

# B

**B.** *abbr.* BARON (3).

**BA.** See *banker's acceptance* under ACCEPTANCE (4).

**baby act, pleading the.** *Slang.* Asserting a person's infancy as a defense to a contract claim made by a minor.

**baby bond.** See BOND (3).

**Baby Doe.** A generic pseudonym for a very young child involved in litigation, esp. in the context of medical care.

**Baby FTC Act.** A state statute that, like the Federal Trade Commission Act, outlaws deceptive and unfair trade practices.

**baby-snatching.** See *child-kidnapping* under KIDNAPPING.

**BAC.** *abbr.* BLOOD ALCOHOL CONTENT.

**bachelor.** **1.** An unmarried man. **2.** The usual title of the first degree that is conferred on a university graduate. **3.** *English law.* A member of one of the orders of chivalry, such as the Order of the Bath. — Also termed (in sense 3) *knight bachelor*.

**bachelor of laws.** See LL.B.

**back, vb.** **1.** To indorse; to sign the back of an instrument. **2.** To sign so as to show acceptance or approval. **3.** To sign so as to indicate financial responsibility for. **4.** *Hist.* (Of a magistrate) to sign a warrant issued in one county to permit its execution in the signing magistrate's county.

"[Although] the warrant of the judge of the Court of King's Bench extends over the whole realm, . . . that of a justice of the peace cannot be executed out of his county, unless it be *backed*, that is, indorsed by a justice of the county, in which it is to be carried into execution. It is said, that formerly there ought in strictness to have been a fresh warrant in every fresh county, but the practice of backing warrants has long been observed, and was at last sanctioned by the statute 23 Geo. 2. c. 26. s. 2, and

24 Geo. 2. c. 55." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 45 (2d ed. 1826).

**backadation.** See BACKWARDATION.

**backberend (bak-ber-ənd).** [Old English] *Hist.* **1.** The bearing of stolen goods upon the back or about the person. • *Backberend* is sometimes modernized to *backbearing*. **2.** A person caught carrying stolen goods. — Also spelled *bacherende*; *backberinde*. Cf. HANDHABEND.

"*Backberinde* signifieth bearing upon the Back, or about a Man. *Bracton* useth it for a Sign or Circumstance of Theft apparent, which the Civilians call *Furtum manifestum* . . ." Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

**back carry.** *Hist.* The crime of carrying, on one's back, unlawfully killed game.

**backdate, vb.** **1.** To put a date earlier than the actual date on (something, as an instrument). • Under UCC § 3-113(a), backdating does not affect an instrument's negotiability. Cf. POST-DATE. **2.** To make (something) retroactively valid.

**backhaul allowance.** See ALLOWANCE (1).

**backing.** Endorsement, esp. of a warrant by a magistrate. See BACK (4).

**back-in right.** *Oil & gas.* A reversionary interest in an oil-and-gas lease entitling an assignor to a share of the working interest after the assignee has recovered specified costs from production.

**back lands.** Generally, lands lying away from — not next to — a highway or a watercourse.

**backpay award.** A judicial or quasi-judicial body's decision that an employee or ex-employee is entitled to accrued but uncollected wages or benefits. — Sometimes shortened to *back-pay*.

**backspread.** *Securities.* In arbitrage, a less than normal price difference in the price of a currency or commodity. See ARBITRAGE; SPREAD (3).

**back taxes.** Taxes that, though assessed for a previous year or years, remain due and unpaid.

**back-title letter.** A letter from a title insurer advising an attorney of the condition of title to land as of a certain date. • With this information, the attorney can begin examining the title from that date forward.

**back-to-back loan.** See LOAN.

**back-to-work agreement.** A contract between a union and an employer covering the terms under which the employees will return to work after a strike.

**backwardation.** *Securities.* A fee paid by the seller of securities so that the buyer will allow delivery after their original delivery date. — Also termed *backadation*; *inverted market*.

**backward integration.** See INTEGRATION (4).

**backwater.** See WATER.

**baculus** (*bak-yə-ləs* or *bak-ə-ləs*). *Hist.* A rod or staff used to symbolize the conveyance of unimproved land. See LIVERY OF SEISIN. See FESTUCA.

**bad-boy disqualification.** An issuer's disqualification from certain SEC-registration exemptions as a result of the issuer's securities-law violations.

**bad-boy provision.** *Securities.* A statutory or regulatory clause in a blue-sky law stating that certain persons, because of their past conduct, are not entitled to any type of exemption from registering their securities. • Such clauses typically prohibit issuers, officers, directors, control persons, or broker-dealers from being involved in a limited offering if they have been the subject of an adverse proceeding concerning securities, commodities, or postal fraud.

**bad character.** A person's predilection toward evil. • In limited circumstances, proof of bad character may be introduced into evidence to discredit a witness. Fed. R. Evid. 608, 609. See *character evidence* under EVIDENCE.

**bad check.** See CHECK.

**bad-conduct discharge.** See DISCHARGE (8).

**bad debt.** See DEBT.

**bad-debt loss ratio.** The ratio of uncollectible debt to a business's total receivables.

**bad-debt reserve.** See RESERVE.

**bad faith, n.** 1. Dishonesty of belief or purpose <the lawyer filed the pleading in bad faith>. — Also termed *mala fides* (*mal-ə fi-deez*).

"A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance." Restatement (Second) of Contracts § 205 cmt. d (1981).

2. *Insurance.* An insurance company's unreasonable and unfounded (though not necessarily fraudulent) refusal to provide coverage in violation of the duties of good faith and fair dealing owed to an insured. • Bad faith often involves an insurer's failure to pay the insured's claim or a claim brought by a third party. 3. An insured's claim against an insurance company for an unreasonable and unfounded refusal to provide coverage. — **bad-faith, adj.** Cf. GOOD FAITH.

**badge of fraud.** A circumstance that the courts generally interpret as a reliable indicator that a party to a transaction was trying to hinder or defraud the other party, such as a transfer in anticipation of litigation, a transaction outside the usual course of business, or a false statement. See FRAUD.

**badge of slavery.** 1. Strictly, a legal disability suffered by a slave, such as the inability to vote or to own property. 2. Broadly, any act of racial discrimination — public or private — that Congress can prohibit under the 13th Amendment.

**badger game.** A scheme to extort money or some other benefit by catching someone in a compromising position and threatening to make that person's behavior public.

"The 'badger game' is a blackmailing trick, usually in the form of enticing a man into a compromising position with a woman whose real or pretended husband comes upon the scene and demands payment under threat of prosecution or exposure." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 451 (3d ed. 1982).

**bad-man theory.** The jurisprudential doctrine or belief that a bad person's view of the law represents the best test of what the law actually is because that person will carefully calculate precisely what the rules allow and operate up to the rules' limits. • This theory was first

espoused by Oliver Wendell Holmes in his essay *The Path of the Law*, 10 Harv. L. Rev. 457 (1897). In the essay, Holmes maintained that a society's legal system is defined by predicting how the law will affect a person, as opposed to considering the ethics or morals supposedly underlying the law. Under Holmes's theory, the prediction is best made by viewing the law as would a "bad man" who is unconcerned with morals. Such a person is not concerned with acting morally or in accord with a grand philosophical scheme. Rather, that person is concerned with whether and to what degree certain acts will incur punishment by the public force of the law. See LEGAL REALISM. — Also termed *prediction theory*.

**bad motive.** See MOTIVE.

**bad title.** See *unmarketable title* under TITLE (2).

**baga** (bag-ə). [Law Latin] *Hist.* A bag or purse, esp. one in which original writs were kept by the Chancery.

**bagman.** A person who collects and distributes illegally obtained money; esp., an intermediary who collects a bribe for a public official.

**bail, n.** 1. A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear at a future time <bail is set at \$500>. Cf. RECOGNIZANCE.

**bail absolute.** A type of fiduciary bond conditioning a surety's liability on the failure of an estate administrator, executor, or guardian to properly account for estate funds. See *fiduciary bond* under BOND (2).

**cash bail.** A sum of money (rather than a surety bond) posted to secure a prisoner's release from jail. — Also termed *stationhouse bail*.

**civil bail.** A bond or deposit of money given to secure the release of a person arrested for failing to pay a court-ordered civil debt. • The bail is conditioned on the payment of the debt.

**excessive bail.** Bail that is unreasonably high considering both the offense with which the accused is charged and the risk that the accused will not appear for trial. • The Eighth Amendment prohibits excessive bail.

2. Release of a prisoner on security for a future appearance <the court refused bail for the accused serial killer>. 3. One or more sureties for a criminal defendant <the attorney stood as bail for her client>. See BAILER (1).

"As a noun, and in its strict sense, bail is the person in whose custody the defendant is placed when released from jail, and who acts as surety for defendant's later appearance in court. . . . The term is also used to refer to the undertaking by the surety, into whose custody defendant is placed, that he will produce defendant in court at a stated time and place." 8 C.J.S. *Bail* § 2 (1988).

**bail above.** See *bail to the action*.

**bail below.** See *bail to the sheriff*.

**bail common.** *Hist.* A fictitious surety filed by a defendant in a (usu. minor) civil action. — Also termed *common bail*; *straw bail*.

"[T]he *Common Pleas* made a distinction between *common* and *special* bail, allowing the former, in cases where the defendant voluntarily appeared to the process, or where the damage expressed in it appeared to be but of a trifling amount, and requiring the latter only, when the plaintiff's demand or the damage he had sustained appeared to be something considerable. In time therefore, in common cases, every defendant took the liberty of offering *John Doe* and *Richard Roe*, for his bail. . . ." 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* lxi (3d ed. 1787).

**bail to the action.** *Hist.* A surety for a civil defendant arrested by a mesne process (i.e., a process issued during the lawsuit). • If the defendant lost the lawsuit, the *bail to the action* was bound either to pay the judgment or to surrender the defendant into custody. — Also termed *bail above*; *special bail*. Cf. *bail to the sheriff*.

**bail to the sheriff.** *Hist.* A person who pledged to the sheriff that a defendant served with process during a civil action would appear on the writ's return day. — Also termed *bail below*. Cf. *bail to the action*.

"This kind of bail is called *bail to the sheriff*, because given to that officer, and for his security; and *bail below*, because subordinate or preliminary to bail to the action or special bail, which is termed *bail above*." 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 174 (2d ed. 1867).

**common bail.** See *bail common*.

**special bail.** See *bail to the action*.

**straw bail.** See *bail common*.

**bail, vb.** 1. To obtain the release of (oneself or another) by providing security for future appearance <his parents bailed him out of jail>. 2. To release (a person) after receiving such security <the court bailed the prisoner>. 3. To place (personal property) in someone else's charge or trust <bail the goods with the warehouse>.

**bailable, adj.** (Of an offense or person) eligible for bail.

**bailable offense.** A criminal charge for which a defendant may be released from custody after providing proper security <misdemeanor theft is a bailable offense>.

**bailable process.** See PROCESS (2).

**bail above.** See *bail to the action* under BAIL (3).

**bail absolute.** See BAIL (1).

**bail below.** See *bail to the sheriff* under BAIL (3).

**bail bond.** See BOND (2).

**bail bondsman.** See BAILER (1).

**bail common.** See BAIL (3).

**Bail Court.** *Hist.* An ancillary court of Queen's Bench responsible for ensuring that bail sureties were worth the sums pledged (i.e., hearing *justifications*) and handling other procedural matters. • The court was established in 1830 and abolished in 1854. — Also termed *Practice Court*.

**bail dock.** A small compartment in a courtroom used to hold a criminal defendant during trial.

**bailee.** A person who receives personal property from another as a bailment. See BAILMENT.

**bailee policy.** See INSURANCE POLICY.

**bail-enforcement agent.** See BOUNTY HUNTER.

**bailer. 1.** One who provides bail as a surety for a criminal defendant's release. — Also spelled *bailor*. — Also termed *bail bondsman*; *bailisman. 2.* BAILOR (1).

**bailiff. 1.** A court officer who maintains order during court proceedings. **2.** A sheriff's officer who executes writs and serves processes.

**bailiff-errant.** *Hist.* A bailiff appointed by the sheriff to deliver writs and other process within a county. Cf. *bailiffs of franchises*.

**bailiff of franchises.** *Hist.* A bailiff who executes writs and performs other duties in privileged districts that are outside the Crown's (and therefore the sheriff's) jurisdiction. Cf. *bailiff-errant*.

"*Bailiffs of Franchises* are those who are appointed by every Lord within his Liberty, to do such Offices therein, as the *Bailiff Errant* does at large in the County."

Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

**bailiffs of hundreds.** *Hist.* Bailiffs appointed by a sheriff to collect fines, summon juries, attend court sessions, and execute writs and process in the county district known as a *hundred*. See HUNDRED.

**bailiffs of manors.** *Hist.* Persons appointed to superintend the estates of the nobility. • These bailiffs collected fines and rents, inspected buildings, and took account of waste, spoils, and misdemeanors in the forests and demesne lands.

**bound bailiff.** *Hist.* A deputy sheriff placed under bond to ensure the faithful performance of assigned duties.

**high bailiff.** *Hist.* A bailiff attached to a county court, responsible for attending court sessions, serving summonses, and executing orders, warrants, and writs.

**special bailiff.** *Hist.* A deputy sheriff appointed at a litigant's request to serve or execute some writ or process related to the lawsuit.

**bail in error.** Security given by a defendant who intends to bring a writ of error on a judgment and desires a stay of execution in the meantime. See *appeal bond & supersedeas bond* under BOND (2).

**bailivia.** See BAILIWICK.

**bailiwick (bay-lə-wik).** The office, jurisdiction, or district of a bailiff; esp., a bailiff's territorial jurisdiction. — Also termed *bailivia*; *baliva*; *balliva*.

"In the early days a village was called a 'wick.' Each village had a bailiff who was its peace officer. His authority was limited to the territory of the wick. A bailiff was popularly referred to as a 'bailie,' and before long a bailie's wick was expressed as his 'bailiwick.' And in time this word came to be used to indicate the special territory over which a peace officer exercises his authority as such. Although it may be changed by statute, the normal situation is that the bailiwick of a policeman is his city, the bailiwick of a sheriff is his county and the bailiwick of a state officer, such as a member of the Highway Patrol, is the state." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1096 (3d ed. 1982).

**bail-jumping, n.** The criminal offense of defaulting on one's bail. — **bail-jumper, n.** — **jump bail, vb.** See JUMP BAIL.

**bailment. 1.** A delivery of personal property by one person (the *bailor*) to another (the *bailee*) who holds the property for a certain purpose under an express or implied-in-fact contract. •

Unlike a sale or gift of personal property, a bailment involves a change in possession but not in title. Cf. PAWN.

"The customary definition of a bailment considers the transaction as arising out of contract. Thus Justice Story defines a bailment as 'a delivery of a thing in trust for some special object or purpose, and upon a contract express or implied, to conform to the object or purpose of the trust' [Joseph Story, *Bailments* 5 (9th ed. 1878)]. There has, however, been a vigorous dissent to this insistence on the contractual element in bailments. Professor Williston . . . defines bailments broadly 'as the rightful possession of goods by one who is not the owner' [4 Samuel Williston, *Law of Contracts* 2888 (rev. ed. 1936)]. . . . It is obvious that the restricted definition of a bailment as a delivery of goods on a contract cannot stand the test of the actual cases. The broader definition of Professor Williston is preferable." Ray Andrews Brown, *The Law of Personal Property* § 73, at 252, 254 (2d ed. 1955).

"Although a bailment is ordinarily created by the agreement of the parties, resulting in a consensual delivery and acceptance of the property, such a relationship may also result from the actions and conduct of the parties in dealing with the property in question. A bailment relationship can be implied by law whenever the personal property of one person is acquired by another and held under circumstances in which principles of justice require the recipient to keep the property safely and return it to the owner." 8A Am. Jur. 2d *Bailment* § 1 (1997).

**actual bailment.** A bailment that arises from an actual or constructive delivery of property to the bailee.

**bailment for hire.** A bailment for which the bailee is compensated, as when one leaves a car with a parking attendant. — Also termed *lucrative bailment*.

**bailment for mutual benefit.** A bailment for which the bailee is compensated and from which the bailor receives some additional benefit, as when one leaves a car with a parking attendant who will also wash the car while it is parked.

**constructive bailment.** A bailment that arises when the law imposes an obligation on a possessor of personal property to return the property to its rightful owner, as with an involuntary bailment.

**gratuitous bailment.** A bailment for which the bailee receives no compensation, as when one borrows a friend's car. ● A gratuitous bailee is liable for loss of the property only if the loss is caused by the bailee's gross negligence. — Also termed *naked bailment*; *depositum*; *naked deposit*; *gratuitous deposit*; *deposit*.

**involuntary bailment.** A bailment that arises when a person accidentally, but without any negligence, leaves personal property in another's possession. ● An involuntary

bailee who refuses to return the property to the owner can be liable for conversion. — Also termed *involuntary deposit*. See *abandoned property*, *lost property*, *misplaced property* under PROPERTY.

**lucrative bailment.** See *bailment for hire*.

**naked bailment.** See *gratuitous bailment*.

**2.** The personal property delivered by the bailor to the bailee. **3.** The contract or legal relation resulting from such a delivery. **4.** The act of posting bail for a criminal defendant. **5.** The documentation for the posting of bail for a criminal defendant.

**bailor** (bay-lor or bay-lər). **1.** A person who delivers personal property to another as a bailment. — Also spelled *bailer*. **2.** BAILER (1).

**bailout, n.** **1.** A rescue of an entity, usu. a corporation, from financial trouble. **2.** An attempt by a business to receive favorable tax treatment of its profits, as by withdrawing profits at capital-gain rates rather than distributing stock dividends that would be taxed at higher ordinary-income rates.

**bailout stock.** See STOCK.

**bail piece.** *Hist.* A document recording the nature of the bail granted to a defendant in a civil action. ● The bail piece was filed with the court and usu. signed by the defendant's sureties. See BAIL (2); RECOGNIZANCE.

**bail-point scale.** A system for determining a criminal defendant's eligibility for bail, whereby a defendant either will be released on personal recognizance or will have a bail amount set according to the total number of points given, based on the defendant's background and behavior.

**bailisman.** See BAILER (1).

**bail to the action.** See BAIL (3).

**bail to the sheriff.** See BAIL (3).

**bait advertising.** See BAIT AND SWITCH.

**bait and switch.** A sales practice whereby a merchant advertises a low-priced product to lure customers into the store only to induce them to buy a higher-priced product. ● Most states prohibit the bait and switch when the original product is not actually available as advertised. — Also termed *bait advertising*.

**balance**, *vb.* **1.** To compute the difference between the debits and credits of (an account) <the accountant balanced the company's books>. **2.** To equalize in number, force, or effect; to bring into proportion <the company tried to balance the ratio of mid-level managers to assembly-line workers>. **3.** To measure competing interests and offset them appropriately <the judge balanced the equities before granting the motion>. — **balance**, *n.*

**balanced economy.** See ECONOMY.

**balanced fund.** See MUTUAL FUND.

**balance of power.** *Int'l law.* A relative equality of force between countries or groups of countries, as a result of which peace is encouraged because no country is in a position to predominate.

**balance of probability.** See PREPONDERANCE OF THE EVIDENCE.

**balance sheet.** A statement of an entity's current financial position, disclosing the value of the entity's assets, liabilities, and owners' equity. — Also termed *statement of financial condition*; *statement of condition*; *statement of financial position*. Cf. INCOME STATEMENT.

**balance-sheet insolvency.** See INSOLVENCY.

**balance-sheet test.** See *balance-sheet insolvency* under INSOLVENCY.

**balancing test.** A judicial doctrine, used esp. in constitutional law, whereby a court measures competing interests — as between individual rights and governmental powers, or between state authority and federal supremacy — and decides which interest should prevail.

**bale.** A package of goods wrapped in cloth and marked so as to be identifiable on a bill of lading.

**baliva.** See BAILIWICK.

**ballistics.** **1.** The science of the motion of projectiles, such as bullets. **2.** The study of a weapon's firing characteristics, esp. as used in criminal cases to determine a gun's firing capacity and whether a particular gun fired a given bullet.

**balliva.** See BAILIWICK.

**ballivo amovendo** (bə-lī-voh ay-moh-ven-doh). [Latin "a bailiff to be removed"] *Hist.* A writ to remove from office a bailiff who does not have sufficient land in the bailiwick as required by the Statute of Westminster (1285).

**balloon note.** See NOTE (1).

**balloon payment.** See PAYMENT.

**balloon-payment mortgage.** See MORTGAGE.

**ballot**, *n.* **1.** A small ball or ticket used for indicating a vote. **2.** The system of choosing persons for office by marking a paper or by drawing papers with names on them from a receptacle. **3.** The formal record of a person's vote.

**absentee ballot.** A ballot that a voter submits, sometimes by mail, before an election. See *absentee voting* under VOTING.

**joint ballot.** *Parliamentary practice.* A vote by legislators of both houses sitting together as one body.

**secret ballot.** A vote cast in such a way that the person voting cannot be identified.

"The secret ballot, when used to protect citizens when choosing their representatives, is a hallmark of a democratic system of government; but, when it is used to conceal a public official's vote, it violates the fundamental tenet of an elected or appointed official's ultimate accountability to the electorate." Op. Tex. Att'y Gen. H-1163 (1978).

**4.** A list of candidates running for office. — **ballot**, *vb.*

**Australian ballot.** A ballot characterized by a variety of safeguards designed to maintain secrecy in voting. ● Australian ballots are widely used in various forms in the United States.

**Massachusetts ballot.** A ballot in which, under each office, the names of candidates and party designations are printed in alphabetical order. ● This is a type of Australian ballot.

**office-block ballot.** A ballot that lists the candidates' names under the title of the office sought without mentioning the candidates' party affiliations.

**party-column ballot.** A ballot that lists the candidates' names in separate columns by political party regardless of the offices sought by the candidates.

**ballot box.** A locked box into which ballots are deposited.

**ban**, *n.* **1.** *Hist.* A public proclamation or summons. • *Bans* dealt with a variety of matters, such as the calling to arms of a lord's vassals or the proclamation that an offender was henceforth to be considered an outlaw. **2.** *Eccles. law.* An authoritative ecclesiastical prohibition; an interdiction. **3.** BANNIS OF MATRIMONY. — Also spelled *bann*.

**ban**, *vb.* To prohibit, esp. by legal means.

**banc** (*bangk or bongk*). [French] Bench. See EN BANC.

**banco** (*bang-koh*). **1.** A seat or bench of justice. See EN BANC. **2.** A tract of land cut off by the shifting of a river's course; esp., land that has become cut off in such a manner from the country it originally belonged to. See AVULSION (2).

**bancus** (*bang-kəs*). [Law Latin "bench"] *Hist. English law.* A court or tribunal.

**bancus reginae** (*bang-kəs rə-ji-nee*). See QUEEN'S BENCH.

**bancus regis** (*bang-kəs ree-jəs*). See KING'S BENCH.

**bancus superior** (*bang-kəs sə-peer-ee-ər*). Upper bench. • The King's Bench was so called during the Protectorate (1653-1659). — Abbr. b.s. — Also termed *bancus publicus* ("public bench").

**B and E.** *abbr.* Breaking and entering. See BURGLARY (2).

**bane**. *Hist.* A malefactor or murderer; a person whose criminal act calls for the raising of the hue and cry.

**banish.** See EXILE.

**bank**. **1.** A financial establishment for the deposit, loan, exchange, or issue of money and for the transmission of funds; esp., a member of the Federal Reserve System. • Under securities law, a bank includes any banking institution, whether or not incorporated, doing business under federal or state law, if a substantial portion of the institution's business consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks and if the institution is supervised and examined by a state or federal banking authority; or a receiver, conservator, or other liquidating agent of any of the above institutions. 15 USCA § 78c(a)(6). **2.** The office in which such an establishment conducts transactions.

"A bank is a quasi public institution, for the custody and loan of money, the exchange and transmission of the same by means of bills and drafts, and the issuance of its own promissory notes, payable to bearer, as currency, or for the exercise of one or more of these functions, not always necessarily chartered, but sometimes so, created to subserve public ends, or a financial institution regulated by law . . . . A bank is wholly a creature of statute doing business by legislative grace and the right to carry on a banking business through the agency of a corporation is a 'franchise' which is dependent on a grant of corporate powers by the state." 1A *Michie on Banks and Banking* § 2, at 5-6 (1993).

**bank for cooperatives.** A bank within a system of banks established to provide a permanent source of credit to farmers' cooperatives and supervised by the Farm Credit Administration.

**collecting bank.** In the check-collection process, any bank handling an item for collection, except for the payor bank or the depository bank. UCC § 4-105(5).

**commercial bank.** A bank authorized to receive both demand and time deposits, to engage in trust services, to issue letters of credit, to rent time-deposit boxes, and to provide similar services.

**correspondent bank.** A bank that acts as an agent for another bank, or engages in an exchange of services with that bank, in a geographical area to which the other bank does not have direct access.

**custodian bank.** A bank or trust company that acts as custodian for a clearing corporation and that is supervised and examined by a state or federal authority. UCC § 8-102(4).

**depository bank.** The first bank to which an item is transferred for collection. UCC § 4-105(2).

**drawee bank.** See *payor bank*.

**Federal Home Loan Bank.** See FEDERAL HOME LOAN BANK.

**federal land bank.** See FEDERAL LAND BANK.

**intermediary bank.** A bank to which an item is transferred in the course of collection, even though the bank is not the depository or payor bank. UCC § 4-105(4).

**investment bank.** A bank whose primary purpose is to acquire financing for businesses, esp. through the sale of securities. • An investment bank does not accept deposits and, apart from selling securities, does not deal with the public at large. See INVESTMENT BANKER.

**member bank.** A bank that is a member of the Federal Reserve System. — Also termed *reserve bank*. See FEDERAL RESERVE SYSTEM.

**mutual savings bank.** A bank that has no capital stock and in which the depositors are the owners. See SAVINGS-AND-LOAN ASSOCIATION.

**national bank.** A bank incorporated under federal law and governed by a charter approved by the Comptroller of the Currency. ● A national bank is permitted to use the abbreviation n.a. (national association) as part of its name.

**nonbank bank.** A financial institution that either accepts demand deposits or makes commercial loans, but, unlike banks, does not do both at the same time and therefore can avoid federal regulations on bank ownership. ● Nonbank banks were esp. prolific in the 1980s, but amendments to the definition of a bank under federal law have essentially closed this loophole.

**nonmember bank.** A bank that is not a member of the Federal Reserve System. See FEDERAL RESERVE SYSTEM.

**payor bank.** A bank that is requested to pay the amount of a negotiable instrument and, on the bank's acceptance, is obliged to pay that amount; a bank by which an item is payable as drawn or accepted. UCC § 4-105(3). — Also termed *drawee bank*.

**presenting bank.** A nonpayor bank that presents a negotiable instrument for payment. UCC § 4-105.

**private bank.** An unincorporated banking institution owned by an individual or partnership and, depending on state statutes, subject to or free from state regulation.

**remitting bank.** A payor or intermediary bank that pays or transfers an item.

**reserve bank.** See *member bank*.

**respondent bank.** A bank, association, or other entity that exercises fiduciary powers, that holds securities on behalf of beneficial owners, and that deposits the securities for safekeeping with another bank, association, or other entity exercising fiduciary powers. SEC Rule 14a-1(k) (17 CFR § 240.14a-1(k)).

**savings-and-loan bank.** See SAVINGS-AND-LOAN ASSOCIATION.

**savings bank.** A bank that receives deposits, pays interest on them, and makes certain types of loans, but does not provide checking services.

**state bank.** A bank chartered by a state and supervised by the state banking department. ● For a state bank to have FDIC insurance on deposits, it must become a member of the Federal Reserve System.

**bank, vb.** **1.** To keep money at <he banks at the downtown branch>. **2.** To deposit (funds) in a bank <she banked the prize money yesterday>. **3. Slang.** To loan money to facilitate (a transaction) <who banked the deal?>. ● The lender's consideration usu. consists of a fee or an interest in the property involved in the transaction.

**bankable paper.** See PAPER.

**bank acceptance.** See *banker's acceptance* under ACCEPTANCE (4).

**bank account.** See ACCOUNT.

**bank-account trust.** See *Totten trust* under TRUST.

**bank bill.** See BANKNOTE.

**bankbook.** See PASSBOOK.

**bank charter.** See CHARTER (3).

**bank credit.** See CREDIT (4).

**bank discount.** The interest that a bank deducts in advance on a note. See DISCOUNT (2).

**bank draft.** See DRAFT.

**banker.** A person who engages in the business of banking.

**bankerout, adj.** *Archaic.* Indebted beyond the means of payment; bankrupt. — Also spelled *bankrout*.

**banker's acceptance.** See ACCEPTANCE (4).

**banker's bill.** See *finance bill* under BILL (6).

**banker's lien.** See LIEN.

**bank examiner.** A federal or state official who audits banks with respect to their financial condition, management, and policies.

