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**c. abbr.** 1. CIRCA. 2. COPYRIGHT.

**ca. abbr.** CIRCA.

**cabal** (kə-bal or kə-bahl). A small group of political schemers or conspirators. • The term is sometimes said to have originated as an acronym from a committee of five ministers of Charles II, whose surnames began with C, A, B, A, and L (Clifford, Arlington, Buckingham, Ashley, and Lauderdale). Though colorful, this etymology is false: the term came into English directly from the French *cabale* “intrigue,” which derives ultimately from Hebrew *qabbalah* “received lore.”

**cabala** (kab-ə-lə or kə-bahl-ə). An esoteric or obscure doctrine.

**caballeria** (kah-bah-ye-ree-ah). [Spanish] *Spanish law*. An allotment of land in regions formerly conquered by Spain, such as Mexico and the southwestern United States. • Originally a Spanish feudal tenure held by a soldier, a *caballeria* eventually came to refer to an area of land. It usu. measures 100 by 200 feet in the United States, and between 30 and 200 acres in Mexico and other former Spanish territories.

**cabinet.** (*often cap.*) The advisory council to an executive officer, esp. the President. • The President’s cabinet is a creation of custom and tradition, dating back to the term of George Washington. The U.S. Constitution alludes to a group of presidential advisers — the President “may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices” (art. II, § 2, cl. 1) — but the term *cabinet* is not specifically mentioned. The cabinet today comprises the heads of the 14 executive departments: the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, and the Secre-

tary of Veterans Affairs. Other officials, such as the U.S. ambassador to the United Nations and the director of the Office of Management and the Budget, have been accorded cabinet rank.

**inner cabinet.** The heads of the departments of State, Treasury, Defense, and Justice. • This group is so called because in most administrations they tend to be closer to the President and more influential than the rest of the cabinet (the *outer cabinet*).

**kitchen cabinet.** An unofficial and informal body of noncabinet advisers who often have more sway with the executive than the real cabinet does. • This term was first used derivatively in reference to some of President Andrew Jackson’s advisers, who, because of their reputation for unpolished manners, were supposedly not important enough to meet in the formal rooms of the White House.

“The term [*kitchen cabinet*] began to lose its sting after Jackson’s time. But because most Presidents do have circles of personal friends, the idea remains. Theodore Roosevelt had his ‘tennis cabinet.’ Jonathan Daniels referred to Warren Harding’s ‘poker cabinet.’ Herbert Hoover had an exercise-loving ‘medicine ball cabinet.’ Even governors can play the game. In writing of New York’s Alfred Smith, Ed Flynn mentions the ‘golfing cabinet.’” William Safire, *Safire’s New Political Dictionary* 389 (1993).

**cabotage** (kab-ə-tij). *Int’l law*. 1. The carrying on of trade along a country’s coast; the transport of goods or passengers from one port or place to another in the same country. • The privilege to carry on this trade is usu. limited to vessels flying the flag of that country. 2. The privilege of carrying traffic between two ports in the same country. 3. The right of a foreign airline to carry passengers and cargo between airports in the same country.

“*Cabotage* meant originally navigation and trade along the same stretch of coast between the parts thereof, such coast belonging to one and the same State. However, the term *cabotage* or coasting trade as used in commercial treaties comprises now sea trade between any two parts of the same country, whether on the same coasts or different coasts, provided always that the different coasts are all of them the coasts of one and the same country as a political and geographical unit in contra-distinction to the coasts of colonies or dominions of such countries.” 1 F.L. Oppenheim, *International Law* 493 (Hersch Lauter ed., 8th ed. 1955).

"Some writers maintain [that *cabotage*] should be applied only to maritime navigation; in this context one can distinguish between petit cabotage — transport between ports situated on the same sea (e.g. Bordeaux–Le Havre) — and grand cabotage — transport between ports situated on different seas (e.g. Bordeaux–Marseille). However, the term is also properly applied to transport between two inland points on an international river within one State, although the term grand cabotage is sometimes incorrectly applied to transnational transport between the inland ports of different riparian States on the same waterway. River cabotage properly so called is sometimes also referred to as local transport. Finally, the term has also been adopted to describe commercial air transport between airports situated in the same State." Robert C. Lane, "Cabotage," in 1 *Encyclopedia of Public International Law* 519–20 (1992).

**ca'canny strike.** See STRIKE.

**cacicazgos** (kah-see-kahs-gohs). Land held in entail by *caciques* (leaders of Indian villages) and their descendants in Spanish America.

**cadastre** (kə-das-tər). A survey and valuation of real estate in a county or region compiled for tax purposes. — Also spelled *cadaster*.

**cadena** (kə-deen-ə). [Spanish "chain"] *Spanish law*. Imprisonment; formerly, confinement at hard labor while chained from waist to ankle.

**cadena perpetua.** Life imprisonment.

**cadena temporal.** Imprisonment for a term less than life.

**cadere** (kad-ə-ree). [Latin "to fail"] *Hist.* **1.** To end, cease, or fail. • This term usu. refers to the failure of a writ action. *Cadit breve*, for example, means "the writ fails." **2.** To be changed or turned into. • *Cadit assisa in juratum* means "the assise is changed into a jury."

**caduca** (kə-d[y]oo-kə). [Latin "fallen things"] **1.** *Civil law*. Inheritable property; property descending to an heir. **2.** *Roman law*. Property formerly belonging to an intestate owner who has died without heirs or to someone who has suffered forfeiture for crime. • The property escheated to the state. See ESCHEAT. **3.** *Roman law*. Testamentary gifts that lapse. See LAPSE.

**caducary** (kə-d[y]oo-kə-ree). (Of a bequest or estate) subject to, relating to, or by way of escheat, lapse, or forfeiture of property <the statute was intended to waive the rights of the caducary heirs>.

**caduce** (kə-d[y]oos), *vb.* To take by escheat or lapse <the government caduced the unclaimed mineral royalties>.

**caducity** (kə-d[y]oo-sə-tee), *n.* The lapse of a testamentary gift <the testator failed to provide a contingency for the caducity of the legacy>.

**caeteris paribus.** See CETERIS PARIBUS.

**caeteris tacentibus.** See CETERIS TACENTIBUS.

**caeterorum administration.** See ADMINISTRATION.

**c.a.f.** Cost, assurance, and freight. • This term is synonymous with C.I.F.

"[I]n a French contract the term 'C.A.F.' does not mean 'Cost and Freight' but has exactly the same meaning as the term 'C.I.F.', since it is merely the French equivalent of that term. The 'A' does not stand for 'and' but for 'assurance,' which means insurance." William D. Hawkland, *Uniform Commercial Code Series* § 2-320 (1984).

**cafeteria plan.** An employee fringe-benefit plan allowing a choice of basic benefits up to a certain dollar amount.

**cahoots** (kə-hoots). *Slang*. Partnership, esp. in an illegal act; collusion <the lawyer was in cahoots with her client>.

**Cairns's Act** (kairn-zəz). *Hist.* An 1858 statute that expanded the relief available in England's chancery courts to include monetary damages in addition to injunctive relief. • Cairns's Act was superseded by the Judicature Acts of 1873–1875. — Also spelled *Cairns' Act*. Cf. JUDICATURE ACTS.

**Calandra rule** (kə-lan-drə). The doctrine that a grand-jury witness may be compelled to answer questions about certain items, even though the items were obtained by the police illegally. *United States v. Calandra*, 414 U.S. 338, 94 S.Ct. 613 (1974).

**calendar**, *n.* **1.** A systematized ordering of time into years, months, weeks, and days; esp., the Gregorian calendar established by Pope Gregory XIII in 1582 and adopted in Great Britain in 1752. • The Gregorian calendar is used throughout the Western world.

**Gregorian calendar.** See NEW STYLE.

**Julian calendar.** See OLD STYLE.

**2.** A court's list of civil or criminal cases.

**court calendar.** See COURT CALENDAR.

**special calendar.** A calendar marked with court cases that have been specially set for

hearing or trial. See *special setting* under SETTING.

**3.** A list of bills reported out of a legislative committee for consideration by the entire legislature.

**calendar, vb.** **1.** To place an important event on a calendar, esp. so that the event will be remembered. **2.** To place a case on a calendar.

**calendar call.** A court session in which the judge calls each case awaiting trial, determines its status, and assigns a trial date.

**calendar day.** See DAY.

**calendar month.** See MONTH.

**calendar motion.** See MOTION.

**calendar year.** See YEAR.

**calends (kal-əndz).** *Roman law.* In the ancient Roman calendar, the first day of the month. — Also spelled *kalends*. Cf. NONES.

**call, n.** **1.** A request or command to come or assemble; an invitation or summons. **2.** A demand for payment of money.

**margin call.** A securities broker's demand that a customer put up money or stock as collateral when the broker finances a purchase of securities. ● A margin call usu. occurs when the market prices of the securities are falling. — Also termed *maintenance call*.

**3.** See *call option* under OPTION. **4.** A demand for the presentation of a security (esp. a bond) for redemption before the maturity date. **5.** A landmark designating a property boundary. ● The landmarks are chosen by the surveyor and recorded in his field notes or in the accompanying deed. See METES AND BOUNDS.

**call, vb.** **1.** To summon. **2.** To demand payment of money. **3.** To redeem (a bond) before maturity.

**callable, adj.** (Of a security) redeemable by the issuing corporation before maturity. See REDEMPTION.

**callable bond.** See *redeemable bond* under BOND (3).

**callable preferred stock.** See STOCK.

**callable security.** See *redeemable security* under SECURITY.

**called meeting.** See *special meeting* under MEETING.

**call equivalent position.** *Securities.* A security position that increases in value as the value of the underlying equity increases. ● It includes a long convertible security, a long call option, and a short put option. SEC Rule 16a-1(b) (17 CFR § 240.16a-1(b)).

**calling to the bar.** See CALL TO THE BAR.

**call loan.** See LOAN.

**call option.** See OPTION.

**call patent.** See PATENT (2).

**call premium.** The percentage amount of a bond's face value that a company pays, along with the face value, to redeem a callable bond; the difference between a bond's call price and its par value.

**call price.** See PRICE.

**call-protection clause.** A clause in a bond issue or a callable preferred stock issue prohibiting the issuer from recalling the security during a specified period.

**call to the bar, n.** The admission of a person to practice law. ● This common phrase is a loan translation of the Latin *ad barram evocatus* ("called to the bar"). See AD BARRAM EVOCATUS. — Also termed *calling to the bar*.

**calumniae iudicium** (kə-ləm-nee-ee joo-dish-ee-əm). [Latin "action for vexation"] *Roman law.* A countersuit that a defendant maliciously sued could bring after winning a judgment in the principal action. — Also spelled *calumniae iudicium*.

**calumniae iusjurandum** (kə-ləm-nee-ee jəs-jə-ran-dəm). [Law Latin "oath of calumny"] *Roman law.* An oath given by a litigant that he is not suing or defending vexatiously.

**calumniate** (kə-ləm-nee-ayt), *vb.* To slander or make false charges against.

**calumny (kal-əm-nee), n.** *Archaic.* **1.** The act of maliciously misrepresenting someone's words or actions in a way that is calculated to injure

that person's reputation. **2.** A false charge or imputation. — **calumnious** (kə-ləm-nee-əs), *adj.* — **calumniator** (kə-ləm-nee-ay-tər), *n.*

**Calvin's case.** The decision establishing that persons born in Scotland after the 1603 accession of James I to the English throne were deemed natural-born subjects of the King of England and could inherit English land. *Calvin v. Smith*, 7 Eng. Rep. 1, 2 S.T. 559 (1608).

**Calvo clause** (kahl-voh). A contractual clause by which an alien waives his right to invoke diplomatic immunity. • Such a clause typically appears in a contract between a national government and an alien.

**Calvo doctrine.** *Int'l law.* The rule that resident aliens have the same rights to protection as citizens, but no more. • This doctrine, which establishes a minimum international standard for the treatment of aliens, was developed by the Argentinian jurist Carlos Calvo in his treatise *Le droit international théorique et pratique* (5th ed. 1896). The doctrine is intended to prevent aliens from abusing their right of diplomatic protection.

**cambiale jus** (kam-bee-ay-lee jəs). [Latin "law of exchange"] The law of commercial exchange.

**cambiator** (kam-bee-ay-tər). *Hist.* An exchanger, usu. of money (*cambiatores monetae*).

**cambist** (kam-bist). [fr. Latin *cambiare* "to exchange"] A broker whose trades are promissory notes or bills of exchange. — Also termed *cambiator*.

**cambium** (kam-bee-əm). [Law Latin "exchange"] *Hist.* **1.** An exchange of money, debt, or land.

**cambium locale.** A contract of exchange in which a person agrees to pay a sum of money at one location in consideration of money received at another location. — Also termed *cambium mercantile*; *cambium trajectitium*.

**cambium reale.** An exchange of land. — Also termed *cambium manuale*.

**2.** A mercantile contract in which the parties agree to exchange money for money; a bill of exchange. — Also termed *escambium*.

**camera** (kam-ə-rə). [Latin] Chamber; room. See IN CAMERA.

**camera regis** (kam-ə-rə ree-jis). [Latin "chambers of the king"] *Hist.* A locale that the king takes a particular interest in, usu. expressed as a royal privilege benefiting a city.

**camerarius** (kam-ə-rair-ee-əs). [fr. Latin *camera* "chamber"] *Hist.* **1.** A chamberlain or other treasurer in charge of public money. **2.** BAILIFF.

**Camera Stellata** (kam-ə-rə stə-lay-tə). [Law Latin] See STAR CHAMBER, COURT OF.

**campers.** *Hist.* The share of a lawsuit's proceeds payable to a champertor. See CHAMPERTY.

**campipartitio** (kam-pə-pahr-tish-ee-oh). [Law Latin] See CHAMPERTY.

**can, vb.** **1.** To be able to do something <you can lift 500 pounds>. **2.** To have permission (as often interpreted by courts); MAY <no appeal can be filed until the filing fee is paid>.

**cancel, vb.** **1.** To destroy a written instrument by defacing or obliterating it <she canceled her will by marking through it>. **2.** To terminate a promise, obligation, or right <the parties canceled the contract>.

**canceled check.** See CHECK.

**cancellaria** (kan-sə-lair-ee-ə). [Law Latin] See CHANCERY (1). — Also termed *curia cancellaria*.

**cancellarius** (kan-sə-lair-ee-əs). [Law Latin] **1.** A chancellor, scrivener, or notary. **2.** See *Lord High Chancellor* under CHANCELLOR.

**cancellation, n.** **1.** The act of defacing or obliterating a writing (as by marking lines across it), thereby rendering it void. **2.** An annulment or termination of a promise or an obligation.

**flat cancellation.** The cancellation of an insurance policy without any charge to the insured.

**3.** An equitable remedy by which courts call in and annul outstanding void or rescinded instruments because they may either spawn vexatious litigation or cloud someone's title to property. — **cancel, vb.** — **cancelable, adj.**

**cancellation clause.** A contractual provision allowing one or both parties to annul their obligations under certain conditions.

**cancellatura.** *Hist.* See CANCELLATION.

**cancelled check.** See CHECK.

**cancelli** (kan-sel-I). [Latin "lattice, grille"] *Archaic*. **1.** Lines drawn on a writing, esp. a will, indicating its revocation. See CANCELLATION (1). **2. Hist.** The rails or latticework enclosing the bar of a court.

**C & F.** *abbr.* COST AND FREIGHT. — Also spelled *CandF*.

**canfara** (kan-fə-rə). [Law Latin] *Hist.* A trial by hot iron, formerly used in England. See *ordeal by fire* under ORDEAL.

**canon** (kan-ən), *n.* **1.** A rule or principle, esp. one accepted as fundamental.

**canon of construction.** A rule used in construing legal instruments, esp. contracts and statutes. • Although a few states have codified the canons of construction — examples of which are *contra proferentem* and *ejusdem generis* — most jurisdictions treat the canons as mere customs not having the force of law. — Often shortened to *canon*. — Also termed *rule of construction*; *rule of interpretation*.

"A frequent criticism of the canons [of construction], made forcefully by Professor Llewellyn many years ago, is that for every canon one might bring to bear on a point there is an equal and opposite canon. This is an exaggeration; but what is true is that there is a canon to support every possible result." Richard A. Posner, *The Federal Courts: Crisis and Reform* 276 (1985).

**canon of descent.** (*usu. pl.*) A common-law rule governing intestate succession. • In England, canons of descent tended to concentrate landholdings in the hands of a few people, an approach generally rejected in the United States. — Also termed *canon of inheritance*.

"The common-law canons of descent tended to prevent the diffusion of landed property, and to promote its accumulation in the hands of a few. The principles sprang from the martial genius of the feudal system. In the United States the English common law of descents, in its essential features, has been rejected; each State has established a law for itself." William C. Anderson, *A Dictionary of Law* 349 (1889).

**2.** (*usu. cap.*) A maxim stating in general terms the standards of professional conduct expected of lawyers. • The Model Code of Judicial Conduct (1990) contains five canons and hundreds of specific rules. **3.** A rule of ecclesiastical law. **4.** A corpus of writings. **5.** A clergy member on the staff of a cathedral.

**honorary canon.** A canon who serves without pay or other benefits.

**6.** A fixed regular payment or tribute made as a contribution payable to the church.

**canonical** (kə-non-ə-kəl), *adj.* **1.** (Of a rule or decree) prescribed by, in conformity with, or relating to canon law. **2.** Orthodox; conforming to accepted rules or conventions.

**canonical disability.** A canonical impediment (*usu. impotence*). See CANONICAL IMPEDIMENT.

**canonical impediment.** A condition rendering a marriage subject to annulment. • The canonical impediments are consanguinity, affinity, and impotence.

**canonical law.** See CANON LAW.

**canonical purgation.** See PURGATION.

**canonist** (kan-ən-ist), *n.* An expert in canon law; esp., a canon lawyer or professor.

**canon law.** **1.** A body of Roman ecclesiastical law that was not compiled until the 12th to 14th centuries. • It has grown steadily since that time, and is now codified in the *Codex Juris Canonici* of 1983, replacing that of 1918. — Also termed *corpus juris canonici*; *papal law*; *jus canonicum*. **2.** A body of law developed within a particular religious tradition. — Also termed *church law*; *canonical law*. Cf. ECCLESIASTICAL LAW.

"The indirect contributions of the canon law to the development of English law were as great as, and the direct contributions far greater than, those made by the civil law. Indirectly the canon lawyers gave much even to the purely secular law of England, because, during the early Middle Ages, most of the judges or the royal courts were ecclesiastics acquainted with the chief doctrines of canon law. . . . The direct influence of the canon law in England resulted from its being the law which was administered in the courts of the Church." W.J.V. Windeyer, *Lectures on Legal History* 41 (2d ed. 1949).

**canon of construction.** See CANON (1).

**canon of descent.** See CANON (1).

**canon of inheritance.** See *canon of descent* under CANON (1).

**cant** (kant). *Civil law.* A method of dividing commonly held property by awarding it to the highest-bidding owner on condition that the successful bidder must buy out each coowner's interest. — Also termed *licitation*.

**cantred** (kan-tred). [fr. Welsh *cant* "hundred" + *tref* "village"] See HUNDRED.

**canum** (kay-nəm). [Law Latin] *Hist.* A duty or tribute payable from a tenant to a lord, usu. consisting of produce from the land.

**canvass**, *vb.* **1.** To examine in detail; scrutinize <that issue has been repeatedly canvassed by our state's courts>. **2.** To solicit political support from voters or a voting district; to take stock of public opinion <the candidate is actively canvassing the Western states>. — **canvass**, *n.*

**cap**, *n.* An upper limit, such as a statutory limit on the recovery in a tort action or on the interest a bank can charge. — **cap**, *vb.*

**capacitate** (kə-pas-ə-tayt), *vb.* To qualify; to make legally competent. — **capacitation** (kə-pas-ə-tay-shən), *n.*

**capacity**. **1.** The role in which one performs an act <in her corporate capacity>.

**proprietary capacity.** The capacity of a city or town when it engages in a business-like venture rather than a governmental function. See PROPRIETARY FUNCTION.

**2.** A legal qualification, such as legal age, that determines one's ability to sue or be sued, to enter into a binding contract, and the like <she had full capacity to bind the corporation with her signature>. • Unless necessary to show the court's jurisdiction, a plaintiff's pleadings need not assert the legal capacity of any party. A party wishing to raise the issue of capacity must do so by specific negative pleading. Fed. R. Civ. P. 9(a). — Also termed (specif.) *capacity to sue*. See STANDING. **3.** The mental ability to understand the nature and effect of one's acts <his acute pain reduced his capacity to understand the hospital's admission form>. — Also termed *mental capacity*. See COMPETENCY.

**criminal capacity.** The mental ability that a person must possess to be held accountable for a crime; the ability to understand right from wrong. See INSANITY; INFANCY.

**diminished capacity.** An impaired mental condition — short of insanity — that is caused by intoxication, trauma, or disease and that prevents the person from having the mental state necessary to be held responsible for a crime. • In some jurisdictions, a defendant's diminished capacity can be used to determine the degree of the offense or the

severity of the punishment. — Also termed *diminished responsibility*. Cf. INSANITY.

**testamentary capacity.** The mental ability a person must have to prepare a valid will. • This capacity is often described as the ability to recognize the natural objects of one's bounty, the nature and extent of one's estate, and the fact that one is making a plan to dispose of the estate after death. — Also termed *disposing capacity*.

**capacity defense.** See DEFENSE (1).

**capacity to sue.** See CAPACITY (2).

**capax doli** (kay-paks doh-li). See DOLI CAPAX.

**capax negotii** (kay-paks ni-goh-shee-i), *adj.* [Latin "capable of entering into a transaction"] (Of a person) having capacity to enter into a contract; capable of transacting business.

**cape** (kay-pee). *Hist.* [Latin "take"] A writ filed to recover possession of land.

**cape magnum** (kay-pee mag-nəm). [Latin "grand" cape] A writ granting possession of land before a tenant's appearance in the action. — Also termed *grand cape*.

**cape parvum** (kay-pee pahr-vəm). [Latin "little" cape] A writ for the recovery of land issuing after the appearance of the tenant in the action. — Also termed *petit cape*.

"Cape is a writ judicial touching plea of land or tenements, so termed (as most writs be) of that word in itself, which carrieth the especiallest intention or end thereof. And this writ is divided in (*Cape magnum*, & *Cape parvum*;) both which . . . take hold of things immoveable, and seeme to differ betweene themselves in these points. First, because (*cape magnum*) or the (*grand Cape*) lyeth before appearance, and (*Cape parvum*) afterward. Secondly, the (*Cape magnum*) summoneth the tenent to answer to the default, and over to the demandant: (*Cape parvum*) summoneth the tenent to answer to the default onely: and therefore is called (*Cape parvum*) or in French English (*petit Cape*)." John Cowell, *The Interpreter* (1607).

**capias** (kay-pee-əs or kap-ee-əs). [Latin "that you take"] Any of various types of writs that require an officer to take a named defendant into custody. — Also termed *writ of capias*; *body execution*.

**capias ad audiendum judicium** (ad aw-dee-en-dəm joo-dish-ee-əm). [Latin "that you take to hear the judgment"] In a misdemeanor case, a writ issued to bring the defendant to hear the judgment to be imposed after having failed to appear.

**capias ad computandum** (ad kom-pyoo-tan-dəm). [Latin “that you take for computation”] *Hist.* A writ issued when a debtor has failed to appear and make account after losing in an action of account render. See ACCOUNTING (3).

**capias ad respondendum** (ad ree-spon-den-dəm). [Latin “that you take to answer”] A writ commanding the sheriff to take the defendant into custody to ensure that the defendant will appear in court. — Abbr. *ca. resp.*

**capias ad satisfaciendum** (ad sat-is-fay-shee-en-dəm). [Latin “that you take to satisfy”] *Hist.* A postjudgment writ commanding the sheriff to imprison the defendant until the judgment is satisfied. — Abbr. *ca. sa.*

**capias extendi facias** (ek-sten-di fay-shee-əs). [Latin “take for extending”] *Hist.* A writ of execution issued against one who is indebted to the Crown, commanding the sheriff to arrest the debtor.

**capias in withernam** (kay-pee-əs in with-ər-nahm). [Law Latin “taking again”] A writ authorizing the sheriff to seize the goods or cattle of a wrongful distrainor. See WITHERNAM.

**capias pro fine** (kay-pee-əs proh fi-nee). [Latin “that you take for the fine”] A writ for the arrest of a person who had not paid an imposed fine. — Also termed *capiatur pro fine*.

**capias utlagatum** (kay-pee-əs ət-lə-gay-təm). [Latin “you take the outlaw”] A writ commanding the arrest of an outlawed person.

**capita.** See PER CAPITA.

**capital, adj.** 1. Of or relating to economic or financial capital <capital market>. 2. Punishable by execution; involving the death penalty <a capital offense>.

**capital, n.** 1. Money or assets invested, or available for investment, in a business. 2. The total assets of a business, esp. those that help generate profits. 3. The total amount or value of a corporation’s stock; corporate equity. See *capital stock* under STOCK.

**actual capital.** Funds generated by the sale of stock. See *authorized stock* under STOCK.

**authorized capital.** See *nominal capital*.

**circulating capital.** See *floating capital*.

**debt capital.** Funds raised by issuing bonds.

**equity capital.** Funds provided by a company’s owners in exchange for evidence of ownership, such as stock.

**fixed capital.** 1. The amount of money invested in fixed assets, such as land and machinery. 2. Fixed assets.

**floating capital.** 1. Funds not allocated to a particular class of the corporation’s capital stock. 2. Funds not presently invested or committed; esp., money retained for the purpose of meeting current expenditures. — Also termed *circulating capital*.

**impaired capital.** Corporate funds consisting of assets that are less than the sum of the corporation’s legal capital and its liabilities.

**legal capital.** An amount equal to the aggregate “par” or stated value of all outstanding shares of a corporation, or, in the case of stock without par value, an amount set by the board of directors. • A minority of states require this amount to remain in the corporation to protect creditors. — Also termed *stated capital*.

**moneyed capital.** Money that is invested with the intent of making a profit.

**nominal capital.** The minimum value of the shares that a company is authorized by its association documents to issue. — Also termed *authorized capital*.

**paid-in capital.** The money paid for the capital stock of a corporation.

**proprietary capital.** Money that represents the initial investment in a sole proprietorship.

**risk capital.** 1. Money or property invested in a business venture, esp. one in which the investor has no managerial control. 2. See *venture capital*.

**stated capital.** 1. See *legal capital*. 2. The total equity of a corporation as it appears on the balance sheet.

**subscribed capital.** The total value of stock for which there are subscriptions (contracts of purchase).

**venture capital.** Funds invested in a new enterprise that has high risk and the potential for a high return. — Also termed *risk capital*. See SEED MONEY.

**working capital.** Current assets (such as cash, inventory, and accounts receivable) less current liabilities. • Working capital measures liquidity and the ability to discharge short-term obligations.

**capital account.** See ACCOUNT.

**capital asset.** See ASSET.

**capital contribution.** 1. Cash, property, or services contributed by partners to a partnership. 2. Funds made available by a shareholder, usu. without an increase in stock holdings.

**capital crime.** See *capital offense* under OFFENSE (1).

**capitale** (kap-i-tay-lee). [Latin “a thing”] *Hist.* 1. Movable property, esp. animals (such as 100 head of cattle). • Over time, *chattel* became the more common term. 2. A stolen thing, or its equivalent value. Pl. *capitalia*.

**capital expenditure.** An outlay of funds to acquire or improve a fixed asset. — Also termed *capital improvement*; *capital outlay*.

**capital expense.** See EXPENSE.

**capital flight.** The sending of large amounts of investment money out of a country, usu. as a result of panic caused by political turmoil or a severe recession.

**capital gain.** The profit realized when a capital asset is sold or exchanged. — Also termed *capital gains*. Cf. *ordinary gain* under GAIN (3); *capital loss* under LOSS.

“Throughout most of the history of income taxation in the U.S., a distinction has been drawn between the rate of taxation on ‘ordinary income’ (or ordinary loss) and ‘capital gain’ (or capital loss). ‘Capital gain’ refers to the income from certain transactions in some assets, called capital assets, or from other transactions that Congress has said should be taxed as capital gain. . . . The most common form of capital gain or loss transaction is a sale of an asset such as a share of stock or a parcel of land, for cash.” John K. McNulty, *Federal Income Taxation of Individuals in a Nutshell* 420 (5th ed. 1995).

**long-term capital gain.** The profit realized from selling or exchanging a capital asset held for more than a specified period, usu. one year.

**short-term capital gain.** The profit realized from selling or exchanging a capital asset held for less than a specified period, usu. one year. • It is treated as ordinary income under current federal tax law.

**capital-gain distribution.** See *capital-gain dividend* under DIVIDEND.

**capital-gain dividend.** See DIVIDEND.

**capital gains.** See CAPITAL GAIN.

## *capitalis justiciarius totius Angliae*

**capital-gains tax.** See TAX.

**capital goods.** See GOODS.

**capital impairment.** The financial condition of a corporation whose assets are less than the sum of its legal capital and its liabilities.

**capital improvement.** See CAPITAL EXPENDITURE.

**capitalis** (kap-i-tay-lis), *adj.* [Latin] 1. *Roman law.* (Of a crime) punishable by death, loss of liberty, or loss of citizenship. See CAPUT. 2. *Hist.* (Of a person or judicial proceeding) that is principal or chief.

**capitalis, n.** [Latin “chief”] *Hist.* A principal (or chief) person, object, or judicial proceeding.

**capitalis baro** (kap-i-tay-lis bar-oh). [Latin “chief baron”] *Hist.* The chief baron of the Court of Exchequer. See CHIEF BARON.

**capitalis custos** (kap-i-tay-lis kəs-tohs). [Latin “chief guardian”] *Hist.* 1. A chief warden or magistrate. 2. Loosely, a mayor.

**capitalis dominus** (kap-i-tay-lis dom-ə-nəs). [Latin “chief lord”] *Hist.* A tenant’s immediate lord; CHIEF LORD.

**capitalis justiciarius** (kap-i-tay-lis jəs-tish-ee-air-ee-əs). [Latin “chief justiciary”] *Hist.* The principal minister of state who governed when the king traveled abroad. • By the 13th century the duties of office were more judicial than political. See JUSTICIARY (2).

**capitalis justiciarius ad placita coram rege tenenda** (kap-i-tay-lis jəs-tish-ee-air-ee-əs ad plas-ə-tə kor-əm ree-jee tə-nen-də). [Latin] *Hist.* Chief justice for holding pleas before the king. • This phrase — which dates from the 13th century — referred to the chief justice of the King’s Bench.

**capitalis justiciarius banci** (kap-i-tay-lis jəs-tish-ee-air-ee-əs ban-si). [Latin] Chief justice of the bench. • This phrase — which dates from the 13th century — referred to the chief justice of the Court of Common Pleas.

**capitalis justiciarius totius Angliae** (kap-i-tay-lis jəs-tish-ee-air-ee-əs toh-shee-əs ang-lee-ee). [Latin] *Hist.* Chief justice of all England. • This was the title of the presiding justice in the court of aula regis.



**capitalism**, *n.* An economic system that depends on the private ownership of the means of production and on competitive forces to determine what is produced. — **capitalist**, *adj.* & *n.*

**capitalis plegius** (kap-i-tay-lis plee-jee-əs). [Latin “chief pledge”] *Hist.* 1. A chief pledge or surety. 2. BORSHOLDER.

**capitalis terra** (kap-i-tay-lis ter-ə). [Latin “head-land”] *Hist.* A piece of land lying before, or at the head of, other land.

**capitalization**, *n.* 1. The act or process of capitalizing or converting something into capital. 2. The amount or sum resulting from this act or process. 3. The total amount of long-term financing used by a business, including stocks, bonds, retained earnings, and other funds. 4. The total par value or stated value of the authorized or outstanding stock of a corporation.

**thin capitalization.** The financial condition of a firm that has a high ratio of liabilities to capital.

**undercapitalization.** The financial condition of a firm that does not have enough capital to carry on its business.

**capitalization accounting method.** See ACCOUNTING METHOD.

**capitalization rate.** The interest rate used in calculating the present value of future periodic payments. — Also termed *cap rate*; *income yield*.

**capitalization ratio.** The ratio between the amount of capital raised and the total capitalization of the firm. — Also termed *capital ratio*.

**capitalize**, *vb.* 1. To convert (earnings) into capital. 2. To treat (a cost) as a capital expenditure rather than an ordinary and necessary expense. 3. To determine the present value of (long-term income). 4. To supply capital for (a business).

**capitalized expense.** See EXPENSE.

**capital lease.** See LEASE-PURCHASE AGREEMENT.

**capital leverage.** The use of borrowed funds in a business to obtain a return greater than the interest rate. See LEVERAGE.

**capital loss.** See LOSS.

**capital market.** See MARKET.

**capital offense.** See OFFENSE (1).

**capital outlay.** 1. CAPITAL EXPENDITURE. 2. Money expended in acquiring, equipping, and promoting a business.

**capital punishment.** See DEATH PENALTY (1).

**capital ratio.** See CAPITALIZATION RATIO.

**capital recovery.** The collection of charged-off bad debt that has been previously written off against the allowance for doubtful accounts.

**capital return.** See RETURN.

**capital-risk test.** *Securities.* A method of determining whether a transaction constitutes an investment contract (subject to securities laws), whereby if a substantial portion of the capital used by a franchiser to start its operations is provided by a franchisee, then the transaction is treated as an investment contract.

**capital stock.** See STOCK.

**capital-stock tax.** See TAX.

**capital structure.** The mix of debt and equity by which a business finances its operations; the relative proportions of short-term debt, long-term debt, and capital stock.

**capital surplus.** See SURPLUS.

**capital transaction.** A purchase, sale, or exchange of a capital asset.

**capitaneus** (kap-i-tay-nee-əs). [Law Latin “tenant in chief”] 1. *Hist.* A tenant *in capite*; one who holds title directly from the king. — Also termed *cataneus*. 2. *Maritime law.* A ship captain or naval commander. 3. A ruler or leader.

**capitation.** See *poll tax* under TAX.

**capitation tax.** See *poll tax* under TAX.

**capitis aestimatio** (kap-i-tis es-ti-may-shee-oh). [Latin “valuing of a head”] *Hist.* A monetary estimate of a person’s life, made to assess a penalty for the person’s slaying. See WERGILD.

**capitis deminutio** (kap-i-tis dem-i-n[y]oo-shee-oh). [Latin “reduction of status”] *Roman*

*law*. A diminution or abridgment of a person's legal status. — Also spelled *capitis diminutio*. Pl. **capitis deminutiones**.

"Capitis deminutio is the destruction of the 'caput' or legal personality. Capitis deminutio, so to speak, wipes out the former individual and puts a new one in his place, and between the old and the new individual there is, legally speaking, nothing in common. A juristic personality may be thus destroyed in one of three ways: (1) by loss of the status libertatis. This is the capitis deminutio maxima; (2) by loss of the status civitatis. This is the capitis deminutio media (magna); (3) by severance from the agnatic family. This entails capitis deminutio minima." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 178-79 (James Crawford Ledlie trans., 3d ed. 1907).

**capitula** (kə-pich-ə-lə). [Law Latin "chapters"] *Hist.* **1.** Collections of laws or ordinances organized under various headings. — Also termed *capitulary*. **2.** Chapters or assemblies of ecclesiastical persons.

**capitula coronae** (kə-pich-ə-lə kə-roh-nee). [Latin "chapters of the Crown"] *Hist.* A more detailed form of the articles of the eyre. See ARTICLES OF THE EYRE.

**capitula de judaeis** (kə-pich-ə-lə dee joo-dee-is). [Latin "chapters on the Jews"] *Hist.* **1.** Laws concerning the Jews. **2.** Questions posed by the justices in eyre to determine the amount a Jew would pay to receive the king's protection and a license to conduct business. • The *capitula de judaeis* reflected the pervasive anti-Semitism of medieval England. Cf. ARTICLES OF THE EYRE.

**capitula itineris** (kə-pich-ə-lə i-tin-ə-ris). [Law Latin "chapters of the eyre"] See ARTICLES OF THE EYRE.

**capitulary** (kə-pich-ə-ler-ee). [Latin "chapter or section (of a code)"] Any orderly and systematic collection or code of laws. See CAPITULA (1).

**capitulation** (kə-pich-ə-lay-shən), *n.* **1.** The act of surrendering or giving in. **2.** *Int'l law.* An agreement to surrender a fortified place or a military or naval force. • A commander in control may generally make such an agreement for the place or force. **3.** *Hist.* An agreement between a Christian state and a non-Christian one (such as the Ottoman Empire) giving subjects of the former certain privileges in the territory of the latter. — **capitulate**, *vb.* — **capitulatory**, *adj.*

**cap rate.** See CAPITALIZATION RATE.

**caprice** (kə-prees), *n.* **1.** Arbitrary or unfounded motivation. **2.** The disposition to change one's mind impulsively.

**capricious** (kə-prish-əs), *adj.* **1.** (Of a person) characterized by or guided by unpredictable or impulsive behavior. **2.** (Of a decree) contrary to the evidence or established rules of law. Cf. ARBITRARY.

**captain-of-the-ship doctrine.** In medical-malpractice law, the doctrine imposing liability on a surgeon for the actions of assistants who are under the surgeon's control but who are employees of the hospital, not the surgeon.

**captain's mast.** *Military law.* The nonjudicial punishment of an enlisted person by a military commanding officer. • This type of punishment is usu. for a minor offense. See *nonjudicial punishment* under PUNISHMENT.

**captation** (kap-tay-shən). *Civil law.* Coercion of a testator resulting in the substitution of another person's desires for those of the testator. • The term formerly applied to the first stage of a hypnotic trance. Cf. UNDUE INFLUENCE.

**captator** (kap-tay-tər). *Civil law.* A person who obtains a gift or legacy through artifice. Cf. UNDUE INFLUENCE.

**captio** (kap-shee-oh). *Hist.* **1.** An arrest of a person, or a seizure of a thing. **2.** The holding of court.

**caption.** **1.** The introductory part of a court paper stating the names of the parties, the name of the court, the docket or file number, and the title of the action. Cf. STYLE (1). **2.** The arrest or seizure of a person by legal process.

**captive-audience doctrine.** **1.** *Constitutional law.* The principle that when the listener cannot, as a practical matter, escape from intrusive speech, the speech can be restricted. **2.** *Labor law.* The rule that prohibits either party to a union election from making a speech on company time to a mass assembly of employees within 24 hours of an election. — Also termed *captive-audience rule*.

**captive insurance.** See INSURANCE.

**captive insurance company.** See INSURANCE COMPANY.

**captive insurer.** See *captive insurance company* under INSURANCE COMPANY.

**capture.** See RULE OF CAPTURE.

**caput (kap-ət).** [Latin “head”] **1. Hist.** A head, chief, or principal person. **2. Roman law.** A person. **3. Roman law.** A person’s condition or status.

“A ‘natural,’ as opposed to an ‘artificial,’ person is such a human being as is regarded by the law as capable of rights or duties: in the language of Roman law as having a ‘status.’ . . . Besides possessing this general legal capacity, or status, a man may also possess various special capacities, such as the ‘tria capita’ of liberty, citizenship, and family rights. A slave having, as such, neither rights nor liabilities, had in Roman law, strictly speaking, no ‘status,’ ‘caput,’ or ‘persona.’ . . . It must however be remembered that the terms ‘persona’ and ‘caput’ were also used in popular language as nearly equivalent to ‘homo,’ and in this sense were applied to slaves as well as to freemen.” Thomas E. Holland, *The Elements of Jurisprudence* 80–81 (4th ed. 1888).

**caput comitatus (kap-ət kom-ə-tay-təs).** [Latin “head of the county”] *Hist.* The head of a county; a sheriff.

**caput gerat lupinum (kap-ət jeer-ət loo-pi-nəm).** [Latin “let him bear the head of a wolf”] *Hist.* An outlawed felon considered a pariah — a lone wolf — open to attack by anyone. See OUTLAWRY.

“He who breaks the law has gone to war with the community; the community goes to war with him. It is the right and duty of every man to pursue him, to ravage his land, to burn his house, to hunt him down like a wild beast and slay him; for a wild beast he is; not merely is he a ‘friendless man,’ he is a wolf. . . . *Caput gerat lupinum* — in these words the court decreed outlawry.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 449 (2d ed. 1899).

**carcanum (kahr-kay-nəm).** [Latin “iron collar, pillory”] *Hist.* A prison or workhouse.

**carcelage (kahr-sə-lij).** [fr. Latin *carcer* “prison”] *Hist.* Prison fees.

**carcer (kahr-sər).** [Latin “jail, prison”] *Hist.* A prison or jail, esp. one used to detain rather than punish. • *Carcer*, as used in English law and Roman law, usu. referred to a jail used as a place of detention during trial or after sentence pending execution, rather than as a place of punishment. The modern term *incarceration* derives from this word.

**cardinal-change doctrine.** *Contracts.* The principle that if the government makes a fundamental, unilateral change to a contract beyond the scope of what was originally contemplated, the other party (usu. a contractor) will be released from the obligation to continue work under the contract. • A contractor’s allegation of *cardinal change* is essentially an assertion that the government has breached the contract.

**care, n.** **1.** Serious attention; heed <written with care>. **2.** Under the law of negligence, the conduct demanded of a person in a given situation. • Typically, this involves a person’s giving attention both to possible dangers, mistakes, and pitfalls and to ways of ensuring that these risks do not materialize <standard of care>. See DEGREE OF CARE; REASONABLE PERSON.

**adequate care.** See *reasonable care*.

**due care.** See *reasonable care*.

**great care.** **1.** The degree of care that a prudent person exercises in dealing with very important personal affairs. **2.** The degree of care exercised in a given situation by the person most competent to deal with the situation.

**ordinary care.** See *reasonable care*.

**proper care.** See *reasonable care*.

**reasonable care.** As a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. — Also termed *due care*; *ordinary care*; *adequate care*; *proper care*. See REASONABLE PERSON.

**slight care.** The degree of care a person gives to matters of minor importance; the degree of care given by a person of limited accountability.

**career criminal.** See RECIDIVIST.

**career vice-consul.** See VICE-CONSUL.

**careless, adj.** **1.** (Of a person) not exercising reasonable care. **2.** (Of an action or behavior) engaged in without reasonable care. Cf. RECKLESS.

**carelessness, n.** **1.** The fact, condition, or instance of a person’s either not having done what he or she ought to have done, or having done what he or she ought not to have done. **2.** A person’s general disposition not to do something that ought to be done.

"The word 'carelessness' as a synonym for negligence can be committed by those who care deeply. A man may take all the care of which he is capable, and yet be accounted negligent for failing to reach the objective standard. He may honestly . . . believe that the facts are such that he is not imperilling anyone; but he may be held to have been negligent in arriving at that belief. An incompetent driver may be convicted of driving 'without due care and attention' even though he was doing his level best. The careless person is the person who does not *take* the care he ought to take: never mind whether he *felt* careful. He can be held to be negligent in making a perfectly honest mistake." Glanville Williams, *Textbook of Criminal Law* 44-45 (1978).

**ca. resp.** See *capias ad respondendum* under CAPIAS.

**cargo insurance.** See INSURANCE.

**carjacking.** The forcible theft of a vehicle from a motorist.

**carnal abuse.** See *sexual abuse* under ABUSE.

**carnal knowledge.** *Archaic.* Sexual intercourse, esp. with an underage female.

"The ancient term for the act itself was 'carnal knowledge' and this is found in some of the recent cases and statutes. The phrase 'sexual intercourse,' more common today apart from legal literature, is also found in recent cases and statutes. Either term, when the reference is to rape, is sometimes coupled with the word 'ravish.' And unlawful intercourse with a girl under the age of consent is often characterized as 'carnal knowledge and abuse.'" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 201 (3d ed. 1982).

**carnet (kahr-nay).** A customs document allowing an item (esp. an automobile) to be exported temporarily from one country into another country.

**carriage.** Transport of freight or passengers.

**Carriage of Goods by Sea Act.** *Maritime law.* A 1936 federal act defining, for goods damaged in transit, the rights and responsibilities of issuers and holders of ocean bills of lading. 46 USCA §§ 1300 et seq.

**carrier. 1.** An individual or organization (such as a railroad or an airline) that transports passengers or goods for a fee.

**common carrier.** A carrier that is required by law to transport passengers or freight, without refusal, if the approved fare or charge is paid. — Also termed *public carrier*.

"[A] 'common carrier' is bound to take all goods of the kind which he usually carries, unless his conveyance is

full, or the goods be specially dangerous; but may charge different rates to different customers." Thomas E. Holland, *The Elements of Jurisprudence* 299 (13th ed. 1924).

**marine carrier.** A carrier operating on navigable waters subject to the jurisdiction of the United States.

**private carrier.** A carrier that is not bound to accept business from the general public and is therefore not considered a common carrier. — Also termed *contract carrier*.

## 2. INSURER.

**carrier's lien.** See LIEN.

**Carroll doctrine.** The principle that a broadcast licensee has standing to contest any grant of a competitive license by the Federal Communications Commission because the grant could lead to a diminution in broadcast service by causing economic injury to an existing licensee. *Carroll Broadcasting Co. v. FCC*, 258 F.2d 440 (D.C. Cir. 1958).

**carryback.** *Tax.* An income-tax deduction (esp. for a net operating loss) that cannot be taken entirely in a given period but may be taken in an earlier period (usu. the previous three years). — Also termed *loss carryback*; *tax-loss carryback*. Cf. CARRYOVER.

**carryforward.** See CARRYOVER.

**carrying away.** See ASPORTATION.

**carrying charge. 1.** A cost, in addition to interest, paid to a creditor for carrying installment credit. **2.** Expenses incident to property ownership, such as taxes and upkeep.

**carrying cost.** See COST (1).

**carryover.** An income-tax deduction (esp. for a net operating loss) that cannot be taken entirely in a given period but may be taken in a later period (usu. the next five years). — Also termed *loss carryover*; *tax-loss carryover*; *carryforward*; *loss carryforward*; *tax-loss carryforward*. Cf. CARRYBACK.

**carryover basis.** See BASIS.

**carta (kahr-tə).** [Latin] *Hist.* A charter, deed, or other written instrument.

**Carta Mercatoria (kahr-tə mər-kə-tor-ee-ə).** *Hist.* An English statute (enacted in 1303) establishing various rules that favored certain

foreign merchants. • In exchange for paying customs duties, merchants received extensive trading rights throughout England, the power to export their merchandise, the liberty to dwell where they pleased, and certain legal rights. — Also termed *Statutum de Nova Cus-tuma*.

**cart-bote.** See *plowbote* under BOTE (1).

**carte blanche** (kahrt **blawnsh**). [French "blank card"] **1.** A signed, blank instrument that is filled out at an agent's discretion. **2.** Full discretionary power; unlimited authority.

**cartel** (kahr-tel), *n.* **1.** A combination of producers or sellers that join together to control a product's production or price. **2.** An association of firms with common interests, seeking to prevent extreme or unfair competition, allocate markets, or share knowledge. **3. Int'l law.** An agreement between belligerents about the means of conducting whatever relations they allow during wartime; esp., such an agreement regarding the exchange of prisoners. — Also spelled *chartel*. — **cartelize** (kahr-tə-liz or kahr-tel-iz), *vb.*

**car trust certificate.** See EQUIPMENT TRUST CERTIFICATE.

**carucage** (kar-ə-kij). [Law Latin] *Hist.* A tax imposed either on a carucate or on the plows used on the land. — Also termed *carvage*.

**carucate** (kar-ə-kayt). [Law Latin] *Hist.* A measure of land for assessment purposes, usu. considered about 120 acres. • This amount was thought to be as much land as one plow with eight oxen could plow in a year. A *carucate* was used to assess taxes. — Also termed *carucata*; *carve*; *plowland*. Cf. HIDE (1); OXGANG.

**carvage.** See CARUCAGE.

**carve** (karv), *n.* See CARUCATE.

**carve out, vb.** **1.** To create an explicit exception to a broad rule. **2. Tax.** To separate from property the income derived from the property.

**carveout, n.** **1.** An explicit exception to a broad rule. **2. Tax.** For tax purposes, the separation from property of the income derived from the property.

**ca. sa.** See *capias ad satisfaciendum* under CAPIAS.

**casata** (kə-say-tə). *Hist.* A house with enough land to support one family.

**casatus** (kə-zay-təs). *Hist.* A vassal or feudal tenant possessing a casata.

**case. 1.** A proceeding, action, suit, or controversy at law or in equity <the parties settled the case>.

**active case.** A case that is still pending.

**case at bar.** A case under the immediate consideration of the court. — Also termed *case at bench*; *instant case*; *present case*.

**case made.** See *case reserved*.

**case of first impression.** A case that presents the court with issues of law that have not previously been decided in that jurisdiction.

**case reserved. 1.** A written statement of the facts proved at trial and drawn up and stipulated to by the parties, so that certain legal issues can be decided by an appellate court. — Also termed *case made*; *special case*. **2. Hist.** An agreement between litigants to submit the case to a judge rather than to a jury.

"It should have come as no surprise ... that in most cases 'merchants were not fond of juries.' For one of the leading measures of the growing alliance between bench and bar on the one hand and commercial interests on the other is the swiftness with which the power of the jury is curtailed after 1790. ... [D]uring the last years of the eighteenth century American lawyers vastly expanded the 'special case' or 'case reserved,' a device designed to submit points of law to the judges while avoiding the effective intervention of a jury. In England, Lord Mansfield had used a similar procedure to bring about an alliance between common lawyers and mercantile interests." Morton J. Horwitz, *The Transformation of American Law, 1780-1860* 141-42 (1977).

**case stated. 1.** A formal written statement of the facts in a case, submitted to the court jointly by the parties so that a decision may be rendered without trial. — Also termed *case agreed on*. **2. Hist.** A procedure used by the Court of Chancery to refer difficult legal questions to a common-law court. • This procedure was abolished in 1852. **3. English law.** An appeal from a Magistrates' Court to the Divisional Court of Queen's Bench on a point of criminal law. • After ruling, the magistrate states the facts for the appeal and the Queen's Bench rules on the question of law presented by the magistrate's ruling.

