Mut. Life Ins. Co. v. Harrison, Tex.Civ. App.*, 358 S.W.2d 404, 406.

**Similar happenings.** In law of evidence, generally things that happened at a time different from the time in dispute in the suit are not admissible because they are not material or relevant to what occurred at the disputed time. Where such happenings are admissible, the proof is limited to such issues as control of premises, or conditions which may have persisted.

**Similar sales.** In law of evidence, when market value is in issue, sales of similar property is admissible to prove value.

There is no specific rule to determine the degree of similarity necessary for evidence of a sale of other property to be admissible in a condemnation action. "Similar" does not mean "identical," and other sales need be only sufficiently similar in character and locality to provide the jury some reasonable basis for comparison. *Lake County Forest Preserve Dist. v. Reliance Standard Life Ins. Co.*, 29 Ill.App.3d 145, 329 N.E.2d 344, 349. "Similarity" necessary to permit evidence of sale of one property to establish market value of another does not mean identical, but does require reasonable resemblance taking into consideration such factors as location, size and sale price; conditions surrounding sale, such as date and character of sale; business and residential advantages or disadvantages; and unimproved, improved or developed nature of land. *Arkansas State Highway Commission v. Witkowski*, 236 Ark. 66, 364 S.W.2d 309, 311.

**Similiter** /səmilətər/. Lat. In common law pleading, means likewise; the like. The name of the short formula used either at the end of pleadings or by itself, expressly of the acceptance of an issue of fact tendered by the opposite party; otherwise termed a "joinder in issue." The plaintiff's reply, that, as the defendant has put himself upon the country, he, the plaintiff, does the like. It occurs only when the plea has the conclusion to the country, and its effect is to join the plaintiff in the issue thus tendered by the defendant.

**Similitudo legalis est casuum diversorum inter se collatorum similis ratio; quod in uno similitium valet, valebit in altero. Dissimilium, dissimilis est ratio** /səmilətyúwdow ləgéləs èst kéysyuwəm dävərsórəm întər siy kòlètórəm símələs réysh(iy)ow; kwòd in yúnow səmíliyəm vələt, vəllybat in óltərow. díssímíliyəm díssímələs èst réysh(iy)ow/. Legal similarity is a similar reason which governs various cases when compared with each other; for what avails in one similar case will avail in the other. Of things dissimilar, the reason is dissimilar.

**Simonia est voluntas sive desiderium emendi vel vendendi spiritualia vel spiritualibus adherentia. Contractus ex turpi causa et contra bonos mores** /səmóniyə èst vələntəs sáyviy dèzədíríyəm əménday vèl vendénday spíhrətyuwéyl(i)yə vèl spíhrətyuwéyləbas ədhərənsh(iy)ə. kənt්රəktəs èks tərpay kòzə èt kònt්රə bównows móríyz/. Simony is the will or desire of buying or selling spiritualities, or things pertaining thereto. It is a contract founded on a bad cause, and against morality.

**Simony** /síməniy/. In English ecclesiastical law, the corrupt presentation of any one to an ecclesiastical benefice for money, gift, or reward. 2 Bl.Comm. 278. An unlawful contract for presenting a clergyman to a benefice. The buying or selling of ecclesiastical preferments or of things pertaining to the ecclesiastical order. An unlawful agreement to receive a temporal reward for something holy or spiritual. Giving or receiving any material advantage in return for spiritual promotion, whether such advantage be actually received or only stipulated for.

**Simple** /símplə/. Lat. In the civil law, the single value of a thing.

**Simple.** Pure; unmixed; not compounded; not aggravated; not evidenced by sealed writing or record.

As to *simple* Assault; Average; Battery; Blockade; Bond; Confession; Contract; Deposit; Imprisonment; Interest; Larceny; Obligation; and Trust, see those titles.

**Simple kidnapping.** A statutory form of unlawful imprisonment of a person which is not aggravated as in the case of child stealing or kidnapping for ransom. See also Kidnapping.

**Simple negligence.** Such consists of failure to exercise for protection of others that degree of care and caution that would, under prevailing circumstances, be exercised by ordinarily prudent person. *Pettingell v. Moede*, 129 Colo. 484, 271 P.2d 1038, 1042, 1043. Inadvertence or

mistake, usually caused by heedlessness or carelessness on the face of a risk which reasonable person would not take. *Popov v. City of Margate, D.C.N.J., 476 F.Supp. 1237, 1244. See Negligence.*

**Simple robbery.** Gist of crime is the putting in fear and taking of property of another by force or intimidation. *People v. Small, 177 Colo. 118, 493 P.2d 15, 19. See also Robbery.*

**Simplex** /simplèks/. Lat. Simple; single; pure; unqualified.

**Simplex et pura donatio dici poterit, ubi nulla est adjecta conditio nec modus** /simplèks èt pyùrà dánysh(iy)ow dáysay pótàrèt, yúwbay nálà èst àxéktà kándish(iy)ow nèk mówdəs/. Agift is said to be pure and simple when no condition or qualification is annexed.

**Simplicita est legibus amica; et nimia subtilitas in jure reprobatur** /simplisètà èst liyjəbəs əmáykə, èt nímiyə səbtíltətəs in júriy rèprəbétər/. Simplicity is favorable to the laws; and too much subtlety in law is to be reprobated.

**Simpliciter** /simplisètər/. Lat. Simply; without ceremony; in a summary manner.

Directly; immediately; as distinguished from inferentially or indirectly.

By itself; by its own force; *per se*.

**Simplified Employee Pension Plan (SEP).** An individual retirement account or individual retirement annuity which an employer establishes for his or her employees. See I.R.C. § 408(k). *See also Individual Retirement Account (I.R.A.).*

**Simulate.** To assume the mere appearance of, without the reality; to assume the signs or indications of, falsely; to counterfeit; feign; imitate; pretend. To engage, usually with the co-operation or connivance of another person, in an act or series of acts, which are apparently transacted in good faith, and intended to be followed by their ordinary legal consequences, but which in reality conceal a fraudulent purpose of the party to gain thereby some advantage to which he is not entitled, or to injure, delay, or defraud others.

**Simulated contract.** One which, though clothed in concrete form, has no existence in fact. It may at any time and at the demand of any person in interest be declared a sham and may be ignored by creditors of the apparent vendor.

**Simulated fact.** In the law of evidence, a fabricated fact; an appearance given to things by human device, with a view to deceive and mislead.

**Simulated judgment.** One which is apparently rendered in good faith, upon an actual debt, and intended to be collected by the usual process of law, but which in reality is entered by the fraudulent contrivance of the parties, for the purpose of giving to one of them an advantage to which he is not entitled, or of defrauding or delaying third persons.

**Simulated sale.** One which has all the appearance of an actual sale in good faith, intended to transfer the ownership of property for a consideration, but which in reality covers a collusive design of the parties to put the property beyond the reach of creditors, or proceeds from some other fraudulent purpose. It results when parties execute a formal act of sale of a thing for which no price is paid or is intended to be paid, and such sale has no legal effect and no title is transferred thereby. If there exists an actual consideration for transfer evidenced by alleged act of sale, no matter how inadequate it be, the transaction is not a "simulated sale", and, even though it be charged to be in fraud of vendor's creditors, such transfer cannot be set aside as a simulation although it may be subject to annulment on the ground of fraud or the giving of undue preference.

**Simulatio latens** /sim(y)əléysh(iy)ow léytenz/. Lat. A species of feigned disease, in which disease is actually present, but where the symptoms are falsely aggravated, and greater sickness is pretended than really exists.

**Simulation.** Assumption of appearance which was feigned, false, deceptive, or counterfeit. *United States v. Peppas, D.C.Cal., 13 F.Supp. 669, 670. See also Personate; Impersonation; Simulate.*

In the civil law, misrepresentation or concealment of the truth; as where parties pretend to perform a transaction different from that in which they really are engaged. A feigned, pretended act; one which assumes the appearance without the reality and, being entirely without effect, it is held not to have existed, and, for that reason, it may be disregarded or attacked collaterally by any interested person. *Freeman v. Woods, La.App., 1 So.2d 134, 136.*

**Simul cum** /sáyməl kəm/. Lat. Together with. In actions of tort and in prosecutions, where several persons united in committing the act complained of, some of whom were known and others not, it was usual to allege in the declaration or indictment that the persons therein named did the injury in question, "together with (*simul cum*) other persons unknown." In cases of riots, it was usual to charge that A B, together with others unknown, did the act complained of.

**Simul et semel** /sáyməl èt siyməl/. Lat. Together and at one time.

**Simultaneous.** A word of comparison meaning that two or more occurrences or happenings are identical in time.

**Simultaneous Death Act.** A Uniform State Law (adopted by most states) which provides that where passage of title to property depends upon the time of one's death, if there is insufficient evidence that persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived unless the Act provides otherwise. *See also Uniform Probate Code, § 2-104.*

**Simultaneous death clause.** A clause in a will which provides for the disposition of property in the event that there is no evidence as to the priority of time of death of

the testator and another, commonly the testator's spouse. See Uniform Probate Code, § 2-104.

**Since.** This word's proper signification is "after," and in its apparent sense it includes the whole period between the event and the present time. "Since" a day named, does not necessarily include that day.

**Sine /sáyniy/. Lat.** Without.

**Sine animo revertendi /sáyniy éñémow riyvörténday/. Without the intention of returning.**

**Sine assensu capituli /sáyniy əséns(y)uw kápítýəlay/. Without the consent of the chapter. In old English practice, a writ which lay where a dean, bishop, prebendary, abbot, prior, or master of a hospital alienated the lands holden in the right of his house, abbey, or priory, without the consent of the chapter; in which cases his successor might have this writ.**

**Sine consideratione curiæ /sáyniy kənsidərəyshiyówniy kyúriyiy/. Without the judgment of the court.**

**Sinecure /sáyñakyùr/sin'/. An office which yields a revenue to the incumbent, but makes little or no demand upon his time or attention.**

**Sine decreto /sáyniy dəkriyotow/. Without authority of a judge.**

**Sine die /sáyniy dáy(iy)/. Without day; without assigning a day for a further meeting or hearing. Hence, a legislative body adjourns sine die when it adjourns without appointing a day on which to appear or assemble again. State ex rel. Jones v. Atterbury, Mo., 300 S.W.2d 806, 811.**

A final adjournment; final dismissal of a cause. *Quod eat sine die*, that he go without day; the old form of a judgment for the defendant, *i.e.*, a judgment discharging the defendant from any further appearance in court.

**Sine hoc quod /sáyniy hòk kwód/. Without this, that. A technical phrase in old pleading, of the same import with the phrase "absque hoc quod."**

**Sine numero /sáyniy n(y)úwmərow/. Without stint or limit. A term applied to common.**

**Sine possessione usucapio procedere non potest /sáyniy pəzəshiyówniy yúwsyukéyp(i)yow prəsiydəriy nòn pówtəst/. There can be no prescription without possession.**

**Sine prole /sáyniy prówliy/. Without issue. Used in genealogical tables, and often abbreviated into "s.p."**

**Sine qua non /sáyniy kwèy nón/. Without which not. That without which the thing cannot be. An indispensable requisite or condition.**

**Single.** One only, being an individual unit; alone; one which is abstracted from others. State ex rel. Nelson v. Board of Com'rs of Yellowstone County, 111 Mont. 395, 109 P.2d 1106, 1107. Unitary; detached; individual; affecting only one person; containing only one part, article, condition, or covenant. Unmarried; the term being also applicable to a widow, and occasionally even

to a married woman living apart from her husband. Sometimes, principal; dominating.

As to *single* Adultery; Bill; Bond; Combat; Demise; Entry; Escheat; Obligation; Original; and Tract of land, see those titles.

**Single creditor.** One having a lien only on a single fund;—distinguished from double creditor, who is one having a lien on two funds.

**Single-entry bookkeeping.** In accounting, a simple system of recordkeeping in which each transaction is recorded in a single record, such as a checkbook or a list of accounts receivable.

**Single juror charge.** The charge that, if there is any juror who is not reasonably satisfied from the evidence that plaintiff should recover a verdict against the defendant, jury cannot find against defendant.

**Single publication rule.** Under the "single publication rule," where an issue of a newspaper or magazine, or an edition of a book, contains a libelous statement, plaintiff has a single cause of action and the number of copies distributed is considered as relevant for damages but not as a basis for a new cause of action. Barres v. Holt, Rinehart and Winston, Inc., 131 N.J.Super. 371, 330 A.2d 38. General theory of this rule is that a defendant should be subject to suit only once for each mass publication of libel, but that in that one action plaintiff may introduce evidence of all sales in all jurisdictions to show extent of his injury. Novel v. Garrison, D.C.Ill., 294 F.Supp. 825, 830.

**Singular.** Each; as in the expression "all and singular." Also, individual. In grammar, the singular is used to express only one. In law, the singular frequently includes the plural. As to *singular* Successor; and Title, see those titles.

**Singuli in solidum tenentur /síngyəlay in solədəm tənéntər/. Each is bound for the whole.**

**Sinking fund.** Assets and their earnings earmarked for the retirement of bonds or other long-term obligations. An obligation sometimes imposed pursuant to the issuance of debt securities or preferred shares by which the issuer is required each year to set aside a certain amount to enable the issuer to retire the securities when they mature. A sinking fund may be allowed to accumulate or may be used each year to redeem a portion of the outstanding securities.

A fund (usually invested), which will be used to replace improvements as needed. Most commonly set aside from the income of income producing property.

A fund arising from particular taxes, imposts or duties, which is appropriated toward the payment of the interest due on a public loan, and for the payment of the principal. Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918, 925.

In general accounting, segregated assets that are being accumulated for a specific purpose. In governmental accounting, a fund established to accumulate resources for the retirement of bonds but not for the

payment of interest, which is handled through the general fund or a special revenue fund.

**Sinking fund debenture.** A type of debenture which is backed by a provision for sinking fund (*q.v.*).

**Sinking fund method of depreciation.** The periodic charge is an amount so that when the charges are considered to be an annuity, the value of the annuity at the end of depreciable life is equal to the acquisition cost of the asset. In theory, the charge for a period ought also to include interest on the accumulated depreciation at the start of the period as well. A fund of cash is not necessarily, or even usually, accumulated.

**Si non appareat quid actum est, erit consequens ut id sequamur quod in regione in qua actum est frequentatur** /sáy nòn apérijət kwid áktəm èst, éhrət kənsiýkwənz ət id səkwéymər kwòd in riýjiýówniy in kwéy áktəm èst friýkwəntéýtər/. If it does not appear what was agreed upon, the consequence will be that we must follow that which is the usage of the place where the agreement was made.

**Si non omnes** /sáy nòn ómniýz/. Lat. In English practice, a writ of association of justices whereby, if all in commission cannot meet at the day assigned, it is allowed that two or more may proceed with the business.

**Si nulla sit conjectura quæ ducat alio, verba intelligenda sunt ex proprietate, non grammatica sed populari ex usu** /sáy nálə sit kənjekt(y)urə kwiy d(y)úwkwət éyl(i)yow, vərbə intələjəndə sənt əks prəprəyətéytiy, nòn grəmátakə səd popyələray əks yúwsyuw/. If there be no inference which leads to a different result, words are to be understood according to their proper meaning, not in a grammatical, but in a popular and ordinary, sense.

**Si paret** /sáy pərat/. Lat. If it appears. In Roman law, words used in the formula by which the prætor appointed a judge, and instructed him how to decide the cause.

**SIPC.** See Securities Investor Protection Act.

**Sipessocua.** In old English law, a franchise, liberty, or hundred.

**Si plures conditiones ascriptæ fuerunt donationi conjunctim, omnibus est parendum; et ad veritatem copulative requiritur quod utraque pars sit vera, si divisim, quilibet vel alteri forum satis est obtemperare; et in disjunctivis, sufficit alteram partem esse veram** /sáy pl(y)úriýz kəndishiyówniyz əskriptiy fyuwirənt dənəyshiyównay kənjəktəm, ómnəbəs èst pərəndəm, èt əd véhrstéýtəm kopyələtáyviy rəkwihrətər kwòd yuwtréýkwiy párz sit vírə, sáy dəváyzəm, kwáyləbət vél óltəray fóram séytəs èst obtəmpərəriy, èt in disjənjktáyvəs, səsfasət óltərəm pártəm ésiy vírəm/. If several conditions are conjunctively written in a gift, the whole of them must be complied with; and with respect to their truth, it is necessary that every part be true, taken jointly; if the conditions are separate, it is sufficient to comply with either one or other of them; and being disjunctive, that one or the other be true.

**Si plures sint fidejussores, quotquot erunt numero, singuli in solidum tenentur** /sáy pl(y)úriýz sint fáydajəsóriýz kwótkwot éhrənt n(y)úwmərow, síngýláy in sólədəm tənéntər/. If there are more sureties than one, how many soever they shall be, they shall each be held for the whole.

**Si prius** /sáy práyəs/. Lat. In old practice, if before. Formal words in the old writs for summoning juries.

**Si quidem in nomine, cognomine, prænominē legatarii testator erraverit, cum de persona constat, nihilominus valet legatum** /sáy kwáydəm in nómaniý, kognóməniý, priýnóməniý legatəriyay testéýtər éhrəvərət, kəm díy pərsównə kónstət, nay(h)ələmáynəs vélət ləgéýtəm/. Although a testator may have mistaken the *nomen*, *cognomen*, or *prænomen* of a legatee, yet, if it be certain who is the person meant, the legacy is valid.

**Si quid universitati debetur singulis non debetur, nec quod debet universitas singuli debent** /sáy kwid yúwnəvərsətéýtay dəbiýtar, síngýləs nòn dəbiýtar, nék kwòd débət yúwnəvərsətəs síngýláy débənt/. If anything be owing to an entire body [or to a corporation], it is not owing to the individual members; nor do the individuals owe that which is owing by the entire body. 1 Bl.Comm. 484.

**Si quis** /sáy kwis/. Lat. In the civil law, if any one. Formal words in the prætorian edicts. The word "quis," though masculine in form was held to include women.

**Si quis cum totum petiisset partem petat, exceptio rei judicata vocet** /sáy kwis kəm tówtəm pətiýsət pártəm pétət, əksépsəh(i)yow riýay júwdəkéýtiy vówsət/. If a party, when he should have sued for an entire claim, sues only for a part, the judgment is *res judicata* against another suit.

**Si quis custos fraudem pupillo fecerit, a tutela removendus est** /sáy kwis kóstəs fródəm pyuwpiłow fiýsrət, èy tyuwtylə rəmwəwendus èst/. If any guardian should perform a fraudulent act against a ward, he must be removed from his charge.

**Si quis prægnantem uxorem reliquit, non videtur sine liberis decessisse** /sáy kwis prəgnántəm əksórəm rəlīkwət, nòn vədiýtər sáyniý líbərəs dəsiýsiýy/. If a man dies, leaving his wife pregnant, he shall not be considered to have died without children. A rule of the civil law.

**Si quis, unum percusserit, cum alium percutere vellet, in feloniam tenetur** /sáy kwis, yúwnəm pərkəsərət, kəm éyl(i)yəm pərkýúwtəriy vélət, in fəlówn(i)yə təniýtər/. If a man kill one, meaning to kill another, he is held guilty of felony.

**Si recognoscat** /sáy rəkəgnóskət/. Lat. If he acknowledge. In old practice. A writ which lay for a creditor against his debtor for money numbered (*pecunia numerata*) or counted; that is, a specific sum of money, which the debtor had acknowledged in the county court, to owe him, as received in *pecuniis numeratis*.

**Sister.** A woman who has the same father and mother with another, or has one of them only. In the first case, she is called sister, simply; in the second, half-sister. The word is the correlative of "brother."

**Sister corporation.** Two corporations having common or substantially common ownership by same shareholders. *Battelstein Inv. Co. v. U. S., D.C.Tex., 302 F.Supp. 320, 322.*

**Sister-in-law.** Sister of one's spouse; wife of one's brother; wife of one's spouse's brother.

**Si suggestio non sit vera, literæ patentis vacuæ sunt** /sáy sǎgjést(i)yow nón sit vírə, lítəriy páténtiyz vákýu-wiy sánt/. If the suggestion be not true, the letters patent are void.

**Sit.** To hold court; to do any act of a judicial nature. To hold a session, as of a court, grand jury, legislative body, etc. To be formally organized and proceeding with the transaction of business.

**Sit-down strike.** A strike in which the workers stay in the plant but refuse to work.

**Site** /sáyť/. A plot of ground suitable or set apart for some specific use. A seat or ground plot. The term does not of itself necessarily mean a place or tract of land fixed by definite boundaries. *See also* Place; Scite or site; Situs.

**Si te fecerit securum** /sáy tíy fésərət səkýúrəm/. If he make you secure. *See* Si fecerit te securum.

**Sithcundmam.** In Saxon law, the high constable of a hundred.

**Sitting.** The part of the year in which judicial business is transacted. A session or term of court; usually plural. *See* Session.

**Sitting in bank or en banc.** A session of the court in which all judges or at least a quorum of judges sit and hear cases. Under current practice, the term is reserved almost exclusively for appellate courts and in this connection it is contrasted with single justice sitting. *See* En banc.

**Sittings in camera.** *See* Chamber.

**Situate.** To give a specific position to; fix a site for; to place in certain position.

**Situation.** State of being placed; posture. Position as regards conditions and circumstances; state; condition. *Bellomy v. Bruce, 303 Ill.App. 349, 25 N.E.2d 428, 433.*

**Situation of danger.** Within the meaning of the last clear chance rule as applicable to a plaintiff operating a moving vehicle, is reached only when plaintiff, in moving toward path of an on-coming train or vehicle has reached a position from which he cannot escape by ordinary care, and it is not enough that plaintiff was merely approaching a position of danger. *See* Last clear chance doctrine.

**Situs** /sáyťəs/. Lat. Situation; location; e.g. location or place of crime or business. Site; position; the place where a thing is considered, for example, with reference

to jurisdiction over it, or the right or power to tax it. It imports fixedness of location. Situs of property, for tax purposes, is determined by whether the taxing state has sufficient contact with the personal property sought to be taxed to justify in fairness the particular tax. *Town of Cady v. Alexander Const. Co., 12 Wis.2d 236, 107 N.W.2d 267, 270.*

Generally, personal property has its taxable "situs" in that state where owner of it is domiciled. *Smith v. Lummus, 149 Fla. 660, 6 So.2d 625, 627, 628.* Situs of a trust means place of performance of active duties of trustee. *Campbell v. Albers, 313 Ill.App. 152, 39 N.E.2d 672, 676.*

For business situs, *see* Business. *See also* Place.

**Sive tota res evincatur, sive pars, habet regressum emptor in venditorem** /sáyviy tówtə ríyz íyviŋkétər, sáyviy pǎrz, héybət rǎgrésəm ém(p)tər in vëndétórəm/. The purchaser who has been evicted in whole or in part has an action against the vendor.

**Sixteenth Amendment.** An amendment of 1913 to the U.S. Constitution, which permits Congress to tax incomes, "from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." The amendment was adopted in response to the Supreme Court's decision in *Pollock v. Farmers' Loan and Trust Co.*, which held that the 1894 federal income tax was unconstitutional as applied to rental income from land. The thrust of the amendment was to remove the apportionment requirement for taxes on income. *Brushaber v. Union Pacific R.R. Co., 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493.*

**Sixth Amendment.** The Sixth Amendment of the U.S. Constitution includes such rights as the right to speedy and public trial by an impartial jury, right to be informed of the nature of the accusation, the right to confront witnesses, the right to assistance of counsel and compulsory process.

**Sixty-day notice.** Under Taft-Hartley Act, notice which must be given by either party to a collective bargaining agreement for reopening or terminating the contract. During such period, strikes and lockouts are prohibited. *See* 29 U.S.C.A. § 158(d).

**Skeleton bill.** One drawn, indorsed, or accepted in blank.

**Skill.** Practical and familiar knowledge of the principles and processes of an art, science, or trade, combined with the ability to apply them in practice in a proper and approved manner and with readiness and dexterity.

**Skilled witnesses.** One possessing knowledge and experience as to particular subject which are not acquired by ordinary persons. Such witness is allowed to give evidence on matters of opinion and abstract fact. *See also* Expert witness.

**Skinpop.** An intramuscular injection of narcotic drug.

**Skiptracing.** Service which assists creditors in locating delinquent debtors or persons who have fled to avoid prosecution. Also, such services may include location of

missing heirs, witnesses, stockholders, bondholders, spouses, assets, bank accounts, or the like.

**S.L.** Abbreviation for "session [or statute] laws."

**Slains.** See Letters of slains or slanes.

**Slander.** The speaking of base and defamatory words tending to prejudice another in his reputation, community standing, office, trade, business, or means of livelihood. *Little Stores v. Isenberg*, 26 Tenn.App. 357, 172 S.W.2d 13, 16. Oral defamation; the speaking of false and malicious words concerning another, whereby injury results to his reputation. *Lloyd v. Commissioner of Internal Revenue*, C.C.A.7, 55 F.2d 842, 844. The essential elements of slander are: (a) a false and defamatory statement concerning another; (b) an unprivileged communication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of harm or the existence of special harm caused by the publication. Restatement, Second, Torts § 558.

"Libel" and "slander" are both methods of defamation; the former being expressed by print, writing, pictures, or signs; the latter by oral expressions or transitory gestures. See Restatement, Second, Torts, § 568.

See also Actionable per quod; Actionable per se; Per quod; Per se; Slanderous per se. Compare Libel.

**Slanderer.** One who commits slander. See Slander.

**Slander of title.** A false and malicious statement, oral or written, made in disparagement of a person's title to real or personal property, or of some right of his causing him special damage. *Higgins v. Higgins*, 103 Nev. 443, 744 P.2d 530, 531. See also Jactitation.

**Slanderous per quod.** See Per quod.

**Slanderous per se.** Slanderous in itself; such words as are deemed slanderous without proof of special damages. Words which intrinsically, without innuendo, import injury, and are words from which damage, by consent of men generally, flows as a natural consequence. *Koerner v. Lawler*, 180 Kan. 318, 304 P.2d 926, 929. Generally an utterance is deemed "slanderous per se" when publication (a) charges the commission of a crime; (b) imputes some offensive or loathsome disease which would tend to deprive a person of society; (c) charges a woman is not chaste; or (d) tends to injure a party in his trade, business, office or occupation. *Munafa v. Helfand*, D.C.N.Y., 140 F.Supp. 234, 238. See Restatement, Second, Torts, § 570.

**Slate.** List of candidates for public office or for positions on board of directors.

**Slave.** A person who is wholly subject to the will of another; one who has no freedom of action, but whose person and services are wholly under the control of another. One who is under the power of a master, and who belongs to him; so that the master may sell and dispose of his person, of his industry, and of his labor, without his being able to do anything, have anything, or

acquire anything, but what must belong to his master. The 13th Amendment abolished slavery.

**Slavery.** The condition of a slave; that civil relation in which one man has absolute power over the life, fortune, and liberty of another. The 13th Amendment abolished slavery.

**Slave-trade.** The traffic in slaves, or the buying and selling of slaves for profit.

**Slay.** This word, in an indictment, adds nothing to the force and effect of the word "kill," when used with reference to the taking of human life. It is particularly applicable to the taking of human life in battle; and, when it is not used in this sense, it is synonymous with "kill."

**Slayer's rule.** Under this doctrine, person who kills another and persons claiming through or under that person may not share in distribution of decedent's estate as heirs, devisees, or legatees and may not collect proceeds as beneficiaries under decedent's life policy when homicide was felonious and intentional, but may share in distribution and collect proceeds when homicide was unintentional, even if it was result of gross negligence. *Ford v. Ford*, 307 Md. 105, 512 A.2d 389, 393. See also Son of Sam law.

**Sleeping or silent partner.** See Silent partner.

**Slight.** A word of indeterminate meaning, variously defined as inconsiderable; unimportant; trifle; remote; insignificant. *Moxley v. Hertz*, 216 U.S. 344, 356, 30 S.Ct. 305, 308, 54 L.Ed. 510.

As to *slight* Care; Evidence; Fault and Negligence, see those titles.

**Slip law.** A legislative enactment which is separately and promptly published in pamphlet or in single sheet format after its passage.

**Slip law print.** An annotated pamphlet print (called a slip law print) of each public and private law enacted by Congress as issued shortly after being signed by the President. Slip laws are cumulated into the U.S. Statutes at Large. See Statute (*Statutes at large*).

**Slip opinion.** An individual court decision published separately soon after it is rendered.

**Slot machine.** Within statute prohibiting operation of slot machines or similar gambling device, an apparatus by which a person depositing money therein may, by chance, get directly or indirectly money or articles of value worth either more or less than the money deposited. *Elder v. Camp*, 193 Ga. 320, 18 S.E.2d 622, 624.

**Slough.** An arm of a river, flowing between islands and the main-land, and separating the islands from one another. Sloughs have not the breadth of the main river, nor does the main body of water of the stream flow through them.

**Slowdown.** An organized effort by workers in a plant by which production is slowed from normal pace to bring pressure on the employer for better terms and conditions of working.

**Sluiceway.** An artificial channel into which water is let by a sluice. Specifically, a trench constructed over the bed of a stream, so that logs or lumber can be floated down to a convenient place of delivery.

**Slum.** A squalid, run-down section of a city, town or village, ordinarily inhabited by the very poor and destitute classes; overcrowding is usually a prevailing characteristic.

**Slush fund.** Money collected or spent for corrupt purposes such as illegal lobbying or the like. *Boehm v. United States*, C.C.A.Mo., 123 F.2d 791, 812.

**Small Business Administration.** The fundamental purposes of the federal Small Business Administration (SBA) are to: aid, counsel, assist, and protect the interests of small business; insure that small business concerns receive a fair proportion of Government purchases, contracts, and subcontracts, as well as of the sales of Government property; make loans to small business concerns, State and local development companies, and the victims of floods or other catastrophes, or of certain types of economic injury; license, regulate, and make loans to small business investment companies; improve the management skills of small business owners, potential owners, and managers; conduct studies of the economic environment; and guarantee leases entered into by small business concerns as well as surety bonds issued to them.

**Small business corporation.** A corporation which satisfies the definition of I.R.C. § 1361(b), § 1244(c)(2), or both. Satisfaction of I.R.C. § 1361(b) permits an S corporation election, and satisfaction of § 1244 enables the shareholders of the corporation to claim an ordinary loss on the worthlessness of the stock.

**Small Business Investment Act.** Federal legislation enacted in 1958 under which investment companies may be organized for supplying long term equity capital to small businesses. Such Act is implemented by the Small Business Administration.

**Small claims court.** A special court (sometimes also called "Conciliation Court") which provides expeditious, informal, and inexpensive adjudication of small claims. Jurisdiction of such courts is usually limited to collection of small debts and accounts. Proceedings are very informal with parties normally representing themselves. These courts of limited jurisdiction are often divisions or departments of courts of general jurisdiction.

**Small estate probate.** *See* Estate.

**Small loan acts.** Statutes in effect in nearly all the States fixing the maximum legal rate of interest and other terms on short-term loans by banks and finance companies.

**Smart-money.** Vindictive, punitive or exemplary damages given by way of punishment and example, in cases of gross misconduct of defendant. *See* Damages.

**Smith Act.** Federal law which punishes, among other activities, the advocacy of the overthrow of the govern-

ment by force or violence. An anti-sedition law. 18 U.S.C.A. § 2385. *See* Sedition.

**Smuggling.** The offense of importing or exporting prohibited articles without paying the duties chargeable upon them. The fraudulent taking into a country, or out of it, merchandise which is lawfully prohibited. Quoted and approved by Brewer, J., in *Dunbar v. U. S.*, 156 U.S. 185, 15 S.Ct. 325, 39 L.Ed. 390.

"Smuggle" has well-understood meaning at common law, signifying bringing on shore, or carrying from shore, of goods, wares, and merchandise for which duty has not been paid, or goods the importation or exportation whereof is prohibited. *Williamson v. U. S.*, C.A. Cal., 310 F.2d 192, 195. *See* 18 U.S.C.A. §§ 545, 546. *See also* Contraband.

**Smut.** *See* Obscene.

**So.** In the same manner as has been stated; under this circumstance; in this way, referring to something which is asserted. Sometimes the equivalent of "hence," or "therefore," and it is thus understood whenever what follows is an illustration of, or conclusion from, what has gone before.

In connection with time, it suggests a period of indefinite duration. Thus, an agreement to pay rent "within a week or so".

**Soakage** /sówkaj/. As used in the laws and regulations relating to withdrawal of liquors from bonded warehouses, the spirits which in course of time in the warehouse had been absorbed by the staves of the barrel containing it.

**Sober.** Moderate in, or abstinent from, the use of intoxicating liquors.

**Sobriety checkpoint.** A public place at which police maintain a roadblock to detain motorists briefly to determine whether they have been operating a motor vehicle under the influence of liquor. Such roadblocks do not violate Fourth Amendment search and seizure protections. *Michigan Dept. of State Police v. Sitz*, 110 S.Ct. 2481 (1990).

**Sobriety tests.** *See* Blood alcohol count; Breathalyzer test; Field sobriety tests; Intoximeter; Intoxilyzer; Sobriety checkpoint.

**Sobrini and sobrinæ** /səbráynay/səbráyniy/. Lat. In the civil law, the children of cousins, german in general.

**Soc, sok, or soka.** In Saxon law, jurisdiction; a power or privilege to administer justice and execute the laws; also a shire, circuit, or territory.

**Soca** /só(w)kə/. A seigniorship or lordship, enfranchised by the king, with liberty of holding a court of his *socmen* or *socagers*; *i.e.*, his tenants.

**Socage** /sówkaj/. A species of tenure, in England, whereby the tenant held certain lands in consideration of certain inferior services of husbandry to be performed by him to the lord of the fee. In its most general and extensive signification, a tenure by any certain and determinate service. And in this sense it is by the ancient writers constantly put in opposition to tenure by chivalry or knight-service, where the render was precar-

ious and uncertain. Socage is of two sorts,—free socage, where the services are not only certain, but honorable; and villein socage, where the services, though certain, are of baser nature. Such as hold by the former tenure are also called in Glanvil and other authors by the name of "*liberi sokemanni*," or tenants in free socage. By the statute 12 Car. 2, c. 24, all the tenures by knight-service were, with one or two immaterial exceptions, converted into free and common socage.

**Socager** /só(w)kəjər/. A tenant by socage.

**Socagium idem est quod servitum socæ; et soca, idem est quod caruca** /səkėj(ji)yəm áydəm èst sərviš(iy)əm sówsiy, èt sówkə, áydəm èst kwòd kəhrúwkə/. Socage is the same as service of the soc; and soc is the same thing as a plow.

**Socer** /sówsər/. Lat. In the civil law, a wife's father; a father-in-law.

**Social contract, or compact.** In political philosophy, a term applied to the theory of the origin of society associated chiefly with the names of Hobbes, Locke and Rousseau, though it can be traced back to the Greek Sophists. Rousseau (*Contract Social*) held that in the pre-social state man was unwarlike and timid. Laws resulted from the combination of men who agreed, for mutual protection, to surrender individual freedom of action. Government must therefore rest on the consent of the governed.

**Social guest.** For purpose of determining landowner's duty of care, "social guest" is person who goes onto property of another for companionship, diversion and enjoyment of hospitality and is treated as licensee. *Gregor v. Gregor*, 111 Ill.App.3d 333, 67 Ill.Dec. 38, 40 443 N.E.2d 1162, 1164. *See also* Guest.

**Social insurance.** *See* Insurance.

**Social Security Act.** Federal legislation creating the Social Security Administration (*q.v.*) 42 U.S.C.A. § 301 *et seq.* *See also* Federal Insurance Contributions Act.

**Social Security Administration.** An agency of the Department of Health and Human Services under the direction of the Commissioner of Social Security which administers a national program of contributory social insurance whereby employees, employers, and the self-employed pay contributions which are pooled in special trust funds. When earnings stop or are reduced because the worker retires, dies, or becomes disabled, monthly cash benefits are paid to replace part of the earnings the person or family has lost. In addition to administering the various retirement, survivors, disability, and supplemental security income (SSI) benefit programs, the SSA oversees the administrative hearing and appeals process involving benefit claims.

**Socida** /səsáydə/. In civil law, the name of a contract by which one man delivers to another, either for a small recompense or for a part of the profits, certain animals on condition that if any of them perish they shall be replaced by the bailee or he shall pay their value.

A contract of hiring, with the condition that the bailee takes upon him the risk of the loss of the thing hired.

**Sociedad** /sowsiyeydáð/. In Spanish law, partnership.

**Socieda anónima** /sowsiyeydáð anónima/. In Spanish and Mexican law, a business corporation.

**Societas** /səsáyətæs/. Lat. In the civil law, partnership; a partnership; the contract of partnership. A contract by which the goods or labor of two or more are united in a common stock, for the sake of sharing in the gain.

**Societas leonina** /səsáyətæs líyənáyne/. That kind of society or partnership by which the entire profits belong to some of the partners, in exclusion of the rest. So called in allusion to the fable of the lion, who, having entered into partnership with other animals for the purpose of hunting, appropriated all the prey to himself.

**Societas navalis** /səsáyətæs nævéyləs/. A naval partnership; an association of vessels; a number of ships pursuing their voyage in company, for purposes of mutual protection.

**Société** /sowsiyeytéy/. Fr. In French law, partnership. *See* Commendam.

**Société anonyme** /sowsiyeytéy ànówniym/. In French law originally a partnership conducted in the name of one of the members; the others were strictly secret partners. To creditors of the firm they came into no relation and under no liability. An association where the liability of all the partners is limited. It had in England until lately no other name than that of "chartered company," meaning thereby a joint-stock company whose shareholders, by a charter from the crown, or a special enactment of the legislature, stood exempted from any liability for the debts of the concern, beyond the amount of their subscriptions.

**Société d'acquets.** A written contract between husband and wife to regard as community property only those things which are acquired during the marriage.

**Société en commandite** /sowsiyeytéy òn kòmondiyt/. In Louisiana, a partnership formed by a contract by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished and no more.

**Société en nom collectif** /sowsiyeytéy òn nówm kolektiýf/. A partnership in which all the members are jointly and severally liable.

**Société en participation** /sowsiyeytéy òn partisiypa-sýówn/. A joint adventure.

**Société par actions** /sowsiyeytéy pàr àks(i)yówn/. A joint stock company.

**Society.** An association or company of persons (generally unincorporated) united together by mutual consent, in order to deliberate, determine, and act jointly for



some common purpose. In a wider sense, the community or public; the people in general. *Gilmer v. Stone*, 120 U.S. 586, 7 S.Ct. 689, 30 L.Ed. 734.

Term "society," loss of which is recoverable element in death action under general maritime law, embraces broad range of mutual benefits each family member receives from other's continued existence, including love, affection, care, attention, companionship, comfort and protection; thus, widow, parent, brother, sister, or child may be compensated for loss of society. *Consolidated Machines, Inc. v. Protein Products Corp.*, D.C. Fla., 428 F.Supp. 209, 228.

Within rule that husband is entitled to damages for loss of wife's "society" through wrongful injury, means such capacities for usefulness, aid, and comfort as a wife as she possessed at the time of the injuries. *Homan v. Missouri Pac. R. Co.*, 335 Mo. 30, 70 S.W.2d 869. See also *Consortium*.

Civil society—usually, a state, nation, or body politic.

**Socii mei socius meus socius non est** /sówshiyá míyay sówsh(iy)əs míyəs sówsh(iy)əs nón èst/. The partner of my partner is not my partner.

**Socius** /sówsh(iy)əs/. Lat. In the civil law, a partner.

**Socman** /sókman/. A socager.

*Free socmen*. In old English law, tenants in free socage.

**Socmanry** /sókmanriy/. Free tenure by socage.

**Socna** /sókna/. A privilege, liberty, or franchise.

**Sodomite** /sódəmayt/. One who has been guilty of sodomy.

**Sodomy**. While variously defined in state criminal statutes, is generally oral or anal copulation between humans, or between humans and animals. *State v. Young*, 140 Or. 228, 13 P.2d 604, 607.

**Soft dollars**. Securities industry term for credits that brokers give big investors, such as pension funds and their money managers, in return for their stock trading business.