**bank for cooperatives.** See BANK.

**bank fraud.** The criminal offense of knowingly executing, or attempting to execute, a scheme or artifice to defraud a financial institution, or to obtain property owned by or under the control of a financial institution, by means of false



or fraudulent pretenses, representations, or promises. 18 USCA § 1344.

**bank holding company.** A company that owns or controls one or more banks. • Ownership or control of 25 percent is usu. enough for this purpose. — Abbr. BHC.

**banking.** The business carried on by or with a bank.

**Banking Act of 1933.** See GLASS-STEAGALL ACT.

**banking day.** **1.** Banking hours on a day when a bank is open to the public for carrying on substantially all its banking functions. • Typically, if the bookkeeping and loan departments are closed by a certain hour, the remainder of that day is not part of that bank's banking day. **2.** A day on which banks are open for banking business.

“ ‘Banking day’ is defined in [UCC § ] 4-104(1)(c) [now 4-104(a)(3)]. The definition was designed to exclude from the ‘banking day’ all bank holidays (although some states added specifics on holidays) as well as the portions of a day on which one or more of the substantial departments of the bank closed off their services to the public, even though it remained open for accepting deposits and withdrawing funds as well as continuously processing items for payment or for dispatch. Clearly, when night depositaries came into vogue, their existence did not extend the ‘banking day.’ The present existence and growing use of so-called 24-hour teller machines also does not extend the banking day. The nature of the banking day is sufficiently tenuous that banks would do well to fix a definite cutoff hour under subsection 4-107(1).” William D. Hawkland, *Uniform Commercial Code Series* § 4-104:01, at 4-43 (1984).

**banking game.** A gambling arrangement in which the house (i.e., the bank) accepts bets from all players and then pays out winning bets and takes other bettors' losses.

**bank night.** A lottery in which a prize is awarded to a person (often a theater patron) whose name is drawn randomly from a hopper.

**banknote.** A bank-issued promissory note that is payable to bearer on demand and that may circulate as money. — Also written *bank note*. — Also termed *bank bill*.

**spurious banknote.** **1.** A banknote that is legitimately made from a genuine plate but that has forged signatures of the issuing officers, or the names of fictitious officers. **2.** A banknote that is not a legitimate impression from a genuine plate, and is made from a counterfeit plate, but that is signed by the

persons shown on it as the issuing officers. — Also termed *spurious bank bill*.

**bank rate.** See INTEREST RATE.

**Bankr. Rep.** *abbr.* Bankruptcy Reporter.

**bankrupt, adj.** Indebted beyond the means of payment; insolvent. — Also spelled (archaically) *bankerout*; *bankrout*.

**bankrupt, n.** **1.** A person who cannot meet current financial obligations; an insolvent person. **2.** DEBTOR (2).

**cessionary bankruptcy.** *Archaic.* A person who forfeits all property so that it may be divided among creditors. • For the modern near-equivalent, see CHAPTER 7.

**bankruptcy.** **1.** The statutory procedure, usu. triggered by insolvency, by which a person is relieved of most debts and undergoes a judicially supervised reorganization or liquidation for the benefit of that person's creditors. • For various types of bankruptcy under federal law, see the entries at CHAPTER. — Also termed *bankruptcy proceeding*; *bankruptcy case*.

“There are two general forms of bankruptcy: (1) liquidation and (2) rehabilitation. Chapter 7 of the Code is entitled ‘Liquidation.’ The terms ‘straight bankruptcy’ and ‘bankruptcy’ often are used to describe liquidation cases under the bankruptcy laws because the vast majority of bankruptcy cases are liquidation cases. In a typical Chapter 7 liquidation case, the trustee collects the non-exempt property of the debtor, converts that property to cash, and distributes the cash to the creditors. The debtor gives up all the nonexempt property she owns at the time of the filing of the bankruptcy petition and hopes to obtain a discharge. Chapters 11, 12, and 13 of the Bankruptcy Code contemplate debtor rehabilitation. In a rehabilitation case, creditors look to future earnings of the debtor, not to the property of the debtor at the time of the initiation of the bankruptcy proceeding, to satisfy their claims. The debtor generally retains its assets and makes payments to creditors, usually from postpetition earnings, pursuant to a court-approved plan.” David G. Epstein et al., *Bankruptcy* § 1-5, at 8-9 (1993).

**involuntary bankruptcy.** A bankruptcy proceeding initiated by creditors (usu. three or more) to force the debtor to declare bankruptcy or be legally declared bankrupt. 11 USCA § 303(b).

**voluntary bankruptcy.** A bankruptcy proceeding initiated by the debtor. 11 USCA § 301.

**2.** The fact of being financially unable to pay one's debts and meet one's obligations; insolvency. — Also termed *failure to meet obli-*

*gations*. **3.** The status of a party who has declared bankruptcy under a bankruptcy statute. **4.** The fact of having declared bankruptcy under a bankruptcy statute. **5.** The field of law dealing with the rights and entitlements of debtors and creditors in bankruptcy.

**Bankruptcy Act.** The Bankruptcy Act of 1898, which governed bankruptcy cases filed before October 1, 1979.

**bankruptcy case.** See BANKRUPTCY (1).

**bankruptcy clause.** See IPSO FACTO CLAUSE.

**Bankruptcy Code.** The Bankruptcy Reform Act of 1978 (as amended and codified in 11 USCA), which governs bankruptcy cases filed on or after October 1, 1979.

**Bankruptcy Court.** **1.** A U.S. district court that is exclusively concerned with administering bankruptcy proceedings. **2.** The bankruptcy judges within a given district, considered as making up a court that is a subunit of a U.S. district court.

**bankruptcy estate.** A debtor's legal and equitable interests in property as of the commencement of a bankruptcy case.

**bankruptcy judge.** A judicial officer appointed by a U.S. Court of Appeals to preside over a bankruptcy court in a designated judicial district for a term of 14 years. • A bankruptcy judge is called an Article II judge. 28 USCA §§ 151 et seq. See ARTICLE II JUDGE.

**bankruptcy plan.** A detailed program of action formulated by a debtor or its creditors to govern the debtor's rehabilitation, continued operation or liquidation, and payment of debts. • The bankruptcy court and creditors must approve the plan before it is implemented. — Often shortened to *plan*. — Also termed *plan of reorganization* (for Chapter 11); *plan of rehabilitation* (for Chapter 13). See ARRANGEMENT WITH CREDITORS.

**bankruptcy proceeding.** **1.** BANKRUPTCY (1). **2.** Any judicial or procedural action (such as a hearing) related to a bankruptcy.

**bankruptcy-remote entity.** A business, usu. a special-purpose entity, established to perform limited functions and to have one or a few primary creditors. • This type of entity is sometimes established to protect lenders on large,

complex projects, when the lender is to be paid solely or almost exclusively out of the money generated when the project becomes operational. This business is established to have no function other than to develop, own, and operate the project, and to have no principal creditors other than the project lenders. In this way, the lenders have additional protection because there are fewer creditors to compete for the money generated by the project, and there is less likelihood that the project will be forced into bankruptcy. A bankruptcy-remote entity will sometimes issue securities instead of just receiving a direct loan. See SINGLE-PURPOSE PROJECT; SPECIAL-PURPOSE ENTITY; *project financing* under FINANCING.

**bankruptcy trustee.** The person appointed by the U.S. Trustee and approved by the bankruptcy court to take charge of and administer the debtor's estate during bankruptcy proceedings. — Also termed *trustee in bankruptcy*. See UNITED STATES TRUSTEE.

**Bank Secrecy Act of 1970.** A federal law requiring banks to maintain records of all transactions with depositors and to report to the U.S. Treasury all deposits of more than \$10,000.

**bank statement.** See STATEMENT OF ACCOUNT (1).

**bank-statement rule.** *Commercial law.* The principle that if a bank customer fails to examine a bank statement within a reasonable time (usu. no more than a year for a forged drawer's signature or alteration, and no more than three years for a forged indorsement), the customer is precluded from complaining about a forgery or material alteration. UCC § 4-406.

**bannitio** (bə-nish-ee-oh or ba-). [Law Latin] *Hist.* Expulsion by a ban or public proclamation; banishment. See EXILE; BAN (1).

**bannitus** (ban-ə-təs). [Law Latin] *Hist.* A person under a ban; an outlaw. See BAN (1).

**banns of matrimony.** *Hist.* Public notice of an intended marriage. • The notice was given to ensure that objections to the marriage would be voiced before the wedding. — Also spelled *bans of matrimony*.

**bar, n. 1.** In a courtroom, the railing that separates the front area, where the judge, court personnel, lawyers, and witnesses conduct court business, from the back area, which pro-

vides seats for observers; by extension, a similar railing in a legislative assembly <the spectator stood behind the bar>. **2.** The whole body of lawyers qualified to practice in a given court or jurisdiction; the legal profession, or an organized subset of it <the attorney's outrageous misconduct disgraced the bar>. See BAR ASSOCIATION.

**integrated bar.** A bar association in which membership is a statutory requirement for the practice of law. — Also termed *unified bar*.

**specialty bar.** A voluntary bar association for lawyers with special interests, specific backgrounds, or common practices.

**voluntary bar.** A bar association that lawyers need not join to practice law.

**3.** A particular court or system of courts <case at bar>. • Originally, *case at bar* referred to an important case tried "at bar" at the Royal Courts of Justice in London. **4.** BAR EXAMINATION <Pendarvis passed the bar>. **5.** A preventive barrier to or the destruction of a legal action or claim; the effect of a judgment for the defendant <a bar to any new lawsuit>. Cf. MERGER (5). **6.** A plea arresting a lawsuit or legal claim <the defendant filed a bar>. See *plea in bar* under PLEA.

**bar, vb.** To prevent, esp. by legal objection <the statute of limitations barred the filing of the stale claims>.

**bar association.** An organization of members of the legal profession <several state bar associations sponsor superb CLE programs>. See BAR (2).

**state bar association.** An association or group of attorneys that have been admitted to practice law in a given state. • State bar associations are usu. created by statute, and membership is often mandatory for those who practice law in the state. Unlike voluntary, professional-development bar associations such as the American Bar Association, state bar associations often have the authority to regulate the legal profession, by undertaking such matters as disciplining attorneys and bringing lawsuits against those who participate in the unauthorized practice of law.

**bareboat charter.** See CHARTER (4).

**barebones indictment.** See INDICTMENT.

**bare license.** See LICENSE.

**bare licensee.** See LICENSEE.

**bare ownership.** See *trust ownership* under OWNERSHIP.

**bare possibility.** See *naked possibility* under POSSIBILITY.

**bare promise.** See *gratuitous promise* under PROMISE.

**bare trustee.** See TRUSTEE (1).

**bar examination.** A written test that a person must pass before being licensed to practice law. • The content and format of bar examinations vary from state to state. — Often shortened to *bar*.

**Multistate Bar Examination.** A part of every state's bar examination given in the form of a multiple-choice test covering broad legal subjects, including constitutional law, contracts, criminal law, evidence, property, and torts. — Abbr. MBE.

**bar examiner.** One appointed by the state to test applicants (usu. law graduates) by preparing and administering the bar examination.

**bargain, n.** An agreement between parties for the exchange of promises or performances. • A bargain is not necessarily a contract because the consideration may be insufficient or the transaction may be illegal. — **bargain, vb.**

"A bargain is an agreement of two or more persons to exchange promises, or to exchange a promise for a performance. Thus defined, 'bargain' is at once narrower than 'agreement' in that it is not applicable to all agreements, and broader than 'contract,' since it includes a promise given in exchange for insufficient consideration. It also covers transactions which the law refuses to recognize as contracts because of illegality." Samuel Williston, *A Treatise on the Law of Contracts* § 2A, at 7 (Walter H.E. Jaeger ed., 3d ed. 1957).

**bargain and sale.** A written agreement for the sale of land whereby the buyer would give valuable consideration (recited in the agreement) without having to enter the land and perform livery of seisin, so that the parties equitably "raised a use" in the buyer. • The result of the bargain and sale was to leave the legal estate in fee simple in the seller and to create an equitable estate in fee simple in the buyer.

**bargain-and-sale deed.** See DEED.

**bargainee.** The buyer in a bargained-for exchange.

**bargaining agent.** See AGENT.

**bargaining unit.** A group of employees authorized to engage in collective bargaining on behalf of all the employees of a company or an industry sector.

**bargain money.** See EARNEST MONEY.

**bargainor** (bahr-gən-or or bahr-gə-nər). The seller in a bargained-for exchange.

**bargain purchase.** See BARGAIN SALE.

**bargain sale.** A sale of property for less than its fair market value. • For tax purposes, the difference between the sale price and the fair market value must be taken into account. And bargain sales between family members may lead to gift-tax consequences. — Also termed *bargain purchase*.

**bargain theory of consideration.** The theory that a promise in exchange for a promise is sufficient consideration for a contract. • This theory underlies all bilateral contracts. See *bilateral contract* under CONTRACT.

"We saw earlier that classical contract theory tended to associate the doctrine of consideration with the concept of bargain. The emphasis of classical law shifted away from actual benefits and detriments to the mutual promises which constitute a wholly executory contract. American lawyers developed from this trend a 'bargain theory of consideration' and similarly in English law a more modern basis for the doctrine of consideration was found by some lawyers in the notion that a contract is a bargain in which the consideration is the price of the bargain. Allied to this is the supposed rule that nothing can be treated as a consideration unless it is seen by the parties as the 'price' of the bargain." P.S. Atiyah, *An Introduction to the Law of Contract* 119 (3d ed. 1981).

**barometer stock.** See STOCK.

**baron.** **1.** *Hist.* A man holding land directly from the Crown in exchange for military service. **2.** *Hist.* A husband. See BARON ET FEME. **3.** One of the judges of the English or Scottish Courts of Exchequer. — Abbr. B. See BARONS OF THE EXCHEQUER. **4.** A noble rank; specif., the lowest rank in the British peerage. **5.** Generally, a lord or nobleman.

**barones scaccarii.** See BARONS OF THE EXCHEQUER.

**baronet.** *Hist.* A non-noble hereditary title that descends in the male line only. • Baronets originated in 1611 when James I began selling the title as a way to raise revenue.

**baron et feme** (bar-ən ay fem). [Law French] *Hist.* Husband and wife. See COVERTURE; FEME COVERT.

**baronial court.** *Hist.* A feudal court established by the owner of extensive lands held directly of the king under military tenure.

**Baron Parke's rule.** See GOLDEN RULE.

**Barons of the Exchequer.** *Hist.* The six judges of the Court of Exchequer. • After the 1873 transfer of the Court's jurisdiction to the High Court of Justice, the judges were known as *justices of the High Court*. — Also termed *barones scaccarii*. See COURT OF EXCHEQUER.

**barony** (bar-ən-ee). See TENURE (2).

**barra** (bah-rə). [Law French "bar"] *Hist.* **1.** See *plea in bar* under PLEA. **2.** A barrister. — Also spelled *barre*.

**barrator** (bar-ə-tər), *n.* A fomentor of quarrels and lawsuits; one who excites dissension and litigation among people. — Also spelled *barretor*. Cf. CHAMPERTOR.

"*Barrator* or *Barater* (Fr. *Barateur*, a Deceiver) Is a common mover or maintainer of Suits, Quarrels, or Parts, either in Courts or elsewhere in the Country, and is himself never quiet, but at variance with one or other." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

**barratry** (bar-ə-tree or bair-), *n.* **1.** Vexatious incitement to litigation, esp. by soliciting potential legal clients. • Barratry is a crime in most jurisdictions. **2.** *Maritime law.* Fraudulent or grossly negligent conduct (by a master or crew) that is prejudicial to a shipowner. **3.** The buying or selling of ecclesiastical or governmental positions. — **barratrous** (bar-ə-trəs), *adj.*

**barrier to entry.** An economic factor that makes it difficult for a business to enter a market and compete with existing suppliers.

"Strictly speaking, a barrier to entry is a condition that makes the long-run costs of a new entrant into a market higher than the long-run costs of the existing firms in the market; a good example is a regulatory limitation on entry. The term is also used, more questionably, as a synonym for heavy start-up costs." Richard A. Posner, *Economic Analysis of Law* § 10.8, at 227 (2d ed. 1977).

**barring of entail.** The freeing of an estate from the limitations imposed by an entail and permitting its free disposition. • This was anciently done by means of a fine or common recovery, but later by deed in which the tenant and next heir join. — Also termed *breaking of entail*. See ENTAIL.

**barrister** (*bar-is-tər*), *n.* In England or Northern Ireland, a lawyer who is admitted to plead at the bar and who may argue cases in superior courts. — **barristerial** (*bar-ə-steer-ee-əl*), *adj.* Cf. SOLICITOR (4).

**inner barrister.** 1. QUEEN'S COUNSEL. 2. A student member of an Inn of Court.

**outer barrister.** A barrister called to the bar, but not called to plead from within it, as a Queen's Counsel or (formerly) serjeant-at-law is permitted to do; a barrister belonging to the outer bar. — Also termed *utter barrister*. See OUTER BAR.

**vacation barrister.** A counselor who, being newly called to the bar, is to attend for six long vacations the exercises of the house.

**barter**, *n.* The exchange of one commodity for another without the use of money. — **barter**, *vb.*

**base court.** See COURT.

**base estate.** See ESTATE.

**base fee.** See FEE (2); *fee simple determinable* under FEE SIMPLE.

**baseline.** *Int'l law.* The line that divides the land from the sea, by which the extent of a coastal jurisdiction is measured.

**basement court.** *Slang.* A low-level court of limited jurisdiction, such as a police court, traffic court, municipal court, or small-claims court.

**base-point pricing.** A freight-charge calculation based on the distance from a geographical location that differs from the goods' shipment point of origin (often where a major competitor is located). • The purpose is to reduce freight charges and enhance the shipper's competitive position, or to have customers incur freight charges not paid by the seller.

**base service.** *Hist.* Work of an agricultural nature performed by a villein tenant in exchange

for permission from the lord to hold the land. Cf. KNIGHT SERVICE.

**base tenure.** See TENURE.

**basic crops.** See CROPS.

**basic-form policy.** See INSURANCE POLICY.

**basic norm.** See NORM.

**basic patent.** See PATENT (3).

**Basilica** (*bə-sil-i-kə*). A 60-book Greek summary of Justinian's *Corpus Juris Civilis*, with comments (*scholia*). • The *Basilica* ("royal law") was begun by the Byzantine emperor Basil I, and it served as a major source of the law of the Eastern Empire from the early 10th century until Constantinople's fall in 1453.

**basis.** 1. A fundamental principle; an underlying condition. 2. *Tax.* The value assigned to a taxpayer's investment in property and used primarily for computing gain or loss from a transfer of the property. • When the assigned value represents the cost of acquiring the property, it is also called *cost basis*. — Also termed *tax basis*. Pl. **bases**.

**adjusted basis.** Basis increased by capital improvements and decreased by depreciation deductions.

"[I]t is well to consider the word 'adjusted' in the term 'adjusted basis.' Often, after property is acquired, certain adjustments (increases or decreases to the dollar amount of the original basis) must be made. After these adjustments, the property then has an 'adjusted basis.'" Michael D. Rose & John C. Chommie, *Federal Income Taxation* § 6.04, at 300 (3d ed. 1988).

**adjusted cost basis.** Basis resulting from the original cost of an item plus capital additions minus depreciation deductions.

**carryover basis.** The basis of property transferred by gift or in trust, equaling the transferor's basis. — Also termed *substituted basis*.

**stepped-up basis.** The basis of property transferred by inheritance. • Stepped-up basis equals the fair market value of property on the date of the decedent's death (or on the alternate valuation date).

**substituted basis.** 1. The basis of property transferred in a tax-free exchange or other specified transaction. 2. See *carryover basis*.

**basis point.** One-hundredth of 1%; .01%. • Basis points are used in computing investment

yields (esp. of bonds) and in apportioning costs and calculating interest rates in real-estate transactions.

**Basket Clause.** See NECESSARY AND PROPER CLAUSE.

**basse justice (bahs zhoo-stees).** [Latin "low justice"] *Hist.* A feudal lord's right to personally try a person charged with a minor offense.

**bastard.** 1. ILLEGITIMATE CHILD. 2. A child born to a married woman whose husband could not possibly be the father.

**bastard eisne.** See EISNE.

**bastardy.** See ILLEGITIMACY.

**bastardy proceeding.** See PATERNITY SUIT.

**batable ground (bay-tə-bəl).** Land of uncertain ownership. • *Batable* (or *debatable*) ground originally referred to certain lands on the border of England and Scotland before the 1603 union of the two kingdoms.

**bathtub conspiracy.** See *intra-enterprise conspiracy* under CONSPIRACY.

**Batson challenge.** See CHALLENGE (1).

**battered-child syndrome.** The medical and psychological condition of a child who has suffered continuing injuries that could not be accidental and are therefore presumed to have been inflicted by someone close to the child.

**battered-woman syndrome.** The medical and psychological condition of a woman who has suffered physical, sexual, or emotional abuse at the hands of a spouse or lover. • This syndrome is sometimes proposed as a defense to justify a woman's killing of a man. — Sometimes (more specifically) termed *battered-wife syndrome*; (more broadly) *battered-spouse syndrome*.

**battery, n.** 1. *Criminal law.* The application of force to another, resulting in harmful or offensive contact. • It is a misdemeanor under most modern statutes. — Also termed *criminal battery*.

"Criminal battery, sometimes defined briefly as the unlawful application of force to the person of another, may be divided into its three basic elements: (1) the defendant's conduct (act or omission); (2) his 'mental state,' which may be an intent to kill or injure, or criminal negligence, or perhaps the doing of an unlawful act; and

(3) the harmful result to the victim, which may be either a bodily injury or an offensive touching." Wayne R. LaFare & Austin W. Scott, Jr., *Criminal Law* § 7.15, at 685 (2d ed. 1986).

**aggravated battery.** A criminal battery accompanied by circumstances that make it more severe, such as the use of a deadly weapon or the fact that the battery resulted in serious bodily harm.

**sexual battery.** The forced penetration of or contact with another's sexual organs or the sexual organs of the perpetrator. See RAPE.

**simple battery.** A criminal battery not accompanied by aggravating circumstances and not resulting in serious bodily harm.

2. *Torts.* An intentional and offensive touching of another without lawful justification. — Also termed *tortious battery*. — **batter, vb.** Cf. ASSAULT.

**battle of the forms.** The conflict between the terms of standard forms exchanged between a buyer and a seller during contract negotiations. • UCC § 2-207 attempts to resolve battles of the forms by abandoning the common-law requirement of mirror-image acceptance and providing that an acceptance with additional terms is normally valid. — Also termed *UCC battle of the forms*. See MIRROR-IMAGE RULE.

"The rules of offer and acceptance are difficult to apply in certain circumstances known as the 'battle of the forms' where parties want to enter into a contract, but jockey for position in an attempt to use the rules of law so as to ensure that the contract is on terms of their choosing." P.S. Atiyah, *An Introduction to the Law of Contract* 54 (3d ed. 1981).

**batture (bə-tyoor or ba-toor).** [French] Soil, stone, or other material that builds under water and may or may not break the surface. • If batture builds against a bank and breaks the surface, it becomes alluvion. See ALLUVION (2).

**bawd.** *Archaic.* A person, usu. a woman, who solicits customers for a prostitute; a madam. See DISORDERLY HOUSE (2). Cf. PIMP.

**bawdy house.** See DISORDERLY HOUSE.

**bay.** *Int'l law.* An inlet of the sea, over which the coastal country exercises its jurisdiction to enforce its environmental, immigration, and customs laws.

**historic bay.** A bay that, because of its shape, would not be considered a bay subject to the coastal country's jurisdiction, except for that country's long-standing unilateral claim over it; a bay over which the coastal

country has traditionally asserted and maintained dominion.

**BCD.** See *bad-conduct discharge* under DISCHARGE.

**BCD special court-martial.** See COURT-MARTIAL.

**beadle** (*beed-əl*). **1.** *Hist.* A court crier with duties similar to those of a constable. **2.** *Hist. Eccles. law.* A minor parish officer who serves the vestry's needs in various ways, including giving notice of the vestry's meetings, executing its orders, and attending its inquests. **3.** A macebearer at Oxford University or Cambridge University. — Also spelled *bedel*.

**beak.** *BrE Slang.* A magistrate or justice of the peace.

**bean counter.** *Slang.* A person who makes decisions using numerical calculations; esp., an accountant.

**bear, vb.** **1.** To support or carry <bear a heavy load>. **2.** To produce as yield <bear interest>. **3.** To give as testimony <bear witness>.

**bear drive.** See BEAR RAID.

**bearer.** One who possesses a negotiable instrument marked "payable to bearer" or indorsed in blank.

**bearer bond.** See BOND (3).

**bearer document.** See *bearer paper* under PAPER.

**bearer instrument.** See *bearer paper* under PAPER.

**bearer paper.** See PAPER.

**bearer security.** See SECURITY.

**bear hug.** *Slang.* A takeover offer that is much higher than the target company's market value.

**bear market.** See MARKET.

**bear raid.** *Slang.* High-volume stock selling by a large trader in an effort to drive down a stock price in a short time. • Bear raids are prohibited by federal law. — Also termed *bear drive*.

**beat, n.** **1.** A law-enforcement officer's patrol territory. **2.** A colloquial term for the principal county subdivision in some southern states, such as Alabama, Mississippi, and South Carolina. **3.** A voting precinct.

**beaupleader** (*boh-plee-dər*). [Law French "fair pleading"] *Hist.* **1.** A fine imposed for bad or unfair pleading. **2.** A writ of prohibition that prevented a sheriff from taking a fine for bad pleading. • The Statute of Marlbridge (1267) prohibited the taking of fines for this type of pleading. See WRIT OF PROHIBITION.

**beauty contest.** *Slang.* A meeting at which a major client interviews two or more law firms to decide which firm will get its business.

**before-and-after theory.** *Antitrust.* A method of determining damages for lost profits (and sometimes overcharges), whereby the plaintiff's profits are examined before, during, and after the violation to estimate the reduction in profits due to the defendant's violation. — Also termed *before-and-after method*. Cf. YARDSTICK THEORY; MARKET-SHARE THEORY.

"In its simplest form, the [before-and-after] theory looks at the plaintiff's net profits before and after the injury period, discounts all dollars to their present value, and gives the plaintiff a sum that, before trebling, will bring its earnings during the injury period up to the same average level as its earnings during the noninjury periods." Herbert Hovenkamp, *Economics and Federal Antitrust Law* § 16.7, at 450 (1985).

**before the fact.** Prior to an event of legal significance.

**behavioral science.** The body of disciplines (psychology, sociology, anthropology) that study human behavior.

**behoof, n.** *Archaic.* A use, profit, or advantage that is part of a conveyance <to his use and behoof>. — **behoove, vb.**

**belief-action distinction.** *Constitutional law.* In First Amendment law, the Supreme Court's distinction between allowing a person to follow any chosen belief and allowing the state to intervene if necessary to protect others from the practices of that belief.

**belief-cluster.** In critical legal studies, a group of unconnected ideas or opinions that appear to be related when considered together in reference to a specific subject, such as racism, sexism, or religious intolerance.

**belligerency.** *Int'l law.* **1.** The status assumed by a nation that wages war against another nation. **2.** The quality of being belligerent; the act or state of waging war.

**belligerent,** *n.* A country involved in a war or other hostile action. — **belligerent,** *adj.* Cf. NEUTRAL.

**bellum** (bel-əm). [Latin] See WAR (1).

**bellum justum** (bel-əm jəs-təm). [Latin] *Int'l law.* A just war; one that the proponent considers morally and legally justifiable, such as a war against an aggressive, totalitarian regime. • Under Roman law, before war could be declared, the *fetiales* (a group of priests who monitored international treaties) had to certify to the Senate that just cause for war existed. Thomas Aquinas and other medieval theologian-jurists debated the circumstances that justified war; some canonists supported the notion of a just war against non-Catholics. Over time, debating the justness of war had little practical effect, and most belligerents now simply declare the validity of their warlike behavior.

**bellwether stock.** See *barometer stock* under STOCK.

**belong,** *vb.* **1.** To be the property of a person or thing <this book belongs to the judge>. See OWNERSHIP. **2.** To be connected with as a member <they belong to the state bar>.

**below,** *adv.* In a lower court <as the court noted below, the defendant's confession was not tape-recorded>. Cf. ABOVE.