**inactive case.** A pending case that is not proceeding toward resolution. • This may occur for several reasons, such as nonservice,

want of prosecution, or (in a criminal case) the defendant's having absconded.

**instant case.** See *case at bar*.

**present case.** See *case at bar*.

**special case.** See *case reserved*.

**test case.** 1. A lawsuit brought to establish an important legal principle or right. • Such an action is frequently brought by the parties' mutual consent on agreed facts — when that is so, a test case is also sometimes termed *amicable action*; *amicable suit*. 2. An action selected from several suits that are based on the same facts and evidence, that raise the same question of law, and that have a common plaintiff or a common defendant. • Sometimes, when all parties agree, the court orders a consolidation and all parties are bound by the decision in the test case. — Also termed *test action*.

2. A criminal investigation <the Manson case>. 3. An individual suspect or convict in relation to any aspect of the criminal-justice system <the probation officer said he considers Mr. Jones a difficult case>. 4. An argument <the debater made a compelling case for gun control>. 5. An instance, occurrence, or situation <a case of mistaken identity> <a terminal case of cancer>. 6. TRESPASS ON THE CASE <the actions of trover and case are not entirely defunct>.

**case agreed on.** See *case stated* under CASE.

**case at bar.** See CASE.

**case at bench.** See *case at bar* under CASE.

**casebook.** A compilation of extracts from instructive cases on a particular subject, usu. with commentary and questions about the cases, designed as a teaching aid. Cf. HORNBOOK.

**casebook method.** An inductive system of teaching law in which students study specific cases to learn general legal principles. • Professor Christopher C. Langdell introduced the technique at Harvard Law School in 1869. The casebook method is now the most widely used form of instruction in American law schools. — Also termed *case method*; *case system*; *Langdell method*. Cf. HORNBOOK METHOD.

**caseflow.** 1. The movement of cases through the judicial system, from the initial filing to the final appeal. 2. An analysis of that movement.

**case-in-chief.** 1. The evidence presented at trial by the party with the burden of proof. 2. The part of a trial in which a party presents evidence to support its claim or defense. Cf. BUTTAL.

**caselaw.** The collection of reported cases that form the body of law within a given jurisdiction. — Also written *case law*; *case-law*. — Also termed *decisional law*; *adjudicative law*; *jurisprudence*; *organic law*.

**case lawyer.** An attorney whose knowledge is largely confined to a specific field of expertise.

"A working lawyer cannot expect to keep abreast of all this output of ideas, but he can at least study some portion so as to liberalize his views of law and to avoid the reproach of being a mere case lawyer." Lord Wright, *The Study of Law*, 54 Law Q. Rev. 185, 185 (1938).

**caseload.** The volume of cases assigned to a given court, agency, officer, judge, law firm, or lawyer.

**case made.** See *case reserved* under CASE.

**case-management order.** A court order designed to control the procedure in a case on the court's docket, esp. by limiting pretrial discovery. — Abbr. CMO.

**case method.** See CASEBOOK METHOD.

**case of first impression.** See CASE.

**case-or-controversy requirement.** The constitutional requirement that, for a federal court to hear a case, the case must involve an actual dispute. See CONTROVERSY (3).

"The courts of the United States do not sit to decide questions of law presented in a vacuum, but only such questions as arise in a 'case or controversy.' The two terms can be used interchangeably, for, we are authoritatively told, a 'controversy,' if distinguishable at all from a 'case,' is distinguishable only in that it is a less comprehensive term, and includes only suits of a civil nature." Charles Alan Wright, *The Law of Federal Courts* 60 (5th ed. 1994).

**case reserved.** See CASE.

**case stated.** See CASE.

**case system.** See CASEBOOK METHOD.

**case-within-a-case rule.** *Torts.* The requirement that in a legal-malpractice action, the plaintiff must show that, but for the attorney's

negligence, the plaintiff would have won the case underlying the malpractice action.

**cas fortuit** (**kah** for-**twee**). [French “fortuitous case”] *Insurance*. A fortuitous event; an inevitable accident.

**cash, n.** **1.** Money or its equivalent. **2.** Currency or coins, negotiable checks, and balances in bank accounts. — **cash, vb.**

**petty cash.** Currency kept on hand for incidental expenditures.

**cash-against-documents sale.** See *documentary sale* under SALE.

**cash-and-carry clause.** *Int’l law.* A regulation that, before U.S. involvement in World War II, allowed belligerent countries to pay cash for goods whose export was prohibited. • Formally, this regulation was entirely neutral, but in practice it favored Great Britain.

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

**cash-basis accounting method.** See ACCOUNTING METHOD.

**cash book.** An account book of all cash received and paid out by a business.

**cash budget.** A period-by-period schedule of a business’s opening cash on hand, estimated cash receipts, cash disbursements, and cash balance. • A cash budget is used to project a business’s cash receipts and disbursements over some future period.

**cash collateral.** See COLLATERAL.

**cash cycle.** The time it takes for cash to flow into and out of a business, such as the time between the purchase of raw materials for manufacture and the sale of the finished product.

**cash discount.** See DISCOUNT.

**cash dividend.** See DIVIDEND.

**cash equivalent.** A short-term security that is liquid enough to be considered equivalent to cash.

**cash-equivalent doctrine.** *Tax.* The doctrine requiring income to be reported even if it is not

cash, as when the taxpayer barter to receive in-kind payments.

**cash-expenditure method.** *Tax.* A technique used by the IRS to reconstruct a taxpayer’s unreported income by comparing the amount spent on goods and services during a given period with the income reported for that period. • If the expenditures exceed the reported revenue, the IRS treats the difference as taxable income.

**cash flow.** **1.** The movement of cash through a business, as a measure of profitability or liquidity. **2.** The cash generated from a business or transaction. **3.** Cash receipts minus cash disbursements for a given period. — Sometimes spelled *cashflow*.

**cash flow per common share.** The cash flow from operations minus preferred stock dividends, divided by the number of outstanding common shares.

**discounted cash flow.** A method of evaluating a capital investment by comparing its projected income and costs with its current value. — Abbr. DCF.

**incremental cash flow.** The net increase in cash flow attributable to a particular capital investment.

**negative cash flow.** A financial situation in which cash outflow exceeds cash inflow. See INSOLVENCY.

**net cash flow.** Cash inflow minus cash outflow.

**cashier, n.** **1.** One who receives and records payments at a business. **2.** A bank’s or trust company’s executive officer, who is responsible for banking transactions.

**cashier, vb.** To dismiss from service dishonorably <after three such incidents, Jones was cashiered>.

**cashier’s check.** See CHECK.

**cashlite.** See AMERCEMENT.

**cash merger.** See MERGER.

**cash or deferred arrangement.** A retirement-plan provision permitting an employee to have a certain amount of compensation paid in cash or contributed, on behalf of the employee, to a profit-sharing or stock-bonus plan. • A 401(k) plan is a type of cash or deferred arrangement. — Abbr. CODA.

**cashout**, *n.* An arrangement by a seller to receive the entire amount of equity in cash rather than retain an interest in the property. — **cash out**, *vb.*

**cash-out merger**. See *cash merger* under MERGER.

**cash-refund annuity**. See ANNUITY.

**cash sale**. See SALE.

**cash surrender value**. See VALUE.

**cash tender offer**. See TENDER OFFER.

**cash-transaction report**. IRS Form 4789, which requires banks and other financial institutions to report cash transactions above a certain amount.

**cash value**. **1.** See *fair market value* under VALUE. **2.** See *full cash value* under VALUE.

**cash-value option**. See OPTION.

**cassare** (kə-sair-ee), *vb.* [Law Latin fr. Latin *cassus* “void”] *Hist.* To quash or nullify. ● *Cassare* was usu. used in reference to voiding an agreement, law, or writ. See CASSETUR BILLA; CASSETUR BREVE.

**cassation** (ka-say-shən), *n.* A quashing. See COURT OF CASSATION.

**cassetur billa** (kə-see-tər bil-ə). [Latin “that the bill be quashed”] *Hist.* **1.** A judgment quashing a plea in abatement. **2.** A plaintiff’s on-the-record admission that a defendant’s plea in abatement cannot be avoided. ● This statement discontinues the action. — Also termed *billa cassetur*; *quod billa cassetur*.

**cassetur breve** (kə-see-tər bree-vee). [Latin “that the writ be quashed”] *Hist.* A judgment quashing an action begun by writ.

**castigatory** (kas-ti-gə-tor-ee). *Hist.* A device for punishing scolds by repeatedly plunging them underwater. — Also termed *ducking stool*; *cucking stool*; *trebucket*. See SCOLD. Cf. BRANKS.

“[A] *common scold*, . . . if convicted, shall be sentenced to be placed in a certain engine of correction called the trebucket, castigatory, or *cucking stool*, which in the Saxon language signifies the scolding stool; though now it is frequently corrupted into *ducking stool*, because the residue of the judgment is, that, when she is so placed therein, she shall be plunged in the water for her punish-

ment.” 4 William Blackstone, *Commentaries on the Laws of England* 169 (1769).

**casting vote**. **1.** A deciding vote cast by the presiding officer of a deliberative body when the votes are tied. ● The U.S. Constitution gives the Vice President the casting vote in the Senate. U.S. Const. art. I, § 3. **2.** VOTE (3).

**cast-iron-pipe doctrine**. See DIVIDEND-CREDIT RULE.

**castle doctrine**. *Criminal law*. An exception to the retreat rule allowing the use of deadly force by a person who is protecting his or her home and its inhabitants from attack, esp. from a trespasser who intends to commit a felony or inflict serious bodily harm. — Also termed *dwelling defense*; *defense of habitation*. See RETREAT RULE.

**castle-guard**, *n.* *Hist.* **1.** The protection of a castle. **2.** A form of knight service in which a tenant must protect the lord’s castle. **3.** The tenure giving rise to this knight service. **4.** A tax once imposed in lieu of this knight service. **5.** The territory that is chargeable with the tax imposed in lieu of the knight service. — Also termed (in senses 2–5) *ward*.

**casual**, *adj.* **1.** (Of employment) occurring without regularity; occasional <a casual employee>. See *casual employment* under EMPLOYMENT. **2.** (Of an event or occurrence) not expected, foreseen, or planned; fortuitous <a casual deficit>.

**casual affray**. See CHANCE-MEDLEY.

**casual condition**. See CONDITION (2).

**casual deficit**. An unforeseen shortfall of funds.

**casual ejector**. See EJECTOR.

**casual employment**. See EMPLOYMENT.

**casualty**. **1.** A serious or fatal accident. **2.** A person or thing injured, lost, or destroyed.

**casualty gain**. *Insurance*. The profit realized by an insured when the benefits paid exceed the insured property’s adjusted value.

**casualty insurance**. See INSURANCE.

**casualty loss**. See LOSS.



**casualty pot.** *Tax.* A step in evaluating tax liability in which casualty gains and losses are compared to determine whether a net loss or gain has occurred. Cf. MAIN POT.

**casu consimili** (kay-s[y]oo kən-sim-ə-lī). [Latin “in a like case”] *Hist.* A writ of entry allowing the holder of a reversionary interest to take possession of land alienated by a life tenant. • This writ originated in the Statute of Westminster 2 (13 Edw. ch. 24 (1285)), which expanded the writs available to litigants by authorizing the Chancery to issue a writ for any situation that called for a writ similar to one that had previously issued *casu consimili* (“in a like case”). Many other writs were framed under Westminster 2, but this particular writ’s close association with the statute led to the term’s becoming generic. — Also termed *consimili casu*; entry in *casu consimili*.

**casu proviso** (kay-s[y]oo prə-vi-zoh). [Latin “in the case provided”] *Hist.* A writ of entry to recover a reversion in land alienated by a tenant in dower, i.e., a widow with a life estate in the alienated land.

**casus** (kay-səs). [Latin] **1.** A chance accident; an event without human intervention or fault. Cf. CULPA; DOLUS. **2.** A situation actually contemplated by the legislature in enacting a statute that applies to the situation. • In this sense, the term is opposed to *casus omissus*.

**casus belli** (kay-səs bel-lī). [Latin] An act or circumstance that provokes or justifies war.

**casus foederis** (kay-səs fed-ər-is). [Latin “the case of the treaty” or “the case of the agreement”] **1.** *Int’l law.* A provocative act by one nation toward another, entitling the latter to call upon an ally to fulfill the terms of an alliance. **2.** A clause within a treaty of alliance specifying such provocative acts. **3.** *Contracts.* A case or an event falling within the terms of a contract.

**casus fortuitus** (kay-səs for-t[y]oo-ə-təs). [Latin] **1.** A fortuitous event. **2.** A loss not attributable to human fault.

**casus major** (kay-səs may-jər). [Latin] An extraordinary casualty.

**casus male inclusus** (kay-səs mal-ee in-kloo-səs). [Latin “case wrongly included”] A situation literally provided for by a statute or contract, but wrongly so because the provision’s

literal application has unintended consequences.

**casus omissus** (kay-səs ə-mis-əs). [Latin “case omitted”] A situation not provided for by a statute or contract, and therefore governed by caselaw or new judge-made law. Pl. *casus omissi*.

“At times a state of war appears to exist between the courts and the parliamentary draftsman. The courts decline to come to the rescue when a *casus omissus* is revealed, so words appropriate to cover the *casus omissus* are added to the statute. More frequently the draftsman gets in first and, anticipating a strict construction by the courts coupled with a total lack of sympathy if there should happen to be a *casus omissus*, he produces a statute which is nothing less than horrific in its detail.” Rupert Cross, *Statutory Interpretation* 11-12 (1976).

**catalla** (kə-tal-ə). [Law Latin “chattels”] *Hist.* **1.** CHATTEL. — Also termed *catalis*.

“*Catalis* (*catalla*) alias *chatels*, cometh of the Normans. For ... all movable goods ... are called chatels: the contrary whereof is (*fief*) which we do call fee.” John Cowell, *The Interpreter* (1607).

**2.** Cattle used for plowing.

**catalla otiosa** (kə-tal-ə oh-shee-oh-sə). [Law Latin “nonworking chattels”] *Hist.* **1.** Chattels that are not animals. **2.** Cattle not used for plowing.

**catallis captis nomine districtionis** (kə-tal-is kap-tis nahm-ə-nee di-strik-shee-oh-nis). [Latin “chattels taken in name of distress”] *Hist.* A writ permitting a landlord who is owed rent to distrain (i.e., seize) the doors, windows, and gates of the tenant’s house.

**catallis reddendis** (kə-tal-is ri-den-dis). See DE CATALIS REDDENDIS.

**catalis.** See CATALLA.

**cataneus.** See CAPITANEUS.

**catchpoll** (kach-pohl). *Hist.* A sheriff’s deputy or bailiff. — Also spelled *catchpol*; *catchpole*.

“Catchpol ... (One that catches by the Poll) Though now taken as a word of Contempt, yet in ancient times, it was used, without reproach, for such as we now call *Sergeants of the Mace*, Bailiffs, or any other that use to Arrest Men upon any Action.” Thomas Blount, *Nomolicon: A Law-Dictionary* (1670).

**catch-time charter.** See *time charter* under CHARTER (4).

**categorical question.** See QUESTION (1).

**cater cousin (kay-tər).** A distant relative. • The term derives from the French *quatre cousin*, meaning a cousin in the fourth degree.

**cathedral.** *Eccles. law.* The principal church of a diocese, in which the bishop's throne, or *cathedra*, is situated.

**cathedral preferment.** *Eccles. law.* In a cathedral church, a deanery, archdeaconry, canonry, or other office below the rank of bishop.

**Catoniana regula** (kə-toh-nee-ay-nə reg-yə-lə). [Latin "rule attributed to Cato"] *Roman law.* The principle that the lapse of time does not cure something void at the outset. • It was typically used to set aside a bequest in which the testator did not have the requisite power or capacity when executing the will.

**cats and dogs.** *Slang.* 1. Nonperforming securities. 2. Highly speculative securities.

"Wall Street disdainfully regards most penny stocks as *cats and dogs*, a popular phrase in use since 1879 to describe low-priced, often worthless, speculative securities. The single word *dog* also means a worthless security, and the related *pup* meant a low-priced, inactive stock during the 1940s and 1950s." Kathleen Odean, *High Steppers, Fallen Angels, and Lollipops: Wall Street Slang* 10 (1988).

**cattle rustling.** The stealing of cattle.

**caucus (kaw-kəs), n.** 1. Representatives from a political party who assemble to nominate candidates and decide party policy. 2. A meeting of a group of people to formulate a policy or strategy. — **caucus, vb.**

**separate caucus.** A confidential mediation session that a mediator holds with an individual party to elicit settlement offers and demands. • When separate caucuses are used, the mediator typically shuttles between the two (or more) sides of a dispute to communicate offers and demands.

**causa (kaw-zə), n.** [Latin] 1. CAUSE (1).

"One of the vaguest terms of the Roman juristic language. Starting from the basic meaning of cause, reason, inducement, the jurists use it in very different senses. . . . *Causa* is the reason for which some judicial measures (actions, exceptions, interdicts) were introduced by the praetor. . . . Sometimes *causa* is roughly identical with *animus* when it alludes to the subjective motive, intention, or purpose of a person." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 382–83 (1953).

**causa causans (kaw-zə kaw-zanz).** An immediate or effective cause. See *immediate cause* under CAUSE.

**causa jactitationis maritaggi (kaw-zə jak-ti-tay-shee-oh-nis mar-ə-tay-jee-I).** [Latin "cause of assertion of marriage"] See JACTITATION OF MARRIAGE.

**causa matrimonii praelocuti (kaw-zə ma-trə-moh-nee-I pree-lə-kyoo-ti).** [Latin "cause of prearranged marriage"] *Hist.* A writ of entry available to a woman who had given land to a suitor who refused to marry her within a reasonable time. — Also termed *entry for marriage in speech*.

**causa proxima (kaw-zə prok-si-mə).** The immediate or latest cause. See *proximate cause* under CAUSE.

**causa remota (kaw-zə ri-moh-tə).** A remote or indirect cause. See *remote cause* under CAUSE.

**causa sine qua non (kaw-zə si-nee kway non also sin-ay kwah nohn).** A necessary cause; the cause without which the thing cannot be or the event could not have occurred. See *but-for cause* under CAUSE.

2. *Civil law.* A consideration or inducement.

"The revolution of the ancient law of Contract was consummated when the Praetor of some one year announced in his Edict that he would grant equitable actions upon Pacts which had never been matured at all into Contracts, provided only that the Pacts in question had been founded on a consideration (*causa*)." Henry S. Maine, *Ancient Law* 28 (17th ed. 1901).

"Article 1131 of the French Civil Code provides that: 'L'obligation sans cause, ou sur une fausse cause, ou sur une cause illicite, ne peut avoir aucun effet.' This *cause* or *causa* is a synonym for consideration, and we find the terms used interchangeably in the earlier English authorities." John Salmond, *Jurisprudence* 361 (Glanville L. Williams ed., 10th ed. 1947).

**causa non secuta (kaw-zə non sə-kyoo-tə).** [Latin "the (expected) consideration not having followed"] *Roman law.* A consideration that has failed; failure of consideration.

**falsa causa (fal-sə [or fawl-sə] kaw-zə).** [Latin "mistaken reason or motive"] *Roman law.* Falsity of consideration. • This might result from several things, such as a mistaken reason for making a gift or bequest.

**causa causae est causa causati (kaw-zə kaw-zee est kaw-zə kaw-zay-ti).** [Latin "the cause of a cause is the cause of the thing caused"]. *Torts.* The principle that the cause of the cause (rather than only the immediate cause) should also be considered as the cause of the effect.

**causa causans.** See CAUSA (1).

**causa jactitationis maritaggi.** See CAUSA (1).

**causal** (kaw-zəl), *adj.* **1.** Of, relating to, or involving causation <a causal link exists between the defendant's action and the plaintiff's injury>. **2.** Arising from a cause <a causal symptom>. Cf. CAUSATIVE.

**causal challenge.** See *challenge for cause* under CHALLENGE (2).

**causality** (kaw-zal-ə-tee), *n.* The principle of causal relationship; the relation between cause and effect <the foreseeability test is one of duty and of causality>. — Also termed *causation*. — **causal**, *adj.*

**causa matrimonii praelocuti.** See CAUSA (1).

**causam nobis significes quare** (kaw-zəm noh-bis sig-nif-ə-seez kwair-ee). [Latin "that you signify to us the cause why"] *Hist.* A writ ordering a town's mayor to give seisin of land to a grantee of the king.

**causa mortis** (kaw-zə mor-tis), *adj.* Done or made in contemplation of one's own death. See *gift causa mortis* under GIFT.

**causa non secuta.** See CAUSA (2).

**causa proxima.** See CAUSA (1).

**causare** (kaw-zair-ee), *vb.* [fr. Latin *causari* "to litigate"] To litigate; to show cause against.

**causa remota.** See CAUSA (1).

**causa sine qua non.** See CAUSA (1).

**causation** (kaw-zay-shən). **1.** The causing or producing of an effect <the plaintiff must prove causation>. **2.** CAUSALITY.

**negative causation.** *Securities.* The defense that part of the plaintiff's damages were caused by factors other than the depreciation in value of the securities resulting from registration-statement defects. ● If negative causation is proved, the plaintiff's damages should be reduced. 15 USCA § 77k(e).

**transaction causation.** *Securities.* The fact that an investor would not have engaged in a given transaction if the other party had made truthful statements at the required time.

**causative** (kaw-zə-tiv), *adj.* **1.** Effective as a cause or producing a result <causative factor of the accident>. **2.** Expressive of causation <the causative relationship between drinking and assault>. Cf. CAUSAL.

**causator** (kaw-zay-tər). [Latin "promoter of litigation"] *Hist.* **1.** A litigant. **2.** A person who manages or litigates a cause for another.

**cause**, *n.* **1.** Something that produces an effect or result <the cause of the accident>.

**but-for cause.** The cause without which the event could not have occurred. — Also termed *actual cause*; *cause in fact*; *factual cause*.

**concurrent cause.** **1.** One of two or more causes that simultaneously create a condition that no single cause could have brought about. **2.** One of two or more causes that simultaneously create a condition that any one cause could have created alone.

**contributing cause.** A factor that — though not the primary cause — plays a part in producing a result.

**cooperative cause.** *Archaic.* A person who is contributorily or comparatively negligent.

**direct and proximate cause.** See *proximate cause*.

**direct cause.** See *proximate cause*.

**efficient adequate cause.** See *proximate cause*.

**efficient cause.** See *proximate cause*.

**efficient intervening cause.** See *intervening cause*.

**efficient proximate cause.** See *proximate cause*.

**factual cause.** See *but-for cause*.

**immediate cause.** The last event in a chain of events, though not necessarily the proximate cause of what follows. — Also termed *effective cause*.

**intervening cause.** An event that comes between the initial event in a sequence and the end result, thereby altering the natural course of events that might have connected a wrongful act to an injury. ● If the intervening cause is strong enough to relieve the wrongdoer of any liability, it becomes a *superseding cause*. A *dependent intervening cause* is one that is not an act and is never a superseding cause. An *independent intervening cause* is one that operates on a condition produced by an antecedent cause but in no way resulted from that cause. — Also termed *intervening act*; *intervening agency*; *intervening force*; *in-*

*dependent intervening cause; efficient intervening cause; supervening cause; novus actus interveniens; nova causa interveniens. See superseding cause.*

**jural cause.** See *proximate cause*.

**legal cause.** See *proximate cause*.

**primary cause.** See *proximate cause*.

**procuring cause.** 1. See *proximate cause* (2). 2. *Real estate.* The efforts of the agent or broker who effects the sale of realty and who is therefore entitled to a commission.

**proximate cause.** 1. A cause that is legally sufficient to result in liability. 2. A cause that directly produces an event and without which the event would not have occurred. — Also termed *direct cause; direct and proximate cause; efficient proximate cause; efficient cause; efficient adequate cause; legal cause; procuring cause; producing cause; primary cause; jural cause*.

“The four ‘tests’ or ‘clues’ of proximate cause in a criminal case are (1) expediency, (2) isolation, (3) foreseeability and (4) intention.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 823 (3d ed. 1982).

“‘Proximate cause’ — in itself an unfortunate term — is merely the limitation which the courts have placed upon the actor’s responsibility for the consequences of the actor’s conduct. In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond. But any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would ‘set society on edge and fill the courts with endless litigation.’ [*North v. Johnson*, 58 Minn. 242, 59 N.W. 1012 (1894).] As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. Some boundary must be set to liability for the consequences of any act, upon the basis of some social idea of justice or policy.” W. Page Keeton et al., *Prosser and Keeton on Torts* § 41, at 264 (5th ed. 1984).

**remote cause.** A cause that does not necessarily or immediately produce an event or injury.

**sole cause.** The only cause that, from a legal viewpoint, produces an event or injury. ● If it comes between a defendant’s action and the event or injury at issue, it is treated as a *superseding cause*.

“When this one dominant cause is found it is treated as the ‘sole cause’ for the purposes of the particular case, even if it might not be so treated in a different kind of cause of action. A ‘sole cause’ which intervenes between defendant’s act and the result in question is spoken of as a ‘superseding cause.’ . . . The phrase ‘sole cause,’ meaning the only cause which will receive juridical recognition for the purposes of the particular case, is convenient to give emphasis to three points: (1) If defendant’s act was the sole cause of the death or other socially-harmful

occurrence, it is by definition a proximate cause thereof; (2) if something other than his act was the sole cause of the harm there need be no further inquiry so far as he is concerned; (3) it is not necessary that defendant’s act should have been the sole cause of the harm, — which is merely another form of stating that a contributory cause is sufficient.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 781–82 (3d ed. 1982).

**superseding cause.** An intervening act that the law considers sufficient to override the cause for which the original tortfeasor was responsible, thereby exonerating that tortfeasor from liability. — Also termed *sole cause*. Cf. *intervening cause*.

**supervening cause.** See *intervening cause*.

**unavoidable cause.** A cause that a reasonably prudent person would not anticipate or be expected to avoid.

2. A ground for legal action <the plaintiff does not have cause to file suit>.

**good cause.** A legally sufficient reason. ● Good cause is often the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused. The term is often used in employment-termination cases. — Also termed *good cause shown; just cause; lawful cause; sufficient cause*.

“Issues of ‘just cause,’ or ‘good cause,’ or simply ‘cause’ arise when an employee claims breach of the terms of an employment contract providing that discharge will be only for just cause. Thus, just cause is a creature of contract. By operation of law, an employment contract for a definite term may not be terminated without cause before the expiration of the term, unless the contract provides otherwise.” Mark A. Rothstein et al., *Employment Law* § 9.7, at 539 (1994).

**probable cause.** See PROBABLE CAUSE.

3. A lawsuit; a case <the court has 50 causes on the motion docket>. 4. CAUSA (2).

**cause, vb.** To bring about or effect <dry conditions caused the fire>.

**cause-and-prejudice rule.** *Criminal law.* The doctrine that a prisoner attacking the conviction or sentence (as by a petition for writ of habeas corpus) on the basis of a constitutional challenge that was not presented to the trial court, must show good cause for failing to preserve the objection at trial, and must show that the trial court’s error actually prejudiced the defendant. ● The cause that will excuse the defendant’s procedural lapse must ordinarily be some objective factor that made presentation of the defense impractical at trial, such as the reasonable unavailability of the legal or factual basis of the defense at trial, or wrongful gov-

ernmental interference. As for the prejudice element, the defendant must show that some actual prejudice, such as a constitutionally invalid sentence, resulted from the trial court's error. The cause-and-prejudice rule creates a higher burden than the defendant would face in a direct appeal because it is intended to provide protection from fundamental miscarriages of justice rather than from minor trial-court errors. But in death-penalty cases in which the defendant proves actual innocence, the court may grant relief even when the standards of the cause-and-prejudice rule have not been met. See *actual innocence* under INNOCENCE.

**cause célèbre** (*kawz sə-leb* or *kawz say-leb-rə*). [French "celebrated case"] A trial or decision in which the subject matter or the characters are unusual or sensational <the O.J. Simpson trial was a cause célèbre in the 1990s>.

**cause in fact.** See *but-for cause* under CAUSE (1).

**cause list.** See DOCKET (2).

**cause of action.** 1. A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; CLAIM (4) <after the crash, Aronson had a cause of action>.

"What is a cause of action? Jurists have found it difficult to give a proper definition. It may be defined generally to be a situation or state of facts that entitles a party to maintain an action in a judicial tribunal. This state of facts may be — (a) a primary right of the plaintiff actually violated by the defendant; or (b) the threatened violation of such right, which violation the plaintiff is entitled to restrain or prevent, as in case of actions or suits for injunction; or (c) it may be that there are doubts as to some duty or right, or the right beclouded by some apparent adverse right or claim, which the plaintiff is entitled to have cleared up, that he may safely perform his duty, or enjoy his property." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 170 (2d ed. 1899).

2. A legal theory of a lawsuit <a malpractice cause of action>. Cf. RIGHT OF ACTION. — Also termed (in senses 1 & 2) *ground of action*.

**new cause of action.** A claim not arising out of or relating to the conduct, occurrence, or transaction contained in the original pleading. • An amended pleading often relates back to the date the original pleading was filed. Thus, a plaintiff may add claims to a suit without facing a statute-of-limitations bar, as long as the original pleading was filed in time to satisfy the statute. But if the

amended pleading adds a claim that arises out of a different transaction or occurrence, or out of different alleged conduct, the amendment does not relate back to the date the original pleading was filed. Fed. R. Civ. P. 15(c).

3. Loosely, a lawsuit <there are four defendants in the pending cause of action>.

**cause-of-action estoppel.** See COLLATERAL ESTOPPEL.

**causidicus** (*kaw-zid-ə-kəs*). [Latin "pleader"] *Roman law*. A speaker or pleader who pleaded cases orally for others. Cf. ADVOCATUS.

**cautio** (*kaw-shee-oh*). [Latin "security"] *Roman & civil law*. 1. Security given to ensure the performance of an obligation. See BAIL; BOND (2). 2. A surety.

**cautio fideiussoria** (*kaw-shee-oh fi-dee-yə-sor-ee-ə*). [Latin "security from a third party"] Security given by a third party. — Also spelled *cautio fidejussoria*.

**cautio judicatem solvi** (*kaw-shee-oh joo-dikay-təm sol-vi*). [Latin] A plaintiff's security for court costs.

**cautio Muciana** (*kaw-shee-oh myoo-shee-ay-nə*). [Latin "security introduced by Mucius Scaevola"] Security given by an heir or legatee to obtain immediate possession of a conditional inheritance. • The condition in the will usu. required an heir to refrain from doing some act, such as marriage or overseas travel.

**cautio pignoratitia** (*kaw-shee-oh pig-nər-ə-tish-[ee]-ə*). [Latin "security by pledge"] Security given by pledging goods. Cf. PIGNORATITIA ACTIO.

**cautio pro expensis** (*kaw-shee-oh proh ek-spen-sis*). [Latin "security for costs"] Security for court costs.

**cautio usufructuaria** (*kaw-shee-oh yooz-yə-frək-choo-air-ee-ə*). [Latin "tenant's security"] Security given by a tenant for life or a term for years against waste of the rented property. See USUFRUCT.

**caution** (*kay-shən*). *Civil & Scots law*. 1. Security given to ensure performance of some obligation. 2. The person who gives the security. See BAIL.

**cautionary instruction.** See JURY INSTRUCTION.

**cautione admittenda.** See DE CAUTIONE ADMITTENDA.

**caution money.** See EARNEST MONEY.

**c.a.v. abbr.** CURIA ADVISARI VULT.

**caveat** (**kav-ee-ah**t or **kay-vee-at** or **kav-ee-at**). [Latin "let him or her beware"] **1.** A warning or proviso <he sold the car to his friend with the caveat that the brakes might need repairs>.

**caveat actor** (**kay-vee-at ak-tor**). [Latin] Let the doer, or actor, beware.

**caveat emptor** (**kay-vee-at emp-tor**). [Latin "let the buyer beware"] A doctrine holding that purchasers buy at their own risk. • Modern statutes and cases have greatly limited the importance of this doctrine.

"It [*caveat emptor*] is one of that tribe of anonymous Latin maxims that infest our law . . . they fill the ear and sound like sense, and to the eye look like learning; while their main use is to supply the place of either or both." Gulian C. Verplanck, *An Essay on the Doctrine of Contracts* 218 (1825).

"*Caveat emptor* is the ordinary rule in contract. A vendor is under no duty to communicate the existence even of latent defects in his wares unless by act or implication he represents such defects not to exist." William R. Anson, *Principles of the Law of Contract* 245 (Arthur L. Corbin ed., 3d Am. ed. 1919).

**caveat venditor** (**kay-vee-at ven-di-tor**). [Latin] Let the seller beware.

**caveat viator** (**kay-vee-at vi-ay-tor**). [Latin "let the traveler beware"]. The duty of a traveler on a highway to use due care to detect and avoid defects in the way.

**2.** A formal notice or warning given by a party to a court or court officer requesting a suspension of proceedings <the decedent's daughter filed a caveat stating the facts on which her will contest is based>. **3.** Under the Torrens system of land titles, a formal notice of an unregistered interest in land. • Once lodged with the register of deeds, this notice prevents the register from recording any dealing affecting the estate or the interest claimed. See TORRENS SYSTEM. — **caveat, vb.**

**caveatable** (**kay-vee-at-ə-bəl**), *adj.* Of or relating to a legal or equitable interest that is protectable by a caveat. See CAVEAT (2), (3).

**caveatee** (**kay-vee-at-ee**). One whose interest is challenged by a caveat.

**caveat emptor.** See CAVEAT.

**caveator** (**kay-vee-ay-tər**). One who files a caveat, esp. to challenge the validity of a will; CONTESTANT.

**caveat venditor.** See CAVEAT.

**caveat viator.** See CAVEAT.

**C.B. abbr.** **1.** COMMON BENCH. **2. Hist.** Chief Baron of the Exchequer.

**CBOE. abbr.** CHICAGO BOARD OPTIONS EXCHANGE.

**CBOT. abbr.** CHICAGO BOARD OF TRADE.

**CBT. abbr.** CHICAGO BOARD OF TRADE.

**C.C. abbr.** **1.** Circuit, city, civil, or county court. **2.** Chancery, civil, criminal, or Crown cases. **3.** CIVIL CODE.

**CCC. abbr.** **1.** COMMODITY CREDIT CORPORATION. **2.** CUSTOMS COOPERATION COUNCIL.

**C corporation.** See CORPORATION.

**CD. abbr.** CERTIFICATE OF DEPOSIT.

**CEA. abbr.** COUNCIL OF ECONOMIC ADVISORS.

**ceap** (**cheep**). *Hist.* Anything for sale; a chattel (usu. cattle) used as a medium for barter.

**ceapgild** (**cheep-gild**). *Hist.* A tax or fine paid with an animal rather than with money.

**cease, vb.** **1.** To stop, forfeit, suspend, or bring to an end. **2.** To become extinct; to pass away. — **cessation** (**se-say-shən**), *n.*

**cease-and-desist order.** A court's or agency's order prohibiting a person from continuing a particular course of conduct. See INJUNCTION; RESTRAINING ORDER.

**ceasefire.** See TRUCE.

**cedant.** See REINSURED.

**cede** (**seed**), *vb.* **1.** To surrender or relinquish. **2.** To assign or grant. — **cession** (**sesh-ən**), *n.* — **cessionary** (**sesh-ən-er-ee**), *adj.*

**cedent.** See REINSURED.

**cédula** (say-thoo-lah). [Spanish] *Spanish law*. **1.** An official document used to identify someone; an identity card. **2.** A promissory note. **3.** A citation requiring a fugitive to appear in court to face criminal charges. • The citation is usu. affixed to the fugitive's door.

**ceiling price.** See PRICE.

**ceiling rent.** See RENT (1).

**cenegild** (kay-nə-gild). *Hist.* An expiatory fine paid by a murderer to the victim's relatives.

**consere** (sen-seer-ee), *vb.* [Latin "to express an opinion"] *Roman law.* To decree or resolve.

**censo** (sen-soh). [Spanish] *Spanish law*. **1.** Ground rent. **2.** An annuity or payment for the use of land.

**censo al quitar** (ahl kee-tahr). A redeemable annuity. — Also termed *censo redimible*.

**censo consignativo** (sen-soh kawn-seeg-nah-tee-voh). A transferable annuity, backed by a lien on the debtor's real property. • The debtor retains full legal title to the real property.

**censo enfiteutico** (en-fee-tay-oo-tee-koh). A real property owner's annuity from a usufructuary tenant; an emphyteutic annuity. See EMPHYTEUSIS.

**censo redimible.** See *censo al quitar*.

**censo reservatio** (ray-ser-vah-tee-oh). An annuity payable by a grantee of land to the grantor. • The annuity is reserved when the land is transferred to the grantee.

**ensor**, *n.* **1.** *Roman law.* A Roman officer who acted as a census taker, assessor, and reviewer of public morals. **2.** A person who inspects publications, films, and the like for objectionable content. **3.** In the armed forces, someone who reads letters and other communications and deletes material considered a security threat. — **ensorial**, *adj.* — **ensorship**, *n.*

**ensor** (sen-sər), *vb.* To officially inspect (esp. a book or film) and delete material considered offensive.

**censo redimible.** See *censo al quitar* under CENSO.

**censo reservatio.** See CENSO.

**ensorial jurisprudence.** See LAW REFORM.

**censumethidus** (sen-sə-meth-ə-dəs). [Law Latin] See MORTMAIN. — Also spelled *censumorthidus*.

**censure** (sen-shər), *n.* An official reprimand or condemnation; harsh criticism <the judge's careless statements subjected her to the judicial council's censure>. — **ensorious**, *adj.*

**censure**, *vb.* To reprimand; to criticize harshly <Congress censured the senator for his inflammatory remarks>.

**census.** The official counting of people to compile social and economic data for the political subdivision to which the people belong. Pl. **cenuses**.

**federal census.** A census of a state or territory, or a portion of either, taken by the Census Bureau of the United States. • The Constitution (art. I, § 2) requires only a simple count of persons for purposes of apportioning congressional representation among the states. Under Congress's direction, however, the census has evolved to include a wide variety of information that is useful to businesses, historians, and others not affiliated with the federal government.

**centena** (sen-tee-nə). [fr. Latin *centum* "hundred"] *Hist.* A district containing 100 freemen, established among the Germans, Franks, Goths, and Lombards. • The *centena* corresponds to the Saxon *hundred*.

**centenarius** (sen-tə-nair-ee-əs). [fr. Latin *centum* "hundred-man"] *Hist.* A petty judge or under-sheriff of a hundred. See HUNDRED.

**center-of-gravity doctrine.** *Conflict of laws.* The rule that, in choice-of-law questions, the law of the jurisdiction with the most significant relationship to the transaction or event applies. — Also termed *significant-relationship theory*; *grouping-of-contacts theory*.

**centesima** (sen-tes-ə-mə). [Latin "one-hundredth"] *Roman law.* The hundredth part; 1%. See USURAE CENTESIMAE.

**Central American Court of Justice.** A court created by a 1908 convention between Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, to guarantee the rights of the various republics to maintain peace and harmony in their relations and to prevent recourse to the use of force. • The convention expired after ten years, and the court ceased to exist in 1918.

**central clearing system.** A method of facilitating securities transactions in which an agent or subsidiary of an exchange acts as a clearinghouse for member brokerage firms by clearing their checks, settling their accounts, and delivering their payments. • Most transactions are reflected solely by computerized book entries, and clearinghouse statements are submitted showing the net balance to be paid to reconcile the member firm's accounts.

**Central Criminal Court.** The Crown Court sitting in London, formerly known as the Old Bailey. • The Central Criminal Court, created in 1834, has jurisdiction to try all indictable offenses committed in London. See CROWN COURT.

**Central Criminal Court Act.** See PALMER'S ACT.

**central government.** See *federal government* under GOVERNMENT.

**Central Intelligence Agency.** A U.S. federal agency responsible for gathering, analyzing, and sometimes acting on information relating to national security, esp. foreign intelligence and counterintelligence activities. — Abbr. CIA.

**Central Office.** The primary office for most of England's courts. • The Central Office was established in 1879 to consolidate the masters and associates of the common-law courts, and the clerical functions of the Crown Office of the Queen's Bench Division, the Report and Enrollment offices of the Chancery Division, and several other offices.

**centumviri** (sen-təm-və-rī). [Latin "hundred men"] *Roman law.* A court with jurisdiction to hear important cases, esp. those relating to inheritances, wills, and property. • The court originally consisted of 105 judges — 3 from each of the 35 tribes.

**CEO.** *abbr.* CHIEF EXECUTIVE OFFICER.

**ceorl** (chorl). *Hist.* A Saxon freeman who either possessed no landed property or held land of a thane by paying rent or providing services. • After the Norman Conquest, ceorls were reduced to the status of unfree villeins. Under Norman rule, the variant form of the word, *churl*, became associated with a base peasant, and soon acquired the connotation of a surly, coarse person (hence the modern meaning). — Also termed *churl*; *cirliscus*.

**cepi** (see-pī). [Latin] *Hist.* I have taken. • *Cepi* was often used in a *capias* return by an arresting sheriff, as in *cepi corpus et est in custodia* ("I have taken the defendant [or body] and he is in custody").

"But for injuries committed *with force* to the person, property, or possession, of the plaintiff, the law, to punish the breach of the peace, and prevent its disturbance in the future, provided also a process against the defendant's *person*. . . . This process was called a *capias ad respondendum*, which at once authorised the sheriff to take the defendant, and imprison him till the return-day, and then produce him in court. . . . If by this process the defendant was arrested, the sheriff returned it with *cepi corpus* indorsed. But notwithstanding this writ commanded the sheriff to take and secure him till the return-day, he might, at his own peril, have let the defendant continue at large; thought he was liable, in case of his non appearance in court, to make amends to the plaintiff in an action for an escape, or to be amerced by the court for the contempt, in not producing the body pursuant to the return he had made on the writ." George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* xlii-xliii (3d ed. 1787).

**cepi corpus et bail** (see-pī kor-pəs et bayl). I have arrested and then released the defendant on a bail bond.

**cepi corpus et committitur** (see-pī kor-pəs et kə-mīt-ə-tər). I have arrested and committed the defendant (to prison).

**cepi corpus et est languidus** (see-pī kor-pəs et est lang-gwə-dəs). I have arrested the defendant and he is sick. • This notation in a sheriff's return indicated that the defendant was too sick to be moved safely from the place of arrest.

**cepi corpus et paratum habeo** (see-pī kor-pəs et pə-ray-təm hay-bee-oh). I have made an arrest and am ready to produce the defendant.

**cepit** (see-pit). [Latin] *Hist.* He took. • This was the main verb in a declaration in an action for trespass or replevin.

**cepit et abduxit** (see-pit et ab-duk-sit). [Latin] *Hist.* He took and led away. • This declaration appeared in either a writ of trespass or a larceny indictment for theft of an animal.

**cepit et asportavit** (see-pit et as-por-tay-vit). [Latin] *Hist.* He took and carried away. • This declaration appeared in either a writ of trespass or a larceny indictment for a defendant's wrongfully carrying away goods.

**cepit in alio loco** (see-pit in ay-lee-oh loh-koh). [Latin] *Hist.* He took in another place. • This phrase appeared in a replevin-action



pleading in which a defendant asserted that the property had been taken at a place other than that named in the plaintiff's declaration.

**cerage** (seer-ij). See WAX SCOT.

**cera impressa** (seer-ə im-pres-ə). [Latin "impressed wax"] *Hist.* An impressed seal. • *Cera impressa* originally referred only to wax seals, but later came to include any impressed seal, regardless of the substance impressed. See SEAL.

"The courts have held that an impression made on wafers or other adhesive substance capable of receiving an impression comes within the definition of 'cera impressa.' If then wax be construed to be merely a general term including any substance capable of receiving and retaining the impression of a seal, paper, if it has that quality, may well be included in the category. The machine now used to impress public seals does not require any substance to receive or retain the impression, which is as well defined, as durable — less likely to be defaced than that made on wax. It is the seal which authenticates, not the substance impressed." William C. Anderson, *A Dictionary of Law* 926 (1889).

**ceratium** (si-ray-shee-əm). See WAX SCOT.

**CERCLA** (sər-klə). *abbr.* Comprehensive Environmental Response, Compensation, and Liability Act of 1980. • This statute holds responsible parties liable for the cost of cleaning up hazardous-waste sites. 42 USCA §§ 9601 et seq. See SUPERFUND.

"CERCLA is probably the most controversial environmental law ever enacted. Supporters praise it as a vital program to safeguard human health and the environment from the toxic consequences of decades of irresponsible waste handling. Citing cost estimates ranging up to \$750 billion, critics deride it as an extraordinarily expensive measure which imposes crippling liability on innocent parties to fund clean-ups which are either unnecessary or largely ineffective." John G. Sprankling & Gregory S. Weber, *The Law of Hazardous Wastes and Toxic Substances in a Nutshell* 256 (1997).

**ceremonial marriage**. See MARRIAGE (2).

**cert.** *abbr.* CERTIORARI.

**certain contract**. See CONTRACT.

**certificando de recognitione stapulae** (sər-ti-fi-kan-doh dee rek-əg-nish-ee-oh-nee stay-pyø-lee). [Law Latin "by certifying the recognition of the statute staple"] *Hist.* A writ commanding the holder of certain commercial debt instruments (i.e., the mayor of the staple) to certify to the lord chancellor the existence and terms of a statute staple (i.e., a bond for com-

mercial debt) wrongfully detained by a party to the bond. See STATUTE STAPLE.

**certificate**, *n.* **1.** A document in which a fact is formally attested <death certificate>.

**face-amount certificate**. *Securities.* **1.** A certificate, investment contract, or other security representing an obligation by its issuer to pay a stated or determinable sum, at a fixed or determinable date or dates more than 24 months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount. — Also termed *face-amount certificate of the installment type*. **2.** A security representing a similar obligation on the part of the issuer of a face-amount certificate, the consideration for which is the payment of a single lump sum. See 15 USCA § 80a-2(a)(15). — Also termed *fully paid face-amount certificate*.

**periodic-payment-plan certificate**. A certificate, investment contract, or other security providing for a series of periodic payments by the holder and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of those payments. • The term also includes any security whose issuer is also issuing the certificates described above and whose holder has substantially the same rights and privileges as those holders have upon completing the periodic payments for which the securities provide. See 15 USCA § 80a-2(a)(27).

**2.** A document certifying the bearer's status or authorization to act in a specified way <nursing certificate>. **3.** A notice by one court to another court of the action it has taken <when issuing its opinion, the Seventh Circuit sent a certificate to the Illinois Supreme Court>.

**certificate creditor**. See CREDITOR.

**certificated security**. See SECURITY.

**certificate into chancery**. *English law.* The decision of a common-law court on a legal question submitted by the chancery court.

**certificate land**. See LAND.

**certificate of acknowledgment**. See ACKNOWLEDGMENT (5).

**certificate of amendment**. A document filed with a state corporation authority, usu. the secretary of state, reflecting changes made to a corporation's articles of incorporation.

**certificate of assize.** *Hist.* In England, a writ granting a retrial. ● The certificate of assize has been replaced by a court order granting a motion for new trial.

**certificate of authority.** **1.** A document authenticating a notarized document that is being sent to another jurisdiction. ● The certificate assures the out-of-state or foreign recipient that the notary public has a valid commission. — Also termed *certificate of capacity*; *certificate of official character*; *certificate of authentication*; *certificate of prothonotary*; *certificate of magistracy*; *apostille*; *verification*. **2.** A document issued by a state agency, usu. the secretary of state, granting an out-of-state corporation the right to do business in the state.

**certificate of conference.** A section of a pleading or motion filed with the court, usu. contained separately on a page near the end of the document, whereby the party filing the pleading or motion certifies to the court that the parties have attempted to resolve the matter, but that a judicial determination is needed because an agreement could not be reached. ● Courts require some motions to have a certificate of conference attached to them. This compels the parties to try to resolve the issue themselves, without burdening the court unless absolutely necessary.

**certificate of convenience and necessity.** A certificate issued by an administrative agency granting operating authority to a utility or transportation company. — Also termed *certificate of public convenience and necessity*.

**certificate of deposit.** **1.** A banker's certificate acknowledging the receipt of money and promising to repay the depositor. **2.** A bank document showing the existence of a time deposit, usu. one that pays interest. — Abbr. CD.

**certificate of discharge.** See SATISFACTION PIECE.

**certificate of dissolution.** A document issued by a state authority (usu. the secretary of state) certifying that a corporation has been dissolved.

**certificate of election.** A document issued by a governor, board of elections, or other competent authority certifying that the named person has been duly elected.

**certificate of holder of attached property.** A certificate given by a person who holds — but does not own — property attached by a sheriff. ● The certificate sets forth the holder's interest in the property.

**certificate of incorporation.** **1.** A document issued by a state authority (usu. the secretary of state) granting a corporation its legal existence and the right to function as a corporation. — Also termed *charter*; *corporate charter*. **2.** ARTICLES OF INCORPORATION.

**certificate of indebtedness.** **1.** DEBENTURE. **2.** TREASURY BILL. **3.** CERTIFICATE OF DEPOSIT.

**certificate of insurance.** A document acknowledging that an insurance policy has been written, and setting forth in general terms what the policy covers.

**certificate of interest.** *Oil & gas.* A document evidencing a fractional or percentage ownership in oil-and-gas production.

**certificate of magistracy.** See CERTIFICATE OF AUTHORITY.

**certificate of occupancy.** A document indicating that a building complies with zoning and building ordinances. ● A certificate of occupancy is often required before title can be transferred and the building occupied.

