

T

T. As an abbreviation, this letter may stand for such terms as "term", "territory", "title", "table".

Every person who was convicted of felony, short of murder, and admitted to the benefit of clergy, was at one time marked with this letter upon the brawn of the thumb. Abolished by 7 & 8 Geo. IV, c. 27.

By a law of the Province of Pennsylvania, A.D. 1698, it was provided that a convicted thief should wear a badge in the form of the letter "T," upon his left sleeve, which badge should be at least four inches long and of a color different from that of his outer garment.

Tabard /tæbærd/. A short gown; a herald's coat; a surcoat.

Tabarder /tæbærdær/. One who wears a tabard or short gown. The name is still used as the title of certain bachelors of arts on the old foundation of Queen's College, Oxford.

Tabella /tæbêlæ/. Lat. In Roman law, a tablet. Used in voting, and in giving the verdict of juries and decision of judges; and, when written upon, commonly translated "ballot." The laws which introduced and regulated the mode of voting by ballot were called "*leges tabellarice*."

Tabellio /tæbêl(i)yow/. Lat. In Roman law, an officer corresponding in some respects to a notary. His business was to draw legal instruments (contracts, wills, etc.), and witness their execution.

Tabelliones differed from notaries in many respects: they had judicial jurisdiction in some cases, and from their judgments there were no appeals. Notaries were then the clerks or aiders of the *tabelliones*; they received the agreements of the parties, which they reduced to short *notes*; and these contracts were not binding until they were written in *extenso*, which was done by the *tabelliones*.

Tabernaculum /tæbærnæk(y)æləm/. In old records, a public inn, or house of entertainment.

Tabernarius /tæbærnériyəs/. Lat. In the civil law, a shopkeeper.

In old English law, a taverner or tavern keeper.

Tabes dorsalis /téybíyz dørséyləs/. In medical jurisprudence, another name for locomotor ataxia. It accompanies attacks of tabetic dementia. See *Insanity*.

Tabetic dementia /tæbétæk dæménsh(iy)ə/. See *Insanity*.

Table, v. To suspend consideration of a pending legislative bill or other measure.

Table, n. A synopsis, condensed statement or listing bringing together numerous items or details so as to be comprehended in a single view; as genealogical tables, exhibiting the names and relationships of all the persons composing a family; life and annuity tables, used by actuaries; interest tables, etc. Term may also refer to an alphabetical, numerical, etc. listing of cases, statutes, court rules, and the like, cited or referred to in a legal publication. See *Table of cases*.

Tableau of distribution /tæblow əv distrəbyúwshən/tæblów/. In Louisiana, a list of creditors of an insolvent estate, stating what each is entitled to.

Table de marbre /tæblə də márbre/. Fr. In old French law, table of Marble; a principal seat of the admiralty, so called. These Tables de Marbre are frequently mentioned in the *Ordonnance of the Marine*.

Table of cases. An alphabetical list of the adjudged cases cited, referred to, or digested in a legal text-book, volume of reports, or digest, with references to the sections, pages, or paragraphs where they are respectively cited, etc., which is commonly either prefixed or appended to the volume.

Table rents. In English law, payments which used to be made to bishops, etc., reserved and appropriated to their table or housekeeping.

Tabula /tæb(y)ələ/. Lat. In the civil law, a table or tablet; a thin sheet of wood, which, when covered with wax, was used for writing.

Tabulæ /tæbyəliy/. Lat. In Roman law, tables. Writings of any kind used as evidences of a transaction. Contracts and written instruments of all kinds, especially wills. So called because originally written on tablets and with wax.

Tabulæ nuptiales /tæbyəliy nəpshiyéyliyz/. In the civil law, a written record of a marriage; or the agreement as to the *dos*.

Tabula in naufragio /tæbyələ in nofréyj(iy)ow/. Lat. A plank in a shipwreck. This phrase is used metaphorically to designate the power subsisting in a third mortgagee, who took without notice of the second mortgage, to acquire the first incumbrance, attach it to his own, and thus squeeze out and get satisfaction, before the second is admitted to the fund. It may be fairly said that the doctrine survives only in the unjust and much-criticised English rule of tacking. See *Tacking*. The use of the expression is attributed to Sir Matthew Hale.

Tabularius /tæbyəlériyəs/. Lat. A notary, or tabellio.

Tac, tak /tæk/. In old records, a kind of customary payment by a tenant.

T-account. Account form shaped like the letter T with an account name above the horizontal line. Debits are shown to the left of the vertical line; credits, to the right. In bookkeeping, an original form of account in which debits and credits may be recorded on the appropriate side of the "T".

Tac free /tæk frij/. In old records, free from the common duty or imposition of *tac*.

Tacit /tæsət/. Existing, inferred, or understood without being openly expressed or stated; implied by silence or silent acquiescence, as a tacit agreement or a tacit understanding. *State v. Chadwick*, 150 Or. 645, 47 P.2d 232, 234. Done or made in silence, implied or indicated, but not actually expressed. Manifested by the refraining from contradiction or objection; inferred from the situation and circumstances, in the absence of express matter.

Tacit acceptance. In the civil law, a tacit acceptance of an inheritance takes place when some act is done by the heir which necessarily supposes his intention to accept and which he would have no right to do but in his capacity as heir. *Civ.Code La. art. 988*.

Tacit admissions. An acknowledgment or concession of a fact inferred from either silence or from the substance of what one has said.

Tacita quædam habentur pro expressis /tæsətə kwjydəm hæbentar prōw ækspræsəs/. Things unexpressed are sometimes considered as expressed.

Tacit dedication. Of property for public use is dedication arising from silence or inactivity, without express contract or agreement. *Goree v. Midstates Oil Corporation*, 205 La. 988, 18 So.2d 591, 596.

Tacite /tæsətij/. Lat. Silently; impliedly; tacitly.

Tacit hypothecation. In the civil law, a species of lien or mortgage which is created by operation of law without any express agreement of the parties. In admiralty law, this term is sometimes applied to a maritime lien, which is not, strictly speaking, an hypothecation in the Roman sense of the term, though it resembles it.

Tacit law. A law which derives its authority from the common consent of the people without any legislative enactment.

Tacit mortgage. In the law of Louisiana, the law alone in certain cases gives to the creditor a mortgage on the property of his debtor, without it being requisite that the parties should stipulate it. This is called "legal mortgage." It is called also "tacit mortgage," because it is established by the law without the aid of any agreement.

Tacit relocation. A doctrine borrowed from the Roman law. It is a presumed renovation of the contract from the period at which the former expired, and is held to arise from implied consent of parties, in consequence of their not having signified their intention that agree-

ment should terminate at the period stipulated. Though the original contract may have been for a longer period than one year, the renewed agreement can never be for more than one year, because verbal contract of location can extend longer. *Srygley v. City of Nashville*, 175 Tenn. 417, 135 S.W.2d 451.

Tack. To annex some junior lien to a first lien, thereby acquiring priority over an intermediate one. *See* Tacking.

Tacking. The term is applied especially to the process of establishing title to land by adverse possession, when the present occupant and claimant has not been in possession for the full statutory period, but adds or "tacks" to his own possession that of previous occupants under whom he claims. That doctrine which permits an adverse possessor to add his period of possession to that of a prior adverse possessor in order to establish a continuous possession for the statutory period. *Deyrup v. Schmitt*, 132 Vt. 423, 425, 321 A.2d 42, 44.

The term is also used in a number of other connections, as of possessions, disabilities, or items in accounts or other dealings. In these several cases the purpose of the proposed tacking is to avoid the bar of a statute of limitations. *See* *Davis v. Coblens*, 174 U.S. 719, 19 S.Ct. 832, 43 L.Ed. 1147.

Tacking in application by motor carriers for certificates of public convenience and necessity is joinder of two or more separate grants of authority at a point common to both. *Midwest Emery Freight System, Inc. v. U. S., D.C.Ill.*, 295 F.Supp. 112, 115.

The uniting of securities given at different times, so as to prevent any intermediate purchaser from claiming a title to redeem or otherwise discharge one lien, which is prior, without redeeming or discharging the other liens also, which are subsequent to his own title. The term is particularly applied to the action of a third mortgagee who, by buying the first lien and uniting it to his own, gets priority over the second mortgagee.

Tactis sacrosanctis /tæktəs sækrsæŋktəs/. Lat. In old English law, touching the holy evangelists. A bishop may swear *visis evangelii* [looking at the Gospels], and not *tactis*, and it is good enough.

Tacto per se sancto evangelio /tæktow pər sɪy sæŋktow əvæŋjɪl(i)yow/. Lat. Having personally touched the holy Gospel. The description of a corporal oath.

Taft-Hartley Act. The Wagner Act was amended in 1947 by the Taft-Hartley Act to balance some of the advantages given to unions under the Wagner Act by imposing corresponding duties on unions. Principal changes imposed by the Act included the following: abolishment of the closed shop, but permitting the union shop under conditions specified in the Act; exempting supervisors from coverage of the Act; requiring the N.L.R.B. to accord equal treatment to both independent and affiliated unions; permitting the employer to file a representation petition even though only one union seeks to represent the employees; granting employees the right not only to organize and bargain collectively but also to refrain from such activities; permitting

employees to file decertification petitions for elections to determine whether or not employees desire to revoke a union's designation as their bargaining agent; declaring certain activities engaged in by unions to be unfair labor practices; giving to employers, employees, and unions new guarantees of the right of free speech; providing for settlement by the N.L.R.B. of certain jurisdictional disputes; vested in the General Counsel, rather than in the Board the authority to investigate and prosecute unfair labor practices. 29 U.S.C.A. § 141 et seq.

Tail. Limited; abridged; reduced; curtailed, as a fee or estate in fee, to a certain order of succession, or to certain heirs.

Tailage. See Tallage.

Tail, estate in. An estate of inheritance, which, instead of descending to heirs generally, goes to the heirs of the donee's body, which means his lawful issue, his children, and through them to his grandchildren in a direct line, so long as his posterity endures in a regular order and course of descent, and upon the death of the first owner without issue, the estate determines.

Several tail. An entail severally to two; as if land is given to two men and their wives, and to the heirs of their bodies begotten; here the donees have a joint estate for their two lives, and yet they have a several inheritance, because the issue of the one shall have his moiety, and the issue of the other the other moiety.

Tail after possibility of issue extinct. A species of estate fail which arises where one is tenant in special tail, and a person from whose body the issue was to spring dies without issue, or, having left issue, that issue becomes extinct. In either of these cases the surviving tenant in special tail becomes "tenant in tail after possibility of issue extinct." 2 Bl.Comm. 124.

Tail female. When lands are given to a person and the female heirs of his or her body. The male heirs are not capable of inheriting it.

Tail general. An estate in tail granted to one "and the heirs of his body begotten," which is called "tail general" because, how often soever such donee in tail be married, his issue in general by all and every such marriage is, in successive order, capable of inheriting the estate tail *per formam doni*. 2 Bl.Comm. 113. This is where an estate is limited to a man and the heirs of his body, without any restriction at all; or, according to some authorities, with no other restriction than that in relation to sex. Thus, tail male general is the same thing as tail male; the word "general," in such case, implying that there is no other restriction upon the descent of the estate than that it must go in the male line. So an estate in tail female general is an estate in tail female. The word "general," in the phrase, expresses a purely negative idea, and may denote the absence of any restriction, or the absence of some given restriction which is tacitly understood.

Tail male. When certain lands are given to a person and the male heirs of his or her body. The female heirs are not capable of inheriting it.

Tail special. This denotes an estate in tail where the succession is restricted to certain heirs of the donee's body, and does not go to all of them in general; e.g., where lands and tenements are given to a man and "the heirs of his body on Mary, his now wife, to be begotten;" here no issue can inherit but such special issue as is engendered between those two, not such as the husband may have by another wife, and therefore it is called "special tail." 2 Bl.Comm. 113. It is defined as the limitation of lands and tenements to a man and his wife and the heirs of their two bodies. But the phrase need not be thus restricted. Tail special, in its largest sense, is where the gift is restrained to certain heirs of the donor's body, and does not go to all of them in general.

Taille /táy/téyl/. Fr. In old English law, the fee which is opposed to fee-simple, because it is so minced or pared that it is not in the owner's free power to dispose of it, but it is, by the first giver, cut or divided from all other, and tied to the issue of the donee,—in short, an estate-tail.

In old French law, a tax or assessment levied by the king, or by any great lord, upon his subjects, usually taking the form of an imposition upon the owners of real estate. The equivalent of the English tallage—the typical direct tax in France of the Middle Ages, as tonlieu was the generic term for an indirect tax. See Tallage.

Taint. A conviction of felony, or the person so convicted.

Take. The word "take" has many shades of meaning, with the precise meaning which it is to bear in any case depending on the subject with respect to which it is used; e.g. eminent domain; larceny; arrest.

To lay hold of; to gain or receive into possession; to seize; to deprive one of the use or possession of; to assume ownership. Thus, constitutions generally provide that a person's property shall not be taken for public uses without just compensation. Fifth Amend., U.S.Const. See De facto taking; Taking.

In the law of larceny, to obtain or assume possession of a chattel unlawfully, and without the owner's consent; to appropriate things to one's own use with felonious intent. Thus, an actual taking is essential to constitute larceny. The element of "taking" in robbery does not require robber's manual possession of property; it is sufficient if robber has acquired dominion and control over property. State v. Beatty, Mo.App., 617 S.W.2d 87, 90. A "taking" may occur when a person with a preconceived design to appropriate property to his own use obtains possession of it by means of fraud or trickery; and, such taking may be accomplished by the use of an innocent agent acting under the control and direction of the taker where the goods finally come into possession of the taker and are converted to his use. U.S. v. Posner, D.C.Md., 408 F.Supp. 1145, 1153.

To seize or apprehend a person; to arrest the body of a person by virtue of lawful process. Thus, a *capias* commands the officer to *take* the body of the defendant. See Seize.

To acquire the title to an estate; to receive or be entitled to an estate in lands from another person by

virtue of some species of title. Thus one is said to "take by purchase," "take by descent," "take a life-interest under the devise," etc.

Profit from a transaction, lottery, etc. Person open to taking bribes (*i.e.* "on the take").

See also Taking as regards eminent domain proceedings.

Take away. This term in a statute punishing every person who shall take away any female under 18 from her father for the purpose of prostitution requires only that such person procure or cause her to go away by some persuasion, enticement, or inducement offered, exercised, or held out to the girl, or by furnishing her the means or money with which to go away. See also Taking.

Take back. To revoke; to retract; as, to take back one's promise.

Take by stealth. To steal; feloniously to take and carry away the personal goods of another; to take without right, secretly, and without leave or consent of the owner.

Take care of. To support; maintain; look after (a person). To pay (a debt). To attend to.

Take effect. To become operative or executed. To be in force, or go into operation.

Take-home pay. The net amount of a paycheck; gross earned wages or salary reduced by deductions for income taxes, Social Security taxes, contributions to fringe benefit plans, union dues, and so on.

Takeover. To assume control or management of;—not necessarily involving the transfer of absolute title. See Tender offer.

Takeover bid. An attempt by an outside corporation or group, usually called the aggressor or "insurgent," to wrest control away from incumbent management of target corporation. A takeover attempt may involve purchase of shares, a tender offer, a sale of assets or a proposal that the target merge voluntarily into the aggressor. See Leveraged buyout; Golden parachute; Greenmail; Poison pill; Tender offer; Target company; White knight.

Taker. One who takes or acquires; particularly, one who takes an estate by devise. When an estate is granted subject to a remainder or executory devise, the devisee of the immediate interest is called the "first taker."

Take up. To pay or discharge, as a note. Also, sometimes, to purchase a note. To retire a negotiable instrument; to discharge one's liability on it;—said particularly of an indorser or acceptor. A party to a negotiable instrument, particularly an indorser or acceptor, is said to "take up" the paper, or to "retire" it, when he pays its amount, or substitutes other security for it, and receives it again into his own hands.

Taking. In criminal law and torts, the act of laying hold upon an article, with or without removing the same. It implies a transfer of possession, dominion, or control.

Under various statutes relating to sexual offenses, such as the abduction of a girl under the age of 18 years for the purpose of carnal intercourse, to constitute a "taking" no force, actual or constructive, need be exercised. The "taking" may be effected by persuasion, enticement, or inducement. And it is not necessary that the girl be taken from the control or against the will of those having lawful authority over her. See also Take away.

There is a "taking" of property when government action directly interferes with or substantially disturbs the owner's use and enjoyment of the property. *Brothers v. U.S.*, C.A.Or., 594 F.2d 740, 741. To constitute a "taking, within constitutional limitation, it is not essential that there be physical seizure or appropriation, and any actual or material interference with private property rights constitutes a taking. *Board of Com'rs of Lake County v. Mentor Lagoons Inc.*, Com.Pl., 6 Ohio Misc. 126, 216 N.E.2d 643, 646; *Aris Gloves, Inc. v. U.S.*, Ct.Cl., 420 F.2d 1386. For example, the noise of jet aircraft in process of landing or taking off can amount to a "taking" or "damaging" of property for which the constitution requires that compensation be made. *Martin v. Port of Seattle*, 64 Wash.2d 309, 391 P.2d 540, 543. Also, "taking" of property is affected if application of zoning law denies property owner of economically viable use of his land, which can consist of preventing best use of land or extinguishing fundamental attribute of ownership. *Vari-Build, Inc. v. City of Reno*, D.C.Nev., 596 F.Supp. 673, 679. See also Condemnation; Constructive taking; Eminent domain; Take.

As element of crime of larceny, see Take.

Taking case from jury. Directing a verdict; a situation in which a court grants a motion to sustain a judgment. See Directed verdict.

Taking delivery. Receiving actual delivery of commodity under futures contract or spot market contract, or of securities recently purchased.

Taking the fifth. The practice of witnesses or suspects in refusing to answer a question because of the Fifth Amendment right in the U.S. Constitution to refuse to furnish information implicating one's self in a crime. See Fifth Amendment; Self-incrimination.

Tale. The count or counting of money. Said to be derived from the same root as "tally." Whence also the modern word "teller."

In old pleading, the plaintiff's count, declaration, or narrative of his case. 3 Bl.Comm. 293.

Tales /téyliy/. Lat. Such; such men. A number of jurors added to a deficient panel to supply the deficiency. When, by means of challenges or any other cause, a sufficient number of unexceptionable jurors does not appear at the trial, either party may request a "tales," as it is termed; that is, a supply of *such* men as are

summoned on the first panel in order to make up the deficiency.

A list of such jurymen as were of the tales, kept in the king's bench office in England.

Tales de circumstantibus /téyliyz diy sárkæmstántøbæs/. So many of the by-standers. The emphatic words of the old writ awarded to the sheriff to make up a deficiency of jurors out of the persons present in court. 3 Bl.Comm. 365.

The order of the judge for taking such by-standers as jurors.

Talesman. A person summoned to act as a juror from among the by-standers in the court. A person summoned as one of the tales added to a jury.

Talio /téyl(i)yow/. Lat. In the civil law, like for like; punishment in the same kind; the punishment of an injury by an act of the same kind, as an eye for an eye, a limb for a limb, etc.

Talis interpretatio semper fienda est, ut evitetur absurdum et inconueniens, et ne iudicium sit illusorium /téylæs intärprätéysh(i)yow sémpær fayéndæ èst, æt èvætíytær æbsærdæm èt ìnkænviyn(i)yenz, èt níy juwdísh(i)yæm sit il(y)uwzóriyæm/. Interpretation is always to be made in such a manner that what is absurd and inconvenient may be avoided, and the judgment be not illusory [or nugatory].

Talis non est eadem; nam nullum simile est idem /téylæs nón èst iyéydæm; næm nálæm símæliy èst áydæm/. What is like is not the same; for nothing similar is the same.

Talis res, vel tale rectum, quæ vel quod non est in homine adtunc superstitie sed tantummodo est et consistit in consideratione et intelligentia legis, et quod alii dixerunt talem rem vel tale rectum fore in nubibus /téylæs ríyz, vèl téyliy réktæm, kwíy vèl kwód nón èst in hómæniy ædtæŋk s(y)uwpárstætiy sèd tæntæmòwdow èst èt kænsístæt in kænsidæreyshiyówniye èd intælæjénsh(i)yæ liyjes, èt kwód éyliiyay diksírænt téylæm rém vèl téyliy réktæm fóriy in nyúwbøbæs/. Such a thing or such a right as is not vested in a person then living, but merely exists in the consideration and contemplation of law [is said to be in abeyance], and others have said that such a thing or such a right is in the clouds.

Taliter processum est /tælætær præsésæm èst/. So it has proceeded. Words formerly used in pleading, by which a defendant, in justifying his conduct by the process of an inferior court, alleged the proceedings in such inferior court. Upon pleading the judgment of an inferior court, the proceedings preliminary to such judgment, and on which the same was founded, must, to some extent, appear in the pleading, but the rule is that they may be alleged with a general allegation that "such proceedings were had," instead of a detailed account of the proceedings themselves, and this general allegation is called the "*taliter processum est*." A like concise mode of stating former proceedings in a suit is adopted at the present day in chancery proceedings upon peti-

tions and in actions in the nature of bills of revivor and supplement.

Tallage, or tailage /tælj/téylj/. A piece cut out of the whole. Used metaphorically for a share of a man's substance paid by way of tribute, toll, or tax, being derived from the French "*tailleur*," which signifies to cut a piece out of the whole. A term used to denote subsidies, taxes, customs, and, indeed, any imposition whatever by the government for the purpose of raising a revenue. A tax upon cities, townships and boroughs granted to the king as a part of the royal revenue.

Tallager /tælæjær/. A tax or toll gatherer; mentioned by Chaucer (and spelled "talaigier").

Tallagium /tæléyj(i)yæm/. L. Lat. A term including all taxes.

Tallagium facere /tæléyj(i)yæm fæsæriy/. To give up accounts in the exchequer, where the method of accounting was by tallies.

Tallatio /tæléysh(i)yow/. A keeping account by tallies.

Talley, or tally. A stick cut into two parts, on each whereof is marked, with notches or otherwise, what is due between debtor and creditor. It was the ancient mode of keeping accounts. One part was held by the creditor, and the other by the debtor. The use of tallies in the exchequer was abolished by St. 23 Geo. III, c. 82, and the old tallies were ordered to be destroyed by St. 4 & 5 Wm. IV, c. 15. By the custom of London, sealed tallies were effectual as a deed. They are admissible by the French and Italian Codes as evidence between traders. It is said that they were negotiable.

Tallies of loan. A term originally used in England to describe exchequer bills, which were issued by the officers of the exchequer when a temporary loan was necessary to meet the exigencies of the government, and charged on the credit of the exchequer in general, and made assignable from one person to another.

Tally trade. A system of dealing by which dealers furnish certain articles on credit, upon an agreement for the payment of the stipulated price by certain weekly or monthly installments.

Tallia /tæl(i)yæ/. L. Lat. A tax or tribute; tallage; a share taken or *cut out* of any one's income or means.

Talmud /talmúwd/tælməd/. A work which embodies the civil and canonical law of the Jewish people.

Taltarum's Case /toltéræmz kéys/. A case reported in Yearb. 12 Edw. IV, 19-21, which is regarded as having established the foundation of common recoveries.

Talweg /tælvèyk/. Germ. (Tal meaning valley, Weg meaning way.) Commonly used by writers on international law in definition of water boundaries between states, meaning the middle or deepest or most navigable channel, and while often styled "fairway" or "midway" or "main channel" the word has been taken over into various languages and the doctrine of Talweg is often applicable in respect of water boundaries to sounds, bays, straits, gulfs, estuaries and other arms of the sea

and also applies to boundary lakes and landlocked seas whenever there is a deep water sailing channel therein. *State of Louisiana v. State of Mississippi*, 202 U.S. 1, 26 S.Ct. 408, 421, 50 L.Ed. 913.

Tame. Domesticated; accustomed to man; reclaimed from a natural state of wildness. In the Latin phrase, tame animals are described as *domitæ naturæ*.

Tamen /témən/. Lat. Notwithstanding; nevertheless; yet.

Tamper. To meddle so as to alter a thing, especially to make illegal, corrupting or perverting changes; as, to tamper with a document or a text; to interfere improperly; to meddle; to busy oneself rashly; to try trifling or foolish experiments. *United States v. Tomicich*, D.C.Pa., 41 F.Supp. 33, 35. To illegally change as to tamper with the mileage reading on an odometer of a motor vehicle, or a motor vehicle identification number (18 U.S.C.A. §§ 511, 512), or consumer products (18 U.S.C.A. § 1365), or a witness or victim (18 U.S.C.A. § 1512 et seq.).

Tampering with jury. Embracery. The act of attempting to influence a juror corruptly by promises, threats, persuasions, entreaties, money or any other means except the production of evidence in open court. Such act is a criminal offense. See *e.g.* 18 U.S.C.A. §§ 1503, 1504.

Tampering with records. See Falsifying a record.

Tam quam /tém kwém/. A phrase used as the name of a writ of error from inferior courts, when the error is supposed to be as well in giving the judgment as in awarding execution upon it. (*Tam in redditione iudicii, quam in adjudicatione executionis.*)

Venire tam quam /vənáyriy tém kwém/. One by which a jury was summoned, *as well* to try an issue *as* to inquire of the damages on a default.

Tangible. Having or possessing physical form. Capable of being touched and seen; perceptible to the touch; tactile; palpable; capable of being possessed or realized; readily apprehensible by the mind; real; substantial.

Tangible assets. Assets with physical existence (*e.g.*, cash, real estate, equipment) and which are not held for resale. Although accounts receivable do not appear to have a physical existence, they are considered to be tangible assets on the balance sheet.

Tangible cost. A term used in connection with the costs associated with oil and gas drilling. Tangible costs include the materials and land in contrast to such costs as drilling or testing costs which are considered intangible costs.

Tangible evidence. Evidence which consists of something which can be seen or touched, *e.g.* gun in homicide trial. In contrast to testimonial evidence, tangible evidence is real evidence. See Evidence.

Tangible property. Property that has physical form and substance and is not intangible. That which may be felt or touched, and is necessarily corporeal, although it may be either real or personal (*e.g.* ring or watch).

H.D. & J.K. Crosswell, Inc. v. Jones, D.C.S.C., 52 F.2d 880, 883. Compare Intangible property.

Tanistry /tánəstriy/θón/. In old Irish law, a species of tenure, founded on ancient usage, which allotted the inheritance of lands, castles, etc., to the "oldest and worthiest man of the deceased's name and blood." It was abolished in the reign of James I.

Tanteo /tantéyow/. Span. In Spanish law, pre-emption.

Tanto, right of /ráyt əv tántow/. In Mexican law, the right enjoyed by an usufructuary of property, of buying the property at the same price at which the owner offers it to any other person, or is willing to take from another.

Tantum bona valent, quantum vendi possunt /tántəm bównə vélənt, kwóntəm vénday pósənt/. Goods are worth so much as they can be sold for.

Tantum habent de lege, quantum habent de justitia /tántəm héybənt diy líjjiy, kwóntəm héybənt diy jəstish(iy)ə/. (Precedents) have value in the law to the extent that they represent justice.

Tapping. The interception of a telephonic or telegraphic message by connecting a device to the lines, permitting a person to hear the message. It is regulated by federal and state statutes and normally requires prior judicial approval. See 18 U.S.C.A. § 2510 et seq. See also Eavesdropping; Pen register; Surveillance; Wiretapping.

Tarde venit /tárdiy vínət/. Lat. The name of a return made by the sheriff to a writ, when it came into his hands too late to be executed before the return-day.

Tare /tér/. A deficiency in the weight or quantity of merchandise by reason of the weight of the box, cask, bag, or other receptacle which contains it and is weighed with it. Also an allowance or abatement of a certain weight or quantity which the seller makes to the buyer, on account of the weight of such box, cask, etc. See Tret.

Target company. Company attempted to be taken over in tender offer, leveraged buyout, or other type of takeover or acquisition attempt. See Takeover bid; Tender offer.

Target offense. In crime of conspiracy, the crime contemplated by the illegal agreement.

Target witness. A person whose testimony the investigating body is principally seeking as in the case of a grand jury which has, as its objective, the information which such a person may give. A witness called before a grand jury against whom the government is seeking an indictment. *United States v. Washington*, 431 U.S. 181, 97 S.Ct. 1814, 52 L.Ed.2d 238.

Tariff /tárəf/. The list or schedule of articles on which a duty is imposed upon their importation into the United States, with the rates at which they are severally taxed. Also the custom or duty payable on such articles. 19 U.S.C.A. And, derivatively, the system of imposing duties or taxes on the importation of foreign merchandise.

A series of schedules or rates of duties or taxes on imported goods. Tariffs are for revenue if their primary

objects are fiscal; protective if designed to relieve domestic businesses from effective foreign competition; discriminatory if they apply unequally to products of different countries; and retaliatory if they are designed to compel a country to remove artificial trade barriers against the entry of another nation's products.

A public document setting forth services of common carrier being offered, rates and charges with respect to services and governing rules, regulations and practices relating to those services. *International Tel. & Tel. Corp. v. United Tel. Co. of Florida*, D.C.Fla., 433 F.Supp. 352, 357.

See also Customs duties; GATT; Most favored nation clause.

Antidumping tariff. A tariff calculated to prevent the dumping or unloading of imported goods below cost by fixing the tariff at the difference between the price at which the goods commonly sell in the country of origin and the price at which it is to be sold in the importing country. *See also* Dumping Act.

Autonomous tariff. Tariff set by legislation and not by commercial treaties.

Joint tariff. Schedule of rates established by two or more carriers covering shipments between places requiring the use of facilities owned by such carriers.

Preferential tariff. Tariff aimed at favoring the products of one country over those of another. *See also* Most favored nation clause; Preferential tariff.

Protective tariff. Tariff designed to protect or encourage domestic goods by imposing a high rate on imported goods of a similar nature. *See also* Protective tariff.

Revenue tariff. Tariff designed primarily to raise revenues and to support the customs service instead of encouraging production of imported goods.

Tath /táθ/téyθ/. In the counties of Norfolk and Suffolk, the lords of manors anciently claimed the privilege of having their tenants' flocks or sheep brought at night upon their own demesne lands, there to be folded for the improvement of the ground, which liberty was called by the name of the "tath."

Tauri liberi libertas /tóhray libaray ləbártəs/'libértəs/. Lat. A common bull; because he was free to all the tenants within such a manor, liberty, etc.

Tautology /totóljij/. Describing the same thing twice in one sentence in equivalent terms; a fault in rhetoric. It differs from repetition or iteration, which is repeating the same sentence in the same or equivalent terms; the latter is *sometimes* either excusable or necessary in an argument or address; the former (tautology) never.

Taverner. In old English law, a seller of wine; one who kept a house or shop for the sale of wine.

Tavern keeper. One who owns and operates a tavern or an inn.

Tax. A charge by the government on the income of an individual, corporation, or trust, as well as the value of

an estate or gift. The objective in assessing the tax is to generate revenue to be used for the needs of the public.

A pecuniary burden laid upon individuals or property to support the government, and is a payment exacted by legislative authority. In *re Mytinger*, D.C.Tex., 31 F.Supp. 977, 978, 979. Essential characteristics of a tax are that it is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority. *Michigan Employment Sec. Commission v. Patt*, 4 Mich.App. 228, 144 N.W.2d 663, 665. Annual compensation paid to government for annual protection and for current support of government. *Alabama Power Co. v. Federal Power Commission*, C.C.A.5, 134 F.2d 602, 608. A ratable portion of the produce of the property and labor of the individual citizens, taken by the nation, in the exercise of its sovereign rights, for the support of government, for the administration of the laws, and as the means for continuing in operation the various legitimate functions of the state. An enforced contribution of money or other property, assessed in accordance with some reasonable rule or apportionment by authority of a sovereign state on persons or property within its jurisdiction for the purpose of defraying the public expenses.

In a general sense, any contribution imposed by government upon individuals, for the use and service of the state, whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name. And in its essential characteristics is not a debt. *City of Newark v. Jos. Hollander, Inc.*, 136 N.J.Eq. 539, 42 A.2d 872, 875.

See also Accumulated earnings tax; Estate tax; Estimated tax; Excess profits tax; Excise tax; Gift tax; Holding company tax; Income tax; Inheritance tax; Intangibles tax; Investment tax credit; Levy; License fee or tax; Occupation tax; Payroll tax; Poll-tax; Progressive tax; Property tax; Regressive tax; Sales tax; Service occupation tax; Surtax; Taxation; Toll; Transfer tax; Undistributed profits tax; Use tax; Withholding.

Synonyms

In a broad sense, *taxes* undoubtedly include *assessments*, and the right to impose assessments has its foundation in the taxing power of the government; and yet, in practice and as generally understood, there is a broad distinction between the two terms. "Taxes," as the term is generally used, are public burdens imposed generally upon the inhabitants of the whole state, or upon some civil division thereof, for governmental purposes, without reference to peculiar benefits to particular individuals or property. "Assessments" have reference to impositions for improvements which are specially beneficial to particular individuals or property, and which are imposed in proportion to the particular benefits supposed to be conferred. They are justified only because the improvements confer special benefits, and are just only when they are divided in proportion to such benefits. As distinguished from other kinds of taxation, "assessments" are those special and local im-

positions upon property in the immediate vicinity of municipal improvements which are necessary to pay for the improvement, and are laid with reference to the special benefit which the property is supposed to have derived therefrom.

Taxes differ from *subsidies*, in being certain and orderly, and from forced contributions, etc., in that they are levied by authority of law, and by some rule of proportion which is intended to insure uniformity of contribution, and a just apportionment of the burdens of government.

Generally

Ad valorem tax. See that title.

Amusement tax. See that title.

Bracket creep. The process by which inflation pushes income earners into higher marginal tax brackets. The significance of the bracket creep changed with the Tax Reform Act of 1986 which substantially reduced the number of brackets.

Capital gains tax. Provision in tax laws by which sale or exchange of capital assets are taxed at a lower rate than ordinary income. Since the Tax Reform Act of 1986, capital gains are taxed at the same rate as ordinary income. See also *Capital*.

Capital stock tax. Tax assessed as a percentage of par or assigned value of capital stock of a corporation.

Capitation tax. See that title.

Collateral inheritance tax. See that title.

Consumption tax. Tax imposed on sales of consumption goods and services.

Customs tax. See Customs duties.

Estate tax. A tax imposed upon the right to transfer property at death, while an inheritance tax is a tax upon the right to receive. See also *Estate tax*; *Inheritance tax*.

Excess profits tax. Tax imposed on all income beyond the normal amount calculated on either a normal return on invested capital or on the average of income of previous years. Such tax is commonly imposed in war time. See *Excess profits tax*; also, *Undistributed profits tax, below*.

Excise tax. See that title.

Flat tax. Tax imposed at same rate to all levels of income.

Floor tax. A tax on all the distilled spirits "on the floor" of a warehouse, *i.e.*, in the warehouse.

Franchise tax. See *Franchise*.

Gift tax. A tax imposed on the transfer of assets without adequate consideration. The federal gift tax is levied on the donor; however, some states impose a gift tax on the donee. See also *Gift tax*.

Graduated tax. A tax so structured that the rate increases as the amount of the income or value of the property increases.

Gross receipts tax. A tax based on total sales rather than on net profits.

Head tax. A flat tax imposed on a per person basis.

Income tax. See that title.

Inheritance tax. See that title and *Estate tax*.

Land tax. See that title and *Ad valorem tax*; *Property tax*.

License tax. See *License fee or tax*.

Local taxes. Taxes imposed by municipalities such as local property taxes or city income or sales taxes.

Occupation tax. See that title.

Payroll tax. A type of tax which is collected by deduction from an employee's wages. Federal, state and half of the social security tax is paid by employees, with the social security tax matched by the employer.

Personal property tax. A tax assessed against personal property by cities and towns. The tax is commonly referred to as an excise tax and is levied against such items as automobiles, boats, etc.

Real estate tax. Tax levied by local taxing authority against the ownership of real estate for purposes of financing the operations of the local government. See also *Ad valorem tax*; *Property tax*.

Poll-tax. See that title.

Progressive tax. See that title. Compare *Regressive tax, below*.

Property tax. Generic term describing a tax levied on the basis of the value of either personal or real property owned by the taxpayer. See also *Ad valorem tax*; *Property tax*; and *Real estate tax, below*.

Proportional taxes. Taxes are "proportional" when the proportion paid by each taxpayer bears the same ratio to the amount to be raised that the value of his property bears to the total taxable value, and in the case of a special tax when that is apportioned according to the benefits received.

Regressive tax. A tax system in which higher-income groups pay a smaller percentage of their income to taxes than do lower-income groups; that is, the marginal rate is below the average rate. The average rate falls as income increases. Compare *Progressive tax*.

Sales tax. Tax levied in most states on the sale of goods and based on their value. It may be a direct tax which is paid by the purchaser or a turnover tax paid by the seller on the gross sales of his business. See also *Sales tax*.

Severance tax. Tax levied on the mining or extraction of some natural resource such as oil or coal. It may be assessed on the value of the product extracted or on the volume.

Sinking fund tax. See *Fund*.

Specific tax. A tax imposed as a fixed sum on each article or item or property of a given class or kind, without regard to its value (*e.g.* sales tax); opposed to *ad valorem tax*.

Stamp tax. Tax collected through the sale of stamps which must be affixed to certain documents such as deeds, stock certificates, etc. *See* Revenue stamps.

Stock transfer tax. Tax levied by the federal government and by certain states on the transfer or sale of shares of stock.

Succession tax. *See* Succession duty or tax.

Surtax. An additional tax imposed on incomes exceeding a specified amount. *See also* Surtax.

Tax abatement. *See* Abatement.

Tax assessment. *See* Assessment; Tax assessment.

Tax certificate. A certificate of the purchase of land at a tax sale thereof, given by the officer making the sale, and which is evidence of the holder's right to receive a deed of the land if it is not redeemed within the time limited by law.

Tax-deed. The deed given upon a sale of real property made for non-payment of taxes. The deed whereby the officer of the law undertakes to convey the title of the property to the purchaser at the tax-sale. *See also* Tax certificate; Tax deed; and *Tax-title, below.*

Tax deficiency. *See* Deficiency assessment.

Taxing district. The district throughout which a particular tax or assessment is ratably apportioned and levied upon the inhabitants; it may comprise the whole state, one county, a city, a ward, or part of a street.

Tax lease. The instrument (or estate) given to the purchaser of land at a tax sale, where the law does not permit the sale of the estate in fee for non-payment of taxes, but instead thereof directs the sale of an estate for years.

Tax levy. The total sum to be raised by a tax. Also the bill, enactment, or measure of legislation by which an annual or general tax is imposed. *See also* Assessment; Levy.

Tax lien. A statutory lien, existing in favor of the state or municipality, upon the lands of a person charged with taxes, binding the same either for the taxes assessed upon the specific tract of land or (in some jurisdictions) for all the taxes due from the individual, and which may be foreclosed for non-payment, by judgment of a court or sale of the land. *See also* Tax lien.

Taxpayer. A person whose income is subject to taxation; one from whom government demands a pecuniary contribution towards its support.

Taxpayers' lists. Written exhibits required to be made out by the taxpayers resident in a district, enumerating all the property owned by them and subject to taxation, to be handed to the assessors, at a specified date or at regular periods, as a basis for assessment and valuation. *See also* Roll (*Tax roll*).

Tax roll. *See* Roll.

Tax sale. *See* Sale.

Tax-title. The title by which one holds land which he purchased at a tax sale. That species of title which is inaugurated by a successful bid for land at a collector's sale of the same for nonpayment of taxes, completed by the failure of those entitled to redeem within the specified time, and evidenced by the deed executed to the tax purchaser, or his assignee, by the proper officer.

Tonnage tax. *See* Tonnage-duty.

Transfer tax. *See* Stock transfer tax, *above.*

Undistributed profits tax. A tax imposed on the accumulated surplus of specific types of corporations when such surplus reaches a certain level. The objective of such a tax is to discourage the formation of a corporation for the purpose of preventing the imposition of an income tax on the shareholder through accumulated earnings instead of making distributions thru dividends. I.R.C. § 531. *See* Accumulated earnings tax.