**below-market loan.** See *interest-free loan* under LOAN.

**below-the-line,** *adj.* (Of a deduction) taken after calculating adjusted gross income and before calculating taxable income. • Examples of below-the-line deductions are medical payments and local taxes. Cf. ABOVE-THE-LINE.

**Ben Avon doctrine.** The principle that due process entitles public utilities to judicial review of rates set by public-service commissions. *Ohio Valley Water Co. v. Borough of Ben Avon*, 253 U.S. 287, 40 S.Ct. 527 (1920).

**bench.** **1.** The raised area occupied by the judge in a courtroom <approach the bench>. **2.** The court considered in its official capacity <remarks from the bench>. **3.** Judges collectively

<bench and bar>. **4.** The judges of a particular court <the Fifth Circuit bench>.

**bench blotter.** See ARREST RECORD (2).

**bench conference.** See SIDEBAR CONFERENCE (1).

**bencher.** A governing officer of an English Inn of Court; one of the Masters of the Bench. See INN OF COURT (1).

**bench legislation.** See JUDGE-MADE LAW (2).

**benchmark.** A standard unit used as a basis for comparison.

**bench memo.** **1.** A short brief submitted by a lawyer to a trial judge, often at the judge's request. **2.** A legal memorandum prepared by an appellate judge's law clerk to help the judge in preparing for oral argument and perhaps in drafting an opinion. • A trial-court judge may similarly assign a bench memo to a law clerk, for use in preparing for hearing or trial or in drafting an opinion.

**bench ruling.** An oral ruling issued by a judge from the bench.

**bench trial.** See TRIAL.

**bench warrant.** See WARRANT (1).

**benefice** (ben-ə-fis). **1.** *Hist.* A feudal estate in land, held during the life of the tenant. See BENEFICIUM (3).

“[T]he vassal no longer owns the land, but ‘holds’ it ‘of’ the lord — the vassal has become a ‘tenant’ (from the Latin, ‘tenere’, to hold). The vassal’s interest in the land so held, first called a ‘benefice’, is now a ‘feudum’, anglicised in modern law as ‘fee.’” Peter Butt, *Land Law* 52 (3d ed. 1996).

**2.** *Hist. Eccles. law.* An estate held by the Catholic Church in feudal tenure. **3.** An ecclesiastical office such as a bishopric; a preferment.

**bénéfice** (bay-nay-fees). [French “benefit”] *French law.* A benefit or advantage; esp., a privilege given by law rather than by agreement of the parties.

**bénéfice de discussion.** [French] BENEFIT OF DISCUSSION.

**bénéfice de division.** [French] BENEFIT OF DIVISION.



**bénéfice d'inventaire.** [French] BENEFIT OF INVENTORY.

**beneficial, adj.** 1. Favorable; producing benefits <beneficial ruling>. 2. Consisting in a right that derives from something other than legal title <beneficial interest in a trust>.

**beneficial association.** See *benevolent association* under ASSOCIATION.

**beneficial enjoyment.** See ENJOYMENT.

**beneficial holder of securities.** A holder of equitable title to corporate stock. • The stock is not registered under the holder's name in the corporation's records.

**beneficial interest.** A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. • For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property.

**beneficial owner.** See OWNER.

**beneficial ownership.** See OWNERSHIP.

**beneficial power.** See POWER (4).

**beneficial use.** See USE (1).

**beneficiary** (ben-ə-fish-ee-er-ee or ben-ə-fish-ə-ree), *n.* A person who is designated to benefit from an appointment, disposition, or assignment (as in a will, insurance policy, etc.); one designated to receive something as a result of a legal arrangement or instrument. — **beneficiary, adj.**

**contingent beneficiary.** The person designated in a life-insurance policy to receive the proceeds if the primary beneficiary is unable to do so. — Also termed *secondary beneficiary*.

**creditor beneficiary.** A third-party beneficiary who is owed a debt that is to be satisfied by performing the contract.

**direct beneficiary.** See *intended beneficiary*.

**donee beneficiary.** A third-party beneficiary who is intended to receive the benefit of the contract's performance as a gift from the promisee.

**avored beneficiary.** See FAVORED BENEFICIARY.

**incidental beneficiary.** A third-party beneficiary who is not intended to benefit from a contract and thus does not acquire rights under the contract. Cf. *intended beneficiary*.

**income beneficiary.** A person entitled to income from property; esp., a person entitled to receive trust income.

**intended beneficiary.** A third-party beneficiary who is intended to benefit from a contract and thus acquires rights under the contract as well as the ability to enforce the contract once those rights have vested. — Also termed *direct beneficiary*. Cf. *incidental beneficiary*.

**primary beneficiary.** The person designated in a life-insurance policy to receive the proceeds when the insured dies.

**secondary beneficiary.** See *contingent beneficiary*.

**third-party beneficiary.** A person who, though not a party to a contract, stands to benefit from the contract's performance. • For example, if Ann and Bob agree to a contract under which Bob will render some performance to Chris, then Chris is a third-party beneficiary.

**unborn beneficiary.** A person named in a general way as sharing in an estate or gift though not yet born.

**beneficiary heir.** See HEIR.

**beneficio primo ecclesiastico habendo** (ben-ə-fish-ee-oh pry-moh ə-klee-z[h]ee-as-tə-koh hə-ben-doh). [Latin "to have the first ecclesiastical benefice"] *Hist.* A writ from the king to the lord chancellor ordering the appointment of a named person to the first vacant benefice.

**beneficium** (ben-ə-fish-ee-əm). [Latin "benefit"] 1. *Roman law.* A privilege, remedy, or benefit granted by law, such as the *beneficium abstinendi* ("privilege of abstaining"), by which an heir could refuse to accept an inheritance (and thereby avoid the accompanying debt). 2. *Hist.* A lease, generally for life, given by a ruler or lord to a freeman. • *Beneficium* in this sense arose on the continent among the German tribes after the collapse of the Roman Empire.

"All those to whom the Frankish king had given land and to whom the Frankish emperor had granted political authority had received it on certain conditions. They were the recipients of royal favor — a *beneficium*. Their holding came to be so styled." Max Radin, *Handbook of Anglo-American Legal History* 126 (1936).

3. *Hist. English law.* An estate in land granted by the king or a lord in exchange for services.

• Originally, a *beneficium* could not be passed to the holder's heirs, in contrast to *feuds*, which were heritable from an early date. Tenants, however, persisted in attempting to pass the property to their heirs, and over time the *beneficium* became a heritable estate. As this process occurred, the meaning of *beneficium* narrowed to a holding of an ecclesiastical nature. See BENEFICE (1).

"Beneficia were formerly Portions of Land, etc. given by Lords to their Followers for their Maintenance; but afterwards as these Tenures became Perpetual and Hereditary, they left their Name of Beneficia to the Livings of the Clergy, and retained to themselves the Name of Feuds. And Beneficium was an estate in land at first granted for Life only, so called, because it was held *ex mero Beneficio* of the Donor . . . [b]ut at Length, by the Consent of the Donor, or his Heirs, they were continued for the Lives of the Sons of the Possessors, and by Degrees past into an Inheritance. . . ." Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

"In England from almost, if not quite, the earliest moment of its appearance, the word *feodum* seems not merely to imply, but to denote, a heritable, though a dependent right. But if on the continent we trace back the use of this word, we find it becoming interchangeable with *beneficium*, and if we go back further we find *beneficium* interchangeable with *precarium*. A tenancy at will has, we may say, become a tenancy in fee. . . . The Norman conquest of England occurs at a particular moment in the history of this process. It has already gone far; the words *feum*, *feudum*, *feodum* are fast supplanting *beneficium*. . . ." 1 Frederick Pollock & Frederick W. Maitland, *The History of English Law Before the Time of Edward I* 67-68 (2d ed. 1898).

4. *Hist. Eccles. law.* A feudal tenure for life in church-owned land, esp. land held by a layperson. • Over time, this sense of *beneficium* faded, and it came to be restricted to that of an ecclesiastical living, i.e., a benefice.

"The pope became a feudal lord; and all ordinary patrons were to hold their right of patronage under this universal superior. Estates held by feudal tenure, being originally gratuitous donations, were at that time denominated *beneficia*: their very name as well as constitution was borrowed, and the care of the souls of a parish thence came to be denominated a *benefice*." 4 William Blackstone, *Commentaries on the Laws of England* 106 (1769).

5. *Hist.* A benefit or favor; any particular privilege, such as benefit of clergy (*beneficium clericale*). 6. BENEFICE (3).

**beneficium abstinendi** (ben-ə-fish-ee-əm ab-sti-nen-di). [Latin "privilege of abstaining"] *Roman law*. The right of an heir to refuse an inheritance and thus avoid liability for the testator's debts.

"[T]hese heirs came also to be protected by the praetor, viz. by the *jus* or *beneficium abstinendi*. Provided they took care not to act as heir in any kind of way, then,

whether they formally demanded the privilege or not, their own property could not be made liable for their ancestor's debts." R.W. Leage, *Roman Private Law* 220 (C.H. Ziegler ed., 2d ed. 1930).

**beneficium cedendarum actionum** (ben-ə-fish-ee-əm see-den-day-rəm ak-shee-oh-nəm). [Latin "privilege of having actions made over"] *Roman & Scots law*. The right of a cosurety who might or might not have paid the debt to compel the creditor to give over the right of action against the other cosurety. • Under Scots law, a cosurety's (or *cocautioneer's*) right of action against the nonpaying cosurety arises on payment, without the necessity of compelling the creditor to assign the action. But in Roman law, the right of action arose before the paying of the debt.

**beneficium competentiae** (ben-ə-fish-ee-əm kom-pə-ten-shi-ee). [Latin "privilege of competency"] *Roman & Scots law*. A debtor's right to be ordered to pay only as much as the debtor reasonably could, so that after assigning his or her estate to creditors, the debtor kept enough to live on. See *assignment for the benefit of creditors* under ASSIGNMENT.

**beneficium divisionis** (ben-ə-fish-ee-əm di-vizh-ee-oh-nis). See BENEFIT OF DIVISION.

**beneficium inventarii** (ben-ə-fish-ee-əm in-ven-tay-ree-I or in-ven-tair-ee-I). See BENEFIT OF INVENTORY.

**beneficium ordinis** (ben-ə-fish-ee-əm or-də-nis). [Latin "privilege of order"] *Roman & Scots law*. A surety's right to require a creditor to seek payment from the principal debtor before seeking payment from the surety. See BÉNÉFICE DE DISCUSSION.

"*Beneficium Ordinis* . . . by the civil law and our own, a cautioner, simply bound *as such*, is entitled to insist that the principal be first discussed by extreme diligence." Hugh Barclay, *A Digest of the Law of Scotland* 76 (3d ed. 1865).

**beneficium separationis** (ben-ə-fish-ee-əm sep-ə-ray-shee-oh-nis). [Latin "privilege of separation"] *Roman law*. The right of a creditor of the deceased to have the property of the deceased separated from an heir's property. • This separation protected the deceased's creditors by ensuring that the deceased's property was not used to pay the heir's creditors.

**benefit, n.** 1. Advantage; privilege <the benefit of owning a car>. 2. Profit or gain <a benefit received from the sale>.

**fringe benefit.** A benefit (other than direct salary or compensation) received by an employee from an employer, such as insurance, a company car, or a tuition allowance. — Often shortened (esp. in pl.) to *benefit*.

**general benefit.** *Eminent domain.* The whole community's benefit as a result of a taking. ● It cannot be considered to reduce the compensation that is due the condemnee.

**pecuniary benefit.** A benefit capable of monetary valuation.

**special benefit.** *Eminent domain.* A benefit that accrues to the owner of the land in question and not to any others. ● Any special benefits justify a reduction in the amount of damages payable to the owner of land that is partially taken by the government during a public project.

3. Financial assistance that is received from an employer, insurance, or a public program (such as social security) in time of sickness, disability, or unemployment <a benefit from the welfare office>. — **benefit, vb.**

**benefit association.** See *benevolent association* under ASSOCIATION.

**benefit certificate.** A written obligation to pay a named person a specified amount upon stipulated conditions. ● Benefit certificates are often issued by fraternal and beneficial societies.

**benefit-of-bargain rule.** See BENEFIT-OF-THE-BARGAIN RULE.

**benefit of cession.** *Civil law.* A debtor's immunity from imprisonment for debt. ● The immunity arises when the debtor's property is assigned to the debtor's creditors.

**benefit of clergy.** 1. At common law, the right of a cleric not to be tried for a felony in the King's Court <in the Middle Ages, anyone who could recite the "neck verse" was granted the benefit of clergy>. ● It was abolished in England in 1827 but survived even longer in some American states, such as South Carolina, where it was successfully claimed in 1855. *State v. Bosse*, 42 S.C.L. (3 Rich.) 276 (1855). See NECK VERSE.

"Benefit of clergy was a remarkable privilege which, although now obsolete, was for centuries of great importance in criminal law. Some knowledge of it is even now essential for a proper understanding of common law crimes. After William the Conqueror separated the ecclesiastical from the secular courts, the clergy put forward the claim that all persons in holy orders should be exempt from secular jurisdiction in all proceedings, civil

or criminal. Eventually the rule was established that 'clerks' of all kinds, who committed any of the serious crimes termed felonies, could be tried only in an ecclesiastical court, and therefore were only amenable to such punishments as that court could inflict. Any clerk accused of such crime was accordingly passed over to the bishop's court. He was there tried before a jury of clerks by the oaths of twelve compurgators; a mode of trial which usually ensured him an acquittal." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 75 (16th ed. 1952).

"'Benefit of clergy,' in its origin, was the right of a clergyman not to be tried for felony in the King's Court. In ancient times, when the Church was at the peak point of its power, it preempted jurisdiction over felony charges against clergymen. It demanded that in any case in which a clergyman was charged with felony, the case be transferred to the Ecclesiastical Court for trial. The benefit was extreme because conviction of felony in the King's Court resulted in the sentence of death, whereas the Ecclesiastical Court did not make use of capital punishment." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 4 (3d ed. 1982).

2. Loosely, religious approval as solemnized in a church ritual <the couple had several children without benefit of clergy>.

**benefit of discussion.** *Civil law.* A guarantor's right to require a creditor to seek payment from the principal debtor before seeking payment from the guarantor. — Also termed *benefice de discussion*.

"*Benefit of Discussion.* By common law a cautioner, bound simply as such, had right to insist that the creditor should *discuss* the principal debtor, that is, exhaust his estate by diligence, before coming upon him for payment of the debt." William K. Morton & Dale A. Whitman, *Manual of the Law of Scotland* 299 (1896).

**benefit of division.** *Civil law.* A surety's right to be sued only for a part of the debt proportionate to the number of solvent cosureties. — Also termed *benefice de division*.

**benefit of inventory.** *Civil law.* The principle that an heir's liability for estate debts is limited to the value of what is inherited, if the heir so elects and files an inventory of the estate's assets. — Also termed *benefice d'inventaire*.

**benefit-of-the-bargain damages.** See DAMAGES.

**benefit-of-the-bargain rule.** 1. The principle that a party who breaches a contract must provide the aggrieved party everything the aggrieved party would have received, including profits, had the contract been fully performed. 2. The principle that a defrauded buyer may recover from the seller as damages the difference between the misrepresented value of the

property and the actual value received. — Also termed *benefit-of-bargain rule*. Cf. OUT-OF-POCKET RULE.

**benevolent association.** See ASSOCIATION.

**benevolentia regis habenda** (ben-ə-və-len-shee-ə ree-jis hə-ben-də). [Latin “the king’s benevolence to be had”] *Hist.* A fine paid to receive the king’s pardon and a restoration of place, title, or estate.

**benevolent society.** See *benevolent association* under ASSOCIATION.

**Benthamism.** See *hedonistic utilitarianism* under UTILITARIANISM.

**Benthamite**, *adj.* Of or relating to the utilitarian theory of Jeremy Bentham. See *hedonistic utilitarianism* under UTILITARIANISM.

**bequeath** (bə-kweeth), *vb.* To give property (usu. personal property) by will.

**bequest** (bə-kwest), *n.* **1.** The act of giving property (usu. personal property) by will. **2.** Property (usu. personal property other than money) disposed of in a will. — Also termed *bequeathal* (bə-kwee-thəl). Cf. DEVISE; LEGACY.

**charitable bequest.** A bequest given to a charitable organization. See CHARITABLE ORGANIZATION.

**conditional bequest.** A bequest whose effectiveness or continuation depends on the occurrence or nonoccurrence of a particular event.

**demonstrative bequest.** A bequest that, by its terms, must be paid out of a specific source, such as a stock fund.

**executory bequest.** A bequest of a future, deferred, or contingent interest in personalty.

**general bequest.** A bequest payable out of the general assets of the estate.

**pecuniary bequest.** A bequest of money; a legacy. — Also termed *monetary bequest*; *money bequest*.

**residuary bequest.** A bequest of the remainder of the testator’s estate, after the payment of the debts, legacies, and specific bequests. — Also termed *remainder bequest*.

**specific bequest.** A bequest of a specific item or cash amount.

**Berne Convention.** An international copyright treaty — drawn up in Berne in 1886 and re-

vised in Berlin in 1908, now administered by the World Intellectual Property Organization — providing that works created by citizens of one signatory nation will be protected in other signatory nations, without the need for local formalities. • The United States ratified the Berne Convention in 1989 and modified several aspects of U.S. copyright law to comply with the treaty’s terms.

**Berry rule.** The doctrine that a defendant seeking a new trial on grounds of newly discovered evidence must show that (1) the evidence is newly discovered and was unknown to the defendant at the time of trial; (2) the evidence is material rather than merely cumulative or impeaching; (3) it will probably produce an acquittal; and (4) the failure to learn of the evidence was not due to the defendant’s lack of diligence. *Berry v. State*, 10 Ga. 511 (1851).

**bertillon system** (bər-tə-lon or bair-tee-yawŋ). A system of anthropometry once used to identify criminals by measuring and describing them. • The bertillon system is named for Alphonse Bertillon, the French anthropologist who developed the technique early in the 20th century. Fingerprinting has largely replaced the bertillon system. Cf. ANTHROPOMETRY.

**bes** (bes). [Latin] **1.** *Roman law.* Two-thirds of the Roman *as*, or pound, consisting of eight *unciae* (ounces) out of twelve. See AS; UNCIA. **2.** *Civil law.* Two-thirds of an inheritance.

**besayel** (bes-ay-əl). [Law French] *Hist.* **1.** A writ of right used by a great-grandfather’s heirs to recover property held by the great-grandfather. See *assize of mort d’ancestor* under ASSIZE (6). **2.** A great-grandfather. — Also spelled *besaiel*; *besaile*; *bisaile*; *besayle*. Cf. AIEL; COSINAGE.

**best bid.** See BID (1).

**best efforts.** Diligent attempts to carry out an obligation <the contractor must use best efforts to complete its work within the stated time>. • As a standard, a best-efforts obligation is stronger than a good-faith obligation. — Also termed *best endeavors*. Cf. *due diligence* (1) under DILIGENCE; GOOD FAITH.

**best-efforts contract.** See CONTRACT.

**best-efforts underwriting.** See UNDERWRITING.

**best endeavors.** See BEST EFFORTS.

**best evidence.** See EVIDENCE.

**best-evidence rule.** The evidentiary rule providing that, to prove the contents of a writing (or a recording or photograph), a party must produce the original writing unless it is unavailable, in which case secondary evidence — such as copies, notes, or testimony — may be admitted. Fed. R. Evid. 1001–1004. — Also termed *documentary-originals rule*; *original-writing rule*; *original-document rule*.

“Down to a century or more ago, the term ‘best evidence’ was a good deal used; ‘the best evidence that the nature of the thing will afford’ was said to be required. But this loose expression never represented a concrete rule. The only positive and concrete rules of the kind are those above named. And today, though the cant phrase is sometimes invoked, and though an inference may be made against a party who fails to produce what might be better evidence, yet no court will in general exclude relevant evidence because there might be better evidence available.” John H. Wigmore, *A Students’ Textbook of the Law of Evidence* 219 (1935).

**bestiality** (bes-chee-al-ə-tee). Sexual activity between a human and an animal. • Some authorities restrict the term to copulation between a human and an animal of the opposite sex. See SODOMY.

**best-mode requirement.** *Patents.* The requirement that a patent application show the best physical method known to the inventor for using the invention. Cf. ENABLEMENT REQUIREMENT.

**bestow**, *vb.* To convey as a gift <bestow an honor on another>. — **bestowal**, *n.*

**best use.** See *highest and best use* under USE.

**bet**, *n.* Something (esp. money) staked or pledged as a wager.

**layoff bet.** A bet placed by a bookmaker to protect against excessive losses or to equalize the total amount placed on each side of the wager.

**betterment.** An improvement that increases the value of real property. See IMPROVEMENT.

**betterment act.** A statute requiring a landowner to compensate an occupant who improves the land under a mistaken belief that the occupant is the real owner. • The compensation usu. equals the increase in the land’s value generated by the improvements. — Also termed *occupying-claimant act*.

**beyond a reasonable doubt.** See REASONABLE DOUBT.

**beyond seas.** (Of a person) being absent from a jurisdiction or nation. • Some jurisdictions toll the statute of limitations during a defendant’s absence. — Also termed *beyond the seas*; *out of the state*; *ultra mare*.

“[I]t has been provided that if any person or persons against whom there shall be any cause of action shall at the time of its accrual be beyond seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such time as before limited, after his or their return from beyond seas.” John Indermaur, *Principles of the Common Law* 240 (Edmund H. Bennett ed., 1st Am. ed. 1878).

**b.f. abbr.** BONUM FACTUM.

**BFOQ. abbr.** BONA FIDE OCCUPATIONAL QUALIFICATION.

**BFP.** See *bona fide purchaser* under PURCHASER (1).

**BHC. abbr.** BANK HOLDING COMPANY.

**bias**, *n.* Inclination; prejudice <the juror’s bias prompted a challenge for cause>. — **bias**, *vb.* — **biased**, *adj.*

**judicial bias.** Bias that a judge develops during a trial. • Judicial bias is usu. insufficient to justify disqualifying a judge from presiding over a case. To justify disqualification or recusal, the judge’s bias usu. must be personal or based on some extrajudicial reason.

**bicameral**, *adj.* (Of a legislature) having two legislative houses (usu. called the House of Representatives and the Senate). • The federal government and all states except Nebraska have bicameral legislatures. — **bicameralism**, *n.*

**bid**, *n.* 1. A buyer’s offer to pay a specified price for something that may or may not be for sale <a bid at an auction> <a takeover bid>.

**best bid.** The highest auction bid; in the letting of a contract, the lowest bid by a qualified bidder.

**bid in.** A bid made by the owner of auctioned property to ensure that the property is not sold below actual value.

**bid off.** To purchase by bid at auction or judicial sale.

**upset bid.** A bid in a judicial sale made for more than the purchaser's bid so that the sale will be set aside (i.e., upset).

**2.** A submitted price at which one will perform work or supply goods <the subcontractor's bid>. — **bid**, *vb.* See BID SHOPPING.

**competitive bid.** A bid submitted in response to public notice of an intended sale or purchase.

**firm bid.** A bid that, by its terms, remains open and binding until accepted or rejected. ● A firm bid usu. contains no unusual conditions that might defeat acceptance.

**open bid.** A bid that the bidder may alter after submission so as to meet competing bids.

**sealed bid.** A bid that is not disclosed until all submitted bids are opened and considered simultaneously.

**bid and asked.** *Securities.* A notation describing the range of prices quoted for securities in an over-the-counter stock exchange. ● *Bid* denotes the buying price, and *asked* denotes the selling price. See SPREAD (2).

**bid bond.** See BOND (2).

**bidding up.** The act or practice of raising the price for an auction item by making a series of progressively higher bids. ● *Bidding up* is unlawful if the bids are made collusively by persons with an interest in raising the bids. Cf. BY-BIDDING.

**bid in.** See BID (1).

**bid off.** See BID (1).

**bid peddling.** See BID SHOPPING.

**bid price.** See PRICE.

**bid quote.** *Securities.* The price a broker will pay for a security or commodity.

**bid shopping.** A general contractor's effort — after being awarded a contract — to reduce its own costs by finding a subcontractor that will submit a lower bid than that used in calculating the total contract price. ● If a lower bid is secured, the general contractor will receive a windfall profit because the savings are usu. not passed on to the property owner. The subcontractor whose bid is used in the initial proposal can seek to avoid bid shopping by insisting that

it be irrevocably named in the contract as the project's subcontractor.

**bid wanted.** *Securities.* A dealer's notation that bids are being sought from anyone on a security for sale. ● The notation appears in the pink sheets. — Abbr. BW. See PINK SHEET.

**biennial session.** See SESSION.

**biennium** (bi-en-ee-əm). **1.** A two-year period. **2.** The period for which many state legislatures make appropriations.

**biens** (beenz or byenz). [French] *Hist.* Goods; property. ● *Biens* includes real property in most civil-law jurisdictions. Cf. BONA.

**bifactoral obligation.** See OBLIGATION.

**bifurcated divorce.** See *divisible divorce* under DIVORCE.

**bifurcated trial.** See TRIAL.

**bigamous** (big-ə-məs), *adj.* **1.** (Of a person) guilty of bigamy. **2.** (Of a marriage) involving bigamy.

**bigamus** (big-ə-məs), *n. Hist.* **1.** One who commits bigamy; a bigamist. **2.** A man who marries a widow, or who remarries. ● Under ecclesiastical law, a bigamus could be denied benefit of clergy.

**bigamy**, *n.* The act of marrying one person while legally married to another. ● Bigamy is a criminal offense if it is committed knowingly. — **bigamist**, *n.* Cf. POLYGAMY; MONOGAMY.

**big bath.** *Slang.* A write-off of significant costs, taken to shed an unprofitable business line or to remove the necessity for future write-offs.

**Big Board.** **1.** The New York Stock Exchange. ● This sense of *Big Board* may have derived from the former name of the NYSE — New York Stock and Exchange Board. **2.** A quotation display showing the current prices of securities listed on the New York Stock Exchange.

**big pot.** See MAIN POT.

**bilagines** (bi-lay-jə-nee-z). [Law Latin] *Hist.* Town bylaws; laws made by a town's inhabitants for their own government.

**bilan** (bee-lahn). [French "balance sheet"] *Civil law*. A book used by bankers and merchants to record all that they owe and all that is owed to them; a balance sheet.

**bilanciis deferendis** (bə-lan-shee-is def-ər-en-dis). *Hist.* An obsolete writ ordering a corporation to carry weights to a given place to weigh wool licensed for transportation.

**bilateral**, *adj.* Affecting or obligating both parties <a bilateral contract>.

**bilateral act.** See ACT (2).

**bilateral contract.** See CONTRACT.

**bilateral mistake.** See *mutual mistake* (1) under MISTAKE.

**bilateral monopoly.** See MONOPOLY.

**bilboes** (bil-bohz). *Hist.* **1.** A device for punishment at sea consisting of a board with holes that secure an offender's hands and feet. Cf. STOCKS. **2.** An iron bar with sliding shackles for confining the ankles of prisoners, esp. on shipboard.

**bill**, *n.* **1.** A formal written complaint, such as a court paper requesting some specific action for reasons alleged. **2.** An equitable pleading by which a claimant brings a claim in a court of equity. • Before the merger of law and equity, the bill in equity was analogous to a declaration in law. The nine parts of every equitable bill are (1) the address to the person holding the great seal, (2) the introduction, which identifies the parties, (3) the premises, which state the plaintiff's case, (4) the confederating part, in which the defendants are charged with combination, (5) the charging part, in which the plaintiff may try to overcome defenses that the defendants may allege, (6) the jurisdictional clause, showing that the court has jurisdiction, (7) the interrogating part, inserted to try to compel a full and complete answer, (8) the prayer for relief, and (9) the prayer for process to compel the defendants to appear and answer. — Also termed *bill in equity*. See DECLARATION (7).

"The statement of the plaintiff's cause of action in equity is called the *bill*. To this bill the defendant (unless he could protect himself by a demurrer or a plea) was obliged to put in an *answer* under oath." George Tucker Bispham, *The Principles of Equity: A Treatise on the System of Justice Administered in Courts of Chancery* § 9, at 12 (11th ed. 1931).

**bill for a new trial.** A bill in equity to enjoin a judgment and to obtain a new trial because of some fact that would render enforcement of the judgment inequitable. • The fact must have been either unavailable or unknown to the party at trial due to fraud or accident. Cf. MOTION FOR NEW TRIAL.