**certificate of official character.** See CERTIFICATE OF AUTHORITY.

**certificate of proof.** See *proof of acknowledgment* under ACKNOWLEDGMENT.

**certificate of prothonotary.** See CERTIFICATE OF AUTHORITY.

**certificate of public convenience and necessity.** See CERTIFICATE OF CONVENIENCE AND NECESSITY.

**certificate of purchase.** A document reflecting a successful bid for property at a judicial sale. ● The bidder receives a property deed if the land is not redeemed or if the sale is confirmed by court order. — Also termed *certificate of sale*.

**certificate of registry.** *Maritime law.* A document certifying that a ship has been registered as required by law. See REGISTRY (2).

**certificate of sale.** See CERTIFICATE OF PURCHASE.

**certificate of service.** A section of a pleading or motion filed with the court, usu. contained separately on the last page, whereby the party filing the pleading or motion certifies to the court that a copy has been sent to the opposing party. • A certificate of service is usu. not included with the initial pleading that the plaintiff files to begin a suit, because that pleading is usu. served with a formal summons, unless the defendant waives service. But other pleadings and motions filed in a suit are usu. required to have a certificate of service attached to them. Fed. R. Civ. P. 5(d).

**certificate of stock.** See STOCK CERTIFICATE.

**certificate of title.** A document indicating ownership of real or personal property. • This document usu. identifies any liens or other encumbrances.

**certification, n.** 1. The act of attesting. 2. The state of having been attested. 3. An attested statement. 4. The writing on the face of a check by which it is certified. 5. A procedure by which a U.S. court of appeals asks the U.S. Supreme Court or the highest state court to review a question of law arising in a case pending before it on which the court of appeals needs guidance. See 15 USCA § 1254(2). Cf. CERTIORARI.

**certification mark.** A word, symbol, or device used on goods or services to certify the place of origin, material, mode of manufacture, quality, or other characteristic. See 15 USCA § 1127. — Also termed *certification trademark*. See TRADE-MARK. Cf. COLLECTIVE MARK.

**certification of bargaining agent.** See UNION CERTIFICATION.

**certification of labor union.** See UNION CERTIFICATION.

**certification to state court.** The procedure by which a federal court of appeals defers deciding a novel question of state law by certifying the question to the highest court of the state. See CERTIFICATION (5).

**certification trademark.** See CERTIFICATION MARK.

**certified check.** See CHECK.

**certified copy.** See COPY.

**certified financial statement.** See FINANCIAL STATEMENT.

**certified mail.** See MAIL.

**certified military lawyer.** See LAWYER.

**certified public accountant.** See ACCOUNTANT.

**certified question.** 1. CERTIFICATION (5). 2. A point of law on which a U.S. court of appeals seeks guidance from either the U.S. Supreme Court or the highest court in a state.

**certify, vb.** 1. To authenticate or verify in writing. 2. To attest as being true or as meeting certain criteria. 3. (Of a court) to issue an order allowing a class of litigants to maintain a class action; to create (a class) for purposes of a class action. See CERTIFICATION. Cf. DECERTIFY.

**certiorari** (sər-shee-ə-rair-I or -rair-ee or -rah-ree). [Law Latin “to be more fully informed”] An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. • The U.S. Supreme Court uses certiorari to review most of the cases that it decides to hear. — Abbr. cert. — Also termed *writ of certiorari*. Cf. CERTIFICATION (5).

“The established method by which the Court of King’s Bench from the earliest times exercised superintendence over the due observance of their limitations by inferior courts, checked the usurpation of jurisdiction, and maintained the supremacy of the royal courts, was by writs of prohibition and certiorari. A proceeding by writ of certiorari (cause to be certified) is a special proceeding by which a superior court requires some inferior tribunal, board, or judicial officer to transmit the record of its proceedings for review, for excess of jurisdiction. It is similar to a writ of error, in that it is a proceeding in a higher court to superintend and review judicial acts, but it only lies in cases not appealable by writ of error or otherwise.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 340, at 541 (Henry Winthrop Ballantine ed., 3d ed. 1923).

“The discretionary writ of certiorari has come to control access to almost all branches of Supreme Court jurisdiction. Appeal jurisdiction has been narrowly limited, and certification of questions from federal courts of appeals has fallen into almost complete desuetude. Certiorari control over the cases that come before the Court enables the Court to define its own institutional role.” Charles Alan Wright et al., *Federal Practice and Procedure* § 4004, at 22 (2d ed. 1996).

**certiorari facias** (sər-shee-ə-rair-I fay-shee-əs). [Latin “cause to be certified”] The

command of a writ of certiorari, referring to certification of the court record for review.

**certworthy**, *adj.* *Slang.* (Of a case or issue) deserving of review by writ of certiorari. — **certworthiness**, *n.*

**cess** (ses), *n.* *Hist.* **1.** *English law.* An assessment or tax. **2.** *Scots law.* A land tax. — Also spelled *cesse*; *sess*.

**cessation-of-production clause.** *Oil & gas.* A lease provision that temporarily extends a lease under which production has stopped. • The clause extends the lease for a specified period during which, to keep the lease alive, the lessee must resume operations.

"Many oil and gas leases contain provisions intended to give lessees more certainty than is given by the temporary cessation of production doctrine. Usually, such provision takes the form of a temporary cessation of production clause, a provision in the lease that states that the lease will be maintained so long as production does not cease for more than an agreed period of time, usually sixty to ninety days. . . . So long as sixty days does not elapse without operations on the property, the lease will not terminate even though there is no production." John S. Lowe, *Oil and Gas Law in a Nutshell* 258 (3d ed. 1995).

**cessavit per biennium** (se-say-vit pār bi-en-ee-əm). [Latin "he ceased for two years"] *Hist.* A writ of right available to a landlord to recover land from a tenant who has failed to pay rent or provide prescribed services for a two-year period. • The writ could also be used to recover land donated to a religious order if the order has failed to perform certain spiritual services. — Also termed *cessavit*.

**cesse.** See **CESS**.

**cesser** (ses-ər). **1.** *Hist.* A tenant whose failure to pay rent or perform prescribed services gives the landowner the right to recover possession of the land. — Also spelled *cessor*; *cessure*. **2.** The termination of a right or interest.

**cesset executio** (ses-ət ek-sə-kyoo-shee-oh). [Latin "let execution stay"] An order directing a stay of execution.

**cesset processus** (ses-ət proh-ses-əs). [Latin "let process stay"] An order directing a stay of a legal proceeding.

**cessio** (sesh-ee-oh). [Latin "cession"] A relinquishment or assignment; **CESSION**.

**cessio actionum** (sesh-ee-oh ak-shee-oh-nəm). [Latin] *Roman law.* The assignment of an obligation by allowing a third party to (1) sue on the obligation in the name of the party entitled to it, and (2) retain the proceeds.

**cessio bonorum** (sesh-ee-oh bæ-nor-əm). [Latin "cession of goods"] *Roman law.* An assignment of a debtor's property to creditors.

"It was the Roman equivalent of modern bankruptcy. . . . [O]ne who thus made *cessio bonorum* would not become *infamis*, was never liable in future beyond his means, for the old debts, and was not liable to personal seizure thereafter in respect of them." W.W. Buckland, *A Manual of Roman Private Law* 388 (1953).

**cessio in jure** (sesh-ee-oh in joor-ee). [Latin "transfer in law"] *Roman law.* A fictitious action brought to convey property, whereby the claimant demanded certain property, the owner did not contest the claim, and a magistrate awarded the property to the claimant. • *Cessio in jure* resembled the English *common recovery*. See **COMMON RECOVERY**.

**cession** (sesh-ən). **1.** The act of relinquishing property rights. **2.** The relinquishment or transfer of land from one state to another, esp. when a state defeated in war gives up the land as part of the price of peace. **3.** The land so relinquished or transferred.

**cessionary bankrupt.** See **BANKRUPT**.

**cessment** (ses-mənt). *Hist.* An assessment or tax.

**cessor.** See **CESSER**.

**cessure.** See **CESSER**.

**cestui** (set-ee or ses-twee). [French "he who"] A beneficiary. — Also spelled *cestuy*.

**cestui que trust** (set-ee [or ses-twee] kee [or kə] trəst). [Law French] One who possesses equitable rights in property and receives the rents, issues, and profits from it; **BENEFICIARY**. — Also termed *fide-commissary*; *fidei-commissarius*. Pl. **cestuis que trust** or (erroneously) **cestuis que trustent**.

"[A]n alternative name for the beneficiary is 'cestui que trust,' an elliptical phrase meaning 'he [for]= whose [benefit the] trust [was created].' In this phrase *cestui* is pronounced 'settee' (with the accent on the first syllable), *que* is pronounced 'kee,' and trust as in English. Grammatically the plural should be *cestuis que trust* (pronounced like the singular); but by an understandable mistake it is sometimes written *cestuis que trustent*, as if

trust were a verb." Glanville Williams, *Learning the Law* 10 (11th ed. 1982).

**cestui que use** (set-ee [or ses-twee] kee [or kə yoos]). The person for whose use and benefit property is being held by another, who holds the legal title to the property. Pl. **cestuis que use** or (erroneously) **cestuis que usent**.

"The basis of this institution was the transfer of property to a trusted friend, who was to hold it not for personal benefit but for the purpose of carrying out the transferor's instructions. The person to whom the land was conveyed for this purpose was the 'feoffee to uses'; the person for whose benefit the land was conveyed — the beneficiary — was the 'cestui que use' . . . , from the law French 'cestui a que use le feoffment fuit fait'." Peter Butt, *Land Law* § 702, at 97 (3d ed. 1996).

**cestui que vie** (set-ee [or ses-twee] kee [or kə vee]). The person whose life measures the duration of a trust, gift, estate, or insurance contract.

"[L]et us assume that A instead transfers 'to E for the life of A.' Since A has used his own life as the measuring life of E's estate, A has given away all that he had. Because E's estate is measured by the life of someone other than himself, his estate is called an estate *pur autre vie*. A, whose life is the measuring life, is called the *cestui que vie*." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 36 (2d ed. 1984).

**ceteris paribus** (set-ə-ris par-ə-bəs). [Latin] Other things being equal. — Also spelled *caeteris paribus*.

**ceteris tacentibus** (set-ə-ris ta-sen-tə-bəs). [Latin] *Hist.* The others being silent. • This phrase appeared in serially printed law reports after an opinion by one judge. It referred to the judges who did not vote or express an opinion. — Also spelled *caeteris tacentibus*. See **SERIALIZED**.

**cf. abbr.** [Latin *confer*] Compare.

**C.F. abbr.** COST AND FREIGHT.

**CFC.** See *controlled foreign corporation* under **CORPORATION**.

**CFP. abbr.** Certified financial planner. See **FINANCIAL PLANNER**.

**CFR. abbr.** CODE OF FEDERAL REGULATIONS.

**CFTC. abbr.** COMMODITY FUTURES TRADING COMMISSION.

**CGL policy.** See *comprehensive general liability policy* under **INSURANCE POLICY**.

**ch. abbr.** 1. Chapter. 2. Chancellor. 3. Chancery. 4. Chief.

**chafewax** (chayf-waks). *Hist.* A chancery officer who heated (or *chafed*) wax to seal writs, commissions, and other instruments. • The office was abolished in 1852. — Also spelled *chaffwax*.

**chain-certificate method.** The procedure for authenticating a foreign official record by the party seeking to admit the record as evidence at trial. See **Fed. R. Civ. P.** 44.

**chain conspiracy.** See **CONSPIRACY**.

**chain gang.** A group of prisoners chained together to prevent their escape while working outside a prison.

**chain of causation.** 1. A series of events each caused by the previous one. 2. The causal connection between a cause and its effects. Cf. **CAUSATION**.

**chain-of-causation rule.** *Workers' compensation.* The principle that an employee's suicide is compensable under workers' compensation statutes if the employee suffered an earlier work-related injury that led to a mental disorder resulting in the suicide.

**chain of custody.** 1. The movement and location of real evidence from the time it is obtained to the time it is presented in court.

"Chain of custody requires testimony of continuous possession by each individual having possession, together with testimony by each that the object remained in substantially the same condition during its presence in his possession. All possibility of alteration, substitution or change of condition need not be eliminated. For example, normally an object may be placed in a safe to which more than one person had access without each such person being produced. However the more authentication is genuinely in issue, the greater the need to negate the possibility of alteration or substitution." Michael H. Graham, *Federal Rules of Evidence in a Nutshell* 402 (3d ed. 1992).

2. The history of a chattel's possession. — Also termed *chain of possession*.

**chain of title.** 1. The ownership history of a piece of land, from its first owner to the present one. — Also termed *line of title*. 2. The ownership history of commercial paper, traceable through the indorsements. • For the holder

to have good title, every prior negotiation must have been proper. If a necessary indorsement is missing or forged, the chain of title is broken and no later transferee can become a holder.

**chain-referral scheme.** See PYRAMID SCHEME.

**chair.** The person who presides over a committee, convention, assembly, or other deliberative body. — Also termed *chairman*; *chairwoman*; *chairperson*.

**Chairman of Committees of the Whole House.** The member of Parliament who presides over the House of Commons when it is sitting in committee.

**chairperson.** See CHAIR.

**chairwoman.** See CHAIR.

**challenge, n. 1.** An act or instance of formally questioning the legality or legal qualifications of a person, action, or thing <a challenge to the opposing party's expert witness>.

**as-applied challenge.** A lawsuit claiming that a law or governmental policy, though constitutional on its face, is unconstitutional as applied, usu. because of a discriminatory effect; a claim that a statute is unconstitutional on the facts of a particular case or to a particular party.

**Batson challenge.** *Criminal procedure.* A defendant's objection to peremptory challenges of jurors whereby the defendant raises an inference that the prosecution used peremptory challenges to exclude potential jurors on the basis of race (*Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986)). • *Edmonson v. Leesville Concrete Company* extended *Batson* challenges to civil cases. 500 U.S. 614, 111 S.Ct. 2077 (1991).

**constitutional challenge.** A lawsuit claiming that a law or governmental action is unconstitutional.

**facial challenge.** A claim that a statute is unconstitutional on its face — that is, that it always operates unconstitutionally.

**2.** A party's request that a judge disqualify a potential juror or an entire jury panel <the personal-injury plaintiff used his last challenge to disqualify a neurosurgeon>. — Also termed *jury challenge*.

**causal challenge.** See *challenge for cause*.

**challenge for cause.** A party's challenge supported by a specified reason, such as bias

or prejudice, that would disqualify that potential juror. — Also termed *causal challenge*; *general challenge*; *challenge to the poll*.

**challenge propter affectum** (**prop-tər ə-fek-təm**). A challenge because some circumstance, such as kinship with a party, renders the potential juror incompetent to serve in the particular case.

**challenge propter defectum** (**prop-tər də-fek-təm**). A challenge based on a claim that the juror is incompetent to serve on any jury for reasons such as alienage, infancy, or non-residency.

**challenge propter delictum** (**prop-tər də-lik-təm**). A challenge based on a claim that the potential juror has lost citizenship rights, as by being convicted of an infamous crime. See CIVIL DEATH (1).

**challenge to the array.** A legal challenge to the manner in which the entire jury panel was selected, usu. for a failure to follow prescribed procedures designed to produce impartial juries. • Such a challenge is either a principal challenge (if some defect renders the jury *prima facie* incompetent, as where the officer selecting veniremembers is related to the prosecutor or defendant) or a challenge for favor (as where the defect does not amount to grounds for a principal challenge, but there is a probability of partiality). — Also termed *challenge to the jury array*.

**challenge to the poll.** See *challenge for cause*.

**general challenge.** See *challenge for cause*.

**peremptory challenge.** One of a party's limited number of challenges that need not be supported by any reason, although a party may not use such a challenge in a way that discriminates against a protected minority. — Often shortened to *peremptory*. — Also termed *peremptory strike*. See STRIKE (2).

**3. Military law.** An objection to a member of the court serving in a court-martial case. • A military judge can be challenged only for cause.

**challenge, vb. 1.** To dispute or call into question <the columnist challenged the wisdom of the court's ruling>. **2.** To formally object to the legality or legal qualifications of <the defendant challenged the person's eligibility for jury duty>.

**challenge to the jury array.** See *challenge to the array* under CHALLENGE (2).

**challenge to the poll.** See *challenge for cause* under CHALLENGE (2).

**chamber, n.** 1. A room or compartment <gas chamber>. 2. A legislative or judicial body; the hall or room where such a body conducts business <the senate chamber>. — **chamber, adj.**

**judge's chamber.** (*usu. pl.*) 1. The private room or office of a judge. 2. Any place that a judge transacts official business when not holding a session of the court. See IN CAMERA.

**lower chamber.** In a bicameral legislature, the larger of the two legislative bodies, such as the House of Representatives or the House of Commons.

**upper chamber.** In a bicameral legislature, the smaller of the two legislative bodies, such as the Senate or the House of Lords.

**chamber, vb.** (Of a judge) to sit in one's chambers at a given location <Judge Kaye chambers sometimes in New York and sometimes in Albany>.

**chamber business.** A judge's official business that is conducted outside the courtroom.

**chamberlain (chaym-bər-lin).** A treasurer; originally, the keeper of the royal treasure chamber. • The term has been used for several high offices in England, such as the Lord Great Chamberlain, Lord Chamberlain of the Household, and Chamberlain of the Exchequer.

**chamberlaria (chaym-bər-lair-ee-ə).** [Law Latin] Chamberlainship; the office of chamberlain.

**chamber of accounts.** *French law.* A court responsible for adjudicating disputes concerning public-revenue collection. Cf. COURT OF EXCHEQUER.

**chamber of commerce.** An association of merchants and other business leaders who organize to promote the commercial interests in a given area and whose group is generally affiliated with the national organization of the same name.

**champertor (cham-pər-tər), n.** A person who engages in champerty; one who supports and promotes another person's lawsuit for pecuniary gain.

**champertous (cham-pər-təs), adj.** Of, relating to, or characterized by champerty; constituting champerty <a champertous contract>.

"In England and many other countries, the contingent fee is prohibited as a form of champerty because it permits a client to carry on litigation in exchange for a promise to the lawyer of a share in the recovery. Although most states in the United States prohibit a lawyer from accepting an assignment of a percentage of the client's cause of action as a legal fee, they do not similarly condemn, as champertous, contingent fees whereby the lawyer receives a percentage of the recovery as a fee and no fee at all if there is no recovery." Robert H. Aronson & Donald T. Weckstein, *Professional Responsibility in a Nutshell* 271-72 (2d ed. 1991).

**champerty (cham-pər-tee), n.** 1. An agreement between a stranger to a lawsuit and a litigant by which the stranger pursues the litigant's claim as consideration for receiving part of any judgment proceeds. 2. The act or fact of maintaining, supporting, or promoting another person's lawsuit. Cf. MAINTENANCE (6).

"There is disagreement in the American courts as to what constitutes champerty. (1) Some courts hold that an agreement to look to the proceeds of the suit for compensation is champerty. . . . (2) Some courts hold that in addition the attorney must prosecute the suit at his own cost and expense to constitute champerty. . . . (3) Some courts hold even in a case like (2) that there is no champerty. . . . (4) All authorities agree that a contract for a contingent fee is not champerty if it is not to be paid out of the proceeds of the suit. . . . (5) In some states it is declared that the common law doctrines of maintenance and champerty are unknown . . . ; in some the matter is regulated wholly by statute. . . . [A]nd in most there is a marked tendency to narrow the doctrines of champerty or to evade them." William R. Anson, *Principles of the Law of Contract* 294 n.2 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"The rule as to champerty has been generally relaxed under modern decisions and a majority of courts now recognize that an agreement by which the attorney is to receive a contingent fee, i.e., a certain part of the avails of a suit or an amount fixed with reference to the amount recovered, is valid as long as the attorney does not agree to pay the expenses and costs of the action." Walter Wheeler Cook, "Quasi-Contracts," in 1 *American Law and Procedure* 129 (1952).

**chance, n.** 1. A hazard or risk. 2. The unforeseen, uncontrollable, or unintended consequences of an act. 3. An accident.

**chancellor, n.** 1. A judge serving on a court of chancery. 2. A university president or CEO of an institution of higher education. — **chancellorship, n.**

**Chancellor, Lord.** See LORD CHANCELLOR.

**chancellor of the diocese.** *Eccles. law.* The sole judge of the consistory court of a diocese.

**Chancellor of the Exchequer.** In England, a government minister who controls revenue and expenditures. • Formerly, the Chancellor sat in the Court of Exchequer.

**chancellor's foot.** A symbol of the variability of equitable justice. • John Selden, the 17th-century jurist, is thought to have coined the phrase in this passage, from his best-known book: "Equity is a roguish thing. For law we have a measure, know what to trust to: equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure the Chancellor's foot. What an uncertain measure would this be! One Chancellor has a long foot, another a short foot, a third an indifferent foot; 'tis the same thing in the Chancellor's conscience." *Table Talk* (1689).

**chance-medley.** [fr. Anglo-Norman *chance medlee* "chance scuffle"] A spontaneous fight during which one participant kills another participant in self-defense. — Also termed *chaud-medley*; *casual affray*. Cf. MEDLEY.

"But the self-defence, which we are now speaking of, is that whereby a man may protect himself from an assault, or the like, in the course of a sudden brawl or quarrel, by killing him who assaults him. And this is what the law expresses by the word *chance-medley*, or (as some rather choose to write it) *chaud-medley*; the former of which in its etymology signifies a *casual* affray, the latter an affray in the *heat* of blood or passion: both of them of pretty much the same import; but the former is in common speech too often erroneously applied to any manner of homicide by misadventure; whereas it appears . . . that it is properly applied to such killing, as happens in self-defence upon a sudden encounter." 4 William Blackstone, *Commentaries on the Laws of England* 184 (1769).

**chance-of-survival doctrine.** The principle that a wrongful-death plaintiff need only prove that the defendant's conduct was a substantial factor in causing the death — that is, that the victim might have survived but for the defendant's conduct.

**chancer** (*chan-sər*), *vb.* To adjust according to equitable principles, as a court of chancery would. • The practice arose in parts of New England when the courts had no equity jurisdiction, and were compelled to act on equitable principles.

"The practice of 'chancering' is a very old one. A forfeiture could be 'chancered' under a law of 1699. . . . Adjudged cases in 1630–1692 may be found in the Records of the Court of Assistants of Massachusetts Bay Colony. The early laws of Massachusetts provided for 'chancering' the forfeiture of any penal bond. . . . In Rhode Island

an act of 1746 provided for 'chancerizing' the forfeiture 'where any penalty is forfeited, or conditional estate recovered, or equity of redemption sued for, whether judgment is confessed or otherwise obtained.'" 1 John Bouvier, *Bouvier's Law Dictionary* 456–57 (8th ed. 1914).

**chancery** (*chan-sər-ee*). **1.** A court of equity; collectively, the courts of equity. — Also termed *court of chancery*; *chancery court*.

"Chancery's jurisdiction was complementary to that of the courts of common law — it sought to do justice in cases for which there was no adequate remedy at common law. It had originated in the petition, not the writ, of the party who felt aggrieved to the Lord Chancellor as 'keeper of the King's conscience.' In its origins, therefore, Chancery's flexible concern for justice complemented admirably the formalism of a medieval system of common law which had begun to adhere strictly, perhaps overstrictly on occasion, to prescribed forms. By 1800, however, Chancery's system was itself regarded as being both consistent and certain." A.H. Manchester, *Modern Legal History of England and Wales, 1750–1950* 135–36 (1980).

**2.** The system of jurisprudence administered in courts of equity. See EQUITY. **3.** *Int'l law.* The place where the head of a diplomatic mission and staff have their offices, as distinguished from the embassy (where the ambassador lives).

**Chancery Court of York.** *Eccles. law.* The ecclesiastical court of the province of York, responsible for appeals from provincial diocesan courts. Cf. COURT OF ARCHES.

**chancery guardian.** See GUARDIAN.

**chance verdict.** See VERDICT.

**changed circumstances.** See *change of circumstances* under CIRCUMSTANCE.

**change of circumstances.** See CIRCUMSTANCE.

**change of condition.** **1.** *Workers' compensation.* A substantial worsening of an employee's physical health occurring after an award, as a result of which the employee merits an increase in benefits. **2.** *Family law.* A change of circumstances justifying a modification to a custody, child support, or alimony order. Cf. *change of circumstances* under CIRCUMSTANCE.

**change of venue.** **1.** The transfer of a lawsuit from one locale to another. **2.** The transfer of a lawsuit begun in one court to another court in the same district, usu. because of questions of fairness. — Also termed *transfer of venue*. See VENUE.



**change order.** A directive issued by the federal government to a contractor to alter the specifications of an item the contractor is producing for the government.

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

**channel. 1.** The bed of a stream of water; the groove through which a stream flows <digging a deeper channel was thought to help protect the river from flooding>.

*main channel.* The bed over which the principal volume of water flows; the deepest and most navigable part of a channel.

*natural channel.* The naturally formed bed and banks of a stream.

*natural flood channel.* A channel through which floodwaters naturally accumulate and flow downstream.

**2.** The line of deep water that vessels follow <a shipping channel>. **3.** A water route between two islands or an island and a continent <the English Channel>. **4.** A mode of transmitting something <the news channel>.

**chantry (chan-tree), n. Hist. Eccles. law. 1.** A benefice endowed for the saying of Mass by chantry priests for the soul of the founder or his designees. • This practice was abolished in England by the Chantry Acts of 1545 and 1547. **2.** A chapel or part of a church so endowed. — Also spelled *chauntry*.

**chapter (chap-ə-tər).** [Law French] *Hist.* A list of matters drawn up by the king to be presented before the justices in eyre, justices of assise, or justices of the peace. — Also spelled *chapitre*. Cf. ARTICLES OF THE EYRE.

**Chapter 7. 1.** The chapter of the Bankruptcy Code allowing a trustee to collect and liquidate a debtor's property, either voluntarily or by court order, to satisfy creditors. **2.** A bankruptcy case filed under this chapter. • An individual debtor who undergoes this type of liquidation (the most common type of bankruptcy) usu. gets a fresh financial start by receiving a discharge of all debts. — Also termed (in sense 2) *straight bankruptcy*.

"A Chapter 7 case has five stages: (1) getting the debtor into bankruptcy court; (2) collecting the debtor's property; (3) selling this property; (4) distributing the proceeds of the sale to creditors; and (5) determining whether the debtor is discharged from further liability to these creditors." David G. Epstein et al., *Bankruptcy* § 1-7, at 9 (1993).

**Chapter 9. 1.** The chapter of the Bankruptcy Code governing the adjustment of a municipality's debts. **2.** A bankruptcy case filed under this chapter.

**Chapter 11. 1.** The chapter of the Bankruptcy Code allowing an insolvent business, or one that is threatened with insolvency, to reorganize itself under court supervision while continuing its normal operations and restructuring its debt. • Although the Code does not expressly prohibit the use of Chapter 11 by an individual nonbusiness debtor, the vast majority of Chapter 11 cases involve business debtors. **2.** A business reorganization conducted under this chapter; REORGANIZATION (2).

**Chapter 12. 1.** The chapter of the Bankruptcy Code providing for a court-approved debt-payment relief plan for family farmers with a regular income. **2.** A bankruptcy case filed under this chapter. — Also termed (in sense 2) *family-farmer bankruptcy*; *farmer bankruptcy*.

**Chapter 13. 1.** The chapter of the Bankruptcy Code allowing a person's future earnings to be collected by a trustee and paid to unsecured creditors. • A plan filed under Chapter 13 is sometimes called a *wage-earner's plan*, a *wage-earner plan*, or an *income-based plan*. A Chapter 13 debtor does not receive a discharge of debts; rather, Chapter 13 allows the debtor to propose a plan of rehabilitation to extend or reduce the balance of any obligations. A plan made in good faith will be confirmed if the creditors acquiesce, if they receive the fair value of their claims, or if the plan pledges all of the debtor's disposable income for three years. **2.** A bankruptcy case filed under this chapter.

**chapter surfing.** *Slang.* A debtor's movement from a filing under one Bankruptcy Code chapter to a filing under another.

**character evidence.** See EVIDENCE.

**characterization. 1. Conflict of laws.** The classification, qualification, and interpretation of laws that apply to the case. — Also termed *qualification*; *classification*; *interpretation*.

"In a conflict-of-laws situation, a court must determine at the outset whether the problem presented to it for solution relates to torts, contracts, property, or some other field, or to a matter of substance or procedure, in order to refer to the appropriate law. In other words, the court must initially, whether consciously or not, go through the process of determining the nature of the problem; otherwise, the court will not know which choice-of-law rule to apply to the case. This process is generally called 'characterization,' and sometimes 'classi-

fication,' 'qualification,' or 'interpretation.' " 16 Am. Jur. 2d *Conflict of Laws* § 3, at 12 (1998).

2. The process of classifying marital property as either separate or community property.

**character witness.** See WITNESS.

**charge, n.** 1. A formal accusation of a crime as a preliminary step to prosecution <a murder charge>. — Also termed *criminal charge*. 2. An instruction or command <a mother's charge to her son>. 3. JURY CHARGE <review the charge for appealable error>. 4. An assigned duty or task; a responsibility <the manager's charge to open and close the office>. 5. An encumbrance, lien, or claim <a charge on property>. 6. A person or thing entrusted to another's care <a charge of the estate>. 7. Price, cost, or expense <free of charge>.

**delinquency charge.** A charge assessed against a borrower for failing to timely make a payment.

**noncash charge.** A cost (such as depreciation or amortization) that does not involve an outlay of cash.

**charge, vb.** 1. To accuse (a person) of criminal conduct <the police charged him with murder>. 2. To instruct or command <the dean charged the students to ensure that the entire group acted ethically>. 3. To instruct a jury on matters of law <the judge charged the jury on self-defense>. 4. To impose a lien or claim; to encumber <charge the land with a tax lien>. 5. To entrust with responsibilities or duties <charge the guardian with the ward's care>. 6. To demand a fee; to bill <the clerk charged a small filing fee>.

**chargeable, adj.** (Of an act) capable or liable of being charged as a criminal offense <taking that money for personal use would be chargeable>.

**charge account.** A credit arrangement by which a customer purchases goods and services and pays for them periodically or within a specified time. See CREDIT (4).

**charge and discharge.** *Equity practice.* Court-ordered account filings by a plaintiff and a defendant. • The plaintiff's account (*charge*) and the defendant's response (*discharge*) were filed with a master in chancery.

**charge and specification.** *Military law.* A written description of an alleged offense.

**charge-back, vb.** A bank's deducting of sums it had provisionally credited to a customer's account, occurring usu. when a check deposited in the account has been dishonored. UCC § 4-214.

**charge conference.** A meeting between a trial judge and the parties' attorneys to develop a jury charge.

**chargé d'affaires** (shahr-zhay də-fair). [French "one in charge of affairs"] A diplomat who is the second in command in a diplomatic mission (hence, subordinate to an ambassador or minister). — Also spelled *chargé des affaires*. Pl. **chargés d'affaires**.

**acting chargé d'affaires.** A chargé d'affaires who performs mission functions when the leader of the mission is not available to do so or when the position is vacant. — Also termed *chargés d'affaires ad interim*.

**permanent chargé d'affaires.** A chargé d'affaires with a high enough rank to head a mission (if there is no ambassador or minister). — Also termed *chargé d'affaires en pied*; *chargé d'affaires en titre*.

**chargee** (chahr-jee). 1. The holder of a charge on property or of a security on a loan. 2. One charged with a crime.

**charge off, vb.** To treat (an account receivable) as a loss or expense because payment is unlikely; to treat as a bad debt. See *bad debt* under DEBT.

**charge sheet.** 1. A police record showing the names of each person brought into custody, the nature of the accusations, and the identity of the accusers. 2. *Military law.* A four-part charging instrument containing (1) information about the accused and the witnesses, (2) the charges and specifications, (3) the preferring of charges and their referral to a summary, special, or general court-martial for trial, and (4) for a summary court-martial, the trial record.

**charging instrument.** A formal document — usu. either an indictment or an information — that sets forth an accusation of a crime. — Also termed *accusatory instrument*.

**charging lien.** See LIEN.

**charging order.** *Partnership.* A statutory procedure whereby an individual partner's creditor can satisfy its claim from the partner's interest in the partnership.

**charitable**, *adj.* **1.** Dedicated to a general public purpose, usu. for the benefit of needy people who cannot pay for benefits received <charitable contribution>. **2.** Involved in or otherwise relating to charity <charitable foundation>.

**charitable bequest.** See BEQUEST.

**charitable contribution.** **1.** A contribution of money or property to an organization engaged in charitable activities. **2.** A contribution to a qualified nonprofit charitable organization. ● Charitable contributions are deductible for certain tax purposes.

**charitable corporation.** See CORPORATION.

**charitable deduction.** See DEDUCTION.

**charitable immunity.** See IMMUNITY (2).

**charitable organization.** *Tax.* A tax-exempt organization that (1) is created and operated exclusively for religious, scientific, literary, educational, athletic, public-safety, or community-service purposes, (2) does not distribute earnings for the benefit of private individuals, and (3) does not interfere in any way with political campaigns and decision-making processes. IRC (26 USCA) § 501(c)(3). — Also termed *charity*; *501(c)(3) organization*.

**charitable purpose.** *Tax.* The purpose for which an organization must be formed so that it qualifies as a charitable organization under the Internal Revenue Code. — Also termed *charitable use*.

**charitable remainder.** See REMAINDER.

**charitable remainder annuity trust.** See TRUST.

**charitable-remainder trust.** See TRUST.

**charitable trust.** See TRUST.

**charitable use.** See *charitable trust* under TRUST.

**charity**, *n.* **1.** CHARITABLE ORGANIZATION. **2.** Aid given to the poor, the suffering, or the general community for religious, educational, economic, public-safety, or medical purposes. **3.** Goodwill.

**charlatan** (*shahr-lə-tən*), *n.* A person who pretends to have more knowledge or skill than he

or she actually has; a quack or faker. — **charlatanism**, *charlatanry*, *n.*

**charta** (*kahr-tə*). [Law Latin] *Hist.* **1.** A charter or deed. **2.** A token by which an estate is held. **3.** A royal grant of privileges or liberties.

**chartae libertatum** (*kahr-tee lib-ər-tay-təm*). [Latin] Charters of liberties. ● This term refers to the two great sources of English liberties: *Magna Carta* and the *Charta de Foresta*.

**chartel.** See CARTEL.

**charter**, *n.* **1.** An instrument by which a governmental entity (such as a city or state) grants rights, liberties, or powers to its citizens. **2.** *Hist.* The writing that accompanies a livery of seisin. ● Rather than being an operative element of transfer, the writing was merely evidence of it. **3.** A legislative act that creates a business or defines a corporate franchise. Cf. ARTICLES OF INCORPORATION.

**bank charter.** A document issued by a governmental authority permitting a bank to conduct business.

**corporate charter.** **1.** CERTIFICATE OF INCORPORATION (1). **2.** A document that one files with the secretary of state upon incorporating a business. ● The corporate charter is often the articles of incorporation.

**home-rule charter.** A municipal corporation's organizational plan or framework, analogous to a constitution, drawn by the municipality itself and adopted by popular vote of the citizenry.

**municipal charter.** A charter by which a municipality is constituted.

"Municipal Charters. — The charter issued to a municipality is in the nature of a constitution to it, being superior to all ordinances enacted by that municipality, though inferior in rank to all State laws of every kind." Frank Hall Childs, *Where and How to Find the Law* 8 (1922).

**4.** The leasing or hiring of an airplane, ship, or other vessel.

**bareboat charter.** A charter under which the shipowner provides the ship, and the charterer provides the personnel, insurance, and other materials necessary to operate it. — Also termed *demise charter*.

**catch-time charter.** See *time charter*.

**demise charter.** A charter under which the shipowner surrenders possession and control of the vessel to the charterer, who then succeeds to many of the shipowner's rights and

obligations. • The charterer is known either as a *demise charterer* or as an *owner pro hac vice*.

**gross charter.** A charter under which the shipowner provides all personnel and pays all expenses.

**time charter.** A charter for a specified period, rather than for a specific task or voyage; a charter under which the shipowner continues to manage and control the vessel, but the charterer designates the ports of call and the cargo carried. • Each party bears the expenses related to its functions and for any damage it causes. — Also termed *catch-time charter*.

**voyage charter.** A charter under which the shipowner provides a ship and crew, and places them at the disposal of the charterer for the carriage of cargo to a designated port. • The voyage charterer may lease the entire vessel for a voyage or series of voyages — or may (by “space charter”) lease only part of the vessel.

**charter, vb.** 1. To establish or grant by charter <charter a bank>. 2. To hire or rent for temporary use <charter a boat>.

**charter agreement.** See CHARTERPARTY.

**chartered life underwriter.** See UNDERWRITER.

**chartered ship.** See SHIP.

**charter-land.** *Hist.* See BOOKLAND.

**charter of affreightment.** See AFFREIGHTMENT.

**charterparty.** A contract by which a ship, or a principal part of it, is leased by the owner, esp. to a merchant for the conveyance of goods on a predetermined voyage to one or more places; a special contract between the shipowner and charterer, esp. for the carriage of goods at sea. — Also written *charter-party*; *charter party*. — Also termed *charter agreement*.

“*Charter partie (charta partita)* is nothing but that which we call a paire of indentures, containing the covenants and agreements made between merchants, or sea faring men touching their marine affaires.” John Cowell, *The Interpreter* (1607).

“The instrument by which a vessel is leased is a charter party. The term is derived from *charta partita*, i.e., a deed of writing divided; in earlier times the *charta partita*, like the indenture agreement, was prepared in two parts, the ship owner retaining one part and the charter-

er the other. . . . While a charter party need not be in writing, most charters today are detailed written documents drawn to accommodate the particular needs of shipper and carrier in a certain type of trade or commerce.” Frank L. Maraist, *Admiralty in a Nutshell* 44–45 (3d ed. 1996).

**chartis reddendis (kahr-tis ri-den-dis).** [Latin “for returning charters”] *Hist.* A writ seeking the return of a charter of feoffment from a person who has been entrusted with the charter but who has refused to deliver it as instructed. See FEOFFMENT.

**chartophylax (kahr-tof-ə-laks).** *Hist.* A keeper of records or public instruments; a registrar.

**chase.** *Hist.* A franchise granted by the Crown empowering the grantee to keep, within a certain district, animals for hunting, i.e., the objects of the chase. • This franchise was also known as a *free chase* to contrast it with a *chase royal* — a chase held by the Crown.

**common chase.** A chase in which everyone is entitled to hunt.

**chattel (chat-əl).** (*usu. pl.*) Movable or transferable property; esp., personal property.

“That Money is not to be accounted Goods or *Chattels*, because it is not of it self valuable. . . . *Chattels* are either *personal* or *real*. *Personal*, may be so called in two respects: One, because they belong immediately to the person of a Man, as a Bow, Horse, etc. The other, for that being any way injuriously withheld from us, we have no means to recover them, but *Personal Actions*. *Chattels real*, are such as either appertain not immediately to the person, but to some other thing, by way of dependency, as a Box with Charters of Land, Apples upon a Tree, or a Tree it self growing on the Ground. . . . [O]r else such as are issuing out of some immoveable thing to a person, as a Lease or Rent for the term of years.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

**chattel personal.** A tangible good or an intangible right (such as a patent). — Also termed *personal chattel*.

**chattel real.** A real-property interest that is less than a freehold or fee, such as a leasehold estate. • The most important chattel real is an estate for years in land, which is considered a chattel because it lacks the indefiniteness of time essential to real property. — Also termed *real chattel*.

**chattel vegetable.** A movable article of a vegetable origin, such as timber, undergrowth, corn, or fruit.

**personal chattel.** See *chattel personal*.

**real chattel.** See *chattel real*.

**chattel lien.** See *mechanic's lien* under LIEN.

**chattel mortgage.** See MORTGAGE.

**chattel-mortgage bond.** See BOND (3).

**chattel paper.** A writing that shows both a monetary obligation and a security interest in or a lease of specific goods. • Chattel paper is generally used in a consumer transaction when the consumer buys goods on credit. The consumer typically promises to pay for the goods by executing a promissory note, and the seller retains a security interest in the goods. See SECURITY AGREEMENT.

“‘Chattel paper’ means a record or records that evidence both a monetary obligation and a security interest in or a lease of specific goods or of specific goods and software used in the goods. The term does not include a charter or other contract involving the use or hire of a vessel. If a transaction is evidenced both by a security agreement or lease and by an instrument or series of instruments, the group of records taken together constitutes chattel paper.” UCC § 9-102(a)(8).

**electronic chattel paper.** Chattel paper evidenced by a record or records consisting of information stored in an electronic medium and retrievable in perceivable form. UCC § 9-102(a)(22).

**tangible chattel paper.** Chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium. UCC § 9-102(a)(54).

**chattel personal.** See CHATTEL.

**chattel real.** See CHATTEL.

**chattel vegetable.** See CHATTEL.

**chaud-medley (showd-med-lee).** See CHANCE-MEDLEY.

**chantry (chon-tree), n.** See CHANTRY.

**cheat, n.** 1. CHEATING. 2. A person who habitually cheats; a swindler.

**cheat, vb.** To defraud; to practice deception.

**cheater.** 1. A person who cheats. 2. ESCHEATOR.

**cheating.** The fraudulent obtaining of another's property by means of a false symbol or token, or by other illegal practices. — Also termed *cheating at common law*; *common-law cheat*; *cheat*. See FRAUD.

**cheating by false pretenses.** The act of purposely obtaining both the possession and ownership of money, goods, wares, or merchandise by means of misrepresentations, with the intent to defraud. See FALSE PRETENSES. Cf. *larceny by trick* under LARCENY.

**check, n.** A draft signed by the maker or drawer, drawn on a bank, payable on demand, and unlimited in negotiability. • Under UCC § 3-104(4), an instrument may be a check even though it is described on its face by another term, such as “money order.” — Also spelled *cheque*. See DRAFT.

**bad check.** A check that is not honored because the account either contains insufficient funds or does not exist. — Also termed *hot check*; *worthless check*; *rubber check*; *bounced check*; *cold check*; *bogus check*; *false check*; *dry check*.

**blank check.** A check signed by the drawer but left blank as to the payee or the amount, or both.

**bogus check.** See *bad check*.

**canceled check.** A check bearing a notation that it has been paid by the bank on which it was drawn. • A canceled check is often used as evidence of payment. — Also spelled *cancelled check*.

**cashier's check.** A check drawn by a bank on itself, payable to another person, and evidencing the payee's authorization to receive from the bank the amount of money represented by the check; a draft for which the drawer and drawee are the same bank, or different branches of the same bank.

**certified check.** A depositor's check drawn on a bank that guarantees the availability of funds for the check. • The guarantee may be by the drawee's signed agreement to pay the draft or by a notation on the check that it is certified.

**cold check.** See *bad check*.

**depository-transfer check.** An unsigned, nonnegotiable check that is used by a bank to transfer funds from its branch to the collection bank.

**dry check.** See *bad check*.

**false check.** See *bad check*.

**hot check.** See *bad check*.

**memorandum check.** A check that a borrower gives to a lender for the amount of a short-term loan, with the understanding that it is not to be presented for payment but will

be redeemed by the borrower when the loan falls due.

**personal check.** A check drawn on a person's own account.

**postdated check.** A check that bears a date after the date of its issue and is payable on or after the stated date.

**raised check.** A check whose face amount has been increased, usu. without the knowledge of the issuer — an act that under the UCC is considered a material alteration. UCC § 3-407. See RAISING AN INSTRUMENT.

**registered check.** A check purchased at a bank and drawn on bank funds that have been set aside to pay that check.

**rubber check.** See *bad check*.

**stale check.** A check that has been outstanding for an unreasonable time — more than six months under the UCC. • Banks in jurisdictions adopting the UCC may choose not to honor such a check. UCC § 4-404.

**teller's check.** A draft drawn by a bank on another bank or payable at or through a bank.

**traveler's check.** A cashier's check that must be signed by the purchaser at the time of purchase and countersigned when cashed; an instrument that (1) is payable on demand, (2) is drawn on or payable at or through a bank, (3) is designated by the term "traveler's check" or by a substantially similar term, and (4) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument. UCC § 3-104(i). • Traveler's checks, which are available in various denominations, are typically purchased from a bank or financing company.

**worthless check.** See *bad check*.

**check, vb.** **1.** To control or restrain <handcuffs checked the defendant's movement>. **2.** To verify or audit <an accountant checked the invoices>. **3.** To investigate <the police checked up on the suspect>.

**check-kiting.** The illegal practice of writing a check against a bank account with insufficient funds to cover the check, in the hope that the funds from a previously deposited check will reach the account before the bank debits the amount of the outstanding check. — Also termed *kiting*; *check-flashing*.

**check-off system.** The procedure by which an employer deducts union dues directly from the

employees' wages and remits those dues to the union.

**checkpoint search.** See SEARCH.

**checks and balances.** The theory of governmental power and functions whereby each branch of government has the ability to counter the actions of any other branch, so that no single branch can control the entire government. • For example, the executive branch can check the legislature by exercising its veto power, but the legislature can, by a sufficient majority, override any veto. See SEPARATION OF POWERS.

**chefe** (chef). [Law French fr. French *chef* "head"] See WERGILD.

**cheque.** See CHECK.

**cherry-stem annexation.** See ANNEXATION.

**chevage** (chee-vij). [fr. French *chef* "head"] *Hist.* An annual tribute payment from a villein to a lord. • Chevage was commonly exacted from villeins for permission to marry or permission to work outside a lord's domain. — Also spelled *chivage*; *chiefage*.

"Chevage, (*chevagium*) commeth of the French (*chef*.i. *caput*). It signifieth with us, a summe of money paid by villeins to their Lords, in acknowledgment of their slaverie. . . . It seemeth also to be used, for a summe of a mony, yearely given by a man to another of might & power, for his avowement, maintenance, and protection, as to their head or leader." John Cowell, *The Interpreter* (1607).

**chevantia** (chə-van-shee-ə). [Law French] *Hist.* A loan of money.

**chevisance** (chev-ə-zints). [Law French] *Hist.* **1.** A composition; an agreement between a creditor and a debtor. See COMPOSITION. **2.** An unlawful or usurious contract; esp., a contract intended to evade the statutes prohibiting usury.

**cheze** (shayz). [French *chez* "at the home of"] *Hist.* **1.** HOMESTEAD. **2.** A homestall; a farmyard.

**Chicago Board of Trade.** The commodities exchange where futures contracts in a large number of agricultural products are made. — Abbr. CBT; CBOT.

**Chicago Board Options Exchange.** The predominant organized marketplace in the United States for trading options. — Abbr. CBOE.

**chicanery** (shi-kay-nər-ee), *n.* Trickery; deception. — Also termed *chicane*. — **chicanerous**, *adj.*

**chief**, *n.* **1.** A person who is put above the rest; the leader <chief of staff>. **2.** The principal or most important part or position <commander-in-chief>. — **chief**, *adj.*

**chief baron.** *Hist.* The presiding judge of the English Court of Exchequer. • The office has been superseded by the Lord Chief Justice of England. See BARONS OF THE EXCHEQUER.

**chief executive.** See EXECUTIVE.

**chief executive officer.** A corporation's highest-ranking administrator who manages the firm day by day and reports to the board of directors. — Abbr. CEO.

**chief judge.** See JUDGE.

**chief justice.** See JUSTICE (2).

**Chief Justice of England.** The former title of the Lord Chief Justice of England.

**Chief Justice of the Common Pleas.** *Hist.* Formerly, the presiding judge in the Court of Common Pleas. • The Judicature Act of 1875 merged the Common Pleas Division into the Queen's Bench Division, at which time the Lord Chief Justice assumed the office of the Chief Justice of the Common Pleas. Cf. LORD CHIEF JUSTICE OF ENGLAND.

**chief justiciar.** See JUSTICIARY (2).

**chief lease.** See HEADLEASE.

**chief lord.** *Hist.* The immediate lord of a fee, to whom the tenants were directly and personally responsible.

**chief magistrate.** See MAGISTRATE (1).

**chief pledge.** See BOROUGHEAD.

**chief rents.** *Hist.* A small, fixed, annual rent payable to the lord by a freeholder of a manor; annual quit rent. • Chief rents were abolished in 1922. See QUIT RENT.

**chiefry** (cheef-ree). *Hist.* A small rent paid to the sovereign by a feudal landholder. — Also spelled *chiefrie*; *chiefery*.

**chief use.** A standard for determining a proper tariff classification in which a commodity's use is understood by examining the intended users as a whole, rather than individually.

**child.** **1.** At common law, a person who has not reached the age of 14, though the age now varies from jurisdiction to jurisdiction. **2.** A boy or girl; a young person. **3.** A son or daughter. **4.** A baby or fetus. See JUVENILE; MINOR.

**afterborn child.** A child born after execution of a will or after the time in which a class gift closes. See *after-born heir* under HEIR.

**biological child.** See *natural child* (1).

**child out of wedlock.** See *illegitimate child*.

**delinquent child.** A legal infant who has either violated criminal laws or engaged in disobedient or indecent conduct, and is in need of treatment, rehabilitation, or supervision. See JUVENILE DELINQUENT.

**disobedient child.** See *incorrigible child*.

**foster child.** A child whose care and upbringing are entrusted to an adult other than the child's natural or adoptive parents. — Also termed (archaically) *fosterling*. See *foster parent* under PARENT.

**illegitimate child.** A child that was neither born nor begotten in lawful wedlock nor later legitimized. • At common law, such a child was considered the child of nobody (*nullius filius*) and had no name except what was gained by reputation. Being no one's child, an illegitimate child could not inherit, even from the mother, but statutes in most states changed this rule to allow maternal inheritance. — Also termed *bastard*; *child out of wedlock*; *nonmarital child*. Cf. BASTARD.

**incorrigible child.** A child who refuses to obey his or her parents or guardians or has been adjudicated delinquent under laws governing unruly children. — Also termed *disobedient child*.

**legitimate child.** **1.** At common law, a child born or begotten in lawful wedlock. **2.** Modernly, a child born or begotten in lawful wedlock or legitimized by the parents' later marriage.

**natural child.** **1.** A child by birth, as distinguished from an adopted child. — Also termed *biological child*. **2.** An illegitimate

child acknowledged by the father. **3.** An illegitimate child.