Unemployment tax. Tax required by the Federal Unemployment Tax Act (FUTA) to cover the cost of unemployment insurance. The federal statute provides for a tax based on a percentage of employee earnings but allows a credit for amounts paid in state unemployment taxes.

Unitary tax. A method of determining the locally taxable income of businesses that transact business with affiliated companies outside the state. *Alcan Aluminum Ltd. v. Franchise Tax Bd. of State of Calif.*, 860 F.2d 688, 690. *See also* Unitary business; Unitary theory.

Use tax. Tax generally imposed by a state on the use of certain goods which are not subject to a sales tax. It is commonly designed to discourage people from going out of state and purchasing goods which are not subject to sales tax at the point of purchase. *See also* Use tax.

Value-added tax (VAT). A tax assessed on goods and services on the value added by each producing unit. The value added is generally the sum of all wages, interest, rent, and profits. Otherwise stated, it is the total sale price of output minus the cost of raw materials and intermediate goods purchased from other firms. The amount of the tax is a percentage of the value of the goods or services. Such a tax exists in many European countries, but not as yet in the U.S.

Withholding tax. A tax which is collected by deducting it from the wages of an employee, *e.g.* federal income taxes. *See also* Payroll tax.

Taxa /táksə/. L. Lat. A tax. In old records, an allotted piece of work; a task.

Taxable. Subject to taxation; liable to be assessed, along with others, for a share in a tax. Something of value, subject to assessment, and to be levied upon and sold for taxes. *Williams v. School Dist. No. 32 in County of Fremont*, 56 Wyo. 1, 102 P.2d 48, 52.

As applied to costs in an action, the term means proper to be taxed or charged up; legally chargeable or assessable. *See also* Taxation (*Taxation of costs*).

Taxable estate. As defined in I.R.C. § 2051, the taxable estate is the gross estate of a decedent reduced by the deductions allowed by §§ 2053-2057 (*e.g.*, administration

expenses, marital, charitable and ESOP deductions). The taxable estate is the amount that is subject to the unified transfer tax at death. *See also* Adjusted gross estate; Gross estate.

Taxable gift. As defined in I.R.C. § 2503, a taxable gift is the gift that is subject to the unified transfer tax. Thus, a taxable gift has been adjusted by the annual exclusion and other appropriate deductions (*e.g.*, marital and charitable deductions).

Taxable income. Under the federal tax law, taxable income is gross income reduced by adjustments and allowable deductions. It is the income against which tax rates are applied to compute an individual or entity's tax liability. Essence of "taxable income" is the accrual of some gain, profit or benefit to taxpayer. In re Goodyear Tire & Rubber Co., Corporate Income Tax 1966, 1967, 1968, 133 Vt. 132, 335 A.2d 310, 313. *See* Gross income; Net income.

Taxable year. The taxable period for computing the Federal or state income tax liability; generally it is either the calendar year or a fiscal year of 12 months ending on the last day of a month other than December. I.R.C. § 441(b). *See also* Accounting period; Fiscal year.

Tax accounting. The accounting (timing) rules and methods used in determining a taxpayer's tax liability.

Tax anticipation bill (TAB). Short term obligations issued by the federal government, the objective of which is to meet the cash flow needs of the government. TABs generally mature one week after corporate estimated taxes are due and are popular because they are accepted by the government at par value on the tax due date without forfeiting any interest income.

Tax anticipation note (TAN). Short-term obligations issued by state or local governments to finance current expenditures. TANs generally mature once individual and corporate taxes are received by the local government.

Tax anticipation warrants. A method of raising public money by the issuance of warrants payable out of tax receipts when collected.

Taxare /tækséiy/. Lat. To rate or value. To tax; to lay a tax or tribute.

In old English practice, to assess; to rate or estimate; to moderate or regulate an assessment or rate.

Tax assessment. The value given to the property which is being taxed. Multiplying the assessed valuation by the tax rate yields the tax paid. *See also* Assessment.

Tax assessor. The official responsible for tax valuation of property. *See also* Assessor.

Taxati /tækséiy/. In old European law, soldiers of a garrison or fleet, assigned to a certain station.

Taxatio /tækséiysh(iy)ow/. Lat. In Roman law, taxation or assessment of damages; the assessment, by the judge, of the amount of damages to be awarded to a plaintiff, and particularly in the way of reducing the amount claimed or sworn to by the latter.

Taxatio ecclesiastica /tækséiysh(iy)ow ækliyziyæstækə/. The value of ecclesiastical benefices made through every diocese in England, on occasion of Pope Innocent IV granting to King Henry III the tenth of all spirituals for three years. This taxation was first made by Walter, bishop of Norwich, delegated by the pope to this office in 38 Hen. III, and hence called "*Taxatio Norwicencis*." It is also called "Pope Innocent's Valor."

Taxatio expensarum /tækséiysh(iy)ow èkspensérəm/. In old English practice, taxation of costs.

Taxation. The process of taxing or imposing a tax. *See* Assessment; Equalization; Tax; Withholding.

Double taxation. *See* Double taxation.

Progressive taxation. A taxing system in which the higher one's income, the higher the tax bracket one is put in.

Proportional taxation. A system of taxation in which the rate of taxation is uniform no matter what the size of income. *Compare* Regressive taxation, below.

Regressive taxation. A system in which, unlike progressive taxation, as more and more income is earned, the tax rate falls.

Taxation of costs. The process of ascertaining and charging up the amount of costs and fees in an action to which a party is legally entitled, or which are legally chargeable. *See e.g.* Fed.R.Civil P. 54(d); 28 U.S.C.A. § 1920. *See also* Costs.

Taxatio norwicensis /tækséiysh(iy)ow nòrwèchénsəs /°nòhrèchénsəs/. A valuation of ecclesiastical benefices made through every diocese in England, by Walter, bishop of Norwich, delegated by the pope to this office in 38 Hen. III.

Tax audit. *See* Audit.

Tax avoidance. The minimization of one's tax liability by taking advantage of legally available tax planning opportunities. Tax avoidance may be contrasted with tax evasion which entails the reduction of tax liability by using illegal means. *Compare* Tax evasion.

Tax base. The total assessed value of all the property in a given area which determines the rate at which an individual property is assessed.

Tax basis. *See* Basis.

Tax benefit rule. A rule which limits the recognition of income from the recovery of an expense or loss properly deducted in a prior tax year to the amount of the deduction that generated a tax savings. Under the "tax benefit rule" if an amount deducted from gross income in a prior taxable year is recovered in a later year, the recovery is income in the later year. *Tennessee Carolina Transp., Inc. v. C.I.R.*, C.A.6, 582 F.2d 378, 379.

Tax bracket. A specified interval of income to which a specific tax rate is applied.

Marginal tax rate. The point where the highest level of income falls.

Tax certificate. Instrument issued to the buyer of property at a tax sale which entitles the holder to the property thus purchased if it is not redeemed within the period provided by law. *See also* Tax deed.

Tax court. The United States Tax Court is a court of record under Article I of the Constitution of the United States (*see* I.R.C. § 7441). The Tax Court tries and adjudicates controversies involving the existence of deficiencies or overpayments in income, estate, and gift taxes in cases where deficiencies have been determined by the Commissioner of Internal Revenue.

At the option of the individual taxpayer, simplified procedures may be utilized for the trials of small tax cases, provided that in a case conducted under these procedures the decision of the court would be final and not subject to review by any court. All decisions other than small tax cases are subject to review by the United States Courts of Appeals and thereafter by the Supreme Court of the United States upon the granting of a writ of certiorari.

State tax courts. Such courts exist in certain states, *e.g.* Maryland, Minnesota, New Jersey, Oklahoma, Oregon. Generally, court has jurisdiction to hear appeals in all tax cases and has power to modify or change any valuation, assessment, classification, tax or final order appealed from. Certain of these tax courts (*e.g.* Minnesota) have small claims sessions at which citizens can argue their own cases without attorneys.

Tax credit. An amount subtracted from an individual's or entity's tax liability to arrive at the total tax liability. A tax credit reduces the taxpayer's liability dollar for dollar, compared to a deduction which reduces taxable income—upon which the tax liability is calculated. A credit differs from a deduction to the extent that the former is subtracted from the tax while the latter is subtracted from income before the tax is computed.

Foreign tax credit. If a U.S. citizen or resident incurs or pays income taxes to a foreign country on income subject to U.S. tax, the taxpayer may be able to claim some of these taxes as a deduction or as a credit against the U.S. income.

Investment tax credit. A reduction in federal taxes for purchasing certain property—primarily equipment. The objective in providing the credit was to encourage companies to make acquisitions resulting in a stronger economy. The Tax Reform Act of 1986 repealed the investment tax credit for property acquired after January 1, 1986 with some exceptions for transition property.

Tax deduction. A subtraction from gross income in arriving at taxable income. A deduction differs from a tax credit in that a deduction reduces taxable income and a credit reduces tax liability. *See also* Deduction.

Tax deed. A proof of ownership of land given to the purchaser by the government after the land has been taken from another person by the government and sold for failure to pay taxes. *See also* Tax certificate.

Tax deficiency notice. *See* Ninety (90) day letter.

Taxers. Two officers yearly chosen in Cambridge, England, to see the true gauge of all the weights and measures.

Tax evasion. Illegally paying less in taxes than the law permits; committing fraud in filing or paying taxes. An example includes reporting less income than actually received or deducting fictitious expenses. Such act is a crime and may result in an underpayment penalty. *See* I.R.C. § 7201. *Compare* Tax avoidance. *See also* Fraud (*Tax fraud*).

Tax exempt. Term pertains to property used for educational, religious, or charitable purposes which is ordinarily exempted by law from assessment for taxes; or to certain bonds issued by the federal government or a State or one of its subdivisions. Interest on State and local government bonds is exempt from federal income taxation, and interest on bonds of the United States or its instrumentalities is correspondingly exempt from State income taxation. *See also* Charitable organizations; Tax exempt securities.

Tax exemption. Immunity from the obligation of paying taxes in whole or in part.

Tax exempt securities. Investments that yield income that is tax exempt. Generally, tax exempts are municipal bonds with interest that is not taxed by the federal government. *See also* Tax exempt.

Tax ferrets. Persons engaged in the business of searching for property omitted from taxation. Their activities when permitted are usually regarded as private rather than as part of a state agency. *Pickett v. United States*, C.C.A.Mo., 100 F.2d 909, 913.

Tax foreclosure. Seizure and sale by public authority of property for non-payment of taxes.

Tax fraud. *See* Fraud.

Tax-free exchange. Transfers of property specifically exempted from income tax consequences by the tax law. Examples are a transfer of property to a controlled corporation under I.R.C. § 351(a) and a like-kind exchange under § 1031(a).

Tax haven. A country that imposes little or no tax on the profits from the transactions carried on from that country.

Tax home. Since travel expenses of an employee are deductible only if the taxpayer is away from home, the deductibility of such expenses rests upon the definition of "tax home". The IRS position is that "tax home" is the business location, post or station of the taxpayer.

Tax incentive. Government taxing policy intended to encourage a particular activity (*e.g.* mortgage financing of real estate sales).

Tax increment financing. Technique used by municipalities to finance commercial developments. Typically, the municipality issues bonds to finance land acquisition and other up-front costs and then uses the additional property taxes generated from the new development to service the debt.

Taxing master. See Master.

Taxing power. The governmental power to levy and collect taxes. U.S. Const., Art. I, § 8, cl. 1. See also Sixteenth Amendment.

Tax injunction act. A statute that mandates that federal district courts not interfere with the assessment or collection of any state tax where a plain, speedy and efficient remedy is available in the state courts. 28 U.S.C.A. § 1341.

Tax liability. The amount which a taxpayer owes under the tax law after properly computing gross income and deductions, using the appropriate tax rate and subtracting any applicable tax credits.

Tax loophole. A legal method of reducing tax liabilities, properly called tax avoidance. Tax avoidance should not be confused with tax evasion, which is illegal and punishable by penalties, fines, and imprisonment. See Tax avoidance.

Tax laws. See Internal Revenue Code; Letter ruling.

Tax levy. The order for payment of taxes. Also, the determination of the total receipts to be collected by the tax. See Assessment; Levy.

Tax lien. A lien on real estate in favor of a state or local government which may be foreclosed for nonpayment of taxes. The majority of the states have adopted the Uniform Federal Tax Lien Registration Act. See also Tax (*Tax lien*).

Federal tax lien. A lien placed on property and all rights to property by the federal government for unpaid federal taxes. See I.R.C. § 6321.

Tax loss carryback, carryforward. A provision in the Internal Revenue Code which allows an individual or corporation to apply current year losses against prior or subsequent year income to reduce their tax liability.

Tax-option corporation. See Corporation (*S Corporation*).

Taxpayer. One who is subject to a tax on income, regardless of whether he or she pays the tax. I.R.C. § 7701(a)(14).

Taxpayer bill of rights. Provisions of the Technical and Miscellaneous Revenue Act of 1988 granting taxpayers specific legal rights when dealing with the IRS, including the right to: receive an explanation of the examination and collection processes; have representation; make audio recordings of interviews with IRS personnel; rely on the IRS's written advice; file an application for relief with the IRS Ombudsman; and receive written notice of levy 30 days prior to enforcement. Pub.L. 100-647, § 6226 et seq.

Tax preference items. Certain items which must be considered in calculating a taxpayer's alternative minimum tax. Such items are deducted in arriving at taxable income for regular tax purposes, and added back in arriving at taxable income for alternative minimum tax purposes. I.R.C. § 55-58. See Alternative minimum tax.

Tax rate. Amount of tax imposed on personal or corporate income, capital gains, gifts, estates, sales, etc. See also Tax rate schedules.

Marginal tax rate. The tax rate on the last dollar of taxable income earned by an individual or firm.

Tax rate schedules. Schedules used to determine the tax on a given level of taxable income. Separate rate schedules are provided for married individuals filing jointly, unmarried individuals who maintain a household, single taxpayers, estates and trusts, and married taxpayers filing separate returns. See also Tax tables.

Tax rebate. Amount of money remitted by taxing authority after payment of taxes. See Rebate.

Tax redemption. The act by which a taxpayer reclaims property which has been taken for nonpayment of taxes. He does so by paying the delinquent taxes in addition to interest, costs and penalties.

Tax return. The form on which an individual, corporation or other entity reports income, deductions, and exemptions and calculates their tax liability. A tax return is generally for a one year period, however, in some cases, the period may be less than a year. A federal tax return is filed with the Internal Revenue Service, and a state return is filed with the revenue department of the state. See also Return.

Amended return. A tax return filed after the original return generally due to a correction of an error.

Declaration of estimated taxes. The amount of tax expected to be paid for the year. Self-employed individuals, and those whose withheld taxes are not adequate to cover their tax liability, as well as corporations, estates, and trusts, must make estimated payments quarterly.

Information return. A tax return filed by an entity listing the income, expenses, assets, and liabilities of the entity. A tax liability is generally not calculated on an information return, instead, it is a vehicle used to report the financial results of an entity for the tax period. An example of an information return is a partnership return (Form 1065). I.R.C. § 6031 et seq.

Joint return. Tax return filed jointly by both spouses; permitted even though only one had income. See Split income.

Separate return. Tax return filed by only one spouse and covering only his or her income.

Tax roll. The official record maintained by cities and towns listing the names of taxpayers and the assessed property.

Tax sale. Sale of property for nonpayment of taxes. See also Tax certificate.

Tax shelter. A device used by a taxpayer to reduce or defer payment of taxes. Common forms or tax shelters include: limited partnership interests, real estate investments which have deductions such as depreciation, interest, taxes, etc. The Tax Reform Act of 1986 limited the benefits of tax shelters significantly by classifying losses from such shelters as passive and ruling that

passive losses can only offset passive income in arriving at taxable income (with a few exceptions). Any excess losses are suspended and may be deducted in the year the investment is sold or otherwise disposed of.

Tax "situs". A state or jurisdiction which has a substantial relationship to assets subject to taxation.

Tax straddle rule. The commodities straddle rule prevents a taxpayer from deferring income by requiring a loss on an identified straddle to be recognized when the offsetting position is closed. The straddle rules generally relate to intangibles such as rights to future events in contrast to more tangible assets such as stock. See I.R.C. §§ 165(c)(2), 1092.

Tax surcharge. Tax added to another tax. See also Surcharge; Surtax.

Tax tables. Tables established by taxing authorities from which taxes may be computed. The federal income tax system provides for separate rates for single taxpayers, married taxpayers filing a joint return, head of household, and married taxpayers filing separate returns. See also Tax rate schedules.

Tax title. Title held by one who purchases property at a tax sale. See also Tax certificate; Tax deed.

Tax warrant. Official process for collecting unpaid taxes and under which property may be seized and sold.

Tax year. The period covered by a tax return. Individuals generally file on a calendar year while corporations, trusts, and other entities may file on a fiscal year. See Accounting period; Fiscal year.

T.C. An abbreviation for the U.S. Tax Court. It is used to cite a Regular Decision of the U.S. Tax Court.

T.C. Memo. An abbreviation used to refer to a Memorandum Decision of the U.S. Tax Court.

Teach. To impart knowledge by means of lessons; to give instruction in; communicating knowledge; introducing into or impressing on the mind as truth or information, and may be done as well through written communications, personal direction, through the public press, or through any means by which information may be disseminated, or it may be done by the adoption of sentiment expressed or arguments made by others which are distributed to others for their adoption and guidance.

Teacher. One who teaches or instructs; especially one whose business or occupation is to teach others; an instructor; preceptor. *Ortega v. Otero*, 48 N.M. 588, 154 P.2d 252, 254, 255, 257.

Team or theame. In old English law, a royalty or privilege granted, by royal charter, to a lord of a manor, for the having, restraining, and judging of bondmen and villeins, with their children, goods, and chattels, etc.

Team work. Within the meaning of an exemption law, this term means work done by a team as a substantial part of a man's business; as in farming, staging, express carrying, drawing of freight, peddling, or the transportation of material used or dealt in as a business.

Tearing of will. Under statute providing that will may be revoked by tearing, any act of tearing of paper on which will is written, however slight, constitutes an act of "tearing," if done with intent to revoke the will, but no act of tearing or cutting accomplishes such purpose unless done with intent to revoke. *Fleming v. Fleming*, 367 Ill. 97, 10 N.E.2d 641, 642.

Technical. Belonging or peculiar to an art or profession. Technical terms are frequently called in the books "words of art." Immaterial, not affecting substantial rights, without substance.

Technical errors. Errors committed in course of trial which have not prejudiced the party and hence are not grounds for reversal. Fed.R.Civil P. 61; Fed.R.Crim.P. 52. See also Harmless error doctrine.

Technical mortgage. A true and formal mortgage, as distinguished from other instruments which, in some respects, have the character of equitable mortgages. See also Mortgage.

Teding-penny. In old English law, a small tax or allowance to the sheriff from each tithing of his county towards the charge of keeping courts, etc.

Teind masters /tɪnd məstərz/'ma/. Those entitled to tithes.

Teinland /tɛynlænd/θɛyn/. Sax. In old English law, land of a thane or Saxon noble; land granted by the crown to a thane or lord.

Telegram. A telegraphic dispatch; a message sent by telegraph. Message transmitted by radio, teletype, cable, any mechanical method of transmission or the like. U.C.C. § 1-201(41).

Teligraphum /tɛlɪgráfəm/. An Anglo-Saxon charter of land.

Teller. One who numbers or counts. An officer of a bank who receives or pays out money. Also one appointed to count the votes cast in a deliberative or legislative assembly or other meeting. The name was also given to certain officers formerly attached to the English exchequer.

Tellers in parliament. In the English parliament, the members of the house selected by the Speaker to count the members when a division takes place.

Tellworc /tɛlwɔrk/. That labor which a tenant was bound to do for his lord for a certain number of days.

Tementale, or tenementale /tɛ(nə)mɛntɛyli/. A tax of two shillings upon every plow-land, a decennary.

Temere /tamɪri/. Lat. In the civil law, rashly; inconsiderately. A plaintiff was said *temere litigare* who demanded a thing out of malice, or sued without just cause, and who could show no ground or cause of action.

Temperance. Habitual moderation in regard to the indulgence of the natural appetites and passions; restrained or moderate indulgence; as, temperance in eating and drinking, temperance in the indulgence of joy or mirth. Not synonymous with abstinence. *Mayfield*

v. Fidelity Casualty Co. of New York, 16 Cal.App.2d 611, 61 P.2d 83, 89.

Tempest. A violent or furious storm; a current of wind rushing with extreme violence, and usually accompanied with rain or snow.

Templars /témplərz/. A religious order of knighthood, instituted about the year 1119, and so called because the members dwelt in a part of the temple of Jerusalem, and not far from the sepulcher of our Lord. They entertained Christian strangers and pilgrims charitably, and their profession was at first to defend travelers from highwaymen and robbers. The order was suppressed A.D. 1307, and their substance given partly to the knights of St. John of Jerusalem, and partly to other religious orders.

Temple. Two English inns of court, thus called because anciently the dwelling place of the Knights Templar. On the suppression of the order, they were purchased by some professors of the common law, and converted into *hospitia* or inns of court. They are called the "Inner" and "Middle Temple," in relation to Essex House, which was also a part of the house of the Templars, and called the "Outer Temple," because situated without Temple Bar.

Temporalis /tèmpərəyləs/. Lat. In the civil law, temporary; limited to a certain time.

Temporalis actio /tèmpərəyləs æksh(iy)ow/. An action which could only be brought within a certain period.

Temporalis exceptio /tèmpərəyləs æksépsh(iy)ow/. A temporary exception which barred an action for a time only.

Temporalities /tèmpərələtīy/. In English law, the lay fees of bishops, with which their churches are endowed or permitted to be endowed by the liberality of the sovereign, and in virtue of which they become barons and lords of parliament. In a wider sense, the money revenues of a church, derived from pew rents, subscriptions, donations, collections, cemetery charges, and other sources.

Temporality. The laity; secular people.

Temporal lords. The peers of England; the bishops are not in strictness held to be peers, but merely lords of parliament.

Temporarily. Lasting for a time only, existing or continuing for a limited time, not of long duration, not permanent, transitory, changing, but a short time.

Temporary. That which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration. Opposite of permanent. Thus, temporary alimony is granted for the support of the wife pending the action for divorce; a temporary receiver is one appointed to take charge of property until a hearing is had and an adjudication made.

As to *temporary Disability*; *Insanity*; *Injunction*; and *Statute*, see those titles.

Temporary administration. Fiduciary appointed by court to administer the affairs of a decedent estate for a short period of time before an administrator or executor can be appointed and qualified.

Temporary alimony. Interim order of payment to spouse pending final outcome of action for divorce. See also *Alimony*.

Temporary detention. Temporary exercise of custody pending final determination on merits of criminal case.

Temporary disability. Healing period during which claimant is totally or partially unable to work due to injury, and continues as long as recovery or lasting improvement of injured person's condition can reasonably be expected. *Corral v. McCrory Corp.*, Fla., 228 So.2d 900, 903. See also *Disability*; *Temporary total disability*.

Temporary Emergency Court of Appeals. The Economic Stabilization Act Amendments of 1971 (85 Stat. 743) created a special court known as the Temporary Emergency Court of Appeals of the United States. The court has exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under the economic stabilization laws, and consists of eight district and circuit judges appointed by the Chief Justice.

Temporary injunction. See *Injunction*; *Preliminary injunction*; *Temporary restraining order*.

Temporary restraining order. An emergency remedy of brief duration which may issue only in exceptional circumstances and only until the trial court can hear arguments or evidence, as the circumstances require, on the subject matter of the controversy and otherwise determine what relief is appropriate. *Paddington Corp. v. Foremost Sales Promotions, Inc.*, 13 Ill.App.3d 170, 300 N.E.2d 484, 487. Order which is issued to maintain status quo pending a hearing on an application for an injunction. *Becker v. Becker*, 66 Wis.2d 731, 225 N.W.2d 884, 886.

A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Fed.R.Civil P. 65(b).

See also *Injunction*; *Injury (Irreparable injury)*; *Preliminary injunction*.

Temporary total disability. As used in workers' compensation law, means inability to return to substantial gainful employment requiring skills or activities comparable to those of one's previous gainful employment during healing or recovery period after injury. Total disability which is not permanent. *Allen v. Workers' Compensation Com'r and Consolidation Coal Co.*, W.Va.,

314 S.E.2d 401, 405. *See also* Disability; Total disability.

Temporis exceptio /témprəs əksépsh(iy)ow/. Lat. In the civil law, a plea of time; a plea of lapse of time, in bar of an action. Corresponding to the plea of prescription, or the statute of limitations, in our law.

Tempus /témpəs/. Lat. In the civil and old English law, time in general. A time limited; a season; *e.g.*, *tempus pessonis*, mast time in the forest.

Tempus continuum /témpəs kəntínyuwəm/. In the civil law, a continuous or absolute period of time. A term which begins to run from a certain event, even though he for whom it runs has no knowledge of the event, and in which, when it has once begun to run, all the days are reckoned as they follow one another in the calendar.

Tempus enim modus tollendi obligationes et actiones, quia tempus currit contra desides et sui juris contemptores /témpəs ɪnəm mówdəs toləndəy əbləgèy-shiýówniyz èt əkshiyówniyz, kwáyə témpəs kšírət kóntrə désədiy èt s(y)úway júros kóntem(p)tóriyuz/. For time is a means of destroying obligations and actions, because time runs against the slothful and contempters of their own rights.

Tempus semestre /témpəs sméstriy/. In old English law, the period of six months or half a year, consisting of one hundred and eighty-two days.

Tempus utile /témpəs yúwtaliy/. In the civil law, a profitable or advantageous period of time. A term which begins to run from a certain event, only when he for whom it runs has obtained a knowledge of the event, and in which, when it has once begun to run, those days are not reckoned on which one has no *experiundi potestas*; *i.e.*, on which one cannot prosecute his rights before a court. A period of time which runs beneficially: *i.e.* feast-days are not included, nor does it run against one absent in a foreign country, or on business of the republic, or detained by stress of weather. But one detained by sickness is not protected from its running; for it runs where there is power to act by an agent as well as where there is power to act personally; and the sick man might have deputed his agent.

Tenancy. A tenancy involves an interest in realty which passes to the tenant, and a possession exclusive even of that of landlord, except as lease permits landlord's entry, and saving his right to enter to demand rent or to make repairs. *Layton v. A. I. Namm & Sons*, 275 A.D. 246, 89 N.Y.S.2d 72, 74, 75. Possession or occupancy of land or premises under lease. Period of tenant's possession or occupancy. To constitute tenancy, tenant must acquire some definite control and possession of premises. *Mercantile Realty Co. v. Allen Edmonds Shoe Corporation*, 263 Ky. 597, 92 S.W.2d 837, 839.

See also Periodic tenancy; Tenant.

General tenancy. A tenancy which is not fixed and made certain in point of duration by the agreement of the parties.

Joint tenancy. An estate in fee-simple, fee-tail, for life, for years, or at will, arising by purchase or grant to two or more persons. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. The primary incident of joint tenancy is survivorship, by which the entire tenancy on the decease of any joint tenant remains to the survivors, and at length to the last survivor.

Type of ownership of real or personal property by two or more persons in which each owns an undivided interest in the whole and attached to which is the right of survivorship. Single estate in property owned by two or more persons under one instrument or act. *D'Ercole v. D'Ercole*, D.C.Mass., 407 F.Supp. 1377, 1380. An estate held by two or more persons jointly, each having an individual interest in the whole and an equal right to its enjoyment during his or her life. In *re Estelle's Estate*, 593 P.2d 663, 665, 122 Ariz. 109.

See also Cotenancy.

Periodic tenancy. *See* that term.

Several tenancy. A tenancy which is separate, and not held jointly with another person.

Tenancy at sufferance. *See* Tenant.

Tenancy at will. *See* Tenant.

Tenancy by the entirety. A tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, other takes whole to exclusion of deceased heirs. *Sams v. McDonald*, 117 Ga.App. 336, 160 S.E.2d 594, 597. It is essentially a "joint tenancy," modified by the common-law theory that husband and wife are one person, and survivorship is the predominant and distinguishing feature of each. *United States v. Jacobs, Ill. & N. Y.*, 306 U.S. 363, 59 S.Ct. 551, 555, 83 L.Ed. 763. Neither party can alienate or encumber the property without the consent of the other. It is inherited by the survivor of the two, and dissolution of marriage transforms it to tenancy in common.

Tenancy for a period. A tenancy for years or for some fixed period.

Tenancy for years. *See* Tenant.

Tenancy from month to month. *See* Tenant (*Tenant at will*).

Tenancy from period to period. A periodic tenancy which runs from month to month or from year to year (though term usually refers to period of less than one year).

Tenancy from year to year. A periodic tenancy which runs from one year to the next. *See* Periodic tenancy.

Tenancy in common. A form of ownership whereby each tenant (*i.e.*, owner) holds an undivided interest in property. Unlike a joint tenancy or a tenancy by the entirety, the interest of a tenant in common does not terminate upon his or her prior death (*i.e.*, there is no right of survivorship). Assume, for example, B and C

acquire real estate as equal tenants in common, each having furnished one-half of the purchase price. Upon B's prior death, his one-half interest in the property passes to his estate or heirs.

Interest in which there is unity of possession, but separate and distinct titles. The relationship exists where property is held by several distinct titles by unity of possession, and is not an estate but a relation between persons, the only essential being a possessory right, as to which all are entitled to equal use and possession. *De Mik v. Cargill*, Okl., 485 P.2d 229, 233.

See also *Cotenancy*; *Partition*.

Tenancy in coparcenary. Of historical value only today; formerly it was a form of concurrent ownership in which property was acquired by intestacy by the female line of heirs and arose only by descent. Today, it is governed by the rules of tenancy in common.

Tenancy in partnership. Real estate held by partnership. See *Uniform Partnership Act*, § 25.

Tenant. In the broadest sense, one who holds or possesses lands or tenements by any kind of right or title, whether in fee, for life, for years, at will, or otherwise. In a more restricted sense, one who holds lands of another; one who has the temporary use and occupation of real property owned by another person (called the "landlord"), the duration and terms of his tenancy being usually fixed by an instrument called a "lease." One who occupies another's land or premises in subordination to such other's title and with his assent, express or implied. One renting land and paying for it either in money or part of crop or equivalent.

See also *Holdover tenant*; *Lessee*; *Tenancy*.

Feudal law. One who holds of another (called "lord" or "superior") by some service; as fealty or rent.

Joint tenants. Two or more persons to whom are granted lands or tenements to hold in fee-simple, fee-tail, for life, for years, or at will. Persons who own lands by a joint title created expressly by one and the same deed or will. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. See also *Tenancy (Joint tenancy)*.

Land tenant. See that title.

Prime tenant. Commercial or professional tenant with established reputation that leases substantial, and usually most preferred, space in office building, shopping center, etc. Such type tenant is important in securing construction financing and in attracting other quality tenants.

Quasi tenant at sufferance. An under-tenant, who is in possession at the determination of an original lease, and is permitted by the reversioner to hold over.

Sole tenant. He that holds lands by his own right only, without any other person being joined with him.

Tenant at sufferance. Such tenancy arises when one comes into the possession of property by lawful title, but

wrongfully holds over after the termination of his interest. *Warehouse Distributors, Inc. v. Prudential Storage & Van Corp.*, 208 Va. 784, 161 S.E.2d 86, 89. He has no estate nor title but only naked possession without right and wrongfully, and stands in no privity to landlord and is not entitled to notice to quit, and is a bare licensee to whom landlord owes merely duty not wantonly nor willfully to injure him. *Welch v. Rice*, 61 Wyo. 511, 159 P.2d 502, 506, 509.

Tenant at will. One who holds possession of premises by permission of owner or landlord, but without fixed term. Characteristics of a "tenancy at will," whether created by express contract or by implication of law, are uncertain duration and right of either party to terminate on proper notice. *Myers v. East Ohio Gas Co.*, 51 Ohio St.2d 121, 5 O.O.3d 103, 364 N.E.2d 1369, 1372.

Tenant a volente. L. Fr. A tenant at will.

Tenant by copy of court roll (shortly, "tenant by copy") is the old-fashioned name for a copyholder.

Tenant by the curtesy. One who, on the death of his wife seised of an estate of inheritance, after having by her issue born alive and capable of inheriting her estate, holds the lands and tenements for the term of his life.

Tenant by the manner. One who has a less estate than a fee in land which remains in the reversioner. He is so called because in avowries and other pleadings it is specially shown in what manner he is tenant of the land, in contradistinction to the *veray tenant*, who is called simply "tenant."

Tenant for life. One who holds lands or tenements for the term of his own life, or for that of any other person (in which case he is called "*pur auter vie*"), or for more lives than one.

Tenant for years. One who has the temporary use and possession of lands or tenements not his own, by virtue of a lease or demise granted to him by the owner, for a determinate period of time, as for a year or a fixed number of years.

Tenant from year to year. One who holds lands or tenements under the demise of another, where no certain term has been mentioned, but an annual rent has been reserved. One who holds over, by consent given either expressly or constructively, after the determination of a lease for years. See also *Tenancy*.

Tenant in capite. In feudal and old English law, tenant in chief; one who held immediately under the king, in right of his crown and dignity. 2 Bl.Comm. 60.

Tenant in common. Tenants who hold the same land together by several and distinct titles, but by unity of possession, because none knows his own severalty, and therefore they all occupy promiscuously. Where two or more hold the same land, with interests accruing under different titles, or accruing under the same title, but at different periods, or conferred by words of limitation importing that the grantees are to take in distinct shares. See also *Tenancy (Tenancy in common)*.

Tenant in dower. This arises where the husband of a woman is seised of an estate of inheritance and dies; in this case the wife shall have the third part of all the lands and tenements whereof he was seised at any time during the coverture, to hold to herself for life, as her dower. 2 Bl.Comm. 129.

Tenant in fee-simple (or tenant in fee). He who has lands, tenements, or hereditaments, to hold to him and his heirs forever, generally, absolutely, and simply; without mentioning *what* heirs, but referring that to his own pleasure, or to the disposition of the law.

Tenant in severalty. One who holds lands and tenements 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.

Tenant in tail. One who holds an estate in fee-tail, that is, an estate which, by the instrument creating it, is limited to some particular heirs, exclusive of others; as to the heirs of *his body* or to the heirs, *male* or *female*, of his body.

Tenant in tail ex provisione viri. Where an owner of lands, upon or previously to marrying a wife, settled lands upon himself and his wife, and the heirs of their two bodies begotten, and then died, the wife, as survivor, became tenant in tail of the husband's lands, in consequence of the husband's provision (*ex provisione viri*). Originally, she could bar the estate-tail like any other tenant in tail; but the husband's intention having been merely to provide for her during her widowhood, and not to enable her to bar his children of their inheritance, she was early restrained from so doing, by the statute 32 Hen. VII, c. 36.

Tenant of the demesne. One who is tenant of a mesne lord; as, where A. is tenant of B., and C. of A., B. is the lord, A. the mesne lord, and C. tenant of the demesne.

Tenant paravaile. The under-tenant of land; that is, the tenant of a tenant; one who held of a mesne lord.

Tenants by the verge. The "same nature as tenants by copy of court roll [*i.e.*, copyholders]. But the reason why they be called 'tenants by the verge' is for that, when they will surrender their tenements into the hands of their lord to the use of another, they shall have a little rod (by the custome) in their hand, the which they shall deliver to the steward or to the bailife, * * * and the steward or bailife, according to the custome, shall deliver to him that taketh the land the same rod, or another rod, in the name of seisin; and for this cause they are called 'tenants by the verge,' but they have no other evidence [title-deed] but by copy of court roll."

Tenant to the præcipe. Before the English fines and recoveries act, if land was conveyed to a person for life with remainder to another in tail, the tenant in tail in remainder was unable to bar the entail without the concurrence of the tenant for life, because a common recovery could only be suffered by the person seised of the land. In such a case, if the tenant for life wished to concur in barring the entail, he usually conveyed his life-estate to some other person, in order that the

præcipe in the recovery might be issued against the latter, who was therefore called the "tenant to the *præcipe*."

Tenantable repair. Such a repair as will render premises fit for present habitation. See *Habitability (Warranty of habitability)*.

Tenant-right. In England, the right of tenant on termination of tenancy to payment for unexhausted improvements made on his holding. Such is governed by the Agricultural Holdings Act of 1986.

Tenant's fixtures. This phrase signifies things which are fixed to the freehold of the demised premises, but which the tenant may detach and take away, provided he does so in season.

Tencon. L. Fr. A dispute; a quarrel.

Tend. To have a leaning; serve, contribute, or conduce in some degree or way, or have a more or less direct bearing or effect; to be directed as to any end, object, or purpose; to have a tendency, conscious or unconscious, to any end, object or purpose. *Rogers v. State*, 122 Tex.Cr.R. 331, 54 S.W.2d 1010, 1012.

In old English law, to tender or offer.

Tender. An offer of money. The act by which one produces and offers to a person holding a claim or demand against him the amount of money which he considers and admits to be due, in satisfaction of such claim or demand, without any stipulation or condition. As used in determining whether one party may place the other in breach of contract for failure to perform, means a readiness and willingness to perform in case of concurrent performance by other party, with present ability to do so, and notice to other party of such readiness. *Monroe St. Properties, Inc. v. Carpenter*, C.A.Ariz., 407 F.2d 379, 380. Essential characteristics of tender are unconditional offer to perform coupled with manifested ability to carry out the offer and production of subject matter of tender. *Collins v. Kingsberry Homes Corp.*, D.C.Ala., 243 F.Supp. 741, 744.

At a settlement under an agreement of sale the seller tenders the executed deed to the purchaser, who tenders the remainder of the purchase price to the seller.

The actual proffer of money, as distinguished from mere proposal or proposition to proffer it. Hence mere written proposal to pay money, without offer of cash, is not "tender."

Tender, though usually used in connection with an offer to pay money, is properly used in connection with offer of property or performance of duty other than payment of money.

Tender, in common law pleading, is a plea by defendant that he has been always ready to pay the debt demanded, and before the commencement of the action tendered it to the plaintiff, and now brings it into court ready to be paid to him, etc.

Legal tender is that kind of coin, money, or circulating medium which the law compels a creditor to accept in payment of his debt, when tendered by the debtor in the right amount. See also *Legal tender*.

See also Legally sufficient tender.

Tender of issue. A form of words in common law pleading, by which a party offers to refer the question raised upon it to the appropriate mode of decision. The common tender of an issue of fact by a defendant is expressed by the words, "and of this he puts himself upon the country."

Tender of delivery. Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and Article 2 of the Uniform Commercial Code. See U.C.C. § 2-503. Tender connotes such performance by the tendering party as puts the other party in default if he fails to proceed in some manner. U.C.C. § 2-503, Comment 1.

Tender offer. A public announcement by a company or individual indicating that it will pay a price above the current market price for the shares "tendered" of a company it wishes to acquire or take control of. An offer to purchase shares made by one company direct to the stockholders of another company, sometimes subject to a minimum and/or a maximum that the offeror will accept, communicated to the shareholders by means of newspaper advertisements and (if the offeror can obtain the shareholders list, which is not often unless it is a friendly tender) by a general mailing to the entire list of shareholders, with a view to acquiring control of the second company. Such purchase offer is used in an effort to go around the management of the second company, which is resisting acquisition.

Tender offers are one of several types of corporate takeover techniques, and are regulated by state and federal securities laws; e.g., Williams Act § 14(e), 15 U.S.C.A. § 78n(e). See also Leveraged buyout; Saturday night special; Takeover bid.

Tender of performance. Offer to perform which is commonly necessary to hold the defaulting party to a contract liable for breach. See also Tender.

Tender years doctrine. Under this doctrine courts generally award custody of children of tender years to mother unless she is found to be unfit. *Saunderson v. Saunderson*, Ala.Civ.App., 379 So.2d 91, 92. In many states this doctrine has been abolished by statute, e.g., N.Y.Dom.Rel.L. § 240, or by judicial decisions, e.g., *Arnold v. Arnold*, 95 Nev. 951, 604 P.2d 109.