**So help you God**. The words commonly at the end of a common oath.

**Soil bank**. A federal agricultural program under which farmers are paid for not growing crops, or for growing noncommercial vegetation, in order to preserve the quality of the soil and stabilize commodity prices by avoiding surpluses.

**Soit** /swá/swéy/. Fr. Let it be; be it so. A term used in several laws; French phrases employed in English law, particularly as expressive of the will or assent of the sovereign in formal communications with parliament or with private suitors.

**Soit baile aux commons** /swà béyl ów kómənz/. Let it be delivered to the commons. The form of indorsement on a bill when sent to the house of commons.

**Soit baile aux seigneurs** /swà béyl ów seynyúr/. Let it be delivered to the lords. The form of indorsement on a bill in parliament when sent to the house of lords.

**Soit droit fait al partie** /swà dróyt féyt àl partíy/. In English law, let right be done to the party. A phrase written on a petition of right, and subscribed by the king.

**Soit fait comme il est desire** /swà féyt kóm íyl deziréy/. Let it be as it is desired. The royal assent to private acts of parliament.

**Sojourning** /səjérniŋ/. This term means something more than "traveling," and applies to a temporary, as contradistinguished from a permanent, residence. In *re Gahn's Will*, 110 Misc. 96, 180 N.Y.S. 262, 266.

**Sokemanries** /só(w)kmənriyz/. Lands and tenements which were not held by knight-service, nor by grand serjeanty, nor by petit, but by simple services; being, as it were, lands enfranchised by the king or his predecessors from their ancient demesne. Their tenants were *sokemans*.

**Sokemans** /só(w)kmənz/. In old English law, those who held their lands in socage.

**Soke-reeve** /só(w)kriyv/. The lord's rent gatherer in the soca.

**Sola ac per se senectus donationem testamentum aut transactionem non vitiat** /sólw æk pər síy sənékʔəs dənəyshiyównəm tɛstəməntəm òt trənzækshiyównəm nòn víshiyət/. Old age does not alone and of itself vitiate a will or gift.

**Solar** /sowlár/. In Spanish law, land; the demesne, with a house, situate in a strong or fortified place.

**Solar day**. That period of time which begins at sunrise and ends at sunset.

**Solares** /sowláreys/. In Spanish law, lots of ground. This term is frequently found in grants from the Spanish government of lands in America.

**Solarium** /səlériyəm/. Lat. In the civil law, a rent paid for the ground, where a person built on the public land. A ground rent.

**Solar month**. A calendar month. See *Month*.

**Solatum** /səláysh(iy)əm/. Compensation. Damages allowed for injury to the feelings.

**Sold**. See *Sale*.

**Soldiers' and Sailors' Civil Relief Act**. A Federal law that suspends or modifies a military person's civil liabilities and requires persons who want to enforce their claims against persons in the service to follow certain procedures. 50 U.S.C.A. App. § 501 et seq.

**Soldier's will**. Similar to a seaman's will which is informal in nature and may dispose only of the personal property of the testator. A nuncupative will (*q.v.*)

**Sold note**. A note given by a broker, who has effected a sale of merchandise, to the buyer, stating the fact of sale, quantity, price, etc. Also called "confirmation" notice.

**Sole**. Single; individual; separate; the opposite of joint; as a *sole tenant*. Comprising only one person; the

opposite of aggregate; as a *corporation sole*. Without another or others.

Unmarried; as a *feme sole*.

**Sole actor doctrine.** Under this doctrine a principal is charged with the knowledge of his agent. It contemplates that agent must have ostensibly endeavored to benefit his principal, and even though he did not do so and his acts were for his personal benefit, possibly through defalcation, the third party who obligated himself must have been under the impression that he was dealing with the principal. *General American Life Ins. Co. v. Anderson*, D.C.Ky., 46 F.Supp. 189, 195, 196, 198. It is based on the presumption that by reason of the relationship between an agent and his principal the principal is presumed to have been told everything the agent has done and presumed to have known of his actions and promises. *Federal Deposit Ins. Corporation v. Pendleton*, D.C.Ky., 29 F.Supp. 779, 782, 783.

**Sole and unconditional owner.** See *Owner*.

**Sole cause.** As respects negligence of plaintiff or third party as the sole cause of injury so as to relieve defendant from liability, means the act or negligence of plaintiff or a third party directly causing the injury without any concurring or contributory negligence of defendant. *Dixon v. Wabash R. Co.*, Mo.App., 198 S.W.2d 395, 398. Term means the act or negligence of the plaintiff or a third party directly causing the injury without any concurring or contributory negligence of defendant. *Jurgens v. Thompson*, 350 Mo. 914, 169 S.W.2d 353, 357. See also *Proximate cause*.

**Solemn** /sóləm/. Formal; in regular form; with all the forms of a proceeding. As to *solemn oath*, see *Corporal oath*; as to *solemn war*, see *War*.

**Solemnnes legum formulæ** /sóləmnnyz líygam fórmýəly/. Lat. In the civil law, solemn forms of laws; forms of forensic proceedings and of transacting legal acts. One of the sources of the unwritten law of Rome.

**Solemnitas attachamentorum** /sóləmnətəs ətəch(iy)-əmentórəm/. In old English practice, solemnity or formality of attachments. The issuing of attachments in a certain formal and regular order.

**Solemnitates juris sunt observandæ** /sóləmnətéytyz júrs sənt ɔbsərvəndiy/. The solemnities of law are to be observed.

**Solemnity** /sóləmnəty/. A rite or ceremony; the formality established by law to render a contract, agreement, or other act valid.

**Solemnization.** To enter marriage publicly before witnesses in contrast to a clandestine or common law marriage.

**Solemnize** /sóləmnayz/. To enter marriage publicly before witnesses in contrast to a clandestine or common law marriage.

**Solemn occasion.** Within constitutional provision empowering the Legislature to require the opinion of the Justices on important questions of law means occasion

when such questions of law are necessary to be determined by the body making the inquiry in the exercise of the power intrusted to it by the Constitution or laws.

**Sole proprietorship.** A form of business in which one person owns all the assets of the business in contrast to a partnership, trust or corporation. The sole proprietor is solely liable for all the debts of the business.

**Sole source rule.** In suits for false advertising at common law, the plaintiff may not recover unless it can demonstrate that it has a monopoly in the sale of goods possessing the advertised trait, because only in that situation were the common law courts confident that the plaintiff would be harmed by the defendant's false advertising. This restrictive doctrine is known as the sole source rule.

**Solicit.** To appeal for something; to apply to for obtaining something; to ask earnestly; to ask for the purpose of receiving; to endeavor to obtain by asking or pleading; to entreat, implore, or importune; to make petition to; to plead for; to try to obtain; and though the word implies a serious request, it requires no particular degree of importunity, entreaty, imploration, or supplication. *People v. Phillips*, 70 Cal.App.2d 449, 160 P.2d 872, 874. To awake or incite to action by acts or conduct intended to and calculated to incite the act of giving. *People ex rel. Friedman v. Framer*, 208 Misc. 236, 139 N.Y.S.2d 331, 337. The term implies personal petition and importunity addressed to a particular individual to do some particular thing.

As used in context of solicitation to commit a crime, term means to command, authorize, urge, incite, request, or advise another to commit a crime. See also *Solicitation*.

**Solicitation.** Asking; enticing; urgent request. The inchoate offense of requesting or encouraging someone to engage in illegal conduct. Any action which the relation of the parties justifies in construing into a serious request. Thus "solicitation of prostitution" is the asking or urging a person to engage in prostitution. The word is also used in such phrases as "solicitation to larceny," to bribery, etc.

For the crime of solicitation to be completed, it is only necessary that the actor, with intent that another person commit a crime, have enticed, advised, incited, ordered or otherwise encouraged that person to commit a crime. The crime solicited need not be committed.

A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission. Model Penal Code, § 5.02. See also *e.g.* 18 U.S.C.A. § 373 (solicitation to commit a violent crime).

Under Model Penal Code, § 5.05, solicitation of a crime is of the same grade and degree as the most serious offense solicited.

**Solicitation of bribe.** Asking, or enticing, or requesting of another to commit crime of bribery. *State v. Wallace*, Del.Super., 9 Storey 123, 214 A.2d 886, 889. See *e.g.* 18 U.S.C.A. § 201.

**Soliciting agent.** In insurance law, is a special agent and generally has authority only to solicit insurance, submit applications to company and perform such acts as are incident to that power. *Dixie Life & Acc. Ins. Co. v. Hamm*, 233 Ark. 320, 344 S.W.2d 601, 603.

**Solicitor.** Chief law officer of city, town, or other governmental body or department; see *e.g.* Solicitor General.

In England, to become a solicitor a person must be articulated to a practicing solicitor, pass the necessary examinations conducted by the Law Society, and be admitted by the Master of the Rolls. A solicitor may practice in the Bankruptcy Court, county courts, petty sessions, certain proceedings in the Crown Court, most inferior courts, and also in chambers of the Supreme Court. Such are controlled by the Solicitors Act of 1974. See also Barrister.

**Solicitor General.** The Solicitor General of the United States is in charge of representing the Government in suits and appeals in the Supreme Court and as well in lower federal trial and appellate courts in cases involving the interests of the United States. He decides what cases the Government should ask the Supreme Court to review and what position the Government should take in cases before the Court. He supervises the preparation of the Government's Supreme Court briefs and other legal documents and the conduct of the oral arguments in the Court and argues most of the important cases himself. The Solicitor General's duties also include deciding whether the United States should appeal in all cases it loses before the lower federal courts. 28 U.S.C.A. §§ 505, 517, 518.

**Solidarity.** In the civil law, when several persons bind themselves towards another for the same sum, at the same time, and in the same contract; and so obligate themselves that each may be compelled to pay the whole debt, and that payment made by one of them exonerates the others towards the creditor; and the obligation thus contracted is one, in solido, although one of the debtors be obliged differently from the others to the payment of one and the same thing; as if the one be but conditionally bound, while the engagement of the others is pure and simple, or if the one is allowed a term which is not granted to the others.

**Solidary.** A term of civil-law origin, signifying that the right or interest spoken of is joint or common. A "solidary obligation" corresponds to a "joint and several" obligation in the common law; that is, one for which several debtors are bound in such wise that each is liable for the entire amount, and not merely for his proportionate share. But in the civil law the term also includes the case where there are several creditors, as against a common debtor, each of whom is entitled to receive the entire debt and give an acquittance for it.

**Solidum** /sólɔdəm/. Lat. In the civil law, a whole; an entire or undivided thing.

**Solinum** /səláyɲəm/. In old English law, two plowlands, and somewhat less than a half.

**Solitary confinement.** In a general sense, the separate confinement of a prisoner, with only occasional access of any other person, and that only at the discretion of the jailer. In a stricter sense, the complete isolation of a prisoner from all human society, and his confinement in a cell so arranged that he has no direct intercourse with or sight of any human being, and no employment or instruction. *Medley, Petitioner*, 134 U.S. 160, 10 S.Ct. 384, 33 L.Ed. 835.

**Solo cedit quod solo implantatur** /sówlow síydət kwòd sówlow implántéyɲtər/. That which is planted in the soil belongs to the soil. The proprietor of the soil becomes also the proprietor of the seed, the plant, and the tree, as soon as these have taken root.

**Solo cedit quod solo inædificatur** /sówlow síydət kwòd sówlow inèdáfakéyɲtər/. That which is built upon the soil belongs to the soil. The proprietor of the soil becomes also proprietor of the building erected upon it.

**Solum provinciale** /sówlɔm prəvínshiyéyliy/. Lat. In Roman law, the *solum italicum* (an extension of the old *Ager Romanus*) admitted full ownership, and of the application to it of *usucapio*; whereas the *solum provinciale* (an extension of the old *Ager Publicus*) admitted of a possessory title only, and of *longi temporis possessio* only. Justinian abolished all distinctions between the two, sinking the *italicum* to the level of the *provinciale*.

**Solum rex hoc non facere potest, quod non potest injuste agere** /sówlɔm réks hók nòn fásəriy pówtəst, kwòd nòn pówtəst injéstiy éjəriy/. This alone the king cannot do, he cannot act unjustly.

**Solus deus facit hæredem, non homo** /sówlɔs díyəs féysət hæriyɲdɔm, nòn hówmow/. God alone makes the heir, not man.

**Solutio** /səl(y)úwsh(iy)ow/. Lat. In civil law, payment, satisfaction, or release; any species of discharge of an obligation accepted as satisfactory by the creditor. The term refers not so much to the counting out of money as to the substance of the obligation.

**Solutio indebiti** /səl(y)úwsh(iy)ow indébetay/. In the civil law, payment of what was not due. From the payment of what was not due arises an obligation *quasi ex contractu*. When one has erroneously given or performed something to or for another, for which he was in no wise bound, he may redemand it, as if he had only lent it. The term "*solutio indebiti*" is here used in a very wide sense, and includes also the case where one performed labor for another, or assumed to pay a debt for which he was not bound, or relinquished a right or released a debt, under the impression that he was legally bound to do so.

**Solutione feodi militis parliamenti, or feodi burgensis parliamenti** /səl(y)úwshiyówniy fyúwɲday mílɲtəs párl(iy)əméntay/ˈbɔrjénsəs párl(iy)əméntay/. Old writs whereby knights of the shire and burgesses might have recovered their wages or allowance if it had been refused.

**Solutio pretii emptionis loco habetur** /səl(y)úwsh(iyow préshiyay èm(p)shiyównæs lówkow hóbíytər/. The payment of the price [of a thing] is held to be in place of a purchase [operates as a purchase].

**Solutus** /səl(y)úwtəs/. In the civil law, loosed; freed from confinement; set at liberty.

**Solvabilité** /solvabilitytáy/. Fr. In French law, ability to pay; solvency.

**Solvency.** Ability to pay debts as they mature and become due. Ability to pay debts in the usual and ordinary course of business. *Jeck v. O'Meara*, 343 Mo. 559, 122 S.W.2d 897, 903. Present ability of debtor to pay out of his estate all his debts. Excess of assets over liabilities. *Akin v. Hull*, 222 Mo.App. 1022, 9 S.W.2d 688, 690. Also such status of a person's property as that it may be reached and subjected by process of law, without his consent, to the payment of such debts. *Graf v. Allen*, 230 Mo.App. 721, 74 S.W.2d 61, 66. "Solvency" within Bankruptcy Code presupposes ability to make ultimate payment of obligations then owed from assets then owned. *Mossler Acceptance Co. v. Martin*, C.A. Fla., 322 F.2d 183, 186. The opposite of *insolvency* (*q.v.*). *Kennedy v. Burr*, 101 Wash. 61, 171 P.2d 1022, 1024.

**Solvendo esse** /solvéndow ésiy/. Lat. To be in a state of solvency; *i.e.*, able to pay.

**Solvendo esse nemo intelligitur nisi qui solidum potest solvere** /solvéndow ésiy níymow intəlíjtər náysay kwày sólédəm pówtəst sólvériy/. No one is considered to be solvent unless he can pay all that he owes.

**Solvendum in futuro** /solvéndəm in fyuwtyúrow/. Lat. To be paid in the future. Used of an indebtedness which is said to be *debitum in presenti* (due now) and *solvendum in futuro* (payable in the future). An interest in an estate may be rested *in presenti*, though it be *solvendum in futuro*, enjoyable in the future.

**Solvent.** See Solvency.

**Solvere** /sólvériy/. Lat. To pay; to comply with one's engagement; to do what one has undertaken to do; to release one's self from obligation, as by payment of a debt.

**Solvere pœnas** /sólvériy píynæs/. To pay the penalty.

**Solvit** /sólvat/. Lat. He paid; paid.

**Solvit ad diem** /sólvéd æd dáyəm/. He paid at the day. The technical name of the plea, in an action of debt on bond, that the defendant paid the money *on the day* mentioned in the condition.

**Solvit ante diem** /sólvéd éntiy dáyəm/. A plea that the money was paid before the day appointed.

**Solvit post diem** /sólvat pówt dáyəm/. He paid after the day. The plea in an action of debt on bond that the defendant paid the money *after the day* named for the payment, and before the commencement of the suit.

**Solvitur adhuc societas etiam morte socii** /sólvtər ædhək səsáyətæs ésh(iy)əm mórtiy sówshiyay/. A partnership is moreover dissolved by the death of a partner.

**Solvitur eo ligamine quo ligatur** /sólvtər iyow lágéyməniy kwòw lágéytər/. In the same manner that a thing is bound it is unloosed.

**Somerset's Case.** A celebrated decision of the English king's bench, in 1771 (20 How.St.Tr. 1), that slavery no longer existed in England in any form, and could not for the future exist on English soil, and that any person brought into England as a slave could not be thence removed except by the legal means applicable in the case of any free-born person.

**Somnambulism** /so(m)námbyəlízəm/. Sleep-walking. Whether this condition is anything more than a co-operation of the voluntary muscles with the thoughts which occupy the mind during sleep is not settled by physiologists. Such condition may be a defense to a crime committed while in such state. *Fain v. Com.*, 78 Ky. 183. See also *Somnolentia*.

**Somnolentia** /sòmnlénsh(iy)ə/. A condition of incomplete sleep resembling in its effects drunkenness and in which part of the faculties are abnormally excited while the others are in repose. It destroys moral agency and is therefore a defense to a crime. *Fain v. Com.*, 78 Ky. 183.

**Sompnour** /sómnr/. In ecclesiastical law, an officer of the ecclesiastical courts whose duty was to serve citations or process.

**Son.** Male offspring. An immediate male descendant. The word may be applied also to a distant male descendant (see *e.g.* Civ.Code La. art. 3556.) In a broad use, term may be employed as designating any young male person, as a pupil, a ward, an adopted male child or dependent.

**Son** /sówn/. Fr. His.

**Son assault demesne.** His own assault. A plea which occurs in the actions of trespass and trespass on the case, by which the defendant alleges that it was the plaintiff's own original assault that occasioned the trespass for which he has brought the action, and that what the defendant did was merely in his own defense.

**Son-in-law.** The husband of one's daughter. *Diebold v. Diebold*, 235 Mo.App. 83, 141 S.W.2d 119, 125.

**Son of Sam law.** Colloquial name, referring to well-known serial killer, for state statutes providing that any share a criminal might otherwise have in proceeds from a book or other presentation about his crime must be placed into an escrow account for the benefit of any victims of the crime. Cf. N.Y. McKinney's Executive Law § 632-a. See also *Slayer's rule*.

**Sonticus** /sóntəkəs/. Lat. In the civil law, hurtful; injurious; hindering; excusing or justifying delay. *Morbis sonticus* is any illness of so serious a nature as to

prevent a defendant from appearing in court and to give him a valid excuse.

**Soon.** Within a reasonable time; as soon as practicable; as soon as; as soon as may be. Phrase "soon as practicable" means within a reasonable time. *Miller v. Zurich General Acc. & Liability Ins. Co.*, 36 N.J.Super. 288, 115 A.2d 597, 600.

**Soror** /sórór/. Lat. Sister.

**Sorricide** /sərórásàyd/. The killing or murder of a sister; one who murders his sister. This is not a technical term of the law.

**Sors** /sórs/. Lat. In old English law, a principal lent on interest, as distinguished from the interest itself.

A thing recovered in action, as distinguished from the costs of the action.

In the civil law, lot; chance; fortune; hazard; a lot, made of wood, gold, or other material. Money borrowed, or put out at interest. A principal sum or fund, such as the capital of a partnership.

**Sortitio** /sortísh(iy)ow/. Lat. In the civil law, a drawing of lots. *Sortitio judicum* was the process of selecting a number of judges, for a criminal trial, by drawing lots.

**Sound, v.** To have reference or relation to; to aim at. An action is technically said to *sound in tort or damages* where it is brought not for the specific recovery of a thing, but for damages only. *See* Sounding in damages.

**Sound, adj.** Whole; in good condition; marketable. *See* Warranty.

Free from disease; healthy; physically and mentally fit. The term may also mean free from danger to the life, safety, and welfare.

*Sound and disposing mind and memory.* Testamentary capacity. Such mind and memory as enables testator to know and understand business in which he is engaged at time of making will. *Farmers' Union Bank of Henning v. Johnson*, 27 Tenn.App. 342, 181 S.W.2d 369, 374. *See also* Capacity, and *Sound mind, below.*

*Sound health.* In insurance law, means that the applicant has no grave impairment or serious disease, and is free from any ailment that seriously affects the general soundness and healthfulness of the system. A state of health unimpaired by any serious malady of which the person himself is conscious. *National Life & Accident Ins. Co. v. Ware*, 169 Okl. 618, 37 P.2d 905.

*Sound judicial discretion.* Discretion exercised on full and fair consideration of the facts presented to the judge by the well-known and established mode of procedure. *Caldwell v. State*, 164 Tenn. 325, 48 S.W.2d 1087, 1089. Discretion exercised not arbitrarily or willfully but with regard to what is right and equitable under the circumstances. *Cornwell v. Cornwell*, 73 App.D.C. 233, 118 F.2d 396, 398.

*Sound mind.* The normal condition of the human mind,—that state in which its faculties of perception and judgment are ordinarily well developed, and not impaired by mania, insanity, or other mental disorder. In

the law of wills means that testator must have been able to understand and carry in mind, in a general way, nature and situation of his property, his relations to those having claim to his remembrance, and nature of his act. The "sound mind" necessary to execute a will means ability of testator to mentally understand in a general way nature and extent of property to be disposed of, and testator's relation to those who would naturally claim a substantial benefit from will, as well as general understanding of practical effect of will as executed. *Skelton v. Davis*, Fla.App., 133 So.2d 432, 435. *See also* Capacity.

*Sound value.* As used with reference to value of property within fire policy is the cash value of property, making an allowance for depreciation due to use at and immediately preceding the time of the fire. *Reliance Ins. Co. v. Bowen*, Tex.Civ.App., 54 S.W.2d 597, 598.

**Sounding in damages.** When an action is brought, not for the recovery of lands, goods, or sums of money (as is the case in real or mixed actions or the personal action of debt or detinue), but for damages only, as in covenant, trespass, etc., the action is said to be "sounding in damages."

**Soundness.** General good health; freedom from any permanent disease or illness. *See* Sound.

**Source.** That from which any act, movement, information, or effect proceeds. A person or thing that originates, sets in motion, or is a primary agency in producing any course of action or result. An originator; creator; origin. A place where something is found or whence it is taken or derived. *Jackling v. State Tax Comm.*, 40 N.M. 241, 58 P.2d 1167, 1171.

*The source of income.* Place where, or circumstances from which, income at issue is produced. *Union Electric Co. v. Coale*, 347 Mo. 175, 146 S.W.2d 631, 635.

**Sources of the law.** The origins from which particular positive laws derive their authority and coercive force; such are constitutions, treaties, statutes, usages, and customs.

In another sense, the authoritative or reliable works, records, documents, edicts, etc., to which we are to look for an understanding of what constitutes the law. Such, for example, with reference to the Roman law, are the compilations of Justinian and the treatise of Gaius; and such, with reference to the common law, are especially the ancient reports and the works of such writers as Bracton, Littleton, Coke, Fleta, Blackstone, and others.

**Sous** /súw/. Fr. Under.

**Sous seing privé** /sùw sɛɲ privé/. Fr. In French law, under private signature; under the private signature of the parties. A contract or instrument thus signed is distinguished from an "authentic act," which is formally concluded before a notary or judge.

**Sovereign.** A person, body, or state in which independent and supreme authority is vested; a chief ruler with supreme power; a king or other ruler in a monarchy. *See also* Clipped sovereignty; Sovereignty.

**Sovereign immunity.** A judicial doctrine which precludes bringing suit against the government without its consent. Founded on the ancient principle that "the King can do no wrong," it bars holding the government or its political subdivisions liable for the torts of its officers or agents unless such immunity is expressly waived by statute or by necessary inference from legislative enactment. *Maryland Port Admin. v. I.T.O. Corp. of Baltimore*, 40 Md.App. 697, 395 A.2d 145, 149. The federal government has generally waived its non-tort action immunity in the Tucker Act, 28 U.S.C.A. § 1346(a)(2), 1491, and its tort immunity in the Federal Tort Claims Act, 28 U.S.C.A. § 1346(b), 2674. Most states have also waived immunity in various degrees at both the state and local government levels.

The immunity from certain suits in federal court granted to states by the Eleventh Amendment to the United States Constitution.

See also Foreign immunity; Federal Tort Claims Act; Suits in Admiralty Act; Tucker Act.

**Foreign Sovereign Immunity Act.** Subject to existing international agreements to which the U.S. is a party, and to certain statutorily prescribed exceptions, a foreign nation is immune from the jurisdiction of federal and state courts. 28 U.S.C.A. § 1601-1611.

**Sovereign people.** The political body, consisting of the entire number of citizens and qualified electors, who, in their collective capacity, possess the powers of sovereignty and exercise them through their chosen representatives. See *Scott v. Sandford*, 19 How. 404, 15 L.Ed. 691.

**Sovereign power or sovereign prerogative.** That power in a state to which none other is superior or equal, and which includes all the specific powers necessary to accomplish the legitimate ends and purposes of government. *Ætna Casualty & Surety Co. v. Bramwell, D.C. Or.*, 12 F.2d 307, 309.

**Sovereign right.** A right which the state alone, or some of its governmental agencies, can possess, and which it possesses in the character of a sovereign, for the common benefit, and to enable it to carry out its proper functions; distinguished from such "proprietary" rights as a state, like any private person, may have in property or demands which it owns.

**Sovereign states.** States whose subjects or citizens are in the habit of obedience to them, and which are not themselves subject to any other (or paramount) state in any respect. The state is said to be semi-sovereign only, and not sovereign, when in any respect or respects it is liable to be controlled by a paramount government. In the intercourse of nations, certain states have a position of entire independence of others, and can perform all those acts which it is possible for any state to perform in this particular sphere. These same states have also entire power of self-government; that is, of independence upon all other states as far as their own territory and citizens not living abroad are concerned. No foreign power or law can have control except by convention. This power of independent action in external and internal relations constitutes complete sovereignty.

**Sovereignty.** The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; the supreme will; paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; also a political society, or state, which is sovereign and independent.

The power to do everything in a state without accountability,—to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like.

Sovereignty in government is that public authority which directs or orders what is to be done by each member associated in relation to the end of the association. It is the supreme power by which any citizen is governed and is the person or body of persons in the state to whom there is politically no superior. The necessary existence of the state and that right and power which necessarily follow is "sovereignty." By "sovereignty" in its largest sense is meant supreme, absolute, uncontrollable power, the absolute right to govern. The word which by itself comes nearest to being the definition of "sovereignty" is will or volition as applied to political affairs. *City of Bisbee v. Cochise County*, 52 Ariz. 1, 78 P.2d 982, 986.

**Sowne.** In old English law, to be leviable. An old exchequer term applied to sheriff's returns.

**S.P.** Abbreviation of "*sine prole*," without issue. Also an abbreviation of "same principle," or "same point," indicating, when inserted between two citations, that the second involves the same doctrine as the first.

**Spadones** /spədówniyz/. Lat. In the civil law, impotent persons. Those who, on account of their temperament or some accident they have suffered, are unable to procreate.

**Sparsim** /spársəm/. Lat. Here and there; scattered; at intervals. For instance, trespass to realty by cutting timber *sparsim* (here and there) through a tract.

**Spata placitum** /spétyi plásətəm/. In old English law, a court for the speedy execution of justice upon military delinquents.

**Speaker.** The official designation of the president or chairman of certain legislative bodies, particularly of the House of Representatives in the Congress of the United States, and of one or both branches of several of the state legislatures, *i.e.* Speaker of the House.

**Speaking demurrer.** A demurrer which introduces a new fact that does not appear from face of bill or complaint is a "speaking demurrer," and cannot be sustained. *Allpress v. Lawyers Title Ins. Corp.*, 218 Tenn. 673, 405 S.W.2d 572, 573. A speaking demurrer is a special exception which, instead of limiting itself to the allegations of the petition and pointing out defects therein, states factual propositions not appearing in the

petition and, in reliance upon such facts, seeks to challenge the plaintiff's right to recovery. *Ragsdale v. Ragsdale*, Tex.Civ.App., 520 S.W.2d 839, 842. *See also* Demurrer.

**Speaking motion.** A motion which requires consideration of matters outside the pleadings. Formerly, such motions were prohibited but under Fed.R.Civ.P. 12(b) such motions are now entertained.

**Special.** Relating to or designating a species, kind, individual, thing, or sort; designed for a particular purpose; confined to a particular purpose, object, person, or class. Unusual, extraordinary.

As to *special* Acceptance; Administration; Agent; Allocatur; Allowance; Appearance; Assessment; Assumpsit; Bail; Bailiff; Benefit; Calendar; Charge; Constable; Contract; Count; Covenant; Customs; Damage; Demurrer; Deposit; Deputy; Election; Finding; Guaranty; Guardian; Imparlance; Indorsement; Injunction; Insurance; Issue; Jury; Legacy; Letter of credit; License; Limitation; Malice; Master; Meeting; Mortgage; Motion; Non est factum; Occupant; Owner; Partner; Partnership; Plea; Pleader; Pleadings; Power; Power of appointment; Privilege; Proceeding; Property; Replication; Request; Restraint of trade; Retainer; Rule; Service; Session; Statute; Stock; Tail; Term; Traverse; Trust; Verdict, and Warranty, see those titles.

**Special act.** A private statute; an act which operates only upon particular persons or private concerns. *Unity v. Burrage*, 103 U.S. 447, 454, 26 L.Ed. 405. *See* Special law.

**Special attorney or counsel.** An attorney employed by the Attorney General of the United States or of a state to assist in a particular case where the public interest so requires. 28 U.S.C.A. § 543. *See also* Independent counsel.

**Special district.** A limited governmental structure created to bypass normal borrowing limitations, to insulate certain activities from traditional political influence, to allocate functions to entities reflecting particular expertise, to provide services in otherwise unincorporated areas, or to accomplish a primarily local benefit or improvement, e.g. parks and planning, mosquito control, sewage removal.

**Special errors.** In common law pleading, special pleas in error are such as, instead of joining in error, alleging some extraneous matter as a ground of defeating the writ of error, e.g., a release of errors, expiration of the time within which error might be brought, or the like. To these, the plaintiff in error may either reply or demur.

**Special exception.** An objection to the form in which a cause of action is stated. *See* Demurrer.

Special exception to municipal zoning ordinance refers to special uses which are permissive in particular zone under ordinance and are neither nonconforming uses nor akin to a variance and refers to special use which is considered by local legislative body to be essential or desirable for welfare of community and its citizenry and

which is entirely appropriate and not essentially incompatible with basic uses in zone involved, but not at every or any location therein or without restriction or conditions being imposed on such use. *Piscitelli v. Township Committee of Scotch Plains Tp.*, 103 N.J.Super. 589, 248 A.2d 274, 277. A special exception allows property owner to put his property to use which regulations expressly permit under conditions specified in zoning regulations themselves. *W A T R, Inc. v. Zoning Bd. of Appeals of Town of Bethany*, 158 Conn. 196, 257 A.2d 818, 821.

Such use is also known as a conditional use, special permit, or special use. *See* Special use permit. *Compare* Variance.

**Special execution.** A copy of a judgment with a direction to the sheriff indorsed thereon to execute it. One that directs a levy upon some special property. *See* Execution.

**Special executor.** One whose power and office are limited, either in respect to the time or place of their exercise, or restricted to a particular portion of the decedent's estate. One only empowered by will to take charge of a limited portion of the estate, or such part as may lie in one place, or to carry on the administration only to a prescribed point. *See* Executor.

**Special facts rule.** In corporation law, as respects director's duty of disclosure when dealing with stockholders, is that where special circumstances or facts are present which make it inequitable for the director to withhold information from the stockholder, the duty to disclose arises, and concealment is fraud. *Taylor v. Wright*, 69 Cal.App.2d 371, 159 P.2d 980, 985.

**Special grand jury.** A grand jury convened to hear a particular case or series of cases involving similar crimes. 18 U.S.C.A. § 3331 *et seq.*

**Special interest groups.** Groups in society that have a special interest in common. Special interest groups generally attempt to influence government legislation to benefit their own particular group interests. *See* Lobbying.

**Special interrogatories.** Written questions on one or more issues of fact submitted to a jury. The answers to these are necessary to a verdict. Fed.R.Civ.P. 49(b).

**Specialist.** Stock broker who remains at one post of exchange where particular stocks are dealt in and executes orders of other brokers, for which he receives commission; one who specializes in limited group of stocks.

**Special jurisdiction.** A court authorized to take cognizance of only some few kinds of causes or proceedings expressly designated by statute is called a court of special or limited jurisdiction. Power of a court over only a limited type of case (e.g. Probate court) or over only property and not the person or the defendant.

**Special law.** One relating to particular persons or things; one made for individual cases or for particular places or districts; one operating upon a selected class,

rather than upon the public generally. A private law. A law is "special" when it is different from others of the same general kind or designed for a particular purpose, or limited in range or confined to a prescribed field of action or operation. A "special law" relates to either particular persons, places, or things or to persons, places, or things which, though not particularized, are separated by any method of selection from the whole class to which the law might, but not such legislation, be applied. *Utah Farm Bureau Ins. Co. v. Utah Ins. Guaranty Ass'n*, Utah, 564 P.2d 751, 754. A special law applies only to an individual or a number of individuals out of a single class similarly situated and affected, or to a special locality. *Board of County Com'rs of Lemhi County v. Swensen*, Idaho, 80 Idaho 198, 327 P.2d 361, 362. *See also* Private bill; Private law. *Compare* General law; Public law.

**Special lien.** A special lien is in the nature of a particular lien, being a lien upon particular property. A lien which the holder can enforce only as security for the performance of a particular act or obligation and of obligations incidental thereto. *See also* Lien.

**Special matter.** In common law pleading, under a plea of the general issue, the defendant is allowed to give special matter in evidence, usually after notice to the plaintiff of the nature of such matter, thus sparing him the necessity of pleading it specially. 3 Bl.Comm. 306.

**Special permit.** *See* Special use permit.

**Special registration.** In election laws, registration for particular election only which does not entitle elector to vote at any succeeding election.

**Special session.** An extraordinary session. *See* Session.

**Specialty.** A contract under seal. *Furst v. Brady*, 375 Ill. 425, 31 N.E.2d 606, 609. A writing sealed and delivered, containing some agreement. A special contract. A writing sealed and delivered, which is given as a security for the payment of a debt, in which such debt is particularly specified. *See* Contract (*Special contract*).

For assessment purposes, a "specialty" is a building or buildings, constructed or peculiarly adapted to conduct of owner's business, which cannot be converted to general industrial use without the loss or expenditure of very substantial amounts of money. *Great Atlantic & Pac. Tea Co., Inc. v. Kiernan*, 49 A.D.2d 99, 371 N.Y.S.2d 173, 175.

**Specialty debt.** A debt due or acknowledged to be due by deed or instrument under seal. 2 Bl.Comm. 465.

**Special use permit.** Permitted exception to zoning ordinance; e.g. church, hospital, etc. A special use permit allows property owner to use his property in a way which the zoning regulations expressly permit under the conditions specified in the regulations themselves. *Shell Oil Co. v. Zoning Bd. of Appeals of Town of Bloomfield*, 156 Conn. 66, 238 A.2d 426, 428. "Special permit" and "special exception" have the same meaning and can be used interchangeably. *Beckish v. Planning and Zoning Comm. of Town of Columbia*, 162 Conn. 11,

291 A.2d 208, 210. *See also* Special exception; *Compare* Variance.

**Special use valuation.** An option which permits the executor of an estate to value, for death tax purposes, real estate used in a farming activity or in connection with a closely-held business at its current use value rather than at its most suitable or highest and best use value. Under this option, a farm would be valued at its value for farming purposes even though, for example, the property might have a higher value as a potential shopping center. In order for the executor of an estate to elect special use valuation, the conditions of I.R.C. § 2032A must be satisfied.

**Special warranty.** A covenant of "special warranty" is one the operation of which is limited to certain persons or claims. *Central Life Assur. Soc. v. Impelmans*, 13 Wash.2d 632, 126 P.2d 757, 763. A "covenant to warrant" in the habendum clause is not a general but at most a "special warranty". *New Orleans & N. E. R. R. v. Morrison*, 203 Miss. 791, 35 So.2d 68, 70. *See also* Warranty.

**Special warranty deed.** A deed in which the grantor only covenants to warrant and defend the title against claims and demands of the grantor and all persons claiming by, through and under him. In some jurisdictions, such deed is called a quitclaim deed (*q.v.*).

**Specie** /spiyshiy(iy)/. Coin of the precious metals, of a certain weight and fineness, and bearing the stamp of the government, denoting its value as currency. Metallic money; e.g. gold or silver coins.

When spoken of a contract, the expression "performance *in specie*" means strictly, or according to the exact terms. As applied to things, it signifies individuality or identity. Thus, on a bequest of a specific picture, the legatee would be said to be entitled to the delivery of the picture *in specie*; i.e., of the very thing. Whether a thing is due *in genere* or *in specie* depends, in each case, on the will of the transacting parties.

**Species** /spiyshiy(iy)z/. Lat. In the civil law, form; figure; fashion or shape. A form or shape given to materials.

**Specific.** Precisely formulated or restricted; definite; explicit; of an exact or particular nature. *People v. Thomas*, 25 Cal.2d 880, 156 P.2d 7, 17. Having a certain form or designation; observing a certain form; particular; precise; tending to specify, or to make particular, definite, limited or precise.

As to *specific* Denial; Devise; Legacy, and Performance, see those titles.

**Specifically.** In a specific manner; explicitly, particularly, definitely.

**Specificatio** /spēsəfəkéysh(iy)ow/. Lat. In the civil law, literally, a making of form; a giving of form to materials. That mode of acquiring property through which a person, by transforming a thing belonging to another, especially by working up his materials into a new species, becomes proprietor of the same.



**Specification.** As used in the law relating to patents, manufacturing, and construction contracts, a particular or detailed statement, account, or listing of the various elements, materials, dimensions, etc. involved.

*Law of personal property.* The acquisition of title to a thing by working it into new forms or species from the raw material; corresponding to the *specificatio* of the Roman law. Right by "specification" can only be acquired when, without the accession of any other material that of another person, which has been used by the operator innocently, has been converted by him into something specifically different in the inherent and characteristic qualities, which identify it. Such is the conversion of corn into meal, of grapes into wine, etc. *Bozeman Mortuary Ass'n v. Fairchild*, 253 Ky. 74, 68 S.W.2d 756.

*Military law.* The clear and particular description of the charges preferred against a person accused of a military offense. *Carter v. McClaughry*, 183 U.S. 365, 22 S.Ct. 181, 46 L.Ed. 236.

*Practice.* A detailed and particular enumeration of several points or matters urged or relied on by a party to a suit or proceeding; as, a "specification of errors," or a "specification of grounds of opposition to a bankrupt's discharge."

**Specific bequest (or devise).** A testamentary gift of specific personal property (e.g. "my old rocking chair") or of a specific amount of cash. A specific bequest (or devise) is a gift by will of a specific article or part of testator's estate, which is identified and distinguished from all things of same kind and which may be satisfied by delivery of particular things. In *re Soles' Estate*, 451 Pa. 568, 304 A.2d 97, 100. *See also* Devise; Legacy (*Specific legacy*).

**Specific devise.** *See* Devise; Specific bequest.

**Specific intent.** The mental purpose to accomplish a specific act prohibited by law. The most common usage of "specific intent" is to designate a special mental element which is required above and beyond any mental state required with respect to the *actus reus* of the crime. Common law larceny, for example, requires the taking and carrying away of the property of another, and the defendant's mental state as to this act must be established, but in addition it must be shown that there was an "intent to steal" the property. Similarly, common law burglary requires a breaking and entry into the dwelling of another, but in addition to the mental state connected with these acts it must also be established that the defendant acted "with intent to commit a felony therein." The subjective desire or knowledge that the prohibited result will occur. *People v. Owens*, 131 Mich.App. 76, 345 N.W.2d 904, 907. *See also* Criminal (*Criminal intent*); Mens rea.

**Specific intent crime.** Crime in which defendant must not only intend the act charged, but also intend to violate law. *U.S. v. Birkenstock*, C.A.Wis., 823 F.2d 1026, 1028. One in which a particular intent is a necessary element of the crime itself. *Russell v. State*,

Fla.App., 373 So.2d 97, 98. *See also* Mens rea; Specific intent.