**neglected child.** **1.** A child whose parents or legal custodians are unfit to care for him or her for reasons of cruelty, immorality, or incapacity. **2.** A child whose parents or legal custodians refuse to provide the necessary care and medical services for the child.

**nonmarital child.** See *illegitimate child*.

**posthumous child.** A child born after the father's death.

**quasi-posthumous child.** *Civil law.* A child who becomes a direct heir of a grandfather or other male ascendant because of the death of the child's father.

**unborn child.** A child not yet born, esp. at the happening of some event.

**child abuse.** See ABUSE.

**child- and dependent-care tax credit.** See TAX CREDIT.

**child-care fund.** State-government funds set aside to reimburse counties for part of the payments for children's foster care and expenses.

**child-care rules.** Administrative rules for the care of foster children.

**child destruction.** See FETICIDE.

**child endangerment.** The placing of a child in a place or position that exposes him or her to danger to life or health.

**child-kidnapping.** See KIDNAPPING.

**child-labor law.** A state or federal statute that protects children by prescribing the necessary working conditions for children in a workplace.

**child molestation.** See MOLESTATION.

**child neglect.** The failure of a person responsible for a minor to care for the minor's emotional or physical needs.

**child out of wedlock.** See *illegitimate child* under CHILD.

**child pornography.** See PORNOGRAPHY.

**children's court.** See *juvenile court* under COURT.

**child-sexual-abuse-accommodation syndrome.** The medical and psychological condition of a child who has suffered repeated instances of sexual abuse, usu. from a relative or family friend. — Also termed *child-sexual-abuse syndrome*.

**child's income tax.** See *kiddie tax* under TAX.

**child-slaying.** See INFANTICIDE.

**child's part.** An inheritance that, by statute in some states, a widow may claim in lieu of dower or what she would receive under her husband's will. ● The amount is the same as the amount that the decedent's child is entitled to receive, subject to payments to estate creditors and the costs of administration.

**child-stealing.** See *child-kidnapping* under KIDNAPPING.

**child support.** *Family law.* **1.** A parent's legal obligation to contribute to the economic maintenance and education of a child. ● The obligation is enforceable both civilly and criminal-ly. **2.** In a custody or divorce action, the money legally owed by one parent to the other for the expenses incurred for children of the marriage. Cf. ALIMONY.

**chill, vb.** To inhibit or discourage <chill one's free-speech rights>.

**chilling a sale.** The act of bidders or others who combine or conspire to discourage others from attempting to buy an item so that they migrate buy the item themselves for a lower price.

**chilling effect.** **1.** *Constitutional law.* The result of a law or practice that seriously discourages the exercise of a constitutional right, such as the right to appeal or the right of free speech. **2.** Broadly, the result when any practice is discouraged.

**Chimel search.** See *protective search* under SEARCH (1).

**chimney money.** See HEARTH MONEY.

**Chinese Wall.** See ETHICAL WALL.

**chirograph** (ki-rə-graf), *n.* **1.** *Civil law.* A handwritten instrument signed by the party who writes it. **2.** A written deed, subscribed and witnessed. **3.** Such a deed in two parts from a single original document separated by an in-



dented line through the word "chirographum," each party retaining one part. 4. *Hist.* FOOT OF THE FINE. — Also termed (in sense 4) *cyrographarius*. — **chirographic**, *adj.*

"Formerly, when deeds were more concise than at present, it was usual to write both parts on the same piece of parchment, with some word or letters of the alphabet written between them; through which the parchment was cut, either in a straight or indented line, in such a manner as to leave half the word on one part and half on the other. Deeds thus made were denominated *syngrapha* by the canonists; and with us *chirographa*, or hand-writings." 2 William Blackstone, *Commentaries on the Laws of England* 295-96 (1766).

**chirographer of fines.** *Hist.* A Court of Common Pleas officer who engrossed court-ordered fines and delivered indentures of the fines to the parties. See INDENTURE OF A FINE.

"*Chirographer of fines* ... signifieth in our common lawe, him in the common bench office, that ingrosseth fines in that court acknowledged, into a perpetuall record, after they be acknowledged, and fully passed by those officers, by whome they are formerly examined; and that writeth and delivereth the indentures of them unto the party. This officer also maketh two indentures, one for the buier, another for the seller; and maketh one other indented peece, containing also the effect of the fine, which he delivereth over to the *custos brevium*, that is called the foote of the fine." John Cowell, *The Interpreter* (1607).

**chirographum** (kī-rōg-rə-fəm). *Roman law.* 1. A handwritten document, usu. an undertaking or acknowledgment of debt written in the debtor's own hand. 2. A right of action for debt. Pl. **chirographa**.

**chit.** 1. A signed voucher for money received or owed, usu. for food, drink, or the like. 2. A slip of paper with writing on it.

**chivalry** (shiv-əl-ree). *Hist.* Tenure held by knight-service; tenure in which a person held land in exchange for military service. See KNIGHT-SERVICE.

"Chivalry is a tenure of land by knight's service: for the better understanding whereof it is to be known, that there is no land but is held mediately or immediately of the crown by some service or other; and therefore all our free-holds that are to us and our heirs are called fees, as proceeding from the bounty of the king for some small yearly rent, and the performance of such services as originally were imposed upon the land at the giving thereof. . . . And these services are all by Littleton divided into two sorts, chivalry and soccage: the one martial and military; the other clownish and rustical." *Termes de la Ley* 83-84 (1st Am. ed. 1812).

**choate** (koh-it), *adj.* 1. Complete in and of itself. 2. Having ripened or become perfected. — **choateness**, *n.* Cf. INCHOATE.

**choate lien.** See LIEN.

**choice of evils.** See NECESSITY (1).

**choice of jurisdiction.** *Conflict of laws.* The choice of the state (or country) that should exercise jurisdiction over a case.

**choice of law.** The question of which jurisdiction's law should apply in a given case. See CONFLICT OF LAWS.

**choice-of-law clause.** A contractual provision by which the parties designate the jurisdiction whose law will govern any disputes that may arise between the parties. Cf. FORUM-SELECTION CLAUSE.

**chop-shop**, *n.* A garage where stolen automobiles are dismantled so that their parts can be sold separately.

**chose** (shohz), *n.* [French] A thing, whether tangible or intangible; a personal article; a chattel. See THING.

**chose in action.** 1. A proprietary right in personam, such as a debt owed by another person, a share in a joint-stock company, or a claim for damages in tort. 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit. — Also termed *thing in action*.

"Chose, or, thing in action is, when a man hath cause, or may bring an action for some duty due to him; as an action of debt . . . and because they are things whereof a man is not possessed, but for recovery of them is driven to his action, they are called things in action." *Termes de la Ley* 85 (1st Am. ed. 1812).

"The term *chose in action* has been in common use for a long time, but some doubts have been recently raised as to its precise meaning. (See *Law Quarterly Review* for 1893, 1894, 1895.) A Divisional Court, however, has now given us the following definition: "'chose in action'" is a known legal expression used to describe all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession." *Torkington v. Magee*, [1902] 2 K.B. p. 430. The phrase 'rights of property' does not seem a very happy one, but it is quite clear that the court meant to include under the term *chose in action* rights under a contract and rights of action arising from breach of contract." William R. Anson, *Principles of the Law of Contract* 362 n.(b) (Arthur L. Corbin ed., 3d Am. ed. 1919).

**chose in possession.** Personal property for which title and possession unite in the same person. — Also termed *thing in possession*.

**chose local.** A fixed chattel.

**chose transitory.** A movable chattel.

**christianitatis curia** (kris-tee-an-ə-tay-tis kyoor-ee-ə). [Latin "Christian court"] See *ecclesiastical court* (2) under COURT.

**church court.** See *ecclesiastical court* under COURT.

**church law.** See CANON LAW (2).

**churl** (chərl). See CEORL.

**churn, burn, and bury.** (Of a stockbroker) to make numerous risky trades in (an account) and, as a result, squander the customer's money. • The term denotes the action involved in particularly reckless churning.

**churning, n.** *Securities.* A stockbroker's excessive trading of a customer's account to earn more commissions rather than to further the customer's interests; an abuse of a customer's confidence for personal gain by frequent and numerous transactions, disproportionate to the size and nature of the customer's account. • Under securities laws, the practice is illegal — a violation of § 10(b) of the Exchange Act (15 USCA § 78j(b)). But because the fraud is the activity as a whole and there is no communication between the broker and the customer about a specific sale of securities, there is not normally a right of action for fraud based on churning. — **churn, vb.**

**CIA.** *abbr.* CENTRAL INTELLIGENCE AGENCY.

**C.I.F.** *abbr.* COST, INSURANCE, AND FREIGHT.

**C.I.F. destination.** See COST, INSURANCE, AND FREIGHT.

**C.I.F. place of destination.** See *C.I.F. destination* under COST, INSURANCE, AND FREIGHT.

**cinque ports** (singk ports). [Fr. "five ports"] The five English ports — Hastings, Romney, Hythe, Dover, and Sandwich — that were important defenses against French invasion. • They received special privileges and were obliged to furnish a certain number of ships for use in war.

**CIO.** *abbr.* The Congress of Industrial Organizations, which merged with the AFL in 1955. See AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS.

**CIP.** *abbr.* CONTINUATION IN PART.

**cippi** (sip-i). [Law Latin] *Hist.* See STOCKS.

**circa** (sər-kə), *prep.* [Latin] About or around; approximately <the book was written circa 1938–1941>. — *Abbr.* ca.; c.

**circle conspiracy.** See *wheel conspiracy* under CONSPIRACY.

**circuit, n.** **1.** A judicial division in which hearings occur at several locations, as a result of which judges often travel to different courthouses. **2.** A judicial division of the United States — that is, the 13 circuits where the U.S. courts of appeals sit.

**circuit court.** See COURT.

**circuit judge.** See JUDGE.

**circuit justice.** See JUSTICE (2).

**circuit-riding, n.** *Hist.* The practice of judges' traveling within a legislatively defined circuit to hear cases in one place for a time, then another, and so on.

"The Judiciary Act of 1789 required that the justices of the Supreme Court serve also as judges of the circuit courts. The justices complained that circuit riding caused serious physical hardships and diverted them from more important duties in the nation's capital. . . . Congress in 1801 abolished circuit riding on grounds of efficiency, but a year later a new Jeffersonian Republican majority restored the practice, obliging each justice to hold circuit court along with a district judge. Gradually, however, improved communications, increasing business in the nation's capital, and the strengthening of American nationhood following the Civil War rendered circuit riding anachronistic. Congress in the Judiciary Act of 1869 established a separate circuit court judiciary, although the justices retained nominal circuit riding duties until the Circuit Court of Appeals Act of 1891. Congress officially ended the practice in 1911." *The Oxford Companion to the Supreme Court of the United States* 145 (Kermit L. Hall ed., 1992).

**circuitry of action.** A procedure allowing duplicative lawsuits, leading to unnecessarily lengthy and indirect litigation, as when a defendant fails to bring a counterclaim, but later brings a separate action to recover what could have been awarded in the original lawsuit. • Civil-procedure rules have eliminated many problems associated with circuitry of action.

"Circuitry of action is, when an action is rightfully brought for a duty, but yet about the bush, as it were, for that it might as well have been otherwise answered and determined, and the suit saved: and because the

same action was more than needful, it is called circuity of action." *Termes de la Ley* 87 (1st Am. ed. 1812).

**circular letter of credit.** See LETTER OF CREDIT.

**circular note.** See LETTER OF CREDIT.

**circulating capital.** See *floating capital* under CAPITAL.

**Circumspecte agatis** (sər-kəm-spek-tee ə-gay-tis). [Latin "that you act circumspectly"] *Hist.* A directive from the king to his justices detailing the boundaries of ecclesiastical jurisdiction. ● The directive, issued circa 1285, was originally in the form of a writ, but over time acquired statutory authority. The title *Circumspecte agatis* derives from the first few words of the writ: "*Rex talibus iudicibus salutem; Circumspecte agatis. . .*"

**circumstance, n.** (*often pl.*) An accompanying or accessory fact, event, or condition, such as a piece of evidence that indicates the probability of an event. — **circumstantial, adj.**

**aggravating circumstance. 1.** A fact or situation that increases the degree of liability or culpability for a tortious or criminal act. **2.** A fact or situation that relates to a criminal offense or defendant and that is considered by the court in imposing punishment (esp. a death sentence). ● Aggravating circumstances in death-penalty cases are usu. prescribed by statute. — Also termed *aggravating element*; *aggravating factor*. Cf. *mitigating circumstance*.

**change of circumstances. Family law.** A modification in the physical, emotional, or financial condition of one or both parents, used to show the need to modify a custody or support order. — Also termed *changed circumstances*.

**exigent circumstances.** A situation that demands unusual or immediate action and that may allow people to circumvent usual procedures, as when a neighbor breaks through a window of a burning house to save someone inside.

**extenuating circumstance.** See *mitigating circumstance*.

**extraordinary circumstances.** A highly unusual set of facts that are not commonly associated with a particular thing or event.

**mitigating circumstance. 1.** A fact or situation that does not justify or excuse a wrongful act or offense but that reduces the degree

of culpability and thus may reduce the damages (in a civil case) or the punishment (in a criminal case). **2.** A fact or situation that does not bear on the question of a defendant's guilt but that is considered by the court in imposing punishment and esp. in lessening the severity of a sentence. **3. Contracts.** An unusual or unpredictable event that prevents performance, such as a labor strike. — Also termed *extenuating circumstance*. Cf. *aggravating circumstance*.

**circumstantial evidence.** See EVIDENCE.

**cirliscus** (sər-lis-kəs). See CEORL.

**citatio ad reassumendam causam** (si-tay-shee-oh ad ree-as-yoo-men-dəm kaw-zəm). [Latin "citation to take up a cause again"] *Civil law.* A citation issued to revive an action that was abated upon one party's death. ● The citation issues against the deceased party's heir. Cf. *bill of revivor* under BILL (2).

**citation, n. 1.** A court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so. **2.** A police-issued order to appear before a judge on a given date to defend against a stated charge, such as a traffic violation. **3.** A reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position. — Often shortened to (in sense 3) *cite*.

**parallel citation.** An additional reference to a case that has been reported in more than one reporter. ● For example, whereas a *Bluebook* citation reads "*Morgan v. United States*, 304 U.S. 1 (1938)," the same reference including parallel citations reads "*Morgan v. United States*, 304 U.S. 1, 58 S.Ct. 773, 82 L.Ed. 1129 (1938)," in which the main citation is to the *U.S. Reports* and the parallel citations are to the *Supreme Court Reporter* and to the *Lawyer's Edition*.

**pinpoint citation.** The page on which a quotation or relevant passage appears, as opposed to the page on which a case or article begins. ● For example, the number 217 is the pinpoint citation in *Baker v. Carr*, 369 U.S. 186, 217 (1962). — Also termed *jump citation*; *dictum page*; *pincite*.

**citational, adj.** Of or relating to a citation (esp. a reference citation) <citational analysis>.

**citation order.** The appropriate ranking of the various authorities marshaled in support of a legal proposition.

**Citations, Law of.** *Roman law.* An A.D. 426 decree of Emperor Valentinian listing Papinian, Paul, Gaius, Ulpian, and Modestinus as the only juristic writers who could be cited authoritatively in court. • If a majority of the writers agreed on an issue, the judge was bound to follow the majority view. The Law of Citations allowed the judge to use discretion only if the writers were equally divided and Papinian (whose view prevailed in a tie) was silent on the issue.

"In 426 came the famous *lex de responsis prudentium* — the Law of Citations. . . . This law lessened the difficulties of the courts in dealing with juristic literature. It excluded a huge mass of conflicting doctrine, the relative value of which had not been determined, and which yet had to be used by the judges as a source of principle on which to base their decisions." W.W. Buckland, *A Text-book of Roman Law: From Augustus to Justinian* 35 (1921).

**citation signal.** See SIGNAL (2).

**citator** (si-tay-tər). A book or section of a book containing tables of cases or statutes that have been judicially cited in later cases.

"A citator is a compilation showing where certain cases have been cited in other cases, and whether the provisions of constitutions and statutes have been repealed, amended, or otherwise affected, or have been judicially construed, or have been cited." Frank Hall Childs, *Where and How to Find the Law* 61 (1922).

**citatory** (si-tə-tor-ee), *adj.* Of, relating to, or having the power of a citation or summons <letters citatory>.

**cite**, *n.* See CITATION (3).

**cite**, *vb.* **1.** To summon before a court of law <the witness was cited for contempt>. **2.** To refer to or adduce as precedent or authority <counsel then cited the appropriate statutory provision>. **3.** To commend or honor <the soldier was cited for bravery>.

**citizen**, *n.* **1.** A person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges. Cf. RESIDENT; DOMICILIARY.

**federal citizen.** A citizen of the United States.

**natural-born citizen.** A person born within the jurisdiction of a national government.

**naturalized citizen.** A foreign-born person who attains citizenship by law.

**2.** For diversity-jurisdiction purposes, a corporation that was incorporated within a state or has its principal place of business there.

**citizen-informant.** A witness who, without expecting payment and with the public good in mind, comes forward and volunteers information to the police or other authorities.

**citizen's arrest.** See ARREST.

**citizenship**, *n.* **1.** The status of being a citizen. **2.** The quality of a person's conduct as a member of a community.

**Citizenship Clause.** The clause of the U.S. Constitution providing that all persons born or naturalized in the United States are citizens of the United States and the state they reside in. U.S. Const. art. XIV, § 1, cl. 1.

**citizen suit.** An action under a statute giving citizens the right to sue violators of the law (esp. environmental law) and to seek injunctive relief and penalties. • In the 1970s, during the heyday of antipollution statutes such as the Clean Water Act and the Clean Air Act, legislators believed that regulators sometimes become too close to the industries they oversee and, as a result, lack the aggressiveness that individual citizens would be able to bring to litigation. The statutes therefore included provisions authorizing people to be "private attorneys general" to protect the environment, seeking not only injunctions to stop pollution but also penalties to be paid to the U.S. Treasury.

**citology.** See LEGAL CITOLOGY.

**city**. **1.** A municipal corporation, usu. headed by a mayor and governed by a city council. **2.** The territory within a city's corporate limits. **3.** Collectively, the people who live within this territory. Cf. TOWN.

**city attorney.** An attorney employed by a city to advise it and represent it in legal matters. — Also termed *municipal attorney*; *city counsel*; *corporation counsel*; *city solicitor*.

"There may have been a time in this country when the function of the City Attorney of the average city consisted mainly of advising the Council, preparing an occasional ordinance or handling an infrequent lawsuit. The legal business of the average city is no longer so simple, so

infrequent and so nonconsuming of the time of the City Attorney. Every action of the City must be justified by its legal powers, and the City Attorney is the municipal officer whose responsibility it is to decide whether any act or action is within the city's legal powers. The demands of citizens for augmented municipal services, and the resulting diversification of city operations have increased the volume of work to the point where the City Attorney, in many cities, has become a central consultant of the city officers and employees on a day-to-day, hour-to-hour basis." Allen Grimes, *The City Attorney: A Practice Manual* 6 (1978).

**city clerk.** See CLERK (1).

**city council.** A city's legislative body, usu. responsible for passing ordinances, levying taxes, appropriating funds, and generally administering city government. — Also termed (in some states) *board of aldermen*.

**city counsel.** See CITY ATTORNEY.

**city court.** See *municipal court* under COURT.

**city judge.** See *municipal judge* under JUDGE.

**city solicitor.** See CITY ATTORNEY.

**Civ. Ct.** See *civil court* under COURT.

**civic, adj.** 1. Of or relating to citizenship or a particular citizen <civic responsibilities>. 2. Of or relating to a city <civic center>.

**civil, adj.** 1. Of or relating to the state or its citizenry <civil rights>. 2. Of or relating to private rights and remedies that are sought by action or suit, as distinct from criminal proceedings <civil litigation>. 3. Of or relating to any of the modern legal systems derived from Roman law <Louisiana is a civil-law jurisdiction>.

**civil action.** See ACTION.

**civil arrest.** See ARREST.

**civil assault.** See ASSAULT.

**civil-authority clause.** *Insurance.* A clause, esp. in a fire insurance policy, insuring against damages caused by firefighters, police, or other civil authority.

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

**Civil Code.** 1. The code that embodied the law of Rome. 2. The code that embodies the law of

France, from which a great part of the Louisiana Civil Code is derived. — Abbr. C.C. — Also termed *Code Civil*. See NAPOLEONIC CODE. 3. A codification of noncriminal statutes.

**civil cognition.** See COGNATION.

**civil commitment.** See COMMITMENT.

**civil commotion.** A public uprising by a large number of people who, acting together, cause harm to people or property. ● A civil commotion usu. involves many more people than a riot. Cf. RIOT.

**civil conspiracy.** See CONSPIRACY.

**civil contempt.** See CONTEMPT.

**civil corporation.** See CORPORATION.

**civil court.** See COURT.

**civil day.** See *artificial day* under DAY.

**civil death.** 1. *Archaic.* At common law, the loss of rights — such as the rights to vote, make contracts, inherit, and sue — by a person who has been outlawed or convicted of a serious crime, or who is considered to have left the temporal world for the spiritual by entering a monastery.

"In one large department of law the fiction [civil death] is elegantly maintained. A monk or nun can not acquire or have any proprietary rights. When a man becomes 'professed in religion,' his heir at once inherits from him any land that he has, and, if he has made a will, it takes effect at once as though he were naturally dead." 1 Frederick Pollock & Frederic W. Maitland, *History of English Law* 434 (2d ed. 1898).

"Civil death arises from outlawry; it seems doubtful whether there are any other circumstances to which the phrase is now applicable." William R. Anson, *Principles of the Law of Contract* 193 n.(b) (Arthur L. Corbin ed., 3d Am. ed. 1919).

2. In some states, the loss of rights — such as the rights to vote and hold public office — by a person serving a life sentence. Cf. *civil disability* under DISABILITY (2). 3. The state of a corporation that has formally dissolved or become bankrupt, leaving an estate to be administered for the benefit of shareholders and creditors. — Also termed *legal death*.

**civil defense.** 1. The practice of protecting civilians from dangers caused by hostilities or disasters and helping them recover from the imme-

diate effects of such events. **2.** The policies that underlie this practice.

**civil disability.** See DISABILITY (2).

**civil disobedience.** A deliberate but nonviolent act of lawbreaking to call attention to a particular law or set of laws of questionable legitimacy or morality.

"Social protest and even civil disobedience serve the law's need for growth. Ideally, reform would come according to reason and justice without self-help and disturbing, almost violent, forms of protest . . . Still, candor compels one here again to acknowledge the gap between the ideal and the reality. Short of the millennium, sharp changes in the law depend partly upon the stimulus of protest." Archibald Cox, *Civil Rights, the Constitution, and the Courts*, 40 N.Y. State B.J. 161, 169 (1968).

**civil disorder.** A public disturbance involving three or more people who commit violent acts that cause immediate danger or injury to people or property. See RIOT.

**civil forfeiture.** See FORFEITURE.

**civil fraud.** See FRAUD.

**civil fruit.** See FRUIT.

**civilian, n.** **1.** A person not serving in the military. **2.** A lawyer practicing in a civil-law jurisdiction. — **civilian, adj.**

**civil infraction.** See INFRACTION.

**civil injury.** See INJURY.

**civilis** (sə-vī-lis), *adj.* [Latin] Of or according to civil law.

**civilista** (siv-ə-lis-tə). [Latin] *Hist.* See CIVILIAN (2).

**civiliter** (sə-vil-ə-tər), *adv.* [Latin "civilly"] **1.** By a civil, as distinguished from a criminal, proceeding. Cf. CRIMINALITER. **2.** Civilly; as a citizen.

**civiliter mortuus** (sə-vil-ə-tər mor-choo-əs). [Latin] Civilly dead <the wife of a man *civiliter mortuus* had similar rights>. See CIVIL DEATH (1).

**civilization.** The transformation of a criminal matter to a civil one by law or judgment. Cf. CRIMINALIZATION.

**civil justice.** The methods by which a society redresses civil wrongs. Cf. CRIMINAL JUSTICE (1).

**civil law. 1.** (*usu. cap.*) One of the two prominent legal systems in the Western World, originally administered in the Roman Empire and still influential in continental Europe, Latin America, Scotland, and Louisiana, among other parts of the world. — Also termed *jus civile*; *Roman law*; *Romanesque law*. Cf. COMMON LAW (2). **2.** ROMAN LAW (1). **3.** The body of law imposed by the state, as opposed to moral law. **4.** The law of civil or private rights, as opposed to criminal law or administrative law. — Abbr. CL.

"The difference between civil law . . . and criminal law turns on the difference between two different objects which the law seeks to pursue — redress or punishment. The object of civil law is the redress of wrongs by compelling compensation or restitution: the wrongdoer is not punished, he only suffers so much harm as is necessary to make good the wrong he has done. The person who has suffered gets a definite benefit from the law, or at least he avoids a loss. On the other hand, in the case of crimes, the main object of the law is to punish the wrongdoer; to give him and others a strong inducement not to commit the same or similar crimes, to reform him if possible, and perhaps to satisfy the public sense that wrongdoing ought to meet with retribution." William Geldart, *Introduction to English Law* 146 (D.C.M. Yardley ed., 9th ed. 1984).

**civil liability.** See LIABILITY.

**civil-liability act.** See DRAM-SHOP LIABILITY.

**civil liberty.** (*usu. pl.*) Freedom from undue governmental interference or restraint. ● This term *usu.* refers to freedom of speech or religion. — Also termed *civil right*.

**civil list.** An annual sum granted by Parliament for the expenses of the royal household.

**civil marriage.** See MARRIAGE (2).

**civil month.** See MONTH (1).

**civil offense.** See *public tort* under TORT.

**civil penalty.** See PENALTY.

**civil possession.** See POSSESSION (3).

**civil power.** See POLITICAL POWER.

**civil procedure. 1.** The body of law — *usu.* rules enacted by the legislature or courts — governing the methods and practices used in

civil litigation. • An example is the Federal Rules of Civil Procedure. **2.** A particular method or practice used in carrying on civil litigation.

**civil process.** See PROCESS.

**civil right.** (*usu. pl.*) **1.** The individual rights of personal liberty guaranteed by the Bill of Rights and by the 13th, 14th, 15th, and 19th Amendments, as well as by legislation such as the Voting Rights Act. • Civil rights include esp. the right to vote, the right of due process, and the right of equal protection under the law. **2.** CIVIL LIBERTY.

**civil-rights act.** One of several federal statutes enacted after the Civil War (1861–1865) and, much later, during and after the civil-rights movement of the 1950s and 1960s, and intended to implement and give further force to the basic rights guaranteed by the Constitution, and esp. prohibiting discrimination in employment and education on the basis of race, sex, religion, color, or age.

**civil-rights removal.** See REMOVAL.

**civil service, n.** **1.** The administrative branches of a government. **2.** The group of people employed by these branches. — **civil servant, n.**

**Civil Service Commission.** A defunct federal board created in 1883 to ensure that civil-service employees are hired on the basis of merit rather than personal preference or political considerations. • In 1978, the Commission's functions were split between the Office of Personnel Management and the Merit Systems Protection Board.

**civil society.** See SOCIETY.

**civil war.** See WAR.

**civil wrong.** See WRONG; TORT.

**civis (siv-is).** [Latin] *Roman law.* A Roman citizen; a person entitled to the public and private rights associated with Roman citizenship. — Also termed *civis Romanus*.

**civitas (siv-ə-tas).** [Latin] *Roman law.* **1.** A state; a group of people living under a given body of law. **2.** The rights of a citizen.

**C.J. abbr.** **1.** See *chief justice* under JUSTICE (2). **2.** See *chief judge* under JUDGE. **3.** See *circuit judge* under JUDGE. **4.** CORPUS JURIS.

**CJE. abbr.** CONTINUING JUDICIAL EDUCATION.

**C.J.S. abbr.** *Corpus Juris Secundum.* — Also written CJS.

**CL. abbr.** CIVIL LAW.

**Claflin trust.** See *indestructible trust* under TRUST.

**Claflin-trust principle.** The doctrine that a trust cannot be terminated by the beneficiaries if the termination would defeat one of the settlor's material purposes in establishing the trust. • If the settlor is alive and consents, however, the trust may be terminated. Trusts in the "Claflin" category are spendthrift trusts, support trusts, trusts in which the trustee has discretion to make distributions, and trusts in which the beneficiary is entitled to income until a certain age and the principal at that age.

**claim, n.** **1.** The aggregate of operative facts giving rise to a right enforceable by a court <the plane crash led to dozens of wrongful-death claims>. **2.** The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional <the spouse's claim to half of the lottery winnings>. **3.** A demand for money or property to which one asserts a right <an insurance claim>.

**liquidated claim.** A claim for an amount previously agreed on by the parties or that can be precisely determined by operation of law or by the terms of the parties' agreement. — Also termed *liquidated demand*.

**matured claim.** A claim based on a debt that is due for payment.

**unliquidated claim.** A claim in which the liability of the party or the amount of the claim is in dispute.

**4.** An interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing; CAUSE OF ACTION (1) <claim against the employer for wrongful termination>.

**colorable claim.** **1.** A claim that is legitimate and that may reasonably be asserted, given the facts presented and the current law (or a reasonable and logical extension or modification of the current law). **2.** A claim in which the debtor and property holder are, as a matter of law, not adverse. • One example

of a colorable claim is one made by a person holding property as an agent or bailee of the bankrupt.

**contingent claim.** A claim that has not yet accrued and is dependent on some future event that may never happen.

**counterclaim.** See COUNTERCLAIM.

**cross-claim.** See CROSS-CLAIM.

**supplemental claim.** A claim for further relief made after the original claim.

**5.** A right to payment or to an equitable remedy for breach of performance if the breach gives rise to a right to payment. • It does not matter whether the right has been reduced to judgment or whether it is fixed or contingent, matured or unmatured, disputed or undisputed, or secured or unsecured.

**creditor's claim.** *Bankruptcy.* A claim that a creditor has against a debtor.

**involuntary gap claim.** *Bankruptcy.* A claim that accrues in the ordinary course of business after an involuntary bankruptcy petition has been filed but before the order for relief or the appointment of a trustee. • The Bankruptcy Code gives priority to creditors with claims of this type to encourage creditors to continue dealing with a debtor until the debtor has a chance to challenge the involuntary petition.

**priority claim.** *Bankruptcy.* An unsecured claim that, under bankruptcy law, must be paid before other unsecured claims. • The Bankruptcy Code sets forth eight classes of claims, to be paid in order of priority: (1) administrative expenses of the bankruptcy estate, (2) involuntary gap claims, (3) wage claims, (4) contributions to employee benefit plans, (5) claims of grain farmers and fishermen, (6) consumer deposits, (7) tax claims, and (8) capital requirements of an insured depository institution.

**secured claim.** A claim held by a creditor who has a lien or a right of setoff against the debtor's property.

**unsecured claim.** **1.** A claim by a creditor who does not have a lien or a right of setoff against the debtor's property. **2.** A claim by a creditor who has a lien on or right of setoff against the debtor's property worth less than the amount of the debt.

**6. Patents.** A formal statement describing the novel features of an invention and defining the scope of the patent's protection <claim no. 3 of the patent describes an electrical means for driving a metal pin>. Cf. SPECIFICATION (3).

**dependent claim.** A patent claim that refers to and further limits another claim or set of claims in the same patent application.

**multiple dependent claim.** A dependent claim that refers to more than one other claim.

**claim and delivery.** A claim for the recovery of specific personal property wrongfully taken or detained, as well as for any damages caused by the taking or detention. • This claim derives from the common-law action of replevin.

**claimant, n.** One who asserts a right or demand, esp. formally.

**claim check.** A receipt obtained for bailed or checked property and surrendered by the holder when the bailee returns the property.

**claim dilution.** *Bankruptcy.* The reduction in the likelihood that a debtor's claimants will be fully repaid, including considerations of the time value of money.

**claim for relief.** The part of a complaint in a civil action specifying what relief the plaintiff asks of the court.

**claim in equity.** *Hist.* A summary proceeding created to eliminate protracted pleading procedure in simple cases. • The claim in equity was established in England in 1850 and abolished in 1860.

**claim-jumping. 1.** The extension of the borders of a mining claim to infringe on other areas or claims. **2.** The filing of a duplicate claim to take advantage of a flaw in the original claim.

**claim of appeal.** See NOTICE OF APPEAL.

**claim of cognizance.** *Hist.* An intervention seeking the return of a case to the claimant's own court. • Cognizance may be claimed by a person, city, or public corporation granted the right to hold court. — Also termed *claim of conusance*. See COGNIZANCE; CONUSANCE.

**claim of conusance.** See CLAIM OF COGNIZANCE.

**claim of liberty.** *Hist.* A petition to the Crown, filed in the Court of Exchequer, seeking the Attorney General's confirmation of liberties and franchises.

**claim of ownership. 1.** The possession of a piece of property with the intention of claiming



it in hostility to the true owner. **2.** A party's manifest intention to take over land, regardless of title or right. — Also termed *claim of right*; *claim of title*.

**claim of right.** *Hist.* A criminal plea, usu. to a theft charge, by a defendant asserting that the property was taken under the honest (but mistaken) belief that the defendant had a superior right to the property. ● The claim of right could also be raised in defense against bigamy if a defendant honestly believed that an earlier marriage had been legally dissolved. It has been superseded by a *defense of honesty*.

**claim-of-right doctrine.** *Tax.* The rule that any income constructively received must be reported as income, whether or not the taxpayer has an unrestricted claim to it.

**claim of title.** See CLAIM OF OWNERSHIP.

**claim preclusion.** See RES JUDICATA.

“[T]he principal distinction between claim preclusion and issue preclusion is . . . that the former forecloses litigation of matters that have never been litigated. This makes it important to know the dimensions of the ‘claim’ that is foreclosed by bringing the first action, but unfortunately no precise definition is possible.” Charles Alan Wright, *The Law of Federal Courts* § 100A, at 723 (5th ed. 1994).

**claim-property bond.** See *replevin bond* under BOND (2).

**claims adjuster.** See ADJUSTER.

**claims-consciousness, n.** The quality characterizing a legal culture in which people have firm expectations of justice and are willing to take concrete steps to see that justice is done <claims-consciousness in the United States has resulted from certain social changes, not from any character deficiency>. — Also termed *rights-consciousness*. — **claims-conscious, adj.**

**Claims Court, U.S.** See UNITED STATES COURT OF FEDERAL CLAIMS.

**claims-made policy.** See INSURANCE POLICY.

**clam** (klam), *adv.* [Latin] *Civil law*. Secretly; covertly. ● Under Roman law, an act (such as occupying or altering the condition of someone else's property) was committed *clam* when it was done with the intent to conceal it in an effort to avoid liability. See INTERDICTUM QUOD VI AUT CLAM.

**clamea admittenda in itinere per attornatum** (klay-mee-ə ad-mə-ten-də in ɪ-tin-ə-ree pər ə-tor-nay-təm). [Latin “claim to be admitted at the eyre by an attorney”] *Hist.* A writ from the king commanding the justices in eyre to permit by attorney the claim of a person employed in the king's service who cannot attend court in person.

**clameur de haro** (krah-mər dah-roh). [French] An outcry recognized in the Channel Islands as a protest against trespass to land. ● The *clameur de haro* is a legal remnant of when the Duchy of Normandy held the islands before England took control in the 13th century. The victim's cry of *haro* (repeated 3 times) is popularly supposed to be an abbreviation of *Ha Rollo*, the first Duke of Normandy. The full cry, *Haro, Haro, Haro, a l'aide, mon prince, on me fait tort*, when registered at the local records office, enjoins the offender from possessing the land. See HARO; HUE AND CRY; GRAND COUTUMIER DE PAYS ET DUCHÉ DE NORMANDIE.

**clamor. 1.** *Hist.* A lawsuit; a claim. **2.** HUE AND CRY (1). **3.** *Civil law.* A claimant. **4.** *Civil law.* The thing claimed from another.

**clandestine** (klan-des-tin), *adj.* Secret or concealed, esp. for illegal or unauthorized purposes.

**clandestine marriage.** See MARRIAGE (1).

**class, n. 1.** A group of people, things, qualities, or activities that have common characteristics or attributes <a class of common-stock shares> <the upper-middle class>.

**protected class.** A class of people who benefit from protection by statute, such as Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, sex, national origin, or religion.

**2.** The order or rank that people or things are arranged in <she flew first class to Chicago>.

**3.** A group of people, uncertain in number <a class of beneficiaries>.

**testamentary class** (tes-tə-men-tə-ree or -tree). A group of beneficiaries who are uncertain in number but whose number will be ascertainable in the future, when each will take an equal or other proportionate share of the gift.

**4.** *Civil procedure.* A group of people who have a common legal position, so that all their claims can be efficiently adjudicated in a single proceeding <a class of asbestos plaintiffs>.

**settlement class.** Numerous similarly situated people for whom a claimant's representative and an adversary propose a contract liquidating the claims of all class members. • During the 1980s and 1990s, mass-tort defendants began using settlement classes as a means of foreclosing claims by some unknown number of future claimants.

**class action.** A lawsuit in which a single person or a small group of people represents the interests of a larger group. • Federal procedure has several requirements for maintaining a class action: (1) the class must be so large that individual suits would be impracticable, (2) there must be legal or factual questions common to the class, (3) the claims or defenses of the representative parties must be typical of those of the class, and (4) the representative parties must adequately protect the interests of the class. Fed. R. Civ. P. 23. — Also termed *class suit*; *representative action*.

"The class action was an invention of equity . . . mothered by the practical necessity of providing a procedural device so that mere numbers would not disable large groups of individuals, united in interest, from enforcing their equitable rights nor grant them immunity from their equitable wrongs. . . . By rule 23 the Supreme Court has extended the use of the class action device to the entire field of federal civil litigation by making it applicable to all civil actions." *Montgomery Ward & Co. v. Langer*, 168 F.2d 182, 187 (8th Cir. 1948).

**hybrid class action.** A type of action in which the rights to be enforced are several and varied, but the object is to adjudicate claims that do or may affect the specific property in the action.

**spurious class action.** A former category of class action in which the interests of class members are several, not interdependent, and joinder is allowed to avoid multiplicity of suits.

**class-based animus.** See ANIMUS (1).

**class director.** See DIRECTOR.

**class gift.** See GIFT.

**classification.** See CHARACTERIZATION (1).

**classified information.** Data or material that, having been designated as secret or confidential, only a limited number of authorized persons may know about.

**classified risk.** See RISK.

**classified tax.** See TAX.

**class legislation.** See *local and special legislation* under LEGISLATION.

**class lottery.** See *Dutch lottery* under LOTTERY.

**class of stock.** A category of corporate shares used when more than one type of stock is issued. See *preferred stock* and *common stock* under STOCK.

**class-one insured.** See INSURED.

**class rate.** See RATE.

**class representative.** See REPRESENTATIVE.

**class suit.** See CLASS ACTION.

**class-two insured.** See INSURED.

**class voting.** See VOTING.

**clausa rebus sic stantibus** (*klawz-ə ree-bəs sik stan-tə-bəs*). [Law Latin] *Int'l law*. **1.** A treaty provision stating that the treaty is binding only as long as the circumstances in existence when the treaty was signed remain substantially the same. **2.** A doctrine by which the law supplies such a provision to a treaty that does not expressly contain one; REBUS SIC STANTIBUS. — Often shortened to *clausa*. — Also termed *clausula rebus sic stantibus*; *clausula*.

"[T]he problem of the attitude of international law to oppressive or obsolete treaty obligations remains, and an attempt has been made by many writers to solve it by the doctrine known as the *clausula rebus sic stantibus*. In every treaty, it is said, there is implied a clause which provides that the treaty is to be binding only 'so long as things stand as they are'; the expressed terms may be absolute, but a treaty is never more than conditional, and when a 'vital change of circumstances' has occurred, the condition of the treaty's validity has failed, and it ceases to be binding. Such a doctrine, if it is to be accepted into the law, clearly needs careful definition. Otherwise it is capable of being used, and it often has been used, merely to excuse the breach of a treaty obligation that a state finds it inconvenient to fulfil." J.L. Brierly, *The Law of Nations* 260 (5th ed. 1955).

**clause, n.** **1.** A distinct section or provision of a legal document or instrument. **2.** ITEM (3). — **clausal, adj.**

**clause of accrual.** A provision, usu. found in a gift by will or in a deed between tenants in common, that grants a decedent beneficiary's shares to the surviving beneficiary. — Also termed *clause of accruer*.

**clause paramount.** *Maritime law.* A provision in a charterparty incorporating the Carriage of Goods by Sea Act into the charter. See CHARTERPARTY; CARRIAGE OF GOODS BY SEA ACT.

**clause potestative** (**poh-tes-tay-tiv**). *French law.* A contractual provision in which one party reserves the right to annul the contract.

**clause rolls.** *Hist.* Sealed rolls containing royal writs (*close writs*) and other documents that the sovereign deemed inappropriate for the public record. — Also termed *close rolls*. See *close writ* under WRIT.

**clausula** (**klawz-yə-lə**). [Latin] A clause; a sentence or part of a sentence in a written instrument or statute.

**clausula derogativa** (**klawz-yə-lə də-rə-gə-ti-və**). [Latin] See DEROGATORY CLAUSE.

**clausula rebus sic stantibus** (**klawz-yə-lə ree-bəs sik stan-tə-bəs**). See CLAUSA REBUS SIC STANTIBUS.

**clausum** (**klawz-əm**). [Latin “close; closed”] *Hist.* **1.** CLOSE (1). — Also termed *clausura*. **2.** See *close writ* under WRIT.

**clausum fregit** (**klawz-əm free-jit**). [Latin “he broke the close”] See TRESPASS QUARE CLAUSUM FREGIT.

**clausura** (**klaw-zhuur-ə**). See CLAUSUM.

**clawback**, *n.* Money taken back; esp., retrieval or recovery of tax allowances by additional forms of taxation. — **claw back**, *vb.*

**Clayton Act.** A federal statute — enacted in 1914 to amend the Sherman Act — that prohibits price discrimination, tying arrangements, and exclusive-dealing contracts, as well as mergers and interlocking directorates, if their effect might substantially lessen competition or create a monopoly in any line of commerce. 15 USCA §§ 12–27.

**Cl. Ct.** *abbr.* CLAIMS COURT, U.S.

**CLE.** *abbr.* CONTINUING LEGAL EDUCATION.

**clean bill.** See BILL (3).

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

**clean draft.** See DRAFT.

**clean-hands doctrine.** The principle that a party cannot seek equitable relief or assert an equitable defense if that party has violated an equitable principle, such as good faith. ● Such a party is described as having “unclean hands.” — Also termed *unclean-hands doctrine*.

**clean house**, *vb.* *Slang.* **1.** To discharge a considerable number of employees, usu. in management, so that new employees may be brought in. **2.** To sell securities not meeting an investor’s requirements.

**clean letter of credit.** See LETTER OF CREDIT.

**clean-slate rule.** *Criminal procedure.* The doctrine that the double-jeopardy prohibition does not apply to the retrial of a defendant who appealed and obtained a reversal of an earlier conviction.

**cleanup clause.** In a loan agreement, a clause that calls for a loan to be repaid in full within a given period, after which no further loans will be afforded the debtor for a specified “cleanup” period.

**cleanup doctrine.** The jurisdictional principle that once an equity court has acquired jurisdiction over a case, it may decide both equitable and legal issues as long as the legal issues are ancillary to the equitable ones.

**clear**, *adj.* **1.** Free from encumbrances or claims. **2.** Free from doubt; sure. **3.** Unambiguous.

**clear**, *vb.* **1.** To acquit or exonerate <she was cleared of all wrongdoing>. **2.** (Of a drawee bank) to pay (a check or draft) out of funds held on behalf of the maker <the bank cleared the employee’s check>. **3.** (Of a check or draft) to be paid by the drawee bank out of funds held on behalf of the maker <the check cleared yesterday>.

**clearance.** **1.** *Maritime law.* The right of a ship to leave port, or the certificate issued by the port collector evidencing the ship’s right to leave port. **2.** The time that must elapse between runs of the same movie within a particular area; a theater’s exclusive right of exhibition over competing theaters.

**clearance card.** A letter given by an employer to a departing employee, stating the duration and nature of the employment and reasons for leaving. ● The clearance card is not necessarily a recommendation.

**clear and convincing evidence.** See EVIDENCE.

**clear and convincing proof.** See *clear and convincing evidence* under EVIDENCE.

**clear-and-present-danger test.** *Constitutional law.* The doctrine allowing the government to restrict the First Amendment freedoms of speech and press if necessary to prevent immediate and severe danger to interests that the government may lawfully protect. • This test was formulated by Justice Oliver Wendell Holmes in *Schenck v. United States*, 249 U.S. 47, 39 S.Ct. 247 (1919).

**clear annual value.** See VALUE.

**clear chance.** See LAST-CLEAR-CHANCE DOCTRINE.

**clear error.** See ERROR (2).

**Clearfield Trust doctrine.** The doctrine describing the federal courts' power to make federal common law when there is both federal lawmaking power to do so and a strong federal interest in a nationally uniform rule. *Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S.Ct. 573 (1943). Cf. ERIE DOCTRINE.

**clearing. 1. Banking.** The exchanging of checks and balancing of accounts. **2. Maritime law.** The departure of a ship from port, after complying with customs, health laws, and other local regulations. See CLEARANCE (1).

**clearing account.** *Banking.* An account (usu. a temporary one) containing amounts to be transferred to another account before the end of an accounting period.

**clearing agent.** *Securities.* A person or company acting as an intermediary in a securities transaction or providing facilities for comparing data with respect to securities transactions. • The term includes a custodian of securities in connection with the central handling of securities. Securities Exchange Act § 3(a)(23)(A) (15 USCA § 78c(a)(23)(A)). — Also termed *clearing agency*.

**clearing agreement.** A contract whose purpose is to facilitate the collective settlement of monetary claims between creditors and debtors in different currency areas, without resort to foreign-exchange reserves.

**clearing corporation.** See CORPORATION.

**clearinghouse. 1.** A place where banks exchange checks and drafts and settle their daily balances; an association of banks or other payors regularly clearing items. See UCC § 4-104(a)-(d). **2.** A stock-and-commodity exchange where the daily transactions of the brokers are cleared. **3.** Any place for the exchange of specialized information.

**clearing loan.** See LOAN.

**clearings.** *Banking.* Checks or other items drawn on a local bank and presented for payment through a clearinghouse or directly to the drawee bank. See CLEARINGHOUSE (1).

**clearly-erroneous standard.** The standard of review that an appellate court usu. applies in judging a trial court's treatment of factual issues. • Under this standard, a judgment is reversible if the appellate court is left with the firm conviction that an error has been committed.

**clear market value.** See *fair market value* under VALUE.

**clear-reflection-of-income standard.** *Tax.* An income-accounting method that the IRS can force on a taxpayer if the method used does not clearly reflect income. IRC § 446(b).

**clear residue.** The income deriving from funds used to pay a decedent's debts, administration expenses, and general legacies. — Also termed *true residue*.

**clear title.** See TITLE (2).

**clear value.** See VALUE.

**clear-view doctrine.** See PLAIN-VIEW DOCTRINE.

**Clemency (klem-ən-see), n.** Mercy or leniency; esp., the power of the President or a governor to pardon a criminal or commute a criminal sentence. — Also termed *executive clemency*. —  **clement (klem-ənt), adj.** See PARDON; COMMUTATION.

**Clementines (klem-ən-tinz or -tinz or -teenz).** *Eccles. law.* A collection of decretals of Pope Clement V, published in 1317 by his successor, Pope John XXII, and forming the fourth of the six parts of the *Corpus Juris Canonici*, completed in 1502. — Also termed *Clementine Constitutions*.

**Clement's Inn.** See INN OF CHANCERY.

**clergy, benefit of.** See BENEFIT OF CLERGY.

**clergyable, adj.** *Archaic.* (Of an offense or person) admitting benefit of clergy.

**clergyman-penitent privilege.** See *priest-penitent privilege* under PRIVILEGE (3).

**clergy privilege.** See BENEFIT OF CLERGY (1).

**clericale privilegium** (kler-ə-kay-lee priv-ə-lee-jee-əm). [Law Latin "clerical privilege"] See BENEFIT OF CLERGY.

**clerical error.** See ERROR (2).

**clerical misprision.** See MISPRISION.

**clerici de cancellaria** (kler-ə-si dee kan-sə-lair-ee-ə). [Law Latin "clerks of the chancery"] Cursitors. — Also termed *clerici de cursu*. See CURSITOR.

**clerici praenotarii** (kler-ə-si pree-nə-tair-ee-1). [Law Latin "prenotary clerks"] See SIX CLERKS.

**clerico capto per statutum mercatorium.** See DE CLERICO CAPTO PER STATUTUM MERCATORIIUM.

**clerico convicto commisso gaolae in defectu ordinarii deliberando.** See DE CLERICO CONVICTO COMMISSO GAOLAE IN DEFECTU ORDINARII DELIBERANDO.

**clerico infra sacros ordines constituto, non eligendo in officium.** See DE CLERICO INFRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM.

**clericus** (kler-ə-kəs). [Law Latin "clergyman"] *Hist.* **1.** *Eccles. law.* A person in holy orders; a priest. **2.** A court clerk or officer of the royal household. **3.** AMANUENSIS.

**clericus mercati** (kler-ə-kəs mər-kay-ti). [Law Latin] See CLERK OF THE MARKET.

**clerk, n.** **1.** A public official whose duties include keeping records or accounts.

**city clerk.** A public official who records a city's official proceedings and vital statistics.

**2.** A court officer responsible for filing papers, issuing process, and keeping records of court proceedings as generally specified by rule or statute. — Also termed *clerk of court*.

**district clerk.** The clerk of a district court within a state or federal system. See *district court* under COURT.

**3.** An employee who performs general office work. **4.** A law student who assists a lawyer or judge with legal research, writing, and other tasks. — Also termed *law clerk*; *extern*; or (depending on the time of year) *summer clerk*; *summer associate*. See INTERN. **5.** A lawyer who assists a judge with research, writing, and case management.