**bill in aid of execution.** A bill to set aside a fraudulent encumbrance or conveyance.

**bill in perpetuum rei memoriam.** See *bill to perpetuate testimony*.

**bill in the nature of a bill of review.** A postjudgment bill of review filed by a person who was neither a party to the original suit nor bound by the decree sought to be reversed. — Also termed *supplemental bill in nature of bill of review*.

**bill in the nature of a bill of revivor.** A bill filed when a litigant dies or becomes incapacitated before the litigant's interest in property could be determined. • The purpose of the bill is to resolve who holds the right to revive the original litigation in the deceased's stead.

**bill in the nature of a supplemental bill.** A bill bringing to court new parties and interests arising from events happening after the filing of the suit. • A *supplemental bill*, in contrast, involves parties or interests already before the court.

**bill in the nature of interpleader.** A bill of interpleader filed by a person claiming an interest in interpleaded property.

**bill of certiorari.** A bill in equity seeking removal of an action to a higher court. See CERTIORARI.

**bill of complaint.** An original bill that begins an action in a court of equity. See COMPLAINT (1).

"A suit in equity, under the procedure of the English Court of Chancery, which was generally adopted in the American States prior to the code, is instituted by the plaintiff filing a bill of complaint. The plaintiff is usually called the complainant, in the Federal courts the complainant or plaintiff indifferently. The bill is in substance a petition to the chancellor, or judge of the court of equity, setting forth at large the grounds of the suit, and praying the process of the court, its subpoena, to bring the defendant into court and compel him to answer the plaintiff's bill, and, also, for such relief by decree or interlocutory remedy, by way of injunction, etc., as the plaintiff supposes himself entitled to." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 55 (2d ed. 1899).

**bill of conformity.** A bill filed by an executor or administrator who seeks the court's guidance in administering an involved estate.

- The bill is usu. filed to adjust creditors' claims.

**bill of costs.** A certified, itemized statement of the amount of costs owed by one litigant to another.

**bill of discovery.** A bill in equity seeking disclosure of facts within the adverse party's knowledge. See DISCOVERY.

**bill of evidence.** A transcript of testimony heard at trial.

**bill of exceptions.** 1. A formal written statement — signed by the trial judge and presented to the appellate court — of a party's objections or exceptions taken during trial and the grounds on which they are founded. • These bills have largely been replaced by straight appeals under the Federal Rules of Civil Procedure. See EXCEPTION (1). 2. In some jurisdictions, a record made to preserve error after the judge has excluded evidence.

**bill of foreclosure.** A bill in equity filed by a lender to have mortgaged property sold to satisfy all or part of the secured, unpaid debt.

**bill of interpleader.** An original bill filed by a party against two or more persons who claim from that party the same debt or duty. • The requesting party asks the court to compel the contenders to litigate their rights to establish to whom the debt or duty is due. See INTERPLEADER.

"The common law offered the stakeholder no relief, in that if he paid in good faith to one claimant, he might nevertheless be sued by and required to pay another claimant. And a judgment at law in favor of one claimant against the stakeholder was no defense to an action against the stakeholder by another claimant. However, in equity the bill or suit of interpleader offers him a remedy in that he may interplead (bring) into one action all of the claimants, turn the money or property over to the court, be himself dismissed from the proceeding, and have the court decide which of the claimants is entitled to the fund or property. . . ." William Q. de Funiak, *Handbook of Modern Equity* § 108, at 241-42 (2d ed. 1956).

**bill of peace.** An equitable bill filed by one who is threatened with multiple suits involving the same right, or with recurrent suits on the same right, asking the court to determine the question once and for all, and to enjoin the plaintiffs from proceeding with the threatened litigation. • One situation involves many persons having a common claim but threatening to bring separate suits; another involves one person bringing a second action on the same claim.

"By a bill of peace we are to understand a bill brought by a person to establish and perpetuate a right which he claims, and which, from its nature, may be controverted by different persons, at different times, and by different

actions; or, where separate attempts have already been unsuccessfully made to overthrow the same right, and justice requires that the party should be quieted in the right, if it is already sufficiently established; or if it should be sufficiently established under the direction of the court. The obvious design of such a bill is to procure repose from perpetual litigation, and therefore, it is justly called a bill of peace." Joseph Story, *Commentaries on Equity Jurisprudence* § 853, at 567 (W.E. Grigsby ed., 1st English ed. 1884).

"If there was a dispute as to some right involving a multiplicity of persons (e.g., as to a man's right to take tolls, or to a right of way traversing many estates), a bill of peace could be brought in equity to establish the right and so secure repose from the prospect of incessant or multifarious litigation. Bills of peace have now in practice been superseded by modern procedural provisions for the joinder of parties and for representative actions." Robert E. Megarry & P.V. Baker, *Snell's Principles of Equity* 570 (27th ed. 1973).

**bill of review.** A bill in equity requesting that a court reverse or revise a prior decree.

**bill of revivor.** A bill filed for the purpose of reviving and continuing a suit in equity when there has been an abatement of the suit before final consummation. • The most common cause of such an abatement is the death of either the plaintiff or the defendant.

**bill of revivor and supplement.** A compound of a supplemental bill and a bill of revivor, joined for convenience. • Its distinct parts must be framed and proceeded on separately.

**bill quia timet.** An equitable bill used to guard against possible or prospective injuries and to preserve the means by which existing rights are protected from future or contingent violations. • It differs from an injunction, which corrects past and present — or imminent and certain — injuries. One example is a bill to perpetuate testimony. See QUIA TIMET.

**bill to carry a decree into execution.** A bill brought when a decree could not be enforced without further court order due to the parties' neglect or for some other reason.

**bill to perpetuate testimony.** An original bill to preserve the testimony of a material witness who may die or leave the jurisdiction before a suit is commenced, or to prevent or avoid future litigation. — Also termed *bill in perpetuam rei memoriam*.

**bill to suspend a decree.** A bill brought to set aside a decree.

**bill to take testimony de bene esse** (dee or də bee-nee es-ee also day ben-ay es-ay). A bill brought to take testimony pertinent to pending litigation from a witness who may be unavailable at the time of trial.



**cross-bill.** A bill brought by the defendant against the plaintiff in the same suit, or against other defendants in the same suit, relating to the matters alleged in the original bill.

**nonoriginal bill.** A bill relating to some matter already litigated by the same parties. • It is an addition to or a continuation of an original bill.

**original bill.** A bill relating to some matter that has never before been litigated by the same parties having the same interests.

**skeleton bill of exceptions.** A bill of exceptions that, in addition to the formal parts, contains only the court's directions to the clerk to copy or insert necessary documents into the record for appellate review, but does not contain the actual evidence or trial-court rulings. • For example, the statement "the clerk will insert the official transcript here" is typically a skeleton bill.

**supplemental bill.** A bill filed for the purpose of adding something to an original bill. • This addition usu. results from the discovery of new facts or from a new understanding of facts after the defendant has put on a defense.

**supplemental bill in nature of bill of review.** See *bill in the nature of a bill or review*.

3. A legislative proposal offered for debate before its enactment.

**appropriation bill.** A bill that authorizes governmental expenditures. • The federal government cannot spend money unless Congress has appropriated the funds. U.S. Const. art. I, § 9, cl. 7. See APPROPRIATION (2), (3).

**clean bill.** A bill that has been changed so much by a legislative committee that it is better to introduce a new bill (a "clean" one) than to explain the changes made.

**deficiency bill.** An appropriation bill covering expenses omitted from the general appropriation bills, or for which insufficient appropriations were made. • An *urgent deficiency bill* covers immediate expenses usu. for one item, and a *general deficiency bill* covers a variety of items.

**engrossed bill.** A bill passed by one house of the legislature.

**enrolled bill.** A bill passed by both houses of the legislature and signed by their presiding officers. See ENROLLED-BILL RULE.

**house bill.** (*often cap.*) A legislative bill being considered by a house of representatives. — Abbr. H.B.

**money bill.** See *revenue bill*.

**omnibus bill.** 1. A single bill containing various distinct matters, usu. drafted in this way to force the executive either to accept all the unrelated minor provisions or to veto the major provision. 2. A bill that deals with all proposals relating to a particular subject, such as an "omnibus judgeship bill" covering all proposals for new judgeships or an "omnibus crime bill" dealing with different subjects such as new crimes and grants to states for crime control.

**private bill.** A bill relating to a matter of personal or local interest only. Cf. SPECIAL LAW.

"A private Bill is a measure for the interest of some person or class of persons, whether an individual, a corporation, or the inhabitants of a county, town, parish, or other locality, and originates on the motion of some member of the [legislature] in which the Bill is introduced." Courtenay P. Ilbert, *Legislative Methods and Forms* 28 (1901).

**public bill.** A bill relating to public policy in the whole community.

**revenue bill.** A bill that levies or raises taxes. • Federal revenue bills must originate in the House of Representatives. U.S. Const. art. I, § 7, cl. 1. — Also termed *money bill*.

**senate bill.** (*often cap.*) A legislative bill being considered by a senate. — Abbr. S.B.

4. An enacted statute <the GI Bill>. 5. An itemized list of charges; an invoice <hospital bill>. See FEE STATEMENT.

**bill of parcels.** 1. A seller's itemized list of goods and prices, intended to assist a buyer in detecting any mistakes or omissions in a shipment of goods. 2. INVOICE.

**bill payable.** See *account payable* under ACCOUNT.

**bill receivable.** See *account receivable* under ACCOUNT.

**bill rendered.** See *account rendered* under ACCOUNT.

6. A bill of exchange; a draft <the bank would not honor the unsigned bill>. See DRAFT (1).

**advance bill.** A bill of exchange drawn before the shipment of the goods.

**banker's bill.** See *finance bill*.

**blank bill.** A bill with the payee's name left blank. Cf. DRAFT (1).

**domestic bill.** 1. A bill of exchange that is payable in the state or country in which it is drawn. 2. A bill on which both the drawer and drawee reside within the same state or country. — Also termed (in sense 2) *inland bill of exchange*. Cf. *foreign bill*.

**finance bill.** A bill of exchange drawn by a bank in one country on a bank in another country for the purpose of raising short-term credit. • Finance bills are often issued in tight money periods, and usu. have maturity dates of more than 60 days. — Also termed *banker's bill*; *working capital acceptance*.

**foreign bill.** A bill of exchange drawn in one state or country and payable in another. Cf. *domestic bill*.

**inland bill of exchange.** See *domestic bill*.

**investment bill.** A bill of exchange purchased at a discount and intended to be held to maturity as an investment.

7. A formal document or note; an instrument <bill of sale>.

"The expression 'bill of sale' includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipts thereto attached, or receipts for purchase-monies of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred . . ." Joshua Williams, *Principles of the Law of Personal Property* 60 (11th ed. 1881) (tracking the definition in the [U.K.] Bills of Sale Act of 1878).

"A transfer may be either an absolute assignment by way of gift or sale, or an assignment by way of mortgage or security only; but in either case when a written document of any sort is used to effect the transfer, the document is called technically a 'bill of sale.'" Arthur Weldon & H. Gibson Rivington, *Gibson's Conveyancing* 302 (14th ed. 1933).

**bill obligatory.** A written promise to pay; a promissory note under seal. — Also termed *single bond*. See NOTE (1).

**bill of debt.** A debt instrument, such as a bill obligatory or promissory note.

**bill of lading.** See BILL OF LADING.

**bill penal.** A written promise to pay that carries a penalty in excess of the underlying debt for failure to pay. Cf. *bill single*.

**bill single.** A written promise to pay that is not under seal and has no penalty for failure to pay. — Also termed *single bill*. Cf. *bill penal*.

**grand bill of sale.** 1. *Hist.* An instrument used to transfer title to a ship that is at sea. 2. An instrument used to transfer title of a ship from the builder to the first purchaser.

**single bill.** See *bill single*.

**skeleton bill.** A bill drawn, indorsed, or accepted in blank.

8. A piece of paper money <a \$10 bill>. 9. A promissory note <the debtor signed a bill for \$7,000>.

**billable hour.** A unit of time used by an attorney or paralegal to account for work performed and chargeable to a client. • Billable hours are usu. divided into quarters or tenths of an hour.

**billable time.** An attorney's or paralegal's time that is chargeable to a client. Cf. NONBILLABLE TIME.

**billa cassetur** (bil-ə kə-see-tər). See CASSETUR BILLA.

**billā excambii** (bil-ə eks-kam-bee-ī). [Latin] See BILL OF EXCHANGE.

**billā exonerationis** (bil-ə ig-zon-ə-ray-shee-oh-nis). [Latin] See BILL OF LADING.

**billā vera** (bil-ə veer-ə). [Latin] See TRUE BILL.

**bill broker.** A middleman who negotiates the purchase or sale of commercial paper.

**billeta** (bil-ə-tə). *Hist.* A proposed statute or petition presented in Parliament.

**bill for a new trial.** See BILL (2).

**billhead.** A printed invoice containing a business's name and address.

**bill in aid of execution.** See BILL (2).

**bill in equity.** See BILL (2).

**billing cycle.** The period in which creditors regularly submit bills to customers or debtors.

**bill in perpetuam rei memoriam.** See *bill to perpetuate testimony* under BILL (2).

**bill in the nature of a bill of review.** See BILL (2).

**bill in the nature of a bill of revivor.** See BILL (2).

**bill in the nature of a supplemental bill.** See BILL (2).

**bill in the nature of interpleader.** See BILL (2).

**bill obligatory.** See BILL (7).

**bill of adventure.** *Maritime law.* A shipper's written statement that the shipped property belongs to another and is conveyed at the owner's risk.

**bill of attainder.** A special legislative act prescribing capital punishment, without a trial, for a person guilty of a high offense such as treason or a felony. • Bills of attainder are prohibited by the U.S. Constitution (art. I, § 9, cl. 3; art. I, § 10, cl. 1). — Also termed *act of attainder*. See ATTAINDER; BILL OF PAINS AND PENALTIES.

**bill of certiorari.** See BILL (2).

**bill of complaint.** See BILL (2).

**bill of conformity.** See BILL (2).

**bill of costs.** See BILL (2).

**bill of credit.** 1. Legal tender in the form of paper, issued by a state and involving the faith of the state, designed to circulate as money in the ordinary uses of business. 2. LETTER OF CREDIT.

**bill of debt.** See BILL (7).

**bill of discovery.** See BILL (2).

**bill of entry.** *Maritime law.* A written description of goods filed by an importer with customs officials to obtain permission to unload a ship's goods.

**bill of evidence.** See BILL (2).

**bill of exceptions.** See BILL (2).

**bill of exchange.** See DRAFT (1).

**bill of foreclosure.** See BILL (2).

**bill of health.** *Maritime law.* A statement certifying the healthy condition of a ship's cargo and crew. • The bill is issued by the port authority from which a vessel sails and is shown to the port authority at the ship's destination as proof that the ship's cargo and crew are disease-free. A "clean" bill states that no contagious or infectious diseases were present at the port; a "touched" or "foul" bill states that the named disease was suspected, anticipated, or actually present.

**bill of indemnity.** 1. *Hist.* An act of Parliament passed annually to protect officeholders who unwittingly fail to take an oath necessary for officeholding from liability for acts done in an official capacity. • A more general statute, the Promissory Oaths Act, replaced the bill of indemnity in 1868. 2. A law protecting a public official from liability for official acts. 3. An initial pleading by which a plaintiff seeks to require another (often an insurance company) to discharge the plaintiff's liability to a third person.

**bill of indictment.** An instrument presented to a grand jury for the jury's determination whether sufficient evidence exists to formally charge the accused with a crime. See INDICTMENT; NO BILL; TRUE BILL.

**bill of information.** 1. INFORMATION. 2. *Hist.* A civil suit begun by the Crown or by those under its protection, such as a charity.

**bill of interpleader.** See BILL (2).

**bill of lading (layd-ing).** A document of title acknowledging the receipt of goods by a carrier or by the shipper's agent; a document that indicates the receipt of goods for shipment and that is issued by a person engaged in the business of transporting or forwarding goods. • An airbill is usu. included within the definition of the term. — Abbr. B/L. — Also termed *waybill*.

"A bill of lading may be regarded in three several aspects. (1) It is a receipt given by the master of a ship acknowledging that the goods specified in the bill have been put on board; (2) it is the document [that] contains the terms of the contract for the carriage of the goods agreed upon between the shipper of the goods and the shipowner (whose agent the master of the ship is); and (3) it is a 'document of title' to the goods, of which it is the symbol. It is by means of this document of title that the goods themselves may be dealt with by the owner of them while they are still on board ship and upon the high seas." William R. Anson, *Principles of the Law of Contract* 380 (Arthur L. Corbin ed., 3d Am. ed. 1919).

**clean bill of lading.** 1. A bill of lading containing no clause or notation qualifying

the bill's terms. **2. Maritime law.** A bill of lading that, by not providing for storage of goods on a ship's deck, implies that the goods are to be stowed belowdecks.

**destination bill of lading.** A bill procured to be issued at the shipping or other destination rather than at the place of shipment. UCC § 7-305.

**foul bill of lading.** A bill of lading that shows on its face that the goods were damaged or that there was a shortage of goods at the time of shipment.

**negotiable bill of lading.** A bill of lading calling for the delivery of goods to the bearer or to a named person's order. UCC § 7-104.

**ocean bill of lading.** A negotiable bill of lading used in shipment by water. — Often shortened to *ocean bill*.

**onboard bill of lading.** A bill of lading reflecting that goods have been loaded onto a ship. — Often shortened to *onboard bill*.

**order bill of lading.** A negotiable bill of lading stating that the goods are consigned to the order of the person named in the bill.

**overseas bill of lading.** A bill of lading used for overseas shipment by water or air. UCC § 2-323. — Often shortened to *overseas bill*.

**straight bill of lading.** A nonnegotiable bill of lading that specifies a consignee to whom the carrier is contractually obligated to deliver the goods. — Also termed *nonnegotiable bill of lading*.

**through bill of lading.** A bill of lading by which a carrier transports goods to a designated destination, even though the carrier will have to use a connecting carrier for part of the passage. UCC § 7-302. — Often shortened to *through bill*.

**bill of Middlesex.** *Hist.* A process by which the Court of the King's Bench in Middlesex obtains jurisdiction over a defendant who resides in a county outside the jurisdiction of the Court, by alleging a fictitious trespass in a county over which the court has jurisdiction. ● Once the sheriff returns the bill noting that the defendant is not in the county where the trespass occurred, a *latitat* is issued to the sheriff of the defendant's actual residence. See LATITAT.

"The bill of Middlesex . . . is a kind of *capias*, directed to the sheriff of that county, and commanding him to take the defendant and have him before our lord the king at Westminster on a day prefixed, to answer to the plaintiff of a plea of trespass. For this accusation of trespass it is, that gives the court of king's bench jurisdiction in other civil causes, as was formerly observed; since when once the defendant is taken into custody . . . of this court,

may here be prosecuted for any other species of injury." 3 William Blackstone, *Commentaries on the Laws of England* 285 (1768).

**bill of mortality.** *Hist.* A record of the number of deaths occurring in a given district. ● Bills of mortality were compiled — often week to week — in England from late in the 16th century to the 19th century as a way to keep track of the plague and other highly contagious diseases.

**bill of pains and penalties.** A legislative act that, though similar to a bill of attainder, prescribes punishment less severe than capital punishment. ● Bills of pains and penalties are included within the U.S. Constitution's ban of bills of attainder. U.S. Const. art I, § 9.

**bill of parcels.** See BILL (5).

**bill of particulars.** A formal, detailed statement of the claims or charges brought by a plaintiff or a prosecutor, usu. filed in response to the defendant's request for a more specific complaint. — Also termed *statement of particulars*. See MOTION FOR MORE DEFINITE STATEMENT.

"Although it has been said that the bill of particulars is not a discovery device, it seems plain that it is a means of discovery, though of a limited nature. It is the one method open to a defendant in a criminal case to secure the details of the charge against him." 1 Charles Alan Wright, *Federal Practice and Procedure* § 129, at 646-47 (3d ed. 1999).

**bill of peace.** See BILL (2).

**bill of review.** See BILL (2).

**bill of revivor.** See BILL (2).

**bill of revivor and supplement.** See BILL (2).

**bill of rights.** **1.** (*usu. cap.*) A section or addendum, usu. in a constitution, defining the situations in which a politically organized society will permit free, spontaneous, and individual activity, and guaranteeing that governmental powers will not be used in certain ways; esp., the first ten amendments to the U.S. Constitution. **2.** (*cap.*) One of the four great charters of English liberty (1 W. & M., 1689), embodying in statutory form all the principles of the other three charters, namely, Magna Carta, the Petition of Right (3 Car., 1628), and the Habeas Corpus Act (31 Car. 2, 1679).

**bill of sale.** An instrument for the conveyance of title to personal property, absolutely or by way of security. Cf. DEED.

**bill of sight.** *Maritime law.* A declaration made to a customs officer by an importer who is unsure about what is being shipped. ● The bill of sight allows an importer to inspect the goods before paying duties.

**bill payable.** See *account payable* under ACCOUNT.

**bill penal.** See BILL (7).

**bill quia timet.** See BILL (2).

**bill receivable.** See *account receivable* under ACCOUNT.

**bill rendered.** See *account rendered* under ACCOUNT.

**bills and notes.** See PAPER.

**bills in a set.** A bill of lading made up of a series of independent parts, each bearing a number and providing that goods delivered against any one part void the other parts. ● Traditionally, in overseas-goods shipments, the parts of this type of bill were sent under separate cover so that if one was lost, the buyer could take delivery of the goods with another one. UCC § 7-304.

**bill single.** See BILL (7).

**bill taken *pro confesso*** (proh kən-fes-oh). [Latin “as if admitted”] *Hist.* An order issued by a court of equity when a defendant fails to file an answer.

**bill to carry a decree into execution.** See BILL (2).

**bill to perpetuate testimony.** See BILL (2).

**bill to suspend a decree.** See BILL (2).

**bill to take testimony *de bene esse*.** See BILL (2).

**bimetallism.** A monetary system in which currency is defined in terms of two metals (usu. gold and silver), both being legal tender and with a fixed rate of exchange between them. ●

The American money system was based on a bimetallic standard from 1792 to 1873.

**bind, *vb.*** To impose one or more legal duties on (a person or institution) <the contract binds the parties> <courts are bound by precedent>. — **binding, *adj.*** — **bindingness, *n.***

**binder. 1.** A document in which the buyer and the seller of real property declare their common intention to bring about a transfer of ownership, usu. accompanied by the buyer’s initial payment. **2.** Loosely, the buyer’s initial payment in the sale of real property. Cf. EARNEST MONEY. **3.** An insurer’s memorandum giving the insured temporary coverage while the application for an insurance policy is being processed or while the formal policy is being prepared. — Also termed *binding receipt*; *binding slip*.

**binding, *adj.* 1.** (Of an agreement) that binds <a binding contract>. **2.** (Of an order) that requires obedience <the temporary injunction was binding on the parties>.

**binding agreement.** See AGREEMENT.

**binding arbitration.** See ARBITRATION.

**binding authority.** See *binding precedent* under PRECEDENT.

**binding instruction.** See *mandatory instruction* under JURY INSTRUCTION.

**binding precedent.** See PRECEDENT.

**binding receipt.** See BINDER.

**binding slip.** See BINDER.

**bind over, *vb.* 1.** To put (a person) under a bond or other legal obligation to do something, esp. to appear in court. **2.** To hold (a person) for trial; to turn (a defendant) over to a sheriff or warden for imprisonment pending further judicial action. ● A court may bind over a defendant if it finds at a preliminary examination that enough evidence exists to require a trial on the charges made against the defendant. — **binding over, *n.*** — **bindover, *adj.***

**bindover hearing.** See PRELIMINARY HEARING.

**biological child.** See *natural child* under CHILD.

**biological father.** See *natural father* under FATHER.

**biological warfare.** See WARFARE.

**bipartite, adj.** (Of an instrument) executed in two parts by both parties.

**birretum** (bə-ret-əm). [Law Latin] A cap or coif formerly worn by British judges and serjeants-at-law.

**birth.** The complete extrusion of a newborn baby from the mother's body.

"For purposes of criminal law — and also for those of property law, e.g. to become a holder of property and so transmit it again to new heirs, or to enable the father to obtain curtesy of his wife's lands — *birth* consists in extrusion from the mother's body, i.e. in having 'come into the world.' If but a foot be unextricated, there can be no murder, the extrusion must be complete, the whole body of the infant must have been brought into the world. But it is not necessary that the umbilical cord should have been severed. And to be born alive the child must have been still in a living state after having wholly quitted the body of the mother." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 104 (16th ed. 1952).

**birth certificate.** A formal document that records a person's birthdate, birthplace, and parentage.

**birth mother.** A biological mother, as opposed to an adoptive mother.

**birth record.** Statistical data kept by a governmental entity concerning persons' birthdates, birthplaces, and parentage.

**bi-scot. Hist. English law.** A fine imposed for not repairing banks, ditches, and causeways.

**bishop.** The chief superintendent and highest-ranking member of the clergy within a diocese.  
• The bishop is subject to the archbishop of a province.

"[A] bishop ... has several courts under him, and may visit at pleasure every part of his diocese. His chancellor is appointed to hold his courts for him, and to assist him in matters of ecclesiastical law...." 1 William Blackstone, *Commentaries on the Laws of England* 370 (1765).

**bishopric** (bish-ə-prik). 1. DIOCESE. 2. The office of a bishop.

**Bishop's Court. Hist. Eccles. law.** A court held in the cathedral of each diocese, the judge being the bishop's chancellor, who applied civil canon law. • The jurisdiction included appeals from

the Court of Archdeacon. In a large diocese, the bishop's chancellor would have commissaries in remote parts who held consistory courts. See CONSISTORY COURT.

**biting rule.** A rule of construction that once a deed or will grants a fee simple, a later provision attempting to cut down, modify, or qualify the grant will be held void.

**Bivens action.** A lawsuit brought to redress a federal official's violation of a constitutional right. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999 (1971). • A *Bivens* action allows federal officials to be sued in a manner similar to that set forth at 42 USCA § 1983 for state officials who violate a person's constitutional rights under color of state law.

**B/L. abbr.** BILL OF LADING.

**blackacre.** A fictitious tract of land used in legal discourse (esp. law-school hypotheticals) to discuss real-property issues. • When another tract of land is needed in a hypothetical, it is often termed "whiteacre."

"Blackacre is the most celebrated tract of land in the world of the law. . . . Blackacre is wholly mythical, yet totally real. It is a concept, living in the realm of the mind and doubly valuable since much of the law of property has the same type of reality." John E. Cribbet, *Principles of the Law of Property* 2 (2d ed. 1975).

**Black Act. Hist.** An English statute (9 Geo. ch. 22) establishing the death penalty for the unlawful killing or maiming of animals. • The statute was passed in 1722 in the wake of crimes committed by persons with faces blackened or otherwise disguised. The statute was repealed in 1827. The classic study of this law is E.P. Thompson, *Whips and Hunters: The Origins of the Black Act* (1975).

**Black Acts. Scots law.** Statutes of the Scottish Parliament passed from 1535 to 1594 and recorded in a book printed in black letter.

**Black Book of the Exchequer. Hist.** A record book containing treaties, conventions, charters, papal bulls, and other English state documents.  
• It dates from the 13th century. — Also termed *Liber Niger Parvus*.

**black cap.** A square cap worn by English judges on certain state or solemn occasions. • The black cap was formerly worn by a judge when handing down a death sentence.

**black codes.** (*usu. cap.*) *Hist.* **1.** Antebellum state laws enacted to regulate the institution of slavery. **2.** Laws enacted shortly after the Civil War in the ex-Confederate states to restrict the liberties of the newly freed slaves to ensure a supply of inexpensive agricultural labor and to maintain white supremacy.

"Clearly, leaders of the old South who survived the war were in no mood for racial equality. It was a bitter enough pill that the slaves were legally free; there was no inclination to go beyond the formal status. The Black Codes of 1865, passed in almost all of the states of the old Confederacy, were meant to replace slavery with some kind of caste system and to preserve as much as possible of the prewar way of life." Lawrence M. Friedman, *A History of American Law* 504 (2d ed. 1985).

**blackletter law.** One or more legal principles that are old, fundamental, and well settled. ● The term refers to the law printed in books set in Gothic type, which is very bold and black. — Also termed *hornbook law*.

**blacklist, vb.** To put the name of (a person) on a list of those who are to be boycotted or punished <the firm blacklisted the former employee>. — **blacklist, n.**

**blackmail, n.** A threatening demand made without justification; EXTORTION (1). — **blackmail, vb.** Cf. GRAYMAIL; GREENMAIL; FEEMAIL.