Tenement /tənəmənt/. This term, in its common acceptance, is only applied to houses and other buildings, but in its original, proper, and legal sense it signifies everything that may be *holden*, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial, ideal, kind. Thus, *liberum tenementum*, frank tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, advowsons, franchises, peerages, etc. At common law, "tenements" included lands, other inheritances, capable of being held in freehold, and rents. *Wood v. Galpert*, Ohio Com.Pl., 199 N.E.2d 900, 901.

Dominant tenement. One for the benefit or advantage of which an easement exists or is enjoyed.

Servient tenement. One which is subject to the burden of an easement existing for or enjoyed by another tenement. See Easement.

Tenement house. Low rent apartment building, usually in poor condition, meeting only minimal, if even that, safety and sanitary conditions.

Tenemental land /tənəməntəl lænd/. Land distributed by a lord among his tenants, as opposed to the demesnes which were occupied by himself and his servants.

Tenementis legatis /tənəməntəm lægétəs/. An ancient writ, lying to the city of London, or any other corporation (where the old custom was that men might devise by will lands and tenements, as well as goods and chattels), for the hearing and determining any controversy touching the same.

Tenendum /tənéndəm/. Lat. To be holden. It was used to indicate the lord of whom the land was to be held and the tenure by which it was to be held, but, since all freehold tenures have been converted into socage, the *tenendum* is of no further use, and is therefore joined in the *habendum*,—"to have and to hold."

Tenens /ténənz/. A tenant; the defendant in a real action.

Tenentibus in assisâ non onerandis /tənéntəbəs ìn əsáyə nòn ònərəndəs/. A writ that formerly lay for him to whom a disseisor had alienated the land whereof he disseised another, that he should not be molested in assize for damages, if the disseisor had wherewith to satisfy them.

Tenere /təníríy/. Lat. In the civil law, to hold; to hold fast; to have in possession; to retain.

In relation to the doctrine of possession, this term expresses merely the fact of manual detention, or the corporal possession of any object, without involving the question of title; while *habere* (and especially *possidere*) denotes the maintenance of possession by a lawful claim; i.e., *civil* possession, as distinguished from mere *natural* possession.

Teneri /təníráy/. The Latin name for that clause in a bond in which the obligor expresses that he is "held and firmly bound" to the obligee, his heirs, etc.

Tenet; tenuit /ténət/tényuwət/. Lat. He holds; he held. In the Latin forms of the writ of waste against a tenant, these words introduced the allegation of tenure. If the tenancy still existed, and recovery of the land was sought, the former word was used (and the writ was said to be "in the *tenet*"). If the tenancy had already determined, the latter term was used (the writ being described as "in the *tenuit*"), and then damages only were sought.

Tenheded, or tienheofed /ténhèd(əd)/. In old English law, a dean.

10-K. The name of the annual financial report required by the SEC of nearly all publicly-held corporations.

This report contains more information than the annual report to stockholders. Corporations must send a copy of the 10-K to those stockholders who request it. See also 10-Q.

Tenmentale /ténmèntèyl/. The number of ten men, which number, in the time of the Saxons, was called a "decennary;" and ten decennaries made what was called a "hundred." Also a duty or tribute paid to the crown, consisting of two shillings for each plowland.

Tenne /ténij/. A term of heraldry, meaning orange color. In engravings it should be represented by lines in bend sinister crossed by others bar-ways. Heralds who blazon by the names of the heavenly bodies, call it "dragon's head," and those who employ jewels, "ja-cinth." It is one of the colors called "stainand."

Tennessee Valley Authority (TVA). A government-owned corporation that conducts a unified program of resource development for the advancement of economic growth in the Tennessee Valley region. The Authority's program of activities includes flood control, navigation development, electric power production, fertilizer development, recreation improvement, and forestry and wild-life development. While its power program is financially self-supporting, other programs are financed primarily by appropriations from Congress.

Tenor. A term used in pleading to denote that an exact copy is set out. "Tenor," in pleading a written instrument, imports that the very words are set out. "Purport" does not import this, but is equivalent only to "substance."

By the tenor of a deed, or other instrument in writing, is signified the matter contained therein, according to the true intent and meaning thereof.

In chancery pleading. A certified copy of records of other courts removed in chancery by *certiorari*.

Tenore indictamenti mittendo /tə'nóriy əndiktəméntay mətəndow/. A writ whereby the record of an indictment, and the process thereupon, was called out of another court into the queen's bench.

Tenore præsentiū /tə'nóriy prəzénsh(iy)əm/. By the tenor of these presents, *i.e.*, the matter contained therein, or rather the intent and meaning thereof.

Tenor est qui legem dat feudo /ténər èst kwày líjəm dət fyúwdow/. It is the tenor [of the feudal grant] which regulates its effect and extent.

10-Q. A quarterly report that must be filed with the Securities and Exchange Commission by any company whose securities are traded on a national or over-the-counter market. See also 10-K.

Tenseriæ /tensíriyiy/. A sort of ancient tax or military contribution.

Tentative trust. See Trust (*Totten trust*).

Tenterden's Act /téntərdənz əkt/. In English law, the statute 9 Geo. IV, c. 14, taking its name from Lord Tenterden, who procured its enactment, which is a spe-

cies of extension of the statute of frauds, and requires the reduction of contracts to writing.

Tenth Amendment. An amendment to the U.S. Constitution (1791) which provides that the powers not delegated to the federal government are reserved to the States or to the people.

Tenths /ténθs/. In English law, a temporary aid issuing out of personal property, and granted to the king by parliament; formerly the real tenth part of all the movables belonging to the subject. 1 Bl.Comm. 308.

In English ecclesiastical law, the tenth part of the annual profit of every living in the kingdom, formerly paid to the pope, but by statute 26 Hen. VIII, c. 3, transferred to the crown, and afterwards made a part of the fund called "Queen Anne's Bounty." 1 Bl.Comm. 284-286.

Tenuit /tényuwət/. A term used in stating the tenure in an action for waste done after the termination of the tenancy. See Tenet.

Tenura /tényərə/. In old English law, tenure.

Tenura est pactio contra communem feudi naturam ac rationem, in contractu interposita /tényərə èst pæksh(iy)ow kóntrə kəmyúwnəm fyúwday nətýúrəm ək rəshiyúwnəm, in kənt්රákkt(y)uw intərpózətə/. Tenure is a compact contrary to the common nature and reason of the fee, put into a contract.

Tenure /tényər/. Generally, tenure is a right, term, or mode of holding or occupying, and "tenure of an office" means the manner in which it is held, especially with regard to time. *Winterberg v. University of Nevada System*, 89 Nev. 358, 513 P.2d 1248, 1250.

Status afforded to teacher or professor upon completion of trial period, thus protecting him or her from summary dismissal without sufficient cause or economic reasons. A faculty appointment for an indefinite period of time. *University Educ. Ass'n. v. Regents of University of Minnesota*, Minn., 353 N.W.2d 534, 540. Tenure denotes relinquishment of the employer's unfettered power to terminate the employee's services. *Zumwalt v. Trustees of California State Colleges*, 31 Cal.App.3d 611, 107 Cal.Rptr. 573, 579.

Term of office. Duration of holding public or private office. The tenure of federal judges is during life and good behavior. The tenure of merit system employees is during satisfactory performance of duties until a fixed age of retirement unless the position is discontinued.

Area tenure. Term descriptive of tenure at certain grade levels and for certain specified subjects. *Baer v. Nyquist*, 40 A.D.2d 925, 338 N.Y.S.2d 257, 259.

Feudal law. The mode or system of holding lands or tenements in subordination to some superior which, in feudal ages, was the leading characteristic of real property. *Gibbs v. Titelman*, D.C.Pa., 369 F.Supp. 38, 49.

Tenure is the direct result of feudalism, which separated the *dominium directum* (the dominion of the soil), which is placed mediately or immediately in the crown, from the *dominion utile* (the possessory title), the right

to the use and profits in the soil, designated by the term "seisin," which is the highest interest a subject can acquire. *Kavanaugh v. Cohoes Power & Light Corporation*, 114 Misc. 590, 187 N.Y.S. 216, 231.

Wharton gives the following list of tenures which were ultimately developed:

Lay Tenures

I. Frank tenement, or freehold. (1) The military tenures (abolished, except grand serjeanty, and reduced to free socage tenures) were: Knight service proper, or tenure in chivalry; grand serjeanty; cornage. (2) Free socage, or plow-service; either petit serjeanty, tenure in burgage, or gavelkind.

II. Villeinage. (1) Pure villeinage (whence copyholds at the lord's [nominal] will, which is regulated according to custom). (2) Privileged villeinage, sometimes called "villein socage" (whence tenure in ancient demesne, which is an exalted species of copyhold, held according to custom, and not according to the lord's will), and is of three kinds: Tenure in ancient demesne; privileged copyholds, customary freeholds, or free copyholds; copyholds of base tenure.

Spiritual Tenures

I. Frankalmoigne, or free alms.

II. Tenure by divine service.

Tenure by divine service. Exists where an ecclesiastical corporation, sole or aggregate, holds land by a certain divine service; as, to say prayers on a certain day in every year, "or to distribute in alms to an hundred poore men an hundred pence at such a day."

Tenured faculty. Those members of a school's teaching staff who hold their position for life or until retirement. They may not be discharged except for cause.

Term. A word or phrase; an expression; particularly one which possesses a fixed and known meaning in some science, art, or profession.

A fixed and definite period of time; implying a period of time with some definite termination. *First-Citizens Bank & Trust Co. v. Conway Nat. Bank*, App., 282 S.C. 303, 317 S.E.2d 776, 778. Period of determined or prescribed duration. A specified period of time; e.g. term of lease, loan, contract, court session, public office, sentence.

In civil law, a space of time granted to a debtor for discharging his obligation.

Bounds, limitation, or extent of time for which an estate is granted; as when a man holds an estate for any limited or specific number of years, which is called his "term," and he himself is called, with reference to the term he so holds, the "termor," or "tenant of the term."

Word, phrase, or condition in a contract, instrument, or agreement which relates to a particular matter. U.C.C. § 1-201(42). *See also* Open price term.

When used with reference to a court, signifies the space of time during which the court holds a session. A *session* signifies the time during the term when the

court sits for the transaction of business, and the session commences when the court convenes for the term, and continues until final adjournment, either before or at the expiration of the term. The *term* of the court is the time prescribed by law during which it may be in *session*. The *session* of the court is the time of its actual sitting. But "term" and "session" are often used interchangeably. *See also* Session; and *Term of court, below*.

General term. A phrase used in some jurisdictions to denote the ordinary session of a court, for the trial and determination of causes, as distinguished from a *special* term, for the hearing of motions or arguments or the despatch of various kinds of formal business, or the trial of a special list or class of cases. Or it may denote a sitting of the court *in banc*.

Regular term. A term begun at the time appointed by law, and continued, in the discretion of the court, to such time as it may appoint, consistent with the law.

Special term. In court practice in certain states, that branch of the court which is held by a single judge for hearing and deciding in the first instance motions and causes of equitable nature is called the "special term," as opposed to the "general term," held by three judges (usually) to hear appeals.

Peculiar or unusual conditions imposed on a party before granting some application to the favor of the court.

Term attendant on the inheritance. *See* Attendant terms.

Term bonds. A bond issue whose component bonds all mature at the same time. Contrast with "serial bonds." *See also* Bond.

Term fee. In English practice, a certain sum which a solicitor is entitled to charge to his client, and the client to recover, if successful, from the unsuccessful party; payable for every term in which any proceedings subsequent to the summons shall take place.

Term for deliberating. The time given to the beneficiary heir, to examine if it be for his interest to accept or reject the succession which has fallen to him.

Term for years. An *estate for years* and the *time* during which such estate is to be held are each called a "term;" hence the term may expire before the time, as by a surrender.

Term in gross. A term of years is said to be either in gross (outstanding) or attendant upon the inheritance. It is outstanding, or in gross, when it is unattached or disconnected from the estate or inheritance, as where it is in the hands of some third party having no interest in the inheritance; it is attendant, when vested in some trustee in trust for the owner of the inheritance.

Term life insurance. *See* Insurance.

Term loan. A loan with a specified maturity date, as opposed to a demand loan which is due whenever the lender requests payment.

Term of court. The period of time prescribed by law during which a court holds session. The Supreme Court

sits in an annual term that begins on the first Monday in October and in recent years ordinarily has ended in the first week of July. The Court may also hold special terms as necessary. The U.S. district courts do not have formal terms, but rather the times for holding regular sessions are determined by local rules of the respective courts. 28 U.S.C.A. §§ 2, 138, 139. *See also General term; Regular term; Special term, above.*

Term of lease. The word "term," when used in connection with a lease, means the period which is granted for the lessee to occupy the premises, and does not include the time between the making of the lease and the tenant's entry. *De Pauw University v. United Electric Coal Cos.*, 299 Ill.App. 339, 20 N.E.2d 146, 149.

Term of office. The period during which elected officer or appointee is entitled to hold office, perform its functions, and enjoy its privileges and emoluments.

Term probatory. The period of time allowed to the promoter of an ecclesiastical suit to produce his witnesses, and prove the facts on which he rests his case.

Term to conclude. In English ecclesiastical practice, an appointment by the judge of a time at which both parties are understood to renounce all further exhibits and allegations.

Term to propound all things. In English ecclesiastical practice, an appointment by the judge of a time at which both parties are to exhibit all the acts and instruments which make for their respective causes.

Under terms. A party is said to be *under terms* when an indulgence is granted to him by the court in its discretion, on certain conditions. Thus, when an injunction is granted *ex parte*, the party obtaining it is put *under terms* to abide by such order as to damages as the court may make at the hearing.

Termes de la Ley. Terms of the law. The name of a lexicon of the law French words and other technicalities of legal language in old times.

Terminable interest. An interest in property which terminates upon the death of the holder or upon the occurrence of some other specified event. The transfer of a terminable interest by one spouse to the other spouse may not qualify for the marital deduction.

Terminable property. Name sometimes given to property of such a nature that its duration is not perpetual or indefinite, but is limited or liable to terminate upon the happening of an event or the expiration of a fixed term; *e.g.*, a leasehold, a life-annuity, etc.

Terminate. To put an end to; to make to cease; to end. *Perruccio v. Allen*, 156 Conn. 282, 240 A.2d 912, 914.

Terminating building societies. Societies, in England, where the members commence their monthly contributions on a particular day, and continue to pay them until the realization of shares to a given amount for each member, by the advance of the capital of the society to such members as required it, and the payment of interest as well as principal by them, so as to insure

such realization within a given period of years. They have been superseded by permanent building societies.

Termination. End in time or existence; close; cessation; conclusion. *Perruccio v. Allen*, 156 Conn. 282, 240 A.2d 912, 914.

Word for purposes of insurance, refers to the expiration of a policy by lapse of the policy. *Waynesville Sec. Bank v. Stuyvesant Inc. Co.*, Mo.App., 499 S.W.2d 218, 220.

With respect to a lease or contract, term refers to an ending, usually before the end of the anticipated term of the lease or contract, which termination may be by mutual agreement or may be by exercise of one party of one of his remedies due to the default of the other party. As regards a partnership, term refers to a winding up and cessation of the business as opposed to only a technical ending (as upon the death of a partner) which is a dissolution. A dissolved partnership may terminate or may be continued by a partnership of the remaining partners, including perhaps the estate or heirs of the deceased partner.

Under the Uniform Commercial Code, "termination" means legally ending a contract without its being broken by either side. U.C.C. § 2-106.

See also Dissolution; Expiration; Lapse.

Termination of conditional contract. To abrogate so much of it as remains unperformed, doing away with existing agreement under agreed terms and consequences. To put an end to all of the unperformed portions thereof. *Blodgett v. Merritt Annex Oil Co.*, 19 Cal.App.2d 169, 65 P.2d 123, 125.

Termination of employment. Within policies providing that insurance should cease immediately upon termination of employment, means a complete severance of relationship of employer and employee. *Edwards v. Equitable Life Assur. Soc. of United States*, 296 Ky. 448, 177 S.W.2d 574, 577, 578. *See also* Employment at will; Wrongful discharge.

Términer /tármənr/. L. Fr. To determine. *See* Oyer and terminer.

Termini /tárməny/. Lat. Ends; bounds; limiting or terminating points.

Termino /termínəw/. In Spanish law, a common; common land. Common because of vicinage.

Term life insurance. *See* Insurance.

Terminum /tármənəm/. A day given to a defendant.

Terminum qui preterit, writ of entry ad /rit av éntriy æd tármənəm kwáy prətéhriyət/. A writ which lay for the reversioner, when the possession was withheld by the lessee, or a stranger, after the determination of a lease for years.

Terminus /tármənəs/. Boundary; a limit, either of space or time.

The phrases "*terminus a quo*" and "*terminus ad quem*" are used, respectively, to designate the starting point and terminating point of a private way. In the

case of a street, road, or railway, either end may be, and commonly is, referred to as the "terminus."

Terminus annorum certus debet esse et determinatus /tərmənəs ənórəm sártəs débat ésiy èt dətərmənáyətəs/. A term of years ought to be certain and determinate.

Terminus et feodum non possunt constare simui in una eademque persona /tərmənəs èt fyúwdəm nòn pòsənt konstériy sáyməl in yúwnə iyeydémkwiy pərsównə/. A term and the fee cannot both be in one and the same person at the same time.

Terminus hominis /tərmənəs hómənəs/. In English ecclesiastical practice, a time for the determination of appeals, shorter than the *terminus juris*, appointed by the judge.

Terminus juris /tərmənəs jərəs/. In English ecclesiastical practice, the time of one or two years, allowed by law for the determination of appeals.

Termor /tərmər/. He that holds lands or tenements for a term of years or life. But we generally confine the application of the word to a person entitled for a term of years.

Terms. Conditions, obligations, rights, price, etc., as specified in contract or instrument. *See also* Term.

Terms of trust. The phrase "terms of the trust" means the manifestation of intention of the settlor with respect to the trust expressed in a manner which admits of its proof in judicial proceedings. Restatement, Second, Trusts § 4.

Terms to be under. A party is said to be *under terms*, when an indulgence is granted to him by the court in its discretion, on certain conditions. Thus, when an injunction is granted *ex parte*, the party obtaining it is put *under terms* to abide by such order as to damages as the court may make at the hearing.

Terra /téhɹə/. Lat. Earth; soil; arable land.

Terra affirmata /téhɹə əfərmáyətə/. Land let to farm.

Terra boscalis /téhɹə bɔskéyləs/. Woody land.

Terra culta /téhɹə káltə/. Cultivated land.

Terra debilis /téhɹə débələs/. Weak or barren land.

Terra dominica, or indominicata /téhɹə dəmínəkə/ˈindəmínəkéytə/. The demesne land of a manor.

Terra dominicales regis /téhɹi dəmínəkéyliyz riyjəs/. The demesne lands of the crown.

Terra excultabilis /téhɹə èkskáltéybələs/. Land which may be plowed.

Terra extendenda /téhɹə èkstendéndə/. A writ addressed to an escheator, etc., that he inquire and find out the true yearly value of any land, etc., by the oath of twelve men, and to certify the extent into the chancery.

Terra frusca, or frisca /téhɹə frískə/. Fresh land, not lately plowed.

Terrage /téhɹəj/. In old English law, a kind of tax or charge on land; a boon or duty of plowing, reaping, etc.

Terrages /téhɹəjəz/. An exemption from all uncertain services.

Terra hydata /téhɹə hədéytə/. Land subject to the payment of hydate.

Terra lucrabilis /téhɹə l(y)uwkréybələs/. Land gained from the sea or inclosed out of a waste.

Terra manens vacua occupanti conceditur /téhɹə mánenz vəkýuwə òkypəntay kənsiydətər/. Land lying unoccupied is given to the first occupant.

Terra normanorum /téhɹə nòrmənórəm/. Land held by a Norman.

Terra nova /téhɹə nówvə/. Land newly converted from wood ground or arable.

Terra putura /téhɹə pyuwtyúra/. Land in forests, held by the tenure of furnishing food to the keepers therein.

Terrarius /tərériyəs/. In old English law, a landholder.

Terra sabulosa /téhɹə sàbyəlòwsə/. Gravelly or sandy ground.

Terra salica /téhɹə sáləkə/. In Salic law, the land of the house; the land within that inclosure which belonged to a German house. No portion of the inheritance of Salic land passes to a woman, but this the male sex acquires; that is, the sons succeed in that inheritance.

Terra testamentalis /téhɹə tɛstamentéyləs/. Gavel-kind land, being disposable by will.

Terra transit cum onere /téhɹə tránzət kəm ównəriy/. Land passes with the incumbrances.

Terra vestita /téhɹə vɛstáytə/. Land sown with corn.

Terra wainabilis /téhɹə wéynéybələs/. Tillable land.

Terra warrenata /téhɹə wòhránéytə/. Land that has the liberty of free-warren.

Terre-tenant /tértènənt/tór°. He who is literally in the occupation or possession of the land, as distinguished from the owner out of possession. But, in a more technical sense, the person who is seized of the land, though not in actual occupancy of it, and locally, in Pennsylvania, one who purchases and takes land subject to the existing lien of a mortgage or judgment against a former owner.

Terrier. In English law, a landroll or survey of lands, containing the quantity of acres, tenants' names, and such like; and in the exchequer there is a terrier of all the glebe lands in England, made about 1338. In general, an ecclesiastical terrier contains a detail of the temporal possessions of the church in every parish.

Terris bonis et catallis rehabendis post purgationem /téhɹəs bównəs èt kətálas riy(h)əbéndəs pòwst pərgèyshiyównəm/. A writ for a clerk to recover his lands, goods, and chattels, formerly seized, after he had cleared himself of the felony of which he was accused, and delivered to his ordinary to be purged.

Terris et catallis tentis ultra debitum levatum /téhɹəs èt kətálas tɛntəs íltrə débatəm ləvéytəm/. A judicial

writ for the restoring of lands or goods to a debtor who is distrained above the amount of the debt.

Terris liberandis /téhros libérándəs/. A writ that lay for a man convicted by attaint, to bring the record and process before the king, and take a fine for his imprisonment, and then to deliver to him his lands and tenements again, and release him of the strip and waste. Also it was a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them.

Territorial. Having to do with a particular area; for example, territorial jurisdiction is the power of a court to take cases from within a particular geographical area.

Territorial courts. U.S. courts in each territory, such as the Virgin Islands. They serve as both Federal and state courts. Created under U.S.Const., Art. IV, Sec. 3, cl. 2.

Territorial jurisdiction. Territory over which a government or a subdivision thereof, or court, has jurisdiction. *State v. Cox*, 106 Utah 253, 147 P.2d 858, 861. Jurisdiction considered as limited to cases arising or persons residing within a defined territory, as, a county, a judicial district, etc. The authority of any court is limited by the boundaries thus fixed. *See also* Extraterritorial jurisdiction; Jurisdiction.

Territorial property. The land and water over which the state has jurisdiction and control whether the legal title be in the state itself or in private individuals. Lakes and waters wholly within the state are its property and also the marginal sea within the three-mile limit, but bays and gulfs are not always recognized as state property.

Territorial; territoriality. These terms are used to signify connection with, or limitation with reference to, a particular country or territory. Thus, "territorial law" is the correct expression for the law of a particular country or state, although "municipal law" is more common.

Territorial waters. Term refers to all inland waters, all waters between line of mean high tide and line of ordinary low water, and all waters seaward to a line three geographical miles distant from the coast line. *C. A. B. v. Island Airlines, Inc.*, D.C.Hawaii, 235 F.Supp. 990, 1002. That part of the sea adjacent to the coast of a given country which is by international law deemed to be within the sovereignty of that country, so that its courts have jurisdiction over offenses committed on those waters, even by a person on board a foreign ship. *See* Three-mile limit.

Territory. A part of a country separated from the rest, and subject to a particular jurisdiction. Geographical area under the jurisdiction of another country or sovereign power.

A portion of the United States, not within the limits of any state, which has not yet been admitted as a state of the Union, but is organized, with a separate legislature, and with executive and judicial officers appointed by the president. *See* Trust territory.

An assigned geographical area of responsibility; *e.g.* salesman's territory.

Territory of a judge. The territorial jurisdiction of a judge; the bounds, or district, within which he may lawfully exercise his judicial authority. *See e.g.* 28 U.S.C.A. § 81 et seq. (territorial composition of federal district courts). *See also* Jurisdiction.

Terror. Alarm; fright; dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation; fear caused by the appearance of danger. In an indictment for riot at common law, it must have been charged that the acts done were "to the terror of the people."

An element of offense of aggravated kidnapping, is any act which is done to fill with intense fear or to coerce by threat or force. *Rogers v. State*, Tex.Cr.App., 687 S.W.2d 337, 341.

Terrorism. "Act of terrorism" means an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and appears to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by assassination or kidnapping. 18 U.S.C.A. § 3077.

Terroristic threats. A person is guilty of a felony if he threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience. 18 U.S.C.A. § 3077; Model Penal Code, § 211.3. *See also* Terrorism.

Terry-stop. *See* Stop and frisk.

Tertia denunciatio /társh(iy)ə dənənsiyéysh(iy)ow/. Lat. In old English law, third publication or proclamation of intended marriage.

Tertius interveniens /térsh(iy)əs intərvíyn(i)yènz/. Lat. In the civil law, a third person intervening; a third person who comes in between the parties to a suit; one who interpleads.

Test. To bring one to a trial and examination, or to ascertain the truth or the quality or fitness of a thing. Something by which to ascertain the truth respecting another thing; a criterion, gauge, standard, or norm.

In public law, an inquiry or examination addressed to a person appointed or elected to a public office, to ascertain his qualifications therefor, but particularly a scrutiny of his political, religious, or social views, or his attitude of past and present loyalty or disloyalty to the government under which he is to act.

See also Competitive civil service examination; Examination.

Discovery. Requests for permission to test tangible things in civil actions are governed by Fed.R.Civil P. 34. Requests for reports or results of examinations or tests are governed by Fed.R.Civil P. 35, and Fed.R.Crim.P. 16.

Testable. A person is said to be testable when he or she has capacity to make a will. In general, person of twenty-one years of age and of sane mind is testable.

Test act. The statute 25 Car. II, c. 2, which directed all civil and military officers to take the oaths of allegiance and supremacy, and make the declaration against transubstantiation, within six months after their admission, and also within the same time receive the sacrament according to the usage of the Church of England, under penalty of £500 and disability to hold the office. This was abolished by St. 9 Geo. IV, c. 17, so far as concerns receiving the sacrament, and a new form of declaration was substituted.

Test action or case. An action selected out of a considerable number of suits, concurrently depending in the same court, brought by several plaintiffs against the same defendant, or by one plaintiff against different defendants, all similar in their circumstances, and embracing the same questions, and to be supported by the same evidence, the selected action to go first to trial (under an order of court equivalent to consolidation), and its decision to serve as a *test* of the right of recovery in the others, all parties agreeing to be bound by the result of the test action. A lawsuit brought to establish an important legal principle or right.

Testacy /téstasiy/. The state or condition of leaving a will at one's death. Opposed to "intestacy."

Testa de nevil /tést də névəl/. An ancient and authentic record in two volumes, in the custody of the king's remembrancer in the exchequer, said to be compiled by John de Nevil, a justice itinerant, in the eighteenth and twenty-fourth years of Henry III. These volumes were printed in 1807, under the authority of the commissioners of the public records, and contain an account of fees held either immediately of the king or of others who held of the king *in capite*; fees holden in frankalmoigne; serjeanties holden of the king; widows and heiresses of tenants *in capite*, whose marriages were in the gift of the king; churches in the gift of the king; escheats, and sums paid for scutages and aids, especially within the county of Hereford.

Testament. Under the early English law, a term that referred to the disposition of *personal* property by will; *i.e.* by "last will and testament." The words "and testament" are no longer necessary since a will now relates to both real and personal property.

Military testament. In English law, a nuncupative will, that is, one made by word of mouth, by which a soldier may dispose of his goods, pay, and other personal chattels, without the forms and solemnities which the law requires in other cases. *See also* Nuncupative will; Soldier's will.

Mutual testaments. Wills made by two persons who leave their effects reciprocally to the survivor.

Mystic testament. A form of testament made under Spanish law which prevailed in Louisiana and California. In the law of Louisiana, a sealed testament. The mystic or secret testament, otherwise called the "closed

testament," is made in the following manner: The testator must sign his dispositions, whether he has written them himself or has caused them to be written by another person. The paper containing those dispositions, or the paper serving as their envelope, must be closed and sealed. The testator shall present it thus closed and sealed to the notary and to seven witnesses, or he shall cause it to be closed and sealed in their presence. Then he shall declare to the notary, in presence of the witnesses, that that paper contains his testament written by himself, or by another by his direction, and signed by him, the testator. The notary shall then draw up the act of superscription, which shall be written on that paper, or on the sheet that serves as its envelope, and that act shall be signed by the testator, and by the notary and the witnesses. Civ.Code La. art. 1584.

Testamenta cum duo inter se pugnancia reperiuntur, ultimum ratum est; sic est, cum duo inter se pugnancia reperiuntur in eodem testamento /téstáméntə kəm d(y)úwów íntər siy pəgnánsh(iy)ə rəpəriyántər, éltəmə réytəm èst; sík èst, kəm d(y)úwów íntər siy pəgnánsh(iy)ə rəpəriyántər in iyówdəm téstáméntow/. When two conflicting wills are found, the last prevails; so it is when two conflicting clauses occur in the same will.

Testamenta latissimam interpretationem habere debent /téstáméntə lætísəməm íntərprətéyshiyównəm həbíríy débənt/. Wills ought to have the broadest interpretation.

Testamentary. Pertaining to a will or testament; as *testamentary* causes. Derived from, founded on, or appointed by a testament or will; as a *testamentary* guardian, letters *testamentary*, etc.

A paper, instrument, document, gift, appointment, etc., is said to be "testamentary" when it is written or made so as not to take effect until after the death of the person making it, and to be revocable and retain the property under his control during his life, although he may have believed that it would operate as an instrument of a different character. *See In re Murphy's Estate*, 193 Wash. 400, 75 P.2d 916, 920.

Letters testamentary. The formal instrument of authority and appointment given to an executor by the proper court, upon the admission of the will to probate, empowering him to enter upon the discharge of his office as executor.

Testamentary capacity. That measure of mental ability which is recognized in law as sufficient for the making of a will. A testator to have such capacity must have sufficient mind and memory to intelligently understand the nature of business in which he is engaged, to comprehend generally the nature and extent of property which constitutes his estate, and which he intends to dispose of, and to recollect the objects of his bounty. *In re Lacy's Estate*, Okl., 431 P.2d 366, 368. *See also* Capacity.

Testamentary character. Of the nature or pertaining to a disposition of property at death.

Testamentary class. Body of persons, uncertain in number at time of gift, ascertainable in future, and each taking in equal or in other definite proportions. A "testamentary class gift" is a gift to a group whose number at the time of the gift is uncertain but which will be ascertained at some future time when all who constitute the class will take an equal or other definite portion, the amount of the share of each being dependent upon the number that ultimately constitutes the class. *Lux v. Lux*, 109 R.I. 592, 288 A.2d 701, 705.

Testamentary disposition. The passing of property to another upon the death of the owner. A disposition of property by way of gift, will or deed which is not to take effect unless the grantor dies or until that event.

Testamentary guardian. A guardian appointed by the last will of parent for the person and real and personal estate of child until the latter arrives of full age. In *re De Saullés*, 101 Misc. 447, 167 N.Y.S. 445, 453.

Testamentary intent. Requirement for a valid will that the testator must intend that the instrument presently operate as his or her last will and testament.

Testamentary paper or instrument. An instrument in the nature of a will; an unprobated will; a paper writing which is of the character of a will, though not formally such, and, if allowed as a testament, will have the effect of a will upon the devolution and distribution of property.

Testamentary power of appointment. A power of appointment that can be exercised only through the will (i.e., upon the death) of the holder. *Restatement, Property*, § 321(1). See also *Power of appointment*.

Testamentary trust. A trust created by a will which takes effect only upon the testator's death. The trust must satisfy requirements of both a valid trust and a valid will. See also *Trust*.

Testamentary trustee. See *Trustee*.

Testamenti factio /tèstáméntáy fáksh(iy)ow/. Lat. In the civil law, the ceremony of making a testament, either as testator, heir, or witness.

Testamentum /tèstáméntám/. Lat. In the civil law, a testament; a will, or last will.

In old English law, a testament or will; a disposition of property made in contemplation of death.

A general name for any instrument of conveyance, including deeds and charters, and so called either because it furnished written *testimony* of the conveyance, or because it was authenticated by witnesses (*testes*).

Testamentum est voluntatis nostræ justa sententia, de eo quod quis post mortem suam fieri velit /tèstáméntám èst vòlontéytás nóstríy jústá sènténsh(iy)è, dìy íyow kwòd kwís pòwst mórtám s(y)úwám fàyèray víylát/. A testament is the just expression of our will concerning that which any one wishes done after his death [or, as Blackstone translates, "the legal declaration of a man's intentions which he wills to be performed after his death"].

Testamentum, i.e., testatio mentis, facta nullo præsentem metu periculi, sed cogitatione mortalitatis /tèstáméntám, íd èst, testéysh(iy)ow méntás, fákta nálow præzèntíy mét(y)uw pèríkyèlay, sèd kòjètèy-shiyówníy mortàlètéytás/. A testament, i.e., the witnessing of one's intention, made under no present fear of danger, but in expectancy of death.

Testamentum inofficiosum /tèstáméntám ínàfísh-iyówsəm/. Lat. In the civil law, an inofficious testament (*q.v.*).

Testamentum omne morte consummatur /tèstáméntám ómniy mórtíy kònsáméy tár/. Every will is perfected by death. A will speaks from the time of death only.

Testari /testéray/. Lat. In the civil law, to testify; to attest; to declare, publish, or make known a thing before witnesses. To make a will.

Testate /tésteyt/. One who has made a will; one who dies leaving a will. See *Testator(-trix)*; *Compare Intestate*.

Testate succession. Acquisition of property or rights through a will.

Testation /testéyshən/. Witness; evidence.

Testator(-trix) /testéy tár/. One who makes or has made a testament or will; one who dies leaving a will. This term is borrowed from the civil law.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam /testátórás éltámè vòlntás èst pèrímpléndá səkóndám vírəm ínténshiyównəm s(y)úwəm/. The last will of a testator is to be thoroughly fulfilled according to his real intention.

Testatrix /testéytrəks/. A woman who makes a will; a woman who dies leaving a will; a female testator.

Testatum /testéy təm/. The name of a writ which is issued by the court of one county to the sheriff of another county in the same state, when defendant cannot be found in the county where the court is located: for example, after a judgment has been obtained, and a *ca. sa.* has been issued, which has been returned *non est inventus*, a testatum *ca. sa.* may be issued to the sheriff of the county where the defendant is.

In conveyancing, that part of a deed which commences with the words, "This indenture witnesseth."

Testatum writ /testéy təm rít/. In practice, a writ containing a *testatum* clause; such as a *testatum capias*, a *testatum fi. fa.*, and a *testatum ca. sa.* See *Testatum*.

Testatus /testéy tás/. Lat. In the civil law, testate; one who has made a will.

Test case. See *Test action or case*.

Teste. To bear witness formally. See *Teste of a writ*.

Tested /téstíyd/. To be tested is to bear the *teste* (*q.v.*).

Teste meipso /téstíy miyípsow/. Lat. In old English law and practice, a solemn formula of attestation by the sovereign, used at the conclusion of charters, and other

public instruments, and also of original writs out of chancery.

Teste of a writ /téstiy əv ə rít/. In practice, the concluding clause, commencing with the word "Witness," etc. A writ which bears the teste is sometimes said to be *tested*.

In English law, "teste" is a word commonly used in the last part of every writ, wherein the date is contained beginning with the words, "*Teste meipso*," meaning the sovereign, if the writ be an original writ, or be issued in the name of the sovereign; but, if the writ be a judicial writ, then the word "Teste" is followed by the name of the chief judge of the court in which the action is brought, or, in case of a vacancy of such office, in the name of the senior puisne judge.

Testes /téstiyz/. Lat. Witnesses.

Testes ponderantur, non numerantur /téstiyz pòndərántər, nòn n(y)uwmarántər/. Witnesses are weighed, not numbered. That is, in case of a conflict of evidence, the truth is to be sought by weighing the credibility of the respective witnesses, not by the mere numerical preponderance on one side or the other.

Testes qui postulat debet dare eis sumptus competentes /téstiyz kwày póstyələt débət dériy iyəs sám(p)təs kòmpténtiyz/. Whosoever demands witnesses must find them in competent provision.

Testes, trial per /tráy(ə)l pər téstiyz/. A trial had before a judge without the intervention of a jury, in which the judge is left to form in his own breast his sentence upon the credit of the witnesses examined; but this mode of trial, although it was common in the civil law, was seldom resorted to in the practice of the common law, but it is now becoming common when each party waives his right to a trial by jury.

Testibus deponentibus in pari numero, dignioribus est credendum /téstəbəs diypənéntəbəs in péray n(y)úwmarow, dign(i)yórəbəs ést kradéndəm/. Where the witnesses who testify are in equal number [on both sides], the more worthy are to be believed.

Testify. To bear witness; to give evidence as a witness; to make a solemn declaration, under oath or affirmation, in a judicial inquiry, for the purpose of establishing or proving some fact.

Testimonial. In the nature of testimony. Evidence is said to be testimonial when elicited from a witness in contrast to documentary evidence or real evidence.

Besides its ordinary meaning of a written recommendation to character, "testimonial" has a special meaning, under St. 39 Eliz., c. 17, § 3, passed in 1597, under which it signified a certificate under the hand of a justice of the peace, testifying the place and time when and where a soldier or mariner landed, and the place of his dwelling or birth, unto which he was to pass, and a convenient time limited for his passage. Every idle and wandering soldier or mariner not having such a testimonial, or willfully exceeding for above fourteen days the time limited thereby, or forging or counterfeiting such testimonial, was to suffer death as a felon, without

benefit of clergy. This English act was repealed, in 1812, by St. 52 Geo. III, c. 31.

Testimonial evidence. Evidence elicited from a witness in contrast to documentary or real evidence. *See also* Evidence; Testimony.

Testimonial proof. In the civil law, proof by the evidence of witnesses, *i.e.*, parol evidence, as distinguished from proof by written instruments, which is called "literal" proof. *See* Evidence.

Testimonia ponderanda sunt, non numeranda /téstəmówn(i)yə pòndəréndə sənt, nòn n(y)úwmaréndə/. Evidence is to be weighed, not enumerated.

Testimonio /téstəmówn(i)yow/. In Spanish law, an authentic copy of a deed or other instrument, made by a notary and given to an interested party as evidence of his title, the original remaining in the public archives.

Testimonium clause /téstəmówn(i)yəm klóz/. In conveyancing, that clause of a deed or instrument with which it concludes; "In witness whereof, the parties to these presents have hereunto set their hands and seals." A clause in the instrument reciting the date on which the instrument was executed and by whom.

Testimony. Evidence given by a competent witness under oath or affirmation; as distinguished from evidence derived from writings, and other sources. Testimony is particular kind of evidence that comes to tribunal through live witnesses speaking under oath or affirmation in presence of tribunal, judicial or quasi-judicial. *State v. Ricci*, 107 R.I. 582, 268 A.2d 692, 697.

In common parlance, "testimony" and "evidence" are synonymous. Testimony properly means only such evidence as is delivered by a witness on the trial of a cause, either orally or in the form of affidavits or depositions.

See also Character evidence; Evidence; Failure to testify; Opinion evidence or testimony; Perpetuating testimony.

Expert testimony. *See* Evidence (*Expert evidence*); Expert witness.

Negative testimony. Testimony not bearing directly upon the immediate fact or occurrence under consideration, but evidencing facts from which it may be inferred that the act or fact in question could not possibly have happened.

Positive testimony. Direct testimony that a thing did or did not happen.

Testis /téstəs/. Lat. A witness; one who gives evidence in court, or who witnesses a document.