"[M]odern American judging in all courts of national significance — the federal courts and the more prominent state appellate courts — staggers along despite the burden of bloated caseloads and the shortcomings of distinctly human judges only by the delegation of a great deal of the labor of judging to law clerks: subordinate, anonymous, but often quite powerful lawyers who function as the noncommissioned officers in the army of the judiciary." John Bilyeu Oakley & Robert S. Thompson, *Law Clerks and the Judicial Process* 2 (1980).

**6. Hist.** A cleric.

"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).

**clerk, vb.** To work as a clerk <she clerked for a Chicago law firm last summer>.

**clerk of arraigns** (ə-raynz). *Hist.* A deputy of the clerk of assize responsible for arraigning defendants and putting the formal questions to the jurors as they deliver their verdict. • The office was abolished in England in 1946.

**clerk of assize** (ə-siz). *Hist.* An assize associate responsible for record-keeping and other clerical and administrative functions. See ASSOCIATE (3).

**clerk of court.** See CLERK (2).

**clerk of enrollments.** *Hist.* The former chief of the Enrollment Office, which the British Parliament abolished in 1879, reassigning its duties to the Central Office. See ENROLLMENT OFFICE; CENTRAL OFFICE.

**clerk of indictment.** *Hist.* An officer of England's Central Criminal Court, responsible for preparing indictments and assisting the Clerk of Arraignment. • The office was abolished in 1946, when its duties were moved to the Central Office.

**Clerk of Nichils.** See NICHIL.

**clerk of records and writs.** *Hist.* Officers of the English Court of Chancery responsible for filing documents and sealing bills of complaint and writs of execution. • The office was abolished in 1879, when its duties were moved to the Central Office.

**clerk of the corporation.** See SECRETARY.

**Clerk of the Crown in Chancery.** The head of the permanent staff of the Crown Office in Chancery (of the Central Office), responsible for reading the title of Bills in the House of Lords, sending out writs of summons to peers, and issuing election writs.

**Clerk of the House of Commons.** *English law.* An officer of the House of Commons who keeps the House journal, signs orders, indorses bills sent to the House of Lords, and has custody of all records. • The Clerk is appointed for life by the Crown.

**clerk of the market.** *Hist.* The overseer of a public market, responsible for witnessing oral contracts, inquiring into weights and measures, measuring land, and settling disputes between people dealing there. • The office has become obsolete as a result of various statutes regulating weights and measures.

**Clerk of the Parliaments.** The principal permanent official of the House of Lords, responsible for the House's minutes and documents, and for advising the members on procedure.

**Clerk of the Peace.** *Hist.* An officer of the Quarter Sessions responsible for maintaining the courts' records, preparing indictments, entering judgments, issuing process, and other clerical and administrative functions. • The office was abolished in England in 1971, when the Quarter Sessions' jurisdiction was transferred to the Crown Courts. See QUARTER SESSIONS.

**Clerk of the Pells.** *Hist.* An Exchequer officer who entered tellers' bills on the parchment rolls (*pells*), one for receipts and the other for

disbursements. — Also termed *Master of the Pells*.

**Clerk of the Pipe.** *Hist.* An Exchequer officer responsible for the Pipe Rolls. • The office was abolished in 1833. — Also termed *Engrosser of the Great Roll*. See PIPE ROLLS.

**Clerk of the Privy Seal (priv-ee seel).** *Hist.* An officer responsible for preparing documents for the Lord Privy Seal. • The use of the Privy Seal was abolished in 1884. See PRIVY SEAL.

**Clerk of the Signet (sig-nit).** *Hist.* An officer who kept the privy signet and attended the sovereign's principal secretary. • The signet was used to seal royal letters and other documents until the office was abolished in England in 1851. See PRIVY SIGNET.

**clerkship.** **1.** A type of internship in which a law student or recent law-school graduate assists a lawyer or judge with legal writing, research, and other tasks. **2.** *Hist.* A law student's employment as an attorney's apprentice before gaining admission to the bar.

**cliens (kli-enz).** [Latin "client"] *Roman law.* A dependent; a person who depended on another for defense in suits at law and other difficulties. • A *cliens* was often a freed slave or immigrant. Pl. *clientes* (kli-en-teez).

**client, n.** A person or entity that employs a professional for advice or help in that professional's line of work. — **cliental, adj.**

**clientela (kli-ən-tee-lə).** [Latin] *Roman law.* **1.** Clientship; the relationship between a *cliens* and a patron. **2.** A person's dependents.

**client security fund.** See FUND (1).

**client's privilege.** See *attorney-client privilege* under PRIVILEGE (3).

**client state.** A country that is obliged in some degree to share in the control of its external relations with some foreign power or powers. — Also termed *satellite state*. Cf. SOVEREIGN STATE.

**Clifford trust.** See TRUST.

**clinical diagnosis.** See DIAGNOSIS.

**clinical legal studies.** Law-school training in which students participate in actual cases under the supervision of a practicing attorney or

law professor. — Often shortened to *clinical studies*.

**clog on the equity of redemption.** An agreement or condition that prevents a defaulting mortgagor from getting back the property free from encumbrance upon paying the debt or performing the obligation for which the security was given. See EQUITY OF REDEMPTION.

**close, n.** 1. An enclosed portion of land. 2. The interest of a person in a particular piece of land, enclosed or not. 3. The final price of a stock at the end of the exchange's trading day.

**close, vb.** 1. To conclude; to bring to an end <the case was closed>. 2. To conclude discussion or negotiation about <close on a house>. See CLOSING.

**close-connectedness doctrine.** A doctrine used by some courts to deny an assignee of a negotiable note holder-in-due-course status if the assignee is too closely connected to the original holder-mortgagee. — Also termed *close-connection doctrine*.

**close corporation.** See CORPORATION.

**closed, adj.** 1. (Of a class or organization) confined to a limited number <a closed mass-tort class> <nonunion workers were excluded from the closed shop>. 2. (Of a proceeding or gathering) conducted in secrecy <a closed hearing> <a closed shareholders' meeting>.

**closed account.** See ACCOUNT.

**closed corporation.** See *close corporation* under CORPORATION.

**closed court.** *Hist.* The English Court of Common Pleas, open only to serjeants-at-law. • The monopoly of the serjeants-at-law was abolished in 1845.

**closed-end fund.** See MUTUAL FUND.

**closed-end mortgage.** See MORTGAGE.

**closed-end mortgage bond.** See BOND (3).

**closed insurance contract.** See *closed policy* under INSURANCE POLICY.

**closed mortgage.** See MORTGAGE.

**closed policy.** See INSURANCE POLICY.

**closed session.** See SESSION.

**closed shop.** See SHOP.

**closed-shop contract.** A labor agreement requiring an employer to hire and retain only union members and to discharge nonunion members.

**closed testament.** See *mystic will* under WILL.

**closed transaction.** See TRANSACTION.

**closed union.** See UNION.

**closed will.** See *mystic will* under WILL.

**close-jail execution.** See EXECUTION.

**closely held corporation.** See *close corporation* under CORPORATION.

**close-nexus test.** See NEXUS TEST.

**close rolls.** See CLAUSE ROLLS.

**close writ.** See WRIT.

**closing.** The final meeting between the parties to a transaction, at which the transaction is consummated; esp., in real estate, the final transaction between the buyer and seller, whereby the conveyancing documents are concluded and the money and property transferred. — Also termed *settlement*.

**closing agreement.** See AGREEMENT.

**closing argument.** In a trial, a lawyer's final statement to the judge or jury before deliberation begins, in which the lawyer requests the judge or jury to consider the evidence and to apply the law in his or her client's favor. • Usual in a jury trial, the judge afterwards instructs the jury on the law that governs the case. — Also termed *closing statement*; *final argument*; *jury summation*; *summing up*.

**closing costs.** *Real estate.* The expenses that must be paid, usu. in a lump sum at closing, apart from the purchase price and interest.

**closing of estate.** *Wills & estates.* The completion of the administration of a decedent's estate, brought about by the administrator's dis-

tribution of estate assets, payment of taxes, and filing of necessary accounts with the probate court.

**closing price.** See PRICE.

**closing statement.** **1.** CLOSING ARGUMENT. **2.** A written breakdown of the costs involved in a particular real-estate transaction, usu. prepared by a lender or an escrow agent. — Also termed *settlement sheet*; *settlement statement*.

**cloture** (kloh-chər), *n.* The procedure of ending debate in a legislative body and calling for an immediate vote. — **cloture**, *v.b.*

**cloud on title.** A defect or potential defect in the owner's title to a piece of land arising from some claim or encumbrance, such as a lien, an easement, or a court order. See *action to quiet title* under ACTION.

**CLS.** *abbr.* CRITICAL LEGAL STUDIES.

**CLSer.** See CRIT.

**CLU.** See *chartered life underwriter* under UNDERWRITER.

**club-law.** Government by clubs (big sticks) or violence; the use of illegal force in place of law.

**cluster zoning.** See ZONING.

**CMO.** *abbr.* **1.** CASE-MANAGEMENT ORDER. **2.** COLLATERALIZED MORTGAGE OBLIGATION.

**CMR.** *abbr.* **1.** Court of Military Review. See COURT OF CRIMINAL APPEALS (1). **2.** COURT-MARTIAL REPORTS.

**CN.** *abbr.* Code Napoléon. See NAPOLEONIC CODE (1).

**co-** *prefix.* Jointly or together with <coowner> <codefendant>.

**co.** *abbr.* (*usu. cap.*) **1.** COMPANY. **2.** COUNTY.

**c/o.** *abbr.* Care of.

**COA.** *abbr.* CONTRACT OF AFFREIGHTMENT.

**coadjutor** (koh-ə-joo-tər or koh-aj-ə-tər), *n.* A coworker or assistant, esp. one appointed to assist a bishop who, because of age or infirmity,

is unable to perform all duties of the office. — **coadjutor**, *adj.*

**co-administrator.** *Wills & estates.* A person appointed to jointly administer an estate with one or more other administrators.

**co-adventurer.** See COVENTURER.

**co-agent.** See AGENT.

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

**coal notice.** In Pennsylvania, a notice that must be included in deeds and other instruments relating to the sale of surface property (excepting mortgages or quitclaim deeds) detailing any severance of the ownership of coal under the land.

**Coase Theorem** (kohs). An economic proposition describing the relationship between legal rules about entitlements and economic efficiency. • The theorem, innovated by Ronald Coase, holds that if there are no transaction costs — such as the costs of bargaining or acquiring information — then any legal rule will produce an efficient result. Coase's seminal article was *The Problem of Social Cost*, 3 J. Law & Econ. 1 (1960).

"Nothing is more central to the study of law and economics nor more responsible for its growth than the Coase Theorem. What the Coase Theorem says, in effect, is that in many instances, the assignment of rights by courts or legal authorities may have little to do with who eventually possesses those rights. In the words of Mark Kelman, 'the market, like an untameable river, will knock out attempts to alter its mighty course.'" Jeffrey L. Harrison, *Law and Economics in a Nutshell* 56 (1995).

**co-assignee.** A person who, along with one or more others, is an assignee of the same subject matter.

**coasting trade.** *Maritime law.* Commerce among different coastal ports or navigable rivers of the United States, in contrast to commerce carried on between nations. — Also termed *coastwise trade*.

**coast water.** See WATER.

**coastwise trade.** See COASTING TRADE.

**COB clause.** *Insurance.* A coordination-of-benefits clause, which provides that the total sums paid for medical and hospital care will not exceed the benefits receivable from all combined sources of insurance.



**COBRA** (*koh-brə*) *abbr.* CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985.

**coconspirator.** A person who engages in a criminal conspiracy with another; a fellow conspirator. See CONSPIRATOR.

**unindicted coconspirator.** See *unindicted conspirator* under CONSPIRATOR.

**coconspirator's exception.** An exception to the hearsay rule whereby one conspirator's acts and statements, if made during and in furtherance of the conspiracy, are admissible against a defendant even if the statements are made in the defendant's absence. — Also termed *coconspirator's rule*. See HEARSAY.

**C.O.D.** *abbr.* **1.** Cash on delivery; collect on delivery. • By consenting to this delivery term, the buyer agrees to pay simultaneously with delivery and appoints the carrier as the buyer's agent to receive and transmit the payment to the seller. With C.O.D. contracts, the practice of carriers has traditionally been to disallow inspection before payment. **2.** Costs on delivery. **3.** Cash on demand. — Sometimes written *c.o.d.*

**CODA.** *abbr.* CASH OR DEFERRED ARRANGEMENT.

**code. 1.** A complete system of positive law, carefully arranged and officially promulgated; a systematic collection or revision of laws, rules, or regulations <the Uniform Commercial Code>. • Strictly, a code is a compilation not just of existing statutes, but also of much of the unwritten law on a subject, which is newly enacted as a complete system of law. — Also termed *consolidated laws*.

"A code is not only a collection of the existing statutory law, but also of much of the unwritten law on any subject, and is composed partly of such materials as might be at hand from all sources — from statutes, cases, and from customs — supplemented by such amendments, alterations, and additions as are deemed by the codifiers necessary to harmonize and perfect the existing system. In fact, in making a code, new laws may be added and old laws repealed in order to constitute a complete system." William M. Lile et al., *Brief Making and the Use of Law Books* 18–19 (3d ed. 1914).

**2.** (*usu. cap.*) The collection of laws and constitutions made by order of the Roman Emperor Justinian and first authoritatively published in A.D. 529 (with a second edition in 534). • Contained in 12 books, the Code is one of four works that make up what is now called the *Corpus Juris Civilis*. — Also termed (in sense 2) *Legal Code*. See CODEX; CORPUS JURIS CIVILIS.

**Code Civil.** The code embodying the civil law of France, dating from 1804. • It was known from the beginning as the *Code Civil*, to distinguish it from the other four Codes promoted by Napoleon, but is sometimes called *Code Napoléon*. In 1870, the official name became *Code Civil*. Cf. NAPOLEONIC CODE. See CIVIL CODE (2).

**coded communications.** Messages that are encoded or enciphered by some method of transposition or substitution so that they become unintelligible to anyone who does not have the key to the code or cipher.

**Code de commerce** (*kohd də kaw-mairs*). A codification of French commercial law, enacted in 1807, dealing with commercial transactions, bankruptcy, and the jurisdiction and procedure of the courts handling these subjects. • This code supplemented the *Code Napoléon*. See NAPOLEONIC CODE.

**Code de procédure civile** (*kohd də praw-se-door see-veel*). A French civil-procedure code, enacted in 1806 and appended to the *Code Napoléon*. See NAPOLEONIC CODE.

**Code d'instruction criminelle** (*kohd dan-struuk-see-awn kri-mi-nel*). A French criminal-procedure code, enacted in 1811 and appended to the *Code Napoléon*. See NAPOLEONIC CODE.

**codefendant.** One of two or more defendants sued in the same litigation or charged with the same crime. — Also termed *joint defendant*. Cf. COPLAINTIFF.

**Code Napoléon** (*kohd na-poh-lay-awn*). See NAPOLEONIC CODE.

**Code Noir** (*kohd nwahr*). [French "black code"] *Hist.* A body of laws issued by Louis XIV and applied in French colonies. • The Code regulated slavery and banned Jews and non-Catholic religious practices from the colonies.

**code of conduct.** A written set of rules governing the behavior of specified groups, such as lawyers, government employees, or corporate employees.

**Code of Federal Regulations.** The annual collection of executive-agency regulations published in the daily Federal Register, combined with previously issued regulations that are still in effect. — *Abbr.* CFR.

**Code of Hammurabi** (hah-mə-rah-bee or ham-ə-). The oldest known written legal code, produced in Mesopotamia during the rule of Hammurabi (who reigned from 1792 to 1750 B.C.). • The code consisted of nearly 300 provisions, arranged under headings such as family, trade, real property, personal property, and labor.

**Code of Justinian.** See JUSTINIAN CODE.

**Code of Military Justice.** The collection of substantive and procedural rules governing the discipline of members of the armed forces. 10 USCA §§ 801 et seq. — Also termed *Uniform Code of Military Justice* (UCMJ).

**Code of Professional Responsibility.** See MODEL CODE OF PROFESSIONAL RESPONSIBILITY.

**Code pénal** (kohd pay-nal). The fourth of five codes promoted by Napoleon, enacted in 1810, setting forth the penal code of France. See NAPOLEONIC CODE.

**code pleading.** See PLEADING (2).

**code state.** *Hist.* A state that, at a given time, had already procedurally merged law and equity, so that equity was no longer administered as a separate system. • This term was current primarily in the early to mid-20th century.

**codex** (koh-deks). [Latin] *Archaic.* **1.** A code, esp. the Justinian Code. **2.** A book written on paper or parchment; esp., a volume of an ancient text.

**Codex Gregorianus** (koh-deks gri-gor-ee-ay-nəs). [Latin] *Roman law.* A collection of imperial constitutions compiled by the Roman jurist Gregorius and published in A.D. 291. — Also termed *Gregorian Code*.

“The imperial enactments, rapidly increasing in number, covering, at hazard, the whole range of law, and, by reason of difficulties of communication and imperfect methods of promulgation, not always readily ascertainable, created a burden for the practitioner almost as great as that of the unmanageable juristic literature. Something was done to help him by two collections published privately about the end of the third century, the *Codex Gregorianus* and *Codex Hermogenianus*. These collections do not now exist: what is known of them is from citations in later literature....” W.W. Buckland, *A Manual of Roman Private Law* 20–21 (2d ed. 1953).

**Codex Hermogenianus** (koh-deks hər-mə-jee-nee-ay-nəs). [Latin] *Roman law.* A collection of imperial constitutions compiled by the Roman jurist Hermogenianus and published in A.D.

295. • The *Codex Hermogenianus* supplemented the *Codex Gregorianus*. — Also termed *Hermogenian Code*.

**Codex Justinianus.** See JUSTINIAN CODE.

**Codex Repetitae Praelectionis** (koh-deks rep-ə-ti-tee pri-lek-shee-oh-nis). [Latin “code of the resumed reading”] *Roman law.* A revised version of the Justinian Code, published in A.D. 534. • This code is divided into 12 books, and deals with ecclesiastical law, criminal law, administrative law, and private law. — Also termed *Codex Iustinianus Repetitae Praelectionis*. See JUSTINIAN CODE.

“By the time when the *Digest* and *Institutes* had been completed it was obvious that the *Codex*, published little more than four years earlier, was incomplete, since in the interval Justinian ... had promulgated other new constitutions. Tribonian, therefore, was appointed to revise the Code, so as to bring it fully up to date, and at the end of the year A.D. 534 this new Code, known as the *Codex Repetitae Praelectionis*, was promulgated, and is the only Code which survives to the present day. Justinian seem to have laboured under the erroneous impression that the system he had framed would be adequate for all time. But as there is nothing static about law, further legislative enactments, termed *Novellae Constitutiones*, were issued during his reign.... In modern times Justinian’s various compilations came to be called collectively the *Corpus Juris Civilis*: the *Corpus* being regarded as a single work, made up of the *Institutes*, the *Digest*, the *Codex Repetitae Praelectionis*, and the *Novels*.” R.W. Leage, *Roman Private Law* 44 (C.H. Ziegler ed., 2d ed. 1930).

**Codex Theodosianus** (koh-deks thee-ə-doh-shee-ay-nəs). [Latin] *Roman law.* A compilation of imperial enactments prepared at the direction of the emperor Theodosius and published in A.D. 438. • The *Codex Theodosianus* replaced all other imperial legislation from the time of Constantine I (A.D. 306–337), and remained the basis of Roman law until it was superseded by the Justinian Code in A.D. 529. — Also termed *Theodosian Code*.

**codicil** (kod-ə-səl or -sil). A supplement or addition to a will, not necessarily disposing of the entire estate but modifying, explaining, or otherwise qualifying the will in some way. • When admitted to probate, the codicil becomes a part of the will.

“A Schedule or supplement to a Will, or some other writing; some Writers, conferring a Testament, and a *Codicil* together, call a Testament a great Will, and a *Codicil* a little one; and compare a Testament to a Ship, and the *Codicil* to the Boat tied to the Ship.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

“A codicil, from *codicillus*, a small *codex*, a little book or writing, may be defined as a writing by the testator

intended as a supplement or addition to his will, the effect of which may be either to enlarge or restrict it, or to annul or revoke it altogether. It may add to or subtract from provisions of the will, may explain or alter, confirm or revoke them wholly or in part; or, when the will itself is invalid, may by a valid re-execution and republication revive and renew the will." 1 H.C. Underhill, *A Treatise on the Law of Wills* § 7, at 11 (1900).

**codicillus** (kod-ə-sil-əs). [Latin "little document"] *Roman law*. **1.** An informal document instructing an heir to carry out a certain performance, usu. the payment of money or the transfer of property to a third person. • During the reign of Augustus (27 B.C.–A.D. 14), directives (*fideicommissa*) contained in *codicilli* became legally binding. See FIDEICOMMISSUM. **2.** An imperially granted appointment or special privilege.

**codification** (kod-ə-fi-kay-shən), *n.* **1.** The process of compiling, arranging, and systematizing the laws of a given jurisdiction, or of a discrete branch of the law, into an ordered code. **2.** The code that results from this process. — **codify** (kod-ə-fi), *vb.* — **codifier** (kod-ə-fi-ər), *n.*

**codifying statute.** See STATUTE.

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

**coemptio** (koh-emp-shee-oh). [Latin] *Roman law*. A form of civil marriage in which the husband "purchased" from a woman's father — by fictitious sale — the right to exercise marital power (*manus*) over the woman. • The importance of *coemptio* as a method of civil marriage had faded by the end of the Republic period. Cf. CONFARREATIO; USUS (2).

**coemption** (koh-emp-shən), *n.* **1.** The act of purchasing the entire quantity of any commodity. **2.** COEMPTIO. — **coemptional**, **coemptive**, *adj.*

**coerce** (koh-ərs), *vb.* To compel by force or threat <coerce a confession>.

**coerced confession.** See CONFESSION.

**coercion** (koh-ər-shən), *n.* **1.** Compulsion by physical force or threat of physical force. • An act such as signing a will is not legally valid if done under coercion.

**criminal coercion.** Coercion intended to restrict another's freedom of action by: (1) threatening to commit a criminal act against that person; (2) threatening to accuse that

person of having committed a criminal act; (3) threatening to expose a secret that either would subject the victim to hatred, contempt, or ridicule or would impair the victim's credit or goodwill, or (4) taking or withholding official action or causing an official to take or withhold action.

**2.** Conduct that constitutes the improper use of economic power to compel another to submit to the wishes of one who wields it. — Also termed *economic coercion*. **3.** *Hist.* A husband's actual or supposed control or influence over his wife's actions. • Under the common-law doctrine of coercion, a wife who committed a crime in her husband's presence was presumed to have been coerced by him and thus had a complete defense. Courts have abolished this doctrine. — **coercive**, *adj.* — **coercer**, *n.*

"Although as an abstract statement any action or restraint imposed upon one by another may be spoken of as coercion, there has been a tendency in the criminal law to employ the word 'compulsion' for the general field and to reserve the word 'coercion' to indicate the exercise of such influence (actual or presumed) over a married woman by her husband. And since the latter is not merely a specific instance of the former, but is something which differs from it in kind so far as common-law consequences are concerned, there are important reasons for retaining this difference in the meaning to be assigned to these terms." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1018 (3d ed. 1982).

**coercive relief.** See RELIEF.

**coexecutor** (koh-eg-zek-yə-tər). See *joint executor* under EXECUTOR.

**coexistence.** *Int'l law.* The peaceful continuation of nations, peoples, or other entities or groups within an effective political-military equilibrium.

**cogent** (koh-jənt), *adj.* Compelling or convincing <cogent reasoning>. — **cogency**, *n.*

**cognate**, *adj.* See COGNATIC.

**cognate**, *n.* One who is kin to another. • In Roman law, the term implies that the kinship derives from a lawful marriage. In Scots and later civil law, the term implies kinship from the mother's side. Cf. AGNATE.

**cognate nuisance.** See NUISANCE.

**cognate offense.** See OFFENSE (1).

**cognati.** See COGNATUS.

**cognatic** (kog-nat-ik), *adj.* (Of a relationship) existing between cognates. — Also termed *cognate*.

**cognatio** (kog-nay-shee-oh). [Latin] *Roman law*. The relationship between people having a common ancestor; a blood relationship. Cf. AGNATIO.

**cognition** (kog-nay-shən), *n.* **1.** Relationship by blood rather than by marriage; relationship arising through common descent from the same man and woman, whether the descent is traced through males or females.

“‘Cognition’ is . . . a relative term, and the degree of connexion in blood which it indicates depends on the particular marriage which is selected as the commencement of the calculation.” Henry S. Maine, *Ancient Law* 122 (17th ed. 1901).

**2. Civil law.** A relationship existing between two people by blood, by family, or by both.

**civil cognation.** A relationship arising by law, such as that created by adoption.

**mixed cognation.** A relationship that combines the ties of blood and family, such as that existing between brothers who are born of the same marriage.

**natural cognation.** A blood relationship, usu. arising from an illicit connection.

**3.** Relationship between persons or things of the same or similar nature; likeness.

**cognatus** (kog-nay-təs), *n.* [Latin] *Roman law*. A cognatic relative; a person related to another by a common ancestor. — Also termed *cognate*. Cf. AGNATUS.

**cognitio** (kog-nish-ee-oh). [fr. Latin *cognoscere* “to know”] **1. Hist.** The acknowledgment of a fine, or the certificate of such an acknowledgment. **2. Roman law.** A judicial examination or hearing of a case by a magistrate or juror. ● *Cognitio* includes everything that the judicial authority did during the proceedings to establish the facts relevant to the controversy.

**cognitionibus mittendis** (kog-nish-ee-oh-nə-bəs mi-ten-dis). [Latin “cognizance of pleas to be released”] *Hist.* A writ ordering a justice of the Common Pleas to certify a fine that the justice had imposed but refused to certify.

**cognitive test.** *Criminal law.* A test of the defendant’s ability to know certain things, specifically the nature of his or her conduct and whether the conduct was right or wrong. ● This

test is used in assessing whether a defendant may rely on an insanity defense.

**cognitor** (kog-ni-tor). *Roman law.* A person formally appointed to represent another in a civil trial. Cf. PROCURATOR (1).

**cognizable** (kog-ni-zə-bəl), *adj.* **1.** Capable of being known or recognized; esp., capable of being identified as a group because of a common characteristic or interest that cannot be represented by others <American Indians qualify as a cognizable group for jury-selection purposes>. **2.** Capable of being judicially tried or examined before a designated tribunal; within the court’s jurisdiction <the tort claims are not cognizable under the consumer-protection statute>.

**cognizance** (kog-ni-zəns), *n.* **1.** The right and power to try and determine cases; JURISDICTION. **2.** The taking of judicial or authoritative notice. **3.** Acknowledgment or admission of an alleged fact; esp. (*hist.*), acknowledgment of a fine. See FINE (1); FINE SUR COGNIZANCE DE DROIT. **4. Common-law pleading.** In a replevin action, a plea by the defendant that the goods are held in bailment for another. Cf. AVOWRY.

**cognizee** (kog-ni-zee). *Hist.* The grantee of land in a conveyance by fine. — Also termed *conu-see*; *conuzee*. See FINE (1).

**cognizor** (kog-ni-zər or -zor). *Hist.* The grantor of land in a conveyance by fine. — Also termed *conusor*; *conuzor*. See FINE (1).

“Next comes the *concord*, or agreement itself, after leave obtained from the court; which is usually an acknowledgment . . . that the lands in question are the right of the complainant. And from this acknowledgment, or recognition of right, the party levying the fine is called the *cognizor*, and he to whom it is levied the *cognizee*.” 2 William Blackstone, *Commentaries on the Laws of England* 350–51 (1766).

**cognovit** (kog-noh-vit). [Latin “he has conceded (a debt or an action)”] An acknowledgment of debt or liability in the form of a confessed judgment. ● Formerly, credit contracts often included a cognovit clause in which the consumer relinquished, in advance, any right to be notified of court hearings in any suit for non-payment — but such clauses are now generally illegal. See CONFESSION OF JUDGMENT. Cf. WARRANT OF ATTORNEY.

“A cognovit is an instrument signed by a defendant in an action actually commenced confessing the plaintiff’s demand to be just, and empowering the plaintiff to sign judgment against him in default of his paying the plaintiff the sum due to him within the time mentioned in the

cognovit." John Indermaur, *Principles of the Common Law* 8 (Edmund H. Bennett ed., 1st Am. ed. 1878).

**cognovit actionem** (kog-noh-vit ak-shee-oh-nam). [Law Latin "he has confessed the action"] A defendant's written acknowledgment of the plaintiff's claim, authorizing the plaintiff to take a judgment for a named sum; a cognovit.

**cognovit clause.** A contractual provision by which a debtor agrees to jurisdiction in certain courts, waives notice requirements, and authorizes the entry of an adverse judgment in the event of a default or breach. • Cognovit clauses are outlawed or restricted in most states.

**cognovit judgment.** See JUDGMENT.

**cognovit note.** A promissory note containing a cognovit clause. — Also termed *judgment note*.

**cohabitation** (koh-hab-ə-tay-shən), *n.* The fact or state of living together, esp. as partners in life, usu. with the suggestion of sexual relations. — **cohabit** (koh-hab-it), *vb.* — **cohabitative** (koh-hab-ə-tay-tiv), *adj.* — **cohabitant** (koh-hab-ə-tənt), *n.*

**illicit cohabitation.** At common law, the act of a man and a woman openly living together without being married to each other. — Also termed *lewd and lascivious cohabitation*.

**matrimonial cohabitation.** The living together of husband and wife.

**notorious cohabitation.** The act of a man and a woman openly living together under circumstances that make the arrangement illegal under statutes that are now rarely enforced.

**cohabitation agreement.** A contract outlining the property and financial arrangements between persons who live together. Cf. PRENUPTIAL AGREEMENT.

**cohabiting unmarried person of the opposite sex.** See CUPOS.

**Cohan rule** (koh-han). *Tax.* A former rule that a taxpayer may approximate travel and entertainment expenses where no records exist if the taxpayer has taken all possible steps to provide documentation. • Since 1962, travel and entertainment expenses have been only partly deductible and must be carefully documented, but courts may apply the *Cohan* reasoning to other

items. *Cohan v. Commissioner*, 39 F.2d 540 (2d Cir. 1930).

**coheir** (koh-air). One of two or more persons to whom an inheritance descends. See HEIR.

**coheiress** (koh-air-is). *Hist.* A female coheir.

**Cohen doctrine** (koh-ən). See COLLATERAL-ORDER DOCTRINE.

**cohort analysis** (koh-hort). A method of measuring racial discrimination in the workplace by comparing, at several points in time, the pay and promotions of employees of different races. • Cohort analyses are often used in employment-discrimination cases.

**coif** (koyf). **1.** A white linen headpiece formerly worn by serjeants at law (barristers of high standing) in common-law courts. **2.** The rank or order of serjeants-at-law. See ORDER OF THE COIF.

**Coinage Clause.** The provision in the U.S. Constitution (art. I, § 8, cl. 5) granting to Congress the power to coin money.

**coincident indicator.** See INDICATOR.

**coindictee.** One of two or more persons who have been jointly indicted. Cf. *joint indictment* under INDICTMENT.

**coined term.** See *fanciful trademark* under TRADEMARK.

**coinsurance.** See INSURANCE.

**coinsurance clause.** A provision in an insurance policy requiring a property owner to carry separate insurance up to an amount stated in the policy to qualify for full coverage. — Also termed *contribution clause*.

**coinsurer.** An insurer who shares losses sustained under an insurance policy. See *coinsurance* under INSURANCE.

**cojudices.** *Archaic.* In England, associate judges.

**cold blood.** A killer's state of mind when committing a willful and premeditated homicide <a shooting in cold blood>. See COOL BLOOD. Cf. HEAT OF PASSION.

**cold check.** See *bad check* under CHECK.

**cold-water ordeal.** See ORDEAL.

**colegatee.** A joint legatee; one of two or more persons who receive a legacy under a will. Cf. LEGATEE.

**colibertus** (kol-i-bər-təs). [Law Latin] *Hist.* A serf in free socage; that is, a serf who is nominally freed but is still subject to certain servile conditions. • A *colibertus* occupied a position in society between servile and free tenants. — Also spelled *collibertus*. Pl. **coliberti**. See SO-CAGE.

**collapsible corporation.** See CORPORATION.

**collapsible partnership.** See PARTNERSHIP.

**collate** (kə-layt), *vb.* *Civil law.* To return (inherited property) to an estate for division <the grandchildren collated the property they had received>.

**collateral** (kə-lat-ər-əl), *adj.* **1.** Supplementary; accompanying, but secondary and subordinate to <whether or not the accident victim was wearing a seat belt is a collateral issue>. **2.** Not direct in line, but on a parallel or diverging line <my uncle is in my collateral line of descent>. Cf. LINEAL. — **collaterality** (kə-lat-ər-əl-ə-tee), *n.*

**collateral** (kə-lat-ər-əl), *n.* **1.** A person collaterally related to a decedent. **2.** Property that is pledged as security against a debt; the property subject to a security interest. See UCC § 9-102(a)(9). — Also termed (in sense 2) *collateral security*.

**as-extracted collateral.** **1.** Oil, gas, or other minerals that are subject to a security interest that is created by a debtor having an interest in the minerals before extraction and that attaches to the minerals as they are extracted. UCC § 9-102(a)(4)(A). **2.** An account arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction. UCC § 9-102(a)(4)(B).

**cash collateral.** Collateral consisting of cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents.

**cross-collateral.** **1.** Security given by all parties to a contract. **2.** *Bankruptcy.* Bargained-for security that protects a creditor's postpetition extension of credit in addition to

the creditor's prepetition unsecured claims that, as a result of this security, obtain priority over other creditors' prepetition unsecured claims. • Some courts allow this procedure, which is known as *cross-collateralization*.

**collateral act.** Any act (usu. excluding the payment of money) for which a bond or recognition is given as security.

**collateral affinity.** See AFFINITY.

**collateral ancestor.** See *collateral ascendant* under ASCENDANT.

**collateral ascendant.** See ASCENDANT.

**collateral assignment.** See ASSIGNMENT (2).

**collateral assurance.** See ASSURANCE.

**collateral attack.** An attack on a judgment entered in a different proceeding. • A petition for a writ of habeas corpus is one type of collateral attack. — Also termed *indirect attack*. Cf. DIRECT ATTACK.

**collateral-benefit rule.** See COLLATERAL-SOURCE RULE.

**collateral condition.** See CONDITION (2).

**collateral consanguinity.** See CONSANGUINITY.

**collateral consequence.** A penalty for committing a crime — in addition to the penalties included in the criminal sentence. • An example is the loss of a professional license.

**collateral contract.** See CONTRACT.

**collateral-contract doctrine.** The principle that in a dispute concerning a written contract, proof of a second (but oral) agreement will not be excluded under the parol-evidence rule if the oral agreement is independent of and not inconsistent with the written contract, and if the information in the oral agreement would not ordinarily be expected to be included in the written contract.

**collateral covenant.** See COVENANT (1).

**collateral defense.** See DEFENSE (1).

**collateral descent.** See DESCENT.

**collateral estoppel** (e-stop-əl). An affirmative defense barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one. — Also termed *issue preclusion*; *issue estoppel*; *direct estoppel*; *estoppel by judgment*; *estoppel by record*; *estoppel by verdict*; *cause-of-action estoppel*; *estoppel per rem judicatam*. Cf. RES JUDICATA.

**administrative collateral estoppel.** Estoppel that arises from a decision made by an agency acting in a judicial capacity.

**defensive collateral estoppel.** Estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff and for another defendant.

**offensive collateral estoppel.** Estoppel asserted by a plaintiff to prevent a defendant from relitigating an issue previously decided against the defendant and for another plaintiff.

**collateral fact.** See FACT.

**collateral fraud.** See *extrinsic fraud* (1) under FRAUD.

**collateral heir.** See HEIR.

**collateral-inheritance tax.** See TAX.

**collateral issue.** See ISSUE (1).

**collateralize** (kə-lat-ər-əl-īz), *vb.* **1.** To serve as collateral for <the purchased property collateralized the loan agreement>. **2.** To make (a loan) secure with collateral <the creditor insisted that the loan be collateralized>. — **collateralization** (kə-lat-ər-əl-ə-zay-shən), *n.*

**collateralized mortgage obligation.** *Securities.* A bond secured by a group of mortgage obligations or pass-through securities and paid according to the payment schedule of its class (or *tranche*). • CMOs are issued by the Federal Home Loan Mortgage Corporation, and benefit from predictable payments of interest and principal. — Abbr. CMO. See *pass-through security* under SECURITY; TRANCHE.

**collateral limitation.** See LIMITATION.

**collateral line.** See LINE.

**collateral loan.** See *secured loan* under LOAN.

**collateral matter.** *Evidence.* Any matter on which evidence could not have been introduced for a relevant purpose. • If a witness has erred in testifying about a detail that is collateral to the relevant facts, then another party cannot call witnesses to contradict that point — cross-examination alone must suffice.

**collateral mistake.** See *unessential mistake* under MISTAKE.

**collateral mortgage.** See MORTGAGE.

**collateral negligence.** See NEGLIGENCE.

**collateral-negligence doctrine.** The rule holding that one who engages an independent contractor is not liable for physical harm that the contractor causes if (1) the contractor's negligence consists solely of the improper manner in which the contractor's work is performed, (2) the risk of harm created is not normal to the work, and (3) the employer had no reason to contemplate the contractor's negligence when the contract was made.

**collateral note.** See *secured note* under NOTE.

**collateral obligation.** A liability undertaken by a person who becomes bound for another's debt. — Also termed *accessorial obligation*.

**collateral-order doctrine.** A doctrine allowing appeal from an interlocutory order that conclusively determines an issue wholly separate from the merits of the action and effectively unreviewable on appeal from a final judgment. — Also termed *Cohen doctrine* (fr. *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221 (1949)). See *appealable decision* under DECISION.

**collateral power.** See POWER.

**collateral proceeding.** See PROCEEDING.

**collateral promise.** See PROMISE.

**collateral relative.** See RELATIVE.

**collateral security.** See SECURITY.

**collateral-source rule.** *Torts.* The doctrine that if an injured party receives compensation for its injuries from a source independent of the tortfeasor, the payment should not be deducted from the damages that the tortfeasor must pay. • Insurance proceeds are the most

common collateral source. — Also termed *collateral-benefit rule*.

**collateral trust bond.** See BOND (3).

**collateral trust certificate.** See *collateral trust bond* (1) under BOND (3).

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

**collateral warranty.** See WARRANTY (1).

**collatio bonorum** (kə-lay-shee-oh bə-nor-əm). [Latin “collation of goods”] *Civil law*. The bringing into hotchpot of goods or money advanced by a parent to a child, so that the parent’s personal estate will be equally distributed among the parent’s children. See HOTCHPOT.

“[I]f the estates so given them, by way of advancement, are not quite equivalent to the other shares, the children so advanced shall now have so much as will make them equal. This just and equitable provision hath been also said to be derived from the *collatio bonorum* of the imperial law: which it certainly resembles in some points, though it differs widely in others. But it may not be amiss to observe, that, with regard to goods and chattels, this is part of . . . the common law of England, under the name of *hotchpot*.” 2 William Blackstone, *Commentaries on the Laws of England* 516–17 (1766).

**collation** (kə-lay-shən), *n.* **1.** The comparison of a copy with its original to ascertain its correctness; the report of the officer who made the comparison. **2.** An estimate of the value of advancements made by an intestate to his or her children so that the estate may be divided in accordance with the intestacy statute. **3.** *Eccles. law*. The act (by a bishop) of conferring a benefice where the bishop holds the right of advowson, thus combining the acts of *presentation* and *institution*. — Also termed *collation to a benefice*. See *advowson collative* under ADVOWSON. — **collate** (kə-layt), *vb.* — **collator** (kə-lay-tər), *n.*

**collatione facta uni post mortem alterius** (kə-lay-shee-oh-nee fak-tə yoo-ni pohst mortəm al-teer-ee-əs [or awl-]). [Law Latin “collation to a benefice made to one after the death of the other”] *Hist.* A writ directed to the Court of Common Pleas, requesting that the court order a bishop to appoint a clerk in place of another who had died pending appointment.

**collatione heremitagii** (kə-lay-shee-oh-nee her-ə-mə-tay-jee-ī). [Law Latin “collation of hermitage”] *Hist.* A writ by which the Crown conferred the keeping of a hermitage on a clerk.

**collation to a benefice.** See COLLATION.

**collatio signorum** (kə-lay-shee-oh sig-nor-əm). [Law Latin “comparison of signs”] *Hist.* A method of testing a seal’s genuineness by comparing it with another known to be genuine.

**collative fact.** See *investitive fact* under FACT.

**collectability.** The relative ability of a judgment creditor to make a judgment debtor pay the amount of the judgment; the degree to which a judgment can be satisfied through collection efforts against the defendant.

**collecting bank.** See BANK.

**collection.** *Banking.* The process through which an item (such as a check) passes in a payor bank. See *payor bank* under BANK (1).

**collection indorsement.** See *restrictive indorsement* under INDORSEMENT.

**collection item.** An item (such as a documentary draft) taken by a bank for a customer’s account, but not credited until payment for the item has actually been received. See *documentary draft* under DRAFT (1).

**collective bargaining.** Negotiations between an employer and the representatives of organized employees to determine the conditions of employment, such as wages, hours, and fringe benefits. See CONCESSION BARGAINING.

“Collective bargaining means the joint determination by employees and employers of the problems of the employment relationship. Such problems include wage rates and wage systems, hours and overtime, vacations, discipline, work loads, classification of employees, layoffs, and worker retirement. The advent of collective bargaining does not give rise to these problems. Rather they are germane to the industrial relations environment, and exist with or without unionization.” Benjamin J. Taylor & Fred Whitney, *Labor Relations Law* 3 (1971).

**collective-bargaining agreement.** *Labor law.* A contract that is made between an employer and a labor union and that regulates employment conditions. — Also termed *collective labor agreement*; *trade agreement*.

**collective mark.** A trademark or servicemark used by an association, union, or other group either to identify the group’s products or services or to signify membership in the group. ● Collective marks — such as “Realtor” or “American Peanut Farmers” — can be federally registered under the Lanham Act. — Also



termed *collective trademark*. Cf. CERTIFICATION MARK. See TRADEMARK.

**collective measure.** *Int'l law.* An activity undertaken by more than one country to achieve an agreed-upon end. • The countries involved may undertake a collective measure either in an ad hoc manner or through an institutionalized association.

**collective punishment.** A penalty inflicted on a group of persons without regard to individual responsibility for the conduct giving rise to the penalty. • Collective punishment was outlawed in 1949 by the Geneva Convention.

**collective trademark.** See COLLECTIVE MARK.

**collective work.** *Copyright.* **1.** A publication (such as a periodical issue, anthology, or encyclopedia) in which several contributions, constituting separate and independent works in themselves, are assembled into a copyrightable whole. **2.** A selection and arrangement of brief portions of different movies, television shows, or radio shows into a single copyrightable work. • If the selecting and arranging involves any originality, the person who selects and arranges the clips may claim a copyright even if copyright cannot be claimed in the individual component parts. Cf. COMPILATION (1).

"If a work is not joint and not derivative but nevertheless consists of works of authorship created by more than one person, it is a compilation of some sort except for the possibility that it is a work for hire. . . . If the component parts have an independent identity, that is, they are works of authorship, then the compilation is a collective work, a type of compilation." Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 374 (2d ed. 1990).

**collector of decedent's estate.** A person temporarily appointed by a probate court to collect assets and payments due to a decedent's estate, and to settle other financial matters requiring immediate attention. • A collector is often appointed to look after an estate when there is a will contest or a dispute about who should be appointed administrator. The collector's duties end when an administrator is appointed.

**collega** (kə-lee-gə). [Latin] *Roman law.* A person invested with joint authority; a colleague or associate. • *Collega* usu. referred to a member of an association (*collegium*) or a coheir. See COLLEGIUM.

**collegatarius** (kə-leg-ə-tair-ee-əs). [Latin] *Roman law.* A co-legatee.

**collegatary** (kə-leg-ə-ter-ee). A co-legatee; a person who shares a common legacy with one or more other persons. — Also termed *collegatarius* (kə-leg-ə-ter-ee-əs).

**college.** **1.** An institution of learning that offers instruction in the liberal arts, humanities, and sciences, but not in the technical arts or in studies preparatory to admission to a profession. **2.** An assembly of people, established by law to perform some special function or to promote some common purpose, usu. of an educational, political, ecclesiastical, or scientific nature.

**College of Arms.** See HERALDS' COLLEGE.

**collegium** (kə-lee-jee-əm). [Latin] *Roman law.* An association of at least three people having the right to assemble and enact rules concerning membership, organization, and the rights and duties of members. • *Collegia* were formed for professional, cultural, charitable, and religious purposes. Pl. *collegia*.

**collegium illicitum** (kə-lee-jee-əm i-lis-ətəm). A collegium that either is not sanctioned by law or assembles for some purpose other than that expressed in its charter.

**collegium licitum** (kə-lee-jee-əm lis-ətəm). An assemblage of people empowered to act as a juristic person in the pursuit of some useful purpose or business.

**collision.** *Maritime law.* **1.** The crashing together of two vessels.

**fortuitous collision.** The accidental crashing of two vessels.

**2.** ALLISION.

**collision insurance.** See INSURANCE.

**colliterales et socii** (kə-lit-ə-ray-leez et soh-shee-i). [Law Latin "assistants and associates"] *Hist.* In England, the former title of assistants to the Chancery judges (i.e., *masters in chancery*).

**collobium** (kə-loh-bee-əm). [Law Latin] *Hist.* A hood or covering for the shoulders, formerly worn by serjeants-at-law.

**colloquium** (kə-loh-kwee-əm). **1.** The offer of extrinsic evidence to show that an alleged defamatory statement referred to the plaintiff even though it did not explicitly mention the plaintiff. **2.** The introductory averments in a plaintiff's pleading setting out all the special

circumstances that make the challenged words defamatory. Pl. **colloquiums**, **colloquia**. Cf. INDUCEMENT (4); INNUENDO (2).

**colloquy** (kol-ə-kwee). Any formal discussion, such as an oral exchange between a judge, the prosecutor, the defense counsel, and a criminal defendant in which the judge ascertains the defendant's understanding of the proceedings and of the defendant's rights.

**collusion** (kə-loo-zhən), *n.* An agreement to defraud another or to obtain something forbidden by law. • For example, before the no-fault concept in divorce proceedings, a husband and wife might agree to make it appear that one of them had committed an act that was grounds for divorce. — **collude**, *vb.* — **collusive**, *adj.* — **colluder**, *n.*

**collusive action.** See ACTION.

**collusive joinder.** See JOINDER.

**Collyer doctrine** (kol-yər). *Labor law.* The principle under which the National Labor Relations Board will refer an issue brought before it to arbitration if the issue is arbitrable under the collective-bargaining agreement. *Collyer Insulated Wire*, 192 NLRB 837 (1971). Cf. SPIELBERG DOCTRINE.

**colonial law.** 1. Law governing a colony or colonies. 2. The body of law in force in the 13 original U.S. colonies before the Declaration of Independence.

**colony**, *n.* *Int'l law.* 1. A dependent territorial entity subject to the sovereignty of an independent country, but considered part of that country for purposes of relations with third countries. 2. A group of people who live in a new territory but retain ties with their parent country. 3. The territory inhabited by such a group. — **colonize**, *vb.* — **colonial**, *adj.* Cf. MOTHER COUNTRY.

**color**, *n.* 1. Appearance, guise, or semblance; esp., the appearance of a legal claim to a right, authority, or office <color of title> <under color of state law>. 2. *Common-law pleading.* An apparent, but legally insufficient, ground of action, admitted in a defendant's pleading to exist for the plaintiff; esp., a plaintiff's apparent (and usu. false) right or title to property, the existence of which is pleaded by the defendant as a confession and avoidance to remove the case from the jury by turning the issue from one of fact to one of law. See GIVE COLOR.

"It is a rule of pleading, that no man be allowed to plead specially such a plea as amounts only to the general issue, or a total denial of the charge; but in such case he shall be driven to plead the general issue in terms, whereby the whole question is referred to a jury. But if the defendant, in an assise or action of trespass, be desirous to refer the validity of his title to the court rather than the jury, he may state his title specially, and at the same time *give colour* to the plaintiff, or suppose him to have an appearance or colour of title, bad indeed in point of law, but of which the jury are not competent judges. As if his own true title be, that he claims by feoffment with livery from A, by force of which he entered on the lands in question, he cannot plead this by itself, as it amounts to no more than the general issue . . . *not guilty* in an action of trespass. But he may allege this specially, provided he goes farther and says, that the plaintiff claiming by *colour* of a prior deed of feoffment, without livery, entered; upon whom he entered; and may then refer himself to the judgment of the court which of these two titles is the best in point of law." 3 William Blackstone, *Commentaries on the Laws of England* 309 (1768).

**express color.** A feigned matter pleaded by the defendant in an action of trespass, from which the plaintiff seems to have a good claim while in truth the plaintiff has only the appearance of one. • This pleading was abolished by the Common-Law Procedure Act of 1852, 15 & 16 Vict., ch. 76, § 64.

"Express color is a fictitious allegation, not traversable, to give an appearance of right to the plaintiff, and thus enable the defendant to plead specially his own title, which would otherwise amount to the general issue. It is a licensed evasion of the rule against pleading contradictory matter specially." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 202, at 351 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**implied color.** An apparent ground of action that arises from the nature of the defense, as when the defense consists of a confession and avoidance in which the defendant admits the facts but denies their legal sufficiency. • This is a quality inherent in all pleadings in confession and avoidance.

**colorable**, *adj.* 1. (Of a claim or action) appearing to be true, valid, or right <the pleading did not state a colorable claim>. 2. Intended to deceive; counterfeit <the court found the conveyance of exempt property to be a colorable transfer, and so set it aside>.