"[Blackmail is] a certain rate of Money, Corn, Cattle, or other consideration, paid to some inhabiting upon, or near the borders, being persons of name and power, allied with . . . known Robbers . . . to be thereby by them freed and protected from the danger of those Spoil-takers." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

"'Black-mail' (black rent) was anciently used to indicate 'rents reserved in work, grain or baser money' (i.e. baser than silver). It was also employed at one time to refer to 'a tribute formerly exacted in the north of England and in Scotland by freebooting chiefs for protection from pillage.' [Quoting *American College Dictionary* (1948).] Such practice was extortion, in the literal sense, and hence 'blackmail' is frequently used to indicate statutory extortion or sometimes an extorsive threat. And the federal statute forbidding the sending of an extorsive threat by mail has been referred to as the 'blackmail statute.'" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 451 (3d ed. 1982).

**blackmail suit.** See SUIT.

**black maria.** *Slang.* A locked van used by the police to transport prisoners to and from jail.

**black market.** See MARKET.

**black-rage insanity defense.** See INSANITY DEFENSE.

**black rent.** *Hist.* Feudal rents paid in work, grain, or money baser than silver. Cf. WHITE RENT.

**Blackstone lawyer.** *Slang.* **1.** A lawyer with a broad knowledge of blackletter principles. **2.** A self-educated lawyer (esp. in antebellum America) whose legal training consists primarily of reading Blackstone's *Commentaries*.

**black ward.** *Hist.* A subvassal; a vassal of the king's vassal.

**blame, n.** **1.** An act of attributing fault; an expression of disapproval <the judge said all the plaintiff's attorneys were to blame>. **2.** Responsibility for something wrong <blame rested with all the defendants>. — **blame, vb.** — **blameworthy, blamable, adj.**

**blanc seign** (blahnk sayn). [Law French] *Civil law.* A signed paper entrusted to someone with the power to bind the signer within the limits of the agreement between the signer and the grantee. See POWER OF ATTORNEY (1).

**blank acceptance.** See ACCEPTANCE (4).

**blank bar.** *Hist.* A plea in bar interposed by a defendant in a trespass action. ● This type of plea was filed to compel the plaintiff to state exactly where the alleged trespass occurred. — Also termed *common bar*.

**blank bill.** See BILL (6).

**blank bond.** See BOND (2).

**blank check.** See CHECK.

**blank contract.** See CONTRACT.

**blanket agreement.** *Labor law.* A collective-bargaining agreement that applies to workers throughout an organization, industry, or geographical area.

**blanket bond.** See BOND (2).

**blanket lien.** See LIEN.

**blanket mortgage.** See MORTGAGE.

**blanket policy.** See INSURANCE POLICY.

**blanket search warrant.** See SEARCH WARRANT.

**blank indorsement.** See INDORSEMENT.

**blank lien.** See LIEN.

**blank stock.** See STOCK.

**blasphemy** (*blas-fə-mee*), *n.* Irreverence toward God, religion, a religious icon, or something else considered sacred. • Blasphemy was a crime at common law and remains so in some U.S. jurisdictions, but it is rarely if ever enforced because of its questionable constitutionality under the First Amendment. — **blaspheme** (*blas-feem* or *blas-feem*), *vb.* — **blasphemous** (*blas-fə-məs*), *adj.* — **blasphemer** (*blas-fee-mər*), *n.*

“Blasphemy is the malicious revilement of God and religion. In England blasphemy was the malicious revilement of the Christian religion. . . . Blasphemy has been held to be a common-law crime [in the United States] because of its tendency to stir up breaches of the peace. It is expressly made punishable by some of the statutes.”  
Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 474, 475 (3d ed. 1982).

**blended fund.** See FUND (1).

**blended trust.** See TRUST.

**blending clause.** A provision in a will disposing of both the testator’s own property and the property over which the testator has a power of appointment, so that the two types of property are treated as a unit.

**blind entry.** See ENTRY (2).

**blind pig.** See BLIND TIGER.

**blind plea.** See PLEA (1).

**blind selling.** The sale of goods without giving a buyer the opportunity to examine them.

**blind tiger.** *Slang.* A place where intoxicants are illegally sold. • This term was commonly used during Prohibition. — Also termed *blind pig*. See PROHIBITION (3).

**blind trust.** See TRUST.

**bloc.** A group of persons or countries aligned with a common interest or purpose, even if only temporarily <voting bloc>.

**block, n.** 1. A municipal area enclosed by streets <three blocks away>. See LOT (1). 2. A quantity

of things bought or sold as a unit <a block of preferred shares>.

**blockade.** *Int’l law.* A belligerent’s prevention of access to or egress from an enemy’s ports by stationing ships or squadrons in such a position that they can intercept vessels attempting to enter or leave those ports. • To be binding, a blockade must be effective — that is, it must be maintained by a force sufficient to prevent access to ports.

**blockage rule.** *Tax.* The principle that a large block of stock shares may be valued at less than the sum of the values of the individual shares because such a large block may be difficult to sell at full price.

**Blockburger test.** See SAME-EVIDENCE TEST.

**blockbusting.** The act or practice, usu. by a real-estate broker, of persuading property owners to sell their property quickly, and often at a loss, to avoid an imminent influx of members of minority groups. • Blockbusting is illegal in many states.

**blocked account.** See ACCOUNT.

**blocked currency.** See CURRENCY.

**blocked income.** See INCOME.

**block grant.** An unrestricted grant of federal funds.

**block interest.** See *add-on interest* under INTEREST (3).

**block policy.** See INSURANCE POLICY.

**block voting.** A shareholders’ agreement to cast their votes in a single block. See *voting trust* under TRUST (4).

**blood.** The relationship arising by descent from a common ancestor. See RELATIVE.

**full blood.** The relationship existing between persons having the same two parents; unmixed ancestry. — Also termed *whole blood*; *entire blood*.

**half blood.** The relationship existing between persons having the same father or mother, but not both parents in common.

**inheritable blood.** *Hist.* A relationship between an ancestor and an heir that the law



recognizes for purposes of passing good title to property.

**mixed blood.** The relationship between persons whose ancestors are of different races or nationalities.

"The term 'mixed bloods,' as used in treaties and statutes, has been held to include persons of half, or more or less than half, Indian blood, derived either from the father or from the mother." 42 C.J.S. *Indians* § 3 (1991).

**whole blood.** See *full blood*.

**blood, corruption of the.** See CORRUPTION OF BLOOD.

**blood alcohol content.** The concentration of alcohol in one's bloodstream, expressed as a percentage. ● Blood alcohol content is used to determine whether a person is legally intoxicated, esp. under a driving-while-intoxicated law. In many states, a blood alcohol content of .08% is enough to charge a person with an offense. — Abbr. BAC. — Also termed *blood alcohol count*; *blood alcohol concentration*. See DRIVING UNDER THE INFLUENCE; DRIVING WHILE INTOXICATED.

**blood feud.** A state of hostility between families in which one family seeks to avenge the killing of one of its members by killing a member of the other family.

"Anglo-Saxon polity preserved, even down to the Norman Conquest, many traces of a time when kinship was the strongest of all bonds. Such a stage of society, we hardly need add, is not confined to any one region of the world or any one race of men. . . . When it puts on the face of strife between hostile kindreds, it is shown in the war of tribal factions, and more specifically in the blood-feud. A man's kindred are his avengers; and, as it is their right and honour to avenge him, so it is their duty to make amends for his misdeeds, or else maintain his cause in fight. Step by step, as the power of the State waxes, the self-centred and self-helping autonomy of the kindred wanes. Private feud is controlled, regulated, put, one may say, into legal harness; the avenging and the protecting clan on the slain and the slayer are made pledges and auxiliaries of public justice." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 31 (2d ed. 1898).

**blood-grouping test.** A test used in paternity and illegitimacy cases to determine whether a particular man could be the father of a child. ● The test does not establish paternity; rather, it eliminates men who could not be the father. See PATERNITY TEST.

**blood money.** 1. *Hist.* A payment given by a murderer's family to the next of kin of the murder victim. 2. A reward given for the apprehension of a person charged with a crime, esp. capital murder.

hension of a person charged with a crime, esp. capital murder.

**bloodwite.** See EFFUSIO SANGUINIS.

**blotter.** 1. See ARREST RECORD. 2. See WASTE BOOK.

**blue-blue-ribbon jury.** See *blue-ribbon jury* under JURY.

**Blue Book.** 1. A compilation of session laws. See SESSION LAWS (2). 2. A volume formerly published to give parallel citation tables for a volume in the National Reporter System. 3. *English law.* A government publication, such as a Royal Commission report, issued in blue paper covers.

**Bluebook.** The citation guide — formerly titled *A Uniform System of Citation* — that is generally considered the authoritative reference for American legal citations. ● The book's complete title is *The Bluebook: A Uniform System of Citation*. Although it has been commonly called the *Bluebook* for decades, the editors officially included *Bluebook* in the title only in the mid-1990s. The book is compiled by the editors of the *Columbia Law Review*, the *Harvard Law Review*, the *University of Pennsylvania Law Review*, and *The Yale Law Journal*.

**blue books.** See SESSION LAWS.

**blue chip, n.** A corporate stock that is considered a safe investment because the corporation has a history of stability, consistent growth, and reliable earnings. — Also termed *blue-chip stock*. — **blue-chip, adj.**

**blue law.** A statute regulating or prohibiting commercial activity on Sundays. ● Although blue laws were formerly common, they have declined since the 1980s, when many courts held them invalid because of their origin in religion (i.e., Sunday being the Christian Sabbath). Blue laws usu. pass constitutional challenge if they are enacted to support a nonreligious purpose, such as a day of rest for workers. — Also termed *Sunday law*; *Sunday-closing law*; *Sabbath law*; *Lord's Day Act*.

**Blue List. Securities.** A daily listing (on blue paper) of secondary-market offerings of municipal bonds.

"Municipal bonds available for resale in the secondary market are listed by state in *The Blue List*, along with such information as the number of bonds offered, issuer, maturity date, coupon rate, price, and dealer making the offering. Ratings are *not* included. But there are sections

on settlement dates of recent new offerings, prerefunded bonds, and miscellaneous offerings (some U.S. government and agency obligations, railroad equipment trust certificates, corporate bonds, and even preferred stocks). The dollar value of listings, referred to as the *floating supply*, gives an indication of the size and liquidity of the secondary municipal market." The New York Institute of Finance, *How the Bond Market Works* 185 (1988).

**blue note.** See NOTE (1).

**blue-pencil test.** A judicial standard for deciding whether to invalidate the whole contract or only the offending words. • Under this standard, only the offending words are invalidated if it would be possible to delete them simply by running a blue pencil through them, as opposed to changing, adding, or rearranging words.

**blue-ribbon jury.** See JURY.

**blue-sky, vb.** To approve (the sale of securities) in accordance with blue-sky laws <the company's IPO has not yet been blue-skyed>.

**blue-sky, adj.** (Of a security) having little value.

**blue-sky law.** A state statute establishing standards for offering and selling securities, the purpose being to protect citizens from investing in fraudulent schemes or unsuitable companies.

"The first legislative attempts to regulate securities transactions were effected on the state level, with the first general securities law being said to have been enacted by the State of Kansas in 1911, and with 48 jurisdictions having enacted such statutes by 1933. These statutes were said to be enacted to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other fraudulent exploitations. A similar description of the early legislative purpose is that such acts were aimed at 'speculative schemes which have no more basis than so many feet of blue sky,' and this description has had a lasting influence in that state securities acts are commonly referred to as 'blue sky laws.'" 69A Am. Jur. 2d *Securities Regulation — State* § 1 (1993).

"The state legislatures entered the arena of securities regulation more than twenty years before Congress. . . . [T]he statutes, which vary widely in their terms and scope, are commonly referred to as 'blue sky' laws, an appellation with several suggested origins. It has been said, for example, that the Kansas legislature was spurred by the fear of fast-talking eastern industrialists selling everything including the blue sky." 1 Thomas Lee Hazen, *Treatise on the Law of Securities Regulation* § 8.1, at 490-92 (3d ed. 1995).

**bluewater seaman.** See *able-bodied seaman* under SEAMAN.

**board. 1.** A group of persons having managerial, supervisory, or advisory powers <board of directors>. **2.** Daily meals (and sometimes lodging) furnished to a guest at an inn, boarding-house, or other lodging <room and board>.

**board-certified, adj.** (Of a professional) recognized by an official body as a specialist in a given field of law or medicine <board-certified in civil litigation>. See BOARD OF LEGAL SPECIALIZATION.

**board lot.** See *round lot* under LOT (3).

**board of adjustment.** See ADJUSTMENT BOARD.

**board of aldermen.** See CITY COUNCIL.

**board of directors. 1.** The governing body of a corporation, elected by the shareholders to establish corporate policy, appoint executive officers, and make major business and financial decisions. — Also termed (esp. in charitable organizations) *board of trustees*. See DIRECTOR.

**staggered board of directors.** A board of directors in which a fraction of the board is elected each year to serve for two or three years.

**2.** The governing body of a partnership, association, or other unincorporated group. — Also termed *board of trustees*.

**board of education.** A state or local agency that governs and manages public schools within a state or local district. Cf. SCHOOL BOARD.

**board of equalization.** See EQUALIZATION BOARD.

**board of examiners.** See EXAMINING BOARD.

**board of fire underwriters.** An unincorporated voluntary association made up of fire insurers.

**Board of Governors.** See FEDERAL RESERVE BOARD OF GOVERNORS.

**Board of Green Cloth. Hist.** A group of persons responsible for governing the royal-household staff, esp. in financial matters such as accounting for expenses and paying servants' wages. • The Board consisted of the Lord Steward and inferior officers, and its name derived from the green cloth that covered the table used by the Board to conduct its duties. In more ancient times, it kept the peace and main-

tained courts of justice within the area around the royal household (i.e., the *verge*). — Also termed *Counting House of the King's Household*; *Green Cloth*.

**board of health.** A municipal or state agency charged with protecting the public health.

**Board of Immigration Appeals.** The highest administrative tribunal for matters arising under U.S. immigration law, charged with hearing appeals from the Immigration and Naturalization Service. • The Board is made up of five permanent members appointed by the Attorney General and two immigration judges who serve on a temporary basis. Most cases are heard by panels of two permanent judges and one temporary judge. — Also termed *Immigration Appeals Board*.

**board of legal specialization.** A body, usu. an arm of a state bar association, that certifies qualified lawyers as specialists within a given field. • Typically, to qualify as a specialist, a lawyer must meet a specified level of experience, pass an examination, and provide favorable recommendations from peers.

**board of pardons.** A state agency, of which the governor is usu. a member, authorized to pardon persons convicted of crimes.

**board of parole.** See PAROLE BOARD.

**Board of Patent Appeals and Interferences.** A quasi-judicial body that reviews rejected patent applications and determines priority between rival patent applicants. See INTERFERENCE (2).

**board of regents.** A group of persons appointed to supervise an educational institution, esp. a university.

**board of registration.** A state agency authorized to license and discipline members of a trade or profession.

**board of review.** 1. A body that reviews administrative-agency decisions. 2. A body that reviews property-tax assessments. 3. In some cities, a board that reviews allegations of police misconduct.

**Board of Tax Appeals.** See TAX COURT, U.S.

**board of trade.** 1. A federation of business executives dedicated to advancing and protect-

ing business interests. 2. An organization that runs a commodities exchange. See CHICAGO BOARD OF TRADE. 3. *Hist.* The Lords of the Committee of the Privy Council that had jurisdiction over trade and foreign plantations. • Today, the responsibilities once assigned to this committee are carried out by the ministry for trade and industry.

**board of trustees.** See BOARD OF DIRECTORS.

**board of zoning appeals.** See ADJUSTMENT BOARD.

**bockland.** See BOOKLAND.

**bocland.** See BOOKLAND.

**bodily harm.** See HARM.

**bodily heir.** See *heir of the body* under HEIR.

**bodily injury.** See INJURY.

**body.** 1. The main part of a written instrument. 2. A collection of laws. — Also termed *body of laws*. See CORPUS JURIS. 3. An artificial person created by a legal authority. See CORPORATION. 4. An aggregate of individuals or groups.

**body corporate.** See CORPORATION.

**body execution.** See CAPIAS; EXECUTION.

**body of a county.** A county as a whole.

**body of laws.** See BODY (2).

**body politic.** A group of people regarded in a political (rather than private) sense and organized under a single governmental authority.

**bogus check.** See *bad check* under CHECK.

**boilerplate, n.** 1. Ready-made or all-purpose language that will fit in a variety of documents. 2. Fixed or standardized contractual language that the proposing party views as relatively nonnegotiable. — **boilerplate, adj.**

**boiler-room transaction.** *Slang.* A high-pressure telephone sales pitch, often of a fraudulent nature.

**bolster, vb.** To enhance (unimpeached evidence) with additional evidence. • This practice is often considered improper.

**bolts.** *Hist.* Student-argued cases in the Inns of Court. • These practice cases were held privately, in contrast to the more formal and public *moots*. — Also termed *boltings*.

**bombardment.** *Int'l law.* An attack from land, sea, or air with weapons that are capable of destroying enemy targets at a distance with bombs, missiles, or projectiles.

**bona** (boh-nə), *n.* [Latin “goods”] Chattels; personal property. Cf. BIENS (2).

**bona confiscata** (boh-nə kon-fi-skay-tə). Goods confiscated by — or forfeited to — the Crown.

**bona felonum** (boh-nə fə-loh-nəm). Personal property belonging to a convicted felon.

**bona forisfacta** (boh-nə for-is-fak-tə). Forfeited goods.

**bona fugitivorum** (boh-nə fyoo-jə-ti-vor-əm). Goods belonging to a fugitive. — Also termed *bona utlagatorum*.

**bona immobilia** (boh-nə i-moh-bil-ee-ə). Immovable property.

**bona mobilia** (boh-nə moh-bil-ee-ə). [Latin] Movable property. See MOVABLE.

**bona notabilia** (boh-nə noh-tə-bil-ee-ə). Notable goods; property worth accounting for in a decedent's estate.

**bona paraphernalia** (boh-nə par-ə-fər-nay-lee-ə). Clothes, jewelry, and ornaments not included in a married woman's dowry.

**bona peritura** (boh-nə per-ə-t[y]uur-ə). Perishable goods; goods that an executor or trustee must diligently convert into money.

**bona utlagatorum** (boh-nə ət-lay-gə-tor-əm). See *bona fugitivorum*.

**bona vacantia** (boh-nə və-kan-shee-ə). [Latin “vacant goods”] 1. Property not disposed of by a decedent's will and to which no relative is entitled under intestacy laws. See ESCHEAT. 2. Ownerless property; goods without an owner. • *Bona vacantia* often resulted when a deceased person died without an heir willing and able to make a claim. The property either belonged to the finder or escheated to the Crown. — Also termed *vacantia bona*. — Sometimes shortened to *vacantia*.

**bona waviata** (boh-nə way-vee-ay-tə). Stolen goods thrown away in flight by a thief. • The goods escheated to the Crown as a penalty to the owner for failing to pursue the thief and recover the goods.

**vacantia bona.** See *bona vacantia*.

**bona activa** (boh-nə ak-ti-və). [Latin “active goods”] Assets. See ASSET (1).

**bona confiscata.** See BONA.

**bonae fidei** (boh-nee fi-dee-i). [Latin] Of good faith; in good faith.

**bonae fidei possessor** (boh-nee fi-dee-i pə-zes-ər). [Latin] *Roman law.* A good-faith possessor of property owned by another. • Unless the owner sued to recover the property, the possessor became the rightful owner after a specified time elapsed, unless the property had been stolen or taken by force. See ADVERSE POSSESSION.

**bona et catalla** (boh-nə et kə-tal-ə). [Law Latin] Goods and chattels.

**bona felonum.** See BONA.

**bona fide** (boh-nə fid or boh-nə fi-dee), *adj.* [Latin “in good faith”] 1. Made in good faith; without fraud or deceit. 2. Sincere; genuine. See GOOD FAITH. — **bona fide**, *adv.*

**bona fide contract.** See CONTRACT.

**bona fide emptor** (boh-nə fid emp-tər). [Latin] Good-faith purchaser. See *good-faith purchaser* under PURCHASER.

**bona fide holder for value.** See HOLDER FOR VALUE.

**bona fide judgment creditor.** See JUDGMENT CREDITOR.

**bona fide occupational qualification.** An employment qualification that, although it may discriminate against a protected class (such as sex, religion, or national origin), relates to an essential job duty and is considered reasonably necessary to the operation of the particular business. • Such a qualification is not illegal under federal employment-discrimination laws. — Abbr. BFOQ.

“The bona fide occupational qualification is a complete defense. It is invoked when the defendant makes a distinction expressly forbidden by Title VII, such as the refusal to hire women or women with preschool-age children, the reassignment of pregnant employees, or the exclusion of particular ethnic groups from particular jobs. . . . The employer's motivation for excluding the protected class is not significant in evaluating the BFOQ defense. The inquiry focuses on the necessity of using an expressly forbidden classification. The fact that the employer adopted the exclusion for invidious reasons, rather

than for the business consideration on which the defense is based, is not material. Thus, if the exclusion, in fact, is proved to be necessary it may be used, even if invidiously motivated." Mack A. Player, *Employment Discrimination Law* § 5.29, at 282-83 (1988).

**bona fide operation.** A real, ongoing business.

**bona fide possession.** See POSSESSION (3).

**bona fide purchaser.** See PURCHASER (1).

**bona fide purchaser for value.** See PURCHASER (1).

**bona fides** (boh-nə fi-deez), *n.* [Latin] See GOOD FAITH.

**bona fide sale.** See SALE.

**bona forisfacta.** See BONA.

**bona fugitivorum.** See BONA.

**bona gratia matrimonium dissolvitur** (boh-nə gray-shee-ə ma-trə-moh-nee-əm di-sol-və-tər). [Law Latin "the marriage is dissolved with good grace"] *Hist.* A consensual divorce.

**bona immobilia.** See BONA.

**bona memoria** (boh-nə mə-mor-ee-ə). [Latin] Good memory. • *Bona memoria*, as used in the phrase *sanae mentis et bonae memoria* (of sound mind and good memory), refers to a testator's mental capacity. See MIND AND MEMORY.

**bona mobilia.** See BONA.

**bona notabilia.** See BONA.

**bona paraphernalia.** See BONA.

**bona peritura.** See BONA.

**bona utlagatorum.** See *bona fugitivorum* under BONA.

**bona vacantia.** See BONA.

**bona waviata.** See BONA.

**bond, n. 1.** An obligation; a promise.

"[A]n obligation, or in English a 'bond,' is a document written and sealed containing a confession of a debt; in later times 'contract' is the genus, 'obligation' the spe-

cies." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law* 207 (2d ed. 1899).

**2.** A written promise to pay money or do some act if certain circumstances occur or a certain time elapses; a promise that is defeasible upon a condition subsequent.

"The fact that an instrument is called a 'bond' is not conclusive as to its character. It is necessary to disregard nomenclature and look to the substance of the bond itself. The distinguishing feature of a bond is that it is an obligation to pay a fixed sum of money, at a definite time, with a stated interest, and it makes no difference whether a bond is designated by that name or by some other, if it possesses the characteristics of a bond. There is no distinction between bonds and certificates of indebtedness which conform to all the characteristics of bonds." 1 Silvester E. Quindry, *Bonds & Bondholders Rights & Remedies* § 2, at 3-4 (1934).

**appeal bond.** A bond that an appellate court may require from an appellant in a civil case to ensure payment of the costs of appeal; a bond required as a condition to bringing an appeal or staying execution of the judgment appealed from. Fed. R. App. P. 7. Cf. *superse-deas bond*.

**appearance bond.** See *bail bond*.

**attachment bond.** A bond that a defendant gives to recover attached property. • The plaintiff then looks to the bond issuer to satisfy a judgment against the defendant.

**average bond.** *Marine insurance.* A bond given to the captain of a ship by consignees of cargo subject to general average, guaranteeing payment of their contribution once it is ascertained, on condition that their goods be promptly delivered.

**bail bond.** A bond given to a court by a criminal defendant's surety, guaranteeing that the defendant will duly appear in court in the future; a bond given to obtain a prisoner's release and to secure the prisoner's appearance to answer legal process. • The effect of the release on bail bond is to transfer custody of the prisoner from the officers of the law to the custody of the surety on the bail bond, whose undertaking is to redeliver the defendant to legal custody at the time and place appointed in the bond. — Also termed *appearance bond*. See BAIL.

**bid bond.** A bond filed in public construction projects to ensure that the bidding contractor will enter into the contract. • The *bid bond* is a type of performance bond.

**blank bond.** *Archaic.* A bond in which the space for the creditor's name is left blank.

**blanket bond. 1.** A bond covering several persons or projects that require performance bonds. **2.** See *fidelity bond*.

**bond for land.** A bond given by the seller of land to a buyer, binding the seller to convey once the buyer tenders the agreed price. — Also termed *bond for a deed*. Cf. BINDER (1).

**bond of corroboration.** An additional obligation undertaken to corroborate the debtor's original obligation.

**bottomry bond.** A contract for the loan of money on a ship, usu. at extraordinary interest, for maritime risks encountered during a certain period or for a certain voyage. ● The loan can be enforced only if the vessel survives the voyage. — Also termed *bottomage bond*. Cf. *respondentia bond*.

"A bottomry bond, strictly speaking, is a mortgage or pledge of a ship by the owner or agent, to secure the repayment of money lent for the use of the ship; and the conditions of it are, that if the ship is lost, the lender loses his money; but if it arrives, then, not only the ship itself is liable, but also the person of the borrower." John Indermaur, *Principles of the Common Law* 169 (Edmund H. Bennett ed., 1st Am. ed. 1878).

"[T]he bottomry bond . . . is a sort of mortgage on a ship, entered into for the purpose of raising money in case of necessity in a foreign port. The advance of communications has caused bottomry and respondentia bonds to pass virtually out of use." Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* § 1-10, at 25 n.85 (2d ed. 1975).

**claim-property bond.** See *replevin bond*.

**common-defesance bond.** See *penal bond*.

**common-law bond.** A performance bond given by a construction contractor. ● A common-law bond exceeds the requirements of a statutory performance bond because it provides additional coverage for construction projects. Cf. PERFORMANCE BOND.

**common money bond.** A promise to pay money as a penalty for failing to perform a duty or obligation.

**cost bond.** A bond given by a litigant to secure the payment of court costs.

**counterbond.** A bond to indemnify a surety.

**delivery bond.** See *forthcoming bond*.

**depository bond.** A bond given by a bank to protect a public body's deposits should the bank become insolvent.

**discharging bond.** A bond that both permits a defendant to regain possession of attached property and releases the property from the attachment lien. — Also termed *dissolution bond*. See *forthcoming bond*.

**executor's bond.** A bond given to ensure the executor's faithful administration of the estate. See *fiduciary bond*.

"The English law did not require an executor to give bond because he was appointed by the testator and his authority was derived from the will rather than court appointment. Some American jurisdictions do not require a bond of an executor. In the majority of our states a testator may by will dispense with the executor's bond, but in absence of such testamentary provision a bond will be required." Thomas E. Atkinson, *Handbook of the Law of Wills* § 113, at 621 (2d ed. 1953).

**fidelity bond.** A bond to indemnify an employer or business for loss due to embezzlement, larceny, or gross negligence by an employee or other person holding a position of trust. — Also termed *blanket bond*.

**fiduciary bond.** A type of surety bond required of a trustee, administrator, executor, guardian, conservator, or other fiduciary to ensure the proper performance of duties.

**forthcoming bond.** 1. A bond guaranteeing that something will be produced or forthcoming at a particular time, or when called for. 2. A bond (usu. given to a sheriff) to permit a person to repossess attached property in exchange for that person's commitment to surrender the property in the event of an adverse judgment. — Also termed *delivery bond*. Cf. *replevin bond*.

**general-average bond.** *Maritime law.* A cargo owner's bond exacted by a carrier to ensure that the owner will pay the general average contribution. ● When the contribution amounts are disputed, the carrier requires this bond before agreeing to unload the ship. — Also termed *average bond*. See *general average* under AVERAGE (3).

**guaranty bond.** A bond combining the features of a fidelity and a surety bond, securing both payment and performance.

**heritable bond.** *Scots law.* A bond secured by land.

**hypothecation bond.** A bond given in the contract of bottomry or respondentia.

**indemnity bond.** A bond to reimburse the holder for any actual or claimed loss caused by the issuer's or some other person's conduct.

**injunction bond.** A bond required of an injunction applicant to cover the costs incurred by a wrongfully enjoined party. Fed. R. Civ. P. 65(c).