**Specific legatee.** The recipient of designated property under a will and transferred by the death of the owner.

**Specific performance.** *See* Performance.

**Specify.** To mention specifically; to state in full and explicit terms; to point out; to tell or state precisely or in detail; to particularize, or to distinguish by words one thing from another. *Aleksich v. Industrial Accident Fund*, 116 Mont. 127, 151 P.2d 1016, 1021.

**Specimen.** A sample; a part of something intended to exhibit the kind and quality of the whole.

**Spectrograph.** Voice print analysis is a method of identification based on the comparison of graphic representations or "spectrograms" made of human voices. Such method utilizes a machine known as a "spectrograph" which separates the sound of human voices into the three component elements of time, frequency and intensity. Using a series of lines or bars, the machine plots the variables across electronically sensitive paper and the result is a "spectrogram" of the acoustical signal of the speaker, with the horizontal axis representing the time lapse, the vertical axis indicating frequency, and the thickness of the lines disclosing the intensity of the voice. *People v. Kelly*, 17 Cal.3d 24, 130 Cal.Rptr. 144, 147, 549 P.2d 1240. An increasing number of courts are permitting the admissibility of spectrograph results into evidence to identify voices. *United States v. Baller*, C.A.W.Va., 519 F.2d 463. *See also* Voice exemplars; Voiceprint.

**Speculation.** Buying or selling with expectation of profiting by a rise or fall in price. Also, engaging in hazardous business transactions, or investing in risky securities or commodities, with the hope of an unusually large profit.

Speculation, upon which neither court in nonjury case nor jurors in jury case may base verdict, is the art of theorizing about a matter as to which evidence is not sufficient for certain knowledge. *Jaramillo v. U. S.*, D.C.N.Y., 357 F.Supp. 172, 175.

**Speculative damages.** *See* Damages.

**Speculum** /spékýæləm/. Lat. Mirror or lookingglass. The title of several of the most ancient lawbooks or compilations. One of the ancient Icelandic books is styled "*Speculum Regale*."

**Speech.** Freedom of speech is right guaranteed by First Amendment, U.S.Const. *See also* Commercial speech doctrine; Freedom of speech; Liberty; Symbolic speech.

**Speech or debate clause.** Art. 1, § 6, cl. 1 of U.S. Constitution grants congressmen immunity "for any speech or debate in either House." The courts have extended this privilege to matters beyond pure speech and debate in either House, but only when necessary to prevent indirect impairment of such deliberations. *Gravel v. U. S.*, 408 U.S. 606, 92 S.Ct. 2614, 33 L.Ed.2d 583. *See also* Legislative immunity.

**Speed.** *See* Amphetamine; Methamphetamine.

**Speedy execution.** An execution which, by the direction of the judge *at nisi prius*, issues forthwith, or on some early day fixed upon by the judge for that purpose after the trial of the action.

**Speedy remedy.** One which, having in mind the subject-matter involved, can be pursued with expedition and without essential detriment to the party aggrieved; *e.g.* Restraining order.

**Speedy trial.** The right of the accused to a speedy trial is guaranteed by the Sixth Amendment of the Constitution and such right is implemented by 18 U.S.C.A. § 3161 *et seq.* and Fed.R.Crim.P. 50. *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101, lists four factors to be considered in determining whether delay was unreasonable: (1) Length of delay; (2) the government's justification for the delay; (3) whether and how the defendant asserted his right to a speedy trial; and (4) prejudice caused by the delay, such as lengthened pretrial incarceration. A trial had as soon after indictment as prosecution, with reasonable diligence, can prepare for it; a trial according to fixed rules, free from capricious and oppressive delays, but the time within which it must be had to satisfy the guaranty depends on the circumstances. *Bryant v. State*, 4 Md.App. 572, 244 A.2d 446, 448. What constitutes a "speedy trial" depends on circumstances of each case. *Ferguson v. People*, 160 Colo. 389, 417 P.2d 768, 769. *See* Prejudice (*Speedy trial*); Speedy Trial Act.

**Speedy Trial Act.** Federal Act of 1974 establishing a set of time limits for carrying out the major events (*e.g.* information, indictment, arraignment) in the prosecution of federal criminal cases. 18 U.S.C.A. § 3161 *et seq.*

In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial. 18 U.S.C.A. § 3161(a). *See also* Fed.R.Crim.P. 50.

**Spend.** To consume by using in any manner; to use up, to exhaust, distribute, as to expend money or any other possession.

**Spendthrift.** One who spends money profusely and improvidently; a prodigal; one who lavishes or wastes his estate. By statute, a person who by excessive drinking, gaming, idleness, or debauchery of any kind shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, or expose the government to charge or expense for the support of himself or family, or is liable to be put under guardianship on account of such excesses. *See* Spendthrift trust.

**Spendthrift trust.** A trust created to provide a fund for the maintenance of a beneficiary and at the same time to secure the fund against his improvidence or incapacity; provisions against alienation of the trust fund by the voluntary act of the beneficiary or by his creditors are its usual incidents. *Estate of Sowers*, 1 Kan.App.2d 675, 574 P.2d 224, 228. One which provides a fund for

benefit of another than settlor, secures it against beneficiary's own improvidence, and places it beyond his creditors' reach. A trust set up to protect a beneficiary from spending all of the money that he is entitled to. Only a certain portion of the total amount is given to him at any one time. Most states permit spendthrift trust provisions that prohibit creditors from attaching a spendthrift trust.

**Sperate.** That of which there is hope. Thus a debt which one may hope to recover may be called "sperate," in opposition to "desperate."

**Spes accrescendi** /spíyz ækrəsénday/. Lat. Hope of surviving.

**Spes est vigilantis somnium** /spíyz èst vijəlántəs sómn(i)yəm/. Hope is the dream of the vigilant.

**Spes impunitatis continuum affectum tribuit delinquendi** /spíyz impyúwnətéytəs kəntínyuwəm əféktəm tríbýuwət delínkwénday/. The hope of impunity holds out a continual temptation to crime.

**Spes recuperandi** /spíyz rək(y)úwpərəénday/. Lat. The hope of recovery or recapture; the chance of retaking property captured at sea, which prevents the captors from acquiring complete ownership of the property until they have definitely precluded it by effectual measures.

**Spigurnel** /spígərnél/. The sealer of the royal writs.

**Spin-off.** A form of corporate divestiture that results in a subsidiary or division of a corporation becoming an independent company. Spin-off occurs where part of assets of corporation is transferred to a new corporation and stock of transferee is distributed to shareholders of transferor without surrender by them of stock in transferor. *C. I. R. v. Baan*, C.A.Cal., 382 F.2d 485, 491. A type of reorganization wherein, for example, A Corporation transfers some assets to B Corporation in exchange for enough B stock to represent control. A Corporation then distributes the B stock to its shareholders. *See also* Split-off; Split-up.

**Spinster.** A woman who never has been married.

**Spiritual.** Relating to religious or ecclesiastical persons or affairs, as distinguished from "secular" or lay, worldly, or business matters.

As to *spiritual* Corporation; Court, and Lord, see those titles.

**Spital, or spittle** /spítəl/. A charitable foundation; a hospital for diseased people; a hospital.

**Spite fence.** A fence of no beneficial use to person erecting and maintaining it on his land and maintained solely for purpose of annoying owner of adjoining land. *Burris v. Creech*, 220 N.C. 302, 17 S.E.2d 123. A high and unsightly fence erected to annoy a neighbor or adjoining landowner by obstructing his air, light or view.

**Split gift.** *See* Gift.

**Split income.** Congress, in 1948, enacted new joint tax return legislation and a new set of rates to remove the considerable disparity between tax treatment of married

couples in community property and common-law states, and thereby to remove the considerable pressure on the common-law states to adopt community-property systems. By law enacted that year, married couples in all states were given the privilege to split their income, that is to have it taxed on a joint return at a rate equal to that which would apply if each had earned one-half the amount and were taxed on a separate return. In 1969, however, Congress retained but reduced the disparity between rates imposed on single persons and married couples with the same incomes. This reduction took the form of a new and lower rate schedule for single persons, which took effect beginning in 1971. See I.R.C. § 1(c). See also Gift splitting election.

**Split-off.** When a corporation sets up and funds a new corporation and gives the shares of this new corporation to the old corporation's stockholders in exchange for some of their shares in the old company, this new company is a "split-off" and the process is a split-off. A type of reorganization whereby, for example, A Corporation transfers assets to B Corporation in exchange for enough B stock to represent control. A Corporation then distributes the B stock to its shareholders in exchange for some of their A stock. See also Spin-off; Split-up.

**Split order.** An order to a broker directing him to buy or sell some stock at one price and some at another.

**Split sentence.** One where penalty of fine and imprisonment, as provided by statute, is imposed and imprisonment part is suspended and fine part enforced. It is also exemplified in a sentence by which the defendant serves some time and the balance of the sentence is suspended.

**Splitting cause of action.** Dividing a single or indivisible cause of action into several parts or claims and bringing several actions thereon. *Van Brode Mill. Co. v. Kellogg Co.*, D.C.Del., 113 F.Supp. 845, 852. Commencement of action for only part of the cause of action. *Wood v. Baker*, 217 Or. 279, 341 P.2d 134, 136. Rule against "splitting cause of action" applies only when several actions are brought as result of dividing single or indivisible cause of action. *Beizer v. Dictograph Products, Inc.*, 6 Conn.Cir. 28, 263 A.2d 93, 97.

There is no "splitting of causes" where demand which is subject of second action was not due at time of the first action. *Glavich v. Industrial Accident Commission of California*, 44 Cal.App.2d 517, 112 P.2d 774, 778. The rule against "splitting causes of action" does not mean that plaintiff cannot sue for less than is his due but means merely that if he does so he may be precluded from maintaining another action for the remainder of the same demand. *Scientific & Hospital Supply Corporation v. Board of Education of City of New York*, 172 Misc. 770, 16 N.Y.S.2d 91, 93.

See also Joinder; Misjoinder; Multiplicity of actions or suits.

**Split-up.** When a corporation divides into two or more separate new corporations, gives its shareholders the shares of these new corporations, and goes out of business, this process is termed a "split-up." A type of reorganization whereby, for example, A Corporation

transfers some assets to B Corporation and the remainder to Z Corporation in return for which it receives enough B and Z stock to represent control of each corporation. The B and Z stock is then distributed by A Corporation to its shareholders in return for all of their A stock. The result of the split-up is that A Corporation is liquidated and its shareholders now have control of B and Z Corporations.

**Spoliation** /spōwliyéyshən/. The intentional destruction of evidence and when it is established, fact finder may draw inference that evidence destroyed was unfavorable to party responsible for its spoliation. *State v. Langlet*, Iowa, 283 N.W.2d 330, 333. Such act constitutes an obstruction of justice. The destruction, or the significant and meaningful alteration of a document or instrument. Application of *Bodkin*, D.C.N.Y., 165 F.Supp. 25, 30.

Any change made on a written instrument by a person not a party to the instrument. Such a change will have no effect, provided that the original tenor of the instrument can still be ascertained.

**Spoliator** /spōwliyéyər/. Lat. A spoiler or destroyer. It is a maxim of law, bearing chiefly on evidence, but also upon the value generally of the thing destroyed, that everything most to his disadvantage is to be presumed against the destroyer (*spoliator*), *contra spoliatorum omnia præsumentur*.

**Spoliatus debet ante omnia restitui** /spōwliyéyətə débət æntiy ómn(i)yə ræstityuway/. A party despoiled [forcibly deprived of possession] ought first of all to be restored.

**Spoliatus episcopus ante omnia debet restitui** /spōwliyéyətə əpiskəpəs æntiy ómn(i)yə débət ræstityuway/. A bishop despoiled of his see ought, above all, to be restored.

**Spolium** /spōwl(i)yəm/. Lat. In the civil and common law, a thing violently or unlawfully taken from another.

**Spondeo** /spōndiyow/. Lat. In the civil law, I undertake; I engage.

**Spondes? spondeo** /spōndiyz? spōndiyow/. Lat. Do you undertake? I do undertake. The most common form of verbal stipulation in the Roman law.

**Spondet peritiam artis** /spōndət pərish(i)yəm ártəs/. He promises the skill of his art; he engages to do the work in a skillful or workmanlike manner. Applied to the engagements of workman for hire.

**Sponsalia per verba de futuro** /spōnsəyl(i)yə pər vərbə diy fyuwtyúrow/. An engagement or betrothal through words concerning the future.

**Sponsalia, or stipulatio sponsalitia** /spōnsəyl(i)yə/stip-yələysh(i)yow spōnsəlsh(i)yə/. Lat. In the civil law, espousal; betrothal; a reciprocal promise of future marriage.

**Sponsio** /spōnsh(i)yow/. Lat. In the civil law, an engagement or undertaking; particularly such as was made in the form of an answer to a formal interrogatory by the other party.

An engagement to pay a certain sum of money to the successful party in a cause.

**Sponsio judicialis** /spónsh(i)yow juwdishiyéyləs/. In Roman law, a judicial wager corresponding in some respects to the "feigned issue" of modern practice.

**Sponsio ludicra** /spónsh(i)yow l(y)úwdəkrə/. A trifling or ludicrous engagement, such as a court will not sustain an action for. An informal undertaking, or one made without the usual formula of interrogation.

**Sponsions** /spónshən(d)z/. In international law, agreements or engagements made by certain public officers (as generals or admirals in time of war) in behalf of their governments, either without authority or in excess of the authority under which they purport to be made, and which therefore require an express or tacit ratification.

**Sponsor.** A surety; one who makes a promise or gives security for another, particularly a godfather in baptism.

In the civil law, one who intervenes for another voluntarily and without being requested.

**Spontaneous combustion.** The ignition of a body by the internal development of heat without the action of an external agent.

**Spontaneous declarations.** A statement is admissible as a "spontaneous declaration" if there was an occurrence sufficiently startling to produce a spontaneous and unreflecting statement, if there was an absence of time to fabricate, and if the statement related to the circumstances of the occurrence. *People v. Was*, 22 Ill.App.3d 859, 318 N.E.2d 309, 313. See Spontaneous exclamation.

**Spontaneous exclamation.** Within *res gestae* rule, a statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him, is admissible as a spontaneous and sincere response to actual perceptions produced by shock. *State v. Kendrick*, 239 Or. 512, 398 P.2d 471, 473. One exception to the Hearsay Rule is the exclamation made by one under the stress of excitement or at the very moment of an event before the mind has an opportunity to contrive a false statement; cf. *Fed.Evid. Rule 803(2)*. Sometimes called the *res gestæ* exception to Hearsay Rule. See *Res (Res gestæ)*.

**Sponte oblata** /spóntiy əbléytə/. Lat. A free gift or present to the crown.

**Sponte virum mulier fugiens et adultera facta, dote sua careat, nisi sponsi sponte retracta** /spóntiy víhrəm myúwl(i)yər fyúwj(i)yenz èt ədáltərə fəktə dówtiy s(y)úwə kəriyət, náysay spónsay rətráktə/. Let a woman leaving her husband of her own accord, and committing adultery, lose her dower, unless taken back by her husband of his own accord.

**Sporting house.** A house of ill-fame. A house frequented by sportsmen, gamblers, and the like, but not necessarily a house kept for unlawful sports or practices.

**Sportula** /spórtiyələ/. Lat. In Roman law, a largess, dole, or present; a pecuniary donation; an official perquisite; something over and above the ordinary fee allowed by law.

**Spot.** In commodity trading and in foreign exchange, immediate delivery in contrast to a future delivery.

**Spot exchange rate.** Exchange rate at which one currency can be converted into another currency for immediate delivery.

**Spot market.** See Spot trading.

**Spot price.** The selling price of commodities or goods in spot market. See Spot trading.

**Spot trading.** In commodities market, cash sales for immediate delivery in contrast to trading in futures.

**Spot zoning.** Granting of a zoning classification to a piece of land that differs from that of the other land in the immediate area. Term refers to zoning which singles out an area for treatment different from that of similar surrounding land and which cannot be justified on the bases of health, safety, morals or general welfare of the community and which is not in accordance with a comprehensive plan. *Save Our Rural Environment v. Snohomish County*, 99 Wash.2d 363, 662 P.2d 816, 819.

**Spousal disqualification.** See Marital communications privilege.

**Spousals** /spáwzəlz/. In old English law, mutual promises to marry.

**Spouse.** One's husband or wife, and "surviving spouse" is one of a married pair who outlive the other.

**Spouse-breach.** In old English law, adultery.

**Spread.** In general, a difference between two amounts. In stock and commodity trading, the difference between the bid and asked price. In arbitrage (*q.v.*), the difference between two markets in the price or value of a currency. In futures trading, is the difference between delivery months in the same or different markets. In fixed-income securities, is the difference between yields on securities of the same quality but different maturities or the difference between yields on securities of the same maturity but different quality. In banking, is difference between bank's cost of obtaining funds and rate it charges on loaning out funds.

**Spread sheet.** A multicolumned worksheet used by accountants and auditors to summarize and analyze transactions.

**Spring-branch.** A branch of a stream, flowing from a spring.

**Springing use.** See Use.

**Sprinkling trust.** See Trust.

**Spurious.** False, counterfeit, not genuine.

**Spurious bank-bill.** A bill which may be a legitimate impression from the genuine plate, but it must have the signatures of persons not the officers of the bank whence it purports to have issued, or else the names of fictitious

persons. It may also be an illegitimate impression from a genuine plate, or an impression from a counterfeit plate, but it must have such signatures or names as indicated. A bill, therefore, may be both counterfeit and forged, or both counterfeit and spurious, but it cannot be both forged and spurious.

**Spurious class action.** One of the former categories of class action in which interests of members of class were several and not interdependent, and where joinder was a matter of efficiency to avoid multiplicity of suits. *Slack v. Stiner, C.A.Tex., 358 F.2d 65, 69.* This category of class action no longer exists under Federal Rule of Civil Procedure 23 as revised. *See also Class or representative action.*

**Spurius** /sp(y)úr(i)yəs/spór˚/. Lat. In the civil law, a bastard; the offspring of promiscuous cohabitation.

**Spy.** A person sent into an enemy's camp to inspect their works, ascertain their strength and their intentions, watch their movements, and secretly communicate intelligence to the proper officer. By the laws of war among all civilized nations, a spy is punished with death. *Ex parte Milligan, 71 U.S. (4 Wall.) 2, 44, 18 L.Ed. 281 (argument of counsel).*

Gathering, transmitting, or losing defense information with intent or reason to believe such information will be used to the injury of the United States is a federal crime. 18 U.S.C.A. § 793 *et seq.* *See Espionage.*

**Spying.** To watch or listen to secretly. *See Eavesdropping; Spy; Wiretapping.*

**Square.** As used to designate a certain portion of land within the limits of a city or town, this term may be synonymous with "block," that is, the smallest subdivision which is bounded on all sides by principal streets, or it may denote a space (more or less rectangular) not built upon, and set apart for public passage, use, recreation, or ornamentation, in the nature of a "park" but smaller.

Under government survey system, an area measuring 24 × 24 miles.

Just; settled; fair.

**Public square.** In its popular import, the phrase refers to ground occupied by a courthouse and other public buildings, normally at a point where two streets meet, but it may be used as synonymous with park.

**Square block.** Territory bounded by four streets. *Bernfeld v. Freedenberg, 125 Misc. 645, 211 N.Y.S. 692.*

**Squatter.** One who settles on another's land, without legal title or authority. A person entering upon lands, not claiming in good faith the right to do so by virtue of any title of his own or by virtue of some agreement with another whom he believes to hold the title. Under former laws, one who settled on public land in order to acquire title to the land.

**Squatter's right.** *See Adverse possession.*

**Squeeze-out.** Techniques by which a minority interest in a corporation is eliminated or reduced. Squeeze-outs may occur in a variety of contexts, *e.g.*, in a "going

private" transaction in which minority shareholders are compelled to accept cash for their shares, or the issuance of new shares to existing shareholders in which minority shareholders are given the unpleasant choice of having their proportionate interest in the corporation reduced significantly or of investing a large amount of additional or new capital over which they have no control and for which they receive little or no return. *Gabhart v. Gabhart, 267 Ind. 370, 370 N.E.2d 345, 353.* Many squeeze-outs involve the use of cash mergers. "Squeeze-out" is often used synonymously with "freeze-out" (*q.v.*).

**Squire.** A contraction of "esquire."

**SS.** An abbreviation used in that part of a record, pleading, or affidavit, called the "statement of the venue." Commonly translated or read, "to-wit," and supposed to be a contraction of "*scilicet*."

**S.S.A.** Social Security Administration.

**S.S.I.** Supplemental Security Income.

**S.S.S.** Selective Service System.

**Stabilia** /stəbīl(i)yə/. A writ called by that name, founded on a custom in Normandy, that where a man in power claimed lands in the possession of an inferior, he petitioned the prince that it might be put into his hands till the right was decided, whereupon he had this writ.

**Stabilize.** To keep steady, fixed, as distinguished from fluctuating, shifting. *McCanless v. Klein, 182 Tenn. 631, 188 S.W.2d 745, 748.*

**Stabilized prices.** Prices held steady against any and all increases. *Philadelphia Coke Co. v. Bowles, Em. App., 139 F.2d 349, 353.*

**Stabit p̄sumptio donec probetur in contrarium** /stéybat prazám(p)sh(iy)ow dównək prabiytar in kəntér(i)yəm/. A presumption will stand good till the contrary is proved.

**Stable-stand.** In forest law, one of the four evidences or presumptions whereby a man was convicted of an intent to steal the king's deer in the forest. This was when a man was found at his *standing* in the forest with a cross-bow or long-bow bent, ready to shoot at any deer, or else standing close by a tree with greyhounds in a leash, ready to slip.

**Stacking.** In insurance, refers to ability of insured, when covered by more than one insurance policy, to obtain benefits from second policy on same claim when recovery from first policy alone would be inadequate. *Nationwide Ins. Co. v. Gode, 187 Conn. 386, 446 A.2d 1059, 1060.*

**Stagiarius** /stèyj(iy)ér(i)yəs/. A resident.

**Stake.** A deposit made to answer an event, as on a wager. Something deposited by two persons with the third on condition that it is to be delivered to the one who shall become entitled to it by the happening of a specified contingency. *See also Stakeholder.*

A boundary marker used for land survey purposes.

**Stakeholder.** Generally, a stakeholder is a third party chosen by two or more persons to keep on deposit property or money the right or possession of which is contested between them, and to be delivered to one who shall establish his right to it; and it is one who is entitled to interplead rival or contesting claimants to property or funds in his hands. *Cochran v. Bank of Hancock County*, 118 Ga.App. 100, 162 S.E.2d 765, 770. A person who is or may be exposed to multiple liability as the result of adverse claims. A stakeholder may commence an action of interpleader against two or more claimants. New York C.P.L.R. § 1006. *See also* Interpleader.

A person with whom money is deposited pending the decision of a bet or wager (*q.v.*). His function is to receive the sums wagered and hold them against the determining event, whether that event be a horse race or otherwise, and then pay them over to the winner.

**Staking.** Identification of boundaries of parcel of land by placing stakes in ground at boundary points.

**Stale, n.** In Saxon law, larceny.

**Stale check.** A check which bears a date of issue very much earlier than the date of its presentation or negotiation. A check which has been outstanding too long.

A check, other than a certified check, that is presented for payment more than six months after its date. U.C.C. § 4-404.

**Stale demand or claim.** A demand or claim that has long remained unasserted; one that is first asserted after an unexplained delay which is so long as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that the claim has been abandoned or satisfied. *Luschen v. Stanton*, 192 Okl. 454, 137 P.2d 567, 572. It implies a greater lapse of time than is necessary to "laches." *Bell v. Mackey*, 191 S.C. 105, 3 S.E.2d 816, 824, 830. The doctrine is purely an equitable one, and arises only when, from lapse of time and laches of plaintiff, it would be inequitable to allow a party to enforce his legal rights. *Wood v. City Board of Plumbing Examiners*, 192 Ga. 415, 15 S.E.2d 486, 488. *See also* Limitation (*Statute of limitations*).

**Stallage** /stóləj/. In old English law, the liberty of right of pitching or erecting stalls in fairs or markets, or the money paid for the same.

**Stallarius** /stolér(i)yəs/. In Saxon law, the *præfectus stabuli*, now master of the horse. Sometimes one who has a stall in a fair or market.

**Stamp.** Stamped or printed paper affixed to official or legal documents, stock certificates, etc. as evidence that tax has been paid as required by law. A small label or strip of paper, printed and sold by the government, and required to be attached to mail-matter, and to certain other documents and articles (*e.g.* liquor, cigarettes) subject to duty or excise. *See* Documentary stamp; Revenue stamps; Stamp tax.

A mark, design, seal, etc., which indicates ownership, approval, etc. An identifying or characterizing mark or impression.

**Stamp acts.** In English law, acts regulating the stamps upon deeds, contracts, agreements, papers in law proceedings, bills and notes, letters, receipts, and other papers. English Act of 1765 requiring that revenue stamps be affixed to all official documents in American colonies.

**Stamp duties.** In old English law, duties imposed upon and raised from stamps upon parchment and paper, and forming a branch of the perpetual revenue of the kingdom. 1 Bl.Comm. 323. *See also* Documentary stamp; Revenue stamps; Stamp; Stamp tax.

**Stamp tax.** The cost of stamps which are required to be affixed to legal documents such as deeds, certificates, and the like. *See* Documentary stamp; Revenue stamps; Stamp.

**Stand.** To cease from movement or progress; to pause, remain stationary or inactive. *Jagers v. Southeastern Greyhound Lines*, D.C.Tenn., 34 F.Supp. 667, 668.

To abide; to submit to; as "to stand a trial." To appear in court.

To remain as a thing is; to remain in force. Pleadings objected to and held good are allowed to stand.

**Standard.** Stability, general recognition, and conformity to established practice. *Standard Accident Ins. Co. v. Standard Surety & Casualty Co.*, D.C.N.Y., 53 F.2d 119, 120. A type, model, or combination of elements accepted as correct or perfect. A measure or rule applicable in legal cases such as the "standard of care" in tort actions. *See* Double standard; Reasonable man doctrine or standard; Standard of care.

An ensign or flag used in war.

**Standard deduction.** In taxation, a minimum amount allowed to individual taxpayers as a deduction from adjusted gross income in arriving at taxable income. An individual may choose to itemize deductions; however, this should be done only if itemized deductions exceed the standard deduction. An additional standard deduction is allowed to taxpayers who are either blind or age 65 or older. A limited standard deduction is allowed to a taxpayer who is claimed as a dependent on another's tax return. I.R.C. §§ 62, 63.

**Standard established by law.** That of a reasonable man under like circumstances. *Gulf, C. & S. F. Ry. Co. v. Bell*, Tex.Civ.App., 101 S.W.2d 363, 364. *See* Reasonable man doctrine or standard; Standard of care.

**Standard mortgage clause.** In fire policy, clause providing that in case of loss policy shall be payable to mortgagee, and that his interest as payee shall not be invalidated by act of mortgagor. *Rhode Island Ins. Co. v. Wurtman*, 265 Ky. 835, 98 S.W.2d 29, 31.

**Standard of care.** In law of negligence, that degree of care which a reasonably prudent person should exercise in same or similar circumstances. If a person's conduct falls below such standard, he may be liable in damages

for injuries or damages resulting from his conduct. See Negligence; Reasonable man doctrine or standard.

In medical, legal, etc., malpractice cases a standard of care is applied to measure the competence of the professional. The traditional standard for doctors is that he exercise the "average degree of skill, care, and diligence exercised by members of the same profession, practicing in the same or a similar locality in light of the present state of medical and surgical science." *Gillette v. Tucker*, 67 Ohio St. 106, 65 N.E. 865. With increased specialization, however, certain courts have disregarded geographical considerations holding that in the practice of a board-certified medical or surgical specialty, the standard should be that of a reasonable specialist practicing medicine or surgery in the same special field. *Bruni v. Tatsumi*, 46 Ohio St.2d 127, 129, 346 N.E.2d 673, 676, 75 O.O.2d 184. See also Malpractice.

**Standard of need.** In public assistance law, total needs of an individual or family stipulated by the state, which, when unsatisfied by relevant resources makes the individual or family in need for public assistance purposes.

**Standard of proof.** The burden of proof required in a particular type of case, as in a criminal case where the prosecution has the standard (i.e. burden) of proof beyond a reasonable doubt, and in most civil cases where proof by a fair preponderance of the evidence is required. See Burden of proof.

**Standard of weight, or measure.** A weight or measure fixed and prescribed by law, to which all other weights and measures are required to correspond.

**Standard opinion.** See Unqualified opinion.

**Standing.** One's place in the community in the estimation of others; his relative position in social, commercial, or moral relations; his repute, grade, or rank. See Reputation; Standing to sue doctrine; Status.

**Standing aside jurors.** A practice by which, on the drawing of a jury for a criminal trial, the prosecuting officer puts aside a juror, provisionally, until the panel is exhausted, without disclosing his reasons, instead of being required to challenge him and show cause. The English statute 33 Edw. I deprived the crown of the power to challenge jurors without showing cause, and the practice of standing aside jurors was adopted, in England, as a method of evading its provisions. A similar practice was in use in Pennsylvania.

**Standing by.** Used in law as implying knowledge, under such circumstances as rendered it the duty of the possessor to communicate it; and it is such knowledge, and not the mere fact of "standing by," that lays the foundation of responsibility. The phrase does not import an actual presence, "but implies knowledge under such circumstances as to render it the duty of the possessor to communicate it." See also Estoppel.

**Standing master.** An officer of the court appointed on a regular basis to hear and determine matters within his jurisdiction for which a master may be appointed, as a master in chancery. See also Master.

**Standing mute.** Such exists in criminal case when defendant refuses to plead to the charge against him. If a defendant refuses to plead, the court shall enter a plea of not guilty. Fed.R.Crim.P. 11(a).

**Standing orders.** Rules adopted by particular courts for governing practice before them. In some states, the presiding judge has authority to adopt standing orders for his court alone. They may include rules as to the time at which court commences each day, a procedure for requesting continuances of cases and a method by which cases are placed on the trial list of the particular court. They may be system wide or affect only a particular court in the system.

**Standing seised to uses.** A covenant to stand seised to uses is one by which the owner of an estate covenants to hold the same to the use of another person, usually a relative, and usually in consideration of blood or marriage. It is a species of conveyance depending for its effect on the statute of uses.

**Standing to be sued.** Capacity of a person or sovereign to be a party defendant in an action. A state as sovereign has no capacity to be sued except in cases in which it has consented to suit. See Sovereign immunity.

**Standing to sue doctrine.** "Standing to sue" means that party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. *Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 1364, 31 L.Ed.2d 636. Standing is a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented to the court; it is the right to take the initial step that frames legal issues for ultimate adjudication by court or jury. *State ex rel. Cartwright v. Oklahoma Tax Com'n, Okl.*, 653 P.2d 1230, 1232. The requirement of "standing" is satisfied if it can be said that the plaintiff has a legally protectible and tangible interest at stake in the litigation. *Guidry v. Roberts, La.App.*, 331 So.2d 44, 50. Standing is a jurisdictional issue which concerns power of federal courts to hear and decide cases and does not concern ultimate merits of substantive claims involved in the action. *Weiner v. Bank of King of Prussia, D.C.Pa.*, 358 F.Supp. 684, 695. The doctrine emanates from the case or controversy requirement of the Constitution and from general principles of judicial administration, and seeks to insure that the plaintiff has alleged such a personal stake in the outcome of the controversy as to assure concrete adverseness. *Campaign Clean Water, Inc. v. Ruckelshaus, D.C.Va.*, 361 F.Supp. 689, 692.

Standing is a requirement that the plaintiffs have been injured or been threatened with injury by governmental action complained of, and focuses on the question of whether the litigant is the proper party to fight the lawsuit, not whether the issue itself is justiciable. *Carolina Environmental Study Group, Inc. v. U. S. Atomic Energy Comm., D.C.N.C.*, 431 F.Supp. 203, 218. Essence of standing is that no person is entitled to assail the constitutionality of an ordinance or statute except as he himself is adversely affected by it. *Sandoval v. Ryan*,

Colo.App., 535 P.2d 244, 247. See also Case (*Cases and controversies*); Justiciable controversy; Ripeness doctrine.

*Administrative Procedure Act.* Such Act authorizes actions against federal officers by "any person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C.A. § 702.

**Staple.** A major commodity grown, traded and demanded; e.g. grain, salt, flour. Such commodity is usually very important to the local economy where it is grown or produced. Raw material.

In English law, a mart or market. A place where the buying and selling of wool, lead, leather, and other articles were put under certain terms.

In International law, the right of staple, as exercised by a people upon foreign merchants, is defined to be that they may not allow them to set their merchandise and wares to sale but in a certain place. This practice is not in use in the United States.

*Law of the staple.* In England, law administered in the court of the mayor of the staple; the law-merchant.

*Staple inn.* An inn of chancery. See Inns of Chancery.

*Statute staple.* The English statute of the staple, 27 Ed. III, stat. 2, confined the sale of all commodities to be exported to certain towns in England, called *estaple* or *staple*, where foreigners might resort. It authorized a security for money, commonly called statute staple, to be taken by traders for the benefit of commerce; the mayor of the place is entitled to take recognizance of a debt in proper form, which had the effect to convey the lands of the debtor to the creditor till out of the rents and profits of them he should be satisfied. A security for a debt acknowledged to be due, so called from its being entered into before the mayor of the *staple*, that is to say, the grand mart for the principal commodities or manufactures of the kingdom, formerly held by act of parliament in certain trading towns. In other respects it resembled the *statute-merchant* (*q.v.*), but like that has now fallen into disuse.

**Starboard.** In maritime law, the righthand side of a vessel when the observer faces forward. "Starboard tack," refers to the course of vessel when she has the wind on her starboard bow.

**Star-chamber.** A court which originally had jurisdiction in cases where the ordinary course of justice was so much obstructed by one party, through writs, combination of maintenance, or overwring influence that no inferior court would find its process obeyed. The court consisted of the privy council, the common-law judges, and (it seems) all peers of parliament. In the reign of Henry VIII and his successors, the jurisdiction of the court was illegally extended to such a degree (especially in punishing disobedience to the king's arbitrary proclamations) that it became odious to the nation, and was abolished.

**Stare decisis** /stériy dəsáysəs/. Lat. To abide by, or adhere to, decided cases.

Policy of courts to stand by precedent and not to disturb settled point. *Neff v. George*, 364 Ill. 306, 4 N.E.2d 388, 390, 391. Doctrine that, when court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same. *Horne v. Moody*, Tex.Civ.App., 146 S.W.2d 505, 509, 510. Under doctrine a deliberate or solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy. *State v. Mellenberger*, 163 Or. 233, 95 P.2d 709, 719, 720. Doctrine is one of policy, grounded on theory that security and certainty require that accepted and established legal principle, under which rights may accrue, be recognized and followed, though later found to be not legally sound, but whether previous holding of court shall be adhered to, modified, or overruled is within court's discretion under circumstances of case before it. *Otter Tail Power Co. v. Von Bank*, 72 N.D. 497, 8 N.W.2d 599, 607. Under doctrine, when point of law has been settled by decision, it forms precedent which is not afterwards to be departed from, and, while it should ordinarily be strictly adhered to, there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. The doctrine is not ordinarily departed from where decision is of long-standing and rights have been acquired under it, unless considerations of public policy demand it. *Colonial Trust Co. v. Flanagan*, 344 Pa. 556, 25 A.2d 728, 729. The doctrine is limited to actual determinations in respect to litigated and necessarily decided questions, and is not applicable to dicta or obiter dicta.

See also Precedent; Res (*Res judicata*).

**Stare decisis et non quieta movere** /stériy dəsáysəs èt nòn kwaiyítə mowvíriy/. To adhere to precedents, and not to unsettle things which are established. *Ballard County v. Kentucky County Debt Commission*, 290 Ky. 770, 162 S.W.2d 771, 773. See *Stare decisis*.

**Stare in judicio** /stériy in juwdish(iy)ow/. Lat. To appear before a tribunal, either as plaintiff or defendant.

**Star page.** The line and word at which the pages of the first edition of a law book began are frequently marked by a star in later editions or subsequent reprintings or reproductions if the original page numbering is important for citation or reference purposes.

**Starr or starra** /stár(ə)/. The old term for contract or obligation among the Jews, being a corruption from the Hebrew word "*shetar*," a covenant, by an ordinance of Richard I, no starr was allowed to be valid, unless deposited in one of certain repositories established by law, the most considerable of which was in the king's exchequer at Westminster; and Blackstone conjectures that the room in which these chests were kept was



thence called the "starr-chamber." 4 Bl.Comm. 266, 267, note a.

**Stash.** To secrete away; to hide or conceal money or property, commonly used in reference to ill-gotten gain or property. *See* Conceal.

**State, n.** A people permanently occupying a fixed territory bound together by common-law habits and custom into one body politic exercising, through the medium of an organized government, independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into international relations with other communities of the globe. *United States v. Kusche*, D.C.Cal., 56 F.Supp. 201, 207, 208. The organization of social life which exercises sovereign power in behalf of the people. *Delany v. Moraitis*, C.C.A.Md., 136 F.2d 129, 130. In its largest sense, a "state" is a body politic or a society of men. *Beagle v. Motor Vehicle Acc. Indemnification Corp.*, 44 Misc.2d 636, 254 N.Y.S.2d 763, 765. A body of people occupying a definite territory and politically organized under one government. *State ex rel. Maisano v. Mitchell*, 155 Conn. 256, 231 A.2d 539, 542. A territorial unit with a distinct general body of law. *Restatement, Second, Conflicts*, § 3. Term may refer either to body politic of a nation (*e.g.* United States) or to an individual governmental unit of such nation (*e.g.* California).

The section of territory occupied by one of the United States. One of the component commonwealths or states of the United States of America. The term is sometimes applied also to governmental agencies authorized by state, such as municipal corporations. Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States. *Uniform Probate Code*, § 1-201(40).

The people of a state, in their collective capacity, considered as the party wronged by a criminal deed; the public; as in the title of a cause, "The State vs. A. B."

Term "state" as used in rules providing when a state may appeal in a criminal case is all inclusive and intended to include not only the state but its political subdivisions, counties and cities. *Spokane County v. Gifford*, 9 Wash.App. 541, 513 P.2d 301, 302. Federal Government is a "state" bound by all of provisions of the Interstate Agreement on Detainers. *Enright v. U. S.*, D.C.N.Y., 437 F.Supp. 580, 581.

The circumstances or condition of a being or thing at a given time.

**Foreign state.** A foreign country or nation. The several United States are considered "foreign" to each other except as regards their relations as common members of the Union.

**State officers.** Those whose duties concern the state at large or the general public, or who are authorized to exercise their official functions throughout the entire state, without limitation to any political subdivision of the state. In another sense, officers belonging to or exercising authority under one of the states of the

Union, as distinguished from the officers of the United States.

**State offices.** *See* Office.

**State paper.** A document prepared by, or relating to, the political department of the government of a state or nation, and concerning or affecting the administration of its government or its political or international relations. Also, a newspaper, designated by public authority, as the organ for the publication of public statutes, resolutions, notices, and advertisements.

**State revenue.** Current income of state from whatever source derived that is subject to appropriation for public uses.

**State's evidence.** *See* that title.

**State tax.** A tax the proceeds of which are to be devoted to the expenses of the state, as distinguished from taxation for federal, local or municipal purposes; *e.g.* state income or sales tax.

**State, v.** To express the particulars of a thing in writing or in words; to set down or set forth in detail; to aver, allege, or declare. To set down in gross; to mention in general terms, or by way of reference; to refer.

**State action.** In general, term used in connection with claims under due process clause and Civil Rights Act for which a private citizen is seeking damages or redress because of improper governmental intrusion into his life. In determining whether an action complained of constitutes "state action" within purview of Fourteenth Amendment, court must examine whether sufficiently close nexus exists between state and challenged action so that the action may fairly be treated as that of the state itself. *Denver Welfare Rights Organization v. Public Utilities Comm.*, Colo., 547 P.2d 239, 243. There is no practical distinction between what constitutes "state action" for purposes of Fourteenth Amendment and what is required to fulfill "under color of state law" provision of 42 U.S.C.A. § 1983. *Ouzts v. Maryland Nat. Ins. Co.*, C.A.Nev., 505 F.2d 547, 549. *See* Color of law.