**colorable alteration.** *Intellectual property.* A modification that effects no real or substantial change, but is made only to distinguish an invention or work from an existing patent or copyright.

**colorable claim.** See CLAIM (4).

**colorable-imitation test.** *Trademarks.* A test for a trademark violation in which a court determines whether an ordinary person who is not allowed to compare the two items side by side could recognize the difference between the two.

**colorable transaction.** See TRANSACTION.

**Colorado River abstention.** See ABSTENTION.

**color book.** *Archaic. Int'l law.* An official compilation of diplomatic documents and internal papers and reports of a government, the purpose of which is to inform the legislature and the public about foreign policy, esp. during foreign crises. • Color books reached their height of popularity in the late 19th and early 20th centuries. They are now little used in most countries.

**colore officii** (kə-lor-ee ə-fish-ee-i). [Latin "by color of office"] See COLOR OF OFFICE.

**color of authority.** The appearance or presumption of authority sanctioning a public officer's actions. • The authority derives from the officer's apparent title to the office or from a writ or other apparently valid process the officer bears.

**color of law.** The appearance or semblance, without the substance, of a legal right. • The term usu. implies a misuse of power made possible because the wrongdoer is clothed with the authority of the state. *State action* is synonymous with *color of law* in the context of federal civil-rights statutes or criminal law. See STATE ACTION.

**color of office.** The authority or power that is inherent in an office, esp. a public office. • Acts taken under the color of an office are vested with, or appear to be vested with, the authority entrusted to that office.

"The starting point in the law of bribery seems to have been when a judge, for doing his office or acting under color of his office, took a reward or fee from some person who had occasion to come before him, — and apparently guilt attached only to the judge himself and not to the bribe-giver." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 527 (3d ed. 1982).

**color of title.** A written instrument or other evidence that appears to give title, but does not do so. — Also termed *apparent title*.

**com. abbr.** 1. COMPANY. 2. COMMONWEALTH.

**comaker.** One who participates jointly in borrowing money on a promissory note; esp., one who acts as surety under a note if the maker defaults. — Also termed *cosigner*. Cf. MAKER.

**combatant** (kəm-bat-ənt or kəm-bə-tənt). *Int'l law.* A person who participates directly in hostilities. • "Legitimate" combatants are members of the armed forces or uniformed members of a militia or volunteer corps, under military command and subject to the laws of war.

**combination.** 1. An alliance of individuals or corporations working together to accomplish a common (usu. economic) goal. See COMBINATION IN RESTRAINT OF TRADE. 2. CONSPIRACY. 3. *Patents.* A union of elements that may be partly old and partly new. • The term encompasses not only a combination of mechanical elements but also a combination of substances in a composition claim or steps in a process claim. 4. STRADDLE.

**combination in restraint of trade.** An express or tacit agreement between two or more persons or entities designed to raise prices, reduce output, or create a monopoly.

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

**combustio domorum** (kəm-bus-tee-oh də-mor-əm). [Latin "houses burning"] *Hist.* See HOUSE-BURNING.

**comes** (koh-meez). [Latin] *Hist.* 1. A count or earl. 2. A person who is part of a high government official's retinue. Pl. **comites**. See COMITATUS.

**comes and defends.** *Archaic.* Traditionally, the standard commencement of a defendant's plea or demurrer. • The phrase, now rarely used, announces the defendant's appearance in court and intent to defend against the action.

**comes now.** *Archaic.* Traditionally, the standard commencement in pleadings <Comes now the plaintiff, Gilbert Lewis, by and through his attorneys of record, and would show unto the court the following>. • For a plural subject, the phrase is *come now* <Come now the plaintiffs, Bob and Louise Smith>. — Also termed *now comes*. — Sometimes shortened to *comes* <Comes the State of Tennessee>.

**comfort letter.** 1. *Securities.* A letter from a certified public accountant certifying that no false or misleading information has been used in preparing a financial statement accompany-

ing a securities offering. **2. Corporations.** A letter, esp. from a parent corporation on behalf of a subsidiary, stating its support (but short of a guarantee) for the activities and commitments of another corporation.

**comingle, vb.** See COMMINGLE.

**coming-to-rest doctrine.** *Insurance.* The principle that coverage of shipped goods ends when the goods are unloaded and any cables or other links to the transporting vehicle have been disconnected. • The coming-to-rest doctrine covers only the movement of goods from the shipping vehicle to a place of rest outside the vehicle, in contrast to the broader coverage of the complete-operation rule. Cf. COMPLETE-OPERATION RULE.

**comitas (kom-ə-təs).** [Latin "courtesy"] See COMITY.

**comitas gentium.** See COMITY.

**comitatu commisso (kom-ə-tay-t[y]oo kə-mis-oh).** [Latin "county commission"] *Hist.* A writ or commission authorizing a sheriff to take charge of a county.

**comitatu et castro commisso (kom-ə-tay-t[y]oo et kas-troh kə-mis-oh).** [Latin "county and castle commission"] *Hist.* A writ authorizing a sheriff to take charge of a county and a castle.

**comitatus (kom-ə-tay-təs).** [Latin] *Hist.* **1.** A county or shire. **2.** The territorial jurisdiction of a count or earl. **3.** A county court. **4.** The retinue accompanying a prince or high government official.

**comites (kom-ə-teez).** See COMES.

**comites paleys (kom-ə-teez-pa-lays).** [Law French] *Hist.* Counts or earls palatine; those who exercise royal privileges in a county palatine. See COUNTY PALATINE.

**comitia (kə-mish-ee-ə).** [Latin "assembly"] *Roman law.* An assembly of the Roman people, gathered together for legislative or judicial purposes.

**comitia centuriata (kə-mish-ee-ə sen-tyoor-ee-ay-tə).** An assembly of the entire populace, voting by centuries (that is, military units) empowered to elect magistrates and to act as a court of appeal in a capital matter.

**comitia curiata (kə-mish-ee-ə kyoor-ee-ay-tə).** An assembly of (originally) patricians whose chief function was to authorize private acts of citizens, such as declaring wills and adoptions. • The *comitia curiata* engaged in little legislative activity.

"[I]n Rome the patrician will, recorded before the *Comitia Curjata*, was a variety of adoption but disappeared gradually, while the plebeian will, which proved the permanent form, was made by a formal sale, or *mancipatio*." John Henry Wigmore, *Problems of Law* 46-47 (1920).

**comitia tributa (kə-mish-ee-ə tri-byoo-tə).** An assembly of tribes convened to elect lower-ranking officials. • The *comitia tributa* undertook a great deal of legislative activity in the later Roman republic. Cf. CONCILIUM PLEBIS.

"Of the various popular assemblies the oldest was the *Comitia Curjata*. This was an assembly of the whole people, or rather of all heads of families, grouped in 30 *curiae*, the *curia* being the voting unit. . . . It is doubtful whether this body ever exercised legislative power in the ordinary sense. Important as its functions were, they belong, in the main and apart from formalities, to an age before legislation was thought of as an ordinary method of law reform. The *Comitia Centuriata* was, in historical times, a much more important body. The centuriate organisation, which was existing, at the latest, soon after the foundation of the Republic, was a grouping of the whole people, patrician and plebeian. . . . [I]t could vote only on propositions submitted by the presiding magistrate . . . in addition a *lex* of the *centuriae* required *auctoritas patrum*, which is commonly supposed to mean approval of the patrician members of the Senate. . . . A third assembly of the whole people was the *Comitia Tributa*. The voting unit of this body was the *tribus*, a subdivision, essentially local, of the territory of the State. . . . As in the case of the *Comitia Centuriata*, the proposal by the presiding magistrate was usually submitted for the previous approval of the Senate, and *auctoritas patrum* was required." W.W. Buckland, *A Textbook of Roman Law: From Augustus to Justinian* 2-4 (1921).

**comity (kom-ə-tee).** **1.** Courtesy among political entities (as nations, states, or courts of different jurisdictions), involving esp. mutual recognition of legislative, executive, and judicial acts. — Also termed *comitas gentium*; *courtoisie internationale*. Cf. ABSTENTION.

"A great deal of misconception about the nature of conflict of laws is due to the loose use of the term 'comity.' The laws of another state or nation, it has been sometimes said, can have no operation in another sovereignty except by comity. In the dictionary definition, comity means 'courtesy between equals; friendly civility.' Such a conception of the matter supposes one sovereign, as a matter of courtesy, allowing the law of another to operate within the territory of the first. If this were true, the determination of when, by comity, recognition would be given to foreign law would not be a predictable matter. . . . Courts use it, often loosely, and in cases correctly decided despite looseness of terms. It is clear

that the reference to foreign law in appropriate cases is dependent not upon a mere courtesy which a court may grant or withhold at will, but upon the need to achieve justice among parties to a controversy having foreign contacts." Herbert F. Goodrich & Eugene F. Scoles, *Handbook of the Conflict of Laws* § 7, at 7-8 (4th ed. 1964).

"The comity principle is most accurately characterized as a golden rule among nations — that each must give the respect to the laws, policies and interests of others that it would have others give to its own in the same or similar circumstances." Thomas Buergenthal & Harold G. Mayer, *Public International Law in a Nutshell* 178 (2d ed. 1990).

**judicial comity.** The respect a court of one state or jurisdiction shows to another state or jurisdiction in giving effect to the other's laws and judicial decisions.

**2.** A rule of law having its origin in courtesy among political entities. **3.** INTERNATIONAL LAW. • This sense is considered a misuse: "[I]n Anglo-American jurisprudence, . . . the term is also misleadingly found to be used as a synonym for international law." Peter Macalister-Smith, "Comity," in 1 *Encyclopedia of Public International Law* 672 (1992).

**Comity Clause.** The clause of the U.S. Constitution giving citizens of one state the right to all privileges and immunities enjoyed by citizens of the other states. U.S. Const. art. IV, § 2, cl. 1. See PRIVILEGES AND IMMUNITIES CLAUSE.

**command. 1.** An order; a directive. **2.** In legal positivism, the sovereign's express desire that a person act or refrain from acting a certain way, combined with the threat of punishment for failure to comply.

"Commands are orders backed by threats. It is in virtue of threatened evils, sanctions, that expressions of desire not only constitute commands but also impose an obligation or duty to act in the prescribed ways." Martin P. Golding, *Philosophy of Law* 26 (1975).

**command, vb.** To direct authoritatively; to order.

**commander-in-chief. 1.** One who holds supreme or highest command of armed forces. **2.** (*cap.*) The title of the U.S. President when acting as the constitutionally designated leader of the nation's military. U.S. Const. art. II, § 2.

**Commander in Chief Clause.** The clause of the U.S. Constitution appointing the President as supreme commander of the military. U.S. Const. art. I, § 8, cl. 3.

**commandment. Hist. 1.** An authoritative order of a judge or magisterial officer. **2.** The offense of inducing another to commit a crime.

**commencement.** See INTRODUCTORY CLAUSE.

**commencement of infringement. Copyright.** The first of a series of discrete copyright violations, such as the first of many separate sales of infringing items. See INFRINGEMENT.

**commenda** (kə-men-də). A business association in which one person has responsibility for managing all business property.

**commendam** (kə-men-dam or -dəm). **1.** *Eccles. law.* A vacant benefice held by a clerk until a regular pastor can be appointed. • Commendams were abolished in 1836. See BENEFICE. **2.** PARTNERSHIP IN COMMENDAM.

**commendation. Hist.** The act of becoming a lord's feudal tenant to receive the lord's protection.

**commendator** (kom-ən-day-tər). *Eccles. law.* A person holding a commendam (a benefice) as a trustee. • Commendators are so called because benefices are commended to their supervision. See COMMENDAM.

**commendatus** (kom-ən-day-təs). *Hist.* A person who, by voluntary oath of homage, was placed under a lord's protection.

**comment, n. 1.** NOTE (2). **2.** An explanatory statement made by the drafters of a particular statute, code section, or rule. — **commentator, n.**

**commentators.** See POSTGLOSSATORS.

**commenter.** One who comments; esp., one who sends comments to an agency about a proposed administrative rule or regulation. See NOTICE-AND-COMMENT PERIOD.

**comment on the evidence.** A statement made to the jury by the judge or by counsel on the probative value of certain evidence. • Lawyers typically make such comments in closing argument — and judges may make such comments in federal court — but most state-court judges are not permitted to do so when examining a witness, instructing the jury, and the like (in which case the comment is sometimes termed an *impermissible comment on the evidence*).

**comment period.** See NOTICE-AND-COMMENT PERIOD.

**commerce.** The exchange of goods and services, esp. on a large scale involving transportation between cities, states, and nations.

**interstate commerce.** Trade and other business activities between those located in different states; esp., traffic in goods and travel of people between states. • For purposes of this phrase, most statutory definitions include a territory of the United States as a state. Some statutory definitions of *interstate commerce* include commerce between a foreign country and a state.

**intrastate commerce.** Commerce that begins and ends entirely within the borders of a single state.

**Commerce Clause.** U.S. Const. art. I, § 8, cl. 3, which gives Congress the exclusive power to regulate commerce among the states, with foreign nations, and with Indian tribes.

**Dormant Commerce Clause.** The constitutional principle that the Commerce Clause prevents state regulation of interstate commercial activity even when Congress has not acted under its Commerce Clause power to regulate that activity. — Also termed *Negative Commerce Clause*.

**Commerce Court.** See COURT.

**commercii belli** (kə-mər-shee-ə bel-ī). [Latin “commerce of war”] Commercial dealings or contracts between nations at war, or between the subjects of nations at war, under which arrangements for nonhostile dealings are made.

**commercial-activity exception.** An exemption from the rule of sovereign immunity, permitting a claim against a foreign state if the claim arises from private acts undertaken by the foreign state, as opposed to the state’s public acts. See RESTRICTIVE PRINCIPLE OF SOVEREIGN IMMUNITY; JURE GESTIONIS; JURE IMPERII.

**commercial agent.** 1. BROKER. 2. A consular officer responsible for the commercial interests of his or her country at a foreign port.

**commercial assets.** See ASSET.

**commercial bank.** See BANK.

**commercial bribery.** See BRIBERY.

**commercial broker.** See BROKER.

**commercial court.** See COURT.

**commercial credit company.** See *commercial finance company* under FINANCE COMPANY.

**commercial division.** See *business court* under COURT.

**commercial domicile.** See DOMICILE.

**commercial finance company.** See FINANCE COMPANY.

**commercial frustration.** See FRUSTRATION.

**commercial general liability policy.** See *comprehensive general liability policy* under INSURANCE POLICY.

**commercial impracticability.** See IMPRACTICABILITY.

**commercial insurance.** See INSURANCE.

**commercial law.** 1. The substantive law dealing with the sale and distribution of goods, the financing of credit transactions on the security of the goods sold, and negotiable instruments. • Most American commercial law is governed by the Uniform Commercial Code. — Also termed *mercantile law*.

“Although the term *commercial law* is not a term of art in American law it has become synonymous in recent years with the legal rules contained in the Uniform Commercial Code.” Jonathan A. Eddy & Peter Winship, *Commercial Transactions* 1 (1985).

## 2. LAW MERCHANT.

**commercial-law notice.** See NOTICE.

**commercial letter of credit.** See LETTER OF CREDIT.

**commercial loan.** See LOAN.

**commercially reasonable, adj.** (Of a property sale) conducted in good faith and in accordance with commonly accepted commercial practice. • Under the UCC, a sale of collateral by a secured party must be done in a commercially reasonable manner, or the sale may be rescinded. UCC § 9-504.

“[Section] 9-504 does impose two requirements upon the reselling creditor: (1) the creditor must send notice; and (2) every aspect of the sale including the method, man-

ner, time, place, and terms must be 'commercially reasonable.' The notice requirement is easy to understand and apply. . . . The second condition is both more important and more difficult to define in operational terms. Its importance lies in the fact that the amount of the deficiency judgment will be inversely proportional to the sales price; if the price is high, the amount of the judgment will be low, and vice versa. The 'method, manner, time, place and terms' tests are really proxies for 'insufficient price,' and their importance lies almost exclusively in the extent they protect against an unfairly low price." James J. White & Robert S. Summers, *Uniform Commercial Code* § 25-10, at 918 (4th ed. 1995).

**commercial name.** See TRADENAME.

**commercial paper.** See PAPER.

**commercial partnership.** See *trading partnership* under PARTNERSHIP.

**commercial set.** The primary documents covering shipment of goods, usu. including an invoice, bill of lading, bill of exchange, and certificate of insurance.

**commercial speech.** See SPEECH.

**commercial surety.** See *compensated surety* under SURETY.

**commercial tort claim.** A claim arising in tort when the claimant is either (1) an organization, or (2) an individual whose claim arose in the course of the claimant's business or profession, and the claim does not include damages arising out of personal injury or death. UCC § 9-102(a)(10).

**commercial-traveler rule.** The principle that an accident will be treated as occurring during the course of employment if it was caused by an employee whose job requires travel, and the employee was not on a personal errand. ● The commercial-traveler rule is an exception to the going-and-coming rule.

**commercial treaty.** See TREATY.

**commercial unit.** A unit of goods that by commercial usage is a single whole for purposes of lease and whose division materially impairs its character or value in the relevant market or in use. UCC § 2-102(a)(7). ● Under the UCC, "a commercial unit may be a single article, such as a machine; a set of articles, such as a suite of furniture or a line of machinery; a quantity, such as a gross or carload; or any other unit treated in use or in the relevant market as a single whole." *Id.*

**comminatorium** (kə-min-ə-tor-ee-əm). [Latin *comminari* "threaten"] *Hist.* A clause often included at the end of a writ, admonishing the sheriff to be faithful in the writ's execution.

**commingle** (kə-ming-gəl), *vb.* To put together in one mass, as when one mixes separate funds or properties into a common fund. — Also spelled *comingle*.

**commingling** (kə-ming-gling), *n.* A mixing together; esp., a fiduciary's mixing of personal funds with those of a beneficiary or client. ● Commingling is usu. considered a breach of the fiduciary relationship. Under the Model Rules of Professional Conduct, a lawyer is prohibited from commingling personal funds with those of a client. — Also spelled *comingling*.

**commissary** (kəm-i-ser-ee), *n.* 1. A person who is delegated or commissioned to perform some duty, usu. as a representative of a superior. 2. A general store, esp. on a military base; also, a lunchroom. — **commissary**, *adj.*

**commission**, *n.* 1. A warrant or authority, from the government or a court, that empowers the person named to execute official acts <the student received his commission to the U.S. Navy after graduation>. 2. The authority under which a person transacts business for another <the client gave her attorney express commission to sign the contract>. 3. A body of persons acting under lawful authority to perform certain public services <the Federal Communications Commission>.

**public-service commission.** A commission created by a legislature to regulate public utilities or public-service corporations.

4. The act of doing or perpetrating (as a crime) <the perpetrator fled to Mexico after commission of the assault>. 5. A fee paid to an agent or employee for a particular transaction, usu. as a percentage of the money received from the transaction <a real-estate agent's commission>.

**double commission.** A commission paid by both a seller and a buyer to the same person acting in different capacities, as when a person acts as both executor and trustee.

**commission broker.** See BROKER.

**commission del credere** (del kred-ər-ay). The commission received by the seller's agent for guaranteeing a buyer's debt.

**commissioned officer.** See OFFICER (2).

**commissioner.** 1. A person who directs a commission; a member of a commission. 2. The administrative head of an organization, such as a professional sport.

**commissioner of bail.** An officer appointed to take bail bonds.

**commissioner of deeds.** An officer authorized by a state to take acknowledgments of deeds and other papers while residing in another state. • The acknowledgments are recognized in the state that licensed the commissioner. Cf. NOTARY PUBLIC.

**commissioner of highways.** A public officer responsible for overseeing the construction, alteration, and repair of highways.

**commissioner of woods and forests.** *Hist.* An officer who, by an 1817 Act of Parliament, assumed the jurisdiction of the Chief Justice of the Forest.

**county commissioner.** A county officer charged usu. with the management of the county's financial affairs, its police regulations, and its corporate business. — Also termed *county supervisor*.

**court commissioner.** An officer appointed by the court esp. to hear and report facts, or to conduct judicial sales.

**United States Commissioner.** *Hist.* A judicial officer appointed by a U.S. district court to hear a variety of pretrial matters in criminal cases. • Commissioners' duties have been transferred to U.S. Magistrate Judges. Cf. UNITED STATES MAGISTRATE JUDGE.

**commissioner's court.** See COURT.

**commission government.** A type of municipal government in which the legislative power is in the hands of a few people.

**commission merchant.** See FACTOR.

**commission of appraisement and sale.** *Maritime law.* A court order requiring the sale of property in an in-rem admiralty action.

**commission of assize.** *Hist.* A royal authorization empowering a person to hold court and try cases arising while the justices in eyre held court elsewhere. Cf. EYRE.

"[B]oth the presentment of crimes and the conduct of trials by assize or jury — which rapidly became a common feature of royal justice — required the presence of twelve or more men from the vicinity where the matter in question occurred. . . . The means of achieving this reconciliation was the frequent issue of commissions to perform judicial functions in the country. . . . [A]ssize

commissioners had original jurisdiction to hear a case from beginning to end. . . . But the assizes, though moulded into a regular routine, never became a distinct 'court' in the permanent sense. The jurisdiction of the judges rested entirely on the commissions which issued for each circuit: the judges could therefore be regularly interchanged, and after 1340 it was quite normal for a Common Plea case to be tried at nisi prius by a King's Bench judge, and vice versa." J.H. Baker, *An Introduction to English Legal History* 67 (3d ed. 1990).

**commission of charitable uses.** *Hist.* An authorization issuing out of the Court of Chancery to a bishop or other person authorizing the appointee to investigate allegations of fraud or other disputed matters concerning charitable land grants.

**commission of delegates.** *Hist.* A commission appointing a person (usu. a lord, bishop, or judge) to sit with several other appointees to hear an appeal of an ecclesiastical judgment in the Court of Chancery. • This commission was abolished in 1832, and its functions transferred to the Judicial Committee of the Privy Council.

**Commission of Gaol Delivery.** *Hist.* A royal appointment authorizing a judge to go on the assize circuit and hear all criminal cases of those held in county jails. See JAIL DELIVERY. Cf. COMMISSION OF OYER AND TERMINER.

**commission of lieutenancy.** *Hist.* A commission issued to send officers into every county to establish military order over the inhabitants. • This commission superseded the former *commission of array*, which provided the same powers. The commissions became obsolete with the establishment of the militia system.

**commission of lunacy.** See DE LUNATICO INQUIRENDO.

**Commission of Oyer and Terminer** (oy-ər an[d] tər-mə-nər). [Law French *oyer et terminer* "to hear and determine"] *Hist.* A royal appointment authorizing a judge (often a serjeant-at-law) to go on the assize circuit and hear felony and treason cases. Cf. COMMISSION OF GAOL DELIVERY; COURT OF OYER AND TERMINER.

"[U]nder the commission of *Oyer and Terminer*, as the judges are directed to *inquire* as well as to hear and determine the same, they can only proceed upon an indictment found at the same assize, and before themselves; for they must first *inquire* by means of the grand jury or inquest, before they are empowered to hear and determine by the intervention of the petit jury." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 142 (2d ed. 1826).



**commission of partition.** An authorization appointing a person to sit with several other appointees for the purpose of dividing land held by tenants in common who desire a partition.

**commission of rebellion.** *Hist.* An attaching process that empowered a layperson to arrest and bring a defendant to Chancery to enforce obedience to a writ of subpoena or decree. ● The commission of rebellion was abolished in 1841. — Also termed *writ of rebellion*; *commissio rebellionis*; *breve rebellionis*.

“*Commission of rebellion (Commissio rebellionis)* is otherwise called a writte of rebellion, (*breve rebellionis*) and it hath use, when a man after proclamation made by the Shyreve upon an order of the chancerie, or court of Starre chamber, under penaltie of his allegiance, to present himselfe to the court by a certaine day, appeareth not. And this commission is directed by way of command to certain persons, to this end, that they . . . apprehend, or cause to be apprehended, the party as a rebell and contemner of the kings lawes.” John Cowell, *The Interpreter* (1607).

**commission of review.** *Hist.* In England, an authorization sometimes granted in an extraordinary case to review a judgment of the Court of Delegates. ● The commission of review is no longer used because the Privy Council was substituted for the Court of Delegates as the appellate court in ecclesiastical cases in 1832. See COURT OF DELEGATES.

**commission of the peace.** *Hist.* An appointment of a person to keep the peace (i.e., provide police protection) on a local level. ● Over time the recipients of these commissions began to acquire judicial responsibilities, and became known as justices of the peace.

**commission of unlivery** (ən-liv-ər-ee). *Hist.* A court order requiring the unloading of goods from a ship so that they may be appraised.

**commission plan.** A form of municipal government whereby both legislative and executive power is vested in a small group of elected officials. ● Today, commission plans are used in only a few cities.

**commission to examine a witness.** A judicial commission directing that a witness beyond the court’s territorial jurisdiction be deposed. Cf. LETTER OF REQUEST.

**commissio rebellionis.** See COMMISSION OF REBELLION.

**commissive waste.** See WASTE (1).

**commissoria lex** (kom-i-sor-ee-ə leks). [Latin “forfeiture clause”] *Roman law*. **1.** An agreement in which a seller could rescind the sale if the purchaser failed to pay for the item at the appointed time. **2.** A clause allowing a creditor to take a debtor’s collateral if the debtor failed to pay the debt.

**commit, vb.** **1.** To perpetrate (a crime). **2.** To send (a person) to prison or to a mental health facility, esp. by court order.

**commitment, n.** **1.** An agreement to do something in the future, esp. to assume a financial obligation <the shipper had a firm commitment>. **2.** The act of entrusting or giving in charge <commitment of money to the bank>. **3.** The act of confining a person in a prison, mental hospital, or other institution <commitment of the felon to prison>. **4.** The order directing an officer to take a person to a penal or mental institution; MITIMUS <the judge signed the commitment after ruling that it was in the best interest of the troubled teen>.

**civil commitment.** A confinement order for a person who is ill, incompetent, drug-addicted, or the like, as contrasted with a criminal sentence; the confinement itself.

**commitment fee.** An amount paid to a lender by a potential borrower for the lender’s promise to lend money at a stipulated rate and within a specified time. ● Commitment fees are common in real estate transactions. See LOAN COMMITMENT.

**commitment letter.** A lender’s written offer to grant a mortgage loan. ● The letter generally outlines the loan amount, the interest rate, and other terms.

**commitment warrant.** See *warrant of commitment* under WARRANT (1).

**committee. 1.** (kə-mit-ee) A group of people appointed or elected to consider, determine, or manage a matter <the bill was sent to legislative committee>.

**conference committee.** A joint legislative committee that meets to adjust differences in a bill passed in different versions by both houses.

**congressional committee.** A committee of the House of Representatives or the Senate, or a joint committee formed for some particular purpose.

**joint committee.** A legislative committee composed of members of both houses of a legislature.

**legislative committee.** A group of legislators appointed to help a legislature conduct its business, esp. by providing careful consideration of proposals for new legislation within a particular field so that the entire body can handle its work efficiently without wasting time and effort on unmeritorious submissions.

**permanent committee.** See *standing committee*.

**special committee.** A temporary legislative committee appointed for a nonlegislative purpose, such as writing memorials, procuring chaplains, determining the qualifications of members, and settling election disputes. — Also termed *select committee*.

**standing committee.** A permanent legislative committee concerned with a specific field of legislation. • A standing committee usu. considers basic questions of legislative policy, holds hearings on legislation, eliminates unwanted bills, and prepares favored measures for passage. — Also termed *permanent committee*.

**2. (kom-i-tee)** A person who is civilly committed, usu. to a psychiatric hospital <the board determined that the committee was dangerous and should not be released>. **3. (kom-i-tee)** The guardian for the person so committed <the patient's lawyer objected to the appointment of the committee>.

**committee of the whole.** An entire legislative house sitting as a committee and operating under informal procedural rules.

**committing magistrate.** See *MAGISTRATE*.

**committitur** (kə-mit-ə-tər). [Latin "he is committed"] An order or minute stating that the person named in it is to be committed to the custody of the sheriff.

**committitur piece.** *Hist.* An instrument used to civilly charge a debtor already in prison, esp. by the plaintiff who had brought about the debtor's imprisonment. • The committitur piece was rendered obsolete by the 1869 Debtors Act, which abolished imprisonment for debt.

**commixtio** (kə-miks-tee-oh). [Latin "mixture"] *Roman law.* A mixture of dry or solid items belonging to different owners, the resulting

mixture being held in common or divided in proportion to the shares contributed. Cf. *CONFUSIO*. See *CONFUSION OF GOODS*.

**commodati actio** (kom-ə-day-ti ak-shee-oh). See *actio commodati* under *ACTIO*.

**commodatum** (kom-ə-day-təm), *n.* [Latin *commodare* "to lend"] *Roman & civil law.* A bailment involving the gratuitous loan of goods to be used by the bailee and then returned to the bailor. • This type of bailment is for the sole benefit of the bailee. This is one of three types of contracts for permissive use, the other two being *locatio conductio* and *mutuum*. — Also termed *accommodatum*.

**commodity. 1.** An article of trade or commerce. • The term embraces only tangible goods, such as products or merchandise, as distinguished from services. **2.** An economic good, esp. a raw material or an agricultural product.

**commodity-backed bond.** See *BOND* (3).

**Commodity Credit Corporation.** A federal agency that, through loan subsidies and loan purchases, supports prices of agricultural products to help sell the products in domestic and foreign markets. — Abbr. CCC.

**Commodity Futures Trading Commission.** A federal agency that supervises the trading of commodity futures and commodity options. — Abbr. CFTC.

**commodity loan.** See *LOAN*.

**commodity option.** See *OPTION*.

**commodity paper.** See *PAPER*.

**common, n. 1.** A legal right to use another person's property, such as an easement. See *PROFIT A PRENDRE*.

**common appendant** (ə-pen-dənt). *Hist.* A tenant's right to graze animals on the landowner's land as a result of longstanding practice.

**common appurtenant** (ə-pər-tə-nənt). *Hist.* A landowner's right to graze animals on another's land as a result of a written grant relating to the ownership or occupancy of land.

**common in gross.** *Hist.* A right to graze animals on another's land as a result of a written grant unrelated to ownership or occu-

pancy of land. — Also termed *common at large*.

**common in the soil.** *Hist.* The right to dig and take away earth from another's land. — Also termed *common of digging*.

**common of estovers** (e-stoh-vərz). *Hist.* A tenant's right to take necessary supplies, esp. wood, from the lord's estate; the right to estovers. See ESTOVER (1).

**common of fishery.** See *common of piscary*.

**common of pasture.** *Hist.* A right to pasture one's cattle on another's land. • The common of pasture may be appendant, appurtenant, or in gross.

**common of piscary** (pis-kə-ree). *Hist.* A right to fish in waters on another's land. — Often shortened to *piscary*. — Also termed *common of fishery*.

**common of shack.** *Hist.* The right of people occupying land in a common field to release their cattle to graze after harvest.

**common of turbarry** (tər-bə-ree). *Hist.* The right to dig turf (for use as fuel in a house) from another's land.

2. A tract of land set aside for the general public's use.

**commonable, adj.** 1. (Of an animal) allowed to graze on common land. 2. (Of land) that can be held in common.

**commonality test.** The principle that a group seeking to be certified as a class in a class-action suit must share at least one issue whose resolution will affect all or a significant number of the putative class members.

**common and notorious thief.** See *common thief* under THIEF.

**common appendant.** See COMMON.

**common appurtenant.** See COMMON.

**common area.** 1. *Landlord-tenant law.* The reality that all tenants may use though the landlord retains control and responsibility over it. 2. An area owned and used in common by the residents of a condominium, subdivision, or planned-unit development. — Also termed *common elements*.

**common assumpsit.** See *general assumpsit* under ASSUMPSIT.

**common assurance.** See MUNIMENT OF TITLE.

**common at large.** See *common in gross* under COMMON.

**common-authority rule.** The principle that a person may consent to a law officer's search of another's property if both persons use, control, or have access to the property.

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

**common bar.** See BLANK BAR.

**Common Bench.** *Hist.* The former name of the English Court of Common Pleas. • The court was so called because it was the forum for the common people, that is, for cases between two or more subjects when the Crown had no interest. — Abbr. C.B.

**common-bond doctrine.** The rule that prospective members of a credit union must share some connection (such as common employment) other than a desire to create a credit union.

**common business purpose.** Related activity by two or more associated businesses. • If one of the businesses comes within the jurisdiction of the Fair Labor Standards Act, then another business that shares a common business purpose will also.

**common calling.** 1. An ordinary occupation that a citizen has a right to pursue under the Privileges and Immunities Clause. 2. A commercial enterprise that offers services to the general public, with a legal duty to serve anyone who requests the services.

"It was only in a very few cases indeed that a person was under a legal obligation to enter into a contract; virtually the only example of such an obligation in fact was the person exercising a 'common calling' such as the innkeeper and the common carrier who were (subject to certain safeguards) legally bound to contract with any member of the public who required their services." P.S. Atiyah, *An Introduction to the Law of Contract* 8 (3d ed. 1981).

**common carrier.** See CARRIER.

**common cause.** See *common plea* under PLEA (3).

**common-character requirement.** The rule that for a group of persons to qualify as a class in a class-action lawsuit, the appointment of the class must achieve economies of time, ef-

fort, and expense, and must promote uniformity of decision for persons similarly situated in addition to sharing common questions of fact and law.

**common cost.** See *indirect cost* under COST.

**common council.** See COUNCIL.

**common count.** See COUNT.

**common court.** See COURT.

**common day.** See DAY.

**common-defeasance bond.** See *penal bond* under BOND (2).

**common descriptive name.** See GENERIC NAME.

**common design.** 1. The intention by two or more people to join in committing an unlawful act. 2. An intention to commit more than one crime. 3. The general design or layout of plots of land surrounding a particular tract. — Also termed *common scheme*; *common plan*. See ZONING.

**common disaster.** An event that causes two or more persons with related property interests (such as an insured and the beneficiary) to die at very nearly the same time, with no way to tell who died first. See SIMULTANEOUS-DEATH ACT.

**common-disaster clause.** A provision in a dispositive instrument, such as an insurance policy or a will, that seeks to cover the situation in which the transferor and transferee die in a common disaster.

**common duty of care.** A landowner's obligation to take reasonable care under the circumstances to see that a lawful visitor will be reasonably safe in using the premises for the purposes for which the visitor is permitted to be there.

**common easement.** See EASEMENT.

**common elements.** See COMMON AREA (2).

**common-employment doctrine.** See FELLOW-SERVANT RULE.

**common-enemy doctrine.** *Property.* The rule that a landowner may repel surface waters as necessary (as during a flood), without having to consider the consequences to upper landowners. • The doctrine takes its name from the idea that the floodwater is every landowner's common enemy.

**common enterprise.** See JOINT ENTERPRISE.

**commoner.** 1. *BrE.* An ordinary citizen; one not a peer. 2. *Archaic.* A member of the House of Commons. 3. *Archaic.* A common lawyer. 4. *Archaic.* A person having a right of common — that is, a right to pasture on a lord's land. 5. A person who shares a right in common.

**common error.** *Copyright.* A mistake found both in a copyrighted work and in an alleged infringing work, the mistake being persuasive evidence of unauthorized copying.

**common fine.** See FINE (4).

**common fishery.** See FISHERY (2).

**common-fund doctrine.** The principle that if a plaintiff or his or her attorney creates, discovers, increases, or preserves a fund to which others also have a claim, then the plaintiff is entitled to recover from the fund the litigation costs and attorney's fees. — Also termed *equitable-fund doctrine*.

**common heritage of mankind.** *Int'l law.* The parts of the earth and cosmos that can be said to belong to human posterity, without regard for geographic location. • The term embraces the ocean floor and its subsoil, and outer space. — Also termed *common heritage of humankind*.

**common highway.** See HIGHWAY.

**common informer.** A person who sues to recover a penalty in a penal action. • In some jurisdictions, such an action may be instituted either by the attorney general on behalf of the state or by a common informer. See INFORMER; *penal action* under ACTION.

**common in gross.** See COMMON.

**common intendment.** See INTENDMENT.

**common-interest doctrine.** See *joint-defense privilege* under PRIVILEGE (3).

**common in the soil.** See COMMON.

**common jury.** See *petit jury* under JURY.

**common knowledge.** A fact that is so generally known that a court may accept it as true without proof. See JUDICIAL NOTICE.

**common-knowledge exception.** The principle that lay testimony concerning routine or simple medical procedures is admissible to establish negligence in a medical-malpractice action. • This is a narrow exception in some jurisdictions to the rule that a medical-malpractice plaintiff must present expert testimony to establish negligence.

**common law, n.** [fr. Law French *commen ley* "common law"] **1.** The body of law derived from judicial decisions, rather than from statutes or constitutions; CASELAW <federal common law>. Cf. STATUTORY LAW.

"Historically, [the common law] is made quite differently from the Continental code. The code precedes judgments; the common law follows them. The code articulates in chapters, sections, and paragraphs the rules in accordance with which judgments are given. The common law on the other hand is inarticulate until it is expressed in a judgment. Where the code governs, it is the judge's duty to ascertain the law from the words which the code uses. Where the common law governs, the judge, in what is now the forgotten past, decided the case in accordance with morality and custom and later judges followed his decision. They did not do so by construing the words of his judgment. They looked for the reason which had made him decide the case the way he did, the *ratio decidendi* as it came to be called. Thus it was the principle of the case, not the words, which went into the common law. So historically the common law is much less fettering than a code." Patrick Devlin, *The Judge* 177 (1979).

**federal common law.** The judge-made law of federal courts, excluding the law in all cases governed by state law. • An example is the nonstatutory law applying to interstate streams of commerce.

**general federal common law. Hist.** In the period before *Erie v. Tompkins* (304 U.S. 64, 58 S.Ct. 817 (1938)), the judge-made law developed by federal courts in deciding disputes in diversity cases. • Since *Erie* was announced in 1938, a federal court has been bound to apply, as a general matter, the law of the state in which it sits. Thus, although there is a "federal common law," there is no *general* federal common law applicable to all disputes heard in federal court.

**2.** The body of law based on the English legal system, as distinct from a civil-law system <all states except Louisiana have the common law

as their legal system>. Cf. CIVIL LAW (1). **3.** General law common to the country as a whole, as opposed to special law that has only local application <the issue is whether the common law trumps our jurisdiction's local rules>. — Also termed *jus commune*.

"In its historical origin the term common law (*jus commune*) was identical in meaning with the term general law . . . . The *jus commune* was the general law of the land — the *lex terrae* — as opposed to *jus speciale*. By a process of historical development, however, the common law has now become, not the entire general law, but only the residue of that law after deducting equity and statute law. It is no longer possible, therefore, to use the expression common law and general law as synonymous." John Salmond, *Jurisprudence* 97 (Glanville L. Williams ed., 10th ed. 1947).

"[I]t is necessary to dispose briefly of a problem of nomenclature. European equivalents of the expression 'common law' have been used, especially in Germany, to describe an emergent system of national law, based on the Roman model, that came into existence before national parliaments undertook to enact laws for the nation as a whole. In this use, 'the common law' (*gemeines Recht*) was used to distinguish the commonly shared tradition of Roman law from local statutes and customs." Lon L. Fuller, *Anatomy of the Law* 133 (1968).

**4.** The body of law deriving from law courts as opposed to those sitting in equity <a mortgage founded in common law>. • The common law of England was one of the three main historical sources of English law. The other two were legislation and equity. The common law evolved from custom and was the body of law created by and administered by the king's courts. Equity developed to overcome the occasional rigidity and unfairness of the common law. Originally the king himself granted or denied petitions in equity; later the task fell to the chancellor, and later still to the Court of Chancery. **5.** The body of law to which no constitution or statute applies <the common law used by lawyers to settle disputes>.

**common-law action.** See ACTION.

**common-law assignment.** See ASSIGNMENT (2).

**common-law bond.** See BOND (2).

**common-law cheat.** See CHEATING.

**common-law contempt.** See *criminal contempt* under CONTEMPT.

**common-law copyright.** See COPYRIGHT.

**common-law corporation.** See *corporation by prescription* under CORPORATION.

**common-law crime.** See CRIME.

**common-law dedication.** See DEDICATION.

**common-law extortion.** See EXTORTION (1).

**common-law fraud.** See *promissory fraud* under FRAUD.

**common-law jurisdiction.** See JURISDICTION.

**common-law lawyer.** A lawyer who is versed in or practices under a common-law system. — Also termed *common lawyer*.

**common-law lien.** See LIEN.

**common-law malice.** See MALICE.

**common-law marriage.** See MARRIAGE (1).

**common-law pleading.** See PLEADING (2).

**common-law rule.** 1. A judge-made rule as opposed to a statutory one. 2. A legal as opposed to an equitable rule. 3. A general rule as opposed to one deriving from special law (such as a local custom or a rule of foreign law that, based on choice-of-law principles, is applied in place of domestic law). 4. An old rule of English law.

**common-law state.** 1. See NONCODE STATE. 2. Any state that is not a community-property state. Cf. COMMUNITY-PROPERTY STATE.

**common-law trust.** See *business trust* under TRUST.

**common lawyer.** See COMMON-LAW LAWYER.

**common market.** See MARKET.

**Common Market.** The European Economic Community. ● *Common Market* is a colloquial term — not a formal designation.

**common mistake.** See *mutual mistake* (2) under MISTAKE.

**common money bond.** See BOND (2).

**common-nucleus-of-operative-fact test.** The doctrine that a federal court will have jurisdiction over state-law claims that arise from the same facts as the federal claims providing a basis for subject-matter jurisdiction.

“The modern doctrine of pendent jurisdiction, as announced by the Supreme Court in *United Mine Workers v. Gibbs* (1966), is much broader. . . . Pendent jurisdiction, the Court said, existed whenever ‘the state and federal claims . . . derive from a common nucleus of operative fact,’ and when considerations of judicial economy dictate having a single trial.” David P. Currie, *Federal Jurisdiction in a Nutshell* 106 (3d ed. 1990).

**common nuisance.** See *public nuisance* under NUISANCE.

**common occupant.** See *general occupant* under OCCUPANT.

**common of digging.** See *common in the soil* under COMMON.

**common of estovers.** See COMMON.

**common of fishery.** See *common of piscary* under COMMON.

**common of pasture.** See COMMON.

**common of piscary.** See COMMON.

**common of shack.** See COMMON.

**common of turbary.** See COMMON.

**common plan.** See COMMON DESIGN.

**common plea.** See PLEA (3).

**Common Pleas, Court of.** See COURT OF COMMON PLEAS.

**common property.** See PROPERTY.

**common recovery.** *Hist.* An elaborate proceeding, full of legal fictions, by which a tenant in tail disentailed a fee-tail estate. ● The action facilitated land transfer by allowing a potential transferee who was barred by law from receiving land to “recover” the land by suing the actual owner. Common recoveries, which were abolished early in the 19th century, were originally concocted by the clergy as a way to avoid the land-conveyance restrictions imposed by mortmain acts. — Also termed *feigned recovery*. See MORTMAIN STATUTE. Cf. CESSIO IN JURE; PRAECIPE QUOD REDDAT.

“Here’s how [the common recovery] worked. B, with the connivance of A, would bring a real action against A claiming falsely that he, B, owned the land and demanding recovery of it. A responded by claiming, just as falsely, that he had acquired the land from C and that C had warranted title to the land. When A demanded of C,

also an accomplice of A, that he defend the title, C admitted falsely that he had, indeed, warranted the title. C allowed B to take a default judgment against A for the recovery of the land, and allowed A to obtain a default judgment against himself, C, for the recovery of land of equal value. The result of this fancy feudal footwork was to leave B with title to the land in fee simple and to leave A with his judgment against C. The judgment against C was viewed by the court as an adequate substitute for the entailed land. But when it came time for O or A's lineal heirs to enforce the judgment, it would transpire that C had been selected by A because he had no land at all! (Why else would C have played along?) Did the court have any suspicion that A, B, and C were colluding? Of course they did — but how else, in the face of *De Donis*, could they unshackle land from the chains of the fee tail?" Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 31–32 (2d ed. 1984).

**common-return days.** See *dies communes in banco* under DIES.

**common scheme.** See COMMON DESIGN.

**common school.** See *public school* under SCHOOL.

**common scold.** See SCOLD.

**common-situs picketing.** See PICKETING.

**common-source doctrine.** The principle that a defendant in a trespass-to-try-title action who claims under a source common to both the defendant and the plaintiff may not demonstrate title in a third source that is paramount to the common source, because doing so amounts to an attack on the source under which the defendant claims title.

**common stock.** See STOCK.

**common-stock equivalent.** A security that is exchangeable for common stock, and thus is considered to be the same as common stock. • Common-stock equivalents include certain types of convertible securities, stock options, and warrants.

**common-stock fund.** See MUTUAL FUND.

**common-stock ratio.** The relationship of outstanding common stock to the corporation's total capitalization. • The common-stock ratio measures the relative claims of stockholders to earnings (earnings per share and payout ratio), cash flow (cash flow per share), and equity (book value per share). Cf. PAYOUT RATIO.

**common substitution.** See SUBSTITUTION (3).

**common suit.** See *common plea* under PLEA (2).

**common tenancy.** See *tenancy in common* under TENANCY.

**common thief.** See THIEF.

**common traverse.** See TRAVERSE.

**common trust fund.** See TRUST FUND.

**common wall.** See *party wall* under WALL.

**commonweal (kom-ən-weel).** The general welfare; the common good.

**commonwealth.** **1.** A nation, state, or other political unit <the Commonwealth of Pennsylvania>. **2.** A political unit that has local autonomy but is voluntarily united with the United States <Puerto Rico and the Northern Mariana Islands are commonwealths>. Cf. DEPENDENCY; TERRITORY. **3.** A loose association of countries that recognize one sovereign <the British Commonwealth>. • In this context, in Great Britain, the term *British* has been dropped from *British Commonwealth*; BrE speakers refer simply to *the Commonwealth*. — Abbr. Commw.; comm. **4.** The central (federal) power in Australia. — Abbr. (in sense 4) Cwth.

**commonwealth court.** See COURT.

**commorancy (kom-ə-rən-see).** **1.** A temporary residency. **2.** *English law.* Permanent residency in a certain place.

**commorant (kom-ə-rənt).** **1.** A person who dwells in a place temporarily. **2.** *English law.* A person who resides permanently in a certain place.

**commorientes (kə-mor-ee-en-teez).** [fr. Latin *commorior* "to die together"] **1.** Persons who die at the same time, such as spouses who die in an accident. **2.** *Civil law.* The rule of succession regarding such persons. See *simultaneous death* under DEATH; SIMULTANEOUS-DEATH ACT.

**commune (kom-yoon), n.** A community of people who share property.

**commune forum (kə-myoo-nee-for-əm).** [Latin "common place of justice"] *Hist.* The seat of the principal English courts, esp. those that do not go on circuit.

**commune placitum** (kə-myoo-nee plas-ə-təm). [Latin "common plea"] *Hist.* A common plea between persons, as opposed to a plea of the Crown (i.e., a criminal action). Pl. **communia placita**.

**commune vinculum** (kə-myoo-nee ving-kyələm). [Latin "common bond"] *Hist.* A relationship or link between persons; esp., the bond between lord and tenant, or the relationship between relatives.

**communia** (kə-myoo-nee-ə). [Latin] *Hist.* Things owned in common, such as running water, the air, and the sea.

**communia placita non tenenda in scaccario** (kə-myoo-nee-ə plas-ə-tə non tənendə in skə-kair-ee-oh). [Law Latin "common pleas are not held in the Exchequer"] *Hist.* A writ directed to the Treasurer and Barons of the Exchequer, forbidding them from holding pleas between common persons, i.e., pleas in which the Crown was not a party.

**communication.** 1. The expression or exchange of information by speech, writing, or gestures. 2. The information so expressed or exchanged.

**conditionally privileged communication.** A defamatory statement made in good faith by a person with an interest in a subject to someone who also has an interest in the subject, as an employer giving a poor but accurate job review of a former employee to a potential future employer. • The privilege may be lost on a showing of malice or bad faith.

**confidential communication.** A communication made within a certain protected relationship — such as husband-wife, attorney-client, or priest-penitent — and legally protected from forced disclosure.

**privileged communication.** A communication that is protected by law from forced disclosure. See PRIVILEGE (3).

**communicative evidence.** See *testimonial evidence* under EVIDENCE.

**communi consensu** (kə-myoo-ni kən-sens[y]oo). [Latin] By common consent.

**communi dividundo.** See DE COMMUNI DIVIDUNDO.

**communio bonorum** (kə-myoo-nee-oh bə-norəm). [Latin "community of goods"] *Civil law.*

Commonly owned goods, esp. those held in common by a husband and wife.

**communis opinio** (kə-myoo-nis ə-pin-ee-oh). [Latin "common opinion"] *Hist.* A generally accepted belief about a point of law. • If held unanimously by those learned in the law, this common belief had the force of law in classical Rome.

"*Communis opinio* is evidence of what the law is, — not where it is an opinion merely speculative and theoretical, floating in the minds of persons, but where it has been made the ground-work and *substratum* of practice." 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 330 (2d ed. 1867) (quoting Lord Ellenborough).

**communis opinio doctorum** (kə-myoo-nis ə-pin-ee-oh dok-tor-əm). [Latin "learned common opinion"] *Hist.* Scholarly agreement on points of Roman law, collected by the glossators of Justinian's texts in the later Middle Ages.

**communis paries** (kə-myoo-nis par-ee-eez). [Latin "common wall"] *Civil law.* See PARTY WALL.

**communis scriptura** (kə-myoo-nis skrip-t[y]oor-əkəm-myoo-nəs-skrip-tyuur-ə). [Latin "common writing"] *Hist.* See CHIROGRAPH.