**interim bond.** 1. A bond set by a police officer when a person is arrested for a minor offense, such as a misdemeanor, without a warrant. ● Although the bond allows the arrestee to be released, it requires that the person be available for arraignment. 2. A

bond set by a judge or magistrate and attached to a misdemeanor warrant.

**judicial bond.** A bond to indemnify an adverse party in a lawsuit against loss occasioned by delay or by deprivation of property resulting from the lawsuit. • Judicial bonds are usu. classified according to the nature of the action in which they are required, as with appeal bonds, injunction bonds, attachment bonds, replevin bonds, forthcoming or redelivery bonds, and bail bonds. A bond of a fiduciary — such as a receiver, administrator, executor, or guardian — is often required as a condition to appointment.

**liability bond.** A bond intended to protect the assured from a loss arising from some event specified in the bond.

**license bond.** A bond required of a person seeking a license to engage in a specified business or to receive a certain privilege. — Also termed *permit bond*.

**maintenance bond.** A bond guaranteeing against construction defects for a period after the completion of the contracted-for work.

**negotiable bond.** A bond that can be transferred from the original holder to another.

**official bond.** A bond given by a public officer, conditioned on the faithful performance of the duties of office. • *Official bond* may also refer to a bond filed by an executor, guardian, trustee, or other fiduciary. See *fiduciary bond*.

**payment bond.** A bond given by a surety to cover any amounts that, because of the general contractor's default, are not paid to a subcontractor or materialman.

“[T]he bond serves two purposes: it assures the owner a lien-free project, and it induces suppliers and subcontractors to accept work on the project, perhaps at a lower price, because of the assurance that they will be paid. Since no additional charge is generally made for a payment bond when a performance bond is being purchased, the two are usually issued simultaneously.” Grant S. Nelson, *Real Estate Finance Law* § 12.2, at 881 (3d ed. 1994).

**peace bond.** A bond required by a court from a person who has breached or threatened to breach the peace. See BREACH OF THE PEACE.

**penal bond.** A bond requiring the obligor to pay a specified sum as a penalty if the underlying obligation is not performed. — Also termed *penal bill*; *common-defeasance bond*.

**performance bond.** See PERFORMANCE BOND.

**permit bond.** See *license bond*.

**personal bond.** 1. See *bail bond*; BAIL. 2. A written document in which an obligor formal-

ly recognizes an obligation to pay money or to do a specified act.

**probate bond.** A bond, such as that filed by an executor, required by law to be given during a probate proceeding to ensure a faithful performance by the person under bond.

**redelivery bond.** See *replevin bond*.

**refunding bond.** A bond given to assure an executor that a legatee will return an estate distribution should the remaining estate assets be insufficient to pay the other legacies.

**registered bond.** A governmental or corporate obligation to pay money, represented by a single certificate delivered to the creditor. • The obligation is registered in the holder's name on the books of the debtor.

**removal bond.** 1. A bond to cover possible duties owed by a person who removes goods from a warehouse for export. 2. A bond required in some states when a litigant seeks to remove an action to another court.

**replevin bond** (ri-plev-in). 1. A bond given by a plaintiff to replevy or attach property in the defendant's possession before judgment is rendered in a replevin action. • The bond protects the attaching officer and ensures the property's safekeeping until the court decides whether it should be returned to the defendant. — Also termed *replevy bond*. See REPLEVIN. 2. A bond given by a defendant in a replevin action to regain attached property pending the outcome of litigation. • The bond does not discharge the attachment lien. — Also termed *replevy bond*; *claim-property bond*; *redelivery bond*. Cf. *forthcoming bond*.

**respondentia bond** (re-spon-den-shee-ə or ree-). A contract containing the pledge of a ship's cargo; a mortgage of a ship's cargo. Cf. *bottomry bond*.

**simple bond.** 1. A bond without a penalty. 2. A bond payable to a named obligee on demand or on a certain date.

**statutory bond.** A bond that literally or substantially meets the requirements of a statute.

**straw bond.** A bond, usu. a bail bond, that carries either a fictitious name or the name of a person who is unable to pay the sum guaranteed; a worthless or inadequate bond.

**submission bond.** A bond given by a litigant who agrees to submit a lawsuit to arbitration and to be bound by an arbitrator's award.

**supersedeas bond** (soo-pər-see-dee-əs). An appellant's bond to stay execution on a judgment during the pendency of the appeal. Fed. R. Civ. P. 62(d); Fed. R. App. P. 8(b). — Often

shortened to *supersedeas*. See SUPERSEDE (2). Cf. *appeal bond*.

**surety bond.** See PERFORMANCE BOND.

**ten-percent bond.** A bail bond in the amount of 10% of the bond otherwise required for a defendant's release. • This type of bond usu. allows a defendant to arrange a bond without the services of a bondsman or other surety.

**unsecured bail bond.** A bond that holds a defendant liable for a breach of the bond's conditions (such as failure to appear in court), but that is not secured by a deposit of or lien on property. See RECOGNIZANCE.

3. A long-term, interest-bearing debt instrument issued by a corporation or governmental entity usu. to provide for a particular financial need; esp., such an instrument in which the debt is secured by a lien on the issuer's property. Cf. DEBENTURE.

"Typically debt securities are notes, debentures, and bonds. Technically a 'debenture' is an unsecured corporate obligation while a 'bond' is secured by a lien or mortgage on corporate property. However, the word 'bond' is often used indiscriminately to cover both bonds and debentures. . . . A 'bond' is a long term debt security while a 'note' is usually a shorter term obligation. Bonds are historically bearer instruments, negotiable by delivery, issued in multiples of \$1,000 with interest payments represented by coupons that are periodically clipped and submitted for payment." Robert W. Hamilton, *The Law of Corporations in a Nutshell* 128 (3d ed. 1991).

**accrual bond.** A bond — usu. the last collateralized-mortgage-obligation issue — from which no principal or interest payment will be made until any bonds issued earlier have been fully paid. — Also termed *Z-bond*.

**adjustment bond.** A bond issued when a corporation is reorganized. — Also termed *reorganization bond*.

**annuity bond.** A bond that lacks a maturity date and that perpetually pays interest. — Also termed *consol*; *perpetual bond*; *continued bond*; *irredeemable bond*.

**arbitrage bond.** A municipal bond, the proceeds of which are invested in bonds paying a higher yield than that paid by the municipality on its own bonds. • Under the Internal Revenue Code, the tax-free aspect of municipal-bond income may be lost if the bonds are classified as arbitrage bonds. See ARBITRAGE.

**assessment bond.** A municipal bond repaid from property assessment taxes.

**assumed bond.** See *guaranteed bond* (1).

**baby bond.** A bond usu. having a face value of \$1,000 or less.

**bearer bond.** A bond payable to the person holding it. • The transfer of possession transfers the bond's ownership. Cf. *registered bond*.

**bond and mortgage.** A bond that is backed by a mortgage on realty. — Also termed *mortgage bond*. Cf. DEBENTURE.

**book-entry bond.** A bond for which no written certificate is issued to reflect ownership.

**callable bond.** See *redeemable bond*.

**chattel-mortgage bond.** A bond secured by a mortgage on personal property.

**closed-end mortgage bond.** A mortgage bond with provisions prohibiting the debtor from issuing additional bonds against the bond's collateral.

**collateral trust bond.** 1. A bond representing a debt secured by the deposit of another security with a trustee. — Also termed *collateral trust certificate*. 2. A long-term corporate bond that is secured by other companies' mortgage bonds held by the corporation, which pledges and deposits the mortgage bonds in trust. • The interest on these collateral trust bonds is typically lower than that received on the bonds pledged; the surplus is used to form a sinking fund to redeem the collateral trust bonds. A holding company often issues these bonds by pledging the stock of a subsidiary.

**commodity-backed bond.** A bond with interest payments or principal repayment tied to the price of a specific commodity, such as gold. • This type of bond, which has a low interest rate but provides a hedge against inflation because the commodity price will usu. rise, is often issued by a firm with a stake in the commodity.

**consolidated bond.** 1. A railroad bond secured by a mortgage on the entire railroad line formed by several consolidated railroads. Cf. *divisional bond*. 2. A single bond that replaces two or more outstanding issues.

**construction bond.** A bond issued by a governmental entity for a building project.

**continued bond.** See *annuity bond*.

**convertible bond.** A bond that can be exchanged for stock shares in the corporation that issued the bond.

**corporate bond.** 1. An interest-bearing instrument containing a corporation's promise to pay a fixed sum of money at some future time. • A corporate bond may be secured or unsecured. 2. A bond issued by a corporation, usu. having a maturity of ten years or longer.



**county bond.** A county-issued bond paid through a levy on a special taxing district, whether or not the district is coextensive with the county.

**coupon bond.** A bond with attached interest coupons that the holder may present to receive interest payments. See BOND COUPON.

**cushion bond.** A bond paying an uncommonly high interest rate.

**debenture bond.** See DEBENTURE (3).

**deferred-interest bond.** A bond whose interest payments are postponed for a time.

**discount bond.** A bond sold at its current market value, which is less than its face value. — Also termed *non-interest-bearing bond*.

**divisional bond.** A railroad bond secured by a mortgage on a specific segment of a consolidated railroad system. Cf. *consolidated bond*.

**endorsed bond.** See *guaranteed bond* (1).

**equipment trust bond.** A bond secured by tangible property, such as an airplane. • A trustee usu. holds title to the equipment, which is leased to the issuer. — Also termed *equipment trust certificate*.

**first-mortgage bond.** A long-term bond that has the first claim on specified assets.

**flat bond.** A bond that trades without accrued interest.

**floating-interest bond.** A bond with an interest rate that moves up and down with changing economic conditions.

**flower bond.** A Treasury bond redeemable before maturity if used to settle federal estate taxes. • Flower bonds were issued before April 1971 and reached final maturity in 1998.

**foreign bond.** A bond issued in a currency different from that used where the issuer is located, such as a Canadian-government bond that is denominated in U.S. dollars and issued in the United States.

**full-faith-and-credit bond.** See *general-obligation bond*.

**general-mortgage bond.** A corporate bond secured by a blanket mortgage on property. • The general-mortgage bond, however, is often less valuable because it is subordinate to prior mortgages.

**general-obligation bond.** A municipal bond payable from general revenue rather than from a special fund. • Such a bond has no collateral to back it other than the issuer's taxing power. — Often shortened to *obli-*

*gation bond*. — Also termed *full-faith-and-credit bond*.

“There are two main types of bonds issued by local governments: general obligation bonds and revenue bonds.... Bonds will be assumed to be general obligation unless they themselves contain a clear promise to pay *only* out of a special fund.” Osborne M. Reynolds, Jr., *Handbook of Local Government Law* § 104, at 323 (1982).

**gold bond.** 1. *Hist.* A bond payable in gold coin or U.S. currency at the election of the bondholder. • This type of bond existed until 1933, when the U.S. monetary system abandoned the gold standard. 2. A commodity-backed bond that is secured by gold and issued by a gold-mining company.

**government bond.** See *savings bond*; *government security* under SECURITY (4).

**guaranteed bond.** 1. A bond issued by a corporation and guaranteed by a third party. • This type of bond is common among railroads. — Also termed *endorsed bond*; *assumed bond*; *joint bond*. 2. A bond issued by a subsidiary corporation whose parent corporation guarantees the principal and interest payments.

**improvement bond.** See *revenue bond*.

**income bond.** A corporate bond secured by the corporation's net income, after the payment of interest on senior debt. • Sometimes this type of bond is a *cumulative-income bond*, in which case, if the income in any year is insufficient to pay the full interest, the deficit is carried forward as a lien on any future income.

**indeterminate bond.** A callable bond with no set maturity date.

**industrial-development bond.** 1. A type of revenue bond in which interest and principal payments are backed by a corporation rather than a municipality. • This type of bond usu. finances a private business facility. 2. A tax-exempt municipal bond that finances a usu. local industry. — Also termed *industrial-revenue bond*.

**interchangeable bond.** A bond that can be exchanged for a different type of bond, such as a coupon bond that may be exchanged for a registered bond.

**interest bond.** A bond paid in lieu of interest due on other bonds.

**investment-grade bond.** A bond with a rating of BBB or better by the leading bond rating services. See INVESTMENT-GRADE RATING.

**irredeemable bond.** See *annuity bond*.

**joint and several bond.** A bond in which the principal and interest are guaranteed by two or more obligors.

**joint bond.** A bond signed by two or more obligors. • In contrast to a joint and several bond, all the obligors must be joined if an action is brought on the bond.

**junior bond.** A bond subordinate in priority to another bond.

**junk bond.** A high-risk, high-yield subordinated bond issued by a corporation with a below-standard industry rating.

**leasehold-mortgage bond.** A bond issued by a lessee and secured by the lessee's leasehold interest.

**Lloyd's bond.** *Hist. English law.* A corporate bond issued on work done or goods delivered. • A bond issued in this manner avoids any restriction on indebtedness existing either in law or in corporate bylaws. The term supposedly derives from an English lawyer named Lloyd, who is credited with devising the method.

**mortgage bond.** A bond secured by the issuer's real property.

**multimaturity bond.** See *put bond*.

**municipal bond.** A bond issued by a nonfederal government or governmental unit, such as a state bond to finance local improvements. • The interest received from a municipal bond may be exempt from federal, state, and local taxes. — Often shortened (in pl.) to *municipals*; *munies*. — Also termed *municipal security*.

**noncallable bond.** See *noncallable security* under SECURITY.

**non-interest-bearing bond.** See *discount bond*.

**nonstatutory bond.** See *voluntary bond*.

**obligation bond.** See *general-obligation bond*.

**open-end mortgage bond.** A mortgage bond that can be used as security for another bond issue.

**optional bond.** A bond that the holder may redeem before its maturity date if the issuer agrees.

**option tender bond.** See *put bond*.

**participating bond.** A bond that entitles the holder to a share of corporate profits but does not have a fixed interest rate.

**passive bond.** A bond bearing no interest. See *passive debt* under DEBT.

**perpetual bond.** See *annuity bond*.

**post-obit bond.** An agreement by which a borrower promises to pay to the lender a lump sum (exceeding the amount advanced) upon the death of a person whose property the borrower expects to inherit. • Equity traditionally enforces such bonds only if the terms are just and reasonable.

**premium bond.** A bond with a selling price above face or redemption value. See PREMIUM (3).

**put bond.** A bond that gives the holder the right to redeem it for full value at specified times before maturity. — Also termed *multimaturity bond*; *option tender bond*. Cf. *put option* under OPTION (4).

**railroad-aid bond.** A bond issued by a public body to fund railway construction.

**redeemable bond.** A bond that the issuer may call for payment. — Also termed *callable bond*.

**re-funding bond.** A bond that retires an outstanding bond.

**registered bond.** A bond that only the holder of record may redeem, enjoy benefits from, or transfer to another. Cf. *bearer bond*.

**reorganization bond.** See *adjustment bond*.

**revenue bond.** A government bond repayable from public funds.

**savings bond.** A nontransferable bond issued by the U.S. government.

**school bond.** A bond issued by a city or school district to fund school construction.

**secured bond.** A bond backed by some type of security. Cf. DEBENTURE (2).

**serial bond.** A bond issued concurrently with other bonds having different maturity dates.

**series bonds.** A group of bonds issued under the authority of the same indenture, but offered publicly at different times and with different maturity dates and interest rates.

**single bond.** See *bill obligatory* under BILL (7).

**sinking-fund bond.** A bond backed by a sinking fund for bond redemption. See *sinking fund* under FUND (1).

**special-tax bond.** A municipal bond secured by taxes levied for a specific governmental purpose, usu. improvements. — Also termed *special-assessment bond*.

**state bond.** A bond issued by a state.

**statutory bond.** A bond given in accordance with a statute.

**subordinated bond.** See *junior bond*.

**tax-exempt bond.** A bond that pays tax-free interest.

**term bond.** A bond that matures concurrently with other bonds in that issue.

**Treasury bond.** See TREASURY BOND.

**unsecured bond.** See DEBENTURE (2).

**voluntary bond.** A bond not required by statute but given anyway. — Also termed *nonstatutory bond*.

**zero-coupon bond.** A bond paying no interest. • It is sold at a discount price and later redeemed at face value, the profit being the difference. — Also termed *passive bond*. See *zero-coupon security* under SECURITY (4).

**bond, vb. 1.** To secure payment by providing a bond <at the creditor's insistence, Gabriel consolidated and bonded his various loans>. **2.** To provide a bond for (a person) <the company bonded its off-site workers>.

**bond and mortgage.** See BOND (3).

**bond conversion.** The exchange of a convertible bond for another asset, usu. stock.

**bond coupon.** The part of a coupon bond that is clipped by the holder and surrendered to obtain an interest payment. See *coupon bond* under BOND (3).

**bond covenant.** A bond-indenture provision that protects bondholders by specifying what the issuer may or may not do, as by prohibiting the issuer from issuing more debt. See BOND INDENTURE (1).

**bond creditor.** See CREDITOR.

**bond discount.** See DISCOUNT (3).

**bond dividend.** See DIVIDEND.

**bonded, adj.** (Of a person or entity) acting under, or placed under, a bond <a bonded court official>.

**bonded debt.** See DEBT.

**bonded warehouse.** See WAREHOUSE.

**bond for a deed.** See *bond for land* under BOND (2).

**bond for deed.** See CONVEYANCE (6); BOND FOR TITLE.

**bond for land.** See BOND (2).

**bond for title.** *Real estate.* The seller's retention of legal title until the buyer pays the purchase price. — Also termed *bond for deed*. Cf. *contract for deed* under CONTRACT.

**bond fund.** See MUTUAL FUND.

**bondholder.** One who holds a government or business bond.

**bond indenture. 1.** A contract between a bond issuer and bondholder outlining a bond's face value, interest rate, maturity date, and other features. **2.** A mortgage held on specified corporate property to secure payment of the bond.

**bonding company.** See COMPANY.

**bond issue.** See ISSUE (2).

**bondman.** See BONDSMAN (2).

**bond of corroboration.** See BOND (2).

**bond premium.** See PREMIUM (3).

**bond rating.** A system of evaluating and appraising the investment value of a bond issue.

**bond retirement.** The cancellation of a bond that has been called or paid.

**bondsman. 1.** One who guarantees a bond; a surety. **2.** A serf or peasant; VILLEIN. — Also termed (in sense 2) *bondman*.

**bond table.** A schedule used in determining a bond's current value by its coupon rate, its time to maturity, and its effective yield if held to maturity.

**bond trust.** See TRUST.

**bones gents** (bohn jents). [Law French "good men"] *Hist.* Qualified or competent persons; esp., men qualified to serve on a jury.

**bonification** (bahn-ə-fi-kay-shən). A tax remission, usu. on goods intended for export. • Boni-

fication enables a commodity to be sold in a foreign market as if it had not been taxed.

**boni homines** (**boh-nī hom-ə-nee-z**). [Law Latin “good men”] *Hist.* Free tenants who judged each other in their lord’s court.

“[W]e may find traces of juries in the laws of all those nations which adopted the feudal system, as in Germany, France, and Italy; who had all of them a tribunal composed of twelve good men and true, ‘boni homines’ . . .”  
3 William Blackstone, *Commentaries on the Laws of England* 349 (1768).

**bonis cedere** (**boh-nis see-də-ree**). [Latin “to cede one’s goods”] *Civil law.* A transfer or surrender of property, usu. from a debtor to a creditor.

**bonis non amovendis.** See DE BONIS NON AMOVENDIS.

**bonitarian** (**bahn-ə-tair-ee-in**), *adj.* Equitable. — Also termed *bonitary*. Cf. QUIRITARIAN.

**bonitarian ownership.** See OWNERSHIP.

**bonitary.** See BONITARIAN.

**bono et malo** (**boh-noh et mal-oh**). See DE BONO ET MALO.

**bonorum possessio contra tabulas** (**bə-noh-rəm pə-zesh-ee-oh kahn-trə tab-yə-ləs**). [Latin “possession of goods against the testament”] *Roman law.* An order authorizing the applicant to take possession of an estate contrary to the testator’s will. • Magistrates made such orders in certain cases, as where a testator passed over a son who was not expressly disinherited. — Also termed *contra tabulas*.

“The Praetor could not affect the civil validity of a will; he could not make or unmake a *heres*. He could, however, give *bonorum possessio* to a person, *heres* or not at civil law, which gave him power to take possession of the goods by appropriate steps, *bonorum possessio contra tabulas* . . .” W.W. Buckland, *A Textbook of Roman Law: From Augustus to Justinian* 324 (Peter Stein ed., 3d ed. 1963).

**bonum factum** (**boh-nəm fak-təm**). [Latin] A good or proper act or deed. — Abbr. *b.f.*

**bonus.** **1.** A premium paid in addition to what is due or expected <year-end bonus>. • In the employment context, workers’ bonuses are not a gift or gratuity; they are paid for services or on consideration in addition to or in excess of the compensation that would ordinarily be given. **2.** *Oil & gas.* A payment made to the lessee

for the execution of an oil-and-gas lease <the lessee received a large bonus at closing>.

“The amount of bonus paid, usually referred to as a per acre amount, may fluctuate widely between properties. The amount paid depends upon the nature of the development activity in the vicinity. If the land is located in a semi-proven area, or in a logical extension of a proven field, the bonus paid may be substantial.” Richard W. Hemingway, *The Law of Oil and Gas* § 2.5, at 57 (3d ed. 1991).

**bonus share.** See *bonus stock* under STOCK.

**bonus stock.** See STOCK.

**bonus zoning.** See *incentive zoning* under ZONING.

**boodle.** *Slang.* Money paid as a bribe, usu. to a public official.

**book, vb.** **1.** To record in a book (as a sale or accounting item) <Jenkins booked three sales that day>. **2.** To record the name of (a person arrested) in a sequential list of police arrests, with details of the person’s identity (usu. including a photograph and a fingerprint), particulars about the alleged offense, and the name of the arresting officer <the defendant was booked immediately after arrest>. **3.** To engage (someone) contractually as a performer or guest <although the group was booked for two full performances, the lead singer, Raven, canceled and this action ensued>. See BOOKING CONTRACT.

**book account.** See ACCOUNT.

**book entry.** **1.** A notation made in an accounting journal. **2.** The method of reflecting ownership of publicly traded securities whereby a customer of a brokerage firm receives confirmations of transactions and monthly statements, but not stock certificates. See CENTRAL CLEARING SYSTEM.

**book-entry bond.** See BOND (3).

**book equity.** The percentage of a corporation’s book value allocated to a particular class of stock. Cf. BOOK VALUE; MARKET EQUITY.

**bookie.** See BOOKMAKER.

**booking contract.** An agreement by which an actor or other performer is engaged.

**bookkeeping**, *n.* The mechanical recording of debits and credits or the summarizing of financial information, usu. about a business enterprise. Cf. ACCOUNTING.

**double-entry bookkeeping.** A method of bookkeeping in which every transaction recorded by a business involves one or more "debit" entries and one or more "credit" entries. • The debit entries must equal the credit entries for each transaction recorded.

**single-entry bookkeeping.** A method of bookkeeping in which each transaction is recorded in a single record, such as a record of cash or credit accounts.

**bookland (buuk-land).** *Hist.* Land held under charter or deed; freehold land. • This was a privileged form of ownership (usu. free of the customary burdens on land) generally reserved for churches and leaders. — Also spelled *bocland*; *bockland*. — Also termed *charter-land*. Cf. LOANLAND; FOLKLAND.

"Charter-land is such as a man holds by charter, that is, by evidence in writing, which otherwise is called freehold. . . . [T]his land was held with more easy and commodious conditions, than folkland and copy-hold land held without writing; . . . it is a free and absolute inheritance; whereas land without writing is charged with payment and bondage; so that for the most part noblemen and persons of quality possess the former, and rustics the other. The first we call freehold and by charter: the other, land at the will of the lord." *Termes de la Ley* 80 (1st. Am. ed. 1812).

"Prior to the Conquest, property in land was divided into *bocland*, *folcland*, and *laenland*. The exact nature of these rights has been disputed, but probably *bocland* was held by owners of high station claiming under a charter of privileges originally granted by the King, while *folcland* was held by ordinary owners according to the custom of the district in which the land lay. *Laenland*, or loanland, appears to have represented something in the nature of a tenancy of a less enduring character. It derived its existence from the loan of land by one person to another, and hence emphasises the relation later known as that of feudal landlord and tenant. Furthermore, as *bocland* became more common, a tendency for *laenland* and *bocland* to coalesce appeared." A.K.R. Kiralfy, *Potter's Outlines of English Legal History* 195 (5th ed. 1958).

**bookmaker.** A person who determines odds and receives bets on the outcome of events, esp. sports events. See BOOKMAKING.

**bookmaking.** Gambling that entails the taking and recording of bets on an event, such as a horse race.

**book of original entry.** A day-to-day record in which a business's transactions are first recorded.

**books of account.** See SHOP BOOKS.

**Books of Adjournal.** *Scots law.* The records of the High Court of Justiciary.

**book value.** The value at which an asset is carried on a balance sheet. Cf. BOOK EQUITY.

**adjusted book value.** Inventory value adjusted to reflect the inventory's current actual value.

**book-value stock.** See STOCK.

**boomage.** **1.** A fee charged by a company for collecting and distributing logs that have accumulated in its boom (i.e., a line of sawed logs collected and stored on a stream's surface). **2.** A right to enter on riparian lands to fasten booms. **3.** An anchorage fee charged by a canal proprietor.

**boon day.** (*usu. pl.*) *Hist.* One of several days in the year when copyhold tenants were obliged to perform base services for the lord (such as reaping corn) without pay. — Also termed *due day*.

**boot, n.** **1.** *Tax.* Supplemental money or property subject to tax in an otherwise tax-free exchange. **2.** *Corporations.* In a corporate reorganization, anything received other than the stock or securities of a controlled corporation. **3.** *Commercial law.* Cash or other consideration used to balance an otherwise unequal exchange. **4.** *Hist.* ESTOVERS (1).

**boot camp.** **1.** A camp for basic training of Navy or Marine Corps recruits. **2.** See *shock incarceration* under INCARCERATION.

**boothage (boo-thij).** See BOTHAGIUM.

**bootleg, vb.** To manufacture, reproduce, or distribute (something) illegally or without authorization <he was bootlegging copyrighted videotapes>.

**bootlegger, n.** A person who manufactures, transports, or sells something illegally, esp. alcoholic beverages. See MOONSHINE.

**bootstrap, vb.** **1.** To make a success despite sparse resources. **2.** To reach an unsupported conclusion.

**bootstrap doctrine.** *Conflict of laws.* The doctrine that forecloses collateral attack on the jurisdiction of another state's court that has

rendered final judgment. • The doctrine applies when a court in an earlier case has taken jurisdiction over a person, over status, or over land. It is based on the principle that under *res judicata*, the parties are bound by the judgment, whether the issue was the court's jurisdiction or something else. The bootstrap doctrine, however, cannot give effectiveness to a judgment by a court that had no subject-matter jurisdiction. For example, parties cannot, by appearing before a state court, "bootstrap" that court into having jurisdiction over a federal matter.

"If the court which rendered the judgment has, with the parties before it, expressly passed upon the jurisdictional question in the case, or had opportunity to do so because the parties could have raised the question, that question is *res judicata*, and is therefore not subject to collateral attack in the state in which the judgment is sued on. This has been called the 'bootstrap doctrine,' the idea being that a court which initially had no jurisdiction can when the issue is litigated lift itself into jurisdiction by its own incorrect but conclusive finding that it does have jurisdiction." Robert A. Leflar, *American Conflicts Law* § 79, at 159 (3d ed. 1977).

**bootstrap sale.** See SALE.

**booty.** **1.** *Int'l law.* Movables taken from the enemy as spoils in the course of warlike operations. — Also termed *spoils of war*. **2.** Property taken by force or piracy; prize or loot.

**bordage** (bor-dij). *Hist.* A type of tenure in which a tenant holds a cottage and a few acres in exchange for providing customary services to the lord.

**bordarii** (bor-dair-ee-1). *Hist.* Bordage tenants. • The status of these tenants was less servile than that of villein tenants. See BORDAGE; VILLENAGE.

**border.** A boundary between one nation (or a political subdivision) and another.

**border control.** *Int'l law.* A country's physical manifestation of its territorial sovereignty, by which it regulates which people and goods may enter and leave. • As a practical matter, border controls are often used to contain plant and animal diseases, fight terrorism, and detect the movement of criminals.