**State auditor.** The elected or appointed official in a state who is responsible for auditing the accounts of state agencies.

**State banks.** Those banks chartered by a state in contrast to federally chartered banks. Banks under the supervision and jurisdiction of state agencies. *See also* Bank.

**State courts.** Those courts which constitute the state judicial system in contrast to federal courts. City and county courts may or may not be part of the state system of courts, depending upon the jurisdiction.

**Stated.** Determined, fixed, or settled.

**Stated meeting.** A meeting of a board of directors, board of officers, etc., held at the time appointed therefor by law, ordinance, by-law, or other regulation; as distinguished from "special" meetings, which are held on call

as the occasion may arise, rather than at a regularly appointed time, and from adjourned meetings.

**Stated term.** A regular or ordinary term or session of a court for the dispatch of its general business, held at the time fixed by law or rule; as distinguished from a *special* term, held out of the due order or for the transaction of particular business.

**Stated times.** Occurring at regular intervals or given regularly; fixed, regular in operation or occurrence, not occasional or fluctuating.

**Stated account.** Term signifies an agreed balance between the parties to a settlement; that is, that they have agreed after an investigation of their accounts that a certain balance is due from one to the other. *Holt v. Western Farm Services, Inc.*, 19 Ariz.App. 335, 507 P.2d 674, 677.

**Stated capital.** Amount of capital contributed by stockholders. Sometimes used to mean legal capital.

The capital or equity of a corporation as it appears in the balance sheet. The sum of the par value of all par value shares issued, the entire amount received for no-par shares, and any amounts transferred by a stock dividend or other corporate action from surplus to stated capital. In some jurisdictions, only a portion of the amount received for no-par shares need be included in stated capital and the remainder may be credited to paid-in surplus and be distributed as a dividend.

**State Department.** That department in the executive branch of the federal government, headed by the Secretary of State, which is principally responsible for foreign affairs and foreign trade. The Department determines and analyzes the facts relating to our overseas interests, makes recommendations on policy and future action, and takes the necessary steps to carry out established policy. In so doing, the Department engages in continuous consultations with other states; negotiates treaties and agreements with foreign nations; speaks for the United States in the United Nations and in numerous major international organizations in which the United States participates; and represents the United States at numerous major international organizations in which the United States participates; and represents the United States at numerous international conferences annually.

**Stated value.** A term used in accounting in reference to the value assigned to a corporation's stock, similar to par value. There is no relation between the stated value and the market value of stock. Stated value is the legal capital of the company. *See also* Par value.

**State law.** Refers to laws of a state or ordinances of city or town, all as distinguished from Federal law which is the supreme law of the land under Art. VI of the U.S. Constitution. However, in matters which are not necessarily governed by Federal law, the Federal courts will look to state law and be governed by it. *See* *Erie v. Tompkins*. *Compare* Federal Acts.

**Statement.** In a general sense, an allegation; a declaration of matters of fact. The term has come to be used of

a variety of formal narratives of facts, required by law in various jurisdictions as the foundation of judicial or official proceedings and in a limited sense is a formal, exact, detailed presentation.

An oral or written assertion, or nonverbal conduct of a person, if it is intended by him as an assertion. Fed.R.Evid. 801(a). Oral or written verbal expression, or nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression. Calif. Evid.Code § 225.

A hearsay declarant's nonverbal conduct may qualify as a "statement" for purpose of exclusion under the hearsay rule if the conduct was intended by the declarant as a substitute for oral or written verbal expression. *Matter of Cheryl H.*, 2 Dist., 153 C.A.3d 1098, 200 Cal.Rptr. 789, 807.

*See also* Closing statement; False statement; Financial statement; Opening statement of counsel; Prior inconsistent statements; Registration statement; Voluntary statement.

**Bank statement.** *See* Statement of account.

**Financial statement.** *See* Balance (*Balance sheet*); Financial statement; Income statement; Profit and loss statement; Statement of affairs.

**Statement of account.** A report issued monthly or periodically by a bank or creditor to a customer setting forth the amounts billed, credits given and balance due. A bank statement includes the checks drawn and cleared, the deposits made, the charges debited, and account balance. *See also* Financial statement.

**Statement of affairs.** Document which must be filed in bankruptcy proceedings, setting forth answers to questions about the past and present financial situation of the debtor. A balance sheet showing immediate liquidation amounts, rather than historical costs, usually prepared when insolvency or bankruptcy is imminent. *See also* Financial statement; Income statement; Statement of condition.

**Statement of claim.** *See* Claim; Complaint.

**Statement of condition.** A balance sheet which shows the assets, liabilities, reserves and capital of a person, business, or a financial institution, as of a given date. *See also* Balance (*Balance sheet*); Financial statement; Statement of affairs.

**Statement of confession.** Oftentimes referred to as a "power of attorney", "cognovit note", or "confession of judgment", is written authority of debtor and his direction to enter judgment against debtor as stated therein. *See* Cognovit judgment; Judgment (*Confession of judgment*).

**Statement of defense.** *See* Answer; Reply.

**Statement of income.** *See* Financial statement; Income statement; Profit and loss statement.

**Statement of particulars.** *See* Bill (*Bill of particulars*).

**State of art.** *See* State of the art.

**State of facts.** Formerly, when a master in chancery was directed by the court of chancery to make an

inquiry or investigation into any matter arising out of a suit, and which could not conveniently be brought before the court itself, each party in the suit carried in before the master a statement showing how the party bringing it in represented the matter in question to be; and this statement was technically termed a "state of facts," and formed the ground upon which the evidence was received, the evidence being, in fact, brought by one party or the other, to prove his own or disprove his opponent's state of facts. And so now, a state of facts means the statement made by any one of his version of the facts.

**State officer.** One who holds elective or appointive position in state government, *e.g.* state attorney general.

**State of mind.** A person's reasons and motives for acting as he did. Term used in connection with evidence. *See* Mens rea; Mental state; State of mind exception.

**State of mind exception.** Under the "state of mind exception" to the hearsay rule, an out of court declaration of a present existing motive or reason for acting is admissible even though the declarant is available to testify. *Oberman v. Dun & Bradstreet, Inc., C.A.III., 507 F.2d 349, 351. See Fed.Evid.R. 803(3).*

**State of the art.** In context of products liability case means level of pertinent scientific and technical knowledge existing at time of manufacture. *Wisla v. St. Stanislaus Social Club, Inc., 7 Mass.App. 813, 390 N.E.2d 1133, 1138, 3 A.L.R.4th 480.*

**State of the case.** In general, the posture of litigation at a given point in time. It may be ready for trial, in the process of trial, or pending appeal.

**State paper office.** An office established in London in 1578 for the custody of state papers. The head of it was the "Clerk of the Papers."

**State police.** A department or agency of a state government empowered with authority of police throughout a state and commonly trained and governed in a quasi-military fashion.

**State police power.** Every state has power to enact laws for the protection of its citizens' health, welfare, morals and safety and such power is derived from the 10th Amendment, U.S.Const. This power is upheld if exercised in a manner consistent with its ends and if the means used are reasonably calculated to protect one of these legitimate ends. *See also* Police power.

**State's attorney.** An officer who represents the State in securing indictments and in prosecuting criminal cases. Also called District or County Attorney or Prosecuting Attorney. Commonly he is elected in a county election and his authority is county wide.

**State seal.** The official die or signet having a raised emblem and used by state officials on documents of importance. Every state has its own such seal.

**State secret.** A governmental secret relating to national defense or international relations of United States and, once established, government has a privilege to refuse to disclose the secret in civil litigation and to prevent any

litigant from disclosing the secret. *Sigler v. LeVan, D.C.Md., 485 F.Supp. 185, 193.*

**State secrets privilege.** This is a long-standing evidentiary privilege that permits government to resist discovery of evidence if disclosure reasonably could be seen as threat to military or diplomatic interest of nation; when properly invoked, privilege is absolute, and no showing of need can overcome it. *Halkin v. Helms, C.A.D.C., 690 F.2d 977, 990.*

**State's evidence.** A popular term for testimony given by an accomplice or joint participant in the commission of a crime tending to criminate or convict the others, and given under an actual or implied promise of immunity or lesser sentence for himself.

**State sovereignty.** The right of a state to self-government. The role of supreme authority or rule exercised by every state within the Union. *See also* Sovereign states.

**State's rights.** Rights not conferred on the federal government or forbidden to the States according to the 10th Amendment, U.S. Constitution.

**Statim** /stéytəm/. Lat. Forthwith; immediately. In old English law, this term meant either "at once," or "within a legal time," *i.e.*, such time as permitted the legal and regular performance of the act in question.

**Stating an account.** Exhibiting, or listing in their order, the items which make up an account.

**Stating part of a bill.** That part of a bill in chancery in which the plaintiff states the facts of his case; it is distinguished from the *charging* part of the bill and from the *prayer*.

**Station.** Social position or status. *See* Standing; Status.

A place where military duty is performed or stores are kept or something connected with war is done.

A place at which both freight and passengers are received for transportation or delivered after transportation.

In the civil law, a place where ships may ride in safety.

**Stationers' company.** A body formed in 1557 in London of 97 London stationers and their successors, to whom was entrusted, in the first instance, and, under Orders in Council, the censorship of the press.

**Stationers' hall.** In old English law, the hall of the stationers' company, at which every person claiming copyright in a book must register his title, in order to be able to bring actions against persons infringing it.

**Stationery office.** In old English law, a government office established as a department of the treasury, for the purpose of supplying government offices with stationery and books, and of printing and publishing government papers.

**Station house.** Police station or precinct.

**Statist** /stéytəst/. A statesman; a politician; one skilled in government.

**Stat pro ratione voluntas** /stæt prów ræshiyówni vólántæs/. The will stands in place of a reason.

**Stat pro ratione voluntas populi** /stæt prów ræshiyówni vólántæs póp(y)álay/. The will of the people stands in place of a reason.

**Statu liber** /státyuw láybər/. Lat. In Roman law, one who is made free by will under a condition; one who has his liberty fixed and appointed at a certain time or on a certain condition.

**Statu liberi** /státyuw líbərəy/. Lat. In Louisiana, slaves for a time, who had acquired the right of being free at a time to come, or on a condition which was not fulfilled, or in a certain event which had not happened, but who in the meantime remained in a state of slavery. Civ.Code La.1838.

**Status**. Standing; state or condition; social position. The legal relation of individual to rest of the community. The rights, duties, capacities and incapacities which determine a person to a given class. A legal personal relationship, not temporary in its nature nor terminable at the mere will of the parties, with which third persons and the state are concerned. *Holzer v. Deutsche Reichsbahn Gesellschaft*, 159 Misc. 830, 290 N.Y.S. 181, 191. While term implies relation it is not a mere relation.

**Status crime**. A class of crime which consists not in proscribed action or inaction, but in the accused's having a certain personal condition or being a person of a specified character. An example of a status crime is vagrancy. Status crimes are constitutionally suspect. For example, being a drug addict is no longer a punishable offense. See *Robinson v. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758.

**Status de manerio** /stéytəs diy mənəriyow/. In old English law, the assembly of the tenants in the court of the lord of a manor, in order to do their customary suit.

**Status of irremovability**. In old English law, the right acquired by a pauper, after one year's residence in any parish, not to be removed therefrom.

**Status quo** /stéytəs kwów/. The existing state of things at any given date. *Status quo ante bellum*, the state of things before the war. "Status quo" to be preserved by a preliminary injunction is the last actual, peaceable, uncontested status which preceded the pending controversy. *Edgewater Constr. Co., Inc. v. Percy Wilson Mortg. & Finance Corp.*, 2 Ill.Dec. 864, 357 N.E.2d 1307, 1314.

**Statutable, or statutory** /státyətəbəl/státyət(ò)riy/. That which is introduced or governed by statutory law, as opposed to the common law or equity. Thus, a court is said to have statutory jurisdiction when jurisdiction is given to it in certain matters by act of the legislature.

**Statuta pro publico commodo late interpretantur** /státyúwtə prów pòbləkow kómədow léytiy intèr-prətəntər/. Statutes made for the public good ought to be liberally construed.

**Statuta suo clauduntur territorio nec ultra territorium disponent** /státyúwtə s(y)úwów klodəntər tèhrətòri-

yow nèk áltrə tèhrətòriyəm dəs-pòwnənt/. Statutes are confined to their own territory, and have no extraterritorial effect.

**Statute, n.** A formal written enactment of a legislative body, whether federal, state, city, or county. An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state. Such may be public or private, declaratory, mandatory, directory, or enabling, in nature. For mandatory and directory statutes, see *Directory*; *Mandatory statutes*.

Depending upon its context in usage, a statute may mean a single act of a legislature or a body of acts which are collected and arranged according to a scheme or for a session of a legislature or parliament.

This word is used to designate the legislatively created laws in contradistinction to court decided or unwritten laws. See *Common law*.

See also *Codification*; *Mandatory statutes*; *Revised statutes*; *Slip law*; *Slip law print*; *Special law*.

*Affirmative statute*. See that title.

*Criminal statute*. An act of the Legislature as an organized body relating to crime or its punishment. See *Crime*; *Criminal law*; *Penal code*; *Penal laws*.

*Declaratory statute*. See that title.

*Enabling statute*. See that title.

*Expository statute*. See that title.

*General statute*. A statute relating to the whole community, or concerning all persons generally, as distinguished from a private or special statute.

*Local statute*. See *Local law*.

*Negative statute*. A statute expressed in negative terms; a statute which prohibits a thing from being done, or declares what shall not be done.

*Penal statute*. See *Crime*; *Criminal law*; *Penal code*; *Penal laws*; *Punitive statute*.

*Perpetual statute*. One which is to remain in force without limitation as to time; one which contains no provision for its repeal, abrogation, or expiration at any future time.

*Personal statutes*. In foreign and modern civil law, those statutes which have principally for their object the person, and treat of property only incidentally. A personal statute, in this sense of the term, is a law, ordinance, regulation, or custom, the disposition of which affects the person and clothes him with a capacity or incapacity, which he does not change with every change of abode, but which, upon principles of justice and policy, he is assumed to carry with him wherever he goes. The term is also applied to statutes which, instead of being general, are confined in their operation to one person or group of persons. See *Private law*; *Special law*.

**Private statute.** A statute which operates only upon particular persons, and private concerns. An act which relates to certain individuals, or to particular classes of men. See Private law; Special law.

**Public statute.** A statute enacting a universal rule which regards the whole community, as distinguished from one which concerns only particular individuals and affects only their private rights. See Public law. See also *General statute, above*.

**Punitive statute.** See that title.

**Real statutes.** In the civil law, statutes which have principally for their object property, and which do not speak of persons, except in relation to property.

**Reference statutes.** See that title.

**Remedial statute.** See Remedial laws or statutes.

**Revised statutes.** See that title.

**Special statute.** One which operates only upon particular persons and private concerns. A private statute. Distinguished from a general or public statute. See Special law.

**Statute fair.** In old English law, a fair at which laborers of both sexes stood and offered themselves for hire; sometimes called also "Mop."

**Statute-merchant.** In old English law, a security for a debt acknowledged to be due, entered into before the chief magistrate of some trading town, pursuant to the statute 13 Edw. I, *De Mercatoribus*, by which not only the body of the debtor might be imprisoned, and his goods seized in satisfaction of the debt, but also his lands might be delivered to the creditor till out of the rents and profits of them the debt be satisfied. Now fallen into disuse.

**Statute of accumulations.** In old English law, the statute 39 & 40 Geo. III, c. 98, forbidding the accumulation, beyond a certain period, of property settled by deed or will.

**Statute of allegiance de facto.** An act of 11 Hen. VII, c. 1, requiring subjects to give their allegiance to the actual king for the time being, and protecting them in so doing.

**Statute of distributions.** See Distribution.

**Statute of Elizabeth.** In old English law, the statute 13 Eliz., c. 5, against conveyances made in fraud of creditors.

**Statute of frauds.** See Frauds, Statute of.

**Statute of Gloucester.** In old English law, the statute 6 Edw. I, c. 1, A.D. 1278. It takes its name from the place of its enactment, and was the first statute giving costs in actions. 3 Bl.Comm. 399.

**Statute of laborers.** See Laborer.

**Statute of limitations.** See Limitation (*Statute of limitation*).

**Statute of repose.** "Statutes of limitations" extinguish, after period of time, right to prosecute accrued cause of

action; "statute of repose," by contrast, limits potential liability by limiting time during which cause of action can arise. *Kline v. J.I. Case Co.*, D.C.Ill., 520 F.Supp. 564, 567. It is distinguishable from statute of limitations, in that statute of repose cuts off right of action after specified time measured from delivery of product or completion of work, regardless of time of accrual of cause of action or of notice of invasion of legal rights. *Universal Engineering Corp. v. Perez*, Fla., 451 So.2d 463, 465.

**Statute of uses.** See Use.

**Statute of wills.** In old English law, the statute 32 Hen. VIII, c. 1, which enacted that all persons being seised in fee-simple (except *femes covert*, infants, idiots, and persons of non-sane memory) might, by will and testament in writing, devise to any other person, except to bodies corporate, two-thirds of their lands, tenements, and hereditaments, held in chivalry, and the whole of those held in socage. 2 Bl.Comm. 375.

**Statute roll.** A roll upon which an English statute, after receiving the royal assent, was formerly entered.

**Statutes at large.** An official compilation of the acts and resolutions of each session of Congress published by the Office of the Federal Register in the National Archives and Records Service. It consists of two parts, the first comprising public acts and joint resolutions, the second, private acts and joint resolutions, concurrent resolutions, treatises, proposed and ratified amendments to Constitution, and Presidential proclamations. The arrangement is currently by Public Law number, and by chapter number in pre-1951 volumes. This is the official print of the law for citation purposes where titles of the United States Code have not been enacted into positive law.

**Statutes of amendments and jeofailes.** Formerly, statutes whereby a pleader who perceived any slip in the form of his proceedings, and acknowledged the error (jeofaile), was permitted to amend.

**Statute staple.** See Staple.

**Temporary statute.** One which is limited in its duration at the time of its enactment. It continues in force until the time of its limitation has expired, unless sooner repealed. A statute which by reason of its nature has only a single and temporary operation—e.g. an appropriation bill—is also called a temporary statute.

**Validating statute.** See that title.

**Statutes at large.** See Statute.

**Statuti** /stət(y)úwtay/. Lat. In Roman law, licensed or registered advocates; members of the college of advocates. The number of these was limited, and they enjoyed special privileges from the time of Constantine to that of Justinian.

**Statutory.** Relating to a statute; created or defined by a statute; required by a statute; conforming to a statute.

**Statutory bond.** One that either literally or substantially meets requirements of statute. Southern Surety

Co. v. United States Cast Iron Pipe & Foundry Co., C.C.A.Mo., 13 F.2d 833, 835.

**Statutory construction.** That branch of the law dealing with the interpretation of laws enacted by a legislature. A judicial function required when a statute is invoked and different interpretations are in contention. Where legislature attempts to do several things one of which is invalid, it may be discarded if remainder of the act is workable and in no way depends upon invalid portion, but if that portion is an integral part of the act, and its excision changes the manifest intent of the act by broadening its scope to include subject matter or territory which was not included therein as enacted, such excision is "judicial legislation" and not "statutory construction". *Ettinger v. Studevent*, 219 Ind. 406, 38 N.E.2d 1000, 1007. *See* Construction; Strict construction.

**Statutory crime.** *See* Crime; Penal code; Penal laws.

**Statutory dedication.** *See* Dedication.

**Statutory exception.** A provision in a statute exempting certain conduct or persons from the thrust of the law enacted.

**Statutory exposition.** When the language of a statute is ambiguous, and any subsequent enactment involves a particular interpretation of the former act, it is said to contain a *statutory* exposition of the former act.

**Statutory extortion.** The unlawful extraction of money or other value by means of a threat not sufficient for robbery, or a communication for the purpose of such extraction. *See e.g.* 18 U.S.C.A. § 871 et seq. *See also* Extortion.

**Statutory foreclosure.** *See* Foreclosure.

**Statutory instruments.** English administrative regulations and orders. The term applies especially to the administrative rules published since 1939, supplementing the English administrative code, Statutory Rules and Orders.

**Statutory law.** That body of law created by acts of the legislature in contrast to constitutional law and law generated by decisions of courts and administrative bodies. *See* Statute.

**Statutory lien.** A lien arising solely by force of statute upon specified circumstances or conditions, but does not include any lien provided by or dependent upon an agreement to give security, whether or not such lien is also provided by or is also dependent upon statute and whether or not the agreement or lien is made fully effective by statute. Bankruptcy Code § 101.

**Statutory merger.** *See* Merger (*Corporations*).

**Statutory obligation.** An obligation—whether to pay money, perform certain acts, or discharge certain duties—which is created by or arises out of a statute, as distinguished from one founded upon acts between parties or jural relationships.

**Statutory offense.** *See* Crime; Penal code; Penal laws.

**Statutory partnership association.** *See* Partnership.

**Statutory penalty.** One imposed against the offender for some statutory violation by him. *People v. Corcillo*, 195 Misc. 198, 88 N.Y.S.2d 534, 536. One which an individual is allowed to recover against a wrongdoer as satisfaction for wrong or injury suffered, without reference to actual damage sustained. *Nording v. Johnston*, 205 Or. 315, 283 P.2d 994, 998. In a civil sense, a "statutory penalty" is a pecuniary punishment, imposed for doing some act which is prohibited or for omitting to do some act which is required to be done; *e.g.* Copyright Act provides statutory damages for copyright infringement. 17 U.S.C.A. § 504(c); 18 U.S.C.A. § 2319. *See also* Penalty.

**Statutory rape.** The unlawful sexual intercourse with a female under the age of consent which may be 16, 17 or 18 years of age, depending upon the state statute. The government is not required to prove that intercourse was without the consent of the female because she is conclusively presumed to be incapable of consent by reason of her tender age. *See also* Rape.

**Statutory release.** In England, a conveyance which superseded the old compound assurance by lease and release. It was created by St. 4 & 5 Vict., c. 21, which abolished the lease for a year.

**Statutory staple.** An ancient writ that lay to take the body of a person and seize the lands and goods of one who had forfeited a bond called statute staple. *See* Staple.

**Statutory successor.** A statutory successor is the person to whom all assets of a corporation pass upon its dissolution under the provisions of a statute of the state of incorporation which is in force at the time of the dissolution. *See* Restatement, Second, Conflicts, § 388.

**Statutum** /stæt(y)úwtəm/. Lat. Established; determined.

In the civil law, a term applied to judicial action.

In old English law, a statute; an act of parliament.

**Statutum affirmativum non derogat communi legi** /stæt(y)úwtəm əfərmətáyvəm nòn dérəgət kəmyúwnay líjyay/. An affirmative statute does not derogate from the common law.

**Statutum ex gratia regis dicitur, quando rex dignatur cedere de jure suo regio, pro commodo et quiete populi sui** /stæt(y)úwtəm èks gréysh(iy)ə ríyjəs dísetər, kwóndow reks dignéytər síydəriy díy júriy s(y)úwow ríyj(iy)ow, pròw kómədow èt kwayiytiy póp(y)əlay s(y)úway/. A statute is said to be by the grace of the king, when the king deigns to yield some portion of his royal rights for the good and quiet of his people.

**Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis** /stæt(y)úwtəm jènərəylətər èst intələjéndəm kwóndow vərbə stæt(y)úwtay sənt spəshiyéyl(i)yə réysh(iy)ow ótəm jènərəyləs/. When the words of a statute are special, but the reason of it general, the statute is to be understood generally.

**Statutum sessionum** /stæt(y)úwtəm sès(hiyównəm/. In old English law, the statute session; a meeting in every

hundred of constables and householders, by custom, for the ordering of servants, and debating of differences between masters and servants, rating of wages, etc.

**Statutum speciale statuto speciali non derogat** /stat(y)úwtam speshiyéyliy stət(y)úwtow speshiyéylay nòn déhrəgat/. One special statute does not take from another special statute.

**Stay, v.** To stop, arrest, or forbear. To "stay" an order or decree means to hold it in abeyance, or refrain from enforcing it.

**Stay, n.** A stopping; the act of arresting a judicial proceeding by the order of a court. Also that which holds, restrains, or supports.

A stay is a suspension of the case or some designated proceedings within it. It is a kind of injunction with which a court freezes its proceedings at a particular point. It can be used to stop the prosecution of the action altogether, or to hold up only some phase of it, such as an execution about to be levied on a judgment.

*Automatic stay in bankruptcy.* See Automatic stay.

**Stay laws.** Acts of the legislature prescribing a stay of execution in certain cases, or a stay of foreclosure of mortgages, or closing the courts for a limited period, or providing that suits shall not be instituted until a certain time after the cause of action arose, or otherwise suspending legal remedies; designed for the relief of debtors, in times of general distress or financial trouble.

**Stay of execution.** The stopping or arresting of execution on a judgment, that is, of the judgment-creditor's right to issue execution, for a limited period. This is given by statute in many jurisdictions, as a privilege to the debtor, usually on his furnishing bail for the debt, costs, and interest. Or it may take place by agreement of the parties. See e.g. Fed.R.Civil P. 62. Term may also refer to the stopping of the execution of capital punishment, commonly to permit further appeals by defendant. See e.g. Fed.R.Crim.P. 38(a).

**Stay of proceedings.** The temporary suspension of the regular order of proceedings in a cause, by direction or order of the court, usually to await the action of one of the parties in regard to some omitted step or some act which the court has required him to perform as incidental to the suit; as where a nonresident plaintiff has been ruled to give security for costs. It is similar to an injunction with which a court freezes its proceedings at a particular point. It can be used to stop the prosecution of the action altogether, or to hold up only some phase of it, such as an execution about to be levied on a judgment. See also Automatic stay.

A "stay" does not reverse, annul, undo or suspend what already had been done or what is not specifically stayed nor pass on the merits of orders of the trial court, but merely suspends the time required for performance of the particular mandates stayed, to preserve a status quo pending appeal. Reed v. Rhodes, D.C.Ohio, 472 F.Supp. 603, 605.

See Fed.R.Civil P. 62, "Stay of Proceedings to Enforce Judgment". See also Injunction; Restraining order.

**Steady course.** A ship is on a "steady course," not only when her heading does not change, but whenever her future positions are certainly ascertainable from her present position and movements. Commonwealth & Dominion Line v. U. S., C.C.A.N.Y., 20 F.2d 729, 731.

**Steal.** This term is commonly used in indictments for larceny ("take, steal, and carry away"), and denotes the commission of theft, that is, the felonious taking and carrying away of the personal property of another, and without right and without leave or consent of owner, and with intent to keep or make use wrongfully. U.S. v. Hill, C.A.Kan., 835 F.2d 759, 763. Or, it may denote the criminal taking of personal property either by larceny, embezzlement, or false pretenses. But, in popular usage "stealing" may include the unlawful appropriation of things which are not technically the subject of larceny, e.g., immovables. See also Larceny; Robbery; Shoplifting; Theft.

**Stealing children.** See Kidnapping.

**Stealth** /stélθ/. The quality or condition of being secret or furtive. The act of stealing when the victim is unaware of the theft is stealing by stealth. Any secret, sly or clandestine act to avoid discovery and to gain entrance into or to remain within residence of another without permission. State v. Lane, 50 Ohio App.2d 41, 361 N.E.2d 535, 540, 4 O.O.3d 24.

**Steerer.** One who gains the confidence of the person intended to be fleeced and who may be said to steer or lead the victim to the place where the latter is to be robbed or swindled.

**Stellionataire.** Fr. In French law, a party who fraudulently mortgages property to which he has no title.

**Stellionate** /stélyəneyt/. In civil law, a name given generally to all species of frauds committed in making contracts but particularly to the crime of alienating the same subject to different persons.

**Stellionatus** /stélyənéytəs/. Lat. In the civil law, a general name for any kind of fraud not falling under any specific class. But the term is chiefly applied to fraud practiced in the sale or pledging of property; as, selling the same property to two different persons, selling another's property as one's own, placing a second mortgage on property without disclosing the existence of the first, etc.

**Step.** When used as prefix in conjunction with a degree of kinship, is repugnant to blood relationship, and is indicative of a relationship by affinity.

**Step-child.** The child of one of the spouses by a former marriage. A child who has a parent by his natural parent's second marriage and has not been adopted by that parent.

**Step-down in basis.** A reduction in the income tax basis of property. See also Step-up in basis.

**Step-father.** The husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring.

**Step-in-the-dark rule.** Such rule of contributory negligence is that one who enters a totally unfamiliar area in the darkness is not justified, in the absence of any special stress, in proceeding without first ascertaining whether there are any obstacles to his safe progress. *Yoder v. Greenwald*, Fla.App., 246 So.2d 148, 150.

**Step-mother.** The wife of one's father by virtue of a marriage subsequent to that of which the person spoken of is the offspring.

**Step-parent.** The mother or father of a child born during a previous marriage of the other parent and hence, not the natural parent of such child.

**Step-son.** The son of one's wife by a former husband, or of one's husband by a former wife.

**Step-transaction approach.** Method used by the Internal Revenue Service to determine tax liability by disregarding one or more transactions of a taxpayer to arrive at the final result. The objective of the step-transaction approach is to review the substance and not just the form of a transaction in determining the tax liability of the individual or entity.

**Step-up in basis.** An increase in the income tax basis of property. The classic step-up in basis occurs when a decedent dies owning appreciated property. The property is valued on the date of death or the alternate valuation date. The estate tax is based on the property values on the date elected; therefore the heirs receive property with a step-up in basis.

**Sterbreche, or strebrich.** The breaking, obstructing, or straitening of a way.

**Stère** /stír/stéhr/. A French measure of solidity, used in measuring wood. It is a cubic meter.

**Sterility** /stərílətíy/. Barrenness; unfruitfulness; incapacity to germinate or reproduce.

**Sterilization.** The act or process by which one is rendered incapable of procreation as, for example, the act of tying the female Fallopian tubes or a vasectomy. Also, the act or process by which an article or instrument is rendered free of germs.

**Sterling.** In English law, current or standard coin, especially silver coin; a standard of coinage.

**Stet processus** /stét prəsésəs/. An entry on the roll in the nature of a judgment of a direction that all further proceedings shall be stayed (*i.e.*, that the process may stand), and it is one of the ways by which a suit may be terminated by an act of the party, as distinguished from a termination of it by judgment, which is the act of the court. It was used by the plaintiff when he wished to suspend the action without suffering a nonsuit.

**Stevadore.** A person employed in loading and unloading vessels.

**Steward.** A man appointed in the place or stead of another. A union official who represents other union employees in grievances with management and who oversees the carrying out of the union contract.

*Steward of all England.* In old English law, an officer who was invested with various powers; among others, to preside on the trial of peers.

*Steward of a Manor.* In old English law, an important officer who had the general management of all forensic matters connected with the manor of which he was steward. He stood in much the same relation to the lord of the manor as an under-sheriff did to the sheriff.

**Stews.** Certain brothels anciently permitted in England, suppressed by Henry VIII. Also, breeding places for tame pheasants.

**Stickler.** An arbitrator. An obstinate contender about anything.

**Stick up.** To rob at the point of a gun; armed robbery.

**Stifling a prosecution.** Agreeing, in consideration of receiving a pecuniary or other advantage, to abstain from prosecuting a person for an offense not giving rise to a civil remedy.

**Still.** Any device used for separating alcoholic spirits from fermented substances. The word is sometimes applied to the whole apparatus for evaporation and condensation used in the manufacture of ardent spirits, but in the description of the parts of the apparatus it is applied merely to the vessel or retort used for boiling and evaporation of the liquid.

**Stillborn child.** A child born dead or in such an early stage of pregnancy as to be incapable of living, though not actually dead at the time of birth.

**Stillicidium** /stíləsíd(i)yəm/. Lat. In the civil law, the drip of water from the eaves of a house. The servitude *stillicidii* consists in the right to have the water drip from one's eaves upon the house or ground of another. The term "*flumen*" designated the rain-water collected from the roof, and carried off by the gutters, and there is a similar easement of having it discharged upon the adjoining estate.

**Sting.** An undercover police operation in which police pose as criminals to trap law violators. *Compare* Entrapment.

**Stint.** In English law, limit; a limited number. Used as descriptive of a species of common.

**Stipend** /stáypənd/. A salary; settled pay; fixed or regular payment. Offering made to clergyman.

**Stipendiary estates** /stəpénd(i)yəhriy/. Estates granted in return for services, generally of a military kind.

**Stipendiary magistrates.** In English law, full time, paid magistrates; appointed in London and some other cities and boroughs, and having in general the powers and jurisdiction of justices of the peace. Appointed from barristers and solicitors of 7 years standing. See *Justices of the Peace Act, 1979*, §§ 13-16.

**Stipendium** /stəpénd(i)yəm/. Lat. In the civil law, the pay of a soldier; wages; stipend.



**Stipes** /stáypiyz/. Lat. In old English law, stock; a stock; a source of descent or title. *Communis stipes*, the common stock.

**Stipital** /stípətəl/. Relating to stipes, roots, or stocks. See *Stirpital*.

**Stipulate**. Arrange or settle definitely, as an agreement or covenant. See *Stipulation*.

**Stipulated damage**. Liquidated damage (*q.v.*)

**Stipulatio** /stípyələysh(iy)ow/. Lat. In the Roman law, *stipulatio* was the verbal contract (*verbis obligatio*), and was the most solemn and formal of all the contracts in that system of jurisprudence. It was entered into by question and corresponding answer thereto, by the parties, both being present at the same time, and usually by such words as "*spondeo? spondeo*," "*promittis? promitto*," and the like.

**Stipulatio aquiliana** /stípyələysh(iy)ow əkwíliyéynə/. A particular application of the *stipulatio*, which was used to collect together into one verbal contract all the liabilities of every kind and quality of the debtor, with a view to their being released or discharged by an *acceptilatio*, that mode of discharge being applicable only to the verbal contract.

**Stipulatio juris** /stípyələysh(iy)ow júrés/. A stipulation or agreement beforehand of a question of law or its applicability, though a court is not bound by a stipulation of erroneous law. However, the parties to a contract may stipulate as to the applicability of the law of a particular state or jurisdiction.

**Stipulation**. A material condition, requirement, or article in an agreement.

The name given to any agreement made by the attorneys engaged on opposite sides of a cause (especially if in writing), regulating any matter incidental to the proceedings or trial, which falls within their jurisdiction. Voluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate need for proof or to narrow range of litigable issues. *Arrington v. State*, Fla., 233 So.2d 634, 636. An agreement, admission or confession made in a judicial proceeding by the parties thereto or their attorneys. *Bourne v. Atchison, T. & S. F. Ry. Co.*, 209 Kan. 511, 497 P.2d 110, 114. Such are evidentiary devices used to simplify and expedite trials by dispensing with the need to prove formally uncontested factual issues. *Paschen v. Ratliff City Trucking Co.*, Okl.App., 637 P.2d 591, 593.

Stipulations made during the course of trial may involve jury of less than twelve (Fed.R.Civil P. 48), master's findings (Rule 53(e)(4)), dismissal of action (Rule 41(a)), or *discovery*, see *below*.

A recognizance of certain persons (called in the old law "*fide jussors*") in the nature of bail for the appearance of a defendant. 3 Bl.Comm. 108.

See also Admission; Pre-trial conference; Proviso.

**Discovery**. Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or

place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may be made only with the approval of the court. Fed.R.Civil P. 29.

**Stipulator**. In the civil law, the party who asked the question in the contract of stipulation; the other party, or he who answered, being called the "promissor." But, in a more general sense, the term was applied to both the parties.

**Stirpes** /stórpiyz/. Lat. Descents. The root-stem, or stock of a tree. Figuratively, it signifies in law that person from whom a family is descended, and also the kindred or family. Taking property by right of representation is called "*succession per stirpes*," in opposition to taking in one's own right, or as a principal, which is termed "*taking per capita*." See also *Per stirpes* and *Representation*.

**Stirpital** /stípədəl/. Relating to *stirpes*, roots, or stocks. "*Stirpital distribution*" of property is distribution *per stirpes*; that is, by right of representation.

**Stock**. The goods and wares of a merchant or tradesman, kept for sale and traffic. In a larger sense, the capital of a merchant or other person, including his merchandise, money, and credits, or, in other words, the entire property employed in business. See *Inventory*.

### Corporation Law

The term is used in various senses. It may mean the capital or principal fund of a corporation or joint-stock company, formed by the contributions of subscribers or the sale of shares; the aggregate of a certain number of shares severally owned by the members or stockholders of the corporation or the proportional share of an individual stockholder; also the incorporeal property which is represented by the holding of a certificate of stock; and in a wider and more remote sense, the right of a shareholder to participate in the general management of the company and to share proportionally in its net profits or earnings or in the distribution of assets on dissolution. The term "stock" has also been held to embrace not only capital stock of a corporation but all corporate wealth and resources, subject to all corporate liabilities and obligations.

"Stock" is distinguished from "bonds" and, ordinarily, from "debentures," in that it gives right of ownership in part of assets of corporation and right to interest in any surplus after payment of debt. "Stock" in a corporation is an equity, and it represents an ownership interest, and it is to be distinguished from obligations such as notes or bonds which are not equities and represent no ownership interest. *U. S. v. Evans*, C.A.Or., 375 F.2d 730, 731.

See also Certificate of stock; Discount shares; Equity security; Par value; Registration of securities; Securities; Security; Share of corporate stock.

### Classes and Types of Corporate Stock

*Preferred stock* is a separate portion or class of the stock of a corporation, which is accorded, by the charter or by-laws, a preference or priority in respect to dividends, over the remainder of the stock of the corporation, which in that case is called *common stock*. That is, holders of the preferred stock are entitled to receive dividends at a fixed annual rate, out of the net earnings or profits of the corporation, before any distribution of earnings is made to the common stock. If the earnings applicable to the payment of dividends are not more than sufficient for such fixed annual dividend, they will be entirely absorbed by the preferred stock. If they are more than sufficient for the purpose, the remainder may be given entirely to the common stock (which is the more usual custom) or such remainder may be distributed pro rata to both classes of the stock, in which case the preferred stock is said to "participate" with the common. The fixed dividend on preferred stock may be "cumulative" or "non-cumulative." In the former case, if the stipulated dividend on preferred stock is not earned or paid in any one year, it becomes a charge upon the surplus earnings of the next and succeeding years, and all such accumulated and unpaid dividends on the preferred stock must be paid off before the common stock is entitled to receive dividends. In the case of "non-cumulative" preferred stock, its preference for any given year is extinguished by the failure to earn or pay its dividend in that year. If a corporation has no class of preferred stock, all its stock is common stock. The word "common" in this connection signifies that all the holders of such stock are entitled to an equal pro rata division of profits or net earnings, if any there be, without any preference or priority among themselves. *Deferred stock* is rarely issued by American corporations, though it is not uncommon in England. This kind of stock is distinguished by the fact that the payment of dividends upon it is expressly postponed until some other class of stock has received a dividend, or until some certain liability or obligation of the corporation is discharged. If there is a class of "preferred" stock, the common stock may in this sense be said to be "deferred," and the term is sometimes used as equivalent to "common" stock. But it is not impossible that a corporation should have three classes of stock: (1) Preferred, (2) common, and (3) deferred; the latter class being postponed, in respect to participation in profits, until both the preferred and the common stock had received dividends at a fixed rate.

*Assented stock.* Stock which an owner deposits with a third person in accordance with an agreement by which the owner voluntarily accepts a change in the securities of the corporation.

*Assessable stock.* Stock which requires the owner to pay more than its cost if the needs of the corporation require.

*Authorized stock.* That amount of stock which the corporate charter permits the corporation to issue. The shares described in the articles of incorporation which a corporation may issue. Modern corporate practice rec-

ommends authorization of more shares than it is currently planned to issue. *See also* Authorized stock issue.