**communis stipes** (kə-myoo-nis sti-pee-z). [Latin "common trunk"] *Hist.* A common ancestor.

**communitization** (kə-myoo-nə-tə-zay-shən), *n.* *Oil & gas.* The aggregating of small tracts sufficient for the granting of a well permit under applicable well-spacing rules. — Also termed *pooling*. — **communitize** (kə-myoo-nə-tīz), *vb.* Cf. UNITIZATION.

**community.** 1. A neighborhood, vicinity, or locality. 2. A society or group of people with similar rights or interests. 3. A collection of common interests that arise from an association.

**community account.** See ACCOUNT.

**community debt.** See DEBT.

**community lease.** See LEASE.

**community of interest.** 1. Participation in a joint venture characterized by shared liability and shared opportunity for profit. See JOINT VENTURE. 2. A common grievance that must be shared by all class members to maintain the class action. See CLASS ACTION. 3. *Labor law.* A



criterion used by the National Labor Relations Board in deciding whether a group of employees should be allowed to act as a bargaining unit. • The Board considers whether the employees have similar duties, wages, hours, benefits, skills, training, supervision, and working conditions. See BARGAINING UNIT.

**community property.** Property owned in common by husband and wife as a result of its having been acquired during the marriage by means other than an inheritance or a gift to one spouse, each spouse holding a one-half interest in the property. • Only nine states have community-property systems: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. See *marital property* under PROPERTY. Cf. SEPARATE PROPERTY.

**community-property state.** A state in which spouses hold property that is acquired during marriage (other than property acquired by inheritance or individual gift) as community property. See COMMUNITY PROPERTY. Cf. COMMON-LAW STATE.

**community trust.** An agency organized to permanently administer funds placed in trust for public-health, educational, and charitable purposes.

**commutation** (kom-yə-tay-shən), *n.* **1.** An exchange or replacement. **2.** *Criminal law.* The executive's substitution in a particular case of a less severe punishment for a more severe one that has already been judicially imposed on the defendant. Cf. PARDON; REPRIEVE. **3.** *Commercial & civil law.* The substitution of one form of payment for the other. — **commute**, *vb.* — **commutative**, *adj.*

**commutation of taxes.** A tax exemption resulting from a taxpayer's paying either a lump sum or a specific sum in lieu of an ad valorem tax.

**commutative contract.** See CONTRACT.

**commutative justice.** See JUSTICE (1).

**commuted value** (kə-myoo-tid). **1.** In the assessment of damages, the present value of a future interest in property. **2.** The value of future payments when discounted to present value.

**Commw. abbr.** COMMONWEALTH.

**compact** (kom-pakt), *n.* An agreement or covenant between two or more parties, esp. between governments or states.

**interstate compact.** A voluntary agreement between states enacted into law in the participating states upon federal congressional approval. Cf. INTERSTATE AGREEMENT.

**Compact Clause.** U.S. Const. art. I, § 10, cl. 3, which disallows a state from entering into a contract with another state or a foreign country without congressional approval.

**companionship services.** Assistance provided to someone who needs help with personal matters such as bathing and dressing. • This type of service (in contrast to housecleaning) is exempt from the Federal Labor Standards Act's minimum-wage and overtime requirements.

**company.** A corporation — or, less commonly, an association, partnership, or union — that carries on a commercial or industrial enterprise; a corporation, partnership, association, joint-stock company, trust, fund, or organized group of persons, whether incorporated or not, and (in an official capacity) any receiver, trustee in bankruptcy, or similar official, or liquidating agent, for any of the foregoing. Investment Company Act § 2(a)(8) (15 USCA § 80a-2(a)(8)). — Abbr. *co.*; *com.*

**bonding company.** A company that insures a party against a loss caused by a third party.

**controlled company.** A company that is under the control of an individual, group, or corporation that owns most of the company's voting stock. Cf. *subsidiary corporation* under CORPORATION.

**dead-and-buried company.** A business that has dissolved, leaving no assets.

**deposit company.** An institution whose business is the safekeeping of securities or other valuables deposited in boxes or safes leased to the depositors. See DEPOSITARY; DEPOSITORY.

**development-stage company.** *Securities.* A company that devotes substantially all of its efforts to establishing a new business in which the principal operations either have not yet begun or have begun but without significant revenue.

**diversified holding company.** A holding company that controls several unrelated companies or businesses.

**diversified investment company.** An investment company that by law must invest 75% of its assets, but may not invest more

than 5% of its assets in any one company or hold more than 10% of the voting shares in any one company.

**face-amount certificate company.** An investment company that is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or that has been engaged in this business and has such a certificate outstanding. See *investment company*.

**growth company.** A company whose earnings have increased at a rapid pace and that usu. directs a high proportion of income back into the business.

**guaranty company.** See *surety company*.

**holding company.** A company formed to control other companies, usu. confining its role to owning stock and supervising management.

**investment company.** A company formed to acquire and manage a portfolio of diverse assets by investing money collected from different sources. • The Investment Company Act of 1940 defines the term as an issuer of securities that (1) is, holds itself out to be, or proposes to be engaged primarily in the business of investing, reinvesting, or trading in securities; (2) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in this business and has such a certificate outstanding; or (3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. 15 USCA § 80a-2(a)(16). — Also termed *investment trust*. See REAL-ESTATE INVESTMENT TRUST; MUTUAL FUND.

**joint-stock company.** 1. An unincorporated association of individuals possessing common capital, the capital being contributed by the members and divided into shares, of which each member possesses a number of shares proportionate to the member's investment. 2. A partnership in which the capital is divided into shares that are transferable without the express consent of the partners. — Also termed *joint-stock association*; *stock association*.

"The joint stock association or company developed early in English company law, the term being used to distinguish companies which operated on a joint account and with a 'joint stock' (in trade) of their members from companies (now obsolete) each member of whom traded

on one's separate account with one's own stock in trade. . . . In American jurisdictions, the joint stock association is generally an unincorporated business enterprise with ownership interests represented by shares of stock." Henry G. Henn & John R. Alexander, *Laws of Corporations* § 50, at 109 (3d ed. 1983).

**limited company.** A company in which the liability of each shareholder is limited to the amount individually invested. • A corporation is the most common example of a limited company.

**limited-liability company.** A company — statutorily authorized in certain states — that is characterized by limited liability, management by members or managers, and limitations on ownership transfer. — Abbr. L.L.C. — Also termed *limited-liability corporation*.

**management company.** Any investment company that is neither a face-amount certificate company nor a unit-investment trust. See *investment company*; *face-amount certificate company*; *unit-investment trust* under TRUST.

**mutual company.** A company that is owned by its customers rather than by a separate group of stockholders. • Many insurance companies are mutual companies, as are many federal savings-and-loan associations. See MUTUAL INSURANCE COMPANY.

**personal holding company.** A holding company that is subject to special taxes and that usu. has a limited number of shareholders, with most of its revenue originating from passive income such as dividends, interest, rent, and royalties.

**reporting company.** See REPORTING COMPANY.

**surety company.** A company authorized to engage in the business of entering into guaranty and suretyship contracts and acting as a surety on bonds, esp. bail, fidelity, and judicial bonds. — Also termed *guaranty company*.

**title company.** A company that examines real-estate titles for any encumbrances, claims, or other flaws, and issues title insurance. — Also termed *title-guaranty company*. See TITLE SEARCH.

**trust company.** A company that acts as a trustee for people and entities and that sometimes also operates as a commercial bank. See TITLE.

**company union.** See UNION.

**comparable** (kəm-pər-ə-bəl), *n.* (*usu. pl.*) A piece of property used as a comparison to determine the value of a similar piece of property.

**comparable accommodation.** A standard used for determining the maximum allowable rent in rent-regulated housing. • In applying this standard, a court reviews the prevailing rent for substantially similar housing units in the same area.

**comparable worth.** **1.** The analogous value that two or more employees bring to a business through their work. **2.** The idea that employees who perform identical work should receive identical pay, regardless of their sex; the doctrine that men and women who perform work of equal value should receive comparable pay.

**comparatio literarum** (kəm-pə-ray-shee-oh lit-ə-rair-əm). [Latin “comparison of writings”] *Roman law.* The act of comparing writings to ascertain authorship. • Even under Roman law, handwriting experts (*comparatores*) sometimes testified about a document’s authenticity.

**comparative advertising.** See ADVERTISING.

**comparative disparity.** *Constitutional law.* The percentage of underrepresentation of a particular group among potential jurors on a venire, in comparison with the group’s percentage of the general population. • Comparative disparity is calculated by subtracting a group’s percentage of representation on the venire from the group’s percentage of the population — that is, calculating the group’s absolute-disparity representation — then dividing that percentage by the group’s percentage-representation in the population, and multiplying the result by 100. For example, if African-Americans make up 12% of a county’s population, and 8% of the potential jurors on the venire, the absolute disparity of African-Americans is 4%. And the comparative disparity is 33%, because 4 divided by 12 is .33, or 33%. Many courts criticize the comparative-disparity analysis, and favor an absolute-disparity analysis, because the comparative-disparity analysis is said to exaggerate the deviation. The reason for calculating the disparity is to analyze a claim that the jury was not impartial because it was not selected from a pool of jurors that fairly represented the makeup of the jurisdiction. See DUREN TEST; FAIR-CROSS-SECTION REQUIREMENT; STATISTICAL-DECISION THEORY. Cf. ABSOLUTE DISPARITY.

**comparative fault.** See *comparative negligence* under NEGLIGENCE.

**comparative-impairment test.** *Conflict of laws.* A test that asks which of two or more forums would have its policies most impaired by not having its law applied in the case.

**comparative interpretation.** A method of statutory interpretation by which parts of the statute are compared to each other, and the statute as a whole is compared to other documents from the same source on a similar subject.

**comparative jurisprudence.** See JURISPRUDENCE.

**comparative law.** See *comparative jurisprudence* under JURISPRUDENCE.

**comparative negligence.** See NEGLIGENCE.

**comparative-negligence doctrine.** *Torts.* The principle that reduces a plaintiff’s recovery proportionally to the plaintiff’s degree of fault in causing the damage, rather than barring recovery completely. • Most states have statutorily adopted the comparative-negligence doctrine. See NEGLIGENCE. Cf. CONTRIBUTORY-NEGLIGENCE DOCTRINE.

**comparative-rectitude doctrine.** *Family law.* Before the advent of no-fault divorce, the rule providing that when both spouses show grounds for divorce, the party least at fault is granted the requested relief.

**comparative-sales approach.** See MARKET APPROACH.

**comparator** (kəm-par-ə-tər or kəm-pə-ray-tər). Something with which something else is compared <the female plaintiffs alleged illegal wage discrimination and contrasted their pay with that of male comparators>.

**compassing** (kəm-pə-sing). *Hist.* The act of contriving or plotting, esp. of something underhanded. • The Treason Act of 1351 criminalized the act of compassing the sovereign’s death.

**compel**, *vb.* **1.** To cause or bring about by force or overwhelming pressure <a lawyer cannot be compelled to testify about a privileged communication>. **2.** (Of a legislative mandate or judicial precedent) to convince (a court) that there

is only one possible resolution of a legal dispute <the wording of the statute compels us to affirm>.

**compellable**, *adj.* Capable of or subject to being compelled, esp. to testify <an accused person's spouse is not a compellable witness for the prosecution>.

**compellativus** (kəm-pel-ə-tī-vəs). [fr. Latin *compellare* "to accuse"] *Hist.* An adversary or accuser.

**compelling-state-interest test.** *Constitutional law.* A method for determining the constitutional validity of a law, whereby the government's interest in the law is balanced against the individual's constitutional right to be free of the law, and only if the government's interest is strong enough will the law be upheld. ● The compelling-state-interest test is used most commonly in equal-protection analysis when the disputed law requires strict scrutiny. See STRICT SCRUTINY.

**compensable** (kəm-pen-sə-bəl), *adj.* Able or entitled to be compensated for <a compensable injury>. — Also termed *recompensable*.

**compensable death.** *Workers' compensation.* A death that, because it occurred in the course of employment, entitles the employee's heirs to compensation.

**compensable injury.** See INJURY.

**compensate** (kəm-pən-sayt), *vb.* **1.** To pay (another) for services rendered <the lawyer was fairly compensated for her time and effort>. **2.** To make an amendatory payment to; to recompense (for an injury) <the court ordered the defendant to compensate the injured plaintiff>.

**compensated surety.** See SURETY.

**compensating balance.** The amount of money a borrower from a bank is required to keep on deposit as a condition for a loan or a line of credit.

**compensatio** (kəm-pen-say-shee-oh). [Latin "weighing; balancing"] *Roman law.* A defendant's claim to have the plaintiff's demand reduced by the amount that the plaintiff owes the defendant. See SETOFF (2).

**compensatio criminis** (kəm-pen-say-shee-oh krim-ə-nis). [Latin] *Eccles. law.* A defendant's

plea in a divorce action, alleging that the complainant is guilty of the same conduct that the defendant is charged with, esp. adultery. See RECRIMINATION.

**compensation** (kəm-pən-say-shən), *n.* **1.** Remuneration and other benefits received in return for services rendered; esp., salary or wages.

"Compensation consists of wages and benefits in return for services. It is payment for work. If the work contracted for is not done, there is no obligation to pay. [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement." Kurt H. Decker & H. Thomas Felix II, *Drafting and Revising Employment Contracts* § 3.17, at 68 (1991).

**2.** Payment of damages, or any other act that a court orders to be done by a person who has caused injury to another and must therefore make the other whole. **3.** See SETOFF (2). — **compensatory** (kəm-pen-sə-tor-ee), **compensational** (kəm-pən-say-shə-nəl), *adj.*

**accrued compensation.** Remuneration that has been earned but not yet paid.

**adequate compensation.** See *just compensation*.

**deferred compensation.** **1.** Payment for work performed, to be paid in the future or when some future event occurs. **2.** An employee's earnings that are taxed when received or distributed and not when earned, such as contributions to a qualified pension or profit-sharing plan.

**just compensation.** Under the Fifth Amendment, a fair payment by the government for property it has taken under eminent domain — usu. the property's fair market value, so that the owner is no worse off after the taking. — Also termed *adequate compensation*; *due compensation*; *land damages*.

**unemployment compensation.** Compensation paid at regular intervals by a state agency to an unemployed person, esp. one who has been laid off.

**unreasonable compensation.** Under the Internal Revenue Code, pay that is out of proportion to the actual services rendered and is therefore not deductible.

**compensation period.** The time fixed by unemployment or workers'-compensation law during which an unemployed or injured worker is entitled to receive compensation.

**compensatory damages.** See DAMAGES.

**compensatory time.** See COMP TIME.

**comperendinatio** (kom-pər-en-də-nay-shee-oh). [Latin “to remand to the next day but one”] *Roman law*. An adjournment of an action to hear the parties or their advocates a second time; a second hearing of the parties to a case. ● The judge (*judex*) would decide the case at the conclusion of the second hearing.

**competence, n.** **1.** A basic or minimal ability to do something; qualification, esp. to testify <competence of a witness>. **2.** The capacity of an official body to do something <the court’s competence to enter a valid judgment>. **3.** Authenticity <the documents were supported by a business-records affidavit, leaving their competence as evidence beyond doubt>. — **competent, adj.** Cf. COMPETENCY.

**competency, n.** **1.** The mental ability to understand problems and make decisions. **2.** A criminal defendant’s ability to stand trial, measured by the capacity to understand the proceedings, to consult meaningfully with counsel, and to assist in the defense. — Also termed *competency to stand trial*. — **competent, adj.** Cf. COMPETENCE.

**competency hearing.** See PATE HEARING.

**competency proceeding.** See PROCEEDING.

**competency to stand trial.** See COMPETENCY.

**competent evidence.** See EVIDENCE.

**competent witness.** See WITNESS.

**competition.** The effort or action of two or more commercial interests to obtain the same business from third parties.

**fair competition.** Open, equitable, and just competition between business competitors.

**horizontal competition.** Competition between a seller and its competitors. ● The Sherman Act prohibits unreasonable restraints on horizontal competition, such as price-fixing agreements between competitors. — Also termed *primary-line competition*.

**perfect competition.** A completely efficient market situation characterized by numerous buyers and sellers, a homogeneous product, perfect information for all parties, and complete freedom to move in and out of the market. ● Perfect competition rarely if ever exists, but antitrust scholars often use the

theory as a standard for measuring market performance.

**primary-line competition.** See *horizontal competition*.

**vertical competition.** Competition between participants at different levels of distribution, such as manufacturer and distributor. — Also termed *secondary-line competition*.

**competitive advertising.** See ADVERTISING.

**competitive bid.** See BID (2).

**competitive civil-service examination.** A test designed to evaluate a person’s qualifications for a civil-service position. ● This type of examination may be open to all those seeking civil-service employment, or it may be restricted to those civil servants seeking a promotion. See CIVIL SERVICE.

**compilation** (kom-pə-lay-shən), *n.* **1.** *Copyright.* A collection of literary works arranged in an original way; esp., a work formed by collecting and assembling preexisting materials or data that are selected, coordinated, or arranged in such a way that the resulting product constitutes an original work of authorship. Cf. COLLECTIVE WORK; DERIVATIVE WORK.

“A compilation consists of an original work of authorship that incorporates other pre-existing material. . . . The author who finally assembles the components into a compilation is the owner of the copyright of the compilation — but not of the component parts.” Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 374–75 (2d ed. 1990).

**2.** A collection of statutes, updated and arranged to facilitate their use. — Also termed *compiled statutes*. **3.** A financial statement that does not have an accountant’s assurance of conformity with generally accepted accounting principles. ● In preparing a compilation, an accountant does not gather evidence or verify the accuracy of the information provided by the client; rather, the accountant reviews the compiled reports to ensure that they are in the appropriate form and are free of obvious errors. — **compile, vb.**

**compiled statutes.** See COMPILATION (2); STATUTE.

**complainant** (kəm-playn-ənt). **1.** The party who brings a legal complaint against another; esp., the plaintiff in a civil suit.

“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).

**2.** A person who, under oath, signs a statement (called a "complaint") establishing reasonable grounds to believe that some named person has committed a crime. — Also termed *affiant*.

**complaint. 1.** The initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief. • In some states, this pleading is called a *petition*. **2. Criminal law.** A formal charge accusing a person of an offense. Cf. INDICTMENT; INFORMATION.

**amended complaint.** A complaint that modifies and replaces the original complaint by adding relevant matters that occurred before or at the time the action began. • In some circumstances, a party must obtain the court's permission to amend its complaint.

**preliminary complaint.** A complaint issued by a court to obtain jurisdiction over a criminal suspect for a hearing on probable cause or on whether to bind the suspect over for trial.

**supplemental complaint.** An additional complaint that either corrects a defect in the original complaint or adds relevant matters that occurred after the action began. • Generally, a party must obtain the court's permission to file a supplemental complaint.

**third-party complaint.** A complaint filed by the defendant against a third party, alleging that the third party may be liable for some or all of the damages that the plaintiff is trying to recover from the defendant.

**well-pleaded complaint.** An original or initial pleading that sufficiently sets forth a claim for relief — by including the grounds for the court's jurisdiction, the basis for the relief claimed, and a demand for judgment — so that a defendant may draft an answer that is responsive to the issues presented. • A well-pleaded complaint must raise a controlling issue of federal law for a federal court to have federal-question jurisdiction over the lawsuit.

**completed-contract accounting method.** See ACCOUNTING METHOD.

**completed gift.** See GIFT.

**complete diversity.** See DIVERSITY OF CITIZENSHIP.

**completed-operations policy.** See INSURANCE POLICY.

**complete in itself, *adj.*** (Of a legislative act) fully covering an entire subject.

**complete integration.** See INTEGRATION (2).

**complete interdiction.** See *full interdiction* under INTERDICTION (2).

**completely integrated contract.** See INTEGRATED CONTRACT.

**completeness doctrine.** See RULE OF OPTIONAL COMPLETENESS.

**complete-operation rule. *Insurance.*** The principle that goods are covered against damage at any time during the shipping process, including the loading and unloading of the goods. Cf. COMING-TO-REST DOCTRINE.

**complete-preemption doctrine.** The rule that a federal statute's preemptive force may be so extraordinary and all-encompassing that it converts an ordinary state-common-law complaint into one stating a federal claim for purposes of the well-pleaded-complaint rule.

**complete voluntary trust.** See *executed trust* under TRUST.

**completion bond.** See PERFORMANCE BOND.

**complex trust.** See TRUST.

**complicated larceny.** See *mixed larceny* under LARCENY.

**complice (kəm-plis).** *Archaic.* An accomplice or accessory to a crime or immoral behavior.

**complicity (kəm-plis-ə-tee), *n.*** Association or participation in a criminal act; the act or state of being an accomplice. — **complicitous (kəm-plis-ə-təs), *adj.*** See ACCOMPLICE.

**composite state.** See STATE (1).

**composite work (kəm-poz-it).** *Copyright.* An original publication that relates to a variety of

subjects and that includes discrete selections from many authors. • Although the distinguishable parts are separately protectable, the owner of the work — not the author — owns the renewal term, if any. 17 USCA § 304(a).

**composition**, *n.* **1.** An agreement between a debtor and two or more creditors for the adjustment or discharge of an obligation for some lesser amount; an agreement among the debtor and two or more creditors that the debtor will pay the creditors less than their full claims in full satisfaction of their claims. • The preexisting-duty rule is not a defense to this type of agreement because consideration arises from the agreement by each creditor with each other to take less than full payment. Through this agreement, the debtor is discharged in full for the debts of the participating creditors. — Also termed *creditors' composition*; *attermoiement*. **2.** The compensation paid as part of such an agreement. **3. Hist.** A payment of money or chattels as satisfaction for an injury. • In Anglo-Saxon and other early societies, a *composition* with the injured party was recognized as a way to deter acts of revenge by the injured party. — **compose**, *vb.*

"[T]he first theory of liability was in terms of a duty to buy off the vengeance of him to whom an injury had been done whether by oneself or by something in one's power. The idea is put strikingly in the Anglo-Saxon proverb, 'Buy spear from side or bear it,' that is, buy off the feud or fight it out. . . . As the social interest in peace and order — the general security in its lowest terms — comes to be secured more effectively by regulation and ultimate putting down of feud as a remedy, payment of composition becomes a duty rather than a privilege. . . . The next step is to measure the composition not in terms of the vengeance to be bought off but in terms of the injury. A final step is to put it in terms of reparation." Roscoe Pound, *An Introduction to the Philosophy of Law* 74 (rev. ed. 1954).

**composition deed.** See DEED.

**composition of matter.** *Patents.* A patentable compound of material composed of two or more different substances; a product containing two or more substances, including all composite articles, whether resulting from chemical union or from mechanical mixture, and whether the substances are gases, fluids, powders, or solids.

"[A] composition of matter describes what most people imagine to be the goal of the typical laboratory inventor, since it is usually a new chemical invention, although it can be any composition of materials, not limited solely to chemicals." Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 21 (2d ed. 1990).

**compos mentis** (kom-pæs men-tis), *adj.* [Latin "master of one's mind"] Of sound mind; hav-

ing use and control over one's own mental faculties. Cf. NON COMPOS MENTIS.

**compossessio** (kom-pæ-zes[h]-ee-oh). [Latin] *Civil law.* Possession by two or more persons of the same thing in common.

**compos sui** (kom-pæs s[y]oo-ı), *adj.* [Latin "master of one's self"] (Of a person) having control over one's own limbs, or the power of bodily motion.

**compound** (kom- or kəm-pownd), *vb.* **1.** To put together, combine, or construct. **2.** To compute (interest) on the principal and the accrued interest. **3.** To settle (a matter, esp. a debt) by a money payment, in lieu of other liability; to adjust by agreement. **4.** To agree for consideration not to prosecute (a crime). • Compounding a felony in this way is itself a felony. **5.** Loosely, to aggravate; to make (a crime, etc.) more serious by further bad conduct.

**compounder** (kom- or kəm-pownd-dər). **1.** One who settles a dispute; the maker of a composition. — Also termed *amicable compounder*. See COMPOSITION (1). **2.** One who knows of a crime by another and agrees, for a promised or received reward, not to prosecute.

**compounding a crime.** The offense of either agreeing not to prosecute a crime that one knows has been committed or agreeing to hamper the prosecution. — Also termed *theft-bote*.

"If a prosecuting attorney should accept money from another to induce the officer to prevent the finding of an indictment against that person this would be *compounding a crime* if the officer knew the other was guilty of an offense, but would be bribery whether he had such knowledge or not." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 539 (3d ed. 1982).

**compound interest.** See INTEREST (3).

**compound journal entry.** See ENTRY (2).

**compound larceny.** See *mixed larceny* under LARCENY.

**comprehensive general liability policy.** See INSURANCE POLICY.

**comprehensive insurance.** See INSURANCE.

**comprehensive nonliteral similarity.** See SUBSTANTIAL SIMILARITY.

**comprehensive zoning plan.** A general plan to control and direct the use and development of a large piece of property. See ZONING.

**comprint (kom-print).** A surreptitious and illegal printing of another bookseller's copy of a work. See INFRINGEMENT.

**compromis (kom-prə-mee).** [French] *Int'l law.* An agreement between two or more countries to submit an existing dispute to the jurisdiction of an arbitrator, an arbitral tribunal, or an international court.

***ad hoc compromis* (ad hok kom-prə-mee).** An agreement in which countries submit a particular dispute that has arisen between them to an ad hoc or institutionalized arbitral tribunal or to an international court. — Also termed *compromis proper*; *special agreement*.

***general compromis.*** An agreement in which countries submit all or a definite class of disputes that may arise between them to an arbitral institution, a court, or an ad hoc arbitral tribunal by concluding a general arbitration treaty or by including an arbitration clause in a treaty. — Also termed *abstract compromis*; *anticipated compromis*.

**compromise, n. 1.** An agreement between two or more persons to settle matters in dispute between them. **2.** A debtor's partial payment coupled with the creditor's promise not to claim the rest of the amount due or claimed. — **compromise, vb.**

**compromise verdict.** See VERDICT.

**compromis proper.** See *ad hoc compromis* under COMPROMIS.

**compromissarius** (kom-prə-mi-sair-ee-əs). [Latin] *Roman law.* See ARBITRATOR.

**compromissum** (kom-prə-mis-əm). [Latin "mutual agreement"] *Roman law.* An agreement to submit a controversy to arbitration.

**compte arrêté (kawnt a-ray-tay).** [French "settled account"] An account stated in writing, and acknowledged to be correct on its face by the party against whom it is stated.

**comp time.** Time that an employee is allowed to take off from work instead of being paid for overtime already worked. — Also termed *compensatory time*.

**comptroller (kən-troh-lər).** An officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically. — Also spelled *controller*.

**compulsion, n. 1.** The act of compelling; the state of being compelled.

"Compulsion can take other forms than physical force; but in whatever form it appears the courts have been indisposed to admit that it can be a defence for any crime committed through yielding to it and the law of the matter is both meagre and vague. It can best be considered under the heads of obedience to orders, martial coercion, duress *per minas*, and necessity." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 54 (16th ed. 1952).

**2.** An uncontrollable inclination to do something. **3.** Objective necessity; duress. — **compel, vb.**

**compulsory (kəm-pəl-sə-ree), adj.** Compelled; mandated by legal process or by statute <compulsory counterclaim>.

**compulsory, n. Eccles. law.** A writ that compels the attendance of a witness.

**compulsory appearance.** See APPEARANCE.

**compulsory arbitration.** See ARBITRATION.

**compulsory-attendance law.** A statute requiring minors of specified ages to attend school.

**compulsory condition.** See CONDITION (2).

**compulsory counterclaim.** See COUNTERCLAIM.

**compulsory disclosure.** See DISCLOSURE.

**compulsory insurance.** See INSURANCE.

**compulsory joinder.** See JOINDER.

**compulsory labor.** See FORCED LABOR.

**compulsory license.** See LICENSE.

**compulsory nonsuit.** See NONSUIT.

**compulsory pilot. Maritime law.** A ship pilot entitled by law to guide a ship for a particular purpose, such as piloting the ship into harbor. ● The compulsory nature of the appointment relieves the vessel's owner of personal liability



if the pilot causes a collision. Cf. VOLUNTARY PILOT.

"The compulsory pilot presents a special problem. Statutes that impose a fine or imprisonment for the failure to take a pilot obviously create compulsory pilotage. Some statutes, however, allow the ship to refuse the pilot provided she pays his fee or half of it ('half-pilotage'). The Supreme Court has indicated that it does not regard the tendering of this alternative as amounting to compulsion. It makes a difference, because it is pretty well settled that if the pilotage is 'compulsory' the *respondent superior* nexus is broken, and the shipowner cannot be held personally liable for the fault of the pilot resulting in collision. The ship's liability *in rem*, however, is unaffected by the fact that the pilotage is compulsory. This is one of the more striking consequences of the endowment of the ship with a juristic personality independent of that of her owner." Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* § 7-16, at 520-21 (2d ed. 1975).

**compulsory process.** See PROCESS.

**Compulsory Process Clause.** The clause of the Sixth Amendment to the U.S. Constitution giving criminal defendants the subpoena power for obtaining witnesses in their favor.

**compulsory sale.** See SALE.

**compurgation** (kom-pər-gay-shən), *n.* [Latin *con-* "together" + *purgare* "to clear or purge"] *Hist.* A trial by which a defendant could have supporters (called *compurgators*), frequently 11 in number, testify that they thought the defendant was telling the truth. — Also termed *wager of law*; *trial by oath*. — **compurgatory**, *adj.*

"If a defendant on oath and in a set form of words will deny the charge against him, and if he can get a certain number of other persons (compurgators) to back his denial by their oaths, he will win his case. If he cannot get the required number, or they do not swear in proper form, 'the oath bursts,' and he will lose. Though oaths were used in the Roman law of procedure, this institution of compurgation was not known to it. It was, however, common to the laws of many of the barbarian tribes who overran the Roman empire. Because it was so common and so widespread the church adopted it. . . . The case of *King v. Williams* in 1824 was the last instance of its use. It was finally abolished in 1833." 1 William Holdsworth, *A History of English Law* 305-08 (7th ed. 1956).

**compurgator** (kom-pər-gay-tər). *Hist.* A person who appeared in court and made an oath in support of a civil or criminal defendant. — Also termed OATH-HELPER. See COMPURGATION.

**computer crime.** See CRIME.

**computus** (kom-pyə-təs). [Latin *computo* "to count up; to reckon"] *Hist.* A writ to compel a guardian, bailiff, receiver, or accountant to render an accounting. — Also spelled *compotus*.

**comstockery** (kom-stok-ər-ee). (*often cap.*) Censorship or attempted censorship of art or literature that is supposedly immoral or obscene.

**Comstock law** (kom-stok). An 1873 federal statute that tightened rules against mailing "obscene, lewd, or lascivious" books or pictures, as well as "any article or thing designed for the prevention of conception or procuring of abortions." • Because of the intolerance that led to this statute, the law gave rise to an English word roughly equivalent to *prudery* — namely, *comstockery*.

**con.** *abbr.* 1. Confidence <con game>. 2. Convict <ex-con>. 3. Contra <pros and cons>. 4. (*cap.*) Constitutional <Con. law>.

**con.** See CONFIDENCE GAME.

**concealed weapon.** See WEAPON.

**concealment**, *n.* 1. The act of refraining from disclosure; esp., an act by which one prevents or hinders the discovery of something. 2. The act of removing from sight or notice; hiding. 3. *Insurance.* The insured's intentional withholding from the insurer material facts that increase the insurer's risk and that in good faith ought to be disclosed. — **conceal**, *vb.*

"Concealment is an affirmative act intended or known to be likely to keep another from learning of a fact of which he would otherwise have learned. Such affirmative action is always equivalent to a misrepresentation and has any effect that a misrepresentation would have. . . ." Restatement (Second) of Contracts § 160 cmt. a (1981).

**active concealment.** The concealment by words or acts of something that one has a duty to reveal.

**fraudulent concealment.** The affirmative suppression or hiding, with the intent to deceive or defraud, of a material fact or circumstance that one is legally (or, sometimes, morally) bound to reveal.

**passive concealment.** The act of maintaining silence when one has a duty to speak.

**concealment rule.** The principle that a defendant's conduct that hinders or prevents a plaintiff from discovering the existence of a claim tolls the statute of limitations until the plaintiff discovers or should have discovered the

claim. — Also termed *fraudulent-concealment rule*.

**concedo** (kən-see-doh). [Latin] *Hist.* I grant. • This was formerly a term of conveyance.

**concentration account.** A single centralized bank account into which funds deposited at or collected at out-of-area locations are periodically transferred.

**conception of invention.** The formation in the inventor's mind of a definite and permanent idea of a complete invention that is thereafter applied in practice. • Courts usu. consider conception when determining priority of invention.

**conceptum** (kən-sep-təm). [Latin "seized"] *Civil law.* A theft in which the stolen item was searched for and found in someone's possession and in the presence of witnesses. See FURTUM CONCEPTUM.

**concerted action.** An action that has been planned, arranged, and agreed on by parties acting together to further some scheme or cause, so that all involved are liable for the actions of one another. — Also termed *concert of action*.

**concerted activity.** *Labor law.* Action by employees concerning wages or working conditions. • Concerted activity is protected by the National Labor Relations Act and cannot be used as a basis for disciplining or discharging an employee.

"Typical protected concerted activity involves union organizing, the discussion of unionization among employees, or the attempt by one employee to solicit union support from another employee. But concerted activity need not involve a union. Activities by groups of employees unaffiliated with a union to improve their lot at their work place are deemed protected concerted activities." Douglas L. Leslie, *Labor Law in a Nutshell* 84 (3d ed. 1992).

**concerted refusal to deal.** *Antitrust.* An agreement between two or more persons or firms to not do business with a third party. • The parties to the agreement may or may not be competitors. Concerted refusals to deal may violate § 1 of the Sherman Act and are analyzed under either the per se rule or the rule of reason, depending on the nature of the agreement. See BOYCOTT; PER SE RULE; RULE OF REASON.

**concert of action.** See CONCERTED ACTION.

**concert-of-action rule.** See WHARTON RULE.

**concessi** (kən-ses-ī). [Latin] *Hist.* I have granted. • *Concessi* grants a covenant in a lease for years; it does not warrant title. *Concessi* often appeared in the phrase *demisi, concessi, et ad firmam tradidi* ("demised, granted, and let to farm"). Cf. DEDI.

"Concessi (a word much used in Conveyances). In Law it creates a *Covenant*, as *Dedi* does a *Warranty*." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

**concessimus** (kən-ses-ə-məs). [Latin] *Hist.* We have granted. • *Concessimus* is a term of conveyance that creates a joint covenant on the part of the grantors.

**concessio** (kən-sesh-ee-oh). [Latin] *Hist.* A grant. • A term of conveyance used to convey incorporeal property. Pl. *concessiones*.

"Grants, *concessiones*; the regular method by the common law of transferring the property of *incorporeal* hereditaments, or, such things whereof no livery can be had. For which reason all corporeal hereditaments, as lands and houses, are said to lie *in livery*; and the others, as advowsons, commons, rents, reversions, etc., to lie *in grant*. . . . These therefore pass merely by the delivery of the deed." 2 William Blackstone, *Commentaries on the Laws of England* 317 (1766).

**concession, n.** 1. A government grant for specific privileges. 2. The voluntary yielding to a demand for the sake of a settlement. 3. A rebate or abatement. 4. *Int'l law.* A contract in which a country transfers some rights to a foreign enterprise, which then engages in an activity (such as mining) contingent on state approval and subject to the terms of the contract. — **concede, vb.** — **concessive, adj.**

**concession bargaining.** *Labor law.* A type of collective bargaining in which the parties negotiate the employees' giving back previously gained improvements in wages, benefits, or working conditions in exchange for some form of job security, such as protection against layoffs. — Also termed *employee givebacks*; *union givebacks*. See COLLECTIVE BARGAINING.

**concessit solvere** (kən-ses-it sol-və-ree). [Latin "he agreed to pay"] *Hist.* A form of debt action on a simple contract. • The plaintiff alleged that the defendant had granted and agreed to pay to the plaintiff the sum sued for, but had not done so. The defendant responded with a plea of *nunquam indebitatus* ("never indebted"). See *indebitatus assumpsit* under ASSUMPSIT; NUNQUAM INDEBITATUS; COMMON COUNT.

**concessor** (kən-ses-ər). *Hist.* A grantor. Cf. CONCESSUS.

**concessum** (kən-ses-əm), *p.pl.* [fr. Latin *concedere* "to grant"] *Hist.* Granted. • Judges used this term to signify their assent to a point made in argument; for example, a court might state that a particular proposition was *concessum per totam curiam* ("granted by the whole court").

**concessus** (kən-ses-əs). *Hist.* A grantee. Cf. CONCESSOR.

**conciliation**, *n.* 1. A settlement of a dispute in an agreeable manner. 2. A process in which a neutral person meets with the parties to a dispute (often labor) and explores how the dispute might be resolved; MEDIATION (1). — **conciliate**, *vb.* — **conciliative**, **conciliatory**, *adj.* — **conciliator**, *n.*

**conciliation court.** See *small-claims court* under COURT.

**concilium** (kən-sil-ee-əm). [Latin "council"] 1. *Hist.* The sitting of a court to hear argument in a case; a motion requesting a day to present an argument. 2. CONCILIUM PLEBIS.

**concilium plebis** (kən-sil-ee-əm plee-bis). [Latin "assembly of the people"] *Roman law.* An assembly of the plebs gathered together to enact legislation. — Often shortened to *concilium*. See PLEBISCITUM. Cf. COMITIA TRIBUTA.

"Legislation was carried on to some extent by the *Comitia Tributa* and in an increasing degree by the assembly of the *plebs* alone, *concilium plebis*, which, in historical times, was also based on the tributal organisation. This assembly, presided over by a tribune of the *plebs*, was active from early times and there was early legislation on constitutional questions, enacted by that body and approved by the Senate, which was regarded as binding on the whole community. Its enactments, properly called *plebiscita*, were often called, as binding on the whole community, *leges* . . ." W.W. Buckland, *A Textbook of Roman Law: From Augustus to Justinian* 4 (1921).

**concilium regis** (kən-sil-ee-əm ree-jis). [Latin "assembly of the king"] *Hist.* A tribunal that, during the reigns of Edward I and Edward II, heard cases of extraordinary difficulty.

**conclude**, *vb.* 1. To ratify or formalize (a treaty, convention, or contract) <it can be difficult to amend a contract that the parties have already concluded>. 2. To bind; estop <the admissions concluded the party as a matter of law>.

**conclusion**, *n.* 1. The final part of a speech or writing (such as a jury argument or a pleading). 2. A judgment arrived at by reasoning; an inferential statement. 3. The closing, settling, or final arranging (as of a treaty or contract). 4. *Archaic.* An act by which one estops oneself from doing anything inconsistent with it.

"Conclusion is, when a man by his own act upon record hath charged himself with a duty or other thing. . . . So if the sheriff, upon a *capias* to him directed, returns that he hath taken the body, and yet hath not the body in court at the day of the return, he shall be amerced. . . ." *Termes de la Ley* 102-03 (1st Am. ed. 1812).

**conclusional**, *adj.* See CONCLUSORY.

**conclusionary**, *adj.* See CONCLUSORY.

**conclusion of fact.** A factual deduction drawn from observed or proven facts; an evidentiary inference. Cf. FINDING OF FACT.

**conclusion of law.** An inference on a question of law, made as a result of a factual showing, no further evidence being required; a legal inference. Cf. FINDING OF FACT; LEGAL CONCLUSION.

**conclusion to the country.** *Archaic.* The closing part of a pleading that requests the trial of an issue by a jury. Cf. GOING TO THE COUNTRY.

**conclusive**, *adj.* Authoritative; decisive; convincing <her conclusive argument ended the debate>. Cf. CONCLUSORY.

**conclusive evidence.** See EVIDENCE.

**conclusive presumption.** See PRESUMPTION.

**conclusive proof.** See *conclusive evidence* (1) under EVIDENCE.

**conclusory** (kən-kloo-zə-ree or -sə-ree), *adj.* Expressing a factual inference without stating the underlying facts on which the inference is based <because the plaintiff's allegations lacked any supporting evidence, they were merely conclusory>. — Also termed *conclusional*; *conclusionary*. Cf. CONCLUSIVE.

**concomitant** (kən-kom-ə-tənt), *adj.* Accompanying; incidental <concomitant actions>. — **concomitant**, *n.*

**concomitant evidence.** See EVIDENCE.

**concord** (kən-kord or kong-), *n.* 1. An amicable arrangement between parties, esp. between

peoples or nations; a compact or treaty. **2. Archaic.** An agreement to compromise and settle an action in trespass.

"Concord is an Agreement made between two or more, upon a Trespass committed; and is divided into *Concord executory*, and *Concord executed* . . . one binds not, as being imperfect, but the other is absolute, and ties the Party." Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

**3. Archaic.** An in-court agreement in which a person who acquired land by force acknowledges that the land in question belongs to the complainant. See DEFORCE.

"Next comes the *concord*, or agreement itself, after leave obtained from the court; which is usually an acknowledgment from the deforciant (or those who keep the other out of possession) that the lands in question are the right of the complainant." 2 William Blackstone, *Commentaries on the Laws of England* 350 (1766).

**4. Hist.** The settlement of a dispute.

**final concord.** A written agreement between the parties to an action by which they settle the action in court, with the court's permission. — Also termed *finalis concordia*; *final peace*.

**concordat** (kon- or kən-kor-dat). **1.** An agreement between a government and a church, esp. the Roman Catholic Church.

"The qualification of a treaty as a concordat depends only upon its object and purpose, not upon the name or outward form chosen by the parties. Although the term originally was also used for treaties between States, it has increasingly become restricted to only those treaties concluded with the Holy See." Heribert Franz Köck, "Concordats," in 1 *Encyclopedia of Public International Law* 164 (1992).

**2. Hist. Eccles. law.** An agreement between ecclesiastical persons concerning a benefice, such as a resignation or promotion. See BENEFICE. **3.** An agreement between secular persons or entities.

**concordatory** (kən-kor-də-tor-ee), *adj.* Of or relating to a concordat, esp. one between church and state in France.

**Concordia discordantium canonum** (kon-kor-dee-ə dis-kor-dan-shee-əm kə-nohn-əm). [Latin "the harmony of the discordant canons"] *Hist.* A collection of ecclesiastical authorities compiled by Gratian, an Italian monk, ca. 1140. • Gratian analyzed questions of law by drawing conclusions from side-by-side comparisons of a variety of texts. Later canonist scholarship usu. proceeded from Gratian's work. — Also termed *Decretum Gratiani*; *Decretum*.

"Another body of jurisprudence was coming into being. From humble beginnings the canon law had grown into a mighty system. Already it asserted its right to stand beside or above the civil law. The civil law might be the law of earth, *ius soli*; here was the law of heaven, *ius poli*. . . . Many men had been endeavouring to state that law, but the fame of earlier labourers was eclipsed by that of Gratian. A monk of Bologna, that city which was the centre of the new secular jurisprudence, he published . . . a book which he called *Concordia discordantium canonum*, but which was soon to become for all mankind simply the *Decretum Gratiani*, or yet more simply the *Decretum*. It is a great law-book. The spirit which animated its author was not that of a theologian, not that of an ecclesiastical ruler, but that of a lawyer. . . . The *Decretum* soon became an authoritative text-book and the canonist seldom went behind it. . . . The canonist had for it rather that reverence which English lawyers have paid to Coke upon Littleton. . . ." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 112–13 (2d ed. 1898).

**concourse** (kon-kors or kong-). *Scots law.* **1.** The simultaneous existence of two actions based on the same facts, esp. a civil action and a criminal action. **2.** The concurrence of the public prosecutor to a criminal prosecution by a private person.

"A private party may prosecute for the punishment of an offence perpetrated against himself, and for which the public prosecutor may refuse to prosecute at the public expense; but the concurrence of the public prosecutor is necessary, and it cannot be refused; or if refused, the case may proceed at the instance of the private party. *Concourse* is distinguished from *Instance*. In the former case the public prosecutor merely concurs or consents, whilst in the latter case he is also a principal party prosecuting for the public interest." Hugh Barclay, *A Digest of the Law of Scotland* 162 (3d ed. 1865).

**3.** A conflict among creditors or claimants. See CONCURSUS (1).

**concupinage** (kon-kyoo-bə-nij), *n.* **1.** The relationship of a man and woman who cohabit without the benefit of marriage. **2.** The state of being a concubine. **3. Hist.** A plea in a dower action made by a defendant who asserts that the plaintiff is the defendant's concubine rather than wife.

"*Concupinage*, in common Acceptation is the Keeping of a Whore or Concubine: But in a legal Sense, it is used as an Exception against her that sueth for Dower, alledging thereby that she was not a Wife lawfully married to the Party, in whose Lands she seeks to be endowed, but his *Concubine*." Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

**concupinatus** (kon-kyoo-bi-nay-təs). [Latin "concupinage"] *Roman law.* A permanent, monogamous union of a man and a woman who are not legally married. • *Concupinatus* was

not prohibited by law, but carried fewer benefits than a legal marriage. Cf. JUSTAE NUPTIAE.

"[C]oncupinage (*concupinatus*) . . . was something to which we have no precise analogue in modern law, for, so far from being prohibited by the law, it was regulated thereby, being treated as a lawful connexion. It is almost a sort of unequal marriage (and is practically so described by some of the jurists) existing between persons of different station — the man of superior rank, the woman of a rank so much inferior that it is not to be presumed that his union with her was intended to be a marriage." James Bryce, "Marriage and Divorce under Roman and English Law," in 3 *Select Essays in Anglo-American Legal History* 806-07 (1909).

**concubine** (kong-kyə-bīn). A woman who cohabits with a man to whom she is not married.

**concur** (kən-kər), *vb.* **1.** To agree; to consent. **2.** In a judicial opinion, to agree with the judgment in the case (usu. as expressed in the opinion of another judge), or the opinion of another judge, but often for different reasons or through a different line of reasoning. **3.** *Civil law.* To join with other claimants in presenting a demand against an insolvent estate.

**concurator** (kon- or kən-kyuur-ə-tər). *Civil law.* A guardian or co-curator. See CURATOR.

**concurrence.** **1.** Agreement; assent. **2.** A vote cast by a judge in favor of the judgment reached, often on grounds differing from those expressed in the opinion or opinions explaining the judgment. **3.** A separate written opinion explaining such a vote. — Also termed (in sense 3) *concurring opinion*.

**concurrency, n.** **1.** *Archaic.* The quality or fact of being concurrent in jurisdiction; joint right or authority. **2.** *Criminal procedure.* (Of a criminal sentence) concurrent in duration.

**concurrent, adj.** **1.** Operating at the same time; covering the same matters <concurrent interests>. **2.** Having authority on the same matters <concurrent jurisdiction>.

**concurrent cause.** See CAUSE (1).

**concurrent condition.** See CONDITION (2).

**concurrent consideration.** See CONSIDERATION.

**concurrent covenant.** See COVENANT (1).

**concurrent estate.** See ESTATE.

**concurrent finding.** See FINDING OF FACT.

**concurrent interest.** See *concurrent estate* under ESTATE (4).

**concurrent jurisdiction.** See JURISDICTION.

**concurrent lease.** See LEASE.

**concurrent lien.** See LIEN.

**concurrent negligence.** See NEGLIGENCE.

**concurrent policy.** See INSURANCE POLICY.

**concurrent power.** See POWER.

**concurrent remedy.** See REMEDY.

**concurrent resolution.** See RESOLUTION (1).

**concurrent-sentence doctrine.** The principle that an appellate court affirming a conviction and sentence need not hear a challenge to a conviction on another count if the conviction on the other count carries a sentence that is equal to or less than the affirmed conviction.

**concurrent sentences.** See SENTENCE.

**concurrent tortfeasors.** See TORTFEASOR.

**concurrent writ.** See WRIT.

**concurring opinion.** See CONCURRENCE (3).

**concurso** (kon- or kən-kər-soh). *Civil law.* An action in which a creditor seeks to enforce a claim against an insolvent debtor.

**concursum** (kon- or kən-kər-səs). [Latin "a running together"] **1.** *Civil & Scots law.* A proceeding in which two or more creditors claim, usu. adversely to each other, an interest in a fund or estate so that they can sort out and adjudicate all the claims on the fund. See CONCOURSE (3). **2.** *Civil law.* INTERPLEADER. **3.** *Eccl. law.* An examination to determine a person's fitness for parochial office.

**concursum in delicto** (kon- or kən-kər-səs in də-lik-toh). [Latin] Cooperation in crime.

**conculsiō** (kən-kəsh-ee-oh). [Latin] *Roman law.* The offense of extorting money or gifts by threat of violence. ● In modern civil-law con-

texts, the term is often anglicized to *concussion*. — **concuss**, *vb.*

**concussionary**. *Archaic*. A person who extorts from others under guise of authority; one who practices concussion.

**condedit** (kən-dee-dit or -ded-it). [Latin “he made (a will)”] *Eccles. law*. A defensive plea filed by a party in response to an ecclesiastical-court libel (i.e., complaint) questioning the veracity of a will. — Also spelled *condidit*.

**condemn**, *vb.* **1.** To judicially pronounce (someone) guilty. **2.** To determine and declare that certain property is assigned to public use. See EMINENT DOMAIN. **3.** To adjudge (a building) as being unfit for habitation. **4.** To adjudge (food or drink) as being unfit for human consumption. **5. Maritime law.** To declare that a vessel (1) is forfeited to the government, (2) is a prize, or (3) is unfit for service.

**condemnation** (kon-dem-nay-shən), *n.* **1.** The act of judicially pronouncing someone guilty; conviction. **2.** The determination and declaration that certain property (esp. land) is assigned to public use, subject to reasonable compensation; the exercise of eminent domain by a governmental entity. See EMINENT DOMAIN.

**excess condemnation.** The taking of property beyond what is needed for public use.

**inverse condemnation.** An action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings. — Also termed *condemnation blight*.

**quick condemnation.** The immediate taking of private property for public use, whereby the estimated reasonable compensation is placed in escrow until the actual amount of compensation can be established.

**3.** An official pronouncement that a thing (such as a building) is unfit for use or consumption; the act of making such a pronouncement.