Testis de visu præponderat aliis /téstəs diy váyz(y)uw prəpòndərət éyliyas/. An eye-witness is preferred to others.

Testis lupanaris sufficit ad factum in lupanari /téstəs l(y)úwprənérés sáfəsət æd fáktəm in l(y)úwprənéray/. A lewd person is a sufficient witness to an act committed in a brothel.

Testis nemo in sua causa esse potest /téstəs níymow in s(y)úwow kóza ésíy pówtəst/. No one can be a witness in his own cause.

Testis oculatus unus plus valet quam auriti decem /téstas òkyaléytàs yúwnàs plàs vâlet kwâm ohráytay désm/. One eye-witness is worth more than ten ear-witnesses.

Testoigne. An old law French term, denoting evidence or testimony of a witness.

Testoignes ne poent testifier le negative, mes l'affirmative. Witnesses cannot testify to a negative; they must testify to an affirmative.

Test oath. An oath required to be taken as a criterion of the fitness of the person to fill a public or political office; but particularly an oath of fidelity and allegiance (past or present) to the established government. *See also* Loyalty oath.

Test-paper. In practice, a paper or instrument shown to a jury as evidence. A term used in the Pennsylvania courts.

Tests. *See* Test.

Textbook. A legal text or treatise which presents principles on any branch of the law. *See also* Hornbook.

Textus roffensis /tékstəs rofénsəs/. In old English law, the Rochester text. An ancient manuscript containing many of the Saxon laws, and the rights, customs, tenures, etc., of the church of Rochester, drawn up by Ernulph, bishop of that see from A.D. 1114 to 1124.

Thainland /θéynlænd/. In old English law, the land which was granted by the Saxon kings to their thains or thanes was so called.

Thalweg /tálvèyk/. Old German spelling of Talweg, which title see.

Under the doctrine of "thalweg," the water boundary between states is defined as the middle of the deepest or most navigable channel, as distinguished from the geographic center or a line midway between the banks. *U.S. v. Louisiana*, 470 U.S. 93, 105 S.Ct. 1074, 1083, 84 L.Ed.2d 73. The middle of main navigable channel, the track taken by boats in their course downstream, which is that of the strongest current. *Anderson-Tully Co. v. Walls*, D.C.Miss., 266 F.Supp. 804, 812.

Thanage of the king /θéynəj əv ðə kíŋ/. A certain part of the king's land or property, of which the ruler or governor was called "thane."

Thane /θéyn/. An Anglo-Saxon nobleman; an old title of honor, perhaps equivalent to "baron." There were two orders of thanes,—the king's thanes and the ordinary thanes. Soon after the Conquest this name was disused.

Thanelands /θéynlændz/. Such lands as were granted by charter of the Saxon kings to their thanes with all immunities, except from the *trinoda necessitas*.

Thanship /θéynshíp/. The office and dignity of a thane; the seigniorship of a thane.

That. A relative pronoun equivalent to who or which, either singular or plural.

Thavies inn. An inn of chancery. *See* Inns of chancery.

The. An article which particularizes the subject spoken of. In construing statute, definite article "the" particularizes the subject which it precedes and is word of limitation as opposed to indefinite or generalizing force "a" or "an". *Brooks v. Zabka*, 168 Colo. 265, 450 P.2d 653, 655.

Theft. A popular name for larceny. The act of stealing. The taking of property without the owner's consent. *People v. Sims*, 29 Ill.App.3d 815, 331 N.E.2d 178, 179. The fraudulent taking of personal property belonging to another, from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking.

It is also said that theft is a wider term than larceny and that it includes swindling and embezzlement and that generally, one who obtains possession of property by lawful means and thereafter appropriates the property to the taker's own use is guilty of a "theft". *Kidwell v. Paul Revere Fire Ins. Co.*, 294 Ky. 833, 172 S.W.2d 639, 640; *People v. Pillsbury*, 59 Cal.App.2d 107, 138 P.2d 320, 322.

Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of his property: (a) Obtaining or exerting unauthorized control over property; or (b) Obtaining by deception control over property; or (c) Obtaining by threat control over property; or (d) Obtaining control over stolen property knowing the property to have been stolen by another.

See also Auto theft; Embezzlement; Extortion; Intimidation; Larceny; Robbery; Steal; Shoplifting.

Theft by deception. Under Model Penal Code § 223.3, a person is guilty of theft by deception if he purposely obtains property of another by deception.

Theft by false pretext. Obtaining property by means of false pretext with intent to deprive owner of value of property without his consent and to appropriate it to own use, followed by such appropriation. *Hoovel v. State*, 125 Tex.Cr.R. 545, 69 S.W.2d 104, 106.

Theft of services. Obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or use of false token or device.

Theft-bote /θéftbòwt/. The offense committed by a party who, having been robbed and knowing the felon, takes back his goods again, or receives other amends, upon an agreement not to prosecute. *Farmers' Nat. Bank of Somerset v. Tarter*, 256 Ky. 70, 75 S.W.2d 758, 760.

Theft-bote est emenda furti capta, sine consideratione curiæ domini regis /θéftbòwt èst əméndə fártay káptə, sáyniy kənsidərəyshiyówniy kyúhriyiy dómənay ríjyəs/. Theft-bote is the paying money to have goods stolen returned, without having any respect for the court of the king.

Thegn /θéyn/. An Anglo-Saxon term meaning a retainer. Afterwards it came to designate the territorial nobility. At a later period these were king's thegns, who were persons of great importance, and inferior thegns. Military service appears to have run through it all. After the Conquest, they were merged into the class of knights.

Thegnage tenure /θéynəj ténər/. A kind of tenure in Northumbria in the 13th century and beyond, of which little is known.

Thelonio irrationabili habendo /θəlówn(i)yow ihræshənábəlay həbéndow/. A writ that formerly lay for him that had any part of the king's demesne in fee-farm, to recover reasonable toll of the king's tenants there, if his demesne had been accustomed to be tolled.

Thelonium /θəlówn(i)yəm/. An abolished writ for citizens or burgesses to assert their right to exemption from toll.

Thelonmannus /θələnmánəs/. The toll-man or officer who receives toll.

Thelusson Act. In English law, the statute 39 & 40 Geo. III, c. 98, which restricted accumulations to a term of twenty-one years from the testator's death. It was passed in consequence of litigation over the will of one Thelusson.

Theme. In Saxon law, the power of having jurisdiction over naifs or villeins, with their suits or offspring, lands, goods, and chattels.

Themmagium /θəmémj(i)yəm/. A duty or acknowledgment paid by inferior tenants in respect of theme or team.

Then. This word, as an adverb, means "at that time," referring to a time specified, either past or future. It has no power in itself to fix a time. It simply refers to a time already fixed. It may also denote a contingency, and be equivalent to "in that event."

Then and there. At the time and place last previously mentioned or charged. Context, however, may give the phrase a more remote antecedent than the time and place *last* previously mentioned or charged.

Thence. From that place, or that time; on that account; therefore. In surveying, and in descriptions of land by courses and distances, this word, preceding each course given, imports that the following course is continuous with the one before it.

Thence down the river. This phrase as used in field notes of a surveyor of a patent, is construed to mean with the meanders of the river, unless there is positive evidence that the meander line as written was where the surveyor in fact ran it; for such lines are to show the general course of the stream and to be used in estimating acreage, and not necessarily boundary lines.

Theocracy. Government of a state by the immediate direction of God (or by the assumed direction of a supposititious divinity), or the state thus governed.

Theoden. In Saxon law, a husbandman or inferior tenant; an under-thane.

Theodosian Code /θiyədówsh(iy)ən kówd/. See Codex Theodosianus.

Theof. In Saxon law, offenders who joined in a body of seven to commit depredations.

Theophilus' Institutes /θiyófələsəz instət(y)uwts/. See Institutes.

Theory of case. Facts on which the right of action is claimed to exist. The basis of liability or grounds of defense. *Higgins v. Fuller*, 48 N.M. 218, 148 P.2d 575, 579. See Cause of action.

Theory of law. The legal premise or set of principles on which a case rests.

Theory of pleading doctrine. The pre-code principle that one must prove his case as pleaded. Otherwise, he fails though he has set forth facts sufficient to sustain his case on a theory different from his pleadings. The various codes and rules of civil procedure have abolished this strict pleading and proof requirement; see *e.g.* Fed. R.Civil P. 15 which permits amendment of pleadings to conform to evidence.

Theowes, theowmen, or thews /θ(y)úwz/θ(y)úwmən/. In feudal law, slaves, captives, or bondmen.

There. In or at that place.

Thereabout. About that place.

Thereafter. After the time last mentioned; after that; after that time; afterward; subsequently; thenceforth. *Dauwe v. State*, 147 Tex.Cr.R. 384, 180 S.W.2d 925, 927.

Thereby. By that means; in consequence of that.

Therefor. For that thing: for it, or them.

Therein. In that place.

Thereupon. Without delay or lapse of time. Immediately where the terms thereupon and thereby are distinguished. Following on; in consequence of. *Yuma County Water Users' Ass'n v. Schlecht*, 262 U.S. 138, 43 S.Ct. 498, 500, 67 L.Ed. 909.

Thesaurus absconditus /θəsóhrəs əbskóndətəs/. In old English law, treasure hidden or buried.

Thesaurus competit domino regi, et non domino liberatis, nisi sit per verba specialia /θəsóhrəs kómpətət dómənow riyjay, èt non dómənow libértéytəs, náysay sit pər vərbə spèshiyéyl(i)yə/. A treasure belongs to the king, and not to the lord of a liberty, unless it be through special words.

Thesaurus inventus /θəsóhrəs ənvéntəs/. In old English law, treasure found; treasure-trove.

Thesaurus inventus est vetus dispositio pecuniæ, etc., cujus non extat modo memoria, adeo ut jam dominum non habeat /θəsóhrəs invéntəs èst víytəs díspəzish(iy)ow pəkýúwnniyiy, etsètərórəm, kyúwjes nòn ékstət mówdow mémóriyè, ádiyow èt jəm dómənəm nòn héybiyət/. Treasure-trove is an ancient hiding of mon-

ey, etc., of which no recollection exists, so that it now has no owner.

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum /θəsóhrəs nòn kómpətət ríjɔj, náysaj kwóndow níymow sít kwáy əbskóndət θəsóhrəm/. Treasure does not belong to the king, unless no one knows who hid it.

Thesaurus regis est vinculum pacis et bellorum nervus /θəsóhrəs ríjɔs ɛst vɪŋk(y)ələm péysəs ɛt belórəm nérvəs/. The king's treasure is the bond of peace and the sinews of war.

Thesaurus, thesaurium /θəsóhrəs/θəsóhriyəm/. The treasury; a treasure.

Thesmothete /θəzməθiət/. A law-maker; a law-giver.

Thethinga /θiyðiŋə/. A tithing.

Thia /tíjə/. Lat. In the civil and old European law, an aunt.

Thief. One who steals; one who commits theft or larceny. *See also* Common thief.

Thin capitalization. When debt owed by a corporation to its shareholders is large in relationship to its capital structure (*i.e.*, stock and shareholder equity), the I.R.S. may contend that the corporation is thinly capitalized. In effect, this means that some or all of the debt will be reclassified as equity. The immediate result is to disallow any interest deduction to the corporation on the reclassified debt. To the extent of the corporation's earnings and profits, interest payments and loan repayments are treated as dividends to the shareholders. I.R.C. § 385.

Thin corporation. A corporation with an excessive amount of debt in its capitalization. A thin corporation is primarily a tax concept. *See* Thin capitalization.

Things. The objects of dominion or property as contradistinguished from "persons." *Gayer v. Whelan*, 59 Cal.App.2d 255, 138 P.2d 763, 768. The object of a right; *i.e.*, whatever is treated by the law as the object over which one person exercises a right, and with reference to which another person lies under a duty.

Such permanent objects, not being persons, as are sensible, or perceptible through the senses. Things are distributed into three kinds: (1) Things real or immovable, comprehending lands, tenements, and hereditaments; (2) things personal or movable, comprehending goods and chattels; and (3) things mixed, partaking of the characteristics of the two former, as a title-deed, a term for years. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*).

Things in action. A right to recover money or other personal property by a judicial proceeding. *See* Chose in action.

Things of value. To be the subject of gaming may refer to any thing affording the necessary lure to indulge the gambling instinct. *Heartley v. State*, 178 Tenn. 254, 157 S.W.2d 1, 3. Within meaning of federal larceny statute (18 U.S.C.A. § 641) a "thing of value" involves both

intangible and tangible property. *U.S. v. Jeter, C.A.Ky.*, 775 F.2d 670, 680.

Things personal. Goods, money, and all other movables, which may attend the owner's person wherever he may go. Things personal consist of goods, money, and all other movables, and of such rights and profits as relate to movables. Also all vegetable productions, as the fruit or other parts of a plant when severed from the body of it, or the whole plant itself, when severed from the ground. *Western Union Telegraph Co. v. Bush*, 191 Ark. 1085, 89 S.W.2d 723, 725. *See also* Property (*Personal property*).

Things real. Such things as are permanent, fixed, and immovable, which cannot be carried out of their place; as lands and tenements and hereditaments. 2 Bl.Comm. 16. *Western Union Telegraph v. Bush*, 191 Ark. 1085, 89 S.W.2d 723, 725. *See also* Property (*Real property*).

Thingus. In Saxon law, a thane or nobleman; knight or freeman.

Think. To believe, to consider, to conclude, to esteem; to recollect or call to mind.

Third. Following next after the second; also, with reference to any legal instrument or transaction or judicial proceeding, any outsider or person not a party to the affair nor immediately concerned in it.

Thirdborough, or thirdborow /θərd(b)ərə/. An underconstable.

Third conviction. *See* Habitual criminal; Recidivist.

Third degree. Term used to describe the process of securing a confession or information from a suspect or prisoner by prolonged questioning, the use of threats, or actual violence. *See* Confession; Interrogation; Miranda Rule.

Term is also sometimes used as a classification of crime (*e.g.* murder in the third degree).

Thirdings /θərdɪŋz/. In old English law, the third part of the corn growing on the land, due to the lord for a heriot on the death of his tenant, within the manor of Turfat, in Hereford.

Third market. *See* Over-the-counter market.

Third-night-awn-hinde. In old English law by the laws of St. Edward the Confessor, if any man lay a third night in an inn, he was called a "third-night-awn-hinde," and his host was answerable for him if he committed any offense. The first night, forman-night, or uncouth (unknown), he was reckoned a stranger; the second night, twa-night, a guest; and the third night, an awn-hinde, a domestic.

Third party. One not a party to an agreement, a transaction, or an action but who may have rights therein. *See also* Party; Privity.

Third party action. A proceeding distinct from the main action. It is in the nature of an indemnity or contribution, the purpose of which is to bring into the lawsuit a party who is or may be liable to defendant for all or part of plaintiff's claim against defendant. Ho-

ward v. Ward County, D.C.N.D., 418 F.Supp. 494, 507. See Third party complaint; Third party-practice.

Third party beneficiary. One for whose benefit a promise is made in a contract but who is not a party to the contract. *Chitlik v. Allstate Ins. Co.*, 34 Ohio App.2d 193, 299 N.E.2d 295, 297, 63 O.O.2d 364. A person not a party to an insurance contract who has legally enforceable rights thereunder. A prime requisite to the status of "third party beneficiary" under a contract is that the parties to the contract must have intended to benefit the third party, who must be something more than a mere incidental beneficiary. *McKinney v. Davis*, 84 N.M. 352, 503 P.2d 332, 333. See also Privy.

Third-party-beneficiary contract. A contract between two or more parties, the performance of which is intended to benefit directly a third party, thus giving the third party a right to file suit for breach of contract by either of the original contract parties.

Third party check. Check which the payee endorses to another party, e.g. as when a person endorses a check received from a customer and endorses it to the IRS. A person who takes a third-party check in good faith and without notice of a security interest can be a holder in due course. *Valley Nat. Bank v. Porter*, C.A.Iowa, 705 F.2d 1027, 1028-29.

Third party claim proceedings. A summary proceeding to determine title to attached property. *Dingwall v. Anderson*, 271 C.A.2d 658, 76 Cal.Rptr. 827; Cal.Code Civ.Proc. § 689.

Third party complaint. A complaint filed by the defendant against a third-party (i.e., a person not presently a party to the lawsuit). This complaint alleges that the third party is or may be liable for all or part of the damages which the plaintiff may win from the defendant. See Fed.R.Civil P. 14. For requisite content of third party claim under Federal Rules of Civil Procedure, see Complaint. See also Third-party practice.

Third-party practice. Under rules practice, a defendant may, after the main action has been commenced, institute an action against a person not a party to the action for all or part of the plaintiff's claim against him. See Fed.R.Civ.P. 14. Procedural device whereby defendant in an action may bring in additional party in claim against such party because of a claim that is being asserted against the defendant. *Denneler v. Aubel Ditching Service, Inc.*, 203 Kan. 117, 453 P.2d 88, 91. See also Impleader; Third-party complaint; Vouching-in.

Thirds. The designation, in colloquial language, of that portion of a decedent's personal estate (one-third) which goes to the widow where there is also a child or children.

Thirteenth Amendment. Amendment to U.S. Constitution which abolished slavery and involuntary servitude in 1865.

Thirty-day letter. A letter which accompanies a revenue agent's report (RAR) issued as a result of an Internal Revenue Service audit of a taxpayer (or the rejection of a taxpayer's claim for refund). The letter outlines

the taxpayer's appeal procedure before the Internal Revenue Service. If the taxpayer does not request any such procedures within the 30-day period, the Internal Revenue Service will issue a statutory notice of deficiency (the "90-day letter"). See also Ninety (90) day letter.

Thirty-nine articles. See Articles of faith.

This. When "this" and "that" refer to different things before expressed, "this" refers to the thing last mentioned, and "that" to the thing first mentioned. "This" is a demonstrative adjective, used to point out with particularity a person or thing present in place or in thought.

This day six months. In English law, fixing "this day six months," or "three months," for the next stage of a bill, is one of the modes in which the house of lords and the house of commons reject bills of which they disapprove. A bill rejected in this manner cannot be reintroduced in the same session.

Thoroughfare. The term means, according to its derivation, a street or passage *through* which one can *fare* (travel); that is, a street or highway affording an unobstructed exit at each end into another street or public passage. If the passage is closed at one end, admitting no exit there, it is called a "*cul de sac*."

Thrave. In old English law, a measure of corn or grain, consisting of twenty-four sheaves or four shocks, six sheaves to every shock.

Thread. A middle line; a line running through the middle of a stream or road. See Filum; Filum aquæ; Filum viæ; Thalweg.

Threat. A communicated intent to inflict physical or other harm on any person or on property. A declaration of an intention to injure another or his property by some unlawful act. *State v. Schweppe*, Minn., 237 N.W.2d 609, 615. A declaration of intention or determination to inflict punishment, loss, or pain on another, or to injure another or his property by the commission of some unlawful act. *U. S. v. Daulong*, D.C.La., 60 F.Supp. 235, 236. A menace; especially, any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent. A declaration of one's purpose or intention to work injury to the person, property, or rights of another, with a view of restraining such person's freedom of action.

The term, "threat" means an avowed present determination or intent to injure presently or in the future. A statement may constitute a threat even though it is subject to a possible contingency in the maker's control. The prosecution must establish a "true threat," which means a serious threat as distinguished from words uttered as mere political argument, idle talk or jest. In determining whether words were uttered as a threat the context in which they were spoken must be considered.

Threats against the President and successors to the President, mailing of threatening communications, and

other extortionate acts, are federal offenses. 18 U.S.C.A. § 871 *et seq.*

See also Coercion; Duress; Extortion.

Terroristic threat. Any threat to commit violence communicated with intent to terrorize another, or to cause the evacuation of any building, place of assembly or facility of transportation, or in wanton disregard of the risk of causing such terror or evacuation. See Model Penal Code § 211.3; 18 U.S.C.A. § 3077. See also Terroristic threats.

Threatening letters. Mailing of threatening communications is a federal offense. 18 U.S.C.A. §§ 876, 877.

Three-dollar piece. A gold coin of the United States, of the value of three dollars; authorized by the seventh section of the act of February 21, 1853.

Three-judge courts. Most cases in federal district courts are heard and determined by only a single judge. For many years, however, Congress has provided for a special three-judge panel in certain categories of cases thought to require special safeguards against arbitrary action, with direct review in the Supreme Court. Three judges are required in condemnation suits involving the TVA, 16 U.S.C.A. Section 831X, and in certain actions under the 1964 Civil Rights and 1965 Voting Rights Acts, 42 U.S.C.A. Sections 1971(g), 1973h(c), 2000a-5(b). Of most significance, however, were 28 U.S.C.A. Sections 2281 and 2282, which required three judges in suits to enjoin enforcement of state or federal statutes, or state administrative orders, on constitutional grounds. Sections 2281 and 2282 were however repealed in 1976 and § 2284 amended to restrict the convening of three-judge courts to when otherwise required by Congress, or to when an action is filed challenging the constitutionality of congressional apportionment or the apportionment of any statewide legislative body.

Three-mile limit. The distance of one marine league or three miles offshore normally recognized as the limit of territorial jurisdiction. See Territorial waters.

Threnges. Vassals, but not of the lowest degree; those who held lands of the chief lord.

Thrift institutions. See Bank; Savings and loan associations.

Thrithing /θráyðin/. In Saxon and old English law, the third part of a county; a division of a county consisting of three or more hundreds. Gradually corrupted to "riding". 1 Bl.Comm. 116.

Through. By means of, in consequence of, by reason of; in, within; over; from end to end, or from one side to the other. By the intermediary of; in the name or as agent of; by the agency of; because of. Great Atlantic & Pacific Tea Co. v. City of Richmond, 183 Va. 931, 33 S.E.2d 795, 802. "Through" is function word capable of several meanings depending on its use; it may indicate passage from one side to another, means of communication, or movement from point to point within a broad expanse or area. State v. Smith, Mo., 431 S.W.2d 74 78.

Through bill of lading. That species of bill of lading which is used when more than one carrier is required for shipping.

Through lot. A lot that abuts upon a street at each end.

Through rate. Total shipping costs when two or more shippers (carriers) are involved. See Joint through rate; Rate.

Throwback Rule. In taxation of trusts, the throwback rule requires that the amount distributed in any tax year which is in excess of that year's distributable net income must be "thrown back" to the preceding year and treated as if it had then been distributed. The beneficiary is taxed in the current year although the computation is made as if the excess had been distributed in the previous year. If the trust did not have undistributed accumulated income in the preceding year, the amount of the throwback is tested against each of the preceding years; in other words, the throwback rule may require consideration of the trust income and its distributions for all of the years preceding the tax year. I.R.C. §§ 665-668.

As term is also used in taxation, if there is no income tax in the state to which a sale would otherwise be assigned for apportionment purposes, the sale essentially is exempt from state income tax, even though the seller is domiciled in a state that levies an income tax. Nonetheless, if the seller's state has adopted a throwback rule, the sale is attributed to the *seller's* state, and the transaction is subjected to a state-level tax. See also Apportionment.

Thrown from automobile. This phrase within accident policy means tossed or hurled out of automobile by some force. Independence Ins. Co. v. Blanford's Adm'x, 276 Ky. 692, 125 S.W.2d 249, 251.

Throw out. To ignore (*e.g.* a bill of indictment) or dismiss a cause of action. See also Dismissal.

Thrusting. Within the meaning of a criminal statute, is not necessarily an attack with a pointed weapon; it means pushing or driving with force, whether the point of the weapon be sharp or not.

Thrymsa /θrimsə/. A Saxon coin worth fourpence.

Thude-weald /θ(y)úwdwiýld/. A woodward, or person that looks after a wood.

Thuringian Code /θərinj(iy)ən kówd/. One of the "barbarian codes," as they are termed; supposed by Montesquieu to have been given by Theodoric, king of Austrasia, to the Thuringians, who were his subjects.

Thus. In the way just indicated. Schrader v. City of Los Angeles, 19 Cal.App.2d 332, 65 P.2d 374, 375.

Thwertnick. In old English law, the custom of giving entertainments to a sheriff, etc., for three nights.

Tick. A colloquial expression for credit or trust; credit given for goods purchased.

Ticket. In contracts, a slip of paper containing a certificate that the person to whom it is issued, or the holder, is entitled to some right or privilege therein mentioned

or described; such, for example, are railroad tickets, theater tickets, pawn tickets, lottery tickets, etc.

Citation or summons issued to violator of motor vehicle law. *See also* Citation.

In election law, a list of candidates for particular offices to be submitted to the voters at an election; a ballot.

Ticket of leave. In English law, a license or permit given to a convict, as a reward for good conduct, originally in the penal settlements, which allows him to go at large, and labor for himself, before the expiration of his sentence, subject to certain specific conditions and revocable upon subsequent misconduct. English equivalent of parole. Such is governed by Criminal Justice Act of 1967, §§ 59-62, as amended by Criminal Law Act of 1977, and extended by Criminal Justice Act of 1982, § 33.

Ticket-of-leave man. A convict who has obtained a ticket of leave.

Ticket speculator. One who purchases and then resells tickets at a price over their face value. A scalper.

Tidal. Affected by or having tides. In order that a river may be "tidal" at a given spot, it may not be necessary that the water should be salt, but the spot must be one where the tide, in the ordinary and regular course of things, flows and reflows.

Tide. The ebb and flow of the sea. As affecting determination of upland boundary of shore, "tide" is rising and falling of water of the sea that is produced by attraction of sun and moon, uninfluenced by special winds, seasons or other circumstances, and meteorological influences should be distinguished as "meteorological tides," and "atmospheric meteorological tides" should be distinguished. *Humble Oil & Refining Co. v. Sun Oil Co.*, C.A.Tex., 190 F.2d 191, 195. *See also* Mean high tide; Mean low tide.

Neap tides. Those tides which happen between the full and change of the moon twice in every 24 hours.

Tideland. Land between the lines of the ordinary high and low tides, covered and uncovered successively by the ebb and flow thereof; land covered and uncovered by the ordinary tides; land over which the tide ebbs and flows; land which is daily covered and uncovered by water by the ordinary ebb and flow of normal tides; land usually overflowed by the neap or ordinary tides; such land as is affected by the tide, that lies between ordinary high-water mark and low-water mark, and which is alternately covered and left dry by the ordinary flux and reflux of the tides; that portion of the shore or beach covered and uncovered by the ebb and flow of ordinary tides. *White v. State*, 18 Cal.App.3d 729, 96 Cal.Rptr. 173, 174.

Tide-water. Water which falls and rises with the ebb and flow of the tide. The term is not usually applied to the open sea, but to coves, bays, rivers, etc.

Tideway. That land between high and low water mark. In re *Inwood Hill Park in Borough of Manhattan, City of New York*, 217 App.Div. 587, 217 N.Y.S. 359, 363.

Tidesmen. In English law, are certain officers of the custom-house, appointed to watch or attend upon ships until the customs are paid; and they are so called because they go aboard the ships at their arrival in the mouth of the Thames, and come up with the tide.

Tie, v. To bind.

Tie, n. When, at an election, neither candidate receives a majority of the votes cast, but each has the same number, there is said to be a "tie." Exists also when the number of votes cast in favor of any measure, in a legislative or deliberative body, is equal to the number cast against it. The Vice President of the United States has the deciding vote in the event of tie votes in the Senate. Art. I, § 3, U.S.Const.

Tied product. Tying arrangement exists when a person agrees to sell one product, the "tying product," only on the condition that the vendee also purchase another product, the "tied product." *Northern v. McGraw-Edison Co.*, C.A.Mo., 542 F.2d 1336, 1344. *See* Tying arrangement.

Tie-in arrangement. *See* Tied product; Tying arrangement.

Tiel. L. Fr. Such. *Nul tiel record*, no such record.

Tiempo inhabil /t(i)yémpow inhábíyl/. Span. A time of inability; a time when the person is not able to pay his debts (when, for instance, he may not alienate property to the prejudice of his creditors). The term is used in Louisiana.

Tierce /tírs/társ/. L. Fr. Third. *Tierce mein* /társ méyn/, third hand.

Tierce /tírs/társ/. A liquid measure, containing the third part of a pipe, or forty-two gallons.

TIF. *See* Tax increment financing.

Tigh /táy/. In old records, a close or inclosure; acroft.

Tight. As colloquially applied to a note, bond, mortgage, lease, etc., this term signifies that the clauses providing the creditor's remedy in case of default (as, by foreclosure, execution, distress, etc.) are summary and stringent.

Tigni immittendi /tígnay imaténday/. Lat. In the civil law, the name of a servitude which is the right of inserting a beam or timber from the wall of one house into that of a neighboring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight.

Tignum /tígnəm/. Lat. A civil law term for building material; timber.

Tihler. In old Saxon law, an accusation.

Tillage. A place tilled or cultivated; land under cultivation, as opposed to lands lying fallow or in pasture.

Till-tapping. Theft of money from a cash register. *Nash v. U. S.*, C.A.Mo., 405 F.2d 1047, 1049.

Timber lease. Lease of real property which contemplates that the lessee will cut timber on the demised premises. *See also* Timber rights.

Timberlode. A service by which tenants were bound to carry timber felled from the woods to the lord's house.

Timber rights. A profit a prendre, the owner of which is entitled to cut and remove timber from the real property described therein. *Blair v. Kimberly-Clark Corp.*, Ala., 474 So.2d 661, 662. *See also* Profit (*Profit a prendre*); Timber lease.

Time. The measure of duration. The word is expressive both of a precise *point* or *terminus* and of an *interval* between two points.

A point in or space of duration at or during which some fact is alleged to have been committed.

See also Computation of time; Elargement of time.

Cooling time. *See* Cooling off period.

Reasonable time. Such length of time as may fairly, properly, and reasonably be allowed or required, having regard to the nature of the act or duty, or of the subject-matter, and to the attending circumstances. It is a maxim of English law that "how long a 'reasonable time' ought to be is not defined in law, but is left to the discretion of the judges." *Twin Lick Oil Co. v. Marbury*, 91 U.S. 587, 591, 23 L.Ed. 328. *See also* Reasonable time.

Time-bargain. In the language of the stock exchange, an agreement to buy or sell stock at a future time, or within a fixed time, at a certain price. It is in reality nothing more than a bargain to pay differences.

Time bill. A bill of exchange which contains a definite or determinable date for payment in contrast to a demand or sight bill.

Time charter. A time charter is a specific and express contract by which the owner lets a vessel or some particular part thereof to another person for a specified time or use; the owner continues to operate the vessel, contracting to render services by his master and crew to carry goods loaded on the vessel, and the master and crew remain servants of the owner. *Atlantic Banana Co. v. M. V. "Calanca"*, D.C.N.Y., 342 F.Supp. 447, 453. A lease of vessel under which owner provides captain and crew who remain subject to owner's control. *Gillentine v. McKeand*, C.A.Mass., 426 F.2d 717, 719. *Compare* Bareboat charter.

Time credit. A letter of credit that is duly honored by the issuer accepting drafts drawn thereunder. Essentially synonymous with "usance credit" and "acceptance credit."

Time deposit. Another term for a savings account or certificate of deposit in a commercial bank. It is so called because in theory (though no longer in practice) a person must wait a certain amount of time after notice of desire to withdraw part or all of his or her savings.

Certificates of deposit usually carry penalties for early withdrawal. Cash in a bank earning interest; contrast with demand deposit. *See* Deposit.

Time draft. A draft payable at a definite time in the future. *See also* Time bill, above.

Time immemorial. Time whereof the memory of a man is not to the contrary.

Time is the essence of contract. Means that performance by one party at time or within period specified in contract is essential to enable him to require performance by other party. *Hayes Mfg. Corporation v. McCauley*, C.C.A.Ohio, 140 F.2d 187, 189. When this phrase is in a contract, it means that a failure to do what is required by the time specified is a breach of the contract.

Time of memory. In English law, time commencing from the beginning of the reign of Richard I. 2 Bl. Comm. 31. Lord Coke defines *time of memory* to be "when no man alive hath had any proof to the contrary, nor hath any consance to the contrary."

Time order. An order which becomes a market or limited price order at a specified time.

Time out of memory. Time beyond memory; time out of mind; time to which memory does not extend.

Time-policy. A policy of marine insurance in which the risk is limited, not to a given voyage, but to a certain fixed term or period of time.

Time value. The price associated with the length of time an investor must wait until an investment matures or the related income is earned. *See also* Yield (*Yield to maturity*).

Timeliness. The importance of fulfilling the terms of a contract by the date provided for in the agreement. *See*, Time (*Time is the essence of contract*).

Time-price differential. "Time price differential" refers to a figure representing the difference between the cash price of an item and the total cost of purchasing that item on credit. *Topline Equipment, Inc. v. Stan Witty Land, Inc.*, 321 Wash.App. 86, 639 P.2d 825, 829. Method by which seller charges one price for immediate cash payment and a different (advance in) price when payment is made at future date or in installments and the former is the cash price and the latter the "time-price" or credit price and difference in price is the "time-price differential". *State ex rel. Guste v. Council of City of New Orleans*, La.App., 297 So.2d 518, 525.

Timesharing. Form of shared property ownership, commonly in vacation or recreation condominium property, wherein rights vest in several owners to use property for specified period each year (e.g., two weeks each year).

Timocracy. An aristocracy of property; government by men of property who are possessed of a certain income.

Timores vani sunt æstimandi qui non cadunt constantem virum /təmōriyz véynay sànt èstàmænday kwày nón kéydànt kənstántəm váyrəm/. Fears which do not assail a resolute man are to be accounted vain.

Tinel. L. Fr. A place where justice was administered.

Tineman /táynmən/. Sax. In old forest law, a petty officer of the forest who had the care of vert and venison by night, and performed other servile duties.

Tinewald /táynwòld/tín/. The ancient parliament or annual convention in the Isle of Man, held upon Midsummer-day, at St. John's chapel.

Tinkermen /tínkərmən/. Fishermen who destroyed the young fry on the river Thames by nets and unlawful engines.

Tinpenny. A tribute paid for the liberty of digging in tin-mines.

Tip. A sum of money given, as to a servant, waiter, bellman, or the like, over and above actual cost or charge for services rendered, with the amount commonly varying upon the quality of such service. A form of gratuity for extra services rendered. Tip income is taxable. I.R.C. § 61(a).

In securities law, refers to advance or inside information passed by one person (a "tipper") to another (a "tippee") as a basis for a decision to buy or sell a security. Such information is presumed to be of material value and not available to the general public. The SEC prohibits trading on the basis of such information by insiders. *See also* Insider; Insider trading; Tippees; Tipper.

Tippees. In securities law, person who acquires material nonpublic information from another who enjoys a fiduciary relationship with the company to which such information pertains. Persons given information by insiders in breach of trust. *Ross v. Licht*, D.C.N.Y., 263 F.Supp. 395, 410. The purpose of SEC Rule 10b-5 (*q.v.*) is to prevent corporate insiders and their "tippees" from taking unfair advantage of the uninformed outsiders. *Radiation Dynamics, Inc. v. Goldmuntz*, C.A.N.Y., 464 F.2d 876. *See also* Insider; Tip; Tipper.

Tipper. A person who possesses material inside information and who makes selective disclosure of such information for trading or other personal purposes; "tippee" is one who receives such information from "tipper." *Grumet v. Shearson/American Exp., Inc.*, D.C.N.J., 564 F.Supp. 336, 340. *See also* Insider; Tip; Tippees.

Tippling house. A place where intoxicating drinks are sold in drams or small quantities to be drunk on the premises, and where men resort for drinking purposes.

Tipstaff. An officer appointed by the court, whose duty is to wait upon the court when it is in session, preserve order, serve process, guard juries, etc. *See* Bailiff.

In English law, an officer appointed by the marshal of the king's bench to attend upon the judges with a kind of rod or staff tipped with silver, who take into their custody all prisoners, either committed or turned over by the judges at their chambers, etc.

Tithe. A tenth part of one's income, contributed for charitable or religious purposes. Broadly, any tax or assessment of one tenth. *See also* Tithes; Tithing.

Tither /táyðər/. One who gathers tithes.

Tithes /táyðz/. In English law, the *tenth* part of the increase, yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants. 2 Bl.Comm. 24. A species of incorporeal hereditament, being an ecclesiastical inheritance collateral to the estate of the land, and due only to an ecclesiastical person by ecclesiastical law. *See also* Tithe.

Great tithes. In English ecclesiastical law, tithes of corn, peas and beans, hay and wood.

Minute tithes. Small tithes, such as usually belong to a vicar, as of wool, lambs, pigs, butter, cheese, herbs, seeds, eggs, honey, wax, etc.

Mixed tithes. Those which arise not immediately from the ground, but from those things which are nourished by the ground, *e.g.*, colts, chickens, calves, milk, eggs, etc.

Personal tithes. Personal tithes are tithes paid of such profits as come by the labor of a man's person; as by buying and selling, gains of merchandise and handicrafts, etc.

Predial tithes. Such as arise immediately from the ground; as, grain of all sorts, hay, wood, fruits, and herbs.

Tithe-free. Exempted from the payment of tithes.

Tithe rent-charge. A rent-charge established in lieu of tithes, under the tithes commutation act, 1836 (St. 6 § 7 Wm. IV, c. 71). As between landlord and tenant, the tenant paying the tithe rent-charge is entitled, in the absence of express agreement, to deduct it from his rent, under section 70 of the above act. And a tithe rent-charge unpaid is recoverable by distress as rent in arrear.

Tithing /táyðin/. Act of paying tithes. One of the civil divisions of England, being a portion of that greater division called a "hundred." It was so called because ten freeholders with their families composed one. It is said that they were all knit together in one society, and bound to the king for the peaceable behavior of each other. In each of these societies there was one chief or principal person, who, from his office, was called "teothing-man," now "tithing-man."

Tithing-man /táyðinmən/. A constable. After the introduction of justices of the peace, the offices of constable and *tithing-man* became so similar that they were regarded as precisely the same.

In New England, a parish officer annually elected to preserve good order in the church during divine service, and to make complaint of any disorderly conduct.

In Saxon law, the head or chief of a tithing or decenary of ten families; he was to decide all lesser causes between neighbors. In modern English law, he is the same as an under-constable or peace-officer.

Tithing-penny /táyðinpeni/. In Saxon and old English law, money paid to the sheriff by the several tithings of his county.

Titius /tish(iy)əs/. In Roman law, a proper name, frequently used in designating an indefinite or fictitious person, or a person referred to by way of illustration. "Titius" and "Seius," in this use, correspond to "John Doe" and "Richard Roe," or to "A.B." and "C.D."

Title. A mark, style, or designation; a distinctive appellation; the name by which anything is known. Thus, in the law of persons, a title is an appellation of dignity or distinction, a name denoting the social rank of the person bearing it; as "duke" or "count." So, in legislation, the title of a statute is the heading or preliminary part, furnishing the name by which the act is individually known. It is usually prefixed to the statute in the form of a brief summary of its contents; as "An act for the prevention of gaming." Again, the title of a patent is the short description of the invention, which is copied in the letters patent from the inventor's petition; e.g., "a new and improved method of drying and preparing malt."

The title of a book, or any literary composition, is its name; that is, the heading or caption prefixed to it, and disclosing the distinctive appellation by which it is to be known. This usually comprises a brief description of its subject-matter and the name of its author.

See also Abstract of title; Action to quiet title; Bad title; Cloud on title; Color of title; Defective title; Disparagement of title; Doubtful title; Good title; Indicia of title; Just title; Legal title; Marketable title; Marketable Title Acts; Merchantable title; Muniments of title; Non-merchantable title; Onerous title; Owner; Ownership; Paramount title; Possession; Recording acts; Torrens title system; Worthier title.

Law of Trademarks

A title may become a subject of property; as one who has adopted a particular title for a newspaper, or other business enterprise, may, by long and prior usage, or by compliance with statutory provisions as to registration and notice, acquire a right to be protected in the exclusive use of it. See Trademark.

Real Property Law

The formal right of ownership of property. Title is the means whereby the owner of lands has the just possession of his property. The union of all the elements which constitute ownership. Full independent and fee ownership. The right to or ownership in land; also, the evidence of such ownership. Such ownership may be held individually, jointly, in common, or in cooperate or partnership form.