**bordereau** (bor-də-roh), *n.* **1.** A description of reinsured risks; esp., a periodic report provided by a cedent to a treaty reinsurer, consisting of basic information affecting the reinsurance treaty, such as the underlying insureds, the types of risks covered, policies, and dates of

loss. See REINSURANCE TREATY. **2.** A detailed note of account. Pl. **bordereaux.** — **border-eau**, *vb.*

**border search.** See SEARCH.

**bord-halfpenny** (bord-hay-pə-nee). See BOTHAGIUM.

**bordlands.** *Hist.* Land used by the nobility to produce food. • Bordlands remained under the nobility's direct control or were given to tenants who produced provisions for the landowner. Cf. BORDAGE.

**bork** (bork), *vb.* *Slang.* **1.** (Of the U.S. Senate) to reject a nominee for the U.S. Supreme Court or other governmental position because of the nominee's unorthodox political and legal philosophy. • The term derives from the name of Robert Bork, President Ronald Reagan's unsuccessful nominee for the Court in 1987. **2.** (Of political and legal activists) to embark on a media campaign that helps pressure U.S. Senators into rejecting a President's nominee for the U.S. Supreme Court. **3.** Generally, to smear a political opponent.

**borough.** **1.** A town or township with a municipal charter, such as one of the five political divisions of New York City. **2.** *English law.* A chartered town that originally sent a member to Parliament. **3.** *Hist.* A fortified or important town.

**borough court.** *English law.* An inferior civil court of record, usu. presided over by the municipal recorder. • Most borough courts were abolished by Parliament in 1972. Cf. BOROUGHS; RECORDER (1).

**borough English.** *Hist.* A common-law rule of descent whereby the youngest son inherited all his father's lands. — Also termed *burgh English*; *burgh Engloys*. See PRIMOGENITURE.

**borough fund.** *English law.* The revenue generated by a municipal borough.

**borough-holder.** See BORSHOLDER.

**borough sessions.** Criminal court sessions held before a municipal recorder. Cf. BOROUGHS; RECORDER (1).

**borrow**, *vb.* **1.** To take something for temporary use. **2.** To receive money with the understand-

ing or agreement that it must be repaid, usu. with interest. See LOAN.

**borrowed capital.** Funds lent to a corporation or other entity to finance its operations, such as cash dividends that are declared by a corporation but temporarily retained (with stockholder approval) to provide operating funds.

**borrowed employee.** See EMPLOYEE.

**borrowed servant.** See *borrowed employee* under EMPLOYEE.

**borrowed-statutes doctrine.** The principle that if one state adopts a statute identical to that of another state, any settled judicial construction of that statute by the courts of the other state is binding on the courts of the state that later enacts the statute.

**borrower.** A person or entity to whom money or something else is lent.

**borrowhead.** See BORSHOLDER.

**borrowing statute.** A legislative exception to the conflict-of-laws rule holding that a forum state must apply its own statute of limitations. • A borrowing statute specifies the circumstances in which a forum state will apply another state's statute of limitations.

**borsholder** (*bors-hohl-dər*). *Hist.* **1.** The chief of a tithing or frankpledge. **2.** A petty constable. — Also termed *borough-holder*; *borrowhead*; *headborough*.

**Boston interest.** See INTEREST (3).

**bote** (*boht*). *Hist.* **1.** A compensation or profit. — Also spelled *bot*; *boot*.

*cart-bote.* See *plowbote*.

*fire-bote.* See *housebote*.

*haybote.* See HAYBOTE.

*hedgebote.* See HAYBOTE.

*housebote.* An allowance of wood from the estate used to repair a house or to burn in the fireplace. — Also termed *fire-bote*.

*plowbote.* An allowance of wood for the construction and repair of farm equipment. — Also termed *cart-bote*.

*wainbote.* An allowance of wood for the repair of wagons.

**2.** A compensatory payment for causing an injury. Cf. BOTELESS.

*God-bote.* A church fine paid for offenses against God.

*man-bote.* Compensation for killing someone.

*theft-bote.* The acceptance of a payment from a thief in exchange for an agreement not to prosecute; COMPOUNDING A CRIME. • The payment might be either a bribe or a return of the stolen goods themselves. This was a form of compounding a felony.

“Another offence of this class is *theftbote* or composition with a thief by which the person robbed takes his goods again and by contract suppresses the robbery and defrauds justice. This crime is punishable by fine and imprisonment.” 1 Sir Robert Chambers, *A Course of Lectures on the English Law: 1767-1773* 448 (Thomas M. Curley ed., 1986).

**3.** A tenant's right to use as much wood from the estate as necessary for fuel, fences, and other agricultural operations. • *Bote* in this sense is an earlier form of *estovers*.

**boteless** (*boht-ləs*), *adj. Hist.* Without relief or remedy; without the privilege of making satisfaction for a crime by pecuniary payment. • The modern word *bootless* is derived from this term. Cf. BOTE (2).

**bothagium** (*bah-thay-jee-əm*). *Hist.* Customary dues paid to a lord for placing a booth in a fair or market. — Also termed *bord-halfpenny*; *boothage*.

**botiler of the king.** *Hist.* An officer who provided the king's wines. • By virtue of office, the *botiler* could choose two casks from every wine-laden ship. The modern word *butler* is derived from *botiler*.

**bottomage bond.** See *bottomry bond* under BOND (2).

**bottom-hole contract.** *Oil & gas.* An agreement requiring a payment from the well owner to the well's lessee after the lessee drills to a specified depth, whether or not the well produces.

**bottomland.** Low-lying land, often located in a river's floodplain.

**bottomry.** A contract by which a shipowner pledges the ship as security for a loan to finance a voyage (as to equip or repair the ship), the lender losing the money if the ship is lost during the voyage. • The term refers to the

idea that the shipowner pledges the ship's bottom, or keel. Cf. *RESPONDENTIA*.

**bottomry bond.** See *BOND* (2).

**bought and sold notes.** Two memoranda prepared by a broker to record the sale of a note. • The broker sends the *bought note* to the purchaser, and sends the *sold note* to the seller.

**bought note.** See *NOTE* (3).

**boulevard rule.** The principle that the driver of a vehicle approaching a highway from a smaller road must stop and yield the right-of-way to all highway traffic.

**boulwarism.** *Labor law.* A bargaining tactic in which an employer researches the probable outcome of collective bargaining and uses the information to make a firm settlement offer to a union on a take-it-or-leave-it basis, so that there is no real negotiation. • *Boulwarism* is now considered to be an unfair labor practice by the National Labor Relations Board. The practice takes its name from Lemuel Boulware, vice president for employee relations at General Electric Company, who used the technique during the mid-20th century.

**bounced check.** See *bad check* under *CHECK*.

**bound, n. (*usu. pl.*)** 1. *BOUNDARY* <metes and bounds>. 2. A limitation or restriction on action <within the bounds of the law>.

**bound, vb.** To delineate a property boundary <property bounded by the creek>. Cf. *BIND*.

**bound, adj.** 1. Constrained by a contractual or other obligation <they are bound to make the payments by the first of each month>. 2. (Of a court) constrained to follow a precedent <bound by a Supreme Court decision>.

**boundary.** 1. A natural or artificial separation that delineates the confines of real property <the creek serves as a boundary between the two properties>. See *METES AND BOUNDS*.

"The object of all rules for the establishment of boundaries is to ascertain the actual location of the boundary as made at the time. The important and controlling consideration, where there is a conflict as to a boundary, is the parties intention, whether express or shown by surrounding circumstances . . ." 11 C.J.S. *Boundaries* § 3 (1995).

**natural boundary.** Any nonartificial thing (such as a river or ocean) that forms a bound-

ary of a nation, a political subdivision, or a piece of property. — Also termed *natural object*.

**private boundary.** An artificial boundary marker.

**public boundary.** A natural formation that marks the beginning of a boundary line. — Also termed *natural boundary*.

2. *Int'l law.* A line marking the limit of the territorial jurisdiction of a state or other entity having an international status.

**boundary by acquiescence.** See *DOCTRINE OF PRACTICAL LOCATION*.

**boundary by agreement.** See *DOCTRINE OF PRACTICAL LOCATION*.

**boundary traffic.** The movement of persons or goods across an international boundary.

**bound bailiff.** See *BAILIFF*.

**bounded tree.** A tree that marks a corner of a property's boundary.

**bounder.** A visible mark that indicates a territorial limit in a land survey.

**bounty.** 1. A premium or benefit offered or given, esp. by a government, to induce someone to take action or perform a service <a bounty for the killing of dangerous animals>. 2. A gift, esp. in a will; generosity in giving <the court will distribute the testator's bounty equally>.

**bounty hunter.** A person who for a fee pursues someone charged with, or suspected of committing, a crime; esp., a person hired by a bail-bond company to find and arrest a criminal defendant who has breached the bond agreement by failing to appear in court as ordered. — Also termed *bail-enforcement agent*.

**bounty land.** See *LAND*.

**bourse** (buurs). [*French*] *French law.* An exchange; a stock exchange. — Also termed *bourse de commerce*.

**boutique** (boo-teek). A small specialty business; esp., a small law firm specializing in one particular aspect of law practice <a tax boutique>.

**bovata terrae** (boh-vay-tə ter-ee). [*Law Latin*] *Hist.* See *OXGANG*.



**bow-bearer.** *Hist.* An officer responsible for apprehending trespassers and poachers in the king's forest.

**box-top license.** See *shrink-wrap license* under LICENSE.

**boycott, n.** **1.** An action designed to achieve the social or economic isolation of an adversary. • The term derives from Captain Charles C. Boycott, an English landowner in famine-plagued Ireland of the 1870s; because of his ruthless treatment of Irish tenant farmers, the Irish Land League ostracized him. **2.** A concerted refusal to do business with a party to express disapproval of that party's practices. **3.** A refusal to deal in one transaction in an effort to obtain terms desired in a second transaction. • Under the Sherman Antitrust Act, even peaceful persuasion of a person to refrain from dealing with another can amount to a boycott. See 15 USCA §§ 1-7. — **boycott, vb.** Cf. PICKETING; STRIKE.

**consumer boycott.** A boycott by consumers of products or services to show displeasure with the manufacturer, seller, or provider.

**group boycott.** *Antitrust.* **1.** CONCERTED REFUSAL TO DEAL. **2.** A type of secondary boycott by two or more competitors who refuse to do business with one firm unless it refrains from doing business with an actual or potential competitor of the boycotters. • A group boycott can violate the Sherman Act and is analyzed under either the per se rule or the rule of reason, depending on the nature of the boycott. See PER SE RULE; RULE OF REASON.

"Since early in this century, courts have interpreted Section 1 [of the Sherman Act] to limit the ability of competing firms to agree not to deal with or to isolate another firm. Unlike many cartels, where all competitors voluntarily join to fix prices (and share monopoly rewards), concerted refusals to deal usually involve a subset of all market participants who band together to gain market power by destroying or coercing their rivals. Such organized refusals to deal with a particular firm are usually given the pejorative label of 'group boycotts.'" Ernest Gellhorn & William E. Kovacic, *Antitrust Law and Economics in a Nutshell* 204 (4th ed. 1994).

**primary boycott.** A boycott by union members who stop dealing with a former employer.

**secondary boycott.** A boycott of the customers or suppliers of a business so that they will withhold their patronage from that business. • For example, a group might boycott a manufacturer who advertises on a radio station that broadcasts messages considered objectionable by the group.

**B.R. abbr.** **1.** Bankruptcy Reporter. — Also abbreviated *Bankr. Rep.* **2.** *Bancus Regis* [Latin "King's Bench"]. **3.** *Bancus Reginae* [Latin "Queen's Bench"]. • This abbreviation has been replaced by the English initials of these courts, K.B. and Q.B.

**bracery.** *Hist.* **1.** The offense of selling pretended rights or title to land. • This practice was outlawed by statute of 32 Hen. 8, ch. 9. **2.** EM-BRACERY.

**bracket creep.** The process by which inflation or increased income pushes individuals into higher tax brackets.

**bracket system.** A system for collecting a sales tax based on an index providing for a graduated payment depending on the purchase price of the item, the purpose being fourfold: (1) to avoid having the seller collect a tax less than one cent; (2) to avoid requiring the state to figure the exact amount of tax on each sale; (3) to allow the seller to have a ready means for fixing the tax to be collected; and (4) to allow the state to collect about the right amount of tax. • This system may be provided for either by statute or by administrative regulation.

**Bracton.** The common title of one of the earliest books of English law, *De Legibus et Consuetudinibus Angliae* (ca. 1250). • Henry of Bratton (also known as *Bracton*), a judge of the Court of King's Bench and of Assize, is credited with writing the work, though he may have merely revised an earlier version.

"Bracton's book is the crown and flower of English medieval jurisprudence. . . . Romanesque in form, English in substance — this perhaps is the best brief phrase that we can find for the outcome of his labours; but yet it is not very good. He had at his command and had diligently studied . . . various parts of the *Corpus Iuris Civilis*, of the *Decretum*, and the *Decretals*, and he levied contributions from the canonist Tancred. . . . Bracton's debt — and therefore our debt — to the civilians is inestimably great. But for them, his book would have been impossible; but for them . . . we should have missed not only the splendid plan, the orderly arrangement, the keen dilemmas, but also the sacerdotal spirit of the work. On the other hand, the main matter of his treatise is genuine English law laboriously collected out of the plea rolls of the king's court. . . . [H]is endeavor is to state the practice, the best and most approved practice, of the king's court, and of any desire to romanize the law we must absolutely acquit him." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 206-09 (2d ed. 1898).

**Brady Act.** A federal law establishing a national system for quickly checking the background of a prospective handgun purchaser. • The formal

name of the law is the Brady Handgun Violence Prevention Act. The U.S. Supreme Court held unconstitutional the law's interim provision, which required chief state law-enforcement officers (usu. sheriffs) to conduct background checks until the national system was in place. The act is named for James Brady, a campaigner for gun-control laws who, as a member of President Ronald Reagan's staff, was wounded by gunfire during an attempted presidential assassination in 1981. 18 USCA §§ 921-930.

**Brady material.** Information or evidence that is favorable to a criminal defendant's case and that the prosecution has a duty to disclose. ● The prosecution's withholding of such information violates the defendant's due-process rights. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963). Cf. JENCKS MATERIAL.

**brain death.** See DEATH.

**brake.** See DUKE OF EXETER'S DAUGHTER.

**branch.** 1. An offshoot, lateral extension, or division of an institution <the executive, legislative, and judicial branches of government>. 2. A line of familial descent stemming from a common ancestor <the Taylor branch of the Bradshaw family>. — Also termed *stock*.

**Brandeis brief (bran-dis).** A brief, usu. an appellate brief, that makes use of social and economic studies in addition to legal principles and citations. ● The brief is named after Supreme Court Justice Louis D. Brandeis, who as an advocate filed the most famous such brief in *Muller v. Oregon*, 208 U.S. 412, 28 S.Ct. 324 (1908), in which he persuaded the Court to uphold a statute setting a maximum ten-hour workday for women.

**Brandeis rules.** See ASHWANDER RULES.

**branding.** 1. The act of marking cattle with a hot iron to identify their owner. 2. Formerly, the punishment of marking an offender with a hot iron.

**brand name.** See TRADENAME.

**branks (brangks).** *Hist.* An instrument used to punish scolds, consisting of an iron framework that surrounded the head and entered the mouth to keep the offender's tongue depressed. — Also termed *scolding bridle*. See SCOLD. Cf. CASTIGATORY; DUCKING STOOL.

**brassage (bras-ij).** *Hist.* A government charge for the actual cost of coining metals. ● Any profit is termed *seigniorage*. See SEIGNIORAGE (2).

**breach, n.** A violation or infraction of a law or obligation <breach of warranty> <breach of duty>. — **breach, vb.**

**breach of arrest.** A military offense committed by an officer who, being under arrest in quarters, leaves those quarters without a superior officer's authorization. See *arrest in quarters* under ARREST.

**breach of close.** The unlawful or unauthorized entry on another person's land; a common-law trespass. — Also termed *breaking a close*. See CLOSE.

**breach of contract.** Violation of a contractual obligation, either by failing to perform one's own promise or by interfering with another party's performance.

"A breach may be one by non-performance, or by repudiation, or by both. Every breach gives rise to a claim for damages, and may give rise to other remedies. Even if the injured party sustains no pecuniary loss or is unable to show such loss with sufficient certainty, he has at least a claim for nominal damages. If a court chooses to ignore a trifling departure, there is no breach and no claim arises." Restatement (Second) of Contracts § 236 cmt. a (1981).

**active breach of contract.** *Civil law.* The negligent performance of a contractual obligation, to the point of acting outside the contract's terms. ● Under Louisiana law, active breach of contract is contrasted with passive breach of contract, which is a failure to perform the obligations created by the contract. Unlike a passive breach, an active breach of contract may give rise to claims in contract and in tort. Cf. *passive breach of contract*.

**anticipatory breach.** A breach of contract caused by a party's anticipatory repudiation, i.e., unequivocally indicating that the party will not perform when performance is due. ● Under these circumstances, the nonbreaching party may elect to treat the repudiation as an immediate breach and sue for damages. — Also termed *constructive breach*. See REPUDIATION.

"A repudiation by one party may occur before the time for performance has arrived. Such a repudiation is called an anticipatory breach, and it gives the innocent party the option of treating the contract as terminated at once and suing for damages immediately if he chooses or, alternatively, of waiting until the time of performance has arrived, and then again calling on the other party to

perform. Should he choose the latter course he runs the risk that the contract may possibly become frustrated in the interim, in which case he will have lost his right to damages." P.S. Atiyah, *An Introduction to the Law of Contract* 298 (3d ed. 1981).

**continuing breach.** A breach of contract that endures for a considerable time or is repeated at short intervals.

**efficient breach.** An intentional breach of contract and payment of damages by a party who would incur greater economic loss by performing under the contract. See EFFICIENT-BREACH THEORY.

**immaterial breach.** See *partial breach*.

**immediate breach.** A breach that entitles the nonbreaching party to sue for damages immediately.

**material breach.** A substantial breach of contract, usu. excusing the aggrieved party from further performance and affording it the right to sue for damages.

"In determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing." Restatement (Second) of Contracts § 241 (1981).

**partial breach.** A breach of contract that is less significant than a material breach and that gives the aggrieved party a right to damages, but does not usu. excuse that party from performance. — Also termed *immaterial breach*.

**passive breach of contract.** *Civil law.* A failure to perform the requirements of a contract. • Under Louisiana law, passive breach of contract is contrasted with active breach of contract, which is negligence in performing a contractual obligation. While an active breach of contract may give rise to claims in contract and in tort, a passive breach of contract usu. does not give rise to a tort claim. Cf. *active breach of contract*.

**total breach.** A material breach of contract that gives rise to a claim for damages based on the injured party's remaining rights to performance under the contract.

**breach of covenant.** The violation of an express or implied promise, usu. in a contract, either to do or not to do an act. See COVENANT.

**breach of duty.** The violation of a legal or moral obligation; the failure to act as the law obligates one to act. See NEGLIGENCE.

**breach of peace.** See BREACH OF THE PEACE.

**breach of prison.** See PRISON BREACH.

**breach of promise.** The violation of one's word or undertaking, esp. a promise to marry. See HEARTBALM STATUTE.

**breach of the peace.** The criminal offense of creating a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or distracting noise. — Also termed *breach of peace*; *disturbing the peace*; *disturbance of the peace*. See DISORDERLY CONDUCT.

"A breach of the peace takes place when either an assault is committed on an individual or public alarm and excitement is caused. Mere annoyance or insult is not enough: thus at common law a householder could not give a man into custody for violently and persistently ringing his door-bell. It is the particular duty of a magistrate or police officer to preserve the peace unbroken; hence if he has reasonable cause to believe that a breach of the peace is imminent he may be justified in committing an assault or effecting an arrest." R.F.V. Heuston, *Salmond on the Law of Torts* 131 (17th ed. 1977).

"The beginning of our criminal justice ... was concerned very largely with the problem of keeping the peace. Because of this fact all early indictments included some such phrase as 'against the peace of the King'; and until recently statutory provisions for simplification, indictments in this country were thought to be incomplete without some such conclusion as 'against the peace and dignity of the state.' As a result of this history all indictable offenses are sometimes regarded as deeds which violate the public peace, and hence in a loose sense the term 'breach of the peace' is regarded as a synonym for crime." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 477 (3d ed. 1982).

**breach of trust.** A trustee's violation of either the trust's terms or the trustee's general fiduciary obligations; the violation of a duty that equity imposes on a trustee, whether the violation was willful, fraudulent, negligent, or inadvertent. • A breach of trust subjects the trustee to removal and creates personal liability.

**breach of warranty.** 1. A breach of an express or implied warranty relating to the title, quality, content, or condition of goods sold. UCC § 2-312. 2. *Insurance.* WARRANTY (3).

**bread acts.** *Hist.* Laws providing for the sustenance of persons kept in prison for debt. • These laws were formerly on the books in both England and the United States.

**break.** *vb.* **1.** To violate or disobey (a law) <to break the law>. **2.** To nullify (a will) by court proceeding <Samson, the disinherited son, successfully broke the will>. **3.** To escape from (a place of confinement) without permission <break out of prison>. **4.** To open (a door, gate, etc.) and step through illegally <he broke the close>.

**breakage.** **1.** An allowance given by a manufacturer to a buyer for goods damaged during transit or storage. **2.** Insignificant amounts of money retained by racetrack promoters from bets. • The retention of these small sums avoids the inconvenience of counting and paying out inconsequential winnings.

**breaking,** *n.* *Criminal law.* In the law of burglary, the act of entering a building without permission.

"[T]o constitute a breaking at common law, there had to be the creation of a breach or opening; a mere trespass at law was insufficient. If the occupant of the dwelling had created the opening, it was felt that he had not entitled himself to the protection of the law, as he had not properly secured his dwelling. . . . In the modern American criminal codes, only seldom is there a requirement of a breaking. This is not to suggest, however, that elimination of this requirement has left the 'entry' element unadorned, so that any type of entry will suffice. Rather, at least some of what was encompassed within the common law 'breaking' element is reflected by other terms describing what kind of entry is necessary. The most common statutory term is 'unlawfully,' but some jurisdictions use other language, such as 'unauthorized,' by 'trespass,' 'without authority,' 'without consent,' or 'without privilege.'" Wayne R. LaFare & Austin W. Scott, Jr., *Criminal Law* § 8.13, at 793-94 (2d ed. 1986).

**breaking a case.** **1.** The voicing by one appellate judge to another judge on the same panel of a tentative view on how a case should be decided. • These informal expressions assist the judges in ascertaining how close they are to agreement. **2.** The solving of a case by the police.

**breaking a close.** See BREACH OF CLOSE.

**breaking and entering.** See BURGLARY (2).

**breaking bulk,** *n.* **1.** The act of dividing a large shipment into smaller units. **2.** Larceny by a bailee, esp. a carrier, who opens containers, removes items from them, and converts the

items to personal use. — Also termed *breaking bale*. — **break bulk,** *vb.*

**breaking of entail.** See BARRING OF ENTAIL.

**breast of the court.** A judge's conscience, mind, or discretion. • This phrase is a loan translation (or calque) of the Latin phrase *in pectore judicis*. See IN PECTORE JUDICIS.

**Breathalyzer.** A device used to measure the blood alcohol content of a person's breath, esp. when the police suspect that the person was driving while intoxicated. • Breathalyzer test results are admissible as evidence if the test was properly administered. — Also termed *alcoholometer*; *drunkometer*; *intoxilyzer*; *intoximeter*. — **breathalyze,** *vb.* See BLOOD ALCOHOL CONTENT.

**breathing room.** *Slang.* The post-bankruptcy period during which a debtor may formulate a debt-repayment plan without harassment or interference by creditors.

**bredwite (bred-wət).** *Hist.* A penalty for not complying with regulations relating to the weight or quantity of bread.

**brehon (bree-hən).** *Hist.* In Ireland, a judge.

**Brehon law (bree-hən law).** *Hist.* The ancient system of law in Ireland at the time of its conquest by Henry II. • This law was formally abolished in 1366. — Sometimes spelled *Brehon Law*.

"[T]he Irish were governed by what they called the Brehon law, so stiled from the Irish name of judges, who were denominated Brehons. But king John in the twelfth year of his reign went into Ireland, and carried over with him many able sages of the law; and there by his letters patent, in right of the dominion of conquest, is said to have ordained and established that Ireland should be governed by the laws of England. . . . But to this ordinance many of the Irish were averse to conform, and still stuck to their Brehon law: so that both Henry the third and Edward the first were obliged to renew the injunction. . . . And yet, even in the reign of queen Elizabeth, the wild natives still kept and preserved their Brehon law. . . ." 1 William Blackstone, *Commentaries on the Laws of England* 100-01 (1765).

**B reorganization.** See REORGANIZATION (2).

**brephotrophi (bre-fah-trə-fi).** *Civil law.* Persons who manage institutions that receive and care for poor or abandoned children. • The word is Greek in origin and was used in late Roman law, but it first appeared in English in the 18th century.

**brethren** (**breth-rən**), *n. pl.* Brothers, esp. those considered spiritual kin (such as male colleagues on a court) <my brethren argue in the dissent that my statutory interpretation is faulty>. • The use of this collegial term has naturally dwindled as more women have entered law and esp. into the judiciary. Cf. SISTREN.

**Bretts and Scotts, Laws of the.** A system of laws used by the Celtic tribes of Scotland until the beginning of the 14th century, when Edward I of England abolished those laws.

**breve** (breev or bree-vee), *n.* [Law Latin] *Hist.* Writ. • The word *brevis* meant “short,” and *brevia* were short writs, unlike charters. Pl. **brevia** (bree-vee-ə).

**album breve** (al-bəm breev or bree-vee). A blank writ; a writ with a blank or omission in it.

**apertum breve** (ə-pər-təm breev or bree-vee). [Latin “open writ”] An open, unsealed writ. See *patent writ* under WRIT. Cf. CLAUSUM.

**breve de bono et malo** (breev or bree-vee dee boh-noh et mal-oh). See DE ODIIO ET ATIA.

**breve de conventionne** (breev or bree-vee dee kən-ven-shee-oh-nee). See WRIT OF COVENANT.

**breve de recto** (breev or bree-vee dee rek-toh). See DE RECTO.

**breve de transgressionne super casum** (breev or bree-vee dee trans-gres[h]-ee-oh-nee s[y]oo-pər kay-səm). See TRESPASS ON THE CASE.

**breve innominatum** (breev or bree-vee i-nom-ə-nay-təm). [Latin “innominate writ”] A writ that recites a cause of action only in general terms.

**breve magnum de recto** (breev or bree-vee mag-nəm dee rek-toh). See DE RECTO PATENS.

**breve perquirere** (breev or bree-vee pər-kwi-rə-ree). [Latin “to obtain a writ”] To purchase a writ or license of trial in the king’s courts.

**breve rebellionis.** See COMMISSION OF REBELLION.

**breve testatum** (breev or bree-vee tes-tay-təm). [Latin “a witnessed writ”] A written memorandum used to memorialize the terms of a conveyance and investiture of land. • Witnesses to the conveyance did not sign the document, but their names were recorded. *Brevia testata* were introduced to reduce disputes concerning the terms of oral grants.

**brevia amicabilia** (bree-vee-ə am-ə-kə-bil-ee-ə). [Latin “writs with agreement”] Writs obtained with the agreement or consent of the opposing party in an action.

**brevia anticipantia** (bree-vee-ə an-tis-ə-pan-shee-ə). [Latin “anticipatory writs”] Anticipatory or preventive writs. • Six were included in this category: writs of *mesne warrantia chartae*; *monstraverunt*; *audita querela*; *curia claudenda*; and *ne injuste vexes*. See QUIA TIMET.

**brevia formata** (bree-vee-ə for-may-tə). [Latin “writs of approved form”] Writs of established and approved form, issued as a matter of course. Cf. *brevia magistralia*.

**brevia judicialia** (bree-vee-ə joo-dish-ee-ay-lee-ə). [Latin “judicial writs”] Writs that issue during an action or afterward in aid of judgment. • A court issued such a writ after an original writ had issued out of Chancery. Cf. *brevia originale*.

**brevia magistralia** (bree-vee-ə maj-istray-lee-ə). [Latin “masters’ writs”] Writs issued by the masters or clerks of chancery according to the circumstances of particular cases. • These writs, unlike some others, might be varied in accordance with the complainant’s particular situation. Cf. *brevia formata*.

**brevia originale** (bree-vee-ə ə-rij-i-nay-lee). [Latin] Original writ. • This writ began a judicial action. Cf. *brevia judicialia*.