*Blue-chip stock.* Stock of a listed company which has a high grade financial record. *See Listed stock, below.*

*Bonus stock.* Stock given to an underwriter as compensation for services. Stock given to purchasers as an inducement. *See also* Bonus stock.

*Callable preferred stock.* Preferred stock which may be called by the issuing corporation at a pre stated price.

*Capital stock.* *See* Capital (*Capital stock*).

*Common stock.* Securities which represent an ownership interest in a corporation. If the company has also issued preferred stock, both common and preferred have ownership rights. The preferred normally is limited to a fixed dividend but has prior claim on dividends and, in the event of liquidation, assets. Claims of both common and preferred stockholders are junior to claims of bondholders or other creditors of the company. Common stockholders assume the greater risk, but generally exercise the greater control and may gain the greater reward in the form of dividends and capital appreciation. The terms common stock and capital stock are often used interchangeably when the company has no preferred stock. *See also* Common stock.

*Control stock.* That amount of capital stock which permits the owner to control the corporation. It is not necessarily a majority of the shares.

*Convertible stock.* Stock which may be changed or converted into common stock.

*Cumulative preferred.* A stock having a provision that if one or more dividends are omitted, the omitted dividends must be paid before dividends may be paid on the company's common stock.

*Cumulative stock.* A type of stock on which unpaid dividends accumulate until paid. They must be paid totally before the common stockholders receive their dividends. *See Cumulative preferred, above.*

*Donated stock.* Stock transferred to the corporation by the stockholders for resale.

*Floating stock.* That part of a corporation's stock which is on the open market for speculation. Stock not yet bought by public holders.

*Growth stock.* Stock purchased with a view towards appreciation in value rather than dividend income.

*Guaranteed stock.* Usually preferred stock on which dividends are guaranteed by another company, under much the same circumstances as a bond is guaranteed.

*Guaranty stock.* Stock in a savings and loan association in some states which yields all dividends to the holders after dividends to depositors or savers.

*Issued stock.* Stock which has been authorized and actually sold to subscribers. It may include treasury stock.

*Letter stock.* Stock received by a buyer who gives the seller a letter stating that he will hold such stock and

not reoffer it to others. Such stock need not be registered under the Securities Act of 1933. *See also* Letter stock.

*Listed stock.* The stock of a company which is traded on a securities exchange, and for which a listing application and a registration statement, giving detailed information about the company and its operations, have been filed with the Securities and Exchange Commission, unless otherwise exempted, and with the exchange itself. The various stock exchanges have different standards for listing.

*Nonassessable stock.* Stock which cannot be assessed (*i.e.* holder cannot be assessed) in the event of failure or insolvency of the corporation. Most all stock is nonassessable.

*Noncumulative preferred stock.* Type of preferred stock which yields no dividend once the dividend is passed. *Contrast Cumulative preferred, above.*

*Noncumulative stock.* A preferred stock on which unpaid dividends do not accrue. Omitted dividends are, as a rule, gone forever.

*Nonvoting stock.* Stock to which no rights to vote attach. Such shares may be created in most states; in some states, however, nonvoting shares may be entitled to vote as a class on certain proposed changes adversely affecting that class as such.

*No par stock.* Stock without par value but which represents a proportionate share of the ownership of a corporation based on the number of shares. Such shares are issued for the consideration designated by the board of directors; such consideration is allocated to stated capital unless the directors or shareholders determine to allocate a portion to capital surplus. A corporation may have both par and no par value stock.

*Outstanding stock.* Stock issued and in the hands of stockholders and such does not include treasury stock.

*Paid up stock.* Stock for which full payment has been made to the corporation.

*Participation preferred stock.* A preferred stock which is entitled to its stated dividend and, also, to additional dividends on a specified basis upon payment of dividends on the common stock.

*Participation stock.* In general, stock which permits the holder to participate in the profits and surplus.

*Par value stock.* Stock which originally had a fixed value arrived at by dividing the total value of capital stock by the number of shares to be issued. The par value does not bear a necessary relation to the actual value of the stock because of the part which surplus plays in valuation. *See also* Par value.

*Penny stock.* Generally, highly speculative stock which can be purchased for under a dollar a share.

*Preferred stock.* A class of stock with a claim on the company's earnings before payment may be made on the common stock and usually entitled to priority over common stock if company liquidates. Usually entitled to

dividends at a specified rate—when declared by the Board of Directors and before payment of a dividend on the common stock—depending upon the terms of the issue.

*Premium stock.* Stock which carries a premium for trading as in the case of short selling.

*Redeemable stock.* Generally preferred stock which can be called in and retired. It is redeemable at par. *See also* Redeemable stock.

*Registered stock.* Stock registered under federal Securities Act. *See also* Listed stock, above.

*Restricted stock.* Stock to which is attached restrictions as to transferability.

*Stock options.* *See* Stock option, below.

*Stock redemption.* *See* Stock redemption, below.

*Stock rights.* *See* Stock rights, below.

*Stock split.* *See* Stock split, below.

*Subscribed stock.* *See* that title.

*Treasury stock.* Stock issued by a company but later re-acquired. It may be held in the company's treasury indefinitely, reissued to the public, or retired. Treasury stock receives no dividends and has no vote while held by the company. The Revised Model Business Corporation Act and the statutes of several states have eliminated the concept of treasury shares.

*Unissued stock.* Stock authorized by the corporate charter but not yet distributed to stockholders and subscribers.

*Unlisted stock.* Stock not listed on one of the stock exchanges but traded over the counter or privately.

*Voting stock.* Stock which carries the right to vote for directors, etc. *See also* Voting stock.

*Watered stock.* Stock issued for inadequate consideration. *See also* Watered stock.

### Law of Descent

The term is used, metaphorically, to denote the original progenitor of a family, or the ancestor from whom the persons in question are all descended; such descendants being called "branches." *Matter of Samson's Estate*, 139 Misc. 490, 249 N.Y.S. 79, 83.

### Generally

*Capital stock.* *See* Capital (*Capital stock*).

*Certificate of stock.* *See* Certificate; Share certificate.

*Exchange of stock.* *See* Exchange.

*Public stocks.* The funded or bonded debt of a government or state.

*Stock association.* A joint-stock company (*q.v.*).

*Stock attribution.* *See* Attribution.

**Stock bailout.** A species of stock redemption in the form of a preferred stock dividend formerly tax free, but now governed by I.R.C. § 306.

**Stockbroker.** One who buys or sells stock as agent of another. *Allen v. Todd*, 12 Cal.App.2d 654, 90 Cal.Rptr. 807, 810. *See also* Broker.

**Stock certificate.** *See* Certificate of stock; Share certificate.

**Stock control.** Type of inventory management by which a business maintains perpetual records of its inventory.

**Stock corporation.** A corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation.

**Stock dividend.** Distributing stock as a dividend. It is a proportional distribution of shares without payment of consideration to existing shareholders. If the dividend is common stock declared on common stock, the only result other than to reduce the value of each share of common and to maintain the proportionate interest of each stockholder is to transfer part of surplus to the stock account. To be distinguished from a cash dividend or a stock split (*see below*). *See also* Dividend.

**Stock exchange.** The place at which shares of stock are bought and sold. Any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a marketplace or facilities for bringing together purchasers and sellers of securities. *See Stock market, below*.

**Stock insurance company.** An insurance company whose shares are held by the public and which pays dividends in contrast to a mutual insurance company whose assets are owned by the policyholders who receive dividends when available.

**Stock in trade.** The inventory carried by a retail business for sale in the ordinary course of business. Also, the tools and equipment owned and used by a tradesman.

**Stock jobber.** A dealer in stock; one who buys and sells stock on his own account on speculation.

**Stock law district.** A district in which stock is by law prohibited from running at large.

**Stock life insurance company.** One in which capital stock investment is made by subscribers to stock, and business is thereafter conducted by board of directors elected by its stockholders, and, subject to statutes, distribution of earnings or profits, as between stockholders and policyholders, is determined by board of directors. *Atlantic Life Ins. Co. v. Moncure*, D.C.Va., 35 F.2d 360, 362.

**Stock market.** The organized trading of securities through the various stock exchanges and over-the-counter markets. The largest stock market in the United States is the New York Stock Exchange. *See also* Over-the-counter market.

**Stock note.** The term has no technical meaning, and may as well apply to a note given on the sale of stock which the bank had purchased or taken in the payment of doubtful debts as to a note given on account of an original subscription to stock.

**Stock option.** The right to buy a designated stock, if holder of option chooses, at any time within specified period, at determinable price, or to sell designated stock within an agreed period at determinable price. *Richardson v. Richardson*, 280 Ark. 498, 659 S.W.2d 510, 514. In addition to its use for investment purposes, such options are often granted to management and key employees as a form of incentive compensation. The term "stock option" is used when the right is issued other than pro rata to all existing shareholders. When so issued to all existing stockholders, the option is called a "stock right." For "restricted," "qualified," and "non-qualified" stock options, *see* Option. *See also* Call; Incentive stock option; Put; Put option; Warrant.

**Stock option contract.** A negotiable instrument which gives the holder the right to buy or sell a certain number of shares of the corporation's stock within a fixed period of time for a certain price. *See also* Option.

**Stock power.** A power of attorney permitting a person other than the owner of the stock to transfer legally the title of ownership to a third party.

**Stock purchase plan.** A plan by which employees of a corporation are allowed to purchase shares of corporate stock.

**Stock redemption.** A partial or complete liquidation of corporate stock by the corporation with varying tax consequences depending upon the type of redemption. It generally consists in the buy back by the corporation of its own stock. The redemption of the stock of a shareholder by the issuing corporation is generally treated as a sale or exchange of the stock unless the redemption is a dividend. I.R.C. §§ 301 and 302. A public corporation might redeem its stock for the purpose of "going private", or as a defense to a hostile takeover attempt. *See also Stock bailout, above*.

**Stock repurchase plan.** A program by which a corporation buys back its own shares in the open market. It is usually done when the corporation believes its shares are undervalued by the market.

**Stock rights.** The privilege to subscribe to new stock issues or to purchase stock. Usually, rights are contained in securities called warrants and the warrants can be sold to others. A right to purchase stock issued pro rata to existing shareholders. Sometimes issued on a "when, as, and if" basis, that is, the holder can buy the stock when it is issued, on such basis or of such kind as is issued, and if it is issued.

A document (*i.e.* negotiable certificate) which gives an existing stockholder the privilege of buying additional stock of a corporation. The right has a value of its own because generally the holder may buy such additional stock at a price less than the market quotation. Rights are traded in the market. A stock right differs from a

warrant to the extent that a right gives a privilege of buying additional stock of the same kind whereas a warrant may permit a preferred stockholder to buy common stock.

*See also* Preemptive right; Warrant (*Stock warrants*).

**Stock split.** The issuance of a number of new shares in exchange for each old share held by a stockholder resulting in a proportional change in the number of shares owned by each stockholder. Share splits, or stock splits, may be (a) split-ups, where one share is split into a larger number of shares, or (b) reverse splits, or split-downs, where a number of shares are combined to form a smaller number of shares. Share splits involve no transfer from surplus to stated capital or any changes except adjustments in par value or stated value per share, when applicable, so that the same stated capital which represented the issued shares before the split properly represents the changed number of shares after the split. A split-up requires not only board of directors action, but often requires advance shareholder approval as well when the articles of incorporation must be amended to change the par value or stated value of shares and also, when necessary, to authorize additional shares. The usual accounting treatment for a share split is to do nothing except to reflect the different (usually increased) number of issued shares and any changes in par or stated value.

A common purpose of a stock split is to reduce the per share market price in order to make for wider trading and a resulting higher per share value (*i.e.* price).

*See also* Reverse stock split.

**Stock subscription.** An agreement (by a subscriber) with the corporation to purchase its stock. *See* *Stock rights, above*. *See also* Subscribed stock; Subscriber; Subscription.

**Stock swap.** In corporate reorganization, an exchange of stock in one corporation for the stock of another corporation.

**Stock transfer agent.** *See* Transfer agent.

**Stock transfer tax.** A tax imposed on the transfer of stock and based on the market value of the stock.

**Stock warrant.** A certificate evidencing the right to buy shares of stock and commonly attached to preferred stock and bonds. It generally has an expiration date before which the warrant must be exercised. *See also* Warrant.

**Tainted stock.** Stock owned by a person who is disqualified for some reason from serving as a plaintiff in a derivative action. The shares are "tainted" because for policy reasons a good faith transferee of such shares will also be disqualified from serving as a plaintiff.

**Stockholder (Shareholder).** A person who owns shares of stock in a corporation or joint-stock company. Referred to as "Shareholder" under Rev. Model Bus. Corp. Act and a number of state statutes, and defined in Model Act (§ 1.40) as "the person in whose name shares are registered in the records of a corporation or the

beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation." *See also* Beneficial holders of securities; Majority stockholder; Minority stockholder.

**Watered stock.** *See* that title.

**Stockholder's derivative action.** An action by a stockholder for purpose of sustaining in his own name a right of action existing in corporation itself, where corporation would be an appropriate plaintiff. It is based upon two distinct wrongs: The act whereby corporation was caused to suffer damage, and act of corporation itself in refusing to redress such act. Procedure in such actions is governed by Fed.R.Civil P. 23.1.

**Stockholder's equity.** The total of a firm's stock at par, contributed capital in excess of par, and retained earnings accounts summarized on the balance sheet. It is sometimes called the *book value* of the firm, *owners' equity*, or *net worth*.

**Stockholder's liability.** Phrase is frequently employed to denote stockholder's statutory, added or double liability for corporation's debts, notwithstanding full payment for stock, but is often employed where stockholder, agreeing to pay full par value of stock, obtained stock certificate before complete payment or where stock, only partly paid for, is intentionally issued by corporation as fully paid up and all or part of purported consideration therefor is entirely fictitious.

**Stockholders' representative action.** An action brought or maintained by a stockholder in behalf of himself and all others similarly situated. *See also* Stockholder's derivative action.

**Stock insurance company.** Also known as a "joint stock insurance company," it is an insurance company that has issued capital stock and which is controlled by stockholders who take the profits. It may be distinguished from a "mutual insurance company" which is owned by policy holders. *National Chiropractic Insurance Company v. United States, D.C.Iowa, 365 F.Supp. 971, 972. See also* Mutual insurance company.

**Stocks.** A machine consisting of two pieces of timber, arranged to be fastened together, and holding fast the legs and/or arms of a person placed in it. This was an ancient method of punishment. *See also* Stock.

**Stolen.** Acquired, or possessed, as a result of some wrongful or dishonest act or taking, whereby a person willfully obtains or retains possession of property which belongs to another, without or beyond any permission given, and with the intent to deprive the owner of the benefit of ownership (or possession) permanently.

The word "stolen" as used in the crime of interstate transportation of stolen motor vehicles includes all wrongful and dishonest takings of motor vehicles with the intent to deprive the owner of the rights and benefits of ownership, regardless of whether theft constitutes common-law larceny; and felonious taking may be effected by diverse means known to both common and statutory law, such as larceny, embezzlement, false pretenses, larceny by trick and other types of wrongful

acquisition. *Lake v. U. S.*, C.A.Colo., 338 F.2d 787, 788. It is not necessary that the taking of the vehicle be unlawful. Even if possession of the vehicle is lawfully acquired, the vehicle will be deemed "stolen" if the defendant thereafter forms the intent to deprive the owner of the rights and benefits of ownership, and converts the vehicle to his own use. *United States v. Turley*, 352 U.S. 407, 417, 77 S.Ct. 397, 402, 1 L.Ed.2d 430.

See also Larceny; Receiving stolen goods or property; Robbery; Theft.

**Stop.** Within statutes requiring a motorist striking a person with automobile to stop, requires a definite cessation of movement for a sufficient length of time for a person of ordinary powers of observation to fully understand the surroundings of the accident. *Moore v. State*, 140 Tex.Cr.R. 482, 145 S.W.2d 887, 888.

"Stop" occurs when police officer restrains person's liberty by physical force or show of authority. *State v. Butkovich*, 87 Or.App. 587, 743 P.2d 752, 753. "Stop," within term stop and frisk, is temporary restraint of person's freedom to walk away and is a permissible seizure within Fourth Amendment dimensions when such person is suspected of being involved in past, present or pending criminal activity. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889; *State v. Anonymous* (1971-20), 6 Conn.Cir. 583, 280 A.2d 816, 818. See also Stop and frisk.

**Stop and frisk.** The situation where police officers who are suspicious of an individual run their hands lightly over the suspect's outer garments to determine if the person is carrying a concealed weapon. Also called a "patdown" or "threshold inquiry," a stop and frisk is intended to stop short of any activity that could be considered a violation of Fourth Amendment rights.

A police officer has the right to stop and pat down a person suspected of contemplating the commission of a crime. Reasonable suspicion which is sufficient for stop and frisk is more than a mere hunch but less than probable cause. *U.S. v. Sokolow*, 109 S.Ct. 1581, 104 L.Ed.2d 1. The scope of the search must be strictly tied to and justified by the circumstances which rendered the initiation of the stop justified. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889. See Frisk; Investigatory stop; Stop.

**Stop-limit order.** In securities trading, a stop order in which a specific price is set below which the stock may not be sold and above which it may not be purchased.

**Stop-loss order.** An order given to a stockbroker to buy or sell certain securities when the market reaches a particular price.

**Stop notice statute.** An alternative to the mechanics' lien remedy that allows contractors, suppliers and workers to make and enforce a claim against the construction lender, and in some instances, the owner, for a portion of the undisbursed construction loan proceeds. See also Mechanics' lien.

**Stop order.** An order to buy securities at a price above or sell at a price below the current market. Stop buy

orders are generally used to limit loss or protect unrealized profits on a short sale. Stop sell orders are generally used to protect unrealized profits or limit loss on a holding. A stop order becomes a market order when the stock sells at or beyond the specified price and, thus, may not necessarily be executed at that price. See also Stop payment order.

**Stoppage.** In the civil law, compensation or set-off.

**Stoppage in transit** /stópaj in tránzət(y). The act by which the unpaid vendor of goods stops their progress and resumes possession of them, while they are in course of transit from him to the purchaser, and not yet actually delivered to the latter. The right of stoppage *in transitu* is that which the vendor has, when he sells goods on credit to another, of resuming the possession of the goods while they are in the possession of a carrier or middle-man, in the transit to the consignee or vendee, and before they arrive into their actual possession, or the destination he has appointed for them on their becoming bankrupt and insolvent. The right which arises to an unpaid vendor to resume the possession, with which he has parted, of goods sold upon credit, before they come into the possession of a buyer who has become insolvent, bankrupt, or pecuniarily embarrassed. See U.C.C. § 2-705(1).

**Stop payment order.** A customer's demand to a payor bank that the bank dishonor a check payable for the customer's account. See U.C.C. § 4-403.

**Stop sign.** A legally erected and maintained traffic signal requiring all traffic to stop before entering into or crossing an intersection. *Sweet v. Awtrey*, 70 Ga.App. 334, 28 S.E.2d 154, 161.

**Storage.** Safekeeping of goods in a warehouse or other depository. *Lincoln Sav. Bank of Brooklyn v. Brown*, Em.App., 137 F.2d 228, 230, 231. See also Bailment; Warehouse; Warehouseman; Warehouse system.

**Store, v.** To keep merchandise for safe custody, to be delivered in the same condition as when received, where the safe-keeping is the principal object of deposit, and not the consumption or sale.

**Store, n.** Any place where goods are deposited and sold by one engaged in buying and selling them.

**Public store.** A government warehouse, maintained for certain administrative purposes, such as the keeping of military supplies, the storing of imported goods under bonds to pay duty, etc.

**Stores.** The supplies of different articles provided for the subsistence and accommodation of a ship's crew and passengers.

**Storehouse.** A structure in which things are stored; e.g. a building for the storing of grain, foodstuffs, or goods of any kind. A magazine; a repository; a warehouse; a store.

**Stowage.** In maritime law, the storing, packing, or arranging of the cargo in a ship, in such a manner as to

protect the goods from friction, bruising, or damage from leakage.

Money paid for a room where goods are laid; housage.

**Stowaway.** One who conceals himself aboard an out-going vessel or aircraft for the purpose of obtaining free passage. See 18 U.S.C.A. § 2199.

**Stowe.** In old English law, a valley.

**Straddle.** A strategy consisting of the combination of an equal number of put options and call options on the same underlying share, index, or commodity future. A straddle is a type of hedge. In stockbrokers' parlance the term means the double option position of a "put" and a "call" in the same underlying stock, and secures to the holder the right to demand of the seller at a certain price within a certain time a certain number of shares of specified stock, or to require him to take, at the same price within the same time, the same shares of stock. See Call; Option; Put option. Compare Hedging.

**Straight-line depreciation.** See Depreciation.

**Stramineus homo** /strāmīniyəs hówmow/. L. Lat. A man of straw, one of no substance, put forward as bail or surety.

**Strand.** A shore or bank of the sea or a river.

**Stranding.** In maritime law, the drifting, driving, or running aground of a ship on a shore or strand. *Accidental* stranding takes place where the ship is driven on shore by the winds and waves. *Voluntary* stranding takes place where the ship is run on shore either to preserve her from a worse fate or for some fraudulent purpose.

**Stranger.** As used with reference to the subject of subrogation, one who, in no event resulting from the existing state of affairs, can become liable for the debt, and whose property is not charged with the payment thereof and cannot be sold therefor. See also Strangers.

**Stranger in blood.** Any person not within the consideration of natural love and affection arising from relationship.

**Strangers.** By this term is intended third persons generally. In its general legal signification the term is opposed to the word "privy." Those who are in no way parties to a covenant or transaction, nor bound by it, are said to be strangers to the covenant or transaction. See also Stranger.

**Stratagem** /strātsjəm/. A deception either by words or actions, in times of war, in order to obtain an advantage over an enemy.

**Stratocracy** /strətókrəsiy/. A military government; government by military chiefs of an army.

**Strator** /stréytər/. In old English law, a surveyor of the highways.

**Straw bail.** See Bail.

**Straw man or party.** A "front"; a third party who is put up in name only to take part in a transaction. Nominal party to a transaction; one who acts as an

agent for another for the purpose of taking title to real property and executing whatever documents and instruments the principal may direct respecting the property. Person who purchases property for another to conceal identity of real purchaser, or to accomplish some purpose otherwise not allowed.

**Stray.** See Estray.

**Stream.** A watercourse having a source and terminus, banks, and channel, through which waters flow at least periodically, and it usually empties into other streams, lakes, or the ocean, but it does not lose its character as a watercourse even though it may break up and disappear. *Southern Pac. Co. v. Proebstel*, 61 Ariz. 412, 150 P.2d 81, 83. A river, brook, or rivulet; anything in fact that is liquid and flows in a line or course. A current of water. A body of water having a continuous flow in one direction. It consists of a bed, banks, and watercourse. *St. Paul Fire & Marine Ins. Co. v. Carroll*, Tex.Civ.App., 106 S.W.2d 757, 758. See also Water course.

*Private stream.* A non-navigable creek or water-course, the bed or channel of which is exclusively owned by a private individual.

**Stream of commerce.** Term used to describe goods which remain in interstate commerce though held within a state for a short period of time. If such goods remain in the stream of commerce, they are not subject to local taxation.

In Commerce Clause analysis, local activities which are part of the current or stream of interstate commerce are considered part of the interstate movement. Congress can regulate such local incidents directly under its commerce power.

**Street.** An urban way or thoroughfare; a road or public way in a city, town, or village, generally paved, and lined or intended to be lined by houses on each side. It includes all urban ways which can be and are generally used for travel, but does not normally include service entrances or driveways leading off from the street onto adjoining premises. *Hill & Combs v. First Nat. Bank of San Angelo, Tex.*, C.C.A.Tex., 139 F.2d 740, 743.

Any street, avenue, boulevard, road, parkway, drive or other way (1) which is an existing state, county or municipal roadway, or (2) which is shown upon a plat heretofore approved pursuant to law, or (3) which is approved by official action or (4) which is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a planning board and the grant to such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines.

See also Ancient street.

**Street name.** Securities held in the name of a broker instead of his customer's name are said to be carried in a "street name." This occurs when the securities have been bought on margin or when the customer wishes the security to be held by the broker. The name of a broker

or bank appearing on a corporate security with *blank endorsement* by the broker or bank. The security can then be transferred merely by delivery since the endorsement is well known. Street name is used for convenience or to shield identity of the true owner.

**Streptus judicialis** /strépətəs juwdishiyéyləs/. Turbulent conduct in a court of justice.

**Stria** /stráyə/. Curved, crooked and intermittent gouges, of irregular depth and width and rough definition, of certain rock surface, sometimes due to abrasions by icebergs. A furrow, channel or hollow; depression, rut, wrinkle, concave, cup, pocket, dimple.

**Strict**. Exact; accurate; precise; undeviating; governed or governing by exact rules.

As to *strict* Settlement, see that title.

**Strict construction**. A close or rigid reading and interpretation of a law. It is said that criminal statutes must be strictly construed. Rule of "strict construction" has no definite or precise meaning, has only relative application, is not opposite of liberal construction, and does not require such strained or narrow interpretation of language as to defeat object of statute. *Southwestern Bell Tel. Co. v. Newingham*, Mo.App., 386 S.W.2d 663, 665.

Rule of "strict construction" means that criminal statute will not be enlarged by implication or intendment beyond fair meaning of language used, or what their terms reasonably justify, and will not be held to include offenses and persons other than those which are clearly described and provided for, although court in interpreting and employing particular statutes may think legislature should have made them more comprehensive. *Matthews v. Powers*, Okl.Cr., 425 P.2d 479, 482. "Strict construction of a statute" is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute as well as within its spirit or reason, resolving all reasonable doubts against applicability of statute to particular case. *Kyrtsis v. Fenny*, 66 Misc.2d 329, 320 N.Y.S.2d 702, 704.

See also Construction; Strictly construed.

**Strict foreclosure**. See Foreclosure.

**Stricti juris** /striktay júrés/. Lat. Of strict right or law; according to strict law. A license is a thing *stricti juris*; a privilege which a man does not possess by his own right, but it is conceded to him as an indulgence, and therefore it is to be strictly observed.

**Strictissimi juris** /striktisímey júrés/. Lat. Of the strictest right or law. Licenses being matter of special indulgence, the application of them was formerly *strictissimi juris*.

**Strict liability**. Liability without fault. *Goodwin v. Reilley*, 1 Dist., 176 Cal.App.3d 86, 221 Cal.Rptr. 374, 376. A concept applied by the courts in product liability cases in which seller is liable for any and all defective or hazardous products which unduly threaten a consumer's personal safety. This doctrine poses strict liability on one who sells product in defective condition unreason-

ably dangerous to user or consumer for harm caused to ultimate user or consumer if seller is engaged in business of selling such product, and product is expected to and does reach user or consumer without substantial change in condition in which it is sold. *Davis v. Gibson Products Co.*, Tex.Civ.App., 505 S.W.2d 682, 688.

Concept of strict liability in tort is founded on the premise that when manufacturer presents his goods to the public for sale, he represents they are suitable for their intended use, and to invoke such doctrine it is essential to prove that the product was defective when placed in the stream of commerce. *Herbstman v. Eastman Kodak Co.*, 68 N.J. 1, 342 A.2d 181, 184.

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if (a) the seller is engaged in the business of selling such a product, and (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold. (2) The rule stated in Subsection (1) applies although (a) the seller has exercised all possible care in the preparation and sale of his product, and (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller. Restatement, Second, Torts, § 402A.

See also Product liability; Warranty.

**Strict liability crimes**. Unlawful acts whose elements do not contain the need for criminal intent or *mens rea*. These crimes are usually acts that endanger the public welfare, such as illegal dumping of toxic wastes. *State v. Lucero*, 87 N.M. 242, 531 P.2d 1215, 1218.

**Strictly** /striktliy/. A strict manner; closely, precisely, rigorously; stringently; positively.

**Strictly construed**. Requirement that a penal statute be strictly construed means that the court will not extend punishment to cases not plainly within the language used, but at the same time such statutes are to be fairly and reasonably construed, and will not be given such a narrow and strained construction as to exclude from their operation cases plainly within their scope and meaning. See also Strict construction.

**Strictly ministerial duty**. One that is absolute and imperative, requiring neither the exercise of official discretion nor judgment.

**Stricto jure** /striktow júryi/. Lat. In strict law.

**Strict scrutiny test**. Under this test for determining if there has been a denial of equal protection, burden is on government to establish necessity of the statutory classification. *Poulos v. McMahan*, 250 Ga. 354, 297 S.E.2d 451, 454. Measure which is found to affect adversely a fundamental right will be subject to "strict scrutiny" test which requires state to establish that it has compelling interest justifying the law and that distinctions created by law are necessary to further some governmental purpose. *In re Valenti*, 2 Dist., 178 C.A.3d 470, 224 Cal.Rptr. 10, 12.



**Strictum jus** /stríktəm jós/. Lat. Strict right or law; the rigor of the law as distinguished from equity.

**Strike.** The act of quitting work by a body of workers for the purpose of coercing their employer to accede to some demand they have made upon him, and which he has refused. *Jeffery-De Witt Insulator Co. v. N. L. R. B.*, C.C.A.4, 91 F.2d 134, 138. A combination to obtain higher wages, shorter hours of employment, better working conditions or some other concession from employer by the employees stopping work at a preconcerted time, and it involves a combination of persons and not a single individual. A cessation of work by employees as a means of enforcing compliance with some demand upon the employer. *People v. Tepel*, Mag.Ct., 3 N.Y.S.2d 779, 781. A combined effort among workers to compel their employer to the concession of a certain demand, by preventing the conduct of his business until compliance with the demand.

The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees. Labor Management Relations Act, § 501(2).

See also No-strike clause; Rent strike; Slowdown; Wildcat strike. Compare Lockout.

**Economic strike.** A cessation of work by employees to enforce economic demands upon the employer in contrast to a strike caused by an unfair labor charge.

**General strike.** Cessation of work by employees effective throughout an entire industry or country.

**Jurisdictional strike.** Cessation of work as result of dispute by members of one union or craft against members of another union or craft as to assignment of work.

**Secondary strike.** Cessation of work by union members of one employer who has business dealings with another employer whose employees are on strike.

**Sit-down strike.** Cessation of work by employees who do not leave employer's premises but who refuse to work.

**Sympathy strike.** A strike in which a union strikes not to gain concessions for itself, but to aid another union's objectives. A sympathy strike involves two unions; one is striking to force some concession from the employer; the other strikes in sympathy with the first's objectives. Sympathy strikes are a common manifestation of traditional union solidarity.

**Wildcat strike.** Cessation of work by group of employees without authorization of union officials.

**Strikebreaker.** One who takes the place of workman who has left his work in an effort to force the striking employee to agree to demands of employer. See also Scab.

**Strike off.** In common parlance, and in the language of the auction-room, property is understood to be "struck off" or "knocked down," when the auctioneer, by the fall of his hammer, or by any other audible or visible announcement, signifies to the bidder that he is entitled to

the property on paying the amount of his bid, according to the terms of the sale.

A court is said to "strike off" a case when it directs the removal of the case from the record or docket, as being one over which it has no jurisdiction and no power to hear and determine it.

**Strike suits.** Shareholder derivative action begun with hope of winning large attorney fees or private settlements, and with no intention of benefiting corporation on behalf of which suit is theoretically brought.

**Striking a jury.** The selecting or nominating a jury out of the whole number returned as jurors on the panel. It is especially used of the selection of a *special jury*, where a panel is prepared by the proper officer, and the parties, in turn, strike off a certain number of names, until the list is reduced to twelve. A jury thus chosen is called a "struck jury."

**Striking off the roll.** The disbaring of an attorney.

**Striking price.** Price at which an option (*e.g.*, to purchase stock) is exercised. The price at which named stock can be put or called is ordinarily the market price when option is written and is termed the "striking price". *Reinach v. C. I. R.*, C.A.N.Y., 373 F.2d 900, 901.

**Strip.** The act of spoiling or unlawfully taking away anything from the land, by the tenant for life or years, or by one holding an estate in the land less than the entire fee.

Separating coupons from corpus of bonds, which, in turn, are sold separately.

**Strong.** Cogent, powerful, forcible, forceful. *Wright v. Austin*, Tex.Civ.App., 175 S.W.2d 281, 283. See also Sound.

**Strong hand.** The words "with strong hand" imply a degree of criminal force, whereas the words *vi et armis* ("with force and arms") are mere formal words in the action of trespass, and the plaintiff is not bound to prove any force. The statutes relating to forcible entries use the words "with a strong hand" as describing that degree of force which makes an entry or detainer of lands criminal.

**Strongly corroborated.** A degree of corroboration amounting to corroboration from independent facts and circumstances which is clear and satisfactory to the court and jury. *Wright v. Austin*, Tex.Civ.App., 175 S.W.2d 281, 283. See also Corroborating evidence.

**Struck.** In common law pleading, a word essential in an indictment for murder, when the death arose from any wounding, beating, or bruising.

**Struck jury.** A special jury. See also Striking a jury.

**Structural alteration or change.** One that affects a vital and substantial portion of a thing; that changes its characteristic appearance, the fundamental purpose of its erection, and the uses contemplated. One that is extraordinary in scope and effect, or unusual in expenditure.

**Structure.** Any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner. That which is built or constructed; an edifice or building of any kind.

A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

**Structured settlement.** *See* Settlement.

**Strumpet** /strámpət/. A whore, harlot, or courtesan. This word was anciently used for an addition. It occurs as an addition to the name of a woman in a return made by a jury in the sixth year of Henry V.

**Stuff gown.** In England, the professional robe worn by junior barristers of the outer bar; viz., those who have not been admitted to the rank of King's Counsel.

**Stultify** /stáltəfay/. To make one out mentally incapacitated for the performance of an act.

**Stultiloquium** /stəltəlókwíyəm/. Lat. In old English law, vicious pleading, for which a fine was imposed by King John, supposed to be the origin of the fines for *beau-pleader*.

**Stumpage.** The sum agreed to be paid to an owner of land for trees standing (or lying) upon his land, the purchaser being permitted to enter upon the land and to cut down and remove the trees; in other words, it is the price paid for a license to cut.

**Stuprum** /st(y)úwprəm/. Lat. In the Roman and civil law, unlawful sexual intercourse between a man and an unmarried woman;—distinguished from adultery by being committed with a virgin or widow.

Any sexual intercourse between a man and an unmarried woman (not a slave), otherwise than in concubinage; illicit intercourse.

Any union of the sexes forbidden by morality.

**Sturgeon** /stérjən/. In old English law, a royal fish which, when either thrown ashore or caught near the coast, is the property of the sovereign.

**Style.** As a verb, to call, name, or entitle one. As a noun, the title or appellation of a person.

**Suable** /s(y)úwəbəl/. Capable of being, or liable to be, sued. A suable cause of action is the matured cause of action. *See* Cause of action; Ripeness doctrine.

**Suapte natura** /s(y)uwəptiy nət(y)úrə/. Lat. In its own nature. *Suapte natura sterilis*, barren in its own nature and quality; intrinsically barren.

**Sua sponte** /s(y)úwə spóntiy/. Lat. Of his or its own will or motion; voluntarily; without prompting or suggestion.

**Sub** /səb/. Lat. Under; upon. For example: "sub judge" means "under judicial consideration" or in court and not yet decided, and "sublet" means to rent out something you yourself are renting.

**Subagent** /səbèyǽnt/. A party to whom an agent delegates his or her authority. An under-agent; a substituted agent; an agent appointed by one who is himself

an agent. A person appointed by an agent to perform some duty, or the whole of the business, relating to his agency. A person employed by an agent to assist him in transacting the affairs of his principal. But a mere servant of an agent is not a "subagent." *Gulf Refining Co. v. Shirley*, Tex.Civ.App., 99 S.W.2d 613, 615. A subagent is a person appointed by an agent empowered to do so, to perform functions undertaken by the agent for the principal, but for whose conduct the agent agrees with the principal to be primarily responsible. *Restatement, Second, Agency*, § 5. *See also* Agent.

**Subaltern** /səbóltərn/səbəltərn/. An inferior or subordinate officer. An officer who exercises his authority under the superintendence and control of a superior.

**Sub-ballivus** /səb-bəlayvəs/. In old English law, an under-bailiff; a sheriff's deputy.

**Subchapter C corporation.** *See* Corporation (*C corporation*).

**Subchapter S corporation.** *See* Corporation (*S Corporation*).

**Sub colore juris** /səb kəloriy júrés/. Under color of right; under a show or appearance of right or rightful power.

**Sub conditione** /səb kəndishiyówniy/. Upon condition. The proper words to express a condition in a conveyance, and to create an estate upon condition.

**Subcontract.** *See* Contract.

**Subcontractor.** One who takes portion of a contract from principal contractor or another subcontractor. *Hardware Mut. Casualty Co. v. Hilderbrandt*, C.C.A. Okl., 119 F.2d 291, 297, 299. One who has entered into a contract, express or implied, for the performance of an act with the person who has already contracted for its performance. One who takes from the principal or prime contractor a specific part of the work undertaken by the principal contractor. *Royal Indemnity Co. v. Kenny Constr. Co.*, C.A.Ill., 528 F.2d 184, 191.

**Sub curia** /səb kyúriyə/. Lat. Under law.

**Sub disjunctione** /səb disjəŋkshiyówniy/. In the alternative.

**Subditus** /səbdətəs/. Lat. In old English law, a vassal; a dependent; any one under the power of another.

**Subdivide.** To divide a part into smaller parts; to separate into smaller divisions. As, where an estate is to be taken by some of the heirs *per stirpes*, it is divided and subdivided according to the number of takers in the nearest degree and those in the more remote degree respectively.

**Subdivision.** Division into smaller parts of the same thing or subject-matter. The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development.

*Resubdivision.* The further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or, the alteration of any streets or the establishment of any new

streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.

**Subdivision map.** A map showing how a larger parcel of land is to be divided into smaller lots, and generally also showing the layout of streets, utilities, etc.

**Subflow.** Those waters which slowly find their way through sand and gravel constituting bed of a stream, or lands under or immediately adjacent to stream. *Maricopa County Municipal Water Conservation Dist. No. 1 v. Southwest Cotton Co.*, 39 Ariz. 65, 4 P.2d 369, 380.

**Subhastare** /səbhæstəriy/. Lat. In the civil law, to sell at public auction, which was done *sub hasta*, under a spear; to put or sell under the spear.

**Subhastatio** /səbhæstéysh(iy)ow/. Lat. In the civil law, a sale by public auction, which was done *under a spear*, fixed up at the place of sale as a public sign of it.

**Subinfeudation** /səbɪnfjuwdéyshən/. The system which the feudal tenants introduced of granting smaller estates out of those which they held of their lord, to be held of themselves as inferior lords. As this system was proceeding downward *ad infinitum*, and depriving the lords of their feudal profits, it was entirely suppressed by the statute *Quia Emptores*, 18 Edw. I, c. 1, and instead of it alienation in the modern sense was introduced, so that thenceforth the alienee held of the same chief lord and by the same services that his alienor before him held.

**Subirrigate** /səbɪhrəgèyt/. To irrigate below the surface, as by a system of underground porous pipes, or by natural percolation through the soil.

**Subjacent support** /səbjéysənt səpórt/. The right of land to be supported by the land which lies under it; distinguished from lateral (side) support. *See also* Support.

**Subject.** *Constitutional law.* One that owes allegiance to a sovereign and is governed by his laws. The natives of Great Britain are *subjects* of the British government. Men in free governments are subjects as well as *citizens*; as citizens they enjoy rights and franchises; as subjects they are bound to obey the laws. The term is little used, in this sense, in countries enjoying a republican form of government. *Swiss Nat. Ins. Co. v. Miller*, 267 U.S. 42, 45 S.Ct. 213, 214, 69 L.Ed. 504.

**Legislation.** The matter of public or private concern for which law is enacted. Thing legislated about or matters on which legislature operates to accomplish a definite object or objects reasonably related one to the other. *Crouch v. Benet*, 198 S.C. 185, 17 S.E.2d 320, 322. The matter or thing forming the groundwork of the act. *McCombs v. Dallas County, Tex.Civ.App.*, 136 S.W.2d 975, 982.