One who holds vested rights in property is said to have title whether he holds them for his own benefit or for the benefit of another. Restatement, Second, Trusts, § 2, Comment d.

See also Deed; Estate.

Procedure

Every action, petition, or other proceeding has a title, which consists of the name of the court in which it is

pending, the names of the parties, etc. Administration actions are further distinguished by the name of the deceased person whose estate is being administered. Every pleading, summons, affidavit, etc., commences with the title. In many cases it is sufficient to give what is called the "short title" of an action, namely, the court, the reference to the record, and the surnames of the first plaintiff and the first defendant. See also Caption.

Generally

Absolute title. As applied to title to land, an exclusive title, or at least a title which excludes all others not compatible with it. An absolute title to land cannot exist at the same time in different persons or in different governments. See also Fee simple.

Abstract of title. See that title.

Adverse title. A title set up in opposition to or defeasance of another title, or one acquired or claimed by adverse possession. See Adverse possession.

Bad title. See that title.

Bond for title. See Bond.

By accession. Title acquired by additions innocently acquired such as in the case of intermingling of another's property with one's own. See Accession.

By accretion. Title acquired by additions to one's property as in the case of deposits of soil from a stream. See Accretion.

By adverse possession. See Adverse possession.

Chain of title. See that title; also Abstract of title.

Clear title, good title, merchantable title, marketable title, are synonymous; "clear title" meaning that the land is free from incumbrances, "good title" being one free from litigation, palpable defects, and grave doubts, comprising both legal and equitable titles and fairly deducible of record. See Marketable title.

Clear title of record, or clear record title. Title free from apparent defects, grave doubts, and litigious uncertainties, and is such title as a reasonably prudent person, with full knowledge, would accept. A title dependent for its validity on extraneous evidence, ex parte affidavits, or written guaranties against the results of litigation is not a clear title of record, and is not such title as equity will require a purchaser to accept. See Marketable title.

Cloud on title. See that title.

Color of title. See that title.

Covenants for title. Covenants usually inserted in a conveyance of land, on the part of the grantor, and binding him for the completeness, security, and continuance of the title transferred to the grantee. They comprise "covenants for seisin, for right to convey, against incumbrances, for quiet enjoyment, sometimes for further assurance, and almost always of warranty." See Covenant.

Defective title. Title which has some defect or is subject to litigation and hence may not be transferred to another. *See* Unmarketable title.

Document of title. *See* Document.

Doubtful title. *See* that title.

Equitable title. A right in the party to whom it belongs to have the legal title transferred to him; or the beneficial interest of one person whom equity regards as the real owner, although the legal title is vested in another. *See also* Equitable ownership.

Examination of title. *See* Examination; Title search.

Good title. Title which is free of defects and litigation and hence may be transferred to another. *See* Marketable title.

Imperfect title. One which requires a further exercise of the granting power to pass the fee in land, or which does not convey full and absolute dominion.

Legal title. *See* that title.

Lucrative title. In the civil law, title acquired without the giving of anything in exchange for it; the title by which a person acquires anything which comes to him as a clear gain, as, for instance, by gift, descent, or devise. Opposed to *Onerous title*, as to which see *below*.

Marketable title. *See* that title.

Onerous title. In the civil law, title to property acquired by the giving of a valuable consideration for it, such as the payment of money, the rendition of services, the performance of conditions, the assumption of obligations, or the discharge of liens on the property; opposed to "lucrative" title, or one acquired by gift or otherwise without the giving of an equivalent.

Paper title. A title to land evidenced by a conveyance or chain of conveyances; the term generally implying that such title, while it has color or plausibility, is without substantial validity.

Paramount title. *See* that title.

Perfect title. Various meanings have been attached to this term: (1) One which shows the absolute right of possession and of property in a particular person. *See* Fee simple. (2) A grant of land which requires no further act from the legal authority to constitute an absolute title to the land taking effect at once. (3) A title which does not disclose a patent defect suggesting the possibility of a lawsuit to defend it; a title such as a well-informed and prudent man paying full value for the property would be willing to take. (4) A title which is good both at law and in equity. (5) One which is good and valid beyond all reasonable doubt. (6) A marketable or merchantable title. *See* Marketable title.

Presumptive title. A barely presumptive title, which is of the very lowest order, arises out of the mere occupation or simple possession of property (*jus possessionis*), without any apparent right, or any pretense of right, to hold and continue such possession.

Quiet title. *See* Quiet title action.

Record title. *See* Record.

Root of title. Root of title means that conveyance or other title transaction or other link in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded or established as of a date forty years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.

Singular title. The title by which a party acquires property as a singular successor.

Tax title. *See* Tax.

Title by adverse possession or prescription. The right which a possessor acquires to property by reason of his adverse possession during a period of time fixed by law. *See* Adverse possession.

The elements of title by prescription are open, visible and continuous use under a claim of right, adverse to and with knowledge of owner. *Dry Gulch Ditch Co. v. Hutton*, 170 Or. 656, 133 P.2d 601, 610. Such title is equivalent to a "title by deed" and cannot be lost or divested except in the same manner, and mere recognition of title in another after such acquisition will not operate to divest the adverse claimant of that which he has acquired. *Maloney v. Bedford*, 290 Ky. 647, 162 S.W.2d 198, 199.

Title by descent. That title which one acquires by law as heir to the deceased owner.

Title by prescription. *See* *Title by adverse possession or prescription, above*.

Title deeds. Deeds which constitute or are the evidence of title to lands. *See* Deed.

Title defective in form. Title on face of which some defect appears, not one that may prove defective by circumstances or evidence dehors the instrument. Title defective in form cannot be basis of prescription.

Title insurance. *See* Insurance.

Title of a cause. The distinctive appellation by which any cause in court, or other juridical proceeding, is known and distinguished from others. *See* Caption.

Title of an act. The heading, or introductory clause, of a statute, wherein is briefly recited its purpose or nature, or the subject to which it relates.

Title of clergymen (to orders). Some certain place where they may exercise their functions; also an assurance of being preferred to some ecclesiastical benefice.

Title of declaration. That preliminary clause of a declaration which states the name of the court and the term to which the process is returnable.

Title of entry. The right to enter upon lands.

Title of record. Evidence that real property is in the lawful possession of owner. Such title is acquired through a deed, a will, adverse possession, or eminent

domain. The conditions of the title are found in a title search.

Title registration. See Torrens title system.

Title retention. A form of lien, in the nature of a chattel mortgage, to secure the purchase price. *American Indemnity Co. v. Allen, for Use and Benefit of Commerce Union Bank*, 176 Tenn. 134, 138 S.W.2d 445, 446.

Title to orders. In English ecclesiastical law, a title to orders is a certificate of preferment or provision required by the thirty-third canon, in order that a person may be admitted into holy orders, unless he be a fellow or chaplain in Oxford or Cambridge, or master of arts of five years' standing in either of the universities, and living there at his sole charges; or unless the bishop himself intends shortly to admit him to some benefice or curacy.

Unity of title. See that title.

Unmarketable title. See that title.

Warranty of title. See Warranty.

Title company. Company that examines real estate titles and, commonly, issues title insurance. See Title search.

Title documents. Those instruments necessary for establishing or for conveying good title; e.g. deed.

Title guaranty company. A business organization which searches title to determine whether any defects or encumbrances are recorded and which then gives the buyer of the property or the mortgagee a guaranty of the title.

Title insurance. See Insurance.

Title opinion. An opinion (usually by an attorney or title company) on the legal state of the title of specific real property. It should reflect any clouds on title such as rights of way, servitudes and easements. See also Title search.

Title search. An examination of the records of the registry of deeds or other office which contains records of title documents to determine whether title to the property is good; i.e. whether there are any defects in the title. The examiner then prepares an abstract of the documents examined. See also Abstract of title; Back title letter; Examination; Title company.

Title standards. Criteria by which a title to real estate may be evaluated to determine whether it is defective or marketable. Many states through associations of conveyancers and real estate attorneys have adopted such standards.

Title theory. A mortgage law theory that holds that from the date of the mortgage execution until the mortgage is satisfied or foreclosed, legal title belongs to the mortgagee and the right to possession belongs to the mortgagor while mortgage is not in default.

Title transaction. Any transaction affecting title to any interest in land, including title by will or descent, title

by tax deed, or deed by trustee, referee, guardian, executor, administrator, master in chancery, sheriff, or any other form of deed, or decree of any court, as well as warranty deed, quitclaim deed, mortgage, or transfer or conveyance of any kind.

Titulada /tiytuwláða/. In Spanish law, title.

Titulus /tityələs/. Lat. Title. In the civil law, the source or ground of possession; the means whereby possession of a thing is acquired, whether such possession be lawful or not.

In old ecclesiastical law, a temple or church; the material edifice. So called because the priest in charge of it derived therefrom his name and *title*.

Titulus est justa causa possidendi id quod nostrum est; dicitur a tuendo /tityələs èst jəstə kóza pəsədiyénday id kwòd nóstrəm èst, dísətar èy t(y)uwéndow/. A title is the just right of possessing that which is our own; it is so called from "tuendo," defending.

To. While this is ordinarily a word of exclusion, when used in describing premises, it has been held that the word in a statute may be interpreted as exclusionary or inclusionary depending on the legislative intent as drawn from the whole statute. *Clark v. Bunnell*, 172 Colo. 32, 470 P.2d 42, 44. It may be a word of inclusion, and may also mean "into."

Toft. A place or piece of ground on which a house formerly stood, which has been destroyed by accident or decay.

Toftman. In old English law, the owner of a toft.

Togati /towgéytay/. Lat. In Roman law, advocates; so called under the empire because they were required, when appearing in court to plead a cause, to wear the *toga*, which had then ceased to be the customary dress in Rome.

Together. In union with, along with. *Gilmore v. Mulvihill*, 109 Mont. 601, 98 P.2d 335, 341.

To have and to hold. The words in a conveyance which show the estate intended to be conveyed. Thus, in a conveyance of land in fee-simple, the grant is to "A. and his heirs, to have and to hold the said [land] unto and to the use of the said A., his heirs and assigns forever."

Strictly speaking, however, the words "to have" denote the estate to be taken, while the words "to hold" signify that it is to be held of some superior lord, i.e., by way of tenure (*q.v.*). The former clause is called the "*habendum*;" the latter, the "*tenendum*."

Token. A sign or mark; a material evidence of the existence of a fact. A sign or indication of an intention to do something as in the case of one who places a small order to show good faith to a seller with a view towards placing a larger order at a future time.

Token-money. A conventional medium of exchange consisting of pieces of metal, fashioned in the shape and size of coins, and circulating among private persons, by consent, at a certain value. No longer permitted or recognized as money.

Tolerate. To allow so as not to hinder; to permit as something not wholly approved of; to suffer; to endure.

Toleration. The allowance of religious opinions and modes of worship which are contrary to, or different from, those of the established church or belief.

Toleration Act. The statute 1 W. & M. St. 1, c. 18, for exempting Protestant dissenters from the penalties of certain laws is so called.

Toll, v. To bar, defeat, or take away; thus, to toll the entry means to deny or take away the right of entry.

To suspend or stop temporarily as the statute of limitations is tolled during the defendant's absence from the jurisdiction and during the plaintiff's minority.

Toll, n. A sum of money for the use of something, generally applied to the consideration which is paid for the use of a road, highway, bridge, or the like, of a public nature. *Sands v. Manistee River Imp. Co.*, 123 U.S. 288, 8 S.Ct. 113, 31 L.Ed. 149; *Rogge v. United States*, C.C.A.Alaska, 128 F.2d 800, 802. The price of the privilege of travel over that particular highway and it is a quid pro quo and rests on principle that he who receives the toll does or has done something as an equivalent to him who pays it. *State ex rel. Washington Toll Bridge Authority v. Yelle*, 195 Wash. 636, 82 P.2d 120, 125. Charge for long-distance telephone calls.

Tollage. Payment of toll; money charged or paid as toll; the liberty or franchise of charging toll.

Tollbooth. A prison; a customhouse; an exchange; also the place where goods are weighed or tolls collected.

Toldish. A vessel by which the toll of corn for grinding is measured.

Toller. One who collects tribute or taxes.

Tollere /tóləriy/. Lat. In the civil law, to lift up or raise; to elevate; to build up.

Tolle voluntatem et erit omnis actus indifferens /tóliy volántéytəm èt èhrət ómniy èktəs indifèrènz/. Take away the will, and every action will be indifferent.

Tolls. In a general sense, any manner of customs, subsidy, prestation, imposition, or sum of money demanded for exporting or importing of any goods or merchandise to be taken of the buyer. *See also Toll.*

Tollsester /towlséstar/. In old English law, an excise; a duty paid by tenants of some manors to the lord for liberty to brew and sell ale.

Tolt. In old English law, a writ whereby a cause depending in a court baron was taken and removed into a county court.

Tolta /tówlta/. In old English law, wrong; rapine; extortion.

Tomb /túwm/. An excavation in earth or rock, intended to receive the dead body of a human being.

Tombstone /túwmstówn/. Stone marking place of burial and usually inscribed with memorial of deceased.

Tombstone ad. A notice, circular or advertisement placed in newspaper of a stock offering containing basic information and language to the effect that the announcement is neither an offer to sell nor a solicitation of an offer to buy any of the securities listed. The actual securities offer is made only by means of the prospectus. *See also Red herring.*

Ton. A measure of weight; differently fixed, at two thousand pounds avoirdupois, or at twenty hundred-weights, each hundred-weight being one hundred and twelve pounds avoirdupois. A short ton is 20 short hundred-weight (2000 lbs.) or 0.907 metric tons; a long ton is 20 long hundred-weight (2240 lbs.) or 1.016 metric tons. There are also various types of tons in shipping usage; e.g. freight ton and register ton.

Ton mile. In transportation, the measure equal to the transportation of one ton of freight one mile.

Tonnage. The capacity of a vessel for carrying freight or other loads, calculated in tons. But the way of estimating the tonnage varies in different countries. Per ton duty or charge on cargo. Total shipping tonnage of country or port.

Tonnage-duty. A tax laid upon vessels according to their tonnage or cubical capacity. The vital principle of a tonnage duty is that it is imposed, whatever the subject, solely according to the rule of weight, either as to the capacity to carry or the actual weight of the thing itself. 46 U.S.C.A. § 121 et seq.

Tonnage-rent. When the rent reserved by a mining lease or the like consists of a royalty on every ton of minerals gotten in the mine, it is often called a "tonnage-rent." There is generally a dead rent in addition.

Tonnagium /tónéyj(iy)əm/. In old English law, a custom or impost upon wines and other merchandise exported or imported, according to a certain rate per ton.

Tonnetight /tántáyt/. In old English law, the quantity of a ton or tun, in a ship's freight or bulk, for which tonnage or tunnage was paid to the king.

Tonsura /tons(y)úrá/. Lat. In old English law, a shaving, or polling; the having the crown of the head shaven; tonsure. One of the peculiar badges of a clerk or clergyman.

Tontine /tontíyn/. A financial arrangement (such as an insurance policy) in which a group of participants share advantages on such terms that upon the default or death of any participant, his advantages are distributed among the remaining participants until only one remains, whereupon the whole goes to him; or on the expiration of an agreed period, the whole goes to those participants remaining at that time. Under the "Tontine" plan of insurance, no accumulation or earnings are credited to the policy unless it remains in force for the Tontine period of a specified number of years. Thus those who survive the period and keep their policies in force share in the accumulated funds and those who die or permit their policies to lapse during period do not; neither do their beneficiaries participate in such accumulation.

Commercial Travelers' Ins. Co. v. Carlson, 104 Utah 41, 137 P.2d 656, 660.

In French law, a species of association or partnership formed among persons who are in receipt of perpetual or life annuities, with the agreement that the shares or annuities of those who die shall accrue to the survivors. This plan is said to be thus named from Tonti, an Italian, who invented it in the seventeenth century. The principle is used in some forms of life insurance.

Took and carried away. In criminal pleading, technical words necessary in an indictment for simple larceny.

Top lease. A lease made before the prior lease has expired; therefore the term of the new lease overlaps the term of the old lease. *St. Clair v. Exeter Exploration Co.*, C.A.N.D., 671 F.2d 1091, 1095. A subsequent oil and gas lease which covers one or more mineral interests that are subject to a valid, subsisting prior lease.

Torpedo doctrine. Attractive nuisance doctrine. *Schock v. Ringling Bros. and Barnum & Bailey Combined Shows*, 5 Wash.2d 599, 105 P.2d 838, 843. *See* Attractive nuisance doctrine.

Torrens title system /tórhrnz táytəl sistəm/. A system for registration of land under which, upon the landowner's application, the court may, after appropriate proceedings, direct the issuance of a certificate of title. With exceptions, this certificate is conclusive as to applicant's estate in land. System of registration of land title as distinguished from registration or recording of evidence of such title. The originator of the system was Sir Richard Torrens, 1814-1884, reformer of Australian Land Laws.

Tort (from Lat. torquere, to twist, tortus, twisted, wrested aside). A private or civil wrong or injury, including action for bad faith breach of contract, for which the court will provide a remedy in the form of an action for damages. *K Mart Corp. v. Ponsock*, 103 Nev. 39, 732 P.2d 1364, 1368. A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction. *Coleman v. California Yearly Meeting of Friends Church*, 27 Cal.App.2d 579, 81 P.2d 469, 470. There must always be a violation of some duty owing to plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties.

A legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the individual.

See also Federal Tort Claims Act; Government tort; Husband-wife tort actions; Joint tort-feasors; Liability; Negligence; Palsgraph doctrine; Parental liability; Privilege; Privity; Privity of contract; Product liability; Sovereign immunity; Strict liability; Warranty.

Children. *See* Parental liability.

Constitutional tort. Federal statute providing that every person who under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C.A. § 1983. *See also* Color of law.

Intentional tort. Tort or wrong perpetrated by one who intends to do that which the law has declared wrong as contrasted with negligence in which the tortfeasor fails to exercise that degree of care in doing what is otherwise permissible. *See also* Willful tort.

Maritime tort. *See* Jones Act; Longshore and Harbor Workers' Compensation Act; Maritime.

Negligence. The tort or negligence consists of the existence of a legal duty owed the plaintiff by the defendant, breach of the duty, proximate causal relationship between the breach and plaintiff's injury, and damages. *Stimson v. Michigan Bell Tel. Co.*, 77 Mich.App. 361, 258 N.W.2d 227, 231. *See also* Negligence.

Personal tort. One involving or consisting in an injury to the person or to the reputation or feelings, as distinguished from an injury or damage to real or personal property, called a "property tort." *Gray v. Blight*, C.C. A.Colo., 112 F.2d 696, 699.

Prenatal injuries. *See* Child; Unborn child; Viable child.

Quasi tort. Though not a recognized term of English law, may be conveniently used in those cases where a man who has not committed a tort is liable as if he had. Thus a master is liable for wrongful acts done by his servant in the course of his employment.

Strict tort liability. *See* Strict liability.

Willful tort. *See* Intentional tort, above; also Willful tort.

Tort claims acts. *See* Federal Tort Claims Act; Sovereign immunity.

Tort-feasor. A wrong-doer; an individual or business that commits or is guilty of a tort. *See also* Joint tort-feasors.

Tortious /tórshəs/. Wrongful; of the nature of a tort. The word "tortious" is used throughout the Restatement, Second, Torts, to denote the fact that conduct whether of act or omission is of such a character as to subject the actor to liability, under the principles of the law of torts. (§ 6). To establish "tortious act" plaintiff must prove not only existence of actionable wrong, but also that damages resulted therefrom. *James v. Public Finance Corp.*, 47 C.A.3d 995, 121 Cal.Rptr. 670, 675. As used in state long-arm statutes, such acts may afford a basis for jurisdiction over a nondomiciliary. *E.g.* N.Y. CPLR § 302(a)(2)(3).

Formerly certain modes of conveyance (*e.g.*, feoffments, fines, etc.) had the effect of passing not merely the estate of the person making the conveyance, but the whole fee-simple, to the injury of the person really

entitled to the fee; and they were hence called "tortious conveyances."

Tortura legum pessima /tort(y)úra líygəm pésəmə/. The torture or wresting of laws is the worst [kind of torture].

Torture. To inflict intense pain to body or mind for purposes of punishment, or to extract a confession or information, or for sadistic pleasure. Within meaning of statute allowing imposition of death sentence, occurs when the victim is subjected to serious physical abuse before his death. *Hardy v. State*, 247 Ga. 235, 275 S.E.2d 319, 321. As element of first-degree murder by torture, consists of cold-blooded, calculated intent to inflict extreme and prolonged pain for the purposes of revenge, extortion, persuasion or for any sadistic purpose. *People v. Talamantez*, App. 4 Dist.1984, 169 C.A.3d 443, 215 Cal.Rptr. 542.

Tory. Originally applied to presbyterians in Scots Gaelic. Then to a papist outlaw in Ireland who supported the hereditary right to the Crown of James despite his Catholic faith. After 1688 it was identified with those supporters of the interests of Anglicanism and the squirearchy, not the Whiggish landed aristocracy, and with the financially well-off middle classes. Used today derogatorily to refer to conservatives rather than Labour, the left and the Social Democrats.

The name was also given, in America, during the struggle of the colonies for independence, to the party of those residents who favored the side of the British Crown and opposed independence.

Tot. In old English practice, a word written by the foreign opposer or other officer opposite to a debt due the king, to denote that it was a *good* debt; which was hence said to be *totted*.

Tota curia /tótə kyúriə/. L. Lat. In the old reports, the whole court.

Total. Whole, not divided, lacking no part, entire, full, complete, the whole amount. Utter, absolute. *Glaze v. Hart*, 225 Mo.App. 1205, 36 S.W.2d 684.

Total disability. A person is "totally disabled" if his physical condition, in combination with his age, training, and experience, and the type of work available in his community, causes him to be unable to secure anything more than sporadic employment resulting in an insubstantial income. *Cavanaugh v. Frederick Willys, Inc.*, Minn., 361 N.W.2d 49, 50. Means loss of earning power as a worker, manifested either by inability to perform work obtainable or inability to secure work, and not absolute helplessness or entire physical disability. *Clark v. Gilley*, Ky., 311 S.W.2d 391, 392.

With meaning of workers' compensation acts, means lack of ability to follow continuously some substantially gainful occupation without serious discomfort or pain and without material injury to health or danger to life. *McKissick Products Corp. v. Gardner*, Okl., 280 P.2d 718, 720. See also Disability; Temporary total disability.

Total eviction. That which occurs when the possessor (i.e. tenant) is wholly deprived of his rights in the premises.

Total Incapacity. See Total disability.

Totality of circumstances test. Test used to determine the constitutionality of various search and seizure procedures, e.g. issuance of a search warrant, *Illinois v. Gates*, 462 U.S. 213, 238, 239, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527; investigative stops, *U.S. v. Sokolow*, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1. This standard focuses on all the circumstances of a particular case, rather than any one factor.

Total loss. *Fire insurance.* The complete destruction of the insured property by fire, so that nothing of value remains from it; as distinguished from a *partial* loss, where the property is damaged, but not entirely destroyed. Test whether building burned is "total loss" is whether substantial portion is left standing in condition reasonably suitable as basis on which to reconstruct building in like condition as to strength, security, and utility as it was before fire. *Commerce Ins. Co. v. Sergi*, Tex.Civ.App., 60 S.W.2d 1046. Total loss is such destruction of a building as that, after the fire, there remains standing in place no substantial remnant thereof which a reasonably prudent owner, uninsured, desiring to restore the building to its original condition, would utilize as a basis of such restoration. *Crutchfield v. St. Paul Fire & Marine Ins. Co.*, Tex.Civ.App., 306 S.W.2d 948, 952.

Actual total loss. The total loss of a vessel covered by a policy of insurance, by its real and substantive destruction, by injuries which leave it no longer existing *in specie*, by its being reduced to a wreck irretrievably beyond repair, or by its being placed beyond the control of the insured and beyond his power of recovery. Distinguished from a *constructive* total loss, which occurs where the vessel, though injured by the perils insured against, remains *in specie* and capable of repair or recovery, but at such an expense, or under such other conditions, that the insured may claim the whole amount of the policy upon abandoning the vessel to the underwriters. In such cases the insured is entitled to indemnity as for a total loss.

Constructive total loss. See *Actual total loss*, above.

Partial loss. Exists where an injury results to a vessel from a peril insured against, but where the loss is neither actually nor constructively total. See also *Actual total loss*, above.

Totidem verbis /tódədəm vərbəs/. Lat. In so many words.

Toties quoties /tówshiy(iy)z kwówshiy(iy)z/. Lat. As often as occasion shall arise.

Totis viribus /tótəz váyrbəs/. Lat. With all one's might or power; with all his might; very strenuously.

Totted /tótəd/. A good debt to the crown, i.e., a debt paid to the sheriff, to be by him paid over to the king.

Totten trust. See Trust.

Totum præfertur unicuique parti /tówtəm præfártər yùwnək(yuw)áykwiy pártay/. The whole is preferable to any single part.

Touch. In marine insurance law, to stop at a port, usually for a brief period.

Touch and stay. In maritime law, words introduced in policies of insurance, giving the party insured the right to stop and stay at certain designated points in the course of the voyage. A vessel which has the power to touch and stay at a place in the course of the voyage must confine herself strictly to the terms of the liberty so given; for any attempt to trade at such a port during such a stay, as, by shipping or landing goods, will amount to a species of deviation which will discharge the underwriters, unless the ship have also liberty to trade as well as to touch and stay at such a place.

Touching a dead body. It was an ancient superstition that the body of a murdered man would bleed freshly when touched by his murderer. Hence, in old criminal law, this was resorted to as a means of ascertaining the guilt or innocence of a person suspected of the murder.

Toujours et uncore prist /tuwzhúr ey onkór priy/. L. Fr. Always and still ready. This is the name of a plea of tender.

Tour d'échelle /túr deshél/. In French law, an easement consisting of the right to rest ladders upon the adjoining estate, when necessary in order to repair a party-wall or buildings supported by it.

Also the vacant space surrounding a building left unoccupied in order to facilitate its reparation when necessary.

Tourn /tyúrn/. In old English law, a court of record, having criminal jurisdiction, in each county, held before the sheriff, twice a year, in one place after another, following a certain circuit or rotation.

Tout /túw/. Fr. All; whole; entirely. *Tout temps prist*, always ready.

Tout ce que la loi ne defend pas est permis /túw s(ə) kə la lwá nə deyfon pá ey permíy/. Everything is permitted which is not forbidden by law.

Toute exception non surveillée tend à prendre la place du principe /túwt eksepsyówn non sərveyéy tónd a prónd la plás dyùw prənsíyp/. Every exception not watched tends to assume the place of the principle.

Tout temps prist /túw ton priy/. L. Fr. Always ready. The emphatic words of the old plea of tender; the defendant alleging that he has always been ready, and still is ready, to discharge the debt.

Tout un sound /túwt ən sáwnd/. L. Fr. All one sound; sounding the same; *idem sonans*.

Towage. The act or service of towing ships and vessels, usually by means of a small vessel called a "tug." Also, the charge for such service.

Toward. In the direction of, or, on a course or line leading to. Coming soon; not long before.

To wit. That is to say; namely; *scilicet*; *videlicet*.

Town. A community which is smaller and less organized than a city; a small municipality. A civil and political division of a state, varying in extent and importance, but usually one of the divisions of a county. In the New England states, the town is the political unit, and is a municipal corporation. In some other states, where the county is the unit, the town is merely one of its subdivisions, but possesses some powers of local self-government. In still other states, such subdivisions of a county are called "townships," and "town" is the name of a village, borough, or smaller city. The word "town" is quite commonly used as a generic term and as including both cities and villages.

Town-clerk. In those states where the town is the unit for local self-government, the town-clerk is a principal officer who keeps the records, issues calls for town-meetings, and performs generally the duties of a secretary to the political organization.

Town collector. One of the officers of a town charged with collecting the taxes assessed for town purposes.

Town commissioner. In some of the states where the town is the political unit the town commissioners constitute a board of administrative officers charged with the general management of the town's business.

Town-crier. An officer in a town whose business it is to make proclamations.

Town-hall. The building maintained by a town for town-meetings and the offices of the municipal authorities.

Town house. Type of dwelling unit normally having two, but sometimes three, stories; usually connected to a similar structure by a common wall, and commonly (particularly in planned unit developments) sharing and owning in common the surrounding grounds.

Town-meeting. Under the municipal organization of the New England states, the town-meeting is a legal assembly of the qualified voters of a town, held at stated intervals or on call, for the purpose of electing town officers, and of discussing and deciding on questions relating to the public business, property, and expenses of the town.

Town or city tax. Such tax as a town or city may levy for its peculiar expenses; as distinguished from a county or state tax; *e.g.*, New York City tax.

Town order or warrant. An official direction in writing by the auditing officers of a town, directing the treasurer to pay a sum of money.

Town pound. A place of confinement maintained by a town for estrays.

Town purpose. When it is said that taxation by a town, or the expenditure of the town's money, must be for town purposes, it is meant that the purposes must be public with respect to the town; *i.e.*, concern the welfare and advantage of the town as a whole.

Town-reeve. The reeve or chief officer of a town.

Township. Township, in government survey, is square tract six miles on each side containing thirty-six square miles of land. *U. S. v. Weyerhaeuser Co.*, C.A.Or., 392 F.2d 448, 449. In some of the states, this is the name given to the civil and political subdivisions of a county.

Township trustee. One of a board of officers to whom, in some states, affairs of a township are intrusted.

Townsite. Portion of public domain segregated by proper authority and procedure as site for a town.

Town treasurer. The treasurer of a town which is an organized municipal corporation.

Toxic /tɒksək/. (Lat. *toxicum*; Gr. *toxikon*.) Poisonous; having the character or producing the effects of a poison; referable to a poison; produced by or resulting from a poison.

Toxical. Poisonous; containing poison.

Toxicant /tɒksəkənt/. A poison; a toxic agent; any substance capable of producing intoxication or poisoning.

Toxicate /tɒksəkəyt/. To poison. Not used to describe the act of one who administers a poison, but the action of the drug or poison itself.

Auto-intoxication. Self-empoisonment from the absorption of the toxic products of internal metabolism, e.g., ptomaine poisoning.

Intoxication. The state of being poisoned; the condition produced by the administration or introduction into the human system of a poison. This term is properly used as equivalent to "drunkenness," which, however, is more accurately described as "alcoholic intoxication." See also *Intoxication*.

Toxicology. The science of poisons; that department of medical science which treats of poisons, their effect, their recognition, their antidotes, and generally of the diagnosis and therapeutics of poisoning.

Toxic waste. Hazardous, poisonous substances such as PCB's, and DDT. Several federal laws regulate the use, transportation, and disposal of toxic material; e.g., The Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901-6987, The Toxic Substances Control Act of 1976, 15 U.S.C.A. §§ 2601-2629, amended by 15 U.S.C.A. §§ 2642-2654, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C.A. §§ 9601-9657. Most states also have similar laws regulating the handling and disposing of toxic wastes. See also *Superfund*.

Toxin. In its widest sense, this term may denote any poison or toxicant; but as used in pathology and medical jurisprudence it signifies, in general, any diffusible alkaloidal substance (as, the ptomaines, abrin, brucin, or serpent venoms), and in particular the poisonous products of pathogenic (disease-producing) bacteria.

Tracea /tréysh(iy)ə/. In old English law, the track or trace of a felon, by which he was pursued with the hue and cry; a foot-step, hoof-print, or wheel-track.

Tracing. A tracing is a mechanical copy or *facsimile* of an original, produced by following its lines, with a pen

or pencil, through a transparent medium, called tracing paper. See also *Skiptracing*.

Tract of land. A lot, piece or parcel of land, of greater or less size, the term not importing, in itself, any precise dimension, though term generally refers to a large piece of land. *Holt v. Wichita County Water Improvement Dist. No. 2*, Tex.Civ.App., 48 S.W.2d 527, 529. Term is synonymous with parcel of land and does not have reference to size but to contiguous quantity of land. *Floral Hills Memory Gardens, Inc. v. Robb*, 227 Ga. 470, 181 S.E.2d 373, 374.

Tract index. A page or set of pages in an index book devoted to listing all documents which affect a particular tract of land.

Tradas in ballium /trédəs in bæliyəm/. You deliver to bail. In old English practice, the name of a writ which might be issued in behalf of a party who, upon the writ *de odio et atia*, had been found to have been maliciously accused of a crime, commanding the sheriff that, if the prisoner found twelve good and lawful men of the county who would be mainpernors for him, he should *deliver him in bail* to those twelve, until the next assize.

Trade. The act or the business of buying and selling for money; traffic; barter. *May v. Sloan*, 101 U.S. 231, 25 L.Ed. 797. Purchase and sale of goods and services between businesses, states or nations. Trade is not a technical word and is ordinarily used in three senses: (1) in that of exchanging goods or commodities by barter or by buying and selling for money; (2) in that of a business occupation generally; (3) in that of a mechanical employment, in contradistinction to the learned professions, agriculture, or the liberal arts. *People v. Polar Vent of America, Inc.*, 10 Misc.2d 378, 174 N.Y.S.2d 789, 793.

An occupation or regular means of livelihood and is business one practices or the work in which one engages regularly. One's calling; occupation; gainful employment; means of livelihood. *People v. Carr*, 163 Cal. App.2d 568, 329 P.2d 746, 752. See also *Trade or business*.

Transaction involving purchase and sale of stocks, bonds, or other securities.

See also *Balance (Balance of trade)*; *Commerce*; *Trade and commerce*; *Trade or business*.

Trade acceptance. A draft or bill of exchange drawn by the seller on the purchaser of goods sold, and accepted by such purchaser, and its purpose is to make the book account liquid, and permit the seller to raise money on it before it is due under the terms of the sale, and its principal function is to take the place of selling goods on an open account and when properly drawn, it is negotiable. *Gilliland & Echols Farm Supply & Hatchery v. Credit Equipment Corp.*, 269 Ala. 190, 112 So.2d 331, 332.

A draft drawn by a seller which is presented for signature (acceptance) to the buyer at the time goods are purchased and which then becomes the equivalent of a

note receivable of the seller and the note payable of the buyer.

A bill of exchange or draft drawn by the seller of goods on the purchaser and accepted by such purchaser. Once accepted, the purchaser becomes primarily liable to pay the draft. See U.C.C. § 3-413(1).

Trade agreement. Agreement between two countries or among many nations concerning buying and selling of each country's goods. See also Collective bargaining agreement; GATT; Most favored nation clause; Reciprocal trade agreements.

Trade and commerce. The words "trade" and "commerce," when used in juxtaposition impart to each other enlarged signification, so as to include practically every business occupation carried on for subsistence or profit and into which the elements of bargain and sale, barter, exchange, or traffic, enter. See Commerce.

Trade association. An association of business organizations having similar problems and engaged in similar fields formed for mutual protection, interchange of ideas and statistics and for maintenance of standards within their industry.

Trade commission. See Federal Trade Commission.

Trade deficit or surplus. Excess of nations imports over exports (trade deficit) or exports over imports (trade surplus). Such determines a nation's balance of trade (positive or negative). See Balance (*Balance of trade*).

Trade discount. A discount from list price offered to all customers of a given type; e.g. discount offered by lumber dealer to building contractor. Difference between seller's list price and the price at which he actually sells goods to the trade. State v. Eau Claire Oil Co., 35 Wis.2d 724, 151 N.W.2d 634, 642. Contrast with a discount offered for prompt payment and quantity discount.

Trade dispute. Within Unemployment Insurance Act barring benefit payments to persons who leave work because of trade dispute, the term includes controversy over working conditions, American-Hawaiian S. S. Co. v. California Employment Commission, 24 Cal.2d 716, 151 P.2d 213, 215; and, unwillingness to cross picket lines, Mattson Terminals v. California Employment Commission, 24 Cal.2d 695, 151 P.2d 202, 206. See Unfair labor practice.

Trade dollar. A silver coin of the United States, of the weight of four hundred and twenty grains, troy.

Trade dress. The total appearance and image of a product, including features such as size, texture, shape, color or color combinations, graphics, and even particular advertising and marketing techniques used to promote its sale. John H. Harland Co. v. Clarke Checks, Inc., C.A.Ga., 711 F.2d 966, 980. Duplication of the trade dress of another's goods is actionable as passing off at common law and under Trademark Act. 15 U.S.C.A. § 1125(a). Commercial prints and labels constituting key elements of trade dress may be protectible under the copyright laws as well.

Trade fixtures. Personal property used by tenants in carrying on business. Such fixtures retain the character of personal property; e.g. shelves used to display merchandise. See also Fixture.

Trade libel. Intentional disparagement of quality of property, which results in pecuniary damage to plaintiff. Erlich v. Etner, 224 C.A.2d 69, 36 Cal.Rptr. 256, 258. The distinction between "libel" and "trade libel" is that the former concerns the person or reputation of plaintiff and the latter relates to his goods. Shores v. Chip Steak Co., 130 C.A.2d 627, 279 P.2d 595, 597.

Trademark. Generally speaking, a distinctive mark of authenticity, through which the products of particular manufacturers or the vendible commodities of particular merchants may be distinguished from those of others. It may consist in any symbol or in any form of words, but, as its office is to point out distinctively the origin or ownership of the articles to which it is affixed, it follows that no sign or form of words can be appropriated as a valid trademark which, from the nature of the fact conveyed by its primary meaning, others may employ with equal truth and with equal right for the same purpose. Koppers Co., Inc. v. Krupp-Koppers, D.C.Pa., 517 F.Supp. 836, 840.

A distinctive mark, motto, device, or emblem, which a manufacturer stamps, prints, or otherwise affixes to the goods he produces, so that they may be identified in the market, and their origin be vouched for. Trade-Mark Cases, 100 U.S. 82, 87, 25 L.Ed. 550. Exclusive rights to use a trademark are granted by the federal government for ten years, with the possibility of additional ten year renewal periods. 15 U.S.C.A. §§ 1058, 1059.

The term "trademark" includes 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 his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown. 15 U.S.C.A. § 1127.

See also Certification mark; Collective mark; Common descriptive name; Descriptive mark; Distinctiveness; Functionality; Infringement; Likelihood of confusion; Official Gazette; Patent and Trademark Office; Related goods; Secondary meaning; Service mark; Trade dress; Trade name; Use in commerce.

Descriptive and suggestive trademarks. Distinction between descriptive and suggestive trademarks is that "suggestive" terms are those which require the buyer to use thought, imagination, or perception to connect the mark with the goods, while "descriptive" terms are those which directly convey to the buyer the ingredients, qualities, or characteristics of the product. Educational Development Corp. v. Economy Co., C.A.Okl., 562 F.2d 26, 29.

Fanciful mark. A trademark consisting of a made-up or coined word is said to be "fanciful." Such marks are considered inherently distinctive, and thus are protected

at common law, and are eligible for Trademark Act registration, from the time of first use.

Geographically descriptive mark. A geographic word used as a trademark that indicates where the goods are grown or manufactured is considered geographically descriptive. Such marks will only be protected at common law and registered under the Trademark Act upon proof of secondary meaning. *See* Secondary meaning.