**brevia selecta** (bree-vee-ə sə-lek-tə). [Latin “selected writs”] Choice or selected writs or processes. — Abbr. *brev. sel.*

**brevet** (brə-vet or brev-it). **1. Military law.** A commission promoting an officer to a higher rank, esp. during wartime, but without a corresponding pay increase. **2. French law.** A privilege or warrant granted by the government to a private person, authorizing a special benefit or the exercise of an exclusive privilege. • For example, a *brevet d’invention* is a patent for an invention.

**brevet officer.** See OFFICER (2).

**brevia amicabilia.** See BREVE.

**brevia anticipantia.** See BREVE.

**brevia formata.** See BREVE.

**brevia judicialia.** See BREVE.

**brevia magistralia.** See BREVE.

*brevia originale.* See BREVE.

**Breviarium Alaricanum** (bree-vee-air-ee-əm al-ə-ri-kay-nəm). [Latin] An abridgment (or  *breviary*) of Roman law compiled by order of the Visigoth king Alaric II, published for the use of his Roman subjects in the year 506. ● The compilation was known before the 16th century as the *Lex Romana Visigothorum*. It was also termed the *Breviarium Aniani* after Alaric's chancellor, Anian, who edited and distributed the work. — Also termed *Breviary of Alaric* (bree-vee-er-ee əv al-ə-rik).

“Though the *Breviarium* was later replaced by the *Lex Visigothorum* in the Visigothic kingdom, it continued in use in southern France and Lombardy, which had meantime passed under the dominion of the Franks. Its qualities made the *Breviarium* a book of high authority throughout the whole of western Europe during the Middle Ages and it was one of the main channels through which Roman law entered western European law prior to the Reception.” David M. Walker, *The Oxford Companion to Law* 151–52 (1980).

*brevia selecta.* See BREVE.

**breviate** (bree-vee-ət). [Latin] *Hist.* An abstract of a writing; esp., a short statement attached to a Parliamentary bill summarizing the contents of the bill.

**brevia testata** (bree-vee-ə tes-tay-tə). [Latin] *Hist.* See *breve testatum* under BREVE.

**brevibus et rotulis liberandis** (bree-və-bəs et roch-ə-ləs lib-ər-an-dis). [Latin “breves and rolls to be freed”] *Hist.* A writ ordering a sheriff to turn over to a successor all paraphernalia of office.

*brev. sel.* See *brevia selecta* under BREVE.

**bribe, n.** A price, reward, gift, or favor bestowed or promised with a view to pervert the judgment of or influence the action of a person in a position of trust.

“The core concept of a bribe is an inducement improperly influencing the performance of a public function meant to be gratuitously exercised.” John T. Noonan, Jr., *Bribes* xi (1984).

**bribee.** One who receives a bribe. — Also termed *bribe-taker*.

**bribe-giver.** See BRIBER.

**briber.** One who offers a bribe. — Also termed *bribe-giver*.

**bribery, n.** The corrupt payment, receipt, or solicitation of a private favor for official action.

● Bribery is a felony in most jurisdictions. — **bribe, vb.**

“If money has been corruptly paid and corruptly received, for the purpose of influencing official action, do we have one crime of which two are guilty, or two different crimes? No uniform answer is possible under existing statutes. Under some of the provisions bribery is one offense and references to (1) giving or offering a bribe, or (2) to receiving or soliciting a bribe, are merely factual statements in regard to the guilt of one party or the other. Under another plan ‘bribery’ is employed as a generic term to cover two different offenses: (1) giving or offering a bribe, and (2) receiving or soliciting a bribe. A third plan uses the word ‘bribery’ to indicate the offense of the briber and ‘receiving a bribe’ for the other side of the transaction.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 537 (3d ed. 1982).

**commercial bribery.** Corrupt dealing with the agents or employees of prospective buyers to secure an advantage over business competitors.

**bribe-taker.** See BRIBEE.

**bribour** (bri-bər). [fr. French *bribeur*] *Hist.* A thief.

**bridge bank.** A national bank chartered to operate an insolvent bank for up to three years or until the bank is sold.

**bridge loan.** See LOAN.

**brief, n. 1.** A written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them. — Also termed *legal brief*.

**Anders brief.** See ANDERS BRIEF.

**Brandeis brief.** See BRANDEIS BRIEF.

**proof brief.** A preliminary appellate brief to be reviewed by the clerk of the court for compliance with applicable rules. ● Proof briefs are required by local rules of the U.S. Court of Appeals for the Sixth Circuit. A proof brief in full compliance will be accepted and filed. If not in compliance, it will be returned for corrections to be made, and a deadline will be set for refiling. After all proof briefs have been accepted in a case, a date is set for filing a final brief, which may be modified only to include joint-appendix references, repagination, or updated citations.

**reply brief.** A brief that responds to issues and arguments raised in the brief previously filed by one's opponent.

**2. English law.** A solicitor's document that abstracts the pleadings and facts to inform a barrister about the case. **3. ABSTRACT OF TITLE.** — **brief, vb.**

**brief-writing.** The art or practice of preparing legal briefs. — Also termed *brief-making*.

**brigandage (brig-ən-dij).** *Archaic.* Plundering and banditry carried out by bands of robbers. • Piracy is sometimes called "maritime brigandage."

**bright-line rule.** A judicial rule of decision that tends to resolve issues, esp. ambiguities, simply and straightforwardly, sometimes sacrificing equity for certainty.

**bring to book.** To arrest and try (an offender) <the fugitives were brought to book and convicted>.

**British subject.** The status conferred on a citizen of the United Kingdom and the Commonwealth countries such as Canada, Australia, New Zealand, and India by the British Nationality Act 1981. • Although this is the current sense, the phrase *British subject* has had many different meanings over the years, under different statutes.

**broad-form insurance.** See INSURANCE.

**broad-form policy.** See INSURANCE POLICY.

**broad interpretation.** See *liberal construction* under CONSTRUCTION (2).

**broadside objection.** See OBJECTION.

**brocard (brahk-ərd or broh-kərd).** An elementary legal principle or maxim, esp. one deriving from Roman law or ancient custom.

**brocarius (broh-kair-ee-əs).** [Law Latin] *Hist.* A broker; a middleman between buyer and seller.

**broker, n. 1.** An agent who acts as an intermediary or negotiator, esp. between prospective buyers and sellers; a person employed to make bargains and contracts between other persons in matters of trade, commerce, and navigation. • A broker differs from a factor because the broker usu. does not have possession of the property. Cf. FACTOR. **2. Securities.** A person engaged in the business of conducting securities transactions for the accounts of others. — **broker, vb.**

"The most important determining factor of what constitutes a 'broker' is whether the party is dealing for itself or for another. A broker may, by contract, have title to property pass through it (though usually it does not), and it may, by contract, collect from the consumer, but a broker does not deal on its account. Two preliminary requirements must be met for a finding that an individual is acting as a broker: (1) the person is acting for compensation; and (2) the person is acting on behalf of someone else." 12 Am. Jur. 2d *Brokers* § 1 (1997).

**broker-agent. 1.** A person who acts as an intermediary between parties to a transaction, and as a representative of one of them. **2.** A person licensed both as a broker and as an agent.

**broker-dealer.** A brokerage firm that engages in the business of trading securities for its own account (i.e., as a principal) before selling them to customers. • Such a firm is usu. registered with the SEC and with the state in which it does business. See DEALER (2).

"Since many broker-dealers maintain custody of funds and securities belonging to their customers, safeguards are required to assure that the customers can recover those funds and securities in the event the broker-dealer becomes insolvent. The three principal techniques that have been utilized are (a) financial responsibility standards for broker-dealers, (b) requirements for segregation of customers' funds and securities, and (c) maintenance of an industry-wide fund to satisfy the claims of customers whose brokerage firms become insolvent." David L. Ratner, *Securities Regulation in a Nutshell* 182-83 (4th ed. 1992).

**broker for sale.** A broker retained to sell something, but having neither possession of the goods nor any right of action in the broker's own name on contracts that the broker enters into.

**broker's broker.** A municipal securities broker or dealer that routinely effects transactions for the account of other brokers, dealers, and municipal securities dealers.

**commercial broker.** A broker who negotiates the sale of goods without having possession or control of the goods. Cf. FACTOR (2).

**commission broker.** A member of a stock or commodity exchange who executes buy and sell orders.

**customhouse broker.** A broker who prepares paperwork for the entry or clearance of ships, and for the import or export of goods. — Also termed *customs broker*.

**discount broker. 1.** A broker who discounts bills of exchange and promissory notes, and advances money on securities. **2.** A broker who executes buy and sell orders at commission rates lower than those of full-service brokers.

**government-securities interdealer broker.** A broker engaged exclusively in the business of transacting in government securities for parties that are themselves government brokers or dealers.

**institutional broker.** A broker who trades securities for institutional clients such as banks, mutual funds, pension funds, and insurance companies.

**insurance broker.** *Insurance.* A person who, for compensation, brings about or negotiates contracts of insurance as an agent for someone else, but not as an officer, salaried employee, or licensed agent of an insurance company. • The broker acts as an intermediary between the insured and the insurer. — Also termed *producer*.

“The term ‘insurance broker’ is often used to characterize an individual who is thought to act primarily on behalf of a purchaser in an insurance transaction. This delineation . . . is employed by some courts and writers even though almost all insurance brokers are actually compensated for their services through commissions that are paid by the insurers. Because brokers receive compensation from the insurer, it seems evident that a persuasive argument can be made for not treating a broker as an agent of the insurance purchaser.” Robert E. Keeton & Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* § 2.5, at 83-84 (1988).

**loan broker.** A person who is in the business of lending money, usu. to an individual, and taking as security an assignment of wages or a security interest in the debtor’s personal property.

**merchandise broker.** One who negotiates the sale of merchandise without possessing it. • A merchandise broker is an agent with very limited powers.

**money broker.** A broker who negotiates the lending or raising of money for others.

**mortgage broker.** An individual or organization that markets mortgage loans and brings lenders and borrowers together. • A mortgage broker does not originate or service mortgage loans.

**note broker.** A broker who negotiates the discount or sale of commercial paper.

**real-estate broker.** A broker who negotiates contracts of sale and other agreements (such as mortgages or leases) between buyers and sellers of real property. • Real-estate brokers must be licensed in the states where they conduct business.

**registered broker.** A broker registered or required to be registered under the Securities Exchange Act of 1934.

**responsible broker-dealer.** A broker-dealer who communicates bids or offers on the floor of a stock exchange at the designated location for trading in a reported security or who, in an off-exchange transaction, communicates the bid or offer as either a principal or an agent, for its own or another’s account. SEC Rule 11Ac1-1(a)(21) (17 CFR § 240.11Ac1-1(a)(21)).

**securities broker.** A broker employed to buy or sell securities for a customer, as opposed to a securities dealer, who trades as a principal before selling the securities to a customer. See DEALER (2).

**brokerage.** **1.** The business or office of a broker <a profitable stock brokerage>. **2.** A broker’s fee <collect the brokerage after the house sells>.

**brokerage contract.** An agency agreement employing a broker to make contracts in the name of and on behalf of the principal and for which the broker receives a commission.

**brokerage listing.** See LISTING (1).

**broker-agent.** See BROKER.

**broker call loan.** See *call loan* under LOAN.

**broker-dealer.** See BROKER.

**broker for sale.** See BROKER.

**broker’s broker.** See BROKER.

**brother.** A male having one parent or both parents the same as another person.

**consanguine brother** (kahn-sang-gwin). *Civil law.* A brother descended from the same father as another, but from a different mother.

**half brother.** See HALF BROTHER.

**uterine brother** (yoo-tər-in). *Civil law.* A brother descended from the same mother as another, but from a different father.

**brother-german.** See GERMAN.

**brother-in-law.** The brother of one’s spouse or the husband of one’s sister. • Additionally, the husband of one’s spouse’s sister is also sometimes considered a brother-in-law. Pl. *brothers-in-law*.



**brother-sister corporation.** See *sister corporation* under CORPORATION.

**Bruton error (broot-ən).** The violation of a criminal defendant's constitutional right of confrontation by admitting into evidence a non-testifying codefendant's confession that implicates a defendant who claims innocence. *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620 (1968).

**brutum fulmen (broo-təm fəl-men or -mən).** [Latin "inert thunder"] **1.** An empty noise; an empty threat; something ineffectual. **2.** A judgment void on its face; one that is, in legal effect, no judgment at all.

**Bryan treaties.** *Int'l law.* Any of 48 treaties designed to avert war by requiring the signatories to submit disputes of any kind to standing peace commissions. • The first of these treaties, named after Secretary of State William Jennings Bryan, was signed between the United States and Great Britain in 1914.

**b.s. abbr.** See *bancus superior* under BANCUS.

**BTA. abbr.** Board of Tax Appeals. See TAX COURT.

**bubble.** *Slang.* A dishonest or insubstantial business project, generally founded on a fictitious or exaggerated prospectus, designed to ensnare unwary investors.

**Bubble Act.** An English statute passed in 1720 to prevent corporate fraud.

**bucketing.** *Securities.* The illegal practice of receiving an order to buy or sell stock but not immediately performing the order. • The perpetrator profits by executing the order when the stock market goes down, but confirming the order to the customer at the original price.

**bucket shop.** *Securities.* An establishment that is nominally engaged in stock-exchange transactions or some similar business, but in fact engages in registering bets or wagers, usu. for small amounts, on the rise or fall of the prices of stocks and commodities. • A bucket shop uses the terms and outward forms of the exchanges, but differs from exchanges because there is no delivery of — and no expectation or intention to deliver or receive — the securities or commodities nominally exchanged.

**budget.** **1.** A statement of an organization's estimated revenues and expenses for a specified period, usu. a year. **2.** A sum of money allocated to a particular purpose or project.

**buffer-zone.** *Land-use planning.* An area of land separating two different zones or areas to help each blend more easily with the other, such as a strip of land between industrial and residential areas.

**buggery, n.** Sodomy or bestiality. — **bugger, vb.** — **bugger, n.** See SODOMY.

**bugging, n.** A form of electronic surveillance by which conversations may be electronically intercepted, overheard, and recorded, usu. covertly; eavesdropping by electronic means. See WIRETAPPING.

**building-and-loan association.** A quasi-public corporation that accumulates funds through member contributions and lends money to the members buying or building homes. Cf. SAVINGS-AND-LOAN ASSOCIATION.

**building codes.** Laws and regulations setting forth standards for the construction, maintenance, occupancy, use, or appearance of buildings and dwelling units. — Also termed (for dwelling units) *housing codes*.

**building lien.** See *mechanic's lien* under LIEN.

**building line.** A boundary drawn along a curb or the edge of a municipality's sidewalks to establish how far a building must be set away from the street to maintain a uniform appearance. • This is often referred to as a setback requirement.

**building loan.** See LOAN.

**building permit.** A license granted by a government agency (esp. a municipality) for the construction of a new building or a substantial alteration of an existing structure.

**building restrictions.** Regulations governing the type of structures that can be constructed on certain property. • The restrictions are usu. listed in zoning ordinances or restrictive covenants in deeds. Cf. BUILDING CODE; *restrictive covenant* under COVENANT (4).

**built-in obsolescence.** See *planned obsolescence* under OBSOLESCENCE.

**bulk**, *adj.* (Of goods) not divided into parts <a bulk shipment of grain>.

**bulk discount.** See *volume discount* under DISCOUNT.

**bulk mortgage.** See MORTGAGE.

**bulk sale.** A sale of a large quantity of inventory outside the ordinary course of the seller's business. • Bulk sales are regulated by Article 6 of the UCC, which is designed to prevent sellers from defrauding unsecured creditors by making these sales and then dissipating the sale proceeds. — Also termed *bulk transfer*.

**bulk transfer.** See BULK SALE.

**bull.** *Eccles. law.* **1.** A document issued by a Pope, so called from the leaden seal attached to it. **2.** A seal attached to an official document, esp. a papal edict.

**bullā** (buul-ə or bəl-ə). [Law Latin] A metal or wax papal seal or document.

**bulletin des lois** (buul-ə-tan day lwah). *French law.* The publication that provides official notice of the text and effective date of a law or decree.

**bullion** (buul-yən). An uncoined solid mass of gold or silver.

**bullion fund.** Public money used by a mint to purchase precious metals for coinage and to pay bullion depositors.

**bull market.** See MARKET.

**bullpen.** *Slang.* **1.** An area in a prison where inmates are kept in close confinement. **2.** A detention cell where prisoners are held until they are brought into court.

**bumbershoot insurance.** See INSURANCE.

**bum-marriage doctrine.** The principle that the marital-witness privilege may not be asserted by a partner in a marriage that is in fact moribund, though legally valid. See *marital privilege* (2) under PRIVILEGE (3).

**bumping.** **1.** Displacement of a junior employee's position by a senior employee. **2.** An airline-industry practice of denying seats to passengers because of overbooking.

**bunco.** A swindling game or scheme; any trick or ploy calculated to win a person's confidence in an attempt to deceive that person.

**bundle**, *vb.* To sell related products or services in one transaction at an all-inclusive price.

**bunkhouse rule.** The principle that an employee's injury suffered while living in an employer's housing is compensable even if the injury occurs during off-duty hours.

**burden**, *n.* **1.** A duty or responsibility <the seller's burden to insure the shipped goods>. **2.** Something that is oppressive <a burden on interstate commerce>. **3.** A restriction on the use or value of land; an encumbrance <the easement created a burden on the estate>. — **burden**, *vb.* — **burdensome**, *adj.*

**burden of allegation.** A party's duty to plead a matter for that matter to be heard in the lawsuit. — Also termed *burden of pleading*.

**burden of going forward with evidence.** See BURDEN OF PRODUCTION.

**burden of persuasion.** A party's duty to convince the fact-finder to view the facts in a way that favors that party. • In civil cases, the plaintiff's burden is usu. "by a preponderance of the evidence," while in criminal cases the prosecution's burden is "beyond a reasonable doubt." — Also termed *persuasion burden*; *risk of nonpersuasion*; *risk of jury doubt*. — Also loosely termed *burden of proof*.

**burden of pleading.** See BURDEN OF ALLEGATION.

**burden of production.** A party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a peremptory ruling such as a summary judgment or a directed verdict. — Also termed *burden of going forward with evidence*; *burden of producing evidence*; *production burden*; *degree of proof*.

**burden of proof.** **1.** A party's duty to prove a disputed assertion or charge. • The burden of proof includes both the *burden of persuasion* and the *burden of production*. — Also termed *onus probandi*. **2.** Loosely, BURDEN OF PERSUASION.

"In the past the term 'burden of proof' has been used in two different senses. (1) The burden of going forward with the evidence. The party having this burden must introduce some evidence if he wishes to get a certain

issue into the case. If he introduces enough evidence to require consideration of this issue, this burden has been met. (2) Burden of proof in the sense of carrying the risk of nonpersuasion. The one who has this burden stands to lose if his evidence fails to convince the jury — or the judge in a nonjury trial. The present trend is to use the term 'burden of proof' only with this second meaning . . . ." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 78 (3d ed. 1982).

"The expression 'burden of proof' is tricky because it has been used by courts and writers to mean various things. Strictly speaking, burden of proof denotes the duty of establishing by a fair preponderance of the evidence the truth of the operative facts upon which the issue at hand is made to turn by substantive law. Burden of proof is sometimes used in a secondary sense to mean the burden of going forward with the evidence. In this sense it is sometimes said that a party has the burden of countering with evidence a prima facie case made against that party." William D. Hawkland, *Uniform Commercial Code Series* § 2A-516:08 (1984).

**Bureau Veritas.** See VERITAS.

**Burford abstention.** See ABSTENTION.

**burgage-tenure** (bər-gij ten-yər). *Hist.* **1.** A type of socage tenure in which tenants paid annual rents to the lord of the borough. See SOCAGE. **2.** *Scots law.* The tenure by which a burgh held its land of the king, the service due being watching and warding. See WATCH AND WARD.

**burgator** (bər-gay-tər). *Hist.* A burglar; a person who breaks into a house or an enclosed space.

**burgess** (bər-jis). *Hist.* **1.** An inhabitant or free-man of a borough or town. **2.** A magistrate of a borough. **3.** A person entitled to vote at elections. **4.** A representative of a borough or town in Parliament.

"[Burgesses] are properly Men of Trade, or the Inhabitants of a Borow or Walled Town; yet we usually apply this name to the Magistrates of such a Town, as the Bailiff and *Burgesses of Leominster*. But we do now usually call those *Burgesses* who serve in Parliament, for any such Borow or Corporation." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

**burgh English** (børg ing-glish). See BOROUGH ENGLISH.

**burgh Engloys** (børg ing-gloiz). See BOROUGH ENGLISH.

**burglar, n.** One who commits burglary.

**burglarious** (bər-glair-ee-əs), *adj.* Of or relating to burglary <burglarious intent>. — **burglariously**, *adv.*

**burglarize, vb.** To commit a burglary <the defendant burglarized three houses>. — Also termed (esp. in BrE) *burgle*.

**burglary, n.** **1.** The common-law offense of breaking and entering another's dwelling at night with the intent to commit a felony. **2.** The modern statutory offense of breaking and entering any building — not just a dwelling, and not only at night — with the intent to commit a felony. • Some statutes make petit larceny an alternative to a felony for purposes of proving burglarious intent. — Also termed (in sense 2) *breaking and entering*; *statutory burglary*. Cf. ROBBERY.

**burglary tool.** (*often pl.*) An implement designed to assist a person in committing a burglary. • In many jurisdictions, it is illegal to possess such a tool if the possessor intends to commit a burglary.

**burgle.** See BURGLARIZE.

**burial insurance.** See INSURANCE.

**buried-facts doctrine.** *Securities.* The rule that a proxy-statement disclosure is inadequate if a reasonable shareholder could fail to understand the risks presented by facts scattered throughout the proxy. • In applying this rule, a court will consider a securities disclosure to be false and misleading if its overall significance is obscured because material information is buried in footnotes, appendixes, and the like.

**burking, n.** The crime of murdering someone, usu. by smothering, for the purpose of selling the corpse. • This term arose from the Scottish murder team of Burke and Hare, whose practice in 1828 of suffocating their victims while leaving few visible marks made the corpses more salable to medical schools. — **burke, vb.**

**burlaw.** See BYRLAW.

**burlaw court.** See BYRLAW COURT.

**bursting-bubble theory.** *Evidence.* The principle that a presumption disappears once the presumed facts have been contradicted by credible evidence.

**business.** A commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain.

**business agent.** 1. See *managing agent* under AGENT. 2. A labor-union representative selected to deal with employers.

**business associations.** See BUSINESS ENTERPRISES.

**business combination.** 1. The consolidation, for accounting purposes, of a corporation and one or more incorporated or unincorporated businesses. 2. The two entities considered as one entity for accounting purposes.

**business compulsion.** See *economic duress* under DURESS (1).

**business corporation.** See CORPORATION.

**business court.** See COURT.

**business cycle.** The recurrent expansion and contraction of economic activity.

**business day.** See DAY.

**business enterprises.** The field of law dealing with various forms of business, such as corporations, limited-liability companies, and partnerships. — Also termed *business entities*; *business associations*.

**business entry.** A writing admissible under the business-records exception. See BUSINESS-RECORDS EXCEPTION.

**business-entry rule.** See BUSINESS-RECORDS EXCEPTION.

**business expense.** See EXPENSE.

**business gain.** See GAIN (2), (3).

**business guest.** See GUEST.

**business homestead.** See HOMESTEAD.

**business-interruption insurance.** See INSURANCE.

**business invitee.** See INVITEE.

**business-judgment rule.** *Corporations.* The presumption that in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest. ● The rule shields directors and officers from liability for unprofitable or harmful corporate transactions if the transactions were made in good faith, with due care, and within the directors' or officers' authority.

"The business judgment rule is a presumption protecting conduct by directors that can be attributed to any rational business purpose. In order to plead and prove a claim, a plaintiff must plead and prove facts overcoming this presumption. Where the presumption is overcome, directors bear the burden of proving the fairness of the challenged conduct. The difference between these two levels of judicial scrutiny — a presumption in favor of directors that protects conduct that is rational, versus a burden of proving fairness — frequently is outcome determinative." 1 Dennis J. Block et al., *The Business Judgment Rule* 18-19 (5th ed. 1998).

**business loss.** See *ordinary loss* under LOSS.

**business plan.** A written proposal explaining a new business or business idea and usu. covering financial, marketing, and operational plans.

**business-purpose doctrine.** *Tax.* The principle that a transaction must serve a bona fide business purpose (i.e., not just for tax avoidance) to qualify for beneficial tax treatment.

**business record.** A report, memorandum, or other record made usu. in the ordinary course of business. ● It may be ordered produced as part of discovery in a lawsuit.

**business-records exception.** *Evidence.* A hearsay exception allowing business records (such as reports or memoranda) to be admitted into evidence if they were prepared in the ordinary course of business. Fed. R. Evid. 803(6). — Also termed *business-entry rule*.

**business-risk exclusion.** See EXCLUSION (3).

**business trust.** See TRUST.

**bust-up merger.** See MERGER.

**but-for cause.** See CAUSE (1).

**but-for test.** *Tort & criminal law.* The doctrine that causation exists only when the result would not have occurred without the party's

conduct. — Also termed (in criminal law) *had-not test*. See *but-for cause* under CAUSE (1).

**butlerage.** *Hist.* A duty on wine imported into England, payable to the royal butler. Cf. PRI-SAGE.

**but see.** See SED VIDE.

**buttals** (*bət-əlz*). *Archaic.* See ABUTTALS.

**butts and bounds.** See METES AND BOUNDS.

**buy.** See PURCHASE (1).

**buy-and-sell agreement.** See BUY-SELL AGREEMENT.

**buy-down,** *n.* Money paid by the buyer of a house to reduce the mortgage-interest payments.

**buyer.** One who makes a purchase. See PURCHASER.

**buyer in ordinary course of business.** A person who — in good faith and without knowledge that the sale violates a third party's ownership rights or security interest in the goods — buys from a person regularly engaged in the business of selling goods of that kind. • Pawnbrokers are excluded from the definition. UCC § 1-201(9).

**qualified institutional buyer.** *Securities.* An institution with more than \$100 million in invested assets.

**buyer's market.** See MARKET.

**buying in,** *n.* The purchase of property by the original owner or an interested party at an auction or foreclosure sale. — **buy in,** *vb.*

**buying on margin.** See MARGIN TRANSACTION.

**buying syndicate.** See SYNDICATE.

**buy order.** See ORDER (4).

**buyout,** *n.* The purchase of all or a controlling percentage of the assets or shares of a business. — **buy out,** *vb.* Cf. MERGER (7).

**leveraged buyout.** The purchase of a publicly held corporation's outstanding stock by its management or outside investors, financed mainly with funds borrowed from investment bankers or brokers and usu. secured by the corporation's assets. — Abbr. LBO.

**management buyout.** **1.** A buyout of a corporation by its own directors and officers. **2.**

A leveraged buyout of a corporation by an outside entity in which the corporation's management has a material financial interest. — Abbr. MBO. See GOING PRIVATE.

**buy-sell agreement.** **1.** An arrangement between owners of a business by which the surviving owners agree to purchase the interest of a withdrawing or deceased owner. Cf. CONTINUATION AGREEMENT. **2. Corporations.** A share-transfer restriction that commits the shareholder to sell, and the corporation or other shareholders to buy, the shareholder's shares at a fixed price when a specified event occurs. — Also termed *buy-and-sell agreement*. Cf. OPTION AGREEMENT.

**BW.** *abbr.* BID WANTED.

**by-bidder.** At an auction, a person employed by the seller to bid on property for the sole purpose of stimulating bidding by potential genuine buyers. — Also termed *puffer*.

**by-bidding.** The illegal practice of employing a person to bid at an auction for the sole purpose of stimulating bidding on the seller's property. — Also termed *puffing*. Cf. BIDDING UP.

**by God and my country.** *Hist.* A customary reply for a criminal defendant when asked at arraignment, "Culprit, how wilt thou be tried?"

**bylaw.** **1.** A rule or administrative provision adopted by an association or corporation for its internal governance. • Corporate bylaws are usu. enacted apart from the articles of incorporation. — Also termed *regulation*. **2. ORDINANCE.** — Sometimes spelled *by-law*; *byelaw*. See ARTICLES OF INCORPORATION.

**bylaw man.** *Hist.* One of the chief men of a town, usu. appointed for some purpose under the town's corporate bylaws.

**by operation of law.** See OPERATION OF LAW.

**bypass trust.** See TRUST.

**byrlaw** (*bir-law*). *Hist. Scots law.* A law made by the members of a local community. — Also spelled *burlaw*.

**byrlaw court.** *Hist. Scots law.* A community assembly that judged minor disputes arising in the community. — Also spelled *burlaw court*.

**bystander.** One who is present when an event takes place, but who does not become directly involved in it.