The constitutions of several of the states require that every act of the legislature shall relate to but one *subject*, which shall be expressed in the title of the statute. But term "subject" within such constitutional provisions is to be given a broad and extensive meaning

so as to allow legislature full scope to include in one act all matters having a logical or natural connection. *Jaffee v. State*, 76 Okl.Cr. 95, 134 P.2d 1027, 1032.

**Subjection.** The obligation of one or more persons to act at the discretion or according to the judgment and will of others.

**Subject-matter.** The subject, or matter presented for consideration; the thing in dispute; the right which one party claims as against the other, as the right to divorce; of ejection; to recover money; to have foreclosure. *Flower Hospital v. Hart*, 178 Okl. 447, 62 P.2d 1248, 1252. Nature of cause of action, and of relief sought. In trusts, the *res* or the things themselves which are held in trust. *Restatement, Second, Trusts*, § 2.

**Subject matter jurisdiction.** Term refers to court's power to hear and determine cases of the general class or category to which proceedings in question belong; the power to deal with the general subject involved in the action. *Standard Oil Co. v. Montecatini Edison S. p. A.*, D.C.Del., 342 F.Supp. 125, 129. *See also* Jurisdiction of the subject matter.

**Subject to.** Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. *Homan v. Employers Reinsurance Corp.*, 345 Mo. 650, 136 S.W.2d 289, 302.

**Sub judice** /səb júwdəsíy/. Under or before a judge or court; under judicial consideration; undetermined.

**Sublata causa tollitur effectus** /səbléytə kózá tólətər əféktəs/. The cause being removed the effect ceases.

**Sublata veneratione magistratum, res publica ruit** /səbléytə vənərəyshiyówniy məjəstrétyuwəm, ríyz pəbləkə rúwət/. When respect for magistrates is taken away, the commonwealth falls.

**Sublato fundamento cadit opus** /səbléytow fəndəméntow kéydat ówpəs/. The foundation being removed, the superstructure falls.

**Sublato principali, tollitur adjunctum** /səbléytow prɪnsəpéylay, tólətər əjəŋktəm/. When the principal is taken away, the incident is taken also.

**Sublease.** A lease executed by the lessee of land or premises to a third person, conveying the same interest which the lessee enjoys, but for a shorter term than that for which the lessee holds (as compared to assignment, where the lessee transfers the entire unexpired term of the leasehold to a third party). Transaction whereby tenant grants interests in leased premises less than his own, or reserves to himself reversionary interest in term. *Ernst v. Condit*, 54 Tenn.App. 328, 390 S.W.2d 703, 707. *See also* Lease; Sandwich lease; Subtenant.

A lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease. U.C.C. § 2A-103(1)(w).

**Subletting.** *See also* Sublease.

**Submerged lands.** Land lying under water. Land lying oceanside of the tideland. *People v. Hecker*, 179 Cal.App.2d 823, 4 Cal.Rptr. 334, 341.

**Submergence.** As it concerns the proprietorship of land, consists in the disappearance of land under water and the formation of a more or less navigable body over it. *Michelsen v. Leskowitz*, 269 App.Div. 693, 55 N.Y. S.2d 831, 838.

**Submission.** A yielding to authority; *e.g.* a citizen is bound to submit to the laws; a child to his parents.

A contract between two or more parties whereby they agree to refer the subject in dispute to others and to be bound by their award. *District of Columbia v. Bailey*, 171 U.S. 161, 18 S.Ct. 868, 872, 43 L.Ed. 118. *See also* Arbitration; Mediation.

**Submission bond.** The bond by which the parties agree to submit their matters to arbitration, and by which they bind themselves to abide by the award of the arbitrator.

**Submission to jury.** The act or process by which a judge gives to the jury the case on trial for their consideration and verdict. *See* Jury instructions.

**Submit.** To commit to the discretion of another. To yield to the will of another. To propound; to present for determination; as an advocate *submits* a proposition for the approval of the court. *See also* Submission.

**Sub modo** /səb mówdow/. Under a qualification; subject to a restriction or condition.

**Submortgage.** When a person who holds a mortgage as security for a loan which he has made, procures a loan to himself from a third person, and pledges his mortgage as security, he effects what is called a "submortgage."

**Sub nomine** /səb nóməniy/. Under the name; in the name of; under the title of.

**Subnotations** /səbnówtéyshənz/. In the civil law, the answers of the prince to questions which had been put to him respecting some obscure or doubtful point of law.

**Subordinate.** Placed in a lower order, class, or rank; occupying a lower position in a regular descending series; inferior in order, nature, dignity, power, importance, or the like; belonging to an inferior order in classification, and having a lower position in a recognized scale; secondary, minor.

**Subordinated bonds or debentures.** A bond that has a claim on the issuing firm's assets that is junior to other forms of debt in the event of a liquidation. The claims of subordinated debenture holders can be met only *after* all the claims of senior creditors have been met. Usually such bonds or debentures are not subordinate to general creditors but only to debt owed to a financial institution.

**Subordinate debt.** Debt that is junior in status of claims to other types or classes of debts.

**Subordinate officer.** One who performs duties imposed on him under direction of a principal or superior officer or he may be an independent officer subject only to such directions as the statute lays on him.

**Subordination.** The act or process by which a person's rights or claims are ranked below those of others; *e.g.* a

second mortgagee's rights are subordinate to those of the first mortgagee.

**Subordination agreement.** An agreement by which one holding an otherwise senior lien or other real estate interest consents to a reduction in priority *vis-a-vis* another person holding an interest in the same real estate. An agreement by which the subordinating party agrees that its interest in real property should have a lower priority than the interest to which it is being subordinated.

**Subordination clause.** A covenant in a junior mortgage enabling the first lien to keep its priority in case of renewal or refinancing.

**Suborn.** To prepare, provide, or procure especially in a secret or underhand manner. *United States v. Silverman*, C.C.A.Pa., 106 F.2d 750, 751.

In criminal law, to procure another to commit perjury.

**Subornation of perjury.** The offense of procuring another to take such a false oath as would constitute perjury in the principal. *Jenkins v. U.S.*, 500 A.2d 1019, 1021. 18 U.S.C.A. § 1622. *See also* Perjury.

**Suborner.** One who suborns or procures another to commit any crime, particularly to commit perjury.

**Subpartner.** *See* Partner.

**Sub pede sigilli** /səb pídyi səjilay/. Under the foot of the seal; under seal.

**Subpoena** /sə(b)píynə/. A subpoena is a command to appear at a certain time and place to give testimony upon a certain matter. A subpoena *duces tecum* requires production of books, papers and other things. Subpoenas in federal criminal cases are governed by Fed.R.Crim.P. 17, and in civil cases by Fed.R.Civil.P. 45. *See also* Alias subpoena.

**Subpoena ad testificandum** /sə(b)píynə əd tès-təfəkándəm/. Lat. Subpoena to testify. A technical and descriptive term for the ordinary subpoena. *See* Subpoena.

**Subpoena duces tecum** /sə(b)píynə d(y)úwsiyz tíykəm/. A court process, initiated by party in litigation, compelling production of certain specific documents and other items, material and relevant to facts in issue in a pending judicial proceeding, which documents and items are in custody and control of person or body served with process. *People v. Grosunor*, 108 Misc.2d 932, 439 N.Y. S.2d 243, 249. *See* Fed.R.Civil.P. 45, and Fed.R.Crim.P. 17.

**Sub potestate** /səb powdəstéyiy/. Under, or subject to, the power of another; used of a wife, child, slave, or other person not *sui juris*.

**Subreptio** /səbrəpsh(iy)ow/. Lat. In the civil law, obtaining gifts of escheat, etc., from the king by concealing the truth.

**Subreption** /sùbrepsyówn/. In French law, the fraud committed to obtain a pardon, title, or grant, by alleging facts contrary to truth.

**Subrogation.** The substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities. *Gerken v. Davidson Grocery Co.*, 57 Idaho 670, 69 P.2d 122, 126. Subrogation denotes the exchange of a third person who has paid a debt in the place of the creditor to whom he has paid it, so that he may exercise against the debtor all the rights which the creditor, if unpaid, might have done. Subrogation appears commonly in construction contracts, insurance contracts, suretyship, and negotiable instrument law. Insurance companies, guarantors and bonding companies generally have the right to step into the shoes of the party whom they compensate and sue any party whom the compensated party could have sued.

The right of one who has paid an obligation which another should have paid to be indemnified by the other. *Olin Corp. (Plastics Division) v. Workmen's Compensation Appeal Bd.*, 14 Pa.Cmwlth. 603, 324 A.2d 813, 816. A device adopted by equity to compel ultimate discharge of an obligation by him who in good conscience ought to pay it. *Jenks Hatchery, Inc. v. Elliott*, 252 Or. 25, 448 P.2d 370, 373.

Subrogation is of two kinds, either conventional or legal; the former being where the subrogation is express, by the acts of the creditor and the third person; the latter being (as in the case of sureties) where the subrogation is effected or implied by the operation of the law. *See also* Equitable subrogation; Legal subrogation.

**Subrogee** /səbrɔʊjɪ/ˈɡi/. A person who is subrogated; one who succeeds to the rights of another by subrogation.

**Subrogor.** The person who substitutes another for himself; one who performs the subrogation.

**Sub rosa** /səb rɔʊzə/. Confidential, secret, not for publication.

**Sub salvo et securo conductu** /səb səlvəw ɛt səkyúrow kəndəkt(y)uw/. Under safe and secure conduct. 1 *Strange*, 430. Words in the old writ of *habeas corpus*.

**Subscribe.** Literally to write underneath, as one's name. To sign at the end of a document. Also, to agree in writing to furnish money or its equivalent, or to agree to purchase some initial stock in a corporation. *See also* Attest; Subscriber; Subscription.

**Subscribed capital.** The total amount of stock or capital for which there are contracts of purchase or subscriptions.

**Subscribed stock.** A stockholders' equity account showing the capital that will be contributed as the subscription price is collected. A subscription is a legal contract so that an entry is made debiting a receivable and crediting subscribed stock as soon as the stock is subscribed. *See also* Subscriber; Subscription.

**Subscriber.** One who writes his name under a written instrument; one who affixes his signature to any document, whether for the purpose of authenticating or

attesting it, of adopting its terms as his own expressions, or of binding himself by an engagement which it contains.

One who becomes bound by a subscription to the capital stock of a corporation. One who has agreed to purchase stock from the corporation on the original issue of such stock, whether before or after incorporation. *Rev. Model Bus. Corp. Act*, § 1.40. One who agrees to buy securities of a corporation, either bonds or stocks.

**Subscribing witness.** He who witnesses or attests the signature of a party to an instrument, and in testimony thereof subscribes his own name to the document. One who sees a writing executed, or hears it acknowledged, and at the request of the party thereupon signs his name as a witness. *See* Attestation.

**Subscriptio** /səbskrípsh(i)yow/. Lat. In the civil law, a writing under, or under-writing; a writing of the name under or at the bottom of an instrument by way of attestation or ratification; subscription.

**Subscription.** The act of writing one's name under a written instrument; the affixing one's signature to any document, whether for the purpose of authenticating or attesting it, of adopting its terms as one's own expressions, or of binding one's self by an engagement which it contains.

A written contract by which one engages to take and pay for capital stock of a corporation, or to contribute a sum of money for a designated purpose, either gratuitously, as in the case of subscribing to a charity, or in consideration of an equivalent to be rendered, as a subscription to a periodical, a forthcoming book, a series of entertainments, or the like. *See also* Subscribed stock; Subscriber, and compound terms below.

**Subscription contract.** In general, any contract by which one becomes bound to buy. In particular, a contract for the purchase of securities. *See* Subscription.

**Subscription list.** A list of subscribers to some agreement with each other or a third person. A list of subscribers to a periodical or series of publications or to some type of service.

**Subscription rights.** Rights of existing stockholders to purchase additional stock, generally at a price under market and in an amount proportionate to their existing holdings. Also, the certificates evidencing such rights. *See also* Stock (*Stock rights*).

**Subsellia** /səbsél(i)yə/. Lat. In Roman law, lower seats or benches, occupied by the *judices* and by inferior magistrates when they sat in judgment, as distinguished from the *tribunal* of the praetor.

**Subsequens matrimonium tollit peccatum praecedens** /səbsiýkwənz mətrəmówn(i)yəm tólət pəkéytəm priýsíydənz/. A subsequent marriage [of the parties] removes a previous fault, *i.e.*, previous illicit intercourse, and legitimates the offspring. A rule of Roman law.

**Subsequent.** Following in time; coming or being later than something else; succeeding.

**Subsequent condition.** See Condition.

**Subservant.** In law of agency, the servant or agent of another servant or agent. Generally, such agent or servant is principal as to the subservant. See also Subagent.

**Subsidiary.** Under another's control. Term is often short for "subsidiary corporation"; i.e. one that is run and owned by another company which is called the "parent." See Subsidiary corporation.

Of secondary importance.

**Subsidiary corporation.** One in which another corporation (i.e. parent corporation) owns at least a majority of the shares, and thus has control. Said of a company more than 50 percent of whose voting stock is owned by another.

**Subsidy.** A grant of money made by government in aid of the promoters of any enterprise, work, or improvement in which the government desires to participate, or which is considered a proper subject for government aid, because such purpose is likely to be of benefit to the public.

**Sub silentio** /səb sələnsh(iy)ow/. Under silence; without any notice being taken. Passing a thing *sub silentio* may be evidence of consent.

**Subsistence.** Support. Means of support, provisions, or that which procures provisions or livelihood. See Necessaries; Support.

**Sub spe reconciliationis** /səb spiy rekənsilyèy-shiyównəs/. Under the hope of reconciliation.

**Substance.** Essence; the material or essential part of a thing, as distinguished from "form." That which is essential.

**Substance vs. form concept.** A standard used, commonly in taxation, to ascertain the true reality of what has occurred.

**Substantial.** Of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. *Seglem v. Skelly Oil Co.*, 145 Kan. 216, 65 P.2d 553, 554. Something worthwhile as distinguished from something without value or merely nominal. In *re Krause's Estate*, 173 Wash. 1, 21 P.2d 268. Synonymous with material. *Lewandoski v. Finkel*, 129 Conn. 526, 29 A.2d 762, 764.

**Substantial capacity test.** Term used in the definition of legal insanity proposed by the Model Penal Code (§ 4.01) to the effect that 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. See also Insanity.

**Substantial compliance rule.** Compliance with the essential requirements, whether of a contract or of a statute. *Wentworth v. Medellin*, Tex.Civ.App., 529 S.W.2d 125, 128. In life insurance law is that where

insured has done substantially all he is required to do under policy to effect change in beneficiary and mere ministerial acts of insurer's officers and agents only remain to be done, change will take effect. *Inter-Southern Life Ins. Co. v. Cochran*, 259 Ky. 677, 83 S.W.2d 11, 14. See Substantial performance doctrine.

**Substantial damages.** See Damages.

**Substantial equivalent of patented device.** Same as thing itself, so that if two devices do same work in substantially same way, and accomplish substantially same results, they are equivalent, even though differing in name, form, or shape. *Bedell v. Dictograph Products Co.*, 251 App.Div. 243, 296 N.Y.S. 25, 32; *Freeman v. Altwater*, C.C.A.Mo., 66 F.2d 506, 511.

**Substantial evidence rule.** Such evidence that a reasonable mind might accept as adequate to support a conclusion. It is that quality of evidence necessary for a court to affirm a decision of an administrative board. Under the "substantial evidence rule," reviewing courts will defer to an agency determination so long as, upon an examination of the whole record, there is substantial evidence upon which the agency could reasonably base its decision. *Marshall v. Consumers Power Co.*, 65 Mich. App. 237, 237 N.W.2d 266, 280.

Substantial evidence is evidence possessing something of substance and relevant consequence and which furnishes substantial basis of fact from which issues tendered can be reasonably resolved. *State v. Green*, 218 Kan. 438, 544 P.2d 356, 362. Evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. *Marker v. Finch*, D.C.Del., 322 F.Supp. 905, 910. For purposes of considering sufficiency of evidence in criminal case, "substantial evidence" means evidence from which trier of fact reasonably could find issue in harmony therewith. *Kansas City v. Stamper*, Mo.App., 528 S.W.2d 767, 768.

Under the substantial evidence rule, as applied in administrative proceedings, all evidence is competent and may be considered, regardless of its source and nature, if it is the kind of evidence that a reasonable mind might accept as adequate to support a conclusion. In other words, the competency of evidence for purposes of administrative agency adjudicatory proceedings is made to rest upon the logical persuasiveness of such evidence to the reasonable mind in using it to support a conclusion. It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Chrysler Corp. v. U.S. Environmental Protection Agency*, C.A., 631 F.2d 865, 890, 203 U.S.App.D.C. 283.

See also Whole record test.

**Substantial justice.** Justice administered according to the rules of substantive law, notwithstanding errors of procedure. *Interstate Bankers Corporation v. Kennedy*, D.C.Mun.App., 33 A.2d 165, 166.

**Substantially.** Essentially; without material qualification; in the main; in substance; materially; in a sub-

stantial manner. About, actually, competently, and essentially. *Gilmore v. Red Top Cab Co. of Washington*, 171 Wash. 346, 17 P.2d 886, 887.

**Substantially justified.** Test for whether government's litigation position is "substantially justified" within meaning of Equal Access to Justice Act provision governing award of attorney fees (28 U.S.C.A. § 2412(d)(1)(A)) is one of reasonableness, under which government is required to establish that its position has reasonable basis both in law and in fact. *Russell v. National Mediation Bd., C.A.Tex.*, 775 F.2d 1284, 1289. Following 1985 amendments to Equal Access to Justice Act, in order to show that its position was "substantially justified" and thus be relieved from liability for fees of a prevailing opponent, Government must show not merely that its position was marginally reasonable, but that its position was clearly reasonable, well founded in law and fact, and solid though not necessarily correct. *U.S. v. 1,378.65 Acres of Land, More or Less, Situate in Vernon County, State of Mo., C.A.Mo.*, 794 F.2d 1313, 1317. See Equal Access to Justice Act.

**Substantial performance doctrine.** A doctrine in commercial reasonableness which recognizes that the rendering of a performance which does not exactly meet the terms of the agreement (slight deviation) will be looked upon as fulfillment of the obligation, less the damages which result from any deviation from the promised performance. This doctrine, which is widely applied in building contracts and which is intended to prevent unjust enrichment, provides that where contract is made for agreed exchange of two performances, one of which is to be rendered first, substantial performance, rather than strict, exact or literal performance, by first party of terms of contract is sufficient to entitle such party to recover on such performance. *Della Ratta, Inc. v. American Better Community Developers, Inc.*, 38 Md. App. 119, 380 A.2d 627, 637.

Substantial performance of a contract is shown when party alleging substantial performance has made an honest endeavor in good faith to perform his part of the contract, when results of his endeavor are beneficial to other party, and when such benefits are retained by the other party; if any one of these circumstances is not established the performance is not substantial, and the party has no right of recovery. *Alliance Tractor & Implement Co. v. Lukens Tool & Die Co.*, 194 Neb. 473, 233 N.W.2d 299, 301.

**Substantiate** /səb'stænʃiəyət/. To establish the existence or truth of, by true or competent evidence, or to verify. *Graves v. School Committee of Wellesley*, 299 Mass. 80, 12 N.E.2d 176, 179.

**Substantive.** An essential part or constituent or relating to what is essential. *Stewart-Warner Corporation v. Le Vally, D.C.Ill.*, 15 F.Supp. 571, 576.

**Substantive due process.** Doctrine that due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution require legislation to be fair and reasonable in content as well as application. Such may be broadly defined as the constitutional guarantee

that no person shall be arbitrarily deprived of his life, liberty or property. The essence of substantive due process is protection from arbitrary and unreasonable action. *Jeffries v. Turkey Run Consolidated School Dist., C.A.Ind.*, 492 F.2d 1, 3. See Due process of law.

**Substantive evidence.** That adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness (*i.e.*, showing that he is unworthy of belief), or of corroborating his testimony. See also Substantial evidence rule.

**Substantive felony.** An independent felony; one not dependent upon the conviction of another person for another crime.

**Substantive law.** That part of law which creates, defines, and regulates rights and duties of parties, as opposed to "adjective, procedural, or remedial law," which prescribes method of enforcing the rights or obtaining redress for their invasion. *Allen v. Fisher*, 574 P.2d 1314, 1315. The basic law of rights and duties (contract law, criminal law, tort law, law of wills, etc.) as opposed to procedural law (law of pleading, law of evidence, law of jurisdiction, etc.). Compare Adjective law; Procedural law.

**Substantive offense.** One which is complete of itself and not dependent upon another. *U. S. v. Martinez-Gonzales, D.C.Cal.*, 89 F.Supp. 62, 64.

**Substantive rights.** A right to the equal enjoyment of fundamental rights, privileges and immunities; distinguished from procedural right.

**Substitute, n.** /səb'stət(y)ùwt/. One who or that which stands in the place of another; that which stands in lieu of something else. A person hired by one who has been drafted into the military service of the country, to go to the front and serve in the army in his stead.

**Substitute, v.** To put in the place of another person or thing; to exchange. *Toledo Edison Co. v. McMaken, C.C.A.Ohio*, 103 F.2d 72, 75.

**Substituted basis.** In taxation, the basis of an asset determined by reference to the basis in the hands of a transferor, donor or grantor or by reference to other property held at any time by the person for whom the basis is to be determined. I.R.C. § 1016(b).

**Substitute defendant.** One who takes the place of another in the same suit or controversy and not one who is sued upon an entirely different cause of action. *McCann v. Bentley Stores Corp., D.C.Mo.*, 34 F.Supp. 231, 233. See Substitution of parties.

**Substituted executor.** One appointed to act in the place of another executor upon the happening of a certain event; *e.g.*, if the latter should refuse the office.

**Substituted service.** Service of process upon a defendant in any manner, authorized by statute or rule, other than personal service within the jurisdiction; as by publication, by mailing a copy to his last known address, or by personal service in another state. See Fed.R.Civil P. 4. See also Service.

**Substitute father.** A man who cohabits with the mother of children not being married to her. *King v. Smith*, 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118.

**Substitutio hæredis** /səbstət(y)úwsh(iy)ow hæriydəs/. Lat. In Roman law, it was competent for a testator after instituting a *hæres* (called the "*hæres institutus*") to substitute another (called the "*hæres substitutus*") in his place in a certain event. If the event upon which the substitution was to take effect was the refusal of the instituted heir to accept the inheritance at all, then the substitution was called "*vulgaris*" (or common); but if the event was the death of the infant (*pupillus*) after acceptance, and before attaining his majority (of fourteen years if a male, and of twelve years if a female), then the substitution was called "*pupillaris*" (or for minors).

**Substitution.** Putting in place of another thing; change of one thing for another; serving in lieu of another; having some of its parts replaced. *See also* Subrogation.

In the civil law, the putting one person in place of another; particularly, the act of a testator in naming a second devisee or legatee who is to take the bequest either on failure of the original devisee or legatee or after him.

**Substitutional or substitutionary.** Where a will contains a gift of property to a class of persons, with a clause providing that on the death of a member of the class before the period of distribution his share is to go to his issue (if any), so as to substitute them for him, the gift to the issue is said to be substitutional or substitutionary. A bequest to such of the children of A. as shall be living at the testator's death, with a direction that the issue of such as shall have died shall take the shares which their parents would have taken, if living at the testator's death, is an example.

**Substitutionary evidence.** Such as is admitted as a substitute for what would be the original or primary instrument of evidence; as where a witness is permitted to testify to the contents of a lost document. *See also* Secondary evidence.

**Substitutionary executor** /səbstət(y)úwshənèhriy əg-zékýdər/. *See* Executor(-trix).

**Substitution of judgment doctrine.** Such doctrine, where permitted, allows the court, upon petition of an incompetent's guardian, to approve an estate plan designed to produce tax savings. Uniform Probate Code, § 5-408. *Strange v. Powers*, 358 Mass. 126, 260 N.E.2d 704.

**Substitution of parties.** In pleading, the replacement of one party to an action by another party because of death, incompetency, transfer of interest, or in case of a public official who is a party to an action, his death or separation from office. Fed.R.Civ.P. 17(a), 25. *See also* Real party in interest; Revival of action.

**Subtraction** /súbstraksýown/. In French law, the fraudulent appropriation of any property, but particularly of the goods of a decedent's estate.

**Sub suo periculo** /səb s(y)úwow pərik(y)əlow/. At his own risk.

**Subtenant** /səbténənt/. An under-tenant; one who leases all or a part of the rented premises from the original lessee for a term less than that held by the latter. *Peak v. Gaddy*, 152 Okl. 138, 3 P.2d 1042, 1043. *See* Sublease.

**Subterfuge** /səbtəfyúwǰ/. That to which one resorts for escape or concealment. *Los Angeles Fisheries v. Crook*, C.C.A.Cal., 47 F.2d 1031, 1035. *See also* Artifice.

**Subterranean waters** /səbtərəyn(i)yən wótərz/. *See* Water.

**Subtraction.** The offense of withholding or withdrawing from another man what by law he is entitled to. There are various descriptions of this offense, of which the principal are as follows: (1) Subtraction of suit and services, which is a species of injury affecting a man's real property, and consists of a withdrawal of (or a neglect to perform or pay) the fealty, suit of court, rent, or services reserved by the lessor of the land. (2) Subtraction of tithes is the withholding from the parson or vicar the tithes to which he is entitled, and this is cognizable in the ecclesiastical courts. (3) Subtraction of conjugal rights is the withdrawing or withholding by a husband or wife of those rights and privileges which the law allows to either party. (4) Subtraction of legacies is the withholding or detaining of legacies by an executor. (5) Subtraction of church rates, in English law, consists in the refusal to pay the amount of rate at which any individual parishioner has been assessed for the necessary repairs of the parish church.

**Subtraction of conjugal rights.** The act of a husband or wife living separately from the other without a lawful cause. 3 Bl.Comm. 94. *See also* Subtraction.

**Suburbani** /səbərbéynay/. Lat. In old English law, husbandmen.

**Subversion.** The act or process of overthrowing, destroying, or corrupting. Used in connection with activities designed to undermine and overthrow the government, state and federal. *See* Subversive activities.

**Subversive activities.** Acts directed toward the overthrow of the government, including treason, sedition and sabotage. Such acts are federal crimes. 18 U.S.C.A. § 2381 *et seq.*; 50 U.S.C.A. § 781 *et seq.* *See* Espionage; Smith Act.

**Successful party.** For purposes of rule allowing "successful party" to recover costs, "successful party" is one who obtains judgment of competent court vindicating civil claim of right. Zoning Bd. of Adjustment of City of Lubbock v. Graham & Associates, Inc., Tex.App. 7 Dist., 664 S.W.2d 430, 437. *See also* Prevailing party.

**Successio** /səksésh(iy)ow/. Lat. In the civil law, a coming in place of another, on his decease; a coming into the estate which a deceased person had at the time of his death. This was either by virtue of an express appointment of the deceased person by his *will* (*ex testamento*), or by the general appointment of law in case of *intestacy* (*ab intestato*).



**Succession.** The devolution of title to property under the law of descent and distribution. The act or right of legal or official investment with a predecessor's office, dignity, possession, or functions; also the legal or actual order of so succeeding from that which is or is to be vested or taken. The word when applied to realty denotes persons who take by will or inheritance and excludes those who take by deed, grant, gift, or any form of purchase or contract. *Olsan Bros. v. Miller, Tex.Civ. App., 108 S.W.2d 856, 857.*

Although "succession" is defined in statute as the acquisition of title to the property of one who dies without disposing of it by will, the word frequently possesses the somewhat broader meaning of the acquisition of rights upon the death of another. In *re Russell's Estate, 17 C.A.3d 758, 95 Cal.Rptr. 88, 95.*

The right by which one group of persons may, by succeeding another group, acquire a property in all the goods, movables, and other chattels of a corporation. The power of perpetual *succession* is one of the peculiar properties of a corporation. *See Perpetual.*

*See also* Descent; Devise; Inheritance; Intestate; Successor; Testamentary.

#### Civil Law and Louisiana

The *fact* of the transmission of the rights, estate, obligations, and charges of a deceased person to his heir or heirs. The *right* by which the heir can take possession of the decedent's estate. The right of the heir to step into the place of the deceased, with respect to the possession, control, enjoyment, administration, and settlement of all the latter's property, rights, obligations, charges, etc.

The *estate* of a deceased person, comprising all kinds of property owned or claimed by him, as well as his debts and obligations, and considered as a legal entity (according to the notion of the Roman law) for certain purposes, such as collecting assets and paying debts.

The transmission of the rights and obligations of the deceased to the heirs, also the estates, rights, and charges which a person leaves after his death, whether the property exceeds the charges or the charges exceed the property, or whether he has only left charges without any property. The succession not only includes the rights and obligations of the deceased as they exist at the time of his death, but all that has accrued thereto since the opening of the succession, as also the new charges to which it becomes subject. The coming in of another to take the property of one who dies without disposing of it by will.

#### General

**Artificial succession.** That attribute of a corporation by which, in contemplation of law, the company itself remains always the same though its constituent members or stockholders may change from time to time.

**Hereditary succession.** Descent or title, by descent at common law; the title whereby a man on the death of

his ancestor acquires his estate by right of representation as his heir at law.

**Intestate succession.** The succession of an heir at law to the property and estate of his ancestor when the latter has died intestate, or leaving a will which has been annulled or set aside. *See also* Descent; Devise; Inheritance; Intestate.

**Irregular succession.** That which is established by law in favor of certain persons, or of the state, in default of heirs, either legal or instituted by testament.

**Legal succession.** That which the law establishes in favor of the nearest relation of a deceased person. *See* Descent.

**Natural succession.** Succession taking place between natural persons, for example, in descent on the death of an ancestor.

**Testamentary succession.** In the civil law, that which results from the institution of an heir in a testament executed in the form prescribed by law. *See* Testamentary.

**Testate succession.** Passing of property to another by will.

**Vacant succession.** Such exists when no one claims it, or when all the heirs are unknown, or when all the known heirs to it have renounced it. *Civ.Code La. art. 1095. Simmons v. Saul, 138 U.S. 439, 11 S.Ct. 369, 34 L.Ed. 1054.*

**Succession duty or tax.** A tax placed on the gratuitous acquisition of property passing on the death of any person by transfer from one person to another. *Wachovia Bank & Trust Co. v. Maxwell, 221 N.C. 528, 20 S.E.2d 840, 842.* A tax imposed upon the privilege of receiving property from a decedent by devise or inheritance. *See* Inheritance tax.

**Successive.** Following one after another in a line or series. In *re Buchholtz, Cust. & Pat.App., 54 F.2d 965, 966.*

**Successor.** One that succeeds or follows; one who takes the place that another has left, and sustains the like part or character; one who takes the place of another by succession. *Wawak Co. v. Kaiser, C.C.A.Ill., 90 F.2d 694, 697.* One who has been appointed or elected to hold an office after the term of the present incumbent.

Term with reference to corporations, generally means another corporation which, through amalgamation, consolidation, or other legal succession, becomes invested with rights and assumes burdens of first corporation.

**Singular successor.** A term borrowed from the civil law, denoting a person who succeeds to the rights of a former owner in a single article of property (as by purchase), as distinguished from a *universal* successor, who succeeds to all the rights and powers of a former owner, as in the case of a bankrupt or intestate estate.

**Successor in interest.** One who follows another in ownership or control of property. In order to be a "successor in interest", a party must continue to retain

the same rights as original owner without change in ownership and there must be change in form only and not in substance, and transferee is not a "successor in interest." In case of corporations, the term ordinarily indicates statutory succession as, for instance, when corporation changes its name but retains same property. *City of New York v. Turnpike Development Corp.*, 36 Misc.2d 704, 233 N.Y.S.2d 887, 890.

**Successors.** Those persons, other than creditors, who are entitled to property of a decedent under his will or succession statute. Uniform Probate Code, § 1-201(42).

**Successor trustee.** A trustee who follows or succeeds an earlier trustee and who generally has all the powers of the earlier trustee. Trusts generally make provisions for appointment of successor trustees.

**Succinct** /səksɪŋkt/. Brief, precise, exact.

**Succurritur minori; facilis est lapsus juventutis** /səksəhrətər mənóray, fáesələs èst lápsəs jùwvənt(y)úwtəs/. A minor is [to be] aided; a mistake of youth is easy [youth is liable to err].

**Such.** Of that kind, having particular quality or character specified. Identical with, being the same as what has been mentioned. Alike, similar, of the like kind. "Such" represents the object as already particularized in terms which are not mentioned, and is a descriptive and relative word, referring to the last antecedent.

**Sudden.** Happening without previous notice or with very brief notice; coming or occurring unexpectedly; unforeseen; unprepared for. *Hagaman v. Manley*, 141 Kan. 647, 42 P.2d 946, 949.

**Sudden emergency doctrine.** When a person finds himself confronted with a sudden emergency, which was not brought about by his own negligence or want of care, such person has the legal right to do what appears to him at the time he should do, so long as he acts in a reasonably prudent manner as any other person would have done under like or similar circumstances, to avoid any injury, and if he does so act, he will not be deemed to have been negligent even though it might afterwards be apparent that some other course of action would have been safer. *Swann v. Huttig Sash & Door Co.*, C.A.Tex., 436 F.2d 60, 62. Under sudden emergency doctrine, one placed in position of sudden emergency or peril other than by his own negligence, is not held to same degree of care and prudence as one who has time for thought and reflection. *Dadds v. Pennsylvania R. Co.*, Del., 251 A.2d 559, 560. *See also* Emergency doctrine; Sudden peril rule.

**Sudden heat of passion.** In the common-law definition of manslaughter, this phrase means an excess of rage or anger, suddenly arising from a contemporary provocation. It means that the provocation must arise at the time of the killing, and that the passion is not the result of a former provocation, and the act must be directly caused by the passion arising out of the provocation at the time of the homicide. *See also* Heat of passion.

**Sudden or violent injury.** Injury occurring unexpectedly and not naturally or in the ordinary course of events.

**Sudden peril rule.** Under this rule, a defendant who is guilty of primary negligence is not liable in case of sudden peril where the peril or alarm was caused by the negligence of the opposite party, apprehension of peril from the standpoint of defendant seeking to excuse his primary negligence was reasonable, and appearance of danger was so imminent as to leave no time for deliberation. *White v. Munson*, Tex.Civ.App., 162 S.W.2d 429, 432. But rule cannot be invoked by one bringing emergency on or not using due care, to avoid it. *McClelland v. Interstate Transit Lines*, 142 Neb. 439, 6 N.W.2d 384, 391. *See also* Sudden emergency doctrine.

**Sudder** /sédər/. In Hindu law, the best; the forecourt of a house; the chief seat of government, contradistinguished from "mofussil," or interior of the country; the presidency.

**Sue.** To commence or to continue legal proceedings for recovery of a right; to proceed with as an action, and follow it up to its proper termination; to gain by legal process. *Lervold v. Republic Mut. Fire Ins. Co.*, 142 Kan. 43, 45 P.2d 839, 843. To commence and carry out legal action against another. Word includes a proceeding instituted by confession of judgment. *Commonwealth ex rel. Bradford County v. Lynch*, 146 Pa.Super. 469, 23 A.2d 77, 78. *See also* Suit.

**Sue out.** To obtain by application; to petition for and take out. Properly the term is applied only to the obtaining and issuing of such process as is only accorded upon an application first made; but conventionally it is also used of the taking out of process which issues of course. The term is occasionally used of instruments other than writs.

**Suerte** /s(u)wértey/. In Spanish law, a small lot of ground. Particularly, such a lot within the limits of a city or town used for cultivation or planting as a garden, vineyard or orchard. Building lots in towns and cities are called "solares."

**Suffer.** To allow, to admit, or to permit. *Osborne v. Winter*, 133 Cal.App. 664, 24 P.2d 892. It includes knowledge of what is to be done under sufferance. *First Nat. Bank & Trust Co. of Port Chester v. New York Title Ins. Co.*, 171 Misc. 854, 12 N.Y.S.2d 703, 709. To suffer an act to be done or a condition to exist is to permit or consent to it; to approve of it, and not to hinder it. It implies knowledge, a willingness of the mind and responsible control or ability to prevent. *Wilson v. Nelson*, 183 U.S. 191, 22 S.Ct. 74, 46 L.Ed. 147.

Also to have the feeling or sensation that arises from the action of something painful, distressing or the like; to feel or endure pain; to endure or undergo without sinking; to support; to bear up under; to be affected by; to sustain; to experience; to feel pain, physical or mental. The customary use of the word indicates some experience of conscious pain. *New York Life Ins. Co. v. Calhoun*, C.C.A.Mo., 97 F.2d 896, 898.

**Sufferance** /səf(ə)rən(t)s/. Toleration; negative permission by not forbidding; passive consent; license implied from the omission or neglect to enforce an adverse right.

**Suffrance wharves.** In old English law, wharves in which goods may be landed before any duty is paid. They are appointed for the purpose by the commissioners of the customs.

**Sufferentia pacis** /sʌfərənʃ(i)yə pɛysəs/. Lat. A grant or suffrance of peace or truce.

**Suffering a recovery.** In old English law, a recovery was effected by the party wishing to convey the land *suffering* a fictitious action to be brought against him by the party to whom the land was to be conveyed (the demandant), and allowing the demandant to recover a judgment against him for the land in question. The vendor, or conveying party, in thus assisting or permitting the demandant so to recover a judgment against him, was thence technically said to "suffer a recovery."

**Sufficiency of evidence.** Term refers to test prescribed by rule providing that grand jury ought to find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction by the trier of the offense. *State v. Parks, Alaska, 437 P.2d 642, 644.*

Barring plain error, an appellate court may not grant a directed verdict or a judgment n. o. v. absent an appropriate motion in the trial court; that is to say, it may not review the "sufficiency of the evidence" and grant a final judgment in favor of a party who failed so to move; and "sufficiency" is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law. *Urti v. Transport Commercial Corp., C.A.La., 479 F.2d 766, 769.*

*See also* Burden of proof; Substantial evidence rule; Sufficient evidence. *Compare* Insufficiency of evidence to support verdict.

**Sufficient.** Adequate, enough, as much as may be necessary, equal or fit for end proposed, and that which may be necessary to accomplish an object. Of such quality, number, force, or value as to serve a need or purpose. *Nissen v. Miller, 44 N.M. 487, 105 P.2d 324, 326.* As to *sufficient* Consideration see that title.

**Sufficient cause.** Such cause as to hold defendant to answer charges is reasonable or probable cause or that state of facts as would lead a man of ordinary caution to conscientiously entertain strong suspicion of defendant's guilt. *People v. Upton, 257 Cal.App.2d 677, 65 Cal.Rptr. 103, 109.* *See also* Probable cause.

**Sufficient evidence.** Adequate evidence; such evidence, in character, weight, or amount, as will legally justify the judicial or official action demanded; according to circumstances, it may be "prima facie" or "satisfactory" evidence. Sufficient evidence is that which is satisfactory for the purpose; that amount of proof which ordinarily satisfies an unprejudiced mind, beyond a reasonable doubt. The term is not synonymous with "conclusive;" but it may be used interchangeably with the term "weight of evidence." *See also* Burden of proof; Evidence; Satisfactory evidence; Substantial evidence rule; Sufficiency of evidence.

**Suffocate.** To kill by stopping respiration, as by strangling or asphyxiation.

**Suffragan** /sʌfrəgən/. Bishops who in former times were appointed to supply the place of others during their absence on embassies or other business were so termed. They were consecrated as other bishops were, and were anciently called "*chorepiscopi*," or "bishops of the county," in contradistinction to the regular bishops of the city or see. The practice of creating *suffragan* bishops, after having long been discontinued, was recently revived; and such bishops are now permanently "assistant" to the bishops.

A suffragan is a titular bishop ordained to aid and assist the bishop of the diocese in his spiritual function; or one who supplieth the place instead of the bishop, by whose suffrage ecclesiastical causes or matters committed to him are to be adjudged, acted on, or determined.

**Suffrage** /sʌfrəj/. A vote; the act of voting; the right or privilege of casting a vote at public elections. The last is the meaning of the term in such phrases as "the extension of the suffrage," "universal suffrage," etc. Right of "suffrage" is right of a man to vote for whom he pleases. *Waterbury Homeowners Ass'n v. City of Waterbury, 28 Conn.Sup. 295, 259 A.2d 650, 654.* *See* Nineteenth Amendment.