Strong trademark. For purposes of determining the likelihood of confusion between marks, is a mark which is generally fictitious, arbitrary or fanciful and is inherently distinctive. A strong mark is entitled to a greater degree of protection from infringing uses than is a weak one, because of its unique usage. *Alpha Industries, Inc. v. Alpha Steel Tube & Shapes, Inc., C.A.Cal., 616 F.2d 440, 445. Compare Weak trademark, below.*

Suggestive mark or term. One that suggests, rather than describes, some particular characteristic of goods and services to which it applies and requires consumer to exercise imagination in order to draw conclusion as to nature of goods or services. *Engineered Mechanical Services, Inc. v. Applied Mechanical Technology, Inc., D.C.La., 584 F.Supp. 1149, 1156.*

Trade name distinguished. A "trade name" is a descriptive of a manufacturer or dealer and applies to business and its goodwill, whereas "trademark" is applicable only to vendable commodities. *American Steel Foundries v. Robertson, 269 U.S. 372, 46 S.Ct. 160, 162, 70 L.Ed. 317.* Corporate or business name symbolizing the reputation of a business as a whole, whereas a "trademark" is a term identifying and distinguishing a business' products. *American Optical Corp. v. North American Optical Corp., D.C.N.Y., 489 F.Supp. 443, 447. See Tradename.*

Weak trademark. A mark that is a meaningful word in common usage or is merely a suggestive or descriptive trademark, and is entitled to protection only if it has acquired a secondary meaning. *See also* Secondary meaning. *Compare Strong trademark, above.*

Trade name. That name which is used by manufacturers, industrialists and merchants to identify their businesses, which actually symbolizes reputation of business. *Frances Denney, Inc. v. New Process Co., W.D.Va., 670 F.Supp. 661, 667.* The name or title lawfully adopted and used by a particular organization engaged in commerce, which can be used in advertising, promotion, and to generate publicity for the business. *Caesars World, Inc. v. Caesar's Palace, D.C.N.J., 490 F.Supp. 818, 822.*

The terms "trade name" and "commercial name" include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or other organizations engaged in trade or commerce and capable of suing and being sued in a court of law. 15 U.S.C.A. § 1127.

See also Certification mark; Collective mark. *Compare* Service mark; Trademark.

Trade or business. Any business or professional activity conducted by a taxpayer, the objective of which is to earn a profit. General test for determining whether person is engaged in "trade or business" so as to be entitled to deduct expenses as trade or business expenses under Internal Revenue Code is whether taxpayer's primary purpose and intention in engaging in the activity is to make a profit. *Zell v. C.I.R., C.A. 10, 763 F.2d 1139, 1142.*

Trader. A merchant; a retailer. One who makes it his business to buy merchandise, goods, or chattels to sell the same at a profit. *People v. Terkanian, 27 Cal. App.2d 460, 81 P.2d 251, 253.* One who sells goods substantially in the form in which they are bought; one who has not converted them into another form of property by his skill and labor. *Albuquerque Lumber Co. v. Bureau of Revenue of New Mexico, 42 N.M. 58, 75 P.2d 334, 336. See also Dealer; Merchant.*

In securities, one who as a member of a stock exchange buys and sells on the floor of the exchange either for brokers or on his own account. Likewise, in commodity market, one who buys and sells commodities (*e.g.* grain) and commodity futures for others and for his own account in anticipation of a speculative profit. *See also* Broker; Dealer.

Trade secret. A "trade secret," as protected from misappropriation, may consist of any formula, pattern, device of compilation of information which is used in one's business, and which gives person an opportunity to obtain an advantage over competitors who do not know or use it; or, it may be a formula or a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *Cherne Indus., Inc. v. Grounds & Associates, Inc., Minn., 278 N.W.2d 81, 89, 90; Kodekey Electronics, Inc. v. Mechanex Corp. C.A.Colo., 486 F.2d 449, 455.*

A plan or process, tool, mechanism, or compound known only to its owner and those of his employees to whom it is necessary to confide it. A secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value. *Palin Mfg. Co., Inc. v. Water Technology, Inc., 103 Ill.App.3d 926, 59 Ill.Dec. 553, 431 N.E.2d 1310, 1314.*

Tradesman. A mechanic, craftsman, or artificer of any kind, whose livelihood depends primarily on the labor of his hands.

Trade-union. A combination of workers of the same trade or of several allied trades, for the purpose of securing by united action the most favorable conditions regarding wages, hours of labor, etc., for its members. *See also* Union.

Trade usage. The usage or customs commonly observed by persons conversant in, or connected with, a particular trade.

A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court. U.C.C. § 1-205(2). *Compare* Course of dealing. *See also* Usage (*Usage of trade*).

Tradición /tràðiyýówn/. Span. In Spanish law, delivery.

Trading. Engaging in trade (*q.v.*); pursuing the business or occupation of trade or of a trader.

Trading corporation. *See* Corporation.

Trading partnership. A firm the nature of whose business, according to the usual modes of conducting it, imports the necessity of buying and selling. *Dowling v. National Exch. Bank*, 145 U.S. 512, 12 S.Ct. 928, 36 L.Ed. 795.

Trading stamps. The name for a method of conducting some kinds of retail business which consists of an agreement between a number of merchants and a corporation that the latter shall print the names of the former in its subscribers' dictionary and circulate a number of copies of the book, and that the merchants shall purchase of the corporation a number of so-called trading stamps, to be given to purchasers with their purchases, and by them preserved and pasted in the books aforesaid until a certain number have been secured, when they shall be presented to the corporation in exchange for the choice of certain articles kept in stock by the corporation.

Trading voyage. One which contemplates the touching and stopping of the vessel at various ports for the purpose of traffic or sale and purchase or exchange of commodities on account of the owners and shippers, rather than the transportation of cargo between terminal points, which is called a "freighting voyage."

Trading with the enemy. Offense of carrying on commerce with a country or with a subject of a nation with whom the U.S. is at war. Federal laws prohibit commercial intercourse with nations and with subjects and allies of nations with whom the U.S. is at war. 50 U.S.C.A. App. § 1 et seq.

Traditio /trədish(iy)ow/. Lat. In the civil law, delivery; transfer of possession; a derivative mode of acquiring, by which the owner of a corporeal thing, having the right and the will of alienating it, transfers it for a lawful consideration to the receiver.

Quasi traditio. A supposed or implied delivery of property from one to another. Thus, if the purchaser of an article was already in possession of it before the sale, his continuing in possession is considered as equivalent to a fresh delivery of it, delivery being one of the necessary

elements of a sale; in other words, a *quasi traditio* is predicated.

Traditio brevi manu. A species of constructive or implied delivery. When he who already holds possession of a thing in another's name agrees with that other that thenceforth he shall possess it in his own name, in this case a delivery and redelivery are not necessary.

Traditio clavium. Delivery of keys; a symbolical kind of delivery, by which the ownership of merchandise in a warehouse might be transferred to a buyer.

Traditio longa manu. A species of delivery which takes place where the transferor places the article in the hands of the transferee, or, on his order, delivers it at his house.

Traditio rei. Delivery of the thing.

Traditio loqui facit chartam /trədish(iy)ow lówkway féysət kártəm/. Delivery makes a deed speak. Delivery gives effect to the words of a deed.

Tradition. Delivery. A close translation or formation from the Latin "*traditio*." 2 Bl.Comm. 307.

Past customs and usages which influence or govern present acts or practices.

Traditionary evidence. Evidence derived from tradition or reputation or the statements formerly made by persons since deceased, in regard to questions of pedigree, ancient boundaries, and the like, where no living witnesses can be produced having knowledge of the facts.

Traditio nihil amplius transferre debet vel potest, ad eum qui accipit, quam est apud eum qui tradit /trədish(iy)ow náy(h)əl æmpliýəs trənsfəriy débət vèl pówtəst, æd iyəm kwày æksəpət, kwæm èst æpəd iyəm kwày tréyðət/. Delivery ought to, and can, transfer nothing more to him who receives than is with him who delivers.

Traditor /trədətər/tréy'/. In old English law, a traitor; one guilty of high treason.

Traditur in ballium /trədətər in bæliyəm/. In old practice, means delivered to bail. Emphatic words of the old Latin bail-piece.

Traffic. Commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing or exchange of goods or commodities from one person to another for an equivalent in goods or money. The subjects of transportation on a route, as persons or goods; the passing to and fro of persons, animals, vehicles, or vessels, along a route of transportation, as along a street, highway, etc. *See* Commerce.

Traffic balances. Balances of moneys collected in payment for the transportation of passengers and freight.

Trafficking. Trading or dealing in certain goods and commonly used in connection with illegal narcotic sales.

Traffic regulations. Prescribed rules of conduct to promote the orderly and safe flow of traffic.

Trahens /tréy(h)enz/. Lat. In French law, the drawer of a bill.

Trail-baston. Justices of trail-baston were justices appointed by King Edward I, during his absence in the Scotch and French wars, about the year 1305. They were so styled, says Hollingshed, for trailing or drawing the staff of justice. Their office was to make inquisition, throughout the kingdom, of all officers and others, touching extortion, bribery, and such like grievances, of intruders into other men's lands, barrators, robbers, breakers of the peace, and divers other offenders.

Trainbands. The militia; the part of a community trained to martial exercises.

Traitor. One who, being trusted, betrays; one guilty of treason (*q.v.*).

Traitorously /tréytərəsliy/. In criminal pleading at common law, an essential word in indictments for treason. The offense must be laid to have been committed *traitorously*.

Trajectitia pecunia /trəjektish(iy)ə pəkyúwn(iy)ə/. A loan to a shipper to be repaid only in case of a successful voyage. The lender could charge an extraordinary rate of interest, *nauticum fœnus*.

Trajectitius /trəjektish(iy)əs/. Lat. In the civil law, sent across the sea.

Tramp. One who roams about from place to place, begging or living without labor or visible means of support; a vagrant.

Tramp steamer. A ship which is not governed by any pre-arranged ports of call but which stops at those ports for which it has cargo.

Transact. To undertake negotiations; to carry on business; to have dealings; to carry through; bring about; perform; to carry on or conduct; to pass back and forth as in negotiations or trade; to bring into actuality or existence. *Knoepfle v. Suko*, N.D., 108 N.W.2d 456, 462. The word embraces in its meaning the carrying on or prosecution of business negotiations, but it is a broader term than the word "contract" and may involve business negotiations which have been either wholly or partly brought to a conclusion. *Bozied v. Edgerton*, 239 Minn. 227, 58 N.W.2d 313, 316. *See also* Negotiate; Transaction.

Transacting business. Term as used in statute providing that no foreign corporation transacting business in State without a certificate of authority shall maintain an action in State if it has not obtained a certificate of authority, is not susceptible of precise definition automatically resolving every case; each case must be dealt with on its own circumstances to determine if foreign corporation has engaged in local activity or only in interstate commerce. *Materials Research Corp. v. Metron, Inc.*, 64 N.J. 74, 312 A.2d 147, 150.

Test of whether or not a corporation is transacting business, in a district, for purpose of section of the Clayton Act providing that an action may be brought against a corporation in any district wherein it transacts

business, is the practical everyday business or commercial concept of doing business of any substantial character. *Interstate Cigar Co. v. Corral Wodiska y Ca*, D.C.N.Y., 30 F.R.D. 354, 355; *Kolb v. Chrysler Corp.*, D.C.Wis., 357 F.Supp. 504, 508.

See also Doing business; Minimum contacts.

"Doing business" distinguished. The concept of "transacting business" under venue provisions of Investment Company Act of 1940, Securities Act of 1933, and Securities Exchange Act of 1934, requires less business activity than that necessary to sustain jurisdiction under a "doing business" or "minimum contacts" standard, and is intended to have a more flexible and broader meaning than the jurisdictional predicates. *Zorn v. Anderson*, D.C.N.Y., 263 F.Supp. 745, 747.

Transactio /tranzæksh(iy)ow/. Lat. In the civil law, the settlement of a suit or matter in controversy, by the litigating parties, between themselves, without referring it to arbitration. An agreement by which a suit, either pending or about to be commenced, was forborne or discontinued on certain terms.

Transaction. Act of transacting or conducting any business; between two or more persons; negotiation; that which is done; an affair. An act, agreement, or several acts or agreements between or among parties whereby a cause of action or alteration of legal rights occur. *Miles v. Starks*, Tex.Civ.App., 590 S.W.2d 223, 227. It may involve selling, leasing, borrowing, mortgaging or lending. Something which has taken place, whereby a cause of action has arisen. It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered. It is a broader term than "contract". *Hoffman Machinery Corporation v. Ebenstein*, 150 Kan. 790, 96 P.2d 661, 663. *See also* Closed transaction; Trade; Transact.

Evidence. A "transaction" between a witness and a decedent, within statutory provisions excluding evidence of such transactions, embraces every variety of affairs which can form the subject of negotiations, interviews, or actions between two persons, and includes every method by which one person can derive impressions or information from the conduct, condition, or language of another. An action participated in by witness and decedent and to which decedent could testify of his own personal knowledge, if alive. *Nelson v. Janssen*, 144 Neb. 811, 14 N.W.2d 662, 665. A personal or mutual transaction wherein deceased and witness actively participate.

Transactional immunity. *See* Immunity (*Immunity from prosecution*).

Transaction or occurrence test. Fed.R.Civil P. 13(a) provides that a claim qualifies as a *compulsory* counterclaim if it arises out of the "transaction or occurrence" that is the subject matter of the opposing party's claim. Courts generally have agreed that these words should be interpreted liberally in order to further the general policies of the federal rules which are to avoid multiple

suits and to encourage the determination of the entire controversy among the parties. Thus, the "transaction" test does not require the court to differentiate between opposing legal and equitable claims or between claims in tort and those in contract. Most courts, rather than attempting to define the key terms of Rule 13(a) precisely, have preferred to suggest standards by which the compulsory or permissive nature of specific counterclaims can be determined. Four tests have been suggested: (1) Are the issues of fact and law raised by the claim and counterclaim largely the same? (2) Would res judicata bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule? (3) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim? (4) Is there any logical relation between the claim and the counterclaim? *Old Homestead Co. v. Continental Baking Co.*, 47 F.R.D. 560, 563. See Counterclaim (*Compulsory counterclaim*).

Cross-claims. Most courts have held that the above standards used for dealing with the "transaction or occurrence" test for compulsory counterclaims also apply to cross-claims under Fed.R.Civil P. 13(g). *Old Homestead Co. v. Continental Baking Co.*, 47 F.R.D. 560, 563. See Cross-claim.

Transazione /tran(d)zàtsiyówney/. An Italian term which technically refers to an instrument whereby parties agree to put an end to a dispute by means of mutual concessions and is the equivalent of "transactio" under the Roman law, the principles of which have been carried into the common law and are found in agreements of accord and satisfaction and compromise and settlement.

Transcript. That which has been transcribed. A copy of any kind, though commonly the term refers to a copy of the record of a trial, hearing or other proceeding as prepared by a court reporter. A writing made from or after an original. A copy of an original writing or deed and suggests the idea of an original writing. *O'Quinn v. Tate*, Tex.Civ.App., 187 S.W.2d 241, 243.

An official copy of the record of proceedings in a trial or hearing. Word-for-word typing of everything that was said "on the record" during the trial. The stenographer (court reporter) types this transcription which is paid for by the parties requesting it.

Transcript of record. Refers to the printed record as made up in each case of the proceedings and pleadings necessary for the appellate court to review the history of the case.

Transcriptio pedis finis levati mittendo in cancellarium /trænskripsh(iy)ow piydəs fáynəs ləvéytay məténdow in kãnsəlériyãm/. A writ which certified the foot of a fine levied before justices in eyre, etc., into the chancery.

Transcriptio recognitionis factæ coram justiciariis itinerantibus, etc. /trænskripsh(iy)ow rəkəgnishiyównəs fáktiý kórəm jəstishiyériyəs aytinárántəbəs/. An old writ to certify a cognizance taken by justices in eyre.

Transfer, v. To convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to change over the possession or control of (as, to transfer a title to land). To sell or give. *Chappell v. State*, 216 Ind. 666, 25 N.E.2d 999, 1001.

Transfer, n. An act of the parties, or of the law, by which the title to property is conveyed from one person to another. The sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security or otherwise. The word is one of general meaning and may include the act of giving property by will. *Hayter v. Fern Lake Fishing Club*, Tex.Civ.App., 318 S.W.2d 912, 915.

The assignment or conveyance of property, including an instrument or document, that vests in the transferee such rights as the transferor had therein. See U.C.C. §§ 3-201(1) & 7-504(1). Transfer is the all-encompassing term used by the Uniform Commercial Code to describe the act which passes an interest in an instrument to another. *Scheid v. Shields*, 269 Or. 236, 524 P.2d 1209, 1210.

Transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption. Bankruptcy Code § 101.

See Barter; Constructive transfer; Exchange; Gift; Sale; Will.

Transferable. A term used in a *quasi* legal sense, to indicate that the character of assignability or negotiability attaches to the particular instrument, or that it may pass from hand to hand, carrying all rights of the original holder. The words "not transferable" are sometimes printed upon a ticket, receipt, or bill of lading, to show that the same will not be good in the hands of any person other than the one to whom first issued.

Transfer agent. An organization, usually a bank, that handles transfers of shares for a publicly held corporation. Generally, a transfer agent assures that certificates submitted for transfer are properly endorsed and that there is appropriate documentation of the right to transfer. The transfer agent issues new certificates and oversees the cancellation of the old ones. Transfer agents also usually maintain the record of shareholders for the corporation and mail dividend checks.

Transferee. He to whom a transfer is made.

Transferee liability. Under certain conditions, if the Internal Revenue Service is unable to collect taxes owed by a transferor of property, it may pursue its claim against the transferee of such property. The transferee's liability for taxes is limited to the extent of the value of the assets transferred. For example, the Internal Revenue Service can force a donee to pay the gift tax

when such tax cannot be paid by the donor making the transfer. I.R.C. §§ 6901-6905.

Transfer in contemplation of death. A transfer made under a present apprehension on the part of the transferor, from some existing bodily or mental condition or impending peril, creating a reasonable fear that death is near at hand. *See* Contemplation of death.

Transfer of a cause. The removal of a case from the jurisdiction of one court or judge to another by lawful authority. 28 U.S.C.A. §§ 1404(a), 1406(a), 1631. *See* Forum non conveniens; Removal of causes.

Transferor. One who makes a transfer.

Transfer payments. Payments made by the government to individuals for which no services are concurrently rendered in return. A transfer payment might be a Social Security check or an unemployment check.

Transferred intent doctrine. If an illegal yet unintended act results from the intent to commit a crime, that act is also considered illegal. Under doctrine of "transferred intent," original malice is transferred from one against whom it was entertained to person who actually suffers consequence of unlawful act. *Provenzano v. State, Fla., 497 So.2d 1177, 1181.* For example, if a person intentionally directs force against one person wrongfully but, instead, hits another, his intent is said to be transferred from one to the other and he is liable to the other though he did not intend it in the first instance. *See also* Intent (*Transferred intent*).

Transfers to Minors Act. The Uniform Transfers to Minors Act (UTMA) revises and replaces the Uniform Gifts to Minors Act (UGMA). As expanded, the Act allows the transfer of any type of property, real or personal, tangible or intangible, and wheresoever located (within or without the state) to a custodianship. In addition, the UTMA permits (in addition to outright lifetime gifts) transfers from trusts, estates, and guardianships even if the trust, will, etc., instrument does not expressly permit such transfers. Transfers from persons indebted to the minor also may be made to the custodianship if the minor does not have a conservator. The UTMA also permits the legal representative of the minor to transfer other property of the minor to the custodianship for the purpose of convenience or economy.

Many states have repealed the former UGMA and substituted this new UTMA. *See also* Gifts (or Transfers) to Minors Act.

Transfer tax. A tax upon the passing of the title to property or a valuable interest therein out of or from the estate of a decedent, by inheritance, devise, or bequest. *See* Estate tax; Inheritance tax; Unified transfer tax.

Tax on the transfer of property, particularly of an incorporeal nature, such as bonds or shares of stock, between living persons. A tax imposed by New York State when a security is sold or transferred from one person to another. Also, a tax imposed by states on

each deed conveying real estate. The tax is paid by the seller. *See also* Revenue stamps.

Transfer ticket. An undertaking on the part of a common carrier to continue the carriage further without additional charge if the passenger, in accordance with its terms, again presents himself at the proper place for carriage. It generally designates the point at which the journey is to be renewed, but contains no contract, express or implied, for safety in making the transfer. *Anton v. St. Louis Public Service Co., 335 Mo. 188, 71 S.W.2d 702, 706.*

Transferuntur dominia sine titulo et traditione, per usucaptionem, scil, per longam continuam et pacificam possessionem /trænsfærântər dæmín(i)yə sáyniy tít(y)əlow èt trədishiyówniy, pər yúwzyuwkæpsihiyównəm, síləsət, pər lóngəm kəntínyuwəm èt pəsífəkəm pəzèshiyównəm/. Rights of dominion are transferred without title or delivery, by usucaption, to-wit, long and quiet possession.

Transfretatio /trænzfrétáysh(iy)ow/. Lat. In old English law, a crossing of the strait [of Dover]; a passing or sailing over from England to France. The royal passages or voyages to Gascony, Brittany, and other parts of France were so called, and time was sometimes computed from them.

Transgressio /trænzgrésh(iy)ow/. In old English law, a violation of law. Also trespass; the action of trespass.

Transgressio est cum modus non servatur nec mensura, debit enim quilibet in suo facto modum habere et mensuram /trænzgrésh(iy)ow èst kəm mówdæs nòn sərvéytər nèk mēns(y)úra, débət íynəm kwáyłəbət in s(y)úwów fáktow mówdəm həbíriy èt mēns(y)úrəm/. Transgression is when neither mode nor measure is preserved, for every one in his act ought to have a mode and measure.

Transgressione /trænzgrèshiyówniy/. In old English law, a writ or action of trespass.

Transgressione multiplicata, crescat poenæ inflictio /trænzgrèshiyówniy mæltəpləkéyətə, kréskət píyniy infliktsh(iy)ow/. When transgression is multiplied, let the infliction of punishment be increased.

Transgressive trust /trænzgrésəv trást/. *See* Trust.

Transshipment. In maritime law, the act of taking the cargo out of one ship and loading it in another.

Transient, n. /trænzsh(iy)ənt/. One who, or that which, is temporary. Synonymous with transitory, fugitive, fleeting, momentary.

Transient, adj. Passing across, as from one thing or person to another; passing with time of short duration; not permanent; not lasting; temporary. *Tilly v. Woodham, La.App., 163 So. 771, 772.*

Transient foreigner. One who visits the country, without the intention of remaining.

Transient merchant. A merchant who engages in the vending or sale of merchandise at any place in the state

temporarily, and who does not intend to become, and does not become, a permanent merchant of such place.

Transient person. One who has no legal residence within a jurisdiction for the purpose of state venue statute. *Aetna Finance Co. v. Gutierrez*, 96 N.M. 538, 632 P.2d 1176.

Transire, v. /trænzáyriy/. Lat. To go, or pass over; to pass from one thing, person, or place to another.

Transire, n. /trænzáyriy/. In English law, a warrant or permit for the custom-house to let goods pass.

Transit. A stop-over privilege on a continuous journey granted by carrier by which a break de facto in continuity of carriage of goods is disregarded and two legs of a journey are treated as though covered without interruption, uniting both legs into a through route for which a joint rate can be published. *Galveston Truck Line Corporation v. State*, Tex.Civ.App., 123 S.W.2d 797, 802; *Baltimore and O. R. Co. v. United States*, D.C.N.Y., 24 F.Supp. 734, 735. Within policy covering goods in transit, term has significance of activity and of motion and direction; literally it means in course of passing from point to point, and ordinarily goods in transit would imply that goods will lawfully be picked up at given place and hauled to place designated by owner or one with authority to so designate. *Simons v. Niagara Fire Ins. Co.*, Tex.Civ.App., 398 S.W.2d 833, 834. Term may also be applied to a check which is mailed for collection while it is still in the mails and uncollected. *See also* In transitu; Stoppage in transit.

Transportation of goods or persons from one place to another. Passage; act of passing.

Transit in rem judicatam /trænzət ən rém juw-dakéytm/. It passes into a matter adjudged; it becomes converted into a *res judicata* or judgment. A contract upon which a judgment is obtained is said to pass *in rem judicatam*.

Transitive covenant. *See* Covenant.

Transitory. Passing from place to place; that which may pass or be changed from one place to another; the opposite of "local." *See* Transitory action.

Transitory action. An action that is personal; *i.e.*, brought against the person of the defendant—and brought in any county in which service of process upon the defendant is obtained. A lawsuit that may be brought in any one of many places. Actions are "transitory" when transaction on which they are based might take place anywhere, and are "local" when they could not occur except in some particular place; the distinction being in nature of subject of injury and not in means used or place at which cause of action arises. *Howle v. Twin States Exp.*, 237 N.C. 667, 75 S.E.2d 732, 736. *See also* In personam; In rem.

Transit privilege. A rate accommodation designed to permit shipper of raw materials or agricultural products to unload and process commodities at a point en route without being required to pay local rates for each seg-

ment of the entire route. *Burlington Northern Inc. v. U.S.*, C.A. 8, 561 F.2d 167, 168.

Transit terra cum onere /trænzət téhrə kəm ównəriy/. Land passes subject to any burden affecting it.

Transitus /trænzətəs/. Lat. Passage from one place to another; transit. *In transitu*, on the passage, transit, or way.

Translado /transláðow/. Span. A transcript.

Translation. The reproduction in one language of a book, document, or speech in another language.

The transfer of property; but in this sense it is seldom used. 2 Bl.Comm. 294.

In ecclesiastical law, as applied to a bishop, the term denotes his removal from one diocese to another.

Translatitium edictum /trænzlætish(iy)əm ədiktəm/. Lat. In Roman law, the praetor, on his accession to office, did not usually publish an entirely new edict, but retained the whole or a part of that promulgated by his predecessor, as being of an approved or permanently useful character. The portion thus repeated or handed down from year to year was called the "*edictum translatitium*."

Translative fact. A fact by means of which a right is transferred or passes from one person to another; one, that is, which fulfills the double function of terminating the right of one person to an object, and of originating the right of another to it.

Transmission. In the civil law, the right which heirs or legatees may have of passing to their successors the inheritance or legacy to which they were entitled, if they happen to die without having exercised their rights.

Transmit. To send or transfer from one person or place to another, or to communicate. *State v. Robbins*, 253 N.C. 47, 116 S.E.2d 192, 193.

Transmittal letter. Non-substantive document which establishes a record of delivery; *e.g.* letter to the SEC which accompanies a preliminary filing.

Transport, n. In old New York law, a conveyance of land.

Transport, v. To carry or convey from one place to another. *Sacramento Nav. Co. v. Salz*, 273 U.S. 326, 47 S.Ct. 368, 369, 71 L.Ed. 663; *People v. One 1941 Cadillac Club Coupe*, 63 Cal.2d 418, 147 P.2d 49, 51.

Transportation. The movement of goods or persons from one place to another, by a carrier. *Interstate Commerce Com'n v. Brimson*, 154 U.S. 447, 14 S.Ct. 1125, 38 L.Ed. 1047.

Criminal law. A species of punishment consisting in removing the criminal from his own country to another (usually a penal colony), there to remain in exile for a prescribed period. *Fong Yue Ting v. U. S.*, 149 U.S. 698, 13 S.Ct. 1016, 37 L.Ed. 905. *See* Deportation.

Trap. A device, as a pitfall, snare, or machine that shuts suddenly as with a spring, for taking game and other

animals. Hence, any device or contrivance by which one may be caught unawares, strategem; snare; gin. It imports an affirmative intent or design either malicious or mischievous, to cause injury. *Gumbart v. Waterbury Club Holding Corporation*, D.C.Conn., 27 F.Supp. 228, 229, 230. The doctrine of "trap" as ground for recovery by trespasser is rested upon theory that owner expected trespasser and prepared an injury. *Moseley v. Alabama Power Co.*, 246 Ala. 416, 21 So.2d 305, 307. The "trap" or "pitfall" which would raise duty of care on part of owner or occupier of land running to a licensee must be an ultrahazardous hidden peril of which occupier has knowledge but licensee does not, and it is not necessary that such trap or pitfall be designed or intended to catch or entrap anything. *Bichsel v. Blumhost*, Mo.App., 429 S.W.2d 301, 306. *See also* Entrapment.

Traslado /tra(n)sláðow/. In Spanish law, a copy; a sight.

A copy of a document taken by the notary from the original, or a subsequent copy taken from the protocol, and not a copy taken directly from the matrix or protocol.

Trassans /trásənz/. Drawing; one who draws. The drawer of a bill of exchange.

Trassatus /trəsáyət/. One who is drawn, or drawn upon. The drawee of a bill of exchange.

Trauma /tráwmə/trómə/. A physical injury caused by a blow, or fall, or a psychologically damaging emotional experience. An injury, wound, shock, or the resulting condition or neurosis. *Ortkiese v. Clarson & Ewell Engineering, Fla.*, 126 So.2d 556, 561.

Traumatic /trəmátək/. Caused by or resulting from a wound or any external injury; as, traumatic insanity, produced by an injury to or fracture of the skull with consequent pressure on the brain. *Figueroa v. Industrial Commission*, 22 Ariz.App. 594, 529 P.2d 1188, 1191.

Traumatism /tráwmətizəm/tró/. A diseased condition of the body or any part of it caused by a wound or external injury.

Travail /tráveyl/trávéyl/. The act of child-bearing. A woman is said to be in her travail from the time the pains of child-bearing commence until her delivery.

Travel. To go from one place to another at a distance; to journey. Spoken of voluntary change of place. Within the meaning of a constitutional right to travel, means migration with intent to settle and abide. *Strong v. Collatos*, D.C.Mass., 450 F.Supp. 1356, 1360.

Travel Act. Federal act prohibiting travel in interstate or foreign commerce to further unlawful gambling, prostitution, extortion, bribery or arson, as well as illegal transactions involving liquor or narcotics. 18 U.S.C.A. § 1952.

Traveled part of highway. *See* Traveled way.

Traveled place. A place where the public have, in some manner, acquired the legal right to travel.

Traveled way. The traveled path, or the path used for public travel, within located limits of the way. Also called "traveled part of highway."

Traveler. One who passes from place to place, whether for pleasure, instruction, business or health.

Traveler's check. Instrument purchased from bank, express company, or the like, in various denominations, which can be used as cash upon second signature by purchaser. It has the characteristics of a cashier's check of the issuer. *Pines v. United States*, C.C.A.Iowa, 123 F.2d 825, 828. It requires the signature of the purchaser at the time he buys it and also at the time when he uses it.

Traveler's letter of credit. A type of letter of credit which is addressed to a correspondent bank. When the traveler wishes to draw credit on the correspondent bank, he identifies himself as the person in whose favor the credit is drawn.

Travel expenses. Travel expenses include meals and lodging and transportation expenses while away from home in the pursuit of a trade or business (including that of an employee). *See* Tax home.

Traverse. In common law pleading, a traverse signifies a denial. Thus, where a defendant denies any material allegation of fact in the plaintiff's declaration, he is said to traverse it, and the plea itself is thence frequently termed a "traverse." *See also* Denial.

Common traverse. A simple and direct denial of the material allegations of the opposite pleading, and without inducement or *absque hoc*.

Criminal practice. To put off or delay the trial of an indictment until a succeeding term. More properly, to deny or take issue upon an indictment. 4 Bl.Comm. 351.

General traverse. One preceded by a general inducement, and denying in general terms all that is last before alleged on the opposite side, instead of pursuing the words of the allegations which it denies.

Special traverse. A peculiar form of traverse or denial, the design of which, as distinguished from a *common* traverse, is to explain or qualify the denial, instead of putting it in the direct and absolute form. It consists of an affirmative and a negative part, the first setting forth the new affirmative matter tending to explain or qualify the denial, and technically called the "inducement," and the latter constituting the direct denial itself, and technically called the "*absque hoc*."

Traverse jury. A petit jury; a trial jury; a jury impaneled to try an action or prosecution, as distinguished from a grand jury. *See* Jury.

Traverse of indictment or presentment. The taking issue upon and contradicting or denying some chief point of it.

Traverse of office. The proving that an inquisition made of lands or goods by the escheator is defective and untruly made. It is the challenging, by a subject, of an inquest of office, as being defective and untruly made.

Traverse upon a traverse. One growing out of the same point or subject-matter as is embraced in a preceding traverse on the other side.

Traverser. In pleading, one who traverses or denies. A prisoner or party indicted; so called from his traversing the indictment.

Traversing note. A pleading in chancery, consisting of a denial put in by the plaintiff on behalf of the defendant, generally denying all the statements in the plaintiff's bill. The effect of it is to put the plaintiff upon proof of the whole contents of his bill, and is only resorted to for the purpose of saving time, and in a case where the plaintiff can safely dispense with an answer. A copy of the note must be served on the defendant.

T.R.E. An abbreviation of "*Tempore Regis Edwardi*" (in the time of King Edward), of common occurrence in Domesday, when the valuation of manors, as it was in the time of Edward the Confessor, is recounted.

Treacher, trechetour, or treachour. A traitor.

Treachery. Deliberate and wilful betrayal of trust and confidence.

Tread-mill, or tread-wheel. An instrument of prison discipline, being a wheel or cylinder with an horizontal axis, having steps attached to it, up which the prisoners walk, and thus put the axis in motion. The men hold on by a fixed rail, and, as their weight presses down the step upon which they tread, they ascend the next step, and thus drive the wheel.

Treason. A breach of allegiance to one's government, usually committed through levying war against such government or by giving aid or comfort to the enemy. The offense of attempting by overt acts to overthrow the government of the state to which the offender owes allegiance; or of betraying the state into the hands of a foreign power. Treason consists of two elements: adherence to the enemy, and rendering him aid and comfort. *Cramer v. U. S.*, U.S.N.Y., 325 U.S. 1, 65 S.Ct. 918, 932, 89 L.Ed. 1441. See 18 U.S.C.A. § 2381. A person can be convicted of treason only on the testimony of two witnesses, or confession in open court. Art. III, Sec. 3, U.S. Constitution.

Constructive treason. Treason imputed to a person by law from his conduct or course of actions, though his deeds taken severally do not amount to actual treason. This doctrine is not known in the United States.

High treason. In English law, treason against the king or sovereign, as distinguished from petit or petty treason, which might formerly be committed against a subject.

Misprision of treason. See Misprision of treason.

Petit treason. In old English law, the crime committed by a wife in killing her husband, or a servant his lord or master, or an ecclesiastic his lord or ordinary. 4 Bl. Comm. 75.

Treason-felony. Under the English statute 11 & 12 Vict., c. 12, passed in 1848, is the offense of compassing,

devising, etc., to depose her majesty from the crown; or to levy war in order to intimidate either house of parliament, etc., or to stir up foreigners by any printing or writing to invade the kingdom. This offense is punishable with penal servitude for life, or for any term not less than five years, etc., under statutes 11 & 12 Vict., c. 12, § 3; 20 & 21 Vict., c. 3, § 2; 27 & 28 Vict., c. 47, § 2. By the statute first above mentioned, the government is enabled to treat as felony many offenses which must formerly have been treated as high treason.

Treasonable. Having the nature or guilt of treason.

Treasure. A treasure is a thing hidden or buried in the earth, on which no one can prove his property, and which is discovered by chance. See *Treasure-trove*.

Treasurer. An officer of a public or private corporation, company, or government, charged with the receipt, custody, investment, and disbursement of its moneys or funds.

Treasurer, Lord High. Formerly the chief treasurer of England, who had charge of the moneys in the exchequer, the chancellor of the exchequer being under him. He appointed all revenue officers and escheaters, and leased crown lands. The office is obsolete, and his duties are now performed by the lords commissioners of the treasury.

Treasurer of the United States. See Treasury Department.

Treasurer's Remembrancer. In English law, he whose charge was to put the lord treasurer and the rest of the judges of the exchequer in remembrance of such things as were called on and dealt in for the sovereign's behalf.

Treasure-trove. Literally, treasure found. Money or coin, gold, silver, plate or bullion found hidden in the earth or other private place, the owner thereof being unknown. 1 Bl. Comm. 295. Called in Latin "*thesaurus inventus*;" and in Saxon "*fynderinga*." Finder of treasure trove, is entitled thereto as against owner of land where such treasure is found and all the world save the true owner, in absence of statute. *Schley v. Couch*, 284 S.W.2d 333, 335.

Treasuries. Debt obligations of U.S. government backed by Full Faith and Credit of government. See Treasury bill; Treasury bond; Treasury note.

Treasury. A place or building in which stores of wealth are repositied; particularly, a place where the public revenues are deposited and kept, and where money is disbursed to defray the expenses of government.

That department of government which is charged with the receipt, custody, and disbursement (pursuant to appropriations) of the public revenues or funds.

Treasury bench. In the English house of commons, the first row of seats on the right hand of the speaker is so called, because occupied by the first lord of the treasury or principal minister of the crown.

Treasury bill. Short-term obligations of the federal government. Treasury bills are for specified terms of three, six and twelve months.

An obligation of the U.S. Treasury with a maturity date less than one year from the date of issue and bearing no interest but sold at a discount. Distinguished from a *certificate of indebtedness*, which also is of a maturity of one year or less but bears interest. *Compare* Treasury bond; Treasury certificate; Treasury note.

Treasury bond. A bond issued by a corporation and then reacquired; such bonds are treated as retired when reacquired and an extraordinary gain or loss on reacquisition is recognized. *Compare* Treasury stock.

Long term debt instruments of U.S. government.

Treasury certificate. An obligation of the U.S. generally maturing in one year on which interest is paid on a coupon basis. *Compare* Treasury bill.

Treasury Department. The Treasury Department was created by act of Congress approved September 2, 1789. Many subsequent acts have figured in the development of the Department delegating new duties to its charge and establishing the numerous bureaus and divisions which now compose the Treasury. The Department of the Treasury performs four basic types of functions: formulating and recommending financial, tax, and fiscal policies; serving as financial agent for the U.S. Government; law enforcement; and manufacturing coins and currency. *See also* Internal Revenue Service.

Treasury note. An obligation of the federal government, with a maturity of one to ten years, on which interest is paid by coupon. *Compare* Treasury bill; Treasury bond.

Treasury Regulations. *See* Regulations.

Treasury securities. *See* Treasury stock.

Treasury shares. *See* Treasury stock.

Treasury stock. Stock which has been issued as fully paid to stockholders and subsequently reacquired by the corporation to be used by it in furtherance of its corporate purposes; stock which is merely to be held as unsubscribed for and unissued is not usually regarded as "treasury stock". *Bronson v. Bagdad Cooper Corp.*, 151 A.2d 677, 679. The Revised Model Business Corporation Act and the statutes of several states have eliminated the concept of treasury shares; reacquired shares automatically having the status of authorized but unissued shares. *Compare* Treasury bond.

Treasury warrant. Order in check form on U.S. Treasury on which treasury (*i.e.* government) disbursements are paid.

Treating physician rule. This rule states that social security disability claimant's treating physician's diagnoses and findings regarding degree of claimant's impairment are binding on administrative law judge unless there is substantial contrary evidence. *Arzuaga v. Bowen*, C.A.N.Y., 833 F.2d 424, 426.

Treatment. A broad term covering all the steps taken to effect a cure of an injury or disease; including examination and diagnosis as well as application of remedies.

Treaty. A compact made between two or more independent nations with a view to the public welfare. *Louis Wolf & Co. v. United States*, Cust. & Pat.App., 107 F.2d 819, 827; *United States v. Belmont*, N.Y., 301 U.S. 324, 57 S.Ct. 758, 761, 81 L.Ed. 1134. An agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns or the supreme power of each state. *Edye v. Robertson*, 112 U.S. 580, 5 S.Ct. 247, 28 L.Ed. 798; *Charlton v. Kelly*, 229 U.S. 447, 33 S.Ct. 945, 954, 57 L.Ed. 1274, 46 L.R.A.,N.S., 397. A treaty is not only a law but also a contract between two nations and must, if possible, be so construed as to give full force and effect to all its parts. *United States v. Reid*, C.C.A.Or., 73 F.2d 153, 155. The term has a far more restricted meaning under U.S. Constitution than under international law. *Weinberger v. Rossi*, Dist.Col., 456 U.S. 25, 102 S.Ct. 1510, 1514, 71 L.Ed.2d 715. *See also* Compact.

United States treaties may be made by the President, by and with the advice and consent of the Senate. Art. II, Sec. 2, U.S. Const. States may not enter into treaties (Art. I, Sec. 10, cl. 1), and, once made, shall be binding on the states as the supreme law of the land (Art. VI, cl. 2). *See* Supremacy clause; Treaty clause.

Treaty clause. The provision in the U.S. Constitution, Art. II, Sec. 2, which gives to the President the power "by and with the consent of the Senate, to make treaties, provided two thirds of the Senators present concur."

Treaty of peace. An agreement or contract made by belligerent powers, in which they agree to lay down their arms, and by which they stipulate the conditions of peace and regulate the manner in which it is to be restored and supported.

Treaty power. *See* Treaty clause.

Treble costs. *See* Costs.

Treble damages. *See* Damages.

Tresael /trəsɛy(ə)l/. L. Fr. A great-great-grandfather. Otherwise written "*tresaiel*," and "*tresayle*." 3 Bl. Comm. 186.

Tresayle /trəsɛy(ə)l/. An abolished writ sued on ouster by abatement, on the death of the grandfather's grandfather.

Tres faciunt collegium /trɪjz fɛyʃh(iy)ənt kəlɪjɪŋ(iy)əm/. Three make a corporation; three members are requisite to constitute a corporation. 1 Bl.Comm. 469.

Trespass. An unlawful interference with one's person, property, or rights. At common law, trespass was a form of action brought to recover damages for any injury to one's person or property or relationship with another.

Any unauthorized intrusion or invasion of private premises or land of another. *Antkiewicz v. Motorists Mut. Ins. Co.*, 91 Mich.App. 389, 283 N.W.2d 749, 753. Trespass comprehends any misfeasance, transgression or offense which damages another person's health, reputa-

tion or property. *King v. Citizens Bank of De Kalb*, 88 Ga.App. 40, 76 S.E.2d 86, 91. Doing of unlawful act or of lawful act in unlawful manner to injury of another's person or property. *Waco Cotton Oil Mill of Waco v. Walker*, Tex.Civ.App., 103 S.W.2d 1071, 1072. An unlawful act committed with violence, actual or implied, causing injury to the person, property, or relative rights of another. It comprehends not only forcible wrongs, but also acts the consequences of which make them tortious. *Mawson v. Vess Beverage Co.*, Mo.App., 173 S.W.2d 606, 612, 613, 614.

See also Forcible trespass; Intruder.

Continuing trespass. One which is in its nature a permanent invasion of the rights of another; as, where a person builds on his own land so that a part of the building overhangs his neighbor's land or dumps rubbish on the land of another. In such a case, there is a continuing wrong so long as the offending object remains.

A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor or his predecessor in legal interest has placed on the land: (a) with the consent of the person then in possession of the land, if the actor fails to remove it after the consent has been effectively terminated, or (b) pursuant to a privilege conferred on the actor irrespective of the possessor's consent, if the actor fails to remove it after the privilege has been terminated, by the accomplishment of its purpose or otherwise. Restatement, Second, Torts, § 160.

Criminal trespass. Criminal trespass is entering or remaining upon or in any land, structure, vehicle, aircraft or watercraft by one who knows he is not authorized or privileged to do so; and (a) He enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to him by the owner thereof or other authorized person; or (b) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are fenced or otherwise enclosed. See also Criminal.

Joint trespass. Exists where two or more persons unite in committing it, or where some actually commit the tort, the others command, encourage or direct it.

Permanent trespass. One which consists of a series of acts, done on successive days, which are of the same nature, and are renewed or continued from day to day, so that, in the aggregate, they make up one indivisible wrong. 3 Bl.Comm. 212.

Trespass ab initio. One who innocently or with a privilege enters upon land may become a trespasser "from the beginning" if his subsequent conduct constitutes trespass by an abuse of such privilege.

Trespass de bonis asportatis /tréspæs diy bównæs æspartéytæs/. (Trespass for goods carried away.) The technical name of that species of action of trespass for injuries to personal property which lies where the injury consists in carrying away the goods or property. See 3 Bl.Comm. 150, 151.

Trespass for mesne profits /tréspæs fær miyn prófæts/. A form of action supplemental to an action of ejectment, brought against the tenant in possession to recover the profits which he has wrongfully received during the time of his occupation. 3 Bl.Comm. 205.

Trespass on the case. The form of action, at common law, adapted to the recovery of damages for some injury resulting to a party from the wrongful act of another, unaccompanied by direct or immediate force, or which is the indirect or secondary consequence of defendant's act. Such action is the ancestor of the present day action for negligence where problems of legal and factual cause arise. *Mueller v. Brunn*, 105 Wis.2d 171, 313 N.W.2d 790, 794. Commonly called, by abbreviation, "Case."

Trespass quare clausum fregit /tréspæs kwóriy klózæm frijæt/. "Trespass wherefore he broke the close." The common-law action for damages for an unlawful entry or trespass upon the plaintiff's land. In the Latin form of the writ, the defendant was called upon to show why he broke the plaintiff's close; i.e., the real or imaginary structure inclosing the land, whence the name. It is commonly abbreviated to "trespass qu. cl. fr." See also *Trespass to try title*, below.

Trespass to chattels. An unlawful and serious interference with the possessory rights of another to personal property.

Trespass to land. At common law, every unauthorized and direct breach of the boundaries of another's land was an actionable trespass. It is a wrong against one who has this right to possession, not necessarily against the person who has title but no immediate right to possession. No intent to commit a trespass was required. All that was necessary was that the act resulting in the trespass be volitional, and that the resulting trespass be direct and immediate. Nor did actual damage need be shown. Any trespass justified at least nominal damages. The present prevailing position of the courts, and Restatement of Torts, finds liability for trespass only in the case of intentional intrusion, or negligence, or some "abnormally dangerous activity" on the part of the defendant. Restatement, Second, Torts, § 166. See *Zimmer v. Stephenson*, 66 Wash.2d 477, 403 P.2d 343. Compare Nuisance.

Extent of trespasser's liability for harm. A trespass on land subjects the trespasser to liability for physical harm to the possessor of the land at the time of the trespass, or to the land or to his things, or to members of his household or to their things, caused by any act done, activity carried on, or condition created by the trespasser, irrespective of whether his conduct is such as would subject him to liability were he not a trespasser. Restatement, Second, Torts, § 162.

Failure to remove thing tortiously placed on land. A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor has tortiously placed there, whether or not the actor has the ability to remove it. A trespass may be committed by the continued presence on the land of a structure, chattel, or other thing which the actor's

predecessor in legal interest therein has tortiously placed there, if the actor, having acquired his legal interest in the thing with knowledge of such tortious conduct or having thereafter learned of it, fails to remove the thing. Restatement, Second, Torts, § 161.

Intrusions upon, beneath, and above surface of land.

(1) Except as stated in Subsection (2), a trespass may be committed on, beneath, or above the surface of the earth. (2) Flight by aircraft in the air space above the land of another is a trespass if, but only if, (a) it enters into the immediate reaches of the air space next to the land, and (b) it interferes substantially with the other's use and enjoyment of his land. Restatement, Second, Torts, § 159.

Liability for intentional intrusions on land. One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally (a) enters land in the possession of the other, or causes a thing or a third person to do so, or (b) remains on the land, or (c) fails to remove from the land a thing which he is under a duty to remove. Restatement, Second, Torts, § 158.

Trespass to try title. The name of the action used in several of the states for the recovery of the possession of real property unlawfully withheld, from an owner who has a right of immediate possession, with damages for any trespass committed upon the same by the defendant. A procedure by which rival claims to title or right to possession of land may be adjudicated, and as an incident partition may also be had when the controversy concerning title or right to possession is settled. It is different from "trespass *quare clausum fregit* (see above)," in that title must be proved. See also Ejectment.

Trespass vi et armis /trɛspəs vây èt àrməs/. Trespass with force and arms. The common-law action for damages for any injury committed by the defendant with direct and immediate force or violence against the plaintiff or his property. See *Mawson v. Vess Beverage Co.*, Mo.App., 173 S.W.2d 606, 613.

Trespasser. One who has committed trespass. One who intentionally and without consent or privilege enters another's property. One who enters upon property of another without any right, lawful authority, or express or implied invitation, permission, or license, not in performance of any duties to owner, but merely for his own purpose, pleasure or convenience. *Mendoza v. City of Corpus Christi*, Tex.App. 13 Dist., 700 S.W.2d 652, 654.

Innocent trespasser. See that title.

Joint trespassers. Two or more who unite in committing a trespass.

Trespasser ab initio /trɛspəsər əb ənɪsh(iy)ow/. Trespasser from the beginning. A term applied to a tort-feasor whose acts relate back so as to make a previous act, at the time innocent, unlawful; as if he enter peaceably, and subsequently commit a breach of the peace, his entry is considered a trespass.

Trestornare /trɛstərnəriy/. In old English law, to turn aside; to divert a stream from its course. To turn or alter the course of a road.

Tresviri /trɪzvəray/. Lat. In Roman law, officers who had the charge of prisons, and the execution of condemned criminals.

Tret /trét/. An allowance made for the water or dust that may be mixed with any commodity. It differs from *tare* (q.v.).

Trethinga /trɪyðɪŋə/. In old English law, a trithing; the court of a trithing.

Treyt /tréyt/tríyt/. Withdrawn, as a juror. Written also *treat*.

Tria capita /tráyə káepətə/. In Roman law, were *civitas*, *libertas*, and *familia*; i.e., citizenship, freedom, and family rights.

Trial. A judicial examination and determination of issues between parties to action, whether they be issues of law or of fact, before a court that has jurisdiction. *Tittsworth v. Chaffin*, Mo.App., 741 S.W.2d 314, 317. A judicial examination, in accordance with law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has proper jurisdiction.

See also Bifurcated trial; Civil jury trial; Examining trial; Fair and impartial trial; Mini-trial; Mistrial; Speedy trial; Trifurcated trial.

Bench trial. See *Trial by court or judge, below*.

New trial. A re-examination in the same court of an issue of fact, or some part or portions thereof, after the verdict by a jury, report of a referee, or a decision by the court. See Fed.R.Civil P. 59; Fed.R.Crim.P. 33. See *Trial de novo, below*. See also Motion for new trial; Plain error rule; Venire facias de novo.

Nonjury trial. See *Trial by court or judge, below*.

Public trial. A trial held in public, in the presence of the public, or in a place accessible and open to the attendance of the public at large, or of persons who may properly be admitted. The Sixth Amendment, U.S. Const., affords the accused the right to a speedy and "public" trial. See, however, *Trial by news media, below*.

Separate trial. See that title.

Speedy trial. See that title.

State trial. See *State*.

Trial at nisi prius /tráy(ə)l àt náysay práyəs/. The ordinary kind of trial which takes place at the sittings, assizes, or circuit, before a single judge.

Trial balance. In bookkeeping, a listing of debit and credit balances of all ledger accounts. The listing is generally taken at end of an accounting period to check as to whether all entries have been made in both debit and credit accounts, though such listing need not prove accuracy of accounts if an error has been made in both the debit and credit entry.

A listing of account balances; all accounts with debit balances are totaled separately from accounts with credit balances. The two totals should be equal. Trial balances are taken as a partial check of the arithmetic accuracy of the entries previously made.

Trial by certificate. A form of trial formerly allowed in cases where the evidence of the person certifying was the only proper criterion of the point in dispute. Under such circumstances, the issue might be determined by the certificate alone, because, if sent to a jury, it would be conclusive upon them, and therefore their intervention was unnecessary.

Trial by court or judge. Trial before judge alone, in contrast to trial before jury and judge. A jury waived trial.

Trial by fire. See Ordeal.

Trial by Grand Assize. A peculiar mode of trial formerly allowed in England on writs of right. See Assize.

Trial by jury. A trial in which the issues of fact are to be determined by the verdict of a jury, duly selected, impaneled, and sworn. The terms "jury" and "trial by jury" were used at the adoption of the Constitution, and have their source in the English legal system. A jury for the trial of a cause was a body of twelve men, described as upright, well-qualified, and lawful men, disinterested and impartial, not of kin nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and selected by officers free from all bias in favor of or against either party, duly impaneled under the direction of a competent court, sworn to render a true verdict according to the law and the evidence given them, who, after hearing the parties and their evidence, and receiving the instructions of the court relative to the law involved in the trial, and deliberating, when necessary, apart from all extraneous influences, must return their unanimous verdict upon the issue submitted to them. In federal court, and as well in many state courts, the parties may stipulate that the jury shall consist of less than twelve members or that a verdict of a stated majority of the jurors shall be taken as the verdict of the jury. See Fed.R.Civil P. 48; Fed.R.Crim.P. 23.

The Seventh Amendment to Federal Constitution provides that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." See also Fed.R.Civil P. 38(a). The right to a jury trial is also preserved in state constitutions. In *civil* cases in federal court, a jury trial must be expressly demanded or such right will be deemed waived (Fed.R.Civil P. 38); while in *criminal* cases the right exists unless expressly waived and approved by court and government (Fed.R.Crim.P. 23(a)). See also Jury trial.

Summary jury trial. A settlement technique designed to resolve disputes. Attorneys present abbreviated arguments to jurors who render an informal nonbinding verdict that guides the settlement of the case. Normally, six mock jurors are chosen after a brief voir dire conducted by the court. Following short opening statements, all evidence is presented in the form of a descriptive summary to the mock jury through the par-

ties' attorneys. Live witnesses do not testify, and evidentiary objections are discouraged. The Cincinnati Gas and Electric Company v. General Electronic Company, C.A. Ohio, 854 F.2d 900, 903, 904. See also Mini-trial.

Trial by news media. The process by which the news media in reporting an investigation of a person on trial leads its readers to act as judge and jury in determining guilt, liability or innocence before the person is tried in a judicial forum. Failure to protect accused from inherently prejudicial publicity may constitute deprivation of right to fair and impartial trial as guaranteed by due process clause of Fourteenth Amendment. Sheppard v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600.

Local court rules have been widely adopted, seeking to set a proper balance between a free press and a fair trial by putting restrictions on the release of information by attorneys and courthouse personnel, making special provision for the conduct of proceedings in extensively publicized and sensational cases, and barring photography, radio, and television equipment from the courtroom and its environs.

See also Gag order.

Trial by proviso. A proceeding formerly allowed where the plaintiff in an action desists from prosecuting his suit, and does not bring it to trial in convenient time. The defendant, in such case, may take out the *venire facias* to the sheriff, containing these words, "*proviso quod*," etc., i.e., provided that. If plaintiff take out any writ to that purpose, the sheriff shall summon but one jury on them both. This is called "going to trial by proviso."

Trial by the record. A form of trial resorted to where issue is taken upon a plea of *nul tiel record*, in which case the party asserting the existence of a record as pleaded is bound to produce it in court on a day assigned. If the record is forthcoming, the issue is tried by inspection and examination of it. If the record is not produced, judgment is given for his adversary. 3 Bl. Comm. 330.

Trial by wager of battel. See Wager of battel.

Trial by wager of law. In old English law, a method of trial, where the defendant, coming into court, made oath that he did not owe the claim demanded of him, and eleven of his neighbors, as compurgators, swore that they believed him to speak the truth. 3 Bl.Comm. 343. See Wager of law.

Trial by witnesses. The name "trial *per testes*" was used for a trial without the intervention of a jury, was the only method of trial known to the civil law, and was adopted by depositions in chancery. The judge was thus left to form, in his own breast, his sentence upon the credit of the witnesses examined. Such type trial was very rarely used at common law.

Trial court. The court of original jurisdiction; the first court to consider litigation.

Trial de novo. A new trial or retrial had in which the whole case is retried as if no trial whatever had been

had in the first instance. *Housing Authority of City of Newark v. Norfolk Realty Co.*, 71 N.J. 314, 364 A.2d 1052, 1058. A trial of the entire case anew, both on law and on facts. In re Initiative Petition No. 260, State Question No. 377, Okl., 298 P.2d 753, 756. See *New trial, above*. See also Motion for new trial; Plain error rule.

Trial jury. See Jury.

Trial list. A list of cases marked down for trial for any one term. See Trial calendar.

Trial calendar. Comprehensive list of cases awaiting trial and containing the dates for trial, names of counsel, expected time required for trial, etc. In some states it is maintained by the trial judge and in others, by the clerk of court. See e.g. Fed.R.Civil P. 79. See also Calendar; Docket.

Trial court. The court of original jurisdiction where all evidence is first received and considered; the first court to consider litigation. Used in contrast to appellate court.

Trial on merits. Trial of substantive issues in case. *Ennis v. Kennedy Valve Mfg. Co.*, 282 A.D. 971, 125 N.Y.S.2d 535, 537. Term used in contrast to a hearing on motion or on other interlocutory matters.

Trial per pais. Historically, a trial by one's peers.

Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam /trayéysh(iy)ow áybay sémpær débæt fáyæray, yúwbay jurətóriyz miyliyóræm pósænt hæbíriy nowtísh(iy)æm/. Trial ought always to be had where the jurors can have the best information.

Tribal lands. Lands of Indian reservation which are not allotted to or occupied by individual Indians but rather the unallotted or common lands of the nation.

Land allotted in severalty to a restricted Indian is no longer part of the "reservation" nor is it "tribal land" but the virtual fee is in the allottee with certain restrictions on the right of alienation. *United States v. Oklahoma Gas & Electric Co.*, C.C.A.Okla., 127 F.2d 349, 353.

See also Indian country; Indian lands; Indian reservation; Indian tribal property.

Tribuere /tráyúwæriy/. Lat. In the civil law, to give; to distribute.

Tribunal. The seat of a judge; a court of law; the place where he administers justice. The whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise.

In Roman law, an elevated seat occupied by the prætor, when he judged, or heard causes in form. Originally a kind of stage made of wood in the form of a square, and movable, but afterwards built of stone in the form of a semicircle.

Tribunaux de commerce /tribyuwnów də komérs/. In French law, certain courts composed of a president, judges, and substitutes, which take cognizance of all cases between merchants, and of disagreements among partners. Appeals lie from them to the courts of justice.

Tributary, *n.* /tribyæt(èh)riy/. Any stream flowing directly or indirectly into a river. *Bull v. Siegrist*, 169 Or. 180, 126 P.2d 832, 834.

Tributary, *adj.* /tribyæt(èh)riy/. Paying or yielding tribute, taxed or assessed by tribute.

Tribute /tribyuwt/. A contribution which is raised by a prince or sovereign from his subjects to sustain the expenses of the state.

A sum of money paid by an inferior sovereign or state to a superior potentate, to secure the friendship or protection of the latter.

Acknowledgment of gratitude or respect.

Tricesima /trəsézæmə/. An ancient custom in a borough in the county of Hereford, so called because thirty burgesses paid 1d. rent for their houses to the bishop, who was lord of the manor.

Trick. A professional engagement of a prostitute. *State v. Cavness*, 46 Haw. 470, 381 P.2d 685, 686.

Triding-mote /tráydɪŋmòwt/. The court held for a triding or trithing.

Triduum /trid(y)uwəm/. In old English law, the space of three days. Ecclesiastically, a devotion of prayer which lasts three days.

Triennial Act /trayéniyæl ákt/. An act of parliament of 1641, which provided that if in every third year parliament was not summoned and assembled before September 3, it should assemble on the second Monday of the next November.

Also an act of 1694, which provided that a parliament be called within three years after dissolution, and that the utmost limit of a parliament be three years. This was followed by the Septennial Act of 1716.

Triens /tráyen(d)z/. Lat. In feudal law, dower or third. 2 Bl.Comm. 129.

In Roman law, a subdivision of the *as*, containing four *uncie*; the proportion of four-twelfths or one-third. 2 Bl.Comm. 462, note *m*. A copper coin of the value of one-third of the *as*.

Trier of fact. Term includes (a) the jury and (b) the court when the court is trying an issue of fact other than one relating to the admissibility of evidence. Calif. Evid.Code. Commonly refers to judge in jury waived trial or jury which, in either case, has the exclusive obligation to make findings of fact in contrast to rulings of law which must be made by judge. Also may refer to hearing officer or judge in administrative proceeding.

Trifurcated trial. A trial which is divided into three stages or parts as for example, a trial on issue of liability, trial for general damages, and trial for special damages.

Trigamus /trígæməs/. In old English law, one who has been thrice married; one who, at different times and successively, has had three wives; a trigamist.

Trigild. In Saxon law, a triple gild, geld, or payment; three times the value of a thing, paid as a composition or satisfaction.

Trinepos /trínəpəs/. Lat. In Roman law, great-grandson of a grandchild.

Trineptis /trənɛptəs/. Lat. Great-granddaughter of a grandchild.

Trinity House. In English law, a society at Deptford Strond, incorporated by Hen. VIII in 1515, for the promotion of commerce and navigation by licensing and regulating pilots, and ordering and erecting beacons, lighthouses, buoys, etc.

Trinity Masters. Elder brethren of the Trinity House. If a question arising in an admiralty action depends upon technical skill and experience in navigation, the judge or court is usually assisted at the hearing by two Trinity Masters who sit as assessors, and advise the court on questions of a nautical character.

Trinity sittings. Sittings of the English court of appeal and of the high court of justice in London and Middlesex, commencing on the Tuesday after Whitsun week, and terminating on the 8th of August. One of the four divisions of the English legal year. See also Easter, Hilary, Michaelmas sittings. Rules of the Supreme Court 1965. The divisions were formerly called terms until the Judicature Act of 1873.

Triniumgeldum /triniyəmgəldəm/. In old European law, an extraordinary kind of composition for an offense, consisting of *three times nine*, or twenty-seven times the single geld or payment.

Trinoda necessitas /trínówdə nəsésətəs/. Lat. In Saxon law, a threefold necessity or burden. A term used to denote the three things from contributing to the performance of which no lands were exempted, viz., *pontis reparatio* (the repair of bridges), *arcis constructio* (the building of castles), *et expeditio contra hostem* (military service against an enemy). 1 Bl.Comm. 263, 357.

Triors /tráyərz/. Persons who are appointed to try challenges to jurors, i.e., to hear and determine whether a juror challenged for favor is or is not qualified to serve.

The lords chosen to try a peer, when indicted for felony, in the court of the lord high steward, are also called "triors."

Trip, *n.* A journey or going from one place to another.

Trip, *v.* To make a false step; to catch the foot; to stumble; to cause to stumble, or take a false step; to cause to lose the footing, as by suddenly checking the motion of a foot or leg; to throw off balance. Johnston v. City of St. Louis, Mo.App., 138 S.W.2d 666, 671.

Tripartite /tráypártayt/. In conveyancing, of three parts; a term applied to an indenture to which there are three several parties (of the first, second, and third parts), and which is executed in triplicate.

Triplicacion /tripləkasyówn/. L. Fr. In old pleading, a rejoinder in pleading; the defendant's answer to the plaintiff's replication.

Triplicatio /tripləkéysh(iy)ow/. Lat. In the civil law, the reply of the plaintiff to the rejoinder of the defendant. It corresponds to the surrejoinder of common law.

Tristris /trístrəs/. In old forest law, a freedom from the duty of attending the lord of a forest when engaged in the chase.

Tritavia /trátéyv(i)yə/. Lat. In the civil law, a great-grandmother's great-grandmother; the female ascendant in the sixth degree.

Tritavus /trítəvəs/. Lat. In the civil law, a great-grandfather's great-grandfather; the male ascendant in the sixth degree.

Trithing /tráyðĩŋ/. In Saxon law, one of the territorial divisions of England, being the *third* part of a county, and comprising three or more hundreds. Within the trithing there was a court held (called "trithing-mote") which resembled the court-leet, but was inferior to the county court.

Trithing-mote /tráyðĩŋmòwt/. The court held for a trithing or riding.

Trithing-reeve /tráyðĩŋ ríyv/. The officer who superintended a trithing or riding.

Triumvir /tráyəmvər/. Lat. In old English law, a trithing man or constable of three hundred.

Triumviri capitales /tráyəmvəray kəpətéyliyz/. Lat. In Roman law, officers who had charge of the prison, through whose intervention punishments were inflicted. They had eight lictors to execute their orders.

Trivernal days /tráyvərbíyəl déyz/. In the civil law, juridical days; days allowed to the prætor for deciding causes; days on which the prætor might speak the *three* characteristic words of his office, viz., *do, dico, addico*. Otherwise called "*dies fasti*." 3 Bl.Comm. 424, and note *u*.

Trivial. Trifling; inconsiderable; of small worth or importance. In equity, a demurrer will lie to a bill on the ground of the *triviality* of the matter in dispute, as being below the dignity of the court.

TRO. Temporary restraining order.

Tronage /trównəj/. In English law, a customary duty or toll for weighing wool; so called because it was weighed by a common *trona*, or beam.

Tronator /trówneytər/. A weigher of wool.

Trophy. Anything taken from an enemy and shown or treasured up in proof of victory. A price or token of victory in any contest; hence, a memento of victory or success; an ornamental group of objects hung together on a wall, or any collection of objects typical of some event, art, industry, or branch of knowledge; a memento or memorial. In re Vortex Cup Co., Cust. & Pat.App., 83 F.2d 821, 822.

Trophy money. Money formerly collected and raised in London, and the several counties of England, towards providing harness and maintenance for the militia, etc.

Trover /tróvvør/. In common-law practice, the action of trover (or trover and conversion) is a species of action on the case, and originally lay for the recovery of damages against a person who had *found* another's goods and wrongfully converted them to his own use. Subsequently the allegation of the loss of the goods by the plaintiff and the finding of them by the defendant was merely fictitious, and the action became the remedy for any wrongful interference with or detention of the goods of another. In form a fiction; in substance, a remedy to recover the value of personal chattels *wrongfully* converted by another to his own use. Common-law form of action to recover value of goods or chattels by reason of an alleged unlawful interference with possessory right of another, by assertion or exercise of possession or dominion over the chattels, which is adverse and hostile to rightful possessor. *L. F. Dommerich & Co. v. Bress*, D.C.N.J., 280 F.Supp. 590, 598. Such remedy lies only for wrongful appropriation of goods, chattels, or personal property which is specific enough to be identified. *See also* Conversion; Detinue; Replevin.

Troy weight. A weight of twelve ounces to the pound, having its name from Troyes, a city in Aube, France.

Truancy. Wilful and unjustified failure to attend school by one who is required to attend. It is a punishable offense within the juvenile system in some states and, in others, it is the basis of a petition for a child in need of services.

Truce. In international law, a suspension or temporary cessation of hostilities by agreement between belligerent powers; an armistice.

Truce of God. In medieval law, a truce or suspension of arms promulgated by the church, putting a stop to private hostilities at certain periods or during certain sacred seasons.

True. Conformable to fact; correct; exact; actual; genuine; honest. In one sense, that only is "true" which is conformable to the actual state of things. In that sense, a statement is "untrue" which does not express things exactly as they are. But in another and broader sense the word "true" is often used as a synonym of "honest", "sincere", not "fraudulent." *Zolintakis v. Equitable Life Assur. Soc. of United States*, C.C.A.Utah, 108 F.2d 902, 905; *Moulou v. American Life Ins. Co.*, 111 U.S. 335, 4 S.Ct. 466, 28 L.Ed. 447.

True admission. A formal act done in course of judicial proceedings which waives or dispenses with production of evidence by conceding for purposes of litigation that proposition of fact alleged by opponent is true. *Maltz v. Jackoway-Katz Cap Co.*, 336 Mo. 1000, 82 S.W.2d 909, 917. *See also* Admission; Stipulation.

True bill. The endorsement made by a grand jury upon a bill of indictment, when they find it sustained by the evidence laid before them, and are satisfied of the truth of the accusation. The endorsement made by a grand jury when they find sufficient evidence to warrant a criminal charge. An indictment.

True copy. A true copy does not mean an absolutely exact copy but means that the copy shall be so true that anybody can understand it. *See* Certified copy; Copy.

True, public, and notorious. These three qualities were formally predicated in the libel in the ecclesiastical courts, of the charges which it contained, at the end of each article severally.

True value. For tax assessment purposes, term refers to the market value of the property at fair and bona fide sale at private contract, and is in essence the value property has in exchange for money. *City of Newark v. West Milford Tp.*, Passaic County, 9 N.J. 295, 88 A.2d 211, 214. In condemnation proceedings, is market value or price which would be agreed upon at voluntary sale between willing seller and willing purchaser, taking into consideration all available uses to which land might be put, as well as all factors, which lead to reimbursement for loss caused by taking. *State Through Dept. of Highways v. Poulan*, La.App., 160 So.2d 387, 388. *See also* Market value; Value.

True value rule. Under this rule, one who subscribes for and receives corporate stock must pay therefor the par value thereof either in money or in money's worth, so that the real assets of the corporation shall at least square with its books, and whenever, whether by fraud, accident or mistake, the true value of property, labor or services received in payment does not equal par value, stock is deemed unpaid for to the full extent of the difference, and holders are liable to creditors for the difference, notwithstanding good faith of directors. *Johansen v. St. Louis Union Trust Co.*, 345 Mo. 135, 131 S.W.2d 599, 603.

True verdict. The voluntary conclusion of the jury after deliberate consideration, and it is none the less a true verdict because the respective jurors may have been liberal in concessions to each other, if conscientiously and freely made. A verdict is not a "true verdict," when it is the result of any arbitrary rule or order, whether imposed by themselves, or by the court or officer in charge. *See* Verdict.

Trust. A legal entity created by a grantor for the benefit of designated beneficiaries under the laws of the state and the valid trust instrument. The trustee holds a fiduciary responsibility to manage the trust's corpus assets and income for the economic benefit of all of the beneficiaries. A confidence reposed in one person, who is termed trustee, for the benefit of another, who is called the cestui que trust, respecting property which is held by the trustee for the benefit of the cestui que trust. *State ex rel. Wirt v. Superior Court for Spokane County*, 10 Wash.2d 362, 116 P.2d 752, 755. Any arrangement whereby property is transferred with intention that it be administered by trustee for another's benefit. A fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another. *Scotti's Drive In Restaurants, Inc. v. Mile High-Dart In Corp.*, Wyo., 526 P.2d 1193, 1195.

A trust can be created for any purpose which is not illegal, and which is not against public policy. *Collins v. Lyon, Inc.*, 181 Va. 230, 24 S.E.2d 572, 579.

Essential elements of trust are designated beneficiary and trustee, fund sufficiently identified to enable title to pass to trustee, and actual delivery to trustee with intention of passing title. *City Bank Farmers' Trust Co. v. Charity Organization Soc. of City of New York*, 238 App.Div. 720, 265 N.Y.S. 267.

An association or organization of persons or corporations having the intention and power, or the tendency, to create a monopoly, control production, interfere with the free course of trade or transportation, or to fix and regulate the supply and the price of commodities. In the history of economic development, the "trust" was originally a device by which several corporations engaged in the same general line of business might combine for their mutual advantage, in the direction of eliminating destructive competition, controlling the output of their commodity, and regulating and maintaining its price, but at the same time preserving their separate individual existence, and without any consolidation or merger. This device was the erection of a central committee or board, composed, perhaps, of the presidents or general managers of the different corporations, and the transfer to them of a majority of the stock in each of the corporations, to be held "in trust" for the several stockholders so assigning their holdings. These stockholders received in return "trust certificates" showing that they were entitled to receive the dividends on their assigned stock, though the voting power of it had passed to the trustees. This last feature enabled the trustees or committee to elect all the directors of all the corporations, and through them the officers, and thereby to exercise an absolutely controlling influence over the policy and operations of each constituent company, to the ends and with the purposes above mentioned. Though the "trust," in this sense, is now seldom if ever resorted to as a form of corporate organization, having given place to the "holding corporation" and other devices, the word became current in statute laws as well as popular speech, to designate almost any form of combination of a monopolistic character or tendency. *Northern Securities Co. v. U. S.*, 193 U.S. 197, 24 S.Ct. 436, 48 L.Ed. 679; *Mallinckrodt Chemical Works v. State of Missouri*, 238 U.S. 41, 35 S.Ct. 671, 673, 59 L.Ed. 1192.

In a looser sense the term is applied to any combination of establishments in the same line of business for securing the same ends by holding the individual interests of each subservient to a common authority for the common interests of all. *Mallinckrodt Chemical Works v. State of Missouri*, 238 U.S. 41, 35 S.Ct. 671, 673, 59 L.Ed. 1192.

A trust, as the term is used in the Restatement, when not qualified by the word "charitable," "resulting" or "constructive," is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises

as a result of a manifestation of an intention to create it. Restatement, Second, Trusts § 2.

See also Breach of trust; Charitable trust; Claflin trust; Common-law trust; Complex trust; Constructive trust; Declaration (*Declaration of trust*); Deed (*Deed of trust*); Equipment; Executory trust; Generation-skipping trust; Governmental trusts; Grantor trusts; Illusory trust; Indestructible trust; Investment trust; Involuntary trust; Land trust; Life insurance trust; Life interest; Nominal trust; Nominee trust; Oral trust; Pension trust; Precatory trust; Purchase money resulting trust; Reciprocal trusts; Resulting trust; Revocable trust; Spendthrift trust; Terms of trust; Unitrust; Voting trust.

Accumulation trust. Trust in which trustees are directed to accumulate income and gains from sales of trust assets for ultimate disposition when the trust is terminated. Many states have laws governing the time over which accumulations may be made. *See also* Accumulation trust.

Active trust. One which imposes upon the trustee the duty of taking active measures in the execution of the trust, as, where property is conveyed to trustees with directions to sell and distribute the proceeds among creditors of the grantor; distinguished from a "passive" or "dry" trust.

In a "passive trust" the legal and equitable titles are merged in the beneficiaries and beneficial use is converted into legal ownership, while in an "active trust" the title remains in trustee for purpose of the trust. *Johnson v. Thornton*, 264 S.C. 252, 214 S.E.2d 124, 127.

Alimony trust. Device used to secure obligation of husband to pay support or alimony for wife. Transfer by husband to trustee of property from which wife as beneficiary will be supported after divorce or separation.

Annuity trust. An annuity trust is a trust from which the trustee is required to pay a sum certain annually to one or more individual beneficiaries for their respective lives or for a term of years, and thereafter either transfer the remainder to or for the use of a qualified charity or retain the remainder for such a use. The sum certain must not be less than 5% of the initial fair market value of the property transferred to the trust by the donor. A qualified annuity trust must comply with the basic statutory requirements of I.R.C. § 664. *See also* Annuity trust.

Blind trust. Device used to give management of one's investments to an outside person over whom the beneficiary has no control. For example, to avoid the possibility of disqualification a judge could utilize a blind trust with respect to his or her investments. *Union Carbide Corp. v. U.S. Cutting Service, Inc.*, C.A.Ill., 782 F.2d 710, 718.

Bond trust. A trust, the *res* of which consists in bonds which yield interest income.

Business trust. *See* Business; Massachusetts trust; Trust estates as business companies.

Bypass trust. Also known as a credit trust, credit shelter trust or exemption equivalent trust, it is an estate

planning tool whereby a deceased spouse's estate passes to a trust rather than to the surviving spouse, thereby reducing the likelihood that the surviving spouse's subsequent estate will exceed the estate tax threshold. Typically, the surviving spouse is given a life estate in the trust.

Cestui que trust. The person for whose benefit a trust is created or who is to enjoy the income or the avails of it. *See Beneficiary.*

Charitable remainder trust. A trust which consists of assets which are paid over to the trust after the expiration of a life estate or intermediate estates and designated for charitable purposes. *See also Charitable remainder annuity trust.*

Charitable trusts. Trusts designed for the benefit of a class or the public generally. They are essentially different from private trusts in that the beneficiaries are uncertain. In general, such must be created for charitable, educational, religious or scientific purposes. *See Public trust, below.*

Clifford trust. Under this tax planning device, a transfer of income-producing property is made to a trust which provides that the income is either to be paid or accumulated for the benefit of a beneficiary other than the grantor for a period of more than ten years, at which time the trust is to terminate and the property reverts back to the grantor. This transfer is made at the cost of a gift tax and if the gift tax paid is less than the income tax which will be saved as the result of the shifting of the income from the high-bracket grantor to the low-bracket beneficiary, the technique has merit from a tax point of view. *Helvering v. Clifford*, 309 U.S. 331, 60 S.Ct. 554, 84 L.Ed. 788; I.R.C. §§ 671-678. The Tax Reform Act of 1986 changed the laws with respect to the Clifford Trust and for transfers made after March 1, 1986, the trust is subject to taxation at the grantor's rate, which effectively eliminates the benefits of the Clifford Trust.

Community trust. An agency organized for the permanent administration of funds placed in trust for public health, educational and charitable purposes.

Complete voluntary trust. One completely created, the subject-matter being designated, the trustee and beneficiary being named, and the limitations and trusts being fully and perfectly declared.

Complex trust. A complex trust is any trust other than a simple trust. One in which the trustees have discretion as to whether to distribute and discretion as to amounts distributed. Such trusts are governed for tax purposes by I.R.C. §§ 661-663.

Constructive trust. A trust raised by construction of law, or arising by operation of law, as distinguished from an express trust. Wherever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust*, and fasten it upon the conscience of the

legal owner, so as to convert him into a trustee for the parties who in equity are entitled to the beneficial enjoyment.

Constructive trusts do not arise by agreement or from intention, but by operation of law, and fraud, active or constructive, is their essential element. Actual fraud is not necessary, but such a trust will arise whenever circumstances under which property was acquired made it inequitable that it should be retained by him who holds the legal title. Constructive trusts have been said to arise through the application of the doctrine of equitable estoppel, or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done, and such trusts are also known as "trusts *ex maleficio*" or "*ex delicto*" or "involuntary trusts" and their forms and varieties are practically without limit, being raised by courts of equity whenever it becomes necessary to prevent a failure of justice. *See also Involuntary trust; Trust ex maleficio, below.*

Contingent trust. An express trust depending for its operation upon a future event.

Creation of trust. A trust may be created by: (a) a declaration by the owner of property that he holds it as trustee for another person; or (b) a transfer *inter vivos* by the owner of property to another person as trustee for the transferor or for a third person; or (c) a transfer by will by the owner of property to another person as trustee for a third person; or (d) an appointment by one person having a power of appointment to another person as trustee for the donee of the power or for a third person; or (e) a promise by one person to another person whose rights thereunder are to be held in trust for a third person. *Restatement, Second, Trusts § 17.*

Credit trust. *See Bypass trust, above.*

Declaration of trust. *See Declaration.*

Deed of trust. *See Deed.*

Directory trust. One which is not completely and finally settled by the instrument creating it, but only defined in its general purpose and to be carried into detail according to later specific directions.

Direct trust. An express trust, as distinguished from a constructive or implied trust. *See Express trust below.*

Discretionary trust. Trust in which trustees have discretion as to types of investment and also as to whether and when distributions may be made to beneficiaries. Trusts under which the trustee or another party has the right to accumulate (rather than pay out) the income for each year. Depending on the terms of the trust instrument, such income may be accumulated for future distributions to the income beneficiaries or added to corpus for the benefit of the remainderperson.

Dry trust. One which merely vests the legal title in the trustee, and does not require the performance of any active duty on his part to carry out the trust.

Educational trusts. Trusts for the founding, endowing, and supporting schools for the advancement of all useful branches of learning, which are not strictly private.

Equipment trust. Financing method commonly used by railroads in which the equipment's title is transferred to trustees as security for the financing.

Estate trust. An estate trust is a trust, for all or part of the income of which is to be accumulated during the surviving spouse's life and added to corpus, with the accumulated income and corpus being paid to the estate of the surviving spouse at death. This type of trust is commonly used to qualify property for the marital deduction.

Executed trust. A trust of which the scheme has in the outset been completely declared. A trust in which the estates and interest in the subject-matter of the trust are completely limited and defined by the instrument creating the trust, and require no further instruments to complete them.

Executory trust. One which requires the execution of some further instrument, or the doing of some further act, on the part of the creator of the trust or of the trustee, towards its complete creation or full effect.

Express active trust. Where will confers upon executor authority to generally manage property of estate and pay over net income to devisees or legatees, such authority creates an "express active trust".

Express private passive trust. Such exists where land is conveyed to or held by one person in trust for another, without any power being expressly or impliedly given trustee to take actual possession of land or exercise acts of ownership over it, except by beneficiary's direction.

Express trust. A direct trust. A trust created or declared in express terms, and usually in writing, as distinguished from one inferred by the law from the conduct or dealings of the parties. A trust directly created for specific purposes in contrast to a constructive or resulting trust which arises by implication of law or the demands of equity. Trusts which are created by the direct and positive acts of the parties, by some writing, or deed, or will, or by words expressly or impliedly evincing an intention to create a trust. *Concannon v. Concannon*, 116 R.I. 323, 356 A.2d 487, 491.