**Suffragium** /sʌfrɛj(i)yəm/. Lat. In Roman law, a vote; the right of voting in the assemblies of the people.

Aid or influence used or promised to obtain some honor or office; the purchase of office.

**Suggest.** To introduce indirectly to the thought; to propose with diffidence or modesty; to hint; to intimate.

**Suggested retail price.** Selling price recommended to retailer by manufacturer of goods.

**Suggestio falsi** /səʒjést(i)yow fɔlsay/. Lat. Suggestion or representation of that which is false; false representation. To recite in a deed that a will was duly executed, when it was not, is *suggestio falsi*; and to conceal from the heir that the will was not duly executed is *suppressio veri*.

**Suggestion.** A suggesting; presentation of an idea especially indirectly, as through association of ideas, bringing before the mind for consideration, action, solution, or the like. It is in the nature of a hint or insinuation, and lacks the element of probability. Facts which merely suggest do not raise an inference of the existence of the fact suggested, and therefore a suggestion is much less than an inference or presumption. *See* Leading question.

In practice, a statement, formally entered on the record, of some fact or circumstance which will materially affect the further proceedings in the cause, or which is necessary to be brought to the knowledge of the court in order to its right disposition of the action, but which, for some reason, cannot be pleaded. Thus, if one of the parties dies after issue and before trial, his death may be *suggested* on the record.

**Suggestion of error.** Request for rehearing. *See also* Objection.

**Suggestive interrogation.** A phrase used by some writers to signify "leading question." It is so used in the French law. *See* Leading question.

**Suicide.** Self-destruction; the deliberate termination of one's own life.

Attempted suicide is a crime in some jurisdictions, but not in others. Some jurisdictions hold an attempted suicide which kills an innocent bystander or would-be rescuer to be murder, others manslaughter, others no crime. Some jurisdictions hold it to be murder for one person to persuade or aid another to commit suicide; some (by statute) make it manslaughter or a separate crime.

**Sui generis** /s(y)úway jénəras/. Lat. Of its own kind or class; *i.e.*, the *only one* of its own kind; peculiar.

**Sui hæredes** /s(y)úway hæriydiyz/. Lat. In the civil law, one's own heirs; proper heirs.

**Sui juris** /s(y)úway júras/. Lat. Of his own right; possessing full social and civil rights; not under any legal disability, or the power of another, or guardianship.

Having capacity to manage one's own affairs; not under legal disability to act for one's self.

*See* Emancipation; Majority. *Compare* Non sui juris.

**Suit.** A generic term, of comprehensive signification, referring to any proceeding by one person or persons against another or others in a court of law in which the plaintiff pursues, in such court, the remedy which the law affords him for the redress of an injury or the enforcement of a right, whether at law or in equity. *Kohl v. U. S.*, 91 U.S. 367, 375, 23 L.Ed. 449; *Weston v. Charleston*, 27 U.S. (2 Pet.) 449, 464, 7 L.Ed. 481; *Syracuse Plaster Co. v. Agostini Bros. Bldg. Corporation*, 169 Misc. 564, 7 N.Y.S.2d 897. It is, however, seldom applied to a criminal prosecution. And it was formerly sometimes restricted to the designation of a proceeding in equity, to distinguish such proceeding from an action at law. Term "suit" has generally been replaced by term "action"; which includes both actions at law and in equity. Fed.R.Civil P. 2. For Ancillary suit and suit *in rem* see those titles. *See also* Action; Cause of action; Litigation; Proceeding.

*Old English law.* The witnesses or followers of the plaintiff. 3 Bl.Comm. 295. *See* Secta.

Old books mention the word in many connections which are now disused,—at least, in the United States. Thus, "suit" was used of following any one, or in the sense of pursuit; as in the phrase "making fresh suit." It was also used of a petition to the king or lord. "Suit of court" was the attendance which a tenant owed at the court of his lord. "Suit covenant" and "suit custom" seem to have signified a right to one's attendance, or one's obligation to attend, at the lord's court, founded upon a known covenant, or an immemorial usage or practice of ancestors. "Suit regal" was attendance at the sheriff's tourn or leet (his court). "Suit of the king's peace" was pursuing an offender,—one charged with

breach of the peace, while "*suithold*" was a tenure in consideration of certain services to the superior lord.

*Class suits.* *See* Class or representative action.

*Derivative suit.* *See* Stockholder's derivative action.

*Suit against state.* Suit in which relief against the state is sought. *See* Sovereign immunity; Tort claims acts.

*Suit money.* Counsel fees allowed or awarded by court to party. An allowance, in the nature of temporary alimony, authorized by statute in some states to be made to a wife on the institution of her suit for divorce, intended to cover the reasonable expenses of the suit and to provide her with means for the efficient preparation and trial of her case. Many federal statutes provide for allowance of attorney fees for actions brought under respective statutes; *e.g.*, actions to recover social security disability benefits. *See also* American rule; Equal Access to Justice Act.

*Suit of a civil nature.* A suit for the remedy of a private wrong, called a "civil action". Fed.R.Civil P. 2. *See* Action.

*Suits or proceedings at law or in chancery.* Suits instituted and carried on in substantial conformity with the forms and modes prescribed by the common law or by the rules in chancery excluding cases instituted and carried on solely in accordance with statutory provisions. Under current rules practice in the federal and most state courts, there is now only one form of action called a "civil action", which embraces both actions at law and in equity. Fed.R.Civil P. 2.

**Suitable.** Fit and appropriate for the end in view.

**Suitas.** Lat. In the civil law, the condition or quality of a *suus hæres*, or proper heir.

**Suite.** Those persons who by his authority *follow* or attend an ambassador or other public minister.

**Suitor.** A party who brings an action; a petitioner; a plaintiff. In its ancient sense, "suitor" meant one who was bound to attend the county court; also one who formed part of the *secta*.

**Suitors' deposit account.** Formerly suitors in the English court of chancery derived no income from their cash paid into court, unless it was invested at their request and risk. Now, however, it is provided by the court of chancery (funds) act, 1872, that all money paid into court, and not required by the suitor to be invested, shall be placed on deposit and shall bear interest at two per cent. per annum for the benefit of the suitor entitled to it.

**Suitors' fee fund.** A fund in the English court of chancery into which the fees of suitors in that court were paid, and out of which the salaries of various officers of the court were defrayed.

**Suits in Admiralty Act.** Federal statute giving injured parties the right to sue the government in admiralty. 46 U.S.C.A. §§ 741-752. *Donily v. U. S.*, D.C.Or., 381 F.Supp. 901. *See also* Sovereign immunity.

**Sulcus** /sɒlkəs/. In old English law, a small brook or stream of water.

**Sullery** /sɒlɪəri/. In old English law, a plowland.

**Sum.** In English law, a summary or abstract; a compendium; a collection. Several of the old law treatises are called "sums." Lord Hale applies the term to summaries of statute law.

The sense in which the term is most commonly used is "money"; a quantity of money or currency; any amount indefinitely, a sum of money, a small sum, or a large sum. *U. S. v. Van Auken*, 96 U.S. 366, 368, 24 L.Ed. 852.

**Sumage** /sɒməj/. Toll for carriage on horseback.

**Sum certain.** A requisite of a negotiable instrument is that it contains an unconditional promise to pay a "sum certain." U.C.C. § 3-104(1)(b). In law of negotiable instruments, the sum payable is a sum certain even though it is to be paid (a) with stated interest or by stated installments; or (b) with stated different rates of interest before and after default or a specified date; or (c) with a stated discount or addition if paid before or after the date fixed for payment; or (d) with exchange or less exchange, whether at a fixed rate or at the current rate; or (e) with costs of collection or an attorney's fee or both upon default. U.C.C. § 3-106(1).

Amount in contract or negotiable instrument, or measure of damages in litigation, that is fixed, settled, exact, or stated. Default judgment may be entered only for a "sum certain," which is a sum susceptible to reliable computation or determined by the court after an accounting. *Insurance Co. of North America v. S/S "Hellenic Challenger"*, D.C.N.Y., 88 F.R.D. 545, 548.

**Sum in gross.** See *In gross*.

**Summa caritas est facere justitiam singulis, et omni tempore quando necesse fuerit** /sɒmə kærɪtəs èst fæsəri jəstɪʃ(i)yəm sɪŋgyləs, èt òmnay tɛmpəriy kwɔndow nəsesiý fyúwɔrət/. The greatest charity is to do justice to every one, and at any time whenever it may be necessary.

**Summa est lex quæ pro religione facit** /sɒmə èst léks kwíy prɔw rɛlɪjyówniý féysət/. That is the highest law which favors religion.

**Summa ratio est quæ pro religione facit** /sɒmə réyʃh(i)yow èst kwíy prɔw rɛlɪjyówniý féysət/. That consideration is strongest which determines in favor of religion.

**Summarily.** Without ceremony or delay, short or concise.

**Summary, n.** An abridgment; brief; compendium; digest; also a short application to a court or judge, without the formality of a full proceeding.

**Summary, adj.** Short; concise; immediate; preemptory; off-hand; without a jury; provisional; statutory. The term as used in connection with legal proceedings means a short, concise, and immediate proceeding.

**Summary conviction.** See *Conviction*.

**Summary courts martial.** See *Court-Martial*.

**Summary ejectment.** See *Process (Summary process)*.

**Summary eviction.** See *Process (Summary process)*.

**Summary judgment.** See that title.

**Summary jurisdiction.** The jurisdiction of a court to give a judgment or make an order itself forthwith; e.g., to commit to prison for contempt. In the case of justices of the peace, a jurisdiction to convict an offender themselves instead of committing him for trial by a jury.

**Summary proceeding.** See *Proceeding (Summary)*.

**Summary trial.** See *Proceeding (Summary)*.

**Summary process.** See *Process*.

**Summary judgment.** Procedural device available for prompt and expeditious disposition of controversy without trial when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only question of law is involved. *American State Bank of Killdeer v. Hewson*, N.D., 411 N.W.2d 57, 60. Federal Rule of Civil Procedure 56 permits any party to a civil action to move for a summary judgment on a claim, counterclaim, or cross-claim when he believes that there is no genuine issue of material fact and that he is entitled to prevail as a matter of law. The motion may be directed toward all or part of a claim or defense and it may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and a variety of outside material. See also *Genuine issue*; *Material fact*.

**Summation.** See *Summing up*.

**Summing up.** On the trial of an action to a jury, a recapitulation by attorneys and, sometimes, judge of the evidence adduced, in order to draw the attention of the jury to the salient points at issue. The counsel for each party has the right of summing up his evidence, if he has adduced any, and the judge sometimes sums up the whole in his charge to the jury. See *Closing argument*.

**Summon.** To serve a summons; to cite a defendant to appear in court to answer a suit which has been begun against him; to notify the defendant that an action has been instituted against him, and that he is required to answer to it at a time and place named. See *Summons*.

**Summoneas** /sɒmɔwniyeys/. L. Lat. In old practice, a writ of summons; a writ by which a party was summoned to appear in court.

**Summoners** /sɒmənɜz/. Petty officers, who cite and warn persons to appear in any court.

**Summonitio** /sɒmənɪʃ(i)yow/. L. Lat. In old English practice, a summoning or summons; a writ by which a party was summoned to appear in court, of which there were various kinds.

**Summonitiones aut citationes nullæ liceant fieri intra palatium regis** /sɒmənɪʃ(i)yówniýz òt saytèyʃh(i)yówniýz nɔliý lísiyànt fæʃəray òtrə pələyʃh(i)yəm ríyʃəs/. Let no summonses or citations be served within the king's palace.

**Summonitores scaccarii** /səmənətóriyz skəkériyay/. Officers who assisted in collecting the revenues by citing the defaulters therein into the court of exchequer.

**Summons.** Instrument used to commence a civil action or special proceeding and is a means of acquiring jurisdiction over a party. In *re Dell*, 56 Misc.2d 1017, 290 N.Y.S.2d 287, 289. Writ or process directed to the sheriff or other proper officer, requiring him to notify the person named that an action has been commenced against him in the court from where the process issues, and that he is required to appear, on a day named, and answer the complaint in such action. Upon the filing of the complaint the clerk is required to issue a summons and deliver it for service to the marshal or to a person specially appointed to serve it. Fed.R.Civil P. 4(a). See also *Alias summons*; *Process*; *Service*.

In criminal law, an alternative to arrest generally used for petty or traffic offenses; a written order notifying an individual that he or she has been charged with an offense. A summons directs the person to appear in court to answer the charge. It is used primarily in instances of low risk, where the person will not be required to appear at a later date. See *e.g.* Fed.R.Crim.P. 4, 9.

*Form and content of summons.* The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. When service is made pursuant to a statute or rule of court of a state, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule. Fed.R.Civil P. 4(b). For form of summons in criminal cases, see Fed.R.Crim.P. 4, 9.

*John Doe summons.* An order of the court to appear in a proceeding to one whose name is unknown. A description of the person so ordered is required to appear on the summons to satisfy due process requirements.

**Summons ad respondendum** /səmənz æd rəspondəndəm/. Process issuing in a civil case at law notifying defendant therein named that he must appear on day designated and thereupon make answer to plaintiff's statement of his cause of action.

**Summons and order.** In English practice, the summons is the application to a common-law judge at chambers in reference to a pending action, and upon it the judge or master makes the order.

**Summum jus** /səməm jəs/. Lat. Strict right; extreme right. The extremity or rigor of the law. See *Apex juris*.

**Summum jus, summa injuria; summa lex, summa crux** /səməm jəs, səmə injūriyæ; səmə léks, səmə kráks/. Extreme law (rigor of law) is the greatest injury; strict law is great punishment. That is, insistence upon the full measure of a man's strict legal rights may work the greatest injury to others, unless equity can aid.

**Sumner.** See *Sompnour*.

**Sum payable.** As used within negotiable instruments law is the amount for which, by the terms of the instrument, the maker becomes liable, and which he might tender and pay in full satisfaction of his obligation. See also *Sum certain*.

**Sumptuary laws** /səm(p)tyuwəriy lóz/. Laws made for the purpose of restraining luxury or extravagance, particularly against inordinate expenditures in the matter of apparel, food, furniture, etc.

**Sunday.** The first day of the week is designated by this name; also as the "Lord's Day," and as the "Sabbath."

**Sunday closing laws.** Laws and ordinances which restrict certain types of business or commercial activities from operating on Sunday. Also called "blue laws". See also *Work of necessity*.

**Sundries.** Miscellaneous or various items which may be considered together, without being separately specified or identified.

**Sundry.** Separate, divers, or various.

**Sunset law.** A statute or provision in a law that requires periodic review of the rationale for the continued existence of the particular law or the specific administrative agency or other governmental function. The legislature must take positive steps to allow the law, agency, or functions to continue in existence by a certain date or such will cease to exist.

**Sunshine law.** Laws which require that meetings of governmental agencies and departments be open to public with reasonable access to the records of such proceedings. 5 U.S.C.A. § 552b. See also *Freedom of Information Act*.

**Suo nomine** /s(y)úwow nómaniy/. Lat. In his own name.

**Suo periculo** /s(y)úwow pərik(y)əlow/. Lat. At his own peril or risk.

**Super** /s(y)úwpər/. Lat. Upon; above; over; higher, as in quantity, quality and degree; more than; as in super-essential, super-natural or super-standard.

**Super altum mare** /s(y)úwpər æltəm mériy/. On the high sea.

**Supercargo** /s(y)úwpərkárgow/. In maritime law, a person specially employed by the owner of a cargo to take charge of and sell to the best advantage merchandise which has been shipped, and to purchase returning cargoes and to receive freight, as he may be authorized.

**Superficiarius** /s(y)úwpərfishiyériys/. Lat. In the civil law, he who has built upon the soil of another, which he has hired for a number of years or forever, yielding a yearly rent. In other words, a tenant on ground-rent.

**Superficies** /s(y)úwpərfishiyiyz/. Lat. In the civil law, the alienation by the owner of the surface of the soil of all rights necessary for building on the surface, a yearly rent being generally reserved; also a building or erection.

**Superficies solo cedit** /s(y)ùwpərfishiyz sówlow siydət/. Whatever is attached to the land forms part of it.

**Super fidem chartarum, mortuis testibus, erit ad patriam de necessitate recurrendum** /s(y)ùwpər fáydəm kartérəm, mórtyuwəs téstabəs, éhrət æd pətíryəm diy nəsésatéytiy rəkəhréndəm/. The truth of charters is necessarily to be referred to a jury, when the witnesses are dead.

**Superfund**. Popular name for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A. § 9601 et seq., which holds responsible parties liable for the cost of cleaning up hazardous waste sites. The name derives from a trust fund initially created by the Act for meeting clean up costs pending reimbursement from responsible parties. Many states have passed similar laws. Cf. McKinney's Environmental Conservation Law §§ 71-2701 et seq. See also Toxic waste.

**Superflua non nocent** /s(y)ùwpərfl(y)uwə nòn nósənt/. Superfluities do not prejudice. Surplusage does not vitiate.

**Superinductio** /s(y)ùwpərindáksh(iy)ow/. Lat. In the civil law, a species of obliteration.

**Superinstitution**. The institution of one in an office to which another has been previously instituted; as where A. is admitted and instituted to a benefice upon one title, and B. is admitted and instituted on the title or presentment of another.

A church being full by institution, if a second institution is granted to the same church this is a superinstitution.

**Superintend**. To have charge and direction of; to direct the course and oversee the details; to regulate with authority; to manage; to oversee with the power of direction; to take care of with authority.

**Superintendent**. One who superintends or has the oversight and charge of something with the power of direction; a manager.

**Superior, n.** One who has a right to command; one who holds a superior rank.

**Superior, adj.** Higher; belonging to a higher grade. People ex rel. McCoy v. McCahey, 296 Ill.App. 310, 15 N.E.2d 988, 993. More elevated in rank or office. Possessing larger power. Entitled to command, influence, or control over another.

In estates, some are superior to others. An estate entitled to a servitude or easement over another estate is called the "superior" or "dominant," and the other, the "inferior" or "servient," estate.

In the feudal law, until the statute *quia emptores* precluded subinfeudations (*q.v.*), the tenant who granted part of his estate to be held of and from himself as lord was called a "superior."

**Superior courts**. Courts of general or extensive jurisdiction, as distinguished from the inferior courts. As the official style of a tribunal, the term "superior court"

bears a different meaning in different states. In some it is a court of intermediate jurisdiction between the trial courts and the chief appellate court; elsewhere it is the designation of the trial courts. See also Court.

**Superior fellow servant**. A term introduced into the law of negligence, and meaning one higher in authority than another, and whose commands and directions his inferiors are bound to respect and obey, though engaged at the same line of work.

**Superior force**. In the law of bailments and of negligence, an uncontrollable and irresistible force, of human agency, producing results which the person in question could not avoid; equivalent to the Latin phrase "*vis major*." See Vis.

**Superjurare** /s(y)ùwpərjurériy/. Over-swearing. A term anciently used when a criminal endeavored to excuse himself by his own oath or the oath of one or two witnesses, and the crime objected against him was so plain and notorious that he was convicted on the oaths of many more witnesses.

**Supernumerarii** /s(y)ùwpərñəmərériyay/. Lat. In Roman law, advocates who were not registered or enrolled and did not belong to the college of advocates. They were not attached to any local jurisdiction. See Statuti.

**Superoneratio** /s(y)ùwpərònəréysh(iy)ow/. Lat. Surcharging a common; *i.e.*, putting in beasts of a number or kind other than the right of common allows.

**Superoneratione pasturæ** /s(y)ùwpərònəréyshiyówniy pæstyúriy/. A judicial writ that lay against him who was impleaded in the county court for the surcharge of a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the superior courts.

**Superplusagium** /s(y)ùwpərpləséyj(iy)əm/. In old English law, overplus; surplus; residue or balance.

**Super prerogativa regis** /s(y)ùwpər prərògátáyvə riyjəs/. A writ which formerly lay against the king's tenant's widow for marrying without the royal license.

**Supersede** /s(y)ùwpərsíyd/. Obliterate, set aside, annul, replace, make void, inefficacious or useless, repeal. To set aside, render unnecessary, suspend, or stay.

**Supersedeas** /s(y)ùwpərsíydiyəs/. The name of a writ containing a command to stay the proceedings at law. A suspension of the power of a trial court to issue an execution on judgment appealed from, or, if writ of execution has issued, it is a prohibition emanating from court of appeal against execution of writ. Stewart v. Hurt, 9 Cal.2d 39, 68 P.2d 726, 727. An auxiliary process designed to supersede enforcement of trial court's judgment brought up for review, and its application is limited to the judgment from which an appeal is taken. Mascot Pictures Corp. v. Municipal Court of City of Los Angeles, 3 Cal.App.2d 559, 40 P.2d 272.

Originally it was a writ directed to an officer, commanding him to desist from enforcing the execution of another writ which he was about to execute, or which might come in his hands. In modern times the term is

often used synonymously with a "stay of proceedings," and is employed to designate the effect of an act or proceeding which of itself suspends the enforcement of a judgment.

**Supersedeas bond.** A bond required of one who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is unsuccessful. See Fed.R.Civil P. 62; Fed.R.App.P. 7 and 8.

**Superseding cause.** An act of a third person or other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about. *Donegan v. Denney*, 457 S.W.2d 953, 958. An intervening act or acts of negligence which operate to insulate an antecedent tort-feasor from liability for negligently causing a dangerous condition which results in injury. *Hargrove v. Frommeyer & Co.*, 229 Pa.Super. 298, 323 A.2d 300, 304. See also *Intervening cause*; *Supervening negligence*.

**Super statuto** /s(y)úwpær stæt(y)úwtow/. A writ, upon the statute 1 Edw. III, c. 12, that lay against the king's tenant holding in chief, who aliened the king's land without his license.

**Super statuto de articulis cleri** /s(y)úwpær stæt(y)úwtow diy artíkyolæs klíray/. A writ which lay against a sheriff or other officer who distrained in the king's highway, or on lands anciently belonging to the church.

**Super statuto facto pour seneschal et marshal de roy, etc.** /s(y)úwpær stæt(y)úwtow fáktow pùr sèneshál ey mår(ə)shál də røy, etsétərə/. A writ which lay against a steward or marshal for holding plea in his court, or for trespass or contracts not made or arising within the king's household.

**Super statuto versus servantes et laboratores** /s(y)úwpær stæt(y)úwtow vørsæs sərवंtíyz ét ləbərətóriyz/. A writ which lay against him who kept any servants who had left the service of another contrary to law.

**Superstitious use.** In English law, when lands, tenements, rents, goods, or chattels are given, secured, or appointed for and towards the maintenance of a priest or chaplain to say mass, for the maintenance of a priest or other man to pray for the soul of any dead man in such a church or elsewhere, to have and maintain perpetual obits, lamps, torches, etc., to be used at certain times to help to save the souls of men out of purgatory, —in such cases the king, by force of several statutes, is authorized to direct and appoint all such uses to such purposes as are truly charitable. The doctrine has no recognition in this country; and a bequest to support a Catholic priest, and perhaps other uses void in England, would not be considered as superstitious uses.

**Supervening cause.** A new effective cause which, operating independently of anything else, becomes proximate cause of accident. See also *Intervening cause*; *Superseding cause*.

**Supervening negligence.** To come within the doctrine of last clear chance or supervening negligence, four conditions must coexist, to wit: (1) the injured party has already come into a position of peril; (2) the injuring party then or thereafter becomes, or in the exercise of ordinary prudence ought to have become, aware, not only of that fact, but also that the party in peril either reasonably cannot escape from it or apparently will not avail himself of opportunities open to him for doing so; (3) the injuring party subsequently has the opportunity by the exercise of reasonable care to save the other from harm; and (4) he fails to exercise such care. See also *Intervening cause*; *Last clear chance doctrine*; *Superseding cause*.

**Supervise.** To have general oversight over, to superintend or to inspect. See *Supervisor*.

**Supervision.** An act of occupation of supervising; inspection.

**Supervisor.** A surveyor or overseer. Also, in some states, the chief officer of a town; one of a board of county officers.

In a broad sense, one having authority over others, to superintend and direct.

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. National Labor Relations Act, § 2(11).

**Supervisory control.** Control exercised by courts to compel inferior tribunals to act within their jurisdiction, to prohibit them from acting outside their jurisdiction, and to reverse their extrajudicial acts. See *Mandamus*.

**Supplemental.** That which is added to a thing or act to complete it. See also *Amendment*.

**Supplemental act.** That which supplies a deficiency, adds to or completes, or extends that which is already in existence without changing or modifying the original. Act designed to improve an existing statute by adding something thereto without changing the original text.

**Supplemental affidavit.** An affidavit made in addition to a previous one, in order to supply some deficiency in it.

**Supplemental answer.** One which was filed for the purpose of correcting, adding to, and explaining an answer already filed. See *Supplemental pleading*.

**Supplemental bill.** In equity pleading, a bill filed in addition to an original bill, in order to supply some defect in its original frame or structure which cannot be supplied by amendment; or, for purpose of bringing into controversy matter occurring after original bill was filed.



**Supplemental bill in nature of bill of review.** A type of bill employed to invoke jurisdiction of court of chancery to recall one of its adjudications made while some fact existed which, if before court, would have prevented rendition of final decree, and which, without negligence of party presenting it, was not earlier presented to chancellor.

**Supplemental claim.** A further claim which is filed when further relief is sought after the bringing of a claim. *See* Supplemental complaint.

**Supplemental complaint.** Under the Rules of Civil Procedure in the federal and most state courts, is a complaint filed in an action to bring to the notice of the court and the opposite party matters occurring after the commencement of action and which may affect the rights asserted. Fed.R.Civil P. 15(d).

It is distinguished from an "amended complaint," in that an "amended complaint" is one which corrects merely faults and errors of a pleading.

**Supplemental pleading.** One consisting of facts arising since filing of the original. Supplemental pleadings relate to occurrences, transactions and events which may have happened since the date of the pleadings sought to be supplemented. Fed.R.Civil P. 15(d). *McKnight v. McKnight*, 25 N.C.App. 246, 212 S.E.2d 902, 904. *Compare* Amendment (*Practice and pleading*).

**Supplementary.** Added as a supplement; additional; being, or serving as, a supplement.

**Supplementary proceedings.** Proceedings supplementary to an execution, directed to the discovery of the debtor's property and its application to the debt for which the execution is issued. Post-judgment remedies provided by statute or procedural rules that allow discovery against persons who might have information on the whereabouts of nonexempt assets of the debtor (supplemental discovery) and that facilitate application of these assets in satisfaction of the judgment (supplemental relief). *See also* Execution.

After an execution on a judgment has issued, the judgment creditor may commence new proceedings to collect the debt. This process includes a summons to the judgment debtor to appear and to submit to an examination as to his property and the court is empowered under statutes to enter an order for payment, for violation of which the debtor may be cited for contempt and imprisoned; e.g. M.G.L.A. (Mass.) c. 246, § 6; Mass. R.Civil P. 4.3(b). *See also* Fed.R. Civil P. 69(a).

**Suppletory oath.** *See* Oath.

**Suppliant** /səpl(i)yənt/. The actor in, or party preferring, a petition of right.

**Supplicatio** /səpləkəysh(i)yow/. Lat. In the civil law, a petition for pardon of a first offense; also a petition for reversal of judgment; also equivalent to "*duplicatio*," which corresponds to the common law rejoinder.

**Supplicavit** /səpləkəyvat/. In English law, a writ issuing out of the king's bench or chancery for taking sureties of the peace. It is commonly directed to the

justices of the peace, when they are averse to acting in the affair in their judicial capacity. 4 Bl.Comm. 253.

**Supplicium** /səplish(i)yəm/. Lat. In the civil law, punishment; corporal punishment for crime. Death was called "*ultimum supplicium*," the last or extreme penalty.

**Supplier.** Any person engaged in the business of making a consumer product directly or indirectly available to consumers; includes all persons in the chain of production and distribution of a consumer product including the producer or manufacturer, component supplier, wholesaler, distributor, and retailer. 15 U.S.C.A. § 2301.

**Supplies.** Means of provision or relief; stores; available aggregate of things needed or demanded in amount sufficient for a given use or purpose; accumulated stores reserved for distribution; sufficiency for use or need; a quantity of something supplied or on hand.

In English law, in parliamentary proceedings the sums of money which are annually voted by the house of commons for the maintenance of the crown and the various public services.

**Supply.** To furnish with what is wanted; available aggregate of things needed or demanded; anything yielded or afforded to meet a want; and the act of furnishing with what is wanted. *Clayton v. Bridgeport Mach. Co.*, Tex.Civ.App., 33 S.W.2d 787, 789.

**Support, v.** Furnishing funds or means for maintenance; to maintain; to provide for; to enable to continue; to carry on. To provide a means of livelihood. To vindicate, to maintain, to defend, to uphold with aid or countenance.

**Support, n.** That which furnishes a livelihood; a source or means of living; subsistence, sustenance, maintenance, or living. In a broad sense the term includes all such means of living as would enable one to live in the degree of comfort suitable and becoming to his station of life. It is said to include anything requisite to housing, feeding, clothing, health, proper recreation, vacation, traveling expense, or other proper cognate purposes; also, proper care, nursing, and medical attendance in sickness, and suitable burial at death. *See also* Maintenance.

Support also signifies the right to have one's ground supported so that it will not cave in, when an adjoining owner makes an excavation. This support is of two kinds, *lateral* and *subjacent*. Lateral support is the right of land to be supported by the land which lies next to it. Subjacent support is the right of land to be supported by the land which lies under it.

*See also* Family expense statutes; Legal duty; Legal obligation; Maintenance; Necessaries; Nonsupport; Reciprocal Enforcement of Support Act; Separate maintenance.

**Crime of non-support.** A person commits a misdemeanor if he persistently fails to provide support which he can provide and which he knows he is legally obliged to

provide to a spouse, child or other dependent. Model Penal Code, § 230.5.

*Ground for divorce.* Non-support of spouse, if able to so provide, is a ground for divorce under many state statutes.

*Legal duty.* Most all states have statutes which impose obligation to support spouse and children; e.g. "Every individual shall support his or her spouse and child, and shall support his or her parent when in need." Calif. Civil Code, § 242.

*Interstate enforcement.* The majority of states have adopted the "Uniform Reciprocal Enforcement of Support Act" as a means of interstate enforcement of support obligations.

**Supposition.** A conjecture based upon possibility or probability that a thing could or may have occurred, without proof that it did occur.

**Suppress.** To put a stop to a thing actually existing; to prohibit, put down; to prevent, subdue, or end by force. To "suppress evidence" is to keep it from being used in a trial by showing that it was either gathered illegally or that it is irrelevant. *See* Suppression hearing; Suppression of evidence.

**Suppression.** Conscious effort to control and conceal unacceptable impulses, thoughts, feelings or acts.

**Suppression hearing.** A pretrial proceeding in criminal cases in which a defendant seeks to prevent the introduction of evidence alleged to have been seized illegally. The ruling of the court then prevails at the trial. Fed.R.Crim.P. 5.1(a), 12, and 41. *See also* Exclusionary Rule.

**Suppression of evidence.** The ruling of a trial judge to the effect that evidence sought to be admitted should be excluded because it was illegally acquired. Motions to suppress illegally obtained evidence are governed by Fed.R.Crim.P. 5.1(a), 12, and 41. *See also* Exclusionary Rule; Motion to suppress.

The crime of compounding a felony by refusing to give evidence or to testify in a criminal proceeding.

Concept of "suppression" as that term is used in rule that suppression by the prosecution of material evidence favorable to an accused on request violates due process, implies that the government has information in its possession of which the defendant lacks knowledge and which the defendant would benefit from knowing. *U. S. v. Natale*, C.A.N.Y., 526 F.2d 1160, 1170. *See also* Withholding of evidence.

**Suppressio veri** /səprəsh(i)yow vɪrəy/. Lat. Suppression or concealment of the truth. It is a rule of equity, as well as of law, that a *suppressio veri* is equivalent to a *suggestio falsi*; and where either the suppression of the truth or the suggestion of what is false can be proved, in a fact material to the contract, the party injured may have relief against the contract.

**Suppressio veri, expressio falsi** /səprəsh(i)yow vɪrəy, əksprəsh(i)yow fɔlsəy/. Suppression of the truth is [equivalent to] the expression of what is false.

**Suppressio veri, suggestio falsi** /səprəsh(i)yow vɪrəy, səgjest(i)yow fɔlsəy/. Suppression of the truth is [equivalent to] the suggestion of what is false.

**Supra** /s(y)úwprə/. Lat. Above; upon. This word occurring by itself in a book refers the reader to a previous part of the book, like "ante;" it is also the initial word of several Latin phrases.

**Supra protest** /s(y)úwprə prɔwtɛst/. *See* Protest.

**Supra-riparian** /s(y)úwprə-rəpəriyən/. Upper riparian; higher up the stream. This term is applied to the estate, rights, or duties of a riparian proprietor whose land is situated at a point nearer the source of the stream than the estate with which it is compared.

**Supremacy.** The state of being supreme, or in the highest station of power; paramount authority; sovereignty; sovereign power.

*Act of supremacy.* The English statute 1 Eliz., c. 1, whereby the supremacy and autonomy of the crown in spiritual or ecclesiastical matters was declared and established.

*Oath of supremacy.* An oath to uphold the supreme power of the kingdom of England in the person of the reigning sovereign.

**Supremacy clause.** The clause of Art. VI of the U.S. Constitution which declares that all laws made in pursuance of the Constitution and all treaties made under the authority of the United States shall be the "supreme law of the land" and shall enjoy legal superiority over any conflicting provision of a State constitution or law. *See also* Preemption.

**Suprema potestas seipsam dissolvere potest** /səpriymə pətéstəs siyípsəm dəzólveri pɔwtɛst/. Supreme power can dissolve itself.

**Supreme.** Superior to all other things.

**Supreme court.** An appellate court existing in most of the states. In the federal court system, and in most states, it is the highest appellate court or court of last resort. In others (such as New York) the supreme court is a court of general original jurisdiction, possessing also (in New York) some appellate jurisdiction, but not the court of last resort. *See also* Court of Appeals.

*Supreme court of errors.* Formerly, the court of last resort in Connecticut, now called "Supreme Court".

*Supreme Court of the United States.* The U.S. Supreme Court comprises the Chief Justice of the United States and such number of Associate Justices as may be fixed by Congress. Under that authority, and by virtue of the act of June 25, 1948 (62 Stat. 869; 28 U.S.C.A. 1), the number of Associate Justices is eight. Power to nominate the Justices is vested in the President of the United States, and appointments are made by and with the advice and consent of the Senate. Article III, section 1, of the Constitution further provides that "the Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which

shall not be diminished during their Continuance in Office." See 28 U.S.C.A. § 1251 et seq.

*Supreme Judicial Court.* Highest appellate court in Maine and Massachusetts.

**Supreme law of the land.** See Supremacy clause.

**Supreme power.** The highest authority in a state, all other powers in it being inferior thereto.

**Supremus** /səprīyməs/. Lat. Last; the last.

**Supremus est quem nemo sequitur** /səprīyməs èst kwēm nīymow sékwətər/. He is last whom no one follows.

**Sur** /sər/syúr/. Fr. On; upon; over. In the titles of real actions "sur" was used to point out what the writ was founded upon. Thus, a real action brought by the owner of a reversion or seignior, in certain cases where his tenant repudiated his tenure, was called "a writ of right *sur disclaimer*"; So, a writ of entry *sur disseisin* was a real action to recover the possession of land from a disseisor.

**Surcharge, n.** An overcharge; an exaction, impost, or encumbrance beyond what is just and right, or beyond one's authority or power. Term may also refer to a second or further mortgage.

The amount with which a court may charge a fiduciary who has breached his trust through intentional or negligent conduct. The imposition of personal liability on a fiduciary for such conduct.

Overprint on a stamp that changes the denomination.

An additional tax or cost onto an existing tax, cost, or charge. See Surtax.

**Surcharge, v.** The imposition of personal liability on a fiduciary for wilful or negligent misconduct in the administration of his fiduciary duties.

In equity practice, to show that a particular item, in favor of the party surcharging, ought to have been included, but was not, in an account which is alleged to be settled or complete. To prove the omission of an item from an account which is before the court as complete, which should be inserted to the credit of the party surcharging. *Perkins v. Hart*, 24 U.S. 237, 6 L.Ed. 463.

The imposition of an additional tax, impost, or cost. See Surtax.

In old English law, to put more cattle upon a common than the herbage will sustain or than the party has a right to do. 3 Bl.Comm. 237.

**Second surcharge.** In old English law, the surcharge of a common a second time, by the same defendant against whom the common was before admeasured, and for which the writ of *second surcharge* was given by the statute of Westminster, 2. 3 Bl.Comm. 239.

**Surcharge and falsify.** This phrase, as used in the courts of chancery, denotes the liberty which these courts will occasionally grant to a plaintiff, who disputes an account which the defendant alleges to be settled, to scrutinize particular items therein without opening the entire account. The showing an item for which credit

ought to have been given, but was not, is to surcharge the account; the proving an item to have been inserted wrongly is to falsify the account.

**Sur cui ante divortium** /sər k(yuw)ay ántiy dāvóresh(iy)əm/. See Cui ante divortium.

**Sur cui in vita** /sər k(yuw)ay in váytə/. A writ that lay for the heir of a woman whose husband had aliened her land in fee, and she had omitted to bring the writ of *cui in vita* for the recovery thereof; in which case her heir might have this writ against the tenant after her decease. See Cui in vita.

**Sur disclaimer** /sər daskléymər/. A writ in the nature of a writ of right brought by the lord against a tenant who had disclaimed his tenure, to recover the land.

**Surdus** /súrdəs/. Lat. In the civil law, deaf; a deaf person. *Surdus et mutus*, a deaf and dumb person.

**Surenchère** /syurònshehr/. In French law, a party desirous of repurchasing property at auction before the court, can, by offering one-tenth or one-sixth, according to the case, in addition to the price realized at the sale, oblige the property to be put up once more at auction. This bid upon a bid is called a "surenchère."

**Surety.** One who at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor. One who undertakes to pay money or to do any other act in event that his principal fails therein. A person who is primarily liable for payment of debt or performance of obligation of another. *Branch Banking and Trust Co. v. Creasy*, 301 N.C. 44, 269 S.E.2d 117, 122. One bound with his principal for the payment of a sum of money or for the performance of some duty or promise and who is entitled to be indemnified by some one who ought to have paid or performed if payment or performance be enforced against him. Term includes a guarantor. U.C.C. § 1-201(40). See also Suretyship; Suretyship, contract of.

**Guarantor and surety compared.** A surety and guarantor have this in common, that they are both bound for another person; yet there are points of difference between them. A surety is usually bound with his principal by the same instrument, executed at the same time and on the same consideration. He is an original promisor and debtor from the beginning, and is held ordinarily to every known default of his principal. On the other hand, the contract of guarantor is his own separate undertaking, in which the principal does not join. It is usually entered into before or after that of the principal, and is often founded on a separate consideration from that supporting the contract of the principal. The original contract of the principal is not the guarantor's contract, and the guarantor is not bound to take notice of its nonperformance. The surety joins in the same promise as his principal and is primarily liable; the guarantor makes a separate and individual promise and is only secondarily liable. His liability is contingent on the default of his principal, and he only becomes abso-

lutely liable when such default takes place and he is notified thereof. "Surety" and "guarantor" are both answerable for debt, default, or miscarriage of another, but liability of guarantor is, strictly speaking, secondary and collateral, while that of surety is original, primary, and direct. In case of suretyship there is but one contract, and surety is bound by the same agreement which binds his principal, while in case of guaranty there are two contracts, and guarantor is bound by independent undertaking. *Howell v. Commissioner of Internal Revenue*, C.C.A.8, 69 F.2d 447, 450. A surety is an insurer of the debt or obligation of another; a guarantor is an insurer of the solvency of the principal debtor or of his ability to pay. Under U.C.C., term "surety" includes a guarantor. § 1-201(40). *See also* Guarantor.

**Surety bond.** *See* Bond.

**Surety company.** A company, usually incorporated, whose business is to assume the responsibility of a surety on the bonds of officers, trustees, executors, guardians, etc., in consideration of a fee proportioned to the amount of the security required.