Fixed trust. A non-discretionary trust in which the trustee may not exercise his own judgment.

Foreign situs trust. A trust which owes its existence to foreign law. It is treated for tax purposes as a non-resident alien individual.

Foreign trust. A trust created and administered under foreign law.

Grantor trust. A trust in which the grantor transfers or conveys property in trust for his own benefit alone or for himself and another.

Honorary trust. Trust for specific non-charitable purposes where there is no definite ascertainable beneficiary and hence unenforceable in the absence of statute.

Illusory trust. A trust arrangement which takes the form of a trust, but because of powers retained in the settlor has no real substance and in reality is not a

completed trust. In *re Herron's Estate*, Fla.App., 237 So.2d 563, 566.

Imperfect trust. An executory trust (*q.v.*); see also *Executed trust*, above.

Implied trust. A trust raised or created by implication of law; a trust implied or presumed from circumstances. Constructive and resulting trusts are implied trusts because they arise by implication of law or by demands of equity. Such arise by operation of law when the circumstances of a transaction are such that the court finds it inequitable for the legal owner to enjoy the beneficial interest. *Price v. State*, 79 Ill.App.3d 143, 34 Ill.Dec. 690, 398 N.E.2d 365, 370.

Indestructible trust. A trust which may not be terminated or revoked. See *Claffin trust*.

Instrumental trust. See *Ministerial trusts*, below.

Insurance trust. A trust, the res of which consists of insurance policies or their proceeds. See also *Insurance*.

Inter vivos trust. Trust created by an instrument which becomes operative during the settlor's lifetime as contrasted with a testamentary trust which takes effect on the death of the settlor. A *Living trust* (*q.v.*).

Involuntary trust. Involuntary or "constructive" trusts embrace all those instances in which a trust is raised by the doctrines of equity, for the purpose of working out justice in the most efficient manner, when there is no intention of the parties to create a trust relation. This class of trusts may usually be referred to fraud, either actual or constructive, as an essential element.

Irrevocable trust. Trust which may not be revoked after its creation as in the case of a deposit of money by one in the name of another as trustee for the benefit of a third person (beneficiary).

Land trust. See *Land trust*.

Limited trust. Trust created for a limited period of time in contrast to a perpetual trust.

Liquidation trust. Trust created for purpose of terminating a business or other undertaking and for distributing the res.

Living trust. An inter vivos trust created and operative during the lifetime of the settlor and commonly for benefit or support of another person.

Marital deduction trust. A testamentary trust created to take full advantage of the marital deduction (*q.v.*) provisions of the Int.Rev.Code.

Massachusetts or business trusts. See *Business*; *Massachusetts trust*; *Trust estates as business companies*.

Ministerial trusts. (Also called "instrumental trusts.") Those which demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; as to convey an estate. They are a species of special trusts, distinguished from discretionary trusts, which necessarily require much exercise of the understanding.

Mixed trust. Trusts established to benefit both private individuals and charities. *Green v. Austin*, 222 Ga. 409, 150 S.E.2d 346.

Naked trust. A dry or passive trust; one which requires no action on the part of the trustee, beyond turning over money or property to the *cestui que trust*.

Nominee trust. An arrangement for holding title to real property under which one or more persons or corporations, pursuant to a written declaration of trust, declare that they will hold any property that they acquire as trustees for the benefit of one or more undisclosed beneficiaries.

Non-discretionary trust. A fixed trust under which the trustees may exercise no judgment or discretion at least as to distributions.

Oral trust. See Oral trust.

Passive trust. A trust as to which the trustee has no active duty to perform. "Passive trust," which equity court may terminate before it ends by its terms, is one in which the trustee does not have responsibilities or discretionary duties to perform. *Nickson v. Filtrol Corp.*, Del.Ch., 262 A.2d 267, 271.

Perpetual trust. A trust which is to continue as long as the need for it continues as for the lifetime of a beneficiary or the term of a particular charity.

Personal trust. Trusts created by and for individuals and their families in contrast to business or charitable trusts.

Pour-over trust. A provision in a will in which the testator leaves the residue of his estate to a trustee of a living trust for purpose of that pour-over trust.

Power of appointment trust. Type of trust used to qualify property for the marital deduction. Property is left in trust for a surviving spouse. The trustee is required to distribute income to the spouse for life and the spouse is given an unqualified power to appoint the property to herself or to her estate.

Precatory trust. Where words employed in a will or other instrument do not amount to a positive command or to a distinct testamentary disposition, but are terms of entreaty, request, recommendation, or expectation, they are termed "precatory words," and from such words the law will raise a trust, called a "precatory trust," to carry out the wishes of the testator or grantor.

Private trust. One established or created for the benefit of a certain designated individual or individuals, or a known person or class of persons, clearly identified or capable of identification by the terms of the instrument creating the trust, as distinguished from trusts for public institutions or charitable uses.

Public trust. One constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description; public trusts and charitable trusts may be considered in general as synonymous expressions. See also *Charitable trusts*, above.

Q-TIP trust. See that title.

Real estate investment trust (REIT). Type of tax shelter wherein investors purchase certificates of ownership in trust which invests such funds in real estate and then distributes profits to investors.

Reciprocal trust. Trust which one person creates for the benefit of another who in turn creates a trust for the benefit of the first party.

Resulting trust. One that arises by implication of law, or by the operation and construction of equity, and which is established as consonant to the presumed intention of the parties as gathered from the nature of the transaction. It arises where the legal estate in property is disposed of, conveyed, or transferred, but the intent appears or is inferred from the terms of the disposition, or from the accompanying facts and circumstances, that the beneficial interest is not to go or be enjoyed with the legal title.

Revocable trust. A trust in which the settlor reserves the right to revoke.

Savings bank trust. A Totten trust (*q.v.*).

Secret trusts. Where a testator gives property to a person, on a verbal promise by the legatee or devisee that he will hold it in trust for another person.

Shifting trust. An express trust which is so settled that it may operate in favor of beneficiaries additional to, or substituted for, those first named, upon specified contingencies.

Short term trust. Trust which by its terms is to be administered for a short period of time and then terminated.

Simple trust. A simple trust corresponds with the ancient use, and arises where property is simply vested in one person for the use of another, and the nature of the trust, not being qualified by the settlor, is left to the construction of law. A simple trust is a trust which provides that all of its income is required to be distributed currently, even if it is not in fact distributed, does not provide that any amounts are to be paid, permanently set aside, or used for charitable purposes; and does not distribute any amount other than current income.

Simple trusts are those that are not complex trusts. Such trusts may not have a charitable beneficiary, accumulate income, nor distribute corpus.

Special trust. One in which a trustee is interposed for the execution of some purpose particularly pointed out, and is not, as in case of a simple trust, a mere passive depository of the estate, but is required to exert himself actively in the execution of the settlor's intention; as, where a conveyance is made to trustees upon trust to reconvey, or to sell for the payment of debts.

Special trusts have been divided into (1) ministerial (or instrumental) and (2) discretionary. The former, such as demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; the latter, such as cannot be duly administered without the application of a certain degree of prudence and judgment.

Spendthrift trust. See Spendthrift trust.

Split-interest trust. Type of charitable trust commonly consisting of a life estate to an individual and a remainder to a charity. The Tax Reform Act of 1969 has placed restrictions on this type of trust.

Sprinkling trust. When a trustee has the discretion to either distribute or accumulate the entity accounting income of the trust and to distribute it among the trust's income beneficiaries in varying magnitudes, a sprinkling trust exists. The trustee can "sprinkle" the income of the trust.

Support trust. A trust in which the trustee has the power to pay the beneficiary only so much of the trust income as is necessary for the beneficiary's support, education and maintenance. See also *Spendthrift trust, above*.

Tentative trust. See *Totten trust, below*.

Testamentary trust. Trust created within a will and executed with the formalities required of a will in contrast to an inter vivos trust which is created by the grantor during his lifetime. A trust which does not take effect until the death of the settlor. Nearly all states have adopted the Uniform Testamentary Additions to Trust Act.

Totten trust. Device used to pass property in bank account after depositor's death to designated person through vehicle of trust rather than through process of probate. *Reidy v. Almich*, 4 Ariz.App. 144, 418 P.2d 390, 393. It is a tentative trust revocable at will until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration such as delivery of the passbook or notice to the beneficiary. If the depositor dies before the beneficiary without revocation or some decisive act or declaration of disaffirmance the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor.

Transgressive trust. A name sometimes applied to a trust which transgresses or violates the rule against perpetuities.

Trust allotments. Allotments to Indians, in which a certificate or trust patent is issued declaring that the United States will hold the land for a designated period in trust for the allottee. *U. S. v. Bowling*, 256 U.S. 484, 41 S.Ct. 561, 562, 65 L.Ed. 1054.

Trust certificate. An obligation issued to finance railroad equipment and by which title to the equipment is held by trustees as security for repayment of the money invested.

Trust company. A corporation formed for the purpose of taking, executing, and administering all such trusts as may be lawfully committed to it, and acting as testamentary trustee, executor, guardian, etc. To these functions are sometimes (but not necessarily) added the business of acting as fiscal agent for corporations, attending to the registration and transfer of their stock and bonds, serving as trustee for their bond or mortgage creditors, engaging in fiduciary investment and estate

planning functions, and transacting a general banking and loan business. A bank which is authorized to serve in fiduciary capacity as executor, administrator, etc. Such companies are commonly associated or combined with commercial banks.

Trust deed. The document by which one creates a trust. An indenture by which property is transferred to a trust. May also include a deed from the trustees. In some states, a mortgage deed.

A species of mortgage given to a trustee for the purpose of securing a numerous class of creditors, as the bondholders of a railroad corporation, with power to foreclose and sell on failure of the payment of their bonds, notes, or other claims. In some of the states, a trust deed or deed of trust is a security resembling a mortgage, being a conveyance of lands to trustees to secure the payment of a debt, with a power of sale upon default, and upon a trustee to apply the net proceeds to paying the debt and to turn over the surplus to the grantor.

A trust deed on real estate as security for a bond issue is, in effect, a mortgage on property executed by the mortgagor to a third person as trustee to hold as security for the mortgage debt as evidenced by the bonds, for the benefit of the purchasers of the bonds as lenders.

See also *Deed (Deed of trust); Mortgage*.

Trust deposit. Where money or property is deposited to be kept intact and not commingled with other funds or property of bank and is to be returned in kind to depositor or devoted to particular purpose or requirement of depositor or payment of particular debts or obligations of depositor. Also called *special deposit*. See also *Deposit*.

Trust estate. This term may mean either the estate of the trustee,—that is, the legal title,—or the estate of the beneficiary, or the corpus of the property which is the subject of the trust.

Trust ex delicto. See *Trust ex maleficio, below*.

Trust ex maleficio. Where actual fraud is practiced in acquiring legal title, the arising trust is referred to as a "trust ex maleficio." *Andres v. Andres*, 1 Ark.App. 75, 613 S.W.2d 404, 407.

A "constructive trust," otherwise known as "trust ex maleficio," a "trust ex delicto," a "trust de son tort," an "involuntary trust" or an "implied trust" is a trust by operation of law which arises against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment or questionable means and against good conscience, either has obtained or holds right to property which he ought not in equity and good conscience hold and enjoy. *Briggs v. Richardson*, App., 288 S.C. 537, 343 S.E.2d 653, 654. See also *Constructive trust, above*.

Trust fund. A fund held by a trustee for the specific purposes of the trust; in a more general sense, a fund which, legally or equitably, is subject to be devoted to a particular purpose and cannot or should not be diverted

therefrom. In this sense it is often said that the assets of a corporation are a "trust fund" for the payment of its debts. *See also* Trust fund.

Trust fund doctrine. In substance, where corporation transfers all its assets with a view to going out of business and nothing is left with which to pay debts, transferee is charged with notice of the circumstances of the transaction, and takes the assets subject to an equitable lien for the unpaid debts of the transferring company; the property of a corporation being a fund subject to be first applied to the payment of debts. *Meikle v. Export Lumber Co., C.C.A.Or., 67 F.2d 301, 304.*

Under such doctrine, if insolvent corporation's assets are distributed among its stockholders before its debts are paid, each stockholder is liable to creditors for full amount received by him. *Scott v. Commissioner of Internal Revenue, C.C.A.8, 117 F.2d 36, 39.*

See Common trust fund; Trust fund; Trust fund theory or doctrine.

Trust in invitum. A constructive trust imposed by equity, contrary to the trustee's intention and will, upon property in his hands.

Trust legacy. *See* Legacy.

Trust receipt. *See* Trust receipt.

Unitrust. A unitrust is a trust from which the trustee is required, at least annually, to pay a fixed percentage which is not less than five percent of the net fair market value of the trust assets, valued annually, to one or more beneficiaries, at least one of which is not a charity, for life or for a term of years, with an irrevocable remainder interest to be held for the benefit of, or paid over to, charity. A qualified unitrust must comply with the basic statutory requirements of I.R.C. § 664.

Vertical trust. In antitrust law, a combination which gathers together under a single ownership a number of businesses or plants engaged in successive stages of production or marketing.

Voluntary trust. An obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another, as distinguished from an "involuntary" trust, which is created by operation of law. According to another use of the term, "voluntary" trusts are such as are made in favor of a volunteer, that is, a person who gives nothing in exchange for the trust, but receives it as a pure gift; and in this use the term is distinguished from "trusts for value," the latter being such as are in favor of purchasers, mortgagees, etc. A "voluntary trust" is an equitable gift, and in order to be enforceable by the beneficiaries must be complete. The difference between a "gift inter vivos" and a "voluntary trust" is that, in a gift, the thing itself with title passes to the donee, while, in a voluntary trust, the actual title passes to a cestui que trust while the legal title is retained by the settlor, to be held by him for the purposes of the trust or is by the settlor transferred to another to hold for the purposes of the trust.

Voting trust. A trust which holds the voting rights to stock in a corporation. It is a useful device when a majority of the shareholders in a corporation cannot agree on corporate policy. *See also* Voting trust.

Trustee. Person holding property in trust. Restatement, Second, Trusts, § 3(3). The person appointed, or required by law, to execute a trust. One in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another. One who holds legal title to property "in trust" for the benefit of another person (beneficiary) and who must carry out specific duties with regard to the property. The trustee owes a fiduciary duty to the beneficiary. *Reinecke v. Smith, Ill., 289 U.S. 172, 53 S.Ct. 570, 77 L.Ed. 1109.*

See also Bare trustee.

Bankruptcy trustee. *See* Bankruptcy proceedings (*Bankruptcy trustee*).

Bond offering. The bondholders' representative in a public debt offering. The trustee is responsible for monitoring the borrower's compliance with the terms of the indenture.

Joint trustees. Two or more persons who are intrusted with property for the benefit of one or more others.

Judicial trustee. One appointed by a decree of court to execute a trust, as distinguished from one appointed by the instrument creating the trust.

Testamentary trustee. A trustee appointed by or acting under a will; one appointed to carry out a trust created by a will. The term does not ordinarily include an executor or an administrator with the will annexed, or a guardian, except when they act in the execution of a trust created by the will and which is separable from their functions as executors, etc.

Trustee ad litem. Trustee appointed by a court in contrast to a trustee selected by a settlor or executor.

Trustee de son tort. Person who is treated as a trustee because of his wrongdoing with respect to property entrusted to him or over which he exercised authority which he lacked.

Trustee ex maleficio. A person who, being guilty of wrongful or fraudulent conduct, is held by equity to the duty and liability of a trustee, in relation to the subject-matter, to prevent him from profiting by his own wrong. *See* Trust (*Trust ex maleficio*).

Trustee in bankruptcy. A person in whom the property of a debtor is vested in trust for the creditors. *See* Bankruptcy Code, § 321 *et seq.*; 28 U.S.C.A. § 581 *et seq.*

Trustee process. The name given, in certain New England states, to the process of garnishment or foreign attachment. *See* Garnishment; Process.

Unit investment trust. A trust established whereby funds are pooled and invested in income-producing securities such as bonds, preferred stock, etc. Units of the trust are sold to investors who maintain an interest in the trust in proportion to their investment.

Trusteeship. Fiduciary relationship between trustee and beneficiary wherein trustee holds title to property for the benefit of the beneficiary.

Trust estates as business companies. A practice originating in Massachusetts of vesting a business or certain real estate in a group of trustees, who manage it for the benefit of the beneficial owners; the ownership of the latter is evidenced by negotiable (or transferable) shares. The trustees are elected by the shareholders, or, in case of a vacancy, by the board of trustees. Provision is made in the agreement and declaration of trust to the effect that when new trustees are elected, the trust estate shall vest in them without further conveyance. The declaration of trust specifies the powers of the trustees. They have a common seal; the board is organized with the usual officers of a board of trustees; it is governed by by-laws; the officers have the usual powers of like corporate officers; so far as practicable, the trustees in their collective capacity, are to carry on the business under a specified name. The trustees may also hold shares as beneficiaries. Provision may be made for the alteration or amendment of the agreement or declaration in a specified manner. In *Eliot v. Freeman*, 220 U.S. 178, 31 S.Ct. 360, 55 L.Ed. 424, it was held that such a trust was not within the corporation tax provisions of the tariff act of Aug. 5, 1909. See also *Zonne v. Minneapolis Syndicate*, 220 U.S. 187, 31 S.Ct. 361, 55 L.Ed. 428. See also Massachusetts trust.

Trust fund. Money or property set aside as a trust for the benefit of another and held by a trustee. The majority of states have adopted the Uniform Common Trust Fund Act. See also Common trust fund; Trust (*Trust fund*; *Trust fund doctrine*); Trust fund theory or doctrine.

Trust fund theory or doctrine. Generic term used in many contexts to describe the imposition of fiduciary obligations on persons who control money or property of another under certain circumstances. A creature of equity which operates to treat officers, directors, or majority shareholders of a corporation as holding in trust for the benefit of creditors such corporate assets as have been improperly appropriated. *Whisenhunt v. Park Lane Corp.*, D.C.Tex., 418 F.Supp. 1096, 1098. See also Common trust fund; Trust (*Trust fund*; *Trust fund doctrine*).

Trust indenture. The document which contains the terms and conditions which govern the conduct of the trustee and the rights of the beneficiaries. Commonly used when a corporation floats bonds. See Indenture.

Trust Indenture Act. Federal Act (1939) designed to protect investors in certain types of bonds by requiring that the trust indenture be approved by the SEC and include certain protective clauses and exclude certain exculpatory clauses, and that trustees be independent of the issuing company. 15 U.S.C.A. § 77aaa et seq. See also Indenture.

Trust instrument. The formal document which creates the trust and contains the powers of the trustees and the rights of the beneficiaries. It may be a deed in trust or

a formal declaration of trust. See also Trust (*Trust deed*).

Trustis /trástēs/. In old European law, trust; faith; confidence; fidelity.

Trust officer. The official or officer in a trust company who has direct charge of funds administered by it in its capacity as trustee.

Trustor. One who creates a trust. Also called settlor.

Trust property. The property which is the subject matter of the trust. The trust *res* (*q.v.*). See also Principal.

Trust receipt. A pre-U.C.C. security device now governed by Article 9 of the Code. A receipt stating that the wholesale buyer has possession of the goods for the benefit of the financier. Today there usually must be a security agreement coupled with the filing of a financing statement. Method of financing commercial transactions by means of which title passes directly from manufacturer or seller to banker or lender who as owner delivers goods to dealer in whose behalf he is acting secondarily, and to whom title goes ultimately when primary right of banker or lender has been satisfied. *Commercial Credit Corp. v. Bosse*, 76 Idaho 409, 283 P.2d 937, 938.

Trust res. The property of which the trust consists. It may be real or personal and the trustee has legal title. See also Principal.

Trust territory. A territory or colony placed under the administration of a country by the United Nations.

Trusty. A prisoner who, because of good conduct, is given some measure of freedom in and around the prison.

Truth. There are three conceptions as to what constitutes "truth": agreement of thought and reality; eventual verification; and consistency of thought with itself. For "Fact" and "truth" distinguished, see Fact.

Truth-in-Lending Act. The purpose of the Truth-in-Lending Act (15 U.S.C.A. § 1601 et seq.) is to assure that every customer who has need for consumer credit is given meaningful information with respect to the cost of that credit. In most cases the credit cost must be expressed in the dollar amount of finance charges, and as an annual percentage rate computed on the unpaid balance of the amount financed. Other relevant credit information must also be disclosed so that the customer may compare the various credit terms available to him from different sources and avoid the uninformed use of credit. The Act further provides a customer the right, in certain circumstances, to cancel a credit transaction which involves a lien on his residence. The intent of the Act is to promote the informed use of consumer credit. *Adiel v. Chase Fed. Sav. & Loan Ass'n*, C.A.Fla., 810 F.2d 1051, 1054. The requirements of the Act are implemented by Regulation Z of the Federal Reserve Board, 12 CFR pt. 226. Many states have their own Truth-in-Lending Acts, e.g., Mass.G.L. ch. 140D. See also Consumer Credit Protection Act; Regulation Z; Uniform Consumer Credit Code.

Try. To examine judicially. To examine and investigate a controversy, by the legal method called "trial," for the purpose of determining the issues it involves.

Tsar. The less common spelling of "czar" (*q.v.*)

TSCA. Toxic Substances Control Act. 42 U.S.C.A. § 2601 *et seq.*

Tuas res tibi habeto /t(y)úwəs ríyz tıbay həbíytow/. Lat. Have or take your things to yourself. The form of words by which, according to the old Roman law, a man divorced his wife.

Tub. In mercantile law, a measure containing sixty pounds of tea, and from fifty-six to eighty-six pounds of camphor.

Tub-man. In English law, a barrister who has a pre-eminence in the Court of Exchequer, and also one who has a particular place in court. Such ceased to exist in 1873. *See also* Postman.

Tuchas /túwchas/. In Spanish law, objections or exceptions to witnesses.

Tucker Act. The Tucker Act, which was passed in 1887, was a response by Congress to the inadequacies of the original Court of Claims legislation. By this act, the jurisdiction of the court was extended to include claims founded upon the Constitution, act of Congress, or executive department regulation, as well as claims for liquidated or unliquidated damages in cases not sounding in tort, in addition to all claims within the scope of the earlier statutes. The present provisions of the Tucker Act are embodied in 28 U.S.C.A. §§ 1346(a)(2), 1491. *See also* Claims Court, U.S.; Court of Claims.

Tuerto /twértow/. In Spanish law, tort.

Tullianum /təliyéynəm/. Lat. In Roman law, that part of a prison which was under ground. Supposed to be so called from Servius Tullius, who built that part of the first prison in Rome.

Tumbrel /təmbrəl/. A castigatory, trebucket, or dunking stool, anciently used as a punishment for common scolds.

Tumultuous petitioning /təmáltyuwəs pətıshəniŋ/. Under English St. 13 Car. II, St. 1, c. 5, this was a misdemeanor, and consisted in more than twenty persons signing any petition to the crown or either house of parliament for the alteration of matters established by law in church or state, unless the contents thereof had been approved by three justices, or the majority of the grand jury at assizes or quarter sessions. No petition could be delivered by more than ten persons.

Tungreve /təŋgriyv/. A town-reeve or bailiff.

Tunnage. A duty in England anciently due upon all wines imported, over and above the prisage and butlerage.

Turba /tərbə/. Lat. In the civil law, a multitude; a crowd or mob; a tumultuous assembly of persons. Said to consist of ten or fifteen, at the least.

Turbary /tərbəriy/. Turbary, or common of turbary, is the right or liberty of digging turf upon another man's ground.

Turf and twig. A piece of turf, or a twig or a bough, were delivered by the feoffer to the feoffee in making livery of seisin. 2 Bl.Comm. 315.

Turn, or tourn /tárn/. In English law, the great court-leet of the county, as the old county court was the court-baron. Of this the sheriff was judge, and the court was incident to his office; wherefore it was called the "sheriff's tourn;" and it had its name originally from the sheriff making a turn of circuit about his shire, and holding this court in each respective hundred.

Turncoat witness. A witness whose testimony was expected to be favorable but who turns around and becomes an adverse witness. *See also* Adverse witness.

Turned to a right. In English law, this phrase means that a person whose estate is divested by usurpation cannot expel the possessor by mere entry, but must have recourse to an action, either possessory or drotitral.

Turning State's evidence. *See* State's evidence.

Turnkey. A person, under the superintendence of a jailer, who has the charge of the keys of the prison, for the purpose of opening and fastening the doors.

Turn-key contract. Project in which all owner need do is "turn the key" in the lock to open the building with nothing remaining to be done and all risks to be assumed by contractor. *Glassman Const. Co., Inc. v. Maryland City Plaza, Inc., D.C.Md., 371 F.Supp. 1154, 1159.* Term used in building trade to designate those contracts in which builder agrees to complete work of building and installation to point of readiness for occupancy. It ordinarily means that builder will complete work to certain specified point, such as building a complete house ready for occupancy as a dwelling, and that builder agrees to assume all risk. *Gantt v. Van der Hoek, 251 S.C. 307, 162 S.E.2d 267, 270.*

In oil drilling industry a job wherein driller of oil well undertakes to furnish everything and does all work required to complete well, place it on production, and turn it over ready to turn the key and start oil running into tanks. *Retsal Drilling Co. v. Commissioner of Internal Revenue, C.C.A.Tex., 127 F.2d 355, 357.* A turn-key contract to drill a well involves the testing of the formation contemplated by the parties and completion of a producing well or its abandonment as a dry hole, all done for an agreed-upon total consideration, putting the risk of rising costs, well trouble, weather, and the like upon the driller, but it does not, in the absence of a clear expression, require the driller to guarantee a producing well. *Totah Drilling Co. v. Abraham, 64 N.M. 380, 328 P.2d 1083, 1091.*

Turntable doctrine. Also termed "attractive nuisance" doctrine. This doctrine requires the owner of premises not to attract or lure children into unsuspected danger or great bodily harm, by keeping thereon attractive machinery or dangerous instrumentalities in an exposed and unguarded condition, and where injuries have been

received by a child so enticed the entry is not regarded as unlawful, and does not necessarily preclude a recovery of damages; the attractiveness of the machine or structure amounting to an implied invitation to enter. It imposes a liability on a property owner for injuries to a child of tender years, resulting from something on his premises that can be operated by such a child and made dangerous by him, and which is attractive to him and calculated to induce him to use it, where he fails to protect the thing so that a child of tender years cannot be hurt by it.

Doctrine is that who maintains or creates upon his premises or upon the premises of another in any public place an instrumentality or condition which may reasonably be expected to attract children of tender years and to constitute a danger to them is under duty to take the precautions that a reasonably prudent person would take under similar circumstance, to prevent injury to such children. *Schock v. Ringling Bros. and Barnum & Bailey Combined Shows*, 5 Wash.2d 599, 105 P.2d 838, 843.

The dangerous and alluring qualities of a railroad turntable gave the "attractive nuisance rule" the name of "Turntable Doctrine." *Louisville & N. R. Co. v. Vaughn*, 292 Ky. 120, 166 S.W.2d 43, 46.

See also Attractive nuisance doctrine.

Turpis /tárps/. Lat. In the civil law, base; mean; vile; disgraceful; infamous; unlawful. Applied both to things and persons.

Turpis causa /tárps kózə/. A base cause; a vile or immoral consideration; a consideration which, on account of its immorality, is not allowed by law to be sufficient either to support a contract or found an action; e.g., future illicit intercourse.

Turpis contractus /tárps kənráktəs/. An immoral or iniquitous contract.

Turpis est pars quæ non convenit cum suo toto /tárps èst párz kwíy nón kənvínət kəm s(y)úwəw tówtow/. The part which does not agree with its whole is of mean account [entitled to small or no consideration].

Turpitude /tárpət(y)úwd/. In its ordinary sense, inherent baseness or vileness of principle or action; shameful wickedness; depravity. In its legal sense, everything done contrary to justice, honesty, modesty, or good morals. An action showing gross depravity. *Traders & General Ins. Co. v. Russell*, Tex.Civ.App., 99 S.W.2d 1079, 1084.

Moral turpitude. A term of frequent occurrence in statutes, especially those providing that a witness' conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general, it means neither more nor less than "turpitude," i.e., anything done contrary to justice, honesty, modesty, or good morals. It is also commonly defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Although a

vague term, it implies something immoral in itself, regardless of its being punishable by law. Thus excluding unintentional wrong, or an improper act done without unlawful or improper intent. It is also said to be restricted to the gravest offenses, consisting of felonies, infamous crimes, and those that are *malum in se* and disclose a depraved mind. *Bartos v. United States District Court for District of Nebraska*, C.C.A.Neb., 19 F.2d 722, 724. See also Moral turpitude.

Turpitude /tárpət(y)úwdow/. Lat. Baseness; infamy; immorality; turpitude.

Tuta est custodia quæ sibimet creditur /t(y)úwtə èst kəstówd(i)yə kwíy sibaymet krédətar/. That guardianship is secure which is intrusted to itself alone.

Tutela /t(y)uwtíylə/. Lat. In the civil law, tutelage; that species of guardianship which continued to the age of puberty; the guardian being called "tutor," and the ward, "pupillus." A power given by the civil law over a free person to defend him when by reason of his age he is unable to defend himself. A child under the power of his father was not subject to tutelage, because not a free person, *caput liberum*.

Tutelæ actio /t(y)uwtíyliy éksh(iy)ow/. Lat. In the civil law, an action of tutelage; an action which lay for a ward or pupil, on the termination of tutelage, against the tutor or guardian, to compel an account.

Tutelage /t(y)úwtəlaj/. Guardianship; state of being under a guardian. See Tutela.

Tutela legitima /t(y)uwtíylə ləjítəmə/. Legal tutelage; tutelage created by act of law, as where none had been created by testament.

Tutelam reddere /t(y)uwtíyləm rédəriy/. Lat. In the civil law, to render an account of tutelage. *Tutelam reposcere*, to demand an account of tutelage.

Tutela testamentaria /t(y)utíylə tɛstəmentéri(i)yə/. Testamentary tutelage or guardianship; that kind of tutelage which was created by will.

Tuteur. In French law, a kind of guardian.

Tuteur officieux. A person over fifty years of age may be appointed a tutor of this sort to a child over fifteen years of age, with the consent of the parents of such child, or, in their default, the *conseil de famille*. The duties which such a tutor becomes subject to are analogous to those in English law of a person who puts himself *in loco parentis* to any one.

Tuteur subrogé. The title of a second guardian appointed for an infant under guardianship. His functions are exercised in case the interests of the infant and his principal guardian conflict.

Tutius erratur ex parte mitiore /t(y)úwsh(iy)əs eh්රéytər èks pártiy mishiyóriy/. It is safer to err on the gentler side [or on the side of mercy].

Tutius semper est errare acquietando, quam in puniendo, ex parte misericordiæ quam ex parte justitiæ /t(y)úwsh(iy)əs sémpər èst eh්රériy əkwáytəndow, kwəm in pyuwniyéndow, èks pártiy mizərkórdiyiy kwəm èks

pártij jəstíshiyiy/. It is always safer to err in acquitting than punishing, on the side of mercy than on the side of justice.

Tutor /t(y)úwtər/. One who teaches, usually a private instructor. State ex rel. Veeder v. State Board of Education, 97 Mont. 121, 33 P.2d 516, 522.

In the civil law, this term corresponds nearly to "guardian" (*i.e.*, a person appointed to have the care of the person of a minor and the administration of his estate), except that the guardian of a minor who has passed a certain age is called "curator," and has powers and duties differing somewhat from those of a tutor.

Tutor alienus /t(y)úwtər èyliyíynəs/. In English law, the name given to a stranger who enters upon the lands of an infant within the age of fourteen, and takes the profits. He may be called to an account by the infant and be charged as guardian in socage.

Tutor proprius /tyúwtər prówpriyəs/. The name given in old English law to one who is rightly a guardian in socage, in contradistinction to a *tutor alienus*.

Tutorship. The office and power of a tutor. The power which an individual, *sui juris*, has to take care of the person of one who is unable to take care of himself. There are four sorts of tutorships: Tutorship by nature; tutorship by will; tutorship by the effect of the law; tutorship by the appointment of the judge. Civ.Code La. art. 247.

Tutorship by nature. Upon the death of either parent, the tutorship of minor children belongs of right to the other. Upon divorce or judicial separation from bed and board of parents, the tutorship of each minor child belongs of right to the parent under whose care he or she has been placed or to whose care he or she has been entrusted; however, if the parents are awarded joint custody of a minor child, then the cotutorship of the minor child shall belong to both parents with equal authority, privileges, and responsibilities, unless modified by order of the court or by an agreement of the parents, approved by the court awarding joint custody. In the event of the death of a parent to whom joint custody had been awarded, the tutorship of the minor children of the deceased belongs of right to the surviving parent. All those cases are called tutorship by nature. Civ.Code La. art. 250.

Tutorship by will. The right of appointing a tutor, whether a relation or a stranger, belongs exclusively to the father or mother dying last. This is called "tutorship by will," because generally it is given by testament; but it may likewise be given by any declaration by the surviving father or mother, or the parent who is the curator of the other spouse, executed before a notary and two witnesses. Civ.Code La. art. 257.

Tutrix /t(y)úwtriiks/. A female tutor.

T.V.A. Tennessee Valley Authority.

Twa night gest /túwnayt gést/. In Saxon law, a guest on the second night. By the laws of Edward the Confessor it was provided that a man who lodged at an inn, or

at the house of another, should be considered, on the first night of his being there, a stranger (*uncuth*); on the second night, a guest; on the third night, a member of the family. This had reference to the responsibility of the host or entertainer for offenses committed by the guest.

Twelfthindi. The highest rank of men in the Saxon government, who were valued at 1200s. If any injury were done to such persons, satisfaction was to be made according to their worth.

Twelfth Amendment. Amendment to the U.S. Constitution (1804) which altered the method of voting in presidential elections by requiring each elector to vote for President and Vice President on separate ballots instead of voting for two persons for President on single ballot as before.

Twelve-day writ. A writ issued under the English St. 18 & 19 Vict., c. 67, for summary procedure on bills of exchange and promissory notes, abolished by rule of court in 1880.

Twelvemonth /twélvmánθ/. This term (in the singular number), includes all the year; but *twelve months* are to be computed according to twenty-eight days for every month.

Twelve-month bond. Twelve-month bond, under statute effective Jan. 20, 1837 (Hartley's Dig. art. 1277), had a double character, first as an obligation known to the Spanish civil law, and second, as a summary statutory judgment, with the force and effect of any other judgment of a court of competent jurisdiction; it being also a consent judgment.

Twelve Tables. The earliest statute or code of Roman law, framed by a commission of ten men, B.C. 450, upon the return of a commission of three who had been sent abroad to study foreign laws and institutions. The Twelve Tables consisted partly of laws transcribed from the institutions of other nations, partly of such as were altered and accommodated to the manners of the Romans, partly of new provisions, and mainly, perhaps, of laws and usages under their ancient kings. They formed the source and foundation for the whole later development of Roman jurisprudence. They exist now only in fragmentary form. See 1 Kent.Comm. 520. These laws were substantially a codification, and not merely an incorporation, of the customary law of the people. There were Greek elements in them, but still they were essentially Roman.

Twentieth Amendment. The so-called lame duck Amendment to the U.S. Constitution (1933) which changed the beginning of Presidential and Vice-Presidential terms from March 4 to January 20, and of Congressional terms from March 4 to January 3, thereby eliminating the short session of Congress which had formerly convened early in December in even-numbered years, and in which a number of Congressmen sat who had not been re-elected to office. The Amendment also provides for Presidential succession under certain circumstances.

Twenty-Fifth Amendment. Amendment to U.S. Constitution (1967) which provides for filling vacancy in offices of President and Vice-President on the death, removal, or resignation of the office holders.

Twenty-First Amendment. Amendment to the Constitution (1933) which repealed Prohibition Amendment (18th) but prohibited the importation of intoxicating beverages into any State where delivery or use of such beverages violated the State's laws.

Twenty-Fourth Amendment. Amendment to the Constitution (1964) which prohibits federal or State denial of right to vote in any primary or other election for federal elective officers because of the prospective voter's failure to pay any poll tax or other tax. *See* Poll-tax.

Twenty-Second Amendment. Amendment to the Constitution (1951) which prevents any person from being elected President more than twice, or, if he has succeeded to the Presidency before the midpoint of his predecessor's term, from being elected more than once.

Twenty-Sixth Amendment. Amendment to U.S. Constitution (1971) which established voting age at 18.

Twenty-Third Amendment. Amendment to the Constitution (1961) which allots to the District of Columbia presidential electors, to be appointed as Congress directs, equal in number to those of a State of equivalent population but never more than the number of electors allotted to the least populous State.

Twice in jeopardy. *See* Jeopardy; Once in jeopardy.

Twisting. Colloquially, in insurance, the misrepresentation or misstatements of fact or incomplete comparison of policies to induce the insured to give up a policy in one company for the purpose of taking insurance in another. *Brandt v. Beha*, 217 App.Div. 644, 216 N.Y.S. 178, 179. *See also* Misrepresentation.

Two-dismissal rule. The rule providing that a notice of dismissal operates with prejudice when filed by a claimant who has in any federal or state court previously dismissed the same claim by notice of dismissal. Fed.R. Civil P. 41(a)(1).

Two issue rule. Under this rule, whenever multiple issues are submitted to a jury for resolution in a general verdict and one of them is free from prejudicial error, it will be presumed that all issues were decided in favor of prevailing party and a judgment will be affirmed. *Barhoush v. Louis By and Through Julien*, Fla.App. 4 Dist., 452 So.2d 1075, 1076. This rule is also a short-cut way of stating that in perjury trial, evidence must consist of something more convincing than one man's word against another's. *U.S. v. Beach*, C.A.Va., 296 F.2d 153, 155.

Two witness rule. This rule requires that falsity element of a perjury conviction be supported either by direct testimony of two witnesses or by direct testimony of one witness plus independent corroborating evidence. *People v. Fueston*, Colo.App., 717 P.2d 978, 990. *See also* Treason.

Twyhindi. The lower order of Saxons, valued at 200s. in the scale of pecuniary mulcts inflicted for crimes. *See* Twelfhindi.

Tyburn ticket /táybærn tikət/. In old English law, a certificate which was given to the prosecutor of a felon to conviction. By the 10 & 11 Will. III, c. 23, the original proprietor or first assignee of such certificate is exempted from all parish and ward offices within the parish or ward where the felony was committed.

Tyhtlan. In Saxon law, an accusation, impeachment, or charge of any offense.

Tying. A term which, as used in a contract of lease of patented machinery means that the lessee has secured only limited rights of use, and that if he exceeds such limited rights by agreeing not to use the machines of others he may lose his lease. *See also* Tying arrangement.

Tying arrangement. A condition imposed by a seller or lessor that a buyer or lessee may obtain a desired product (the "tying" product) only if it also agrees to take an additional product (the "tied" product), which may or may not be desired. Some tying arrangements violate either § 3 of the Clayton Act or § 1 of the Sherman Act. *See also* Reciprocal dealing arrangement; Tied product.

Variable proportion tying arrangement. A tying arrangement in which different buyers use different amounts of the tied product in proportion to their use of the tying product. For example, an arrangement in which the lessor of photocopy machines requires all lessees to purchase their photocopying paper from the lessor. Commonly used by lessors as price discrimination devices.

Tylwith. Brit. A tribe or family branching or issuing out of another.

Tymbrella /timbrélə/. In old English law, a tumbrel, castigatory, or ducking stool, anciently used as an instrument of punishment for common scolds.

Tyranny /tíhrəniy/. Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, either vested constitutionally in one ruler, or usurped by him by breaking down the division and distribution of governmental powers.

Tyrant /táyрэnt/. A despot; a sovereign or ruler, legitimate or otherwise, who uses his power unjustly and arbitrarily, to the oppression of his subjects.

Tyrra, or toira /tíhrə/. A mount or hill.

Tythe /táyð/. Tithe, or tenth part.

Tything /táyðĩŋ/. A company of ten; a district; a tenth part. *See* Tithing.

Tzar /tsár/zár/, **Tzarina** /tsariynə/zəriynə/. Formerly, the emperor and empress of Russia. *See* Czar.