**Surety insurance.** This phrase is generally used as synonymous with "guaranty insurance."

**Surety of the peace.** A species of preventive justice, and consists in obliging those persons whom there is a probable ground to suspect of future misbehavior, to stipulate with, and to give full assurance to, the public that such offense as is apprehended shall not take place, by finding pledges or securities for keeping the peace, or for their good behavior.

**Suretyship.** The relationship among three parties whereby one person (the surety) guarantees payment of a debtor's debt owed to a creditor or acts as a co-debtor. Generally speaking, "the relation which exists where one person has undertaken an obligation and another person is also under an obligation or other duty to the obligee, who is entitled to but one performance, and as between the two who are bound, one rather than the other should perform." *Restatement of Security*, § 82 (1941). *See also* Surety; Suretyship, contract of.

**Suretyship, contract of.** Contract whereby one party engages to be answerable for debt, default, or miscarriage of another and arises when one is liable to pay debt or discharge obligation, and party is entitled to indemnity from person who should have made the payment in the first instance before surety was so compelled. A contract whereby one person engages to be answerable for the debt, default, or miscarriage of another. An accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation, if the debtor does not. A lending of credit to aid a principal having insufficient credit of his own; the one expected to pay, having the primary obligation, being the "principal," and the one bound to pay, if the principal does not, being the "surety." *See also* Surety.

**Suretyship defenses.** Defenses of a surety against the creditor that are dependent on the surety's status as such and that are tied to the conduct of the creditor that alters or modifies the principal debtor's obligation or impairs collateral for the obligation.

**Surface.** This term, when used in law, is seldom, if ever, limited to mere geometrical superficies, although when used without any qualifying phrase in a deed, it ordinarily signifies only the superficial part of land. And when employed in connection with mining, it usually means that part of the earth or geologic section lying over the minerals in question, unless the contract or conveyance otherwise defines it. Thus, where the surface is granted to one and the underlying coal to another, the "surface" includes the soil and waters which lie above and are superincumbent on the coal. Nevertheless, a conveyance of the "surface," except the oil and gas rights in the land, may be deemed, under certain circumstances, to constitute a conveyance of all the land (including coal deposits), except only the oil and gas rights specifically reserved.

The term "surface," when used as the subject of a conveyance, is not a definite one capable of a definition of universal application, but is susceptible of limitation according to the intention of the parties using it; and in determining its meaning, regard may be had, not only to the language of the deed in which it occurs, but, also to the situation of the parties, the business in which they were engaged, and to the substance of the transaction.

**Surface rights.** A right or easement granted with mineral rights, enabling the possessor of the mineral rights to drill or mine through the surface.

**Surface waters.** *See* Water.

**Surgeon.** One whose profession or occupation is to cure diseases, defects, or injuries of the body by manual operation; one who practices surgery.

**Surgeon General.** The chief medical officer of the United States Public Health Service.

**Surgery.** Greek words signifying the hand and work. Originally, it was part of the profession of barbers, but later was taken up by physicians and now is recognized as that branch of medical science which treats of mechanical or operative measures for healing diseases, deformities, disorders, or injuries. *State ex rel. Beck v. Gleason*, 148 Kan. 1, 79 P.2d 911.

The practice of *medicine*, in contradistinction to the practice of *surgery*, denotes the treatment of disease by the administration of drugs or other sanative substances. There cannot however be a complete separation between the practice of medicine and surgery; the principles of both are the same throughout, and no one is qualified to practice either who does not properly understand the fundamental principles of both.

**Surmise.** Idea based on weak evidence, conjecture.

Formerly where a defendant pleaded a local custom, for instance, a custom of the city of London, it was necessary for him to "surmise," that is, to suggest that such custom should be certified to the court by the

mouth of the recorder, and without such a surmise the issue was to be tried by the country as other issues of fact are.

Something offered to a court to move it to grant a prohibition, *audita querela*, or other writ grantable thereon.

In ecclesiastical law, an allegation in a libel. A collateral surmise is a surmise of some fact not appearing in the libel.

**Sur mortgage** /sər mɔːrɡəj/. Upon a mortgage. In some states the method of enforcing the security of a mortgage, upon default, is by a writ of "*scire facias sur mortgage*," which requires the defendant (mortgagor) to show cause why it should not be foreclosed.

**Surname**. The family name; the name over and above the Christian name. The part of a name which is not given in baptism. The name of a person which is derived from the common name of his parents. In *re Faith's Application*, 22 N.J.Misc. 412, 39 A.2d 638, 640. The last name; the name common to all members of a family.

**Surplus fees** /sɜːrplʌs fiːz/. In English ecclesiastical law, fees payable on ministerial offices of the church; such as baptisms, funerals, marriages, etc.

**Surplus**. That which remains of a fund appropriated for a particular purpose; the remainder of a thing; the overplus; the residue. Ordinarily, surplus means residue or excess of assets after liabilities, including capital, have been deducted. *American Life & Acc. Ins. Co. v. Love, Mo.*, 431 S.W.2d 177, 180.

A general term in corporate accounting that usually refers to either the excess of assets over liabilities or that amount further reduced by the stated capital represented by issued shares. Surplus has a more definite meaning when combined with a descriptive adjective from par value statutes, *e.g.*, earned surplus, capital surplus or reduction surplus.

As to *surplus* Earnings; Profit, and Water, see those titles.

**Accumulated surplus**. That surplus which results from the accumulation of profits.

**Acquired surplus**. Surplus acquired by the purchase of one business by another.

**Appreciation surplus**. Surplus which results from the revaluation of the assets of a business.

**Appropriated surplus**. That portion of surplus which is earmarked or set aside for a specific purpose.

**Capital surplus**. All surplus which does not arise from the accumulation of profits. It may be created by a financial reorganization or by gifts to the corporation. The entire surplus of a corporation other than its earned surplus.

**Earned surplus**. The portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an applica-

tion of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus also includes also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign. *See also* Earned surplus.

**Initial surplus**. That surplus which appears on the financial statement at the commencement of an accounting period and which does not reflect the operations for the period covered by the statement.

**Paid-in surplus**. Surplus paid in by stockholders as contrasted to earned surplus that arises from profits. Such being the difference between the par value and price received for the stock by the corporation. If the stock is no-par; it is the amount received that is allocated to paid-in surplus. *See also* Paid-in-capital.

**Reserved surplus**. *See Appropriated surplus, above.*

**Restricted surplus**. That portion of surplus which is limited or restricted as to its use.

**Surplusage**. Extraneous, impertinent, superfluous, or unnecessary matter. Matter in any instrument which is unnecessary to its meaning and does not affect its validity; whatever is extraneous, impertinent, superfluous or unnecessary, and in procedure means matter which is not necessary or relevant to the case. *Morrow v. Morrow, Tex.Civ.App.*, 382 S.W.2d 785, 786.

The remainder or surplus of money left. *See also* Surplus.

**Pleading**. Allegations of matter wholly foreign and impertinent to the cause. All matter beyond the circumstances necessary to constitute the action. Any allegation without which the pleading would yet be adequate. On motion, the court may order stricken from the pleadings any insufficient defense, redundant, immaterial, or scandalous matter. *Fed.R.Civil P. 12(f)*.

**Surplusagium non nocet** /sɜːrplʌsɛj(j)əm nɒn nɔːt/. Surplusage does no harm.

**Surprise**. Act of taking unawares; sudden confusion or perplexity. In its legal acceptance, denotes an unforeseen disappointment against which ordinary prudence would not have afforded protection.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding because of surprise. *Fed.R.Civil P. 60(b)*.

**Equitable relief**. The act by which a party who is entering into a contract is taken unawares, by which sudden confusion or perplexity is created, which renders it proper that a court of equity should relieve the party so surprised. The situation in which a party is placed without any default of his own, which will be injurious to his interests.

Anything which happens without the agency or fault of the party affected by it, tending to disturb and confuse the judgment, or to mislead him, of which the opposite party takes an undue advantage, is in equity a surprise, and one species of fraud for which relief is granted. There does not seem anything technical or peculiar in the word "surprise". Where a court relieves on the ground of surprise, it does so upon the ground that the party has been taken unawares, and that he has acted without due deliberation, and under confused and sudden impressions.

**Ground for new trial.** As a ground for a new trial, that situation in which a party is unexpectedly placed without fault on his part, which will work injury to his interests. He must show himself to have been diligent at every stage of the proceedings, and that the event was one which ordinary prudence could not have guarded against. A situation or result produced, having a substantive basis of fact and reason, from which the court may justly deduce, as a legal conclusion, that the party will suffer a judicial wrong if not relieved from his mistake. The general rule is that when a party or his counsel is "taken by surprise," in a material point or circumstance which could not have been anticipated, and when want of skill, care, or attention cannot be justly imputed, and injustice has been done, a new trial should be granted.

**Surrebutter** /sə'rəbətər/. In common law pleading, the plaintiff's answer of fact to the defendant's rebutter. It is governed by the same rules as the replication. It is no longer required under modern pleading.

**Surrejoinder** /sə'rəjɔɪndər/. In common law pleading, the plaintiff's answer of fact to the defendant's rejoinder. It is governed in every respect by the same rules as the replication.

**Surrender.** To give back; yield; render up; restore; and in law, the giving up of an estate to the person who has it in reversion or remainder, so as to merge it in the larger estate. A yielding up of an estate for life or years to him who has an immediate estate in reversion or remainder, wherein the estate for life or years may drown by mutual agreement between them. To relinquish, to deliver into lawful custody, or to give up completely in favor of another. *First Nat. Bank of Martinsville v. Cobler*, 215 Va. 852, 213 S.E.2d 800, 803, 96 A.L.R.3d 1137.

In commercial law, a means whereby a holder discharges a party's liability on an instrument by delivering possession of the instrument with the intention to release the person from liability. The term also refers to the act of a holder of a negotiable document in presenting the document to the bailee upon taking possession of the goods.

In old English law, yielding up a tenancy in a copyhold estate to the lord of the manor for a specified purpose.

In landlord-tenant law, surrender exists when the tenant voluntarily gives up possession of the premises prior to the full term of the lease and the landlord

accepts possession with intent that the lease be terminated. It differs from "abandonment," as applied to leased premises, inasmuch as the latter is simply an act on the part of the lessee alone; but to show a surrender, a mutual agreement between lessor and lessee that the lease is terminated must be clearly proved. *See Surrender by operation of law.*

**Surrender by bail.** The act, by bail or sureties in a recognizance, of giving up their principal again into custody, in their own discharge.

**Surrender by operation of law.** This phrase is properly applied to cases where the tenant for life or years has been a party to some act the validity of which he is by law afterwards estopped from disputing, and which would not be valid if his particular estate continued to exist. An implied surrender occurs when an estate incompatible with the existing estate is accepted, or the lessee takes a new lease of the same lands.

Any acts which are equivalent to an agreement on the part of the tenant to abandon, and on the part of the landlord to resume the possession of the demised premises, amount to a "surrender by operation of law." The rule may be said to be that a surrender is created by operation of law, when the parties to a lease do some act so inconsistent with the subsisting relation of landlord and tenant as to imply that they have both agreed to consider the surrender as made.

**Surrenderee.** The person to whom a surrender is made.

**Surrender of a preference.** In bankruptcy practice, the surrender to the assignee in bankruptcy, by a preferred creditor, of anything he may have received under his preference and any advantage it gives him, which he must do before he can share in the dividend. The word as generally defined may denote either compelled or voluntary action. *Keppel v. Bank*, 197 U.S. 356, 25 S.Ct. 443, 49 L.Ed. 790. *See Bankruptcy Code*, § 547.

**Surrender of charter.** A corporation created by charter may give up or "surrender" its charter to the people, unless the charter was granted under a statute, imposing indefeasible duties on the bodies to which it applies.

**Surrender of copyhold.** The mode of conveying or transferring copyhold property from one person to another by means of a surrender, which consisted in the yielding up of the estate by the tenant into the hands of the lord for such purposes as were expressed in the surrender. The process in most manors was for the tenant to come to the steward, either in court or out of court, or else to two customary tenants of the same manor, provided there was a custom to warrant it, and there, by delivering up a rod, a glove, or other symbol, as the custom directs, to resign into the hands of the lord, by the hands and acceptance of his steward, or of the said two tenants, all his interest and title to the estate, in trust, to be again granted out by the lord to such persons and for such uses as were named in the surrender, and as the custom of the manor would warrant. *See Admittance; Copyhold.*

**Surrender of criminals.** The act by which the public authorities deliver a person accused of a crime, and who is found in their jurisdiction, to the authorities within whose jurisdiction it is alleged the crime has been committed. *See* Extradition; Rendition.

**Surrenderor.** One who makes a surrender. One who yielded up a copyhold estate for the purpose of conveying it.

**Surrender to uses of will.** Formerly a copyhold interest would not pass by will unless it had been surrendered to the use of the will. By English St. 55 Geo. III, c. 192, this was no longer necessary.

**Surrender value.** In insurance, the current value of a policy which will be paid to the policyholder when he elects to surrender the policy.

**Surreptitious** /səhrəptɪʃəs/. Stealthily or fraudulently done, taken away, or introduced.

**Surrogate** /səhrəgət/. The name given in some of the states to the judge or judicial officer who has jurisdiction over the administration of probate matters, guardianships, etc. In other states he is called judge of probate, register, judge of the orphans' court, etc. He is ordinarily a county officer, with a local jurisdiction limited to his county. *See* Surrogate court.

In English law, one that is substituted or appointed in the room of another, as by a bishop, chancellor, judge, etc.; especially an officer appointed to dispense licenses to marry without banns.

**Surrogate court.** Name of court in certain states with jurisdiction similar to that of probate court.

In New York the Surrogate's Court has jurisdiction over all actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings arising thereunder or pertaining thereto, guardianship of the property of minors, and such other actions and proceedings, not within the exclusive jurisdiction of the supreme court, as may be provided by law.

**Surrogate mother.** A woman who is artificially inseminated with the semen of another woman's husband. She conceives a child, carries the child to term, and after the birth assigns her parental rights to the birth father and his wife. *Matter of Baby M*, 109 N.J. 396, 537 A.2d 1227, 1234. *See* Surrogate parenting agreement.

**Surrogate parent.** A person other than a parent who stands in loco parentis to the child by virtue of his or her voluntary assumption of parental rights and responsibilities. The person appointed by a juvenile court as a child's advocate in the educational decision-making process in place of the child's natural parents or guardian.

**Surrogate parenting agreement.** Agreement wherein a woman agrees to be artificially inseminated with the semen of another woman's husband; she is to conceive a child, carry the child to term and after the birth, assign her parental rights to the birth father and his wife. The intent of the contract is that the child's birth mother will thereafter be forever separated from her

child. The wife is to adopt the child, and she and the birth father are to be regarded as the child's parents for all purposes. Such contracts have been held illegal and invalid where a woman agrees to act as a surrogate for payment of money with a binding agreement to assign her parental rights to her child. *Matter of Baby M*, 109 N.J. 396, 537 A.2d 1227, 1234-35.

**Surround.** To inclose on all sides; to encompass.

**Surrounding circumstances.** Such as may permit inference of culpability on part of defendant under *res ipsa loquitur* rule, refers not to circumstances directly tending to show lack of care, but only to mere neutral circumstances of control and management by defendant, which may, when explained, appear to be entirely consistent with due care. *Hepp v. Quickel Auto & Supply Co.*, 37 N.M. 525, 25 P.2d 197.

**Sursise** /sərsáyz/. L. Fr. In old English law, neglect; omission; default; cessation.

**Sursum reddere** /sərsəm redəriy/. Lat. In old conveying, to render up; to surrender.

**Sursumredditio** /sərsəmredɪʃ(i)ow/. Lat. A surrender.

**Surtax.** Any tax that is levied in addition to some "normal" tax rate. An additional tax on what has already been taxed. A tax on a tax; for example: if person must pay a hundred dollar tax on a one thousand dollar income (ten percent), a ten percent surtax would be an additional ten dollars, not an additional hundred dollars.

**Surtax exemption.** The portion of taxable income not subject to the surtax.

**Surveillance** /sərvéy(ɪ)əns/. Oversight, superintendence, supervision. Police investigative technique involving visual or electronic observation or listening directed at a person or place (e.g., stakeout, tailing of suspects, wiretapping). Its objective is to gather evidence of a crime or merely to accumulate intelligence about suspected criminal activity. *See also* Eavesdropping; Pen register; Wiretapping.

**Survey, v.** To survey land is to ascertain corners, boundaries, and divisions, with distances and directions, and not necessarily to compute areas included within defined boundaries. To appraise as to value or condition.

**Survey, n.** The process by which a parcel of land is measured and its boundaries and contents ascertained; also a map, plat, or statement of the result of such survey, with the courses and distances and the quantity of the land. *See also* Corner (*Lost corner*); Government survey system; Meander lines.

An investigation or examination. In insurance law, the term has acquired a general meaning, inclusive of what is commonly called the "application," which contains the questions propounded on behalf of the company, and the answers of the assured.

Polling or questioning of public regarding their views on issues, candidates, etc.

*Survey of a vessel.* A statement of its present condition. *Chicago S. S. Lines v. U. S. Lloyds, C.C.A.Ill.*, 12 F.2d 733, 737. A public document, looked to both by underwriters and owners, as affording the means of ascertaining, at the time and place, the state and condition of the ship and other property at hazard.

*Topographical survey.* A survey of land to determine its elevation levels in relation to sea level.

**Surveyor.** One who makes surveys, determines area of portion of earth's surface, length and direction of boundary lines, and contour of surface.

**Surveyor of the port.** Formerly, a revenue officer of the United States appointed for each of the principal ports of entry, whose duties chiefly concerned the importations at his station and the determination of their amount and valuation. Such office was abolished in 1953. *See* Customs Service.

**Survival actions.** Term refers to actions for personal injuries which by statute survives death of injured person. *Britt v. Sears*, 150 Ind.App. 487, 277 N.E.2d 20, 23. An action or cause of action which does not become extinguished with the death of the party claiming the action. *See* Survival statutes; Wrongful death statutes.

**Survival statutes.** Statutory provision for the survival, after death of the injured person, of certain causes of action for injury to the person whether death results from the injury or from some other cause. The cause of action which survives is for the wrong to the injured person. A type of statute, that allows an action to continue, notwithstanding the death of the one who originally had a right to bring the action. Such a right usually may be enforced by or against the estate of the decedent. Some survival statutes cover death of both injured party (plaintiff) and death of defendant. *See also* Wrongful death statutes.

**Survive.** To continue to live or exist beyond the life, or existence of; to live through in spite of; live on after passing through; to remain alive; exist in force or operation beyond any period or event specified.

**Surviving.** Remaining alive. Living beyond the life of another or beyond the happening of some event so as to be entitled to a distribution of property or income. *See* Survival actions.

**Surviving corporation.** The corporation which, through a merger or takeover, acquires the assets and liabilities of another corporation.

**Surviving spouse.** The spouse who outlives (survives) the other spouse. Term commonly found in statutes dealing with probate, administration of estates and estate and inheritance taxes.

A taxpayer classification which, generally, describes an unmarried taxpayer whose spouse died within either of the past two taxable years and who provides a home for his dependent(s). I.R.C. § 2(a).

**Survivor.** One who survives another; one who outlives another; one who lives beyond some happening; one of two or more persons who lives after the death of the

other or others. The word "survivor," however, in connection with the power of one of two trustees to act, is used not only with reference to a condition arising where one of such trustees dies, but also as indicating a trustee who continues to administer the trust after his cotrustee is disqualified, has been removed, renounces, or refuses to act.

**Survivorship.** The living of one of two or more persons after the death of the other or others. Survivorship is where a person becomes entitled to property by reason of his having survived another person who had an interest in it. *United States v. Jacobs*, 306 U.S. 363, 59 S.Ct. 551, 555, 83 L.Ed. 763. A feature of joint tenancy and tenancy by the entirety, whereby the surviving co-owner takes the entire interest in preference to heirs or devisees of the deceased co-owner. *See also* Presumption of survivorship; Tenancy (*Joint tenancy; Tenancy by the entirety*).

**Survivorship annuity.** Type of annuity contract which provides for payments beyond the life of the annuitant, as for example, to a widow of the annuitant.

**Susceptible.** Capable.

**Suspect.** To have a slight or even vague idea concerning;—not necessarily involving knowledge or belief or likelihood. "Suspect" with reference to probable cause as grounds for arrest without warrant is commonly used in place of the word believe. A person reputed or suspected to be involved in a crime. *See also* Probable cause; Suspicion.

**Suspect classifications.** The Court will employ the "strict scrutiny" standard under the Equal Protection Clause in determining the legitimacy of classifications that are based upon a trait which itself seems to contravene established constitutional principles so that any purposeful use of the classification may be deemed "suspect." Examples include race, sex, national origin and alienage (with exceptions). *Matter of C.H.*, 210 Mont. 184, 683 P.2d 931, 938.

**Suspend.** To interrupt; to cause to cease for a time; to postpone; to stay, delay, or hinder; to discontinue temporarily, but with an expectation or purpose of resumption. As a form of censure or discipline, to forbid a public officer, attorney, employee, or ecclesiastical person from performing his duties or exercising his functions for a more or less definite interval of time.

To postpone, as a judicial sentence. To cause a temporary cessation, as of work by an employee; to lay off.

*See also* Suspension.

**Suspended sentence.** A conviction of a crime followed by a sentence that is given formally, but not actually served. A suspended sentence in criminal law means in effect that defendant is not required at the time sentence is imposed to serve the sentence. *Richards v. Crump*, 260 S.C. 133, 194 S.E.2d 575, 576. *See also* Sentence (*Suspension of sentence*).

**Suspense.** When a rent, profit à *prendre*, and the like, are, in consequence of the unity of possession of the rent, etc., of the land out of which they issue, not *in esse*



for a time, they are said to be in suspense, *tunc dormiunt*; but they may be revived or awakened.

**Suspension.** A temporary stop, a temporary delay, interruption, or cessation. Thus, we speak of a *suspension* of the writ of *habeas corpus*, of a statute, of the power of alienating an estate, of a person in office, etc.

A temporary cutting off or debarring one, as from the privileges of one's profession.

Temporary withdrawal or cessation from employment as distinguished from permanent severance accomplished by removal; "removal" being, however, the broader term, which may on occasion include suspension.

*Ecclesiastical law.* An ecclesiastical censure, by which a spiritual person is either interdicted the exercise of his ecclesiastical function or hindered from receiving the profits of his benefice. It may be partial or total, for a limited time, or forever, when it is called "deprivation" or "amotion."

*Suspension of a right.* The act by which a party is deprived of the exercise of his right for a time. A temporary stop of a right, a partial extinguishment for a time, as contrasted with a complete extinguishment, where the right is absolutely dead. Suspension of a right in an estate is a temporary or partial withholding of it from use or exercise. It differs from extinguishment, because a suspended right is susceptible of being revived, which is not the case where the right was extinguished.

*Suspension of arms.* An agreement between belligerents, made for a short time or for a particular place, to cease hostilities between them. *See also* Armistice.

*Suspension of a statute.* A temporary termination of its power of law. The suspension of a statute for a limited time operates so as to prevent its operation for the time; but it has not the effect of a repeal.

*Suspension of business.* These words in a statute contemplate an interruption of ordinary business operations, evidenced by some objective features. An interruption of the ordinary course of business, other than a mere failure to meet maturing obligations.

**Suspensive condition.** *See* Condition.

**Suspensory condition.** *See* Condition.

**Sus. per coll** /səs. pər kól/. An abbreviation of "*suspensatur per collum*" /səspendýtər pər kóləm/, let him be hanged by the neck. Words formerly used in England in signing judgment against a prisoner who was to be executed; being written by the judge in the margin of the sheriff's calendar or list, opposite the prisoner's name. 4 Bl.Comm. 403.

**Suspicion.** The act of suspecting, or the state of being suspected; imagination, generally of something ill; distrust; mistrust; doubt. The apprehension of something without proof or upon slight evidence. Suspicion implies a belief or opinion based upon facts or circumstances which do not amount to proof.

**Suspicious character.** In the criminal laws of some of the states, a person who is known or strongly suspected to be an habitual criminal, or against whom there is reasonable cause to believe that he has committed a crime or is planning or intending to commit one, or whose actions and behavior give good account of himself, and who may therefore be arrested or required to give security for good behavior.

**Sustain.** To carry on; to maintain. To affirm, uphold or approve, as when an appellate court sustains the decision of a lower court. To grant, as when a judge sustains an objection to testimony or evidence, he or she agrees with the objection and gives it effect.

To support; to warrant;—said of evidence in connection with a verdict, decision, etc.

To suffer; bear; undergo. To endure or undergo without failing or yielding; to bear up under.

**Suthdure.** The south door of a church, where canonical purgation was performed, and plaints, etc., were heard and determined.

**Sutler** /sətələr/. A person who, as a business, follows an army and sells provisions and liquor to the troops. A small trader who follows an army and who is licensed to sell goods, especially edibles, to the soldiers.

**Suum cuique tribuere** /s(y)úwəm k(yuw)áykwiý trə-byúwəriý/. Lat. To render to everyone his own. One of the three fundamental maxims of the law laid down by Justinian.

**Suus hæres** /s(y)úwəs híriýz/. *See* Hæres.

**Suus judex** /s(y)úwəs júwdeks/. Lat. In old English law, a proper judge; a judge having cognizance of a cause. Literally, one's own judge.

**Suzerain** /s(y)úwz(ə)rən/. In French and feudal law, the immediate vassal of the king; a crown vassal; a tenant *in capite*. A lord who possesses a fief whence other fiefs issue. Also spelled "suzereign."

A nation that exercises political control over another nation in relation to which it is sovereign.

Term is used as descriptive of relations, ill-defined and vague, which exist between powerful and dependent states; its very indefiniteness being its recommendation. While protecting and protected states tend to draw nearer, the reverse is true of suzerain and vassal states; a protectorate is generally the preliminary to incorporation; suzerainty, to separation.

It is said that suzerainty is title without corresponding power; protectorate is power without corresponding title.

**Swain; swainmote** /swéyn(mowt)/. *See* Swein; Sweinmote.

**Swamp.** Wet, spongy land; soft, low ground saturated with water, but not usually covered by it; marshy ground away from seashore. *Campbell v. Walker*, 137 Or. 375, 2 P.2d 912, 914.

**Swamp and overflowed lands.** Lands unfit for cultivation by reason of their swampy character and requiring

drainage or reclamation to render them available for beneficial use.

**Swanimote.** See Sweinmote.

**Swaps.** The exchange of one security for another. A swap may be executed to change the maturities of a bond portfolio or the quality of the issues in a share or bond portfolio, or because investment objectives have shifted. Swap agreements are used by corporations and financial institutions to hedge against changes in interest and foreign exchange rates.

**Swarf-money.** Warth-money; or guard-money paid in lieu of the service of castleward.

**Swatch.** Commercially, a small sample of cloth from which suits, etc., are to be ordered.

**Swear.** To put on oath; to administer an oath to a person. To take an oath; to become bound by an oath duly administered. To declare on oath the truth (of a pleading, etc.). See also Affirmation; False swearing; Oath.

To use obscene or profane language. Its use in public places is an offense in many states.

**Swearing in.** The administration of an oath as to a trial witness or to a public official or one about to become a public official, as in the case of a person who becomes a judge. See Oath.

**Swearing the peace.** Showing to a magistrate that one has just cause to be afraid of another in consequence of his menaces, in order to have him bound over to keep the peace.

**Sweat equity.** Equity created in property through labor of owner in making improvements to property.

**Sweating.** The questioning of a person in custody charged with crime with intent to obtain information concerning his connection therewith or knowledge thereof by plying him with questions, or by threats or other wrongful means, extorting information to be used against him. Such interrogation is unconstitutional. See Interrogation; Miranda Rule.

**Sweat shop.** A business whose employees are overworked and paid low wages, or a place where employees are required to work to an extent hardly endurable, and in the public mind the term imputes unsavory and illegal business practices. *Masters v. Sun Mfg. Co.*, 237 Mo.App. 240, 165 S.W.2d 701, 703. Sweat shops resulted in the enactment of wage and hour laws, child labor laws, minimum wage laws, etc.

**Sweeping.** Comprehensive; including in its scope many persons or objects; as, a sweeping objection.

**Sweepstakes.** Term initially referring to a type of horse race in which the winner's prize was the sum of the stakes which subscribers agreed to pay for each horse nominated. *Stone v. Clay*, C.A.Ill., 61 Fed. 889. Currently refers generally to contests, often conducted for promotional purposes, which award prizes based on the random selection of entries. Federal law prohibits conducting a scheme for obtaining money or property through the mail by means of false representations. 39 U.S.C.A. § 3005. See also Lottery.

**Sweeteners.** Inducement to a brokerage firm to enter into an underwriting arrangement with an issuer.

**Sweetheart contract.** Derogatory term used to describe a contract between a union and an employer in which concessions are granted to one or to the other for purpose of keeping a rival union out.

**Swein** /swéyn/. In old English law, a freeman or freeholder within the forest.

**Sweinmote** /swéynmòwt/. In forest law, a court holden before the verderors, as judges, by the steward of the sweinmote, thrice in every year, the *sweins* or freeholders within the forest composing the jury. Its principal jurisdiction was—*First*, to inquire into the oppressions and grievances committed by the officers of the forest; and, *secondly*, to receive and try presentments certified from the court of attachments in offenses against vert and venison. 3 Bl.Comm. 72.

**Swell.** To enlarge or increase. In an action of tort, circumstances of aggravation may "swell" the damages.

**Swift v. Tyson Case.** An early case decided in 1842 by the U.S. Supreme Court, 41 (16 Pet.) U.S. 1, 10 L.Ed. 865, which held that federal courts in suits founded on diversity of citizenship were free to exercise an independent judgment in matters of "general" law; *i.e.* matters not at all dependent upon local statutes or local usages of a fixed and permanent operation. *Swift v. Tyson* was overruled by *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 which requires the application of state law in diversity actions under most circumstances. See *Erie v. Tompkins*; Federal common law.

**Swift witness.** A term colloquially applied to a witness who is unduly zealous or partial for the side which calls him, and who betrays his bias by his extreme readiness to answer questions or volunteer information.

**Swindle.** A scheme for cheating or defrauding.

**Swindler.** A cheat; one guilty of defrauding divers persons.

**Swindling.** Cheating and defrauding with deliberate artifice. Usually applied to a transaction where the guilty party procures the delivery to him, under a pretended contract, of the personal property of another, with the felonious design of appropriating it to his own use. The acquisition of any personal or movable property, money, or instrument of writing conveying or securing a valuable right, by means of some false or deceitful pretense or device, or fraudulent representation, with intent to appropriate the same to the use of the party so acquiring, or of destroying or impairing the rights of the party justly entitled to the same.

To make out offense of "cheating" and "swindling" by false representations, government must prove that representations were made, that representations were knowingly and designedly false, that such were made with intent to defraud, that such did defraud, that representations related to existing fact or past event, and that party to whom representations were made, relying on their truth, was thereby induced to part with

his property. See *e.g.* 18 U.S.C.A. §§ 1341, 1342 (mail swindles).

See False pretenses; Fraud.

**Switch-yard doctrine.** The doctrine that there can be no implied license to the public to use the track of a railroad company within the limits of its switch-yard.

**Swoling of land.** Term in old English law, meaning so much land as one's plow can till in a year; a hide of land.

**Sworn.** Frequently used interchangeably with "verified." See Affirmation; Oath; Swear; Verify.

**Sworn brothers.** In old English law, persons who, by mutual oaths, covenant to share in each other's fortunes.

**Sworn clerks in chancery.** Certain officers in the English court of chancery, whose duties were to keep the records, make copies of pleadings, etc. Their offices were abolished by St. 5 & 6 Vict., c. 103.

**Sworn statement.** Listing by contractor-builder of all of his suppliers and sub-contractors and their respective bids. Such is required by lending institution for interim construction financing.

**Syb and som** /sɪb ənd sɔwm/. A Saxon form of greeting, meaning peace and safety.

**Syllabus.** An abstract; a headnote; a note prefixed to the report or opinion of an adjudged case, containing an epitome or brief statement of the rulings of the court upon the point or points decided in the case. The syllabus (in Supreme Court decisions) constitutes no part of the opinion of the Court but is prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499. Ordinarily, where a headnote, even though prepared by the court, is given no special force by statute or rule of court, the opinion is to be looked to for the original and authentic statement of the grounds of decision. *Burbank v. Ernst*, 232 U.S. 162, 34 S.Ct. 299, 58 L.Ed. 551. See also Digest; Headnote.

**Syllogism.** In logic, the full logical form of a single argument. It consists of three propositions (two premises and the conclusion), and these contain three terms, of which the two occurring in the conclusion are brought together in the premises by being referred to a common class.

**Sylva cædua** /sɪlvə sɪdyuə/. Lat. In ecclesiastical law, wood of any kind which was kept on purpose to be cut, and which, being cut, grew again from the stump or root.

**Symbiotic relationship.** When the action of government and private actors is so intertwined as to constitute a "symbiotic relationship", their combined activities will be viewed by the courts as constituting state involvement sufficient to invoke the "state action" doctrine and thereby subject the private actor, in such circumstances, to constitutional obligation. *Burton v.*

*Wilmington Parking Authority*, 38 Del.Ch. 266, 150 A.2d 197 (1961).

**Symbolæography** /sɪmbəlɪjɔːgrəfi/. The art or cunning rightly to form and make written instruments. It is either judicial or extrajudicial; the latter being wholly occupied with such instruments as concern matters not yet judicially in controversy, such as instruments of agreements or contracts, and testaments or last wills.

**Symbolic delivery.** The constructive delivery of the subject-matter of a sale or gift, where it is cumbersome or inaccessible, by the actual delivery of some article which is conventionally accepted as the symbol or representative of it, or which renders access to it possible, or which is evidence of the purchaser's or donee's title to it. Thus, a present gift of the contents of a box in a bank vault, accompanied by a transfer of the key thereto, is valid as a symbolical delivery.

**Symbolic speech.** A person's conduct which expresses opinions or thoughts about a subject and which may or may not be protected by the First Amendment. Actions which have as their primary purpose the expression of ideas as in the case of students who wore black arm bands to protest the war in Viet Nam. Such conduct is generally protected under the First Amendment as "pure speech" because very little conduct is involved. *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731. However, not all such conduct is protected. The burning of a draft card was not protected speech because of the government's substantial interest. *U. S. v. O'Brien*, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672. See Flag desecration.

**Symbolum animæ** /sɪmbələm ɛnəmiy/. Lat. A mortuary, or soul scot.

**Symmetry.** Due proportion of several parts of a body to each other; adaptation of the form or dimensions of the several parts of a thing to each other; harmonious relation of parts; conformance; consistency; congruity; correspondence or similarity of form, dimensions, or parts on opposite sides of an axis, center, or a dividing plane.

**Symond's inn.** Formerly an inn of chancery.

**Sympathy strike.** A boycott. See Boycott; Strike.

**Synallagmatic contract** /sɪnələgmətək kɒntrækt/. In the civil law, a bilateral or reciprocal contract, in which the parties expressly enter into mutual engagements, each binding himself to the other. Such are the contracts of sale, hiring, etc.

**Syncopare.** To cut short, or pronounce things so as not to be understood.

**Syndic** /sɪndək/. In the civil law, an advocate or patron; a Burgess or recorder; an agent or attorney who acts for a corporation or university; an actor or procurator; an assignee. The term corresponds very nearly with that of assignee under the common law.

In English common law, an agent appointed by a corporation for the purpose of obtaining letters of guardianship and the like, to whom such letters were issued.

In French law, the person who is commissioned by the courts to administer a bankruptcy. He fulfills the same functions as the trustee or assignee. Also, one who is chosen to conduct the affairs and attend to the concerns of a body corporate or community. In this sense the word corresponds to director or manager.

In Louisiana, the assignee of a bankrupt. Also, one of several persons to be elected by the creditors of a succession, for the purpose of administering thereon, whenever a succession has been renounced by the heirs, or has been accepted under the benefit of an inventory, and neither the beneficiary heirs, their attorney in fact, nor tutor will accept the administration and give the security required.

**Syndicalism** /sɪndəkəlɪzəm/. The theory, plan, or practice of trade-union action which aims by the general strike and direct action to establish control by local organizations of workers over the means and processes of production.

A form or development of trade-unionism, originating in France, which aims at the possession of the means of production and distribution, and ultimately at the control of society and government, by the federated bodies of industrial workers, and which seeks to realize its purposes through the agency of general strikes and of terrorism, sabotage, violence, or other criminal means.

**Criminal syndicalism.** Any doctrine or precept advocating, teaching, or aiding and abetting the commission of crime, sabotage (defined in the act as willful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism, as a means of accomplishing a change in industrial ownership, or control, or effecting any political change. *Gitlow v. New York*, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138; *Whitney v. California*, 274 U.S. 357, 47 S.Ct. 641, 71 L.Ed. 1095. See also *Criminal*.

**Syndicate** /sɪndəkət/. An association of individuals, formed for the purpose of conducting and carrying out some particular business transaction, ordinarily of a financial character, in which the members are mutually interested. An organization formed for some temporary purpose, such as the organization of a real estate trust and the sale of shares to the public. Syndicates may exist as corporations or partnerships (either general or limited).

A group of investment bankers who together underwrite and distribute a new issue of securities or a large block of an outstanding issue. A syndicate is formed in such instances because the capital commitment or risk involved for any single investor, financial institution or broker is too great. An association of securities broker-dealers, usually in writing, who assist the principal underwriter in the controlled distribution of the securities of an issuer.

**Syndicating.** Gathering materials suitable for newspaper publication from writers and artists and distributing the same at regular intervals to newspapers throughout the country for publication on the same day.

**Syndication.** Act or process of forming a syndicate.

**Syndicos, or syndicus** /sɪndəkəs/sɪndəkəs/. One chosen by a college, municipality, etc., to defend its cause. See *Syndic*.

**Syngraph** /sɪŋgræf/. The name given by the canonists to deeds or other written instruments of which both parts were written on the same piece of parchment, with some word or letters of the alphabet written between them, through which the parchment was cut in such a manner as to leave half the word on one part and half on the other. It thus corresponded to the chirograph or indenture of the common law. 2 Bl.Comm. 295, 296.

Formerly such writings were attested by the subscription and crosses of the witnesses; afterwards, to prevent frauds and concealments, they made deeds of mutual covenant in a script and rescript, or in a *part* and *counterpart*, and in the middle between the two copies they wrote the word *syngraphus* in large letters, which, being cut through the parchment and one being delivered to each party, on being afterwards put together proved their authenticity.

A deed, bond, or other written instrument under the hand and seal of all the parties. It was so called because the parties *wrote together*.

**Synod** /sɪnəd/. A meeting or assembly of ecclesiastical persons concerning religion; being the same thing, in Greek, as convocation in Latin. There are four kinds: (1) A general or universal synod or council, where bishops of all nations meet; (2) a national synod of the clergy of one nation only; (3) a provincial synod, where ecclesiastical persons of a province only assemble, being now what is called the "convocation;" (4) a diocesan synod, of those of one diocese. A synod in Scotland is composed of three or more presbyteries.

A convention of bishops and elders within a district including at least three presbyteries. Trustees of Pencader Presbyterian Church in *Pencader Hundred v. Gibson*, 26 Del.Ch. 375, 22 A.2d 782, 788. A meeting of the few adjoining presbyteries,—not the same as an ecumenical council, which is a council of all, and not of a part.

**Synodal** /sɪnədəl/. A tribute or payment in money paid to the bishop or archdeacon by the inferior clergy, at the Easter visitation.

**Synodales testes** /sɪnədəjliyz tɛstɪjz/. L. Lat. Synodsmen (corrupted into sidesmen) were the urban and rural deans, now the church-wardens. See *Sidesmen*.

**Synonymous.** Expressing the same or nearly the same idea.

**Synopsis.** A brief or partial statement, less than the whole; an epitome; synonymous with summary. See *Abstract*; *Digest*; *Syllabus*.

**System.** Orderly combination or arrangement, as of particulars, parts, or elements into a whole; especially such combination according to some rational principle. Any methodic arrangement of parts. *Method*; *manner*; *mode*.