**condemnation money.** **1.** Damages that a losing party in a lawsuit is condemned to pay. **2.** Compensation paid by an expropriator of land to the landowner for taking the property.

**condemnatory** (kən-dem-nə-tor-ee), *adj.* **1.** Condemning; expressing condemnation or censure. **2.** Of or relating to the use of eminent domain or expropriation.

**condemnee** (kon-dem-nee). One whose property is expropriated for public use or taken by a public-works project.

**condemnor** (kon-dem-nor or kən-dem-nər). A public or semipublic entity that expropriates property for public use.

**condescendence** (kon-di-sen-dənts). *Scots law*. A statement of facts in a civil pleading, set out in consecutively numbered paragraphs, that the claimant relies on to justify the claim for relief.

**condictio** (kən-dik-shee-oh). [fr. Latin *condicere* “to demand back”] *Roman & civil law*. A personal action in the nature of demanding something back; an action of debt. • In the sense here used, *debt* must be understood broadly to cover not only contractual but also noncontractual claims. *Condictio* is usu. founded on an obligation to give or do a certain thing or service. — Also termed *condiction*; *action of debt*. — **condictitious**, **condictious**, *adj.*

“The principal *actio stricti juris* was the *condictio*, a general term with many applications. It might be brought for a certain sum of money (*condictio certae pecuniae*), or for some other certain thing (*condictio triticaria*), or to assert an illiquid claim (*condictio incerti*). The various forms of *condictio* were also distinguished according to the cause which gave rise to them, as *condictio furtiva*, *condictio indebiti*, and others....” R.W. Lee, *The Elements of Roman Law* 435 (4th ed. 1956).

**condictio certi** (kən-dik-shee-oh sər-tī). [Latin “claim for recovery of a certain sum or thing”] An action based on a promise to do a thing, where the promise is certain.

**condictio ex causa furtiva.** See *conductio rei furtivae*.

**condictio ex lege** (kən-dik-shee-oh eks lee-jee). [Latin “claim for recovery under a statute”] An action arising where a statute creates an obligation but provides no remedy.

**condictio furtiva.** See *condictio rei furtivae*.

**condictio incerti** (kən-dik-shee-oh in-sər-tī). [Latin “claim for recovery of an uncertain amount”] An action to recover an uncertain amount.

**condictio indebiti** (kən-dik-shee-oh in-deb-ə-tī). [Latin “claim for recovery of something not due”] An action to prevent the unjust enrichment of a defendant who had received money or property from the plaintiff by mistake. — Also termed *actio condictio indebiti*.

**condictio rei furtivae** (kən-dik-shee-oh ree-i fər-tī-vee). [Latin “claim for recovery of a stolen thing”] An action to recover a stolen thing. • A *condictio rei furtivae* could be

brought against the thief or the thief's heirs. — Also termed *condictio furtiva*; *condictio ex causa furtiva*.

**condictio sine causa** (kən-dik-shee-oh si-nee kaw-zə). [Latin "claim for recovery of money or a thing given without consideration"] An action for the recovery of a thing given without consideration and in contemplation of a specific event that did not occur, such as a dowry made in view of a marriage that does not take place.

**condictio triticaria** (kən-dik-shee-oh tri-ti-kair-ee-ə). [Latin "claim for recovery of wheat"] An action for the recovery of a specified quantity of a named commodity.

**conditio** (kən-dish-ee-oh). [Latin] A condition.

**condition, n. 1.** A future and uncertain event on which the existence or extent of an obligation or liability depends; an uncertain act or event that triggers or negates a duty to render a promised performance. • For example, if Jones promises to pay Smith \$500 for repairing a car, Smith's failure to repair the car (a condition) relieves Jones of the promise to pay.

"A condition is an event, not certain to occur, which must occur, unless its non-occurrence is excused, before performance under a contract becomes due." Restatement (Second) of Contracts § 224 (1981).

"'Condition' is used in this Restatement to denote an event which qualifies a duty under a contract. It is recognized that 'condition' is used with a wide variety of other meanings in legal discourse. Sometimes it is used to denote an event that limits or qualifies a transfer of property. In the law of trusts, for example, it is used to denote an event such as the death of the settlor that qualifies his disposition of property in trust. Sometimes it is used to refer to a term in an agreement that makes an event a condition, or more broadly to refer to any term in an agreement (e.g., 'standard conditions of sale'). For the sake of precision, 'condition' is not used here in these other senses." *Id.* cmt. a.

"Strictly, a condition is a fact or event on the occurrence of which some legal right or duty comes into existence; a party may promise that this fact is so, or that the event will take place, but it is equally possible that no party to the contract promises this. An insurance company promises to pay £10,000 to an insured person if his house is destroyed by fire; the destruction of the house by fire is a condition of the insurer's promise to pay, but neither party promises to burn the house." P.S. Atiyah, *An Introduction to the Law of Contract* 146 (3d ed. 1981).

**2.** A stipulation or prerequisite in a contract, will, or other instrument, constituting the essence of the instrument. • If a court construes a contractual term to be a condition, then its untruth or breach will entitle the party to whom it is made to be discharged from all liabilities under the contract.

"Promises and the duties they generate can be either unconditional ('I promise to pay you \$100,000') or conditional ('I promise to pay you \$100,000 if your house burns down'). Lawyers use the word *condition* in several senses. Sometimes they use it to refer to the term in the agreement that makes the promise conditional. . . . However, lawyers also use the word *condition* to refer to an operative fact rather than to a term. According to the Restatement Second a condition is 'an event, not certain to occur, which must occur, unless occurrence is excused, before performance under a contract becomes due.' This use of the word has the support of leading writers." E. Allan Farnsworth, *Contracts* § 8.2, at 563 (2d ed. 1990).

"The terms 'warranty' and 'condition' are generally used interchangeably, for all practical purposes, and they refer to representations or promises by the insured, incorporated into the contract itself, on the truthfulness or fulfillment of which it is agreed that the rights of the insured shall depend. The primary differences between a mere representation and a warranty or condition are (1) while the insurer has the burden of proving the materiality of a misrepresentation before it will be grounds for avoidance, the materiality of a warranty or condition is conclusively presumed; and (2) while a representation will not be grounds for avoidance as long as it is substantially true, a warranty or condition must be strictly complied with in order to preclude avoidance. As with the majority view in representations, good or bad faith on the part of the insured is irrelevant." John F. Dobbyn, *Insurance Law in a Nutshell* 201 (3d ed. 1996).

**affirmative condition.** See *positive condition*.

**casual condition.** *Civil law.* A condition that depends on chance; one that is not within the power of either party to an agreement.

**collateral condition.** A condition that requires the performance of an act having no relation to an agreement's main purpose.

**compulsory condition.** A condition expressly requiring that a thing be done, such as a tenant's paying rent on a certain day.

**concurrent condition.** A condition that must occur or be performed at the same time as another condition, the performance by each party separately operating as a condition precedent; a condition that is mutually dependent on another, arising when the parties to a contract agree to exchange performances simultaneously. — Also termed *condition concurrent*.

"Conditions concurrent are acts that the parties to a contract are under duties of performing concurrently, the act of each party being separately operative as a condition precedent. The act is not concurrent with the legal relation affected, but only with the act of the other party." William R. Anson, *Principles of the Law of Contract* 412-13 (Arthur L. Corbin ed., 3d Am. ed. 1919).

**condition implied by law.** See *constructive condition*.

**condition implied in law.** See *constructive condition*.

**condition precedent.** An act or event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises. ● If the condition does not occur and is not excused, the promised performance need not be rendered. The most common condition contemplated by this phrase is the immediate or unconditional duty of performance by a promisor.

"Now the most important type of conditional clause, i.e. a clause on which the entire operation of the contract depends, is called a condition precedent. The vital thing about such a condition is that it is not a promise, and if a contract is subject to a condition precedent it may properly be called a conditional contract. A much-quoted example of such a contract is found in *Pym v. Campbell*, where the defendants agreed to buy from the plaintiffs a share of an invention, provided that the invention was approved by a third party. This proviso was held to be a condition precedent to the operation of the entire contract, and in the absence of the approval specified, the contract never came into operation." P.S. Atiyah, *An Introduction to the Law of Contract* 146 (3d ed. 1981).

"Before one gets too confused by the precedent and subsequent classifications, it might be helpful to know that in contract law there is no substantive difference between the two. . . . However, in the area of pleading and procedure significance may be placed upon the difference between a condition precedent and subsequent in terms of who has the burden of pleading and proof, the party seeking to enforce the promise usually being required to plead and prove a condition precedent and the party seeking to avoid liability for breach of promise sometimes being required to plead and prove the occurrence of the condition subsequent that would terminate his duty." Claude Rohwer & Gordon D. Schaber, *Contracts in a Nutshell* 313 (4th ed. 1997).

**condition subsequent.** A condition that, if it occurs, will bring something else to an end; an event the existence of which, by agreement of the parties, discharges a duty of performance that has arisen.

"It must also be observed that lawyers sometimes refer to a condition subsequent, i.e. a condition on the happening of which the whole contract is dissolved. A condition subsequent is simply a statement of the circumstances in which the contract may be prematurely brought to an end, and is usually more readily recognized than a condition precedent. Like a condition precedent, however, a condition subsequent differs from terms which are promises, because the occurrence of such a condition involves the parties in no liability." P.S. Atiyah, *An Introduction to the Law of Contract* 147 (3d ed. 1981).

"If . . . the deed or will uses such words as 'but if,' 'on condition that,' 'provided, however,' or 'if, however,' it will generally be assumed that a condition subsequent was intended." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 50 (2d ed. 1984).

**constructive condition.** A condition contained in an essential contractual term that, though omitted by the parties from their agreement, a court has supplied as being rea-

sonable in the circumstances; a condition imposed by law to do justice. ● The cooperation of the parties to a contract, for example, is a constructive condition. — Also termed *implied-in-law condition*; *condition implied by law*; *condition implied in law*.

"[C]onstructive conditions are imposed by law to do justice. . . . The dividing line between an express condition . . . and constructive conditions is often quite indistinct. Yet, the distinction is often of crucial importance. The general rule governing an express condition is that it must be strictly performed. The general rule as to constructive conditions is that substantial compliance is sufficient." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 11.8, at 402 (4th ed. 1998).

**copulative condition** (*kop-yə-lə-tiv* or *-lay-tiv*). A condition requiring the performance of more than one act. *disjunctive condition*; *single condition*.

**dependent condition.** A mutual covenant that goes to the consideration on both sides of a contract.

**disjunctive condition.** A condition requiring the performance of one of several acts. Cf. *copulative condition*; *single condition*.

**dissolving condition.** See *resolatory condition*.

**express condition.** A condition that is explicitly stated in an instrument; esp., a contractual condition that the parties have reduced to writing.

**implied condition.** A condition that is not expressly mentioned, but is imputed by law from the nature of the transaction or the conduct of the parties to have been tacitly understood between them as a part of the agreement.

**implied-in-fact condition.** A contractual condition that the parties have implicitly agreed to by their conduct or by the nature of the transaction.

**implied-in-law condition.** See *constructive condition*.

**inherent condition.** A condition that is an intrinsic part of an agreement; a condition that is not newly imposed but is already present in an agreement.

**lawful condition.** A condition that can be fulfilled without violating the law.

**mixed condition.** *Civil law.* A condition that depends either on the will of one party and the will of a third person, or on the will of one party and the happening of a causal event.

**negative condition.** A condition forbidding a party from doing a certain thing, such as



prohibiting a tenant from subletting leased property; a promise not to do something, usu. as part of a larger agreement. — Also termed *restrictive condition*. See *negative easement* under EASEMENT.

**positive condition.** A condition that requires some act, such as paying rent. — Also termed *affirmative condition*.

**potestative condition** (poh-tes-tə-tiv). *Civil law.* A condition that will be fulfilled only if the obligated party chooses to do so. • Louisiana no longer uses this term, instead providing that this type of condition will render the obligation null. Cf. *suspensive condition*; *resolatory condition*.

**preexisting condition.** *Insurance.* A physical or mental condition evident during the period before the effective date of a medical-insurance policy. • Typically, coverage for later treatment for such a condition is excluded if symptoms of the condition were present during the period before the policy was effective.

**promissory condition.** A condition that is also a promise.

“The distinction between a condition which is also a promise, and a condition which is not the subject of a promise, is often one of great difficulty and importance, especially where the term is implied and not expressed, and it is unfortunate that legal usage has sanctioned the word ‘condition’ for two such different concepts. It would at least be desirable if lawyers could be persuaded to refer to conditions which are the subject of a promise as ‘promissory conditions’, a usage which it is proposed to adopt here.” P.S. Atiyah, *An Introduction to the Law of Contract* 147 (3d ed. 1981).

**resolatory condition** (rə-zol-yə-tor-ee). *Civil law.* A condition that upon fulfillment terminates an already enforceable obligation and entitles the parties to be restored to their original positions. — Also termed *resolutive condition*; *dissolving condition*. Cf. *potestative condition*.

**restrictive condition.** See *negative condition*.

**single condition.** A condition requiring the performance of a specified thing. Cf. *copulative condition*; *disjunctive condition*.

**suspensive condition.** *Civil law.* A condition that must be fulfilled before an obligation is enforceable. Cf. *potestative condition*.

**unlawful condition.** A condition that cannot be fulfilled without violating the law.

**3.** Loosely, a term, provision, or clause in a contract.

“This term *condition* is generally used to describe any fact, subsequent to the formation of a contract, which

operates to make the duty of a promisor immediately active and compelling. Such a fact may be described as such in a term of the contract or it may not. In either event, the *term* of the contract should not itself be called the *condition*.... It is not uncommon, popularly, to speak of a condition of the contract as synonymous with *term* or *provision* of the contract. This should be avoided.” William R. Anson, *Principles of the Law of Contract* 226 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“The word ‘condition’ is used in the law of property as well as in the law of contract and it is sometimes used in a very loose sense as synonymous with ‘term,’ ‘provision,’ or ‘clause.’ In such a sense it performs no useful service.” *Id.* at 409.

**4.** A qualification attached to the conveyance of property providing that if a particular event does or does not take place, the estate will be created, enlarged, defeated, or transferred. **5.** A state of being; an essential quality or status. — **condition**, *vb.*

**artificial condition.** A physical characteristic of real property, brought about by a person’s affirmative act instead of by natural forces.

**dangerous condition.** **1.** A property defect creating a substantial risk of injury when the property is used in a reasonably foreseeable manner. • A dangerous condition may result in waiver of sovereign immunity. **2.** A property risk that children, because of their immaturity, cannot appreciate or avoid.

**conditional**, *adj.* Subject to or dependent on a condition <a conditional sale>.

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

**conditional admissibility.** See ADMISSIBILITY.

**conditional agreement.** See AGREEMENT.

**conditional assault.** See ASSAULT.

**conditional assignment.** See ASSIGNMENT (2).

**conditional bequest.** See BEQUEST.

**conditional contraband.** See CONTRABAND.

**conditional contract.** See CONTRACT.

**conditional conveyance.** See CONVEYANCE.

**conditional covenant.** See COVENANT (1).

**conditional creditor.** See CREDITOR.

**conditional delivery.** See DELIVERY.

**conditional devise.** See DEVISE.

**conditional guaranty.** See GUARANTY.

**conditional indorsement.** See INDORSEMENT.

**conditional legacy.** See LEGACY.

**conditional limitation.** See LIMITATION.

**conditionally privileged communication.** See COMMUNICATION.

**conditional obligation.** See OBLIGATION.

**conditional pardon.** See PARDON.

**conditional payment.** See PAYMENT.

**conditional presumption.** See *rebuttable presumption* under PRESUMPTION.

**conditional privilege.** See *qualified privilege* under PRIVILEGE (1).

**conditional promise.** See PROMISE.

**conditional proof.** See PROOF.

**conditional purpose.** 1. An intention to do something, conditions permitting. 2. *Criminal law.* A possible defense against a crime if the conditions make committing the crime impossible (e.g., "I will steal the money if it's there," and the money is not there).

**conditional right.** See RIGHT.

**conditional sale.** See SALE.

**conditional sales contract.** See *retail installment contract* under CONTRACT.

**conditional sentence.** See SENTENCE.

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

**conditional-use permit.** See SPECIAL-USE PERMIT.

**conditional will.** See WILL.

**conditional zoning.** See ZONING.

**condition concurrent.** See *concurrent condition* under CONDITION (2).

**condition implied by law.** See *constructive condition* under CONDITION (2).

**condition implied in law.** See *constructive condition* under CONDITION (2).

**conditioning the market.** See GUN-JUMPING.

**condition of employment.** A qualification or circumstance required for obtaining or keeping a job.

**condition precedent.** See CONDITION (2).

**conditions of sale.** The terms under which auctions are to be conducted. • The conditions of sale are usu. placed in the auction room for public viewing before the sale.

**condition subsequent.** See CONDITION (2).

**condominia** (kon-də-min-ee-ə). *Civil law.* Coownerships or limited ownerships. • *Condominia* are considered part of the *dominium* of the property, and thus are more than mere rights in the property (i.e., *jure in re aliena*); examples of *condominia* include *emphyteusis*, *superficies*, *pignus*, *hypotheca*, *usufructus*, *usus*, and *habitatio*.

**condominium** (kon-də-min-ee-əm). 1. Ownership in common with others. 2. A single real-estate unit in a multi-unit development in which a person has both separate ownership of a unit and a common interest, along with the development's other owners, in the common areas. Cf. COOPERATIVE (2). Pl. (for sense 2) **condominiums**.

"The condominium concept is not new, despite its relatively recent introduction in the United States. Ownership of individual units in buildings can be traced back to ancient Babylon; it was quite common in ancient Rome and in medieval Europe. The earliest condominium statute is Article 664 of the Code Napoleon of 1804, a very brief provision which was later substantially expanded. Condominium statutes were adopted in most nations in Europe, and in Central and South America, before any were adopted in the United States." Roger A. Cunningham et al., *The Law of Property* § 2.2, at 34 n.26 (2d ed. 1993).

3. Joint sovereignty by two or more nations. 4. A politically dependent territory under such sovereignty. Pl. **condominia** (senses 3 & 4).

**condonation** (kon-də-nay-shən), *n.* A victim's implied forgiveness of an offense by treating

the offender as if there had been no offense; esp., before the advent of no-fault divorce, a spouse's forgiveness implied by continuing to live normally with the other spouse after that spouse has committed an offense that would otherwise be grounds for divorce.

**condone** (kən-dohn), *vb.* To voluntarily pardon or overlook (esp. an act of adultery). — **condonable** (kən-dohn-ə-bəl), *adj.*

**conduct**, *n.* Personal behavior, whether by action or inaction; the manner in which a person behaves. — **conduct**, *vb.*

"The word 'conduct' ... covers both acts and omissions. . . . In cases in which a man is able to show that his conduct, whether in the form of action or of inaction, was involuntary, he must not be held liable for any harmful result produced by it . . ." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 13 n.2, 24 (16th ed. 1952).

**assertive conduct**. *Evidence.* Nonverbal behavior that is intended to be a statement, such as pointing one's finger to identify a suspect in a police lineup. ● Assertive conduct is a statement under the hearsay rule, and thus it is not admissible unless a hearsay exception applies. Fed. R. Evid. 801(a)(2). — Also termed *implied assertion*.

**contumacious conduct** (kon-t[y]oo-may-shəs). A willful disobedience of a court order. See CONTUMACY.

**disorderly conduct**. Behavior that tends to disturb the public peace, offend public morals, or undermine public safety. See BREACH OF THE PEACE.

**disruptive conduct**. Disorderly conduct in the context of a governmental proceeding. See CONTEMPT.

**nonassertive conduct**. *Evidence.* Nonverbal behavior that is not intended to be a statement, such as fainting while being questioned as a suspect by a police officer. ● Nonassertive conduct is not a statement under the hearsay rule, and thus it is admissible. Fed. R. Evid. 801.

**outrageous conduct**. Conduct so extreme that it exceeds all reasonable bounds of human decency. See EMOTIONAL DISTRESS.

**unprofessional conduct**. Behavior that is immoral, unethical, or dishonorable, either generally or when judged by the standards of the actor's profession.

**conductio** (kən-dək-shee-oh). [Latin "a hiring"] *Roman law.* The act of hiring or leasing, usu. of property or services. See LOCATIO-CONDUCTIO.

**conductor** (kən-dək-tər or -tor). [Latin "one who hires"] *Roman law.* **1.** A person who leases property or hires the services of another. **2.** A person who engages himself to make a specific work.

**conductor operarum** (kən-dək-tər [or -tor] op-ə-rair-əm). [Latin "a hirer of labor"] *Roman law.* A person who engages another to perform specified work for another at a stated price; a contractor.

**conductus** (kən-dək-təs). [fr. Latin *conducere* "hired"] *Roman law.* A person or thing hired by a *conductor*.

**conduit taxation**. See *pass-through taxation* under TAXATION.

**confarreatio** (kən-far-ee-ay-shee-oh). [Latin] *Roman law.* A religious ceremony used to wed patricians. ● By this ceremony, the wife was brought into the husband's family and placed under the husband's protection (*manus*). See MANUS. Cf. COEMPTIO; USUS (2).

"Anciently, there were three modes in which marriage might be contracted according to Roman usage, one involving a religious solemnity, the other two the observance of certain secular formalities. By the religious marriage of *Confarreatio*; by the higher form of civil marriage, which was called *Coemptio*; and by the lower form, which was termed *Usus*, the Husband acquired a number of rights over the person and property of his wife, which were on the whole in excess of such as are conferred on him in any system of modern jurisprudence. But in what capacity did he acquire them? Not as *Husband*, but as *Father*. By the *Confarreatio*, *Coemptio*, and *Usus*, the woman passed in *manum viri*, that is, in law she became the *Daughter* of her husband. She was included in his *Patria Potestas*. . . . These three ancient forms of marriage fell, however, gradually into disuse, so that, at the most splendid period of Roman greatness, they had almost entirely given place to a fashion of wedlock — old apparently, but not hitherto considered reputable — which was founded on a modification of the lower form of civil marriage." Henry S. Maine, *Ancient Law* 149 (10th ed. 1884).

**confectio** (kən-fek-shee-oh). [Latin "a completing"] *Hist.* The act of making or executing a written instrument.

**confederacy**, *n.* **1.** A league of states or countries that have joined for mutual support or joint action; an alliance. **2.** An association of two or more persons, usu. for unlawful purposes; CONSPIRACY. **3.** The fact or condition of being an ally or accomplice.

**confederacy clause**. *Archaic.* A clause in a complaint charging that the defendant or de-

fendants have combined with others (who may yet be named as defendants) to defraud or deprive the plaintiff of personal rights.

**confederate**, *n.* An ally; esp., a coconspirator or accomplice.

**confederation**. A league or union of states or nations, each of which retains its sovereignty but also delegates some rights and powers to a central authority. Cf. **FEDERATION**.

**confederation of states**. A confederation involving a central government that exists and exercises certain powers but does not control all the external relations of the member states. • For international purposes there exists not one but a number of states. Cf. *federal state* under **STATE**.

**conferee** (kon-fər-ee). See **MANAGER** (2).

**conference committee**. See **COMMITTEE**.

**confess**, *vb.* To admit (an allegation) as true; to make a confession. — **confessor**, *n.*

**confessed judgment**. See **CONFESSION OF JUDGMENT**.

**confessing error**. A plea admitting to an assignment of error. See **ASSIGNMENT OF ERROR**.

**confessio in judicio** (kən-fesh-ee-oh in joo-dish-ee-oh). [Latin “confession in court”] *Hist.* An in-court confession.

**confession**, *n.* A criminal suspect’s acknowledgment of guilt, usu. in writing and often including details about the crime. Cf. **ADMISSION**; **STATEMENT**.

“A confession is an acknowledgment in express words, by the accused in a criminal case, of the truth of the main fact charged or of some essential part of it.” 3 John H. Wigmore, *Evidence in Trials at Common Law* § 821, at 308 (James H. Chadbourne ed., 4th rev. ed. 1970).

“The distinction between admissions in criminal cases and confessions by the accused is the distinction in effect between admissions of fact from which the guilt of the accused may be inferred by the jury and the express admission of guilt itself.” William P. Richardson, *The Law of Evidence* § 394, at 268 (3d ed. 1928).

**coerced confession**. A confession that is obtained by threats or force.

**direct confession**. A statement in which an accused person acknowledges having committed the crime.

**extrajudicial confession**. A confession made out of court, and not as a part of a judicial examination or investigation. • Such a confession must be corroborated by some other proof of the *corpus delicti*, or else it is insufficient to warrant a conviction. Cf. *judicial confession*.

**implied confession**. A confession in which the person does not plead guilty but invokes the mercy of the court and asks for a light sentence.

**indirect confession**. A confession that is inferred from the defendant’s conduct.

**interlocking confessions**. Confessions by two or more suspects whose statements are substantially the same and consistent concerning the elements of the crime. • Such confessions are admissible in a joint trial.

**involuntary confession**. A confession induced by the police or other law-enforcement authorities who make promises to, coerce, or deceive the suspect.

**judicial confession**. A plea of guilty or some other direct manifestation of guilt in court or in a judicial proceeding. Cf. *extrajudicial confession*.

**naked confession**. A confession unsupported by any evidence that a crime has been committed, and therefore usu. highly suspect.

**oral confession**. A confession that is not made in writing. • Oral confessions are admissible, though as a practical matter police interrogators prefer to take written or recorded confessions since juries typically view these as being more reliable.

**plenary confession** (plee-nə-ree or plen-ə-). A complete confession; one that is believed to be conclusive against the person who made it.

**confession and avoidance**. A plea in which a defendant admits allegations but pleads additional facts that deprive the admitted facts of an adverse legal effect. • For example, a plea of contributory negligence (before the advent of comparative negligence) was a confession and avoidance. — Also termed *avoidance*; *plea in confession and avoidance*; *plea of confession and avoidance*.

**confession of judgment**. 1. A person’s agreeing to the entry of judgment upon the occurrence or nonoccurrence of an event, such as making a payment. 2. A judgment taken against a debtor by the creditor, based on the debtor’s written consent. 3. The paper on which the person so agrees, before it is entered. — Also termed *confessed judgment*; *cog-*

*novit judgment; statement of confession.* See COGNOVIT. Cf. WARRANT OF ATTORNEY.

**confidence.** **1.** Assured expectation; firm trust; faith <the partner has confidence in the associate's work>. **2.** Reliance on another's discretion; a relation of trust <she took her coworker into her confidence>. **3.** A communication made in trust and not intended for public disclosure; specif., a communication protected by the attorney-client or similar privilege <the confidences between lawyer and client>. • Under the ABA Code of Professional Responsibility, a lawyer cannot reveal a client's confidence unless the client consents after full disclosure. DR 4-101. Cf. SECRET (2). — **confide**, *vb.*

**confidence game.** A means of obtaining money or property whereby a person intentionally misrepresents facts to gain the victim's trust so that the victim will transfer money or property to the person. — Also termed *con game*; *con*.

**confidential**, *adj.* **1.** (Of information) meant to be kept secret <confidential settlement terms>. **2.** (Of a relationship) characterized by trust and a willingness to confide in the other <a confidential relationship between attorney and client>.

**confidential communication.** See COMMUNICATION.

**confidentiality**, *n.* **1.** Secrecy; the state of having the dissemination of certain information restricted. **2.** The relation between lawyer and client or guardian and ward, or between spouses, with regard to the trust that is placed in the one by the other.

**confidential relationship.** See FIDUCIARY RELATIONSHIP.

**confidential source.** A person who provides information to a law-enforcement agency or to a journalist on the express or implied guarantee of anonymity. • Confidentiality is protected both under the Federal Freedom of Information Act (for disclosures to law enforcement) and under the First Amendment (for disclosures to journalists).

**confinee.** A person held in confinement.

**confinement**, *n.* The act of imprisoning or restraining someone; the state of being imprisoned or restrained <solitary confinement>. — **confine**, *vb.*

**confirm**, *vb.* **1.** To give formal approval to <confirm the bankruptcy plan>. **2.** To verify or corroborate <confirm that the order was signed>. **3.** To make firm or certain <the judgment confirmed the plaintiff's right to possession>.

**confirmatio** (kon-fər-may-shee-oh). [Latin "confirmation"] *Hist.* A confirmation of a voidable estate. See CONFIRMATION (4).

**confirmatio crescens** (kon-fər-may-shee-oh kres-enz). [Latin "growing confirmation"] A confirmation that enlarges an estate.

**confirmatio diminuens** (kon-fər-may-shee-oh di-min-yoo-enz). [Latin "diminishing confirmation"] A confirmation that decreases the services that a tenant must perform.

**confirmatio perficiens** (kon-fər-may-shee-oh pər-fish-ee-enz). [Latin "perfecting confirmation"] A confirmation that ratifies a wrongful and defeasible title, or makes a conditional estate absolute. See CONFIRMATION (4).

**Confirmatio Chartarum** (kon-fər-may-shee-oh kahr-tair-əm). [Latin "confirmation of the charters"] *Hist.* A declaration first made by Henry III in 1225 confirming the guarantees of Magna Carta and the Charter of the Forest. • It was not enrolled until 1297, when, during the reign of Edward I, it was enacted, thus introducing these charters into the common law. — Also spelled *Confirmatio Cartarum*.

"For lawyers, the really important date is neither 1215 nor 1225, when Henry's Charter took its final form, but 1297, when Edward I, in his *Inspeximus*, confirmed the Charter of 1225 and the Forest Charter, which was issued at the same time (*Confirmatio Chartarum*). The important element in the *Confirmatio* is the statement that the Charter might be pleaded in every royal court, either to support a claim or a defense. The Charter becomes in this way part of the law — the Common Law — which, in 1297, was already a definite concept although it was not yet quite the equivalent of the law of England. Until then, the political aspects of the Charter had been much the more important." Max Radin, *Handbook of Anglo-American Legal History* 156 (1936).

**confirmation**, *n.* **1.** The act of giving formal approval <Senate confirmation hearings>. **2.** The act of verifying or corroborating; a statement that verifies or corroborates <the journalist sought confirmation of the district attorney's remarks>. **3.** The act of ratifying a voidable estate; a type of conveyance in which a voidable estate is made certain or a particular estate is increased <deed of confirmation>. **4.** *Civil law.* A declaration that corrects a null provision of an obligation in order to make the provision enforceable. **5.** *Commercial law.* A bank's agreement to honor a letter of

credit issued by another bank. — **confirmatory** (kən-fər-mə-tor-ee), *adj.* Cf. RATIFICATION.

**silent confirmation.** A bank's confirmation based on the request of the beneficiary of the credit rather than the issuing bank.

**confirmation of sale.** A court's approval — usu. in the form of a docket entry or order — of the terms of a court-ordered sale.

**confirmation slip.** The form verifying a purchase or sale of a security, usu. mailed by the broker to the investor. — Also termed *transaction slip*; *sold note*.

**confirmatio perficiens.** See CONFIRMATIO.

**confirmavi** (kon-fər-may-vī). [Latin] *Hist.* I have confirmed. • The emphatic word in a deed of confirmation. See CONFIRMATION (3).

**confirmed letter of credit.** See LETTER OF CREDIT.

**confirnee** (kon-fər-mee). *Hist.* The grantee of a deed of confirmation. See CONFIRMATION (3).

**confirming bank.** See BANK.

**confirmor** (kən-fər-mər or -mor). *Hist.* The grantor of a deed of confirmation. See CONFIRMATION (3).

**confiscable** (kən-fis-kə-bəl or kon-fə-skə-bəl), *adj.* (Of property) liable to confiscation; subject to forfeiture <confiscable contraband>.

**confiscare** (kon-fi-skair-ee), *vb.* [Latin *con* "together" + *fiscus* "treasury"] *Hist.* To seize (property) for the government.

**confiscate** (kon-fə-skayt), *vb.* **1.** To appropriate (property) as forfeited to the government. **2.** To seize (property) by authority of law.

**confiscation** (kon-fi-skay-shən), *n.* **1.** Seizure of property for the public treasury. **2.** Seizure of property by actual or supposed authority. — **confiscatory** (kən-fis-kə-tor-ee), *adj.* — **confiscator** (kon-fə-skay-tər), *n.*

**confiscatory rate.** See RATE.

**confitens reus** (kon-fə-tenz ree-əs). [Latin "confessing accused"] *Hist.* An accused person who admits committing the offense.

**conflicting evidence.** See EVIDENCE.

**conflicting presumption.** See PRESUMPTION.

**conflict of authority.** **1.** A disagreement between two or more courts, often courts of coordinate jurisdiction, on a point of law. **2.** A disagreement between two or more treatise authors or other scholars, esp. in an area in which scholarly authority is paramount, such as public or private international law.

**conflict of interest.** **1.** A real or seeming incompatibility between one's private interests and one's public or fiduciary duties. **2.** A real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent.

**conflict of laws.** **1.** A difference between the laws of different states or countries in a case in which a transaction or occurrence central to the case has a connection to two or more jurisdictions. — Often shortened to *conflict*.

**conflict of personal laws.** **1.** A difference of laws between a jurisdiction's general laws and the laws of a racial or religious group, such as a conflict between federal law and American Indian tribal law. **2.** A difference between personal laws. See PERSONAL LAW.

**false conflict of laws.** **1.** A situation resembling but not embodying an actual conflict because the potentially applicable laws do not differ, because the laws' underlying policies have the same objective, or because one of the laws is not meant to apply to the case before the court. **2.** The situation in which, although a case has a territorial connection to two or more states whose laws conflict with one another, there is no real conflict because one state has a dominant interest in having its law chosen to govern the case — hence there is no real conflict. **3.** The situation in which the laws of all states that are relevant to the facts in dispute either are the same or would produce the same decision in the case. — Often shortened to *false conflict*.

**2.** The body of jurisprudence that undertakes to reconcile such differences or to decide what law is to govern in these situations; the principles of choice of law. — Often shortened (in sense 2) to *conflicts*. — Also termed (in international contexts) *private international law*; *international private law*.

"The phrase [conflict of laws], although inadequate, because it does not cover questions as to jurisdiction, or as to the execution of foreign judgments, is better than any other." Thomas E. Holland, *The Elements of Jurisprudence* 421 (13th ed. 1924).

**conflict out**, *vb.* To disqualify (a lawyer or judge) on the basis of a conflict of interest <the judge was conflicted out of the case by his earlier representation of one of the litigants>.

**conformed copy**. See COPY.

**conforming**, *adj.* Being in accordance with contractual obligations <conforming goods> <conforming conduct>. UCC § 2-102(a)(8).

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

**Conformity Act**. *Hist.* An 1872 federal statute providing that the practice and procedure in federal district courts (other than in equity and admiralty matters) must conform to the practice and procedure used by the state courts for like cases. • The Federal Rules of Civil Procedure (effective in 1938) superseded the Conformity Act.

"[E]ven where there was conformity, it was to be 'as near as may be,' and this was understood by the Court to make the Conformity Act 'to some extent only directory and advisory' and to permit the federal judge to disregard a state practice that would, in his view, 'unwisely encumber the administration of the law, or tend to defeat the ends of justice.' With all these exceptions to conformity, and with the judge left somewhat at large to decide when he would conform, it is hardly surprising that the result was, in the view of a distinguished commentator, 'a mixture of conflicting decisions, which have served to cloud the whole subject in hideous confusion and shifting certainty.'" Charles Alan Wright, *The Law of Federal Courts* § 61, at 425-26 (5th ed. 1994) (quoting *Indianapolis & St. Louis Ry. Co. v. Horst*, 93 U.S. 291, 300-01 (1876)).

**conformity hearing**. **1.** A court-ordered hearing to determine whether the judgment or decree prepared by the prevailing party conforms to the decision of the court. **2.** A hearing before a federal agency or department to determine whether a state-submitted plan complies with the requirements of federal law. • This type of hearing is common in cases involving social services.

**Confrontation Clause**. The Sixth Amendment provision guaranteeing a criminal defendant's right to directly confront an accusing witness and to cross-examine that witness.

**confusio** (kən-fyoo-zhee-oh). [fr. Latin *confundere* "to pour together"] **1.** *Roman law*. An

inseparable mixture of liquid property belonging to different owners. Cf. COMMIXTIO. **2.** *Scots law*. A doctrine whereby a lesser right is absorbed into a greater right and is thus extinguished.

**confusion**. **1.** CONFUSION OF GOODS. **2.** MERGER (8).

"Confusion is the intermingling of two or more pieces of personal property so that the property rights in each can no longer be distinguished. Thereafter, no specific identification or separation of the formerly separate chattel is possible. Such an intermingling occurs most often with fungible goods like gas, oil, grain, mineral ore, or unmarked timber." Barlow Burke, *Personal Property in a Nutshell* 379 (2d ed. 1993).

**confusion of boundaries**. *Hist.* The branch of equity that deals with the settlement of disputed or uncertain boundaries.

**confusion of debts**. See MERGER (8).

**confusion of goods**. The mixture of things of the same nature but belonging to different owners so that the identification of the things is no longer possible. • If this occurs by common consent of the owners, they are owners in common, but if the mixture is done willfully by one person alone, that person loses all right in the property unless (1) the goods can be distinguished and separated among owners, or (2) the mixing person's goods are equal in value to the goods with which they were intermingled. *Confusion of goods* combines the civil-law concepts of *confusio* (a mixture of liquids) and *commixtio* (a mixture of dry items). — Also termed *intermixture of goods*.

**confusion of rights**. See MERGER (8).

**confusion of titles**. *Civil law*. The merger of two titles to the same land in the same person. Cf. MERGER (8).

**con game**. See CONFIDENCE GAME.

**congeable** (kon-jee-ə-bəl), *adj.* [fr. French *congé* "permission"] *Hist.* Lawful; permissible.

**congé d'accorder** (kawn-zhay da-kor-day). [Law French] *Hist.* Leave to accord. • Courts used this phrase in fictitious land-title lawsuits to grant the defendant permission to agree with the plaintiff's allegations. See FINE (1).

**congé d'emparrer** (kawn-zhay dawm-pahr-lay). [French] *Hist.* Leave to imparl. • This phrase was formerly used by a defendant to

request leave of court for additional time to file a responsive pleading. See IMPARLANCE.

**congeries** (kən-jeer-eez or kən-jə-reez). A collection or aggregation <a congeries of rights>.

**conglomerate** (kən-glom-ər-it), *n.* A corporation that owns unrelated enterprises in a wide variety of industries. — **conglomerate** (kən-glom-ə-rayt), *vb.* — **conglomerate** (kən-glom-ər-it), *adj.*

**conglomerate merger.** See MERGER.

**Congress, n.** 1. A formal meeting of delegates or representatives. 2. (*cap.*) The legislative body of the federal government, created under U.S. Const. art. I, § 1 and consisting of the Senate and the House of Representatives. — **Congressional, adj.**

**Congressional committee.** See COMMITTEE.

**Congressional district.** See DISTRICT.

**Congressional Globe.** A privately issued record of the proceedings in Congress. • The *Globe* was the sole record of congressional speeches and statements from 1833 until the publicly printed *Congressional Record* appeared in 1873.

**Congressional immunity.** See IMMUNITY (1).

**Congressional intent.** See LEGISLATIVE INTENT.

**Congressional power.** See POWER.

**Congressional Record.** The published record of the daily proceedings in the U.S. Senate and House of Representatives. • Members of Congress are allowed to edit their speeches before printing, and they may insert material never actually spoken by obtaining permission from their respective houses to print or extend their remarks.

**Congressional survey.** See *government survey* under SURVEY.

**conjectio** (kən-jek-shee-oh), *vb.* [Latin “to infer”] *Roman law.* (Of a court) to draw a conclusion from evidence; to infer a fact from the evidence presented.

**conjectio causae** (kən-jek-shee-oh kaw-zee). [Latin “putting together of a cause”] *Roman*

*law.* A summary presentation of a case before the court by the parties or their advocates.

**conjectural choice, rule of.** The principle that no basis for recovery is presented when all theories of causation rest only on conjecture.

**conjecture** (kən-jek-chər), *n.* A guess; supposition; surmise. — **conjecture** (kən-jek-chər), *vb.* — **conjectural** (kən-jek-chər-əl), *adj.*

**conjoint** (kən-joynt). A person connected with another in a joint interest or obligation, such as a cotenant or spouse.

**conjoint robbery.** See ROBBERY.

**conjoint will.** See *joint will* under WILL.

**conjudex** (kən-joo-deks). [fr. Latin *con* “together” + *judex* “judge”] *Hist.* An associate judge.

**conjugal** (kən-jə-gəl), *adj.* Of or relating to the married state, often with an implied emphasis on sexual relations between spouses <the prisoner was allowed a private bed for conjugal visits>.

**conjugal rights.** The rights and privileges arising from the marriage relationship, including the mutual rights of companionship, support, and sexual relations. • Loss of conjugal rights amounts to loss of consortium. See CONSORTIUM.

**conjugium** (kən-joo-jee-əm), *n.* [fr. Latin *con* “together” + *jugum* “yoke”] *Roman law.* The condition of being married.

**conjuncta** (kən-jəŋk-tə). [Latin] *Civil law.* Things (usu. words or phrases) that are joined together. Cf. DISJUNCTA.

**conjunctim** (kən-jəŋk-tim), *adv.* [Latin] *Roman law.* Conjointly. • Heirs instituted *conjunctim*, for example, became coheirs with equal shares. Cf. DISJUNCTIM.

**conjunctim et divisim** (kən-jəŋk-timet də-vi-zim or -sim). [Latin] *Hist.* Jointly and severally.

**conjunctive denial.** See DENIAL.

**conjuratio** (kən-juu-ray-shee-oh). [Latin] CONJURATION.



**conjunction** (kon-jə-ray-shən). *Hist.* 1. A plot or compact made by persons who swear to each other to do something that will result in public harm. 2. The offense of attempting a conference with evil spirits to discover some secret or effect some purpose; witchcraft; sorcery.

“*Coniuration (coniuratio)* is the very French word drawne from the latine, which as it is compounded of (*con & iuro*) so it signifieth a compact or plot, made by men combining themselves together by oath or promise, to do some publique harme. But in our common lawe, it is especially used for such as have personall conference with the devill or evil spirit, to know any secret, or to effect any purpose. And the difference that I have observed (how truly let those judge that be beter skilled in these maters) betweene coniuration and witchcraft, is because the one seemeth, by prayers and invocation of Gods powerfull names, to compell the devill, to say or doe what he commandeth him: the other dealeth rather by a friendly and voluntarie conference or agreement betweene him or her and the devill or familiar, to have her or his desires and turnes served in lieu of blood, or other gift offered unto him, especially of his or her soule.” John Cowell, *The Interpreter* (1607).

**conjurator** (kon-jə-ray-tər). *Hist.* A person who swears an oath with others; a coconspirator.

**connecting factors.** *Conflict of laws.* Factual or legal circumstances that help determine the choice of law by linking an action or individual with a state or jurisdiction. • An example of a connecting factor is a party’s domicile within a state.

**connecting-up doctrine.** The rule allowing evidence to be admitted on condition that the party offering it will adduce other evidence to show relevance.

**connexity** (kə-nek-sə-tee). Connectedness; the quality of being connected. • In some states, *connexity* expresses the relationship that must exist between a foreign party (such as a corporation) and the state for a plaintiff to maintain personal jurisdiction over the party; generally, the claim must arise from a transaction connected with the activities of the party in the state.

**connivance** (kə-ni-vənts), *n.* 1. The ignoring of a wrongdoer’s illegal conduct; esp., a secret or indirect condonation of another’s unlawful act. 2. *Family law.* In a divorce action, a defense that points to the plaintiff’s corrupt consent, implied or express, to the action being complained of.

**connive** (kə-nɪv), *vb.* 1. To knowingly overlook another’s wrongdoing. 2. Loosely, to conspire.

**connubium** (kə-n[y]oo-bee-əm), *n.* [fr. Latin *con* “together” + *nubere* “to marry”] *Roman law.* 1. The legal capacity to wed. 2. The collection of rights that accompany a marriage between persons who have the capacity to marry. — Also spelled *conubium*. — Also termed *jus connubii*. See CONCUBINATUS; JUSTAE NUPTIAE.

“The word *connubium* denotes properly the right to intermarry with Roman citizens; and hence to contract a Roman marriage, according to the peculiar forms and with the peculiar incidents and effects of marriage between Roman citizens. Chief among these incidents or effects was the *patria potestas*, or life-long control of the father over his children, which, as we shall soon see, was among the most remarkable peculiarities of the Roman system. In general, *connubium* embraces the peculiar rights of Roman citizens, so far as they pertain to family relations.” James Hadley, *Introduction to Roman Law* 116 (1881).

**conqueror**, *n.* [fr. Law French *conquerir* “to acquire”] *Hist.* The first person who acquired land by purchase; one who first brought an estate into a family. See CONQUEST (2); PURCHASE (2).

**conqueror**, *vb.* [Latin] To complain. • *Conqueror* served as a declaratory statement in petitions, often by introducing the complaint: *Conqueror quod*. . . . (“I complain that. . .”).

**conquest.** 1. *Int’l law.* An act of force by which, during a war, a belligerent occupies territory within an enemy country with the intention of extending its sovereignty over that territory. • That intention is usu. explained in a proclamation or some other legal act. 2. *Hist.* The acquisition of land by any method other than descent, esp. by purchase. 3. *Hist.* The land so acquired. Cf. PURCHASE (2).

“What we call *purchase*, *perquisitio*, the feudists called *conquest*, *conquaestus*, or *conquisitio*: both denoting any means of acquiring an estate out of the common course of inheritance. And this is still the proper phrase in the law of Scotland: as it was, among the Norman jurists, who stiled the first purchaser (that is, he who first brought the estate into the family which at present owns it) the conqueror or *conquereur*. Which seems to be all that was meant by the appellation which was given to William the Norman, when his manner of ascending the throne of England was, in his own and his successors’ charters, and by the historians of the times, entitled *conquaestus*, and himself *conquaestor* or *conquisitor*; signifying, that he was the first of his family who acquired the crown of England, and from whom therefore all future claims by descent must be derived: though now, from our disuse of the feudal sense of the word, together with the reflection on his forcible method of acquisition, we are apt to annex the idea of *victory* to this name of *conquest* or *conquisition*; a title which, however just with regard to the *crown*, the conqueror never pretended with

regard to the *realm* of England; nor, in fact, ever had." 2 William Blackstone, *Commentaries on the Laws of England* 242-43 (1766).

**conquisitio** (kən- or kəng-kwi-zish-ee-oh). [Latin "search"] See CONQUEST (2). — Also termed *conquisition*.

**conquisitor** (kən- or kəng-kwiz-ə-tər). [Latin "one who searches"] See CONQUEROR (1).

**consanguine brothers.** See BROTHERS.

**consanguineo.** See COSINAGE.

**consanguineus** (kon-sang-gwin-ee-əs), *n.* [Latin "related by blood"] *Hist.* A person related to another by blood; a consanguineous relative.

**consanguineus frater** (kon-sang-gwin-ee-əs fray-tər). [Latin "blood brother"] *Hist.* A half-brother by the same father.

**consanguineus uterinus** (kon-sang-gwin-ee-əs yoo-tə-rī-nəs). [Latin "blood relative by the uterus"] *Hist.* A half-brother by the same mother.

**consanguinitas** (kon-sang-gwin-ə-tas). [Latin "relationship by blood"] *Roman law.* The relationship between siblings who have the same father.

**consanguinity** (kon-sang-gwin-ə-tee), *n.* The relationship of persons of the same blood or origin. — **consanguineous**, *adj.* See *prohibited degree* under DEGREE. Cf. AFFINITY.

**collateral consanguinity.** The relationship between persons who have the same ancestor but do not descend or ascend from one another (for example, uncle and nephew, etc.).

**lineal consanguinity.** The relationship between persons who are directly descended or ascended from one another (for example, mother and daughter, great-grandfather and grandson, etc.).

**conscience.** 1. The moral sense of right or wrong; esp., a moral sense applied to one's own judgment and actions. 2. In law, the moral rule that requires justice and honest dealings between people.

**conscience of the court.** 1. The court's equitable power to decide issues based on notions of fairness and justice. 2. A standard applied by the court in deciding whether the parties or a jury has acted within limits. ● Thus, in some

cases, a jury's award of damages is upset because it is said to "shock the conscience of the court."

**conscientious objector.** A person who for moral or religious reasons is opposed to participating in any war, and who is therefore deferred from military conscription but is subject to serving in civil work for the nation's health, safety, or interest. Cf. PACIFIST.

**conscionable** (kon-shə-nə-bəl), *adj.* Conforming with good conscience; just and reasonable <a conscionable bargain>. — **conscionableness**, **conscionability**, *n.* Cf. UNCONSCIONABLE.

**consciously parallel.** *Antitrust.* Of, relating to, or characterizing the conduct of a party who has knowledge of a competitor's action (such as raising prices) and who makes an independent decision to take the same action. ● In some cases this is viewed as evidence of a conspiracy.

**conscious parallelism.** *Antitrust.* An act of two or more businesses intentionally engaging in monopolistic conduct.

**conscriptio.** See DRAFT (2).

**consecratio capitis** (kon-sə-kray-shee-oh kap-i-tis). [Latin "consecrating the body"] *Roman law.* The act of declaring a wrongdoer an outlaw who could be killed on sight; the punishing of criminal behavior by relegating an offender to the gods, i.e., leaving the person outside divine and human protection. See SACER; OUTLAWRY.

**consecutive sentences.** See SENTENCE.

**consecutive tortfeasors.** See TORTFEASOR.

**consensual** (kən-sen-shoo-əl), *adj.* Having, expressing, or occurring with full consent. — Also termed *consentaneous*; *consentient*.

**consensual contract.** See CONTRACT.

**consensual crime.** See *victimless crime* under CRIME.

**consensual marriage.** See MARRIAGE (1).

**consensus ad idem** (kən-sen-səs ad ī-dem). [Latin] An agreement of parties to the same thing; a meeting of minds. — Also termed *consensus in idem*.

"Agreement between the parties or *consensus in idem* is the basis of contractual obligation. . . ." 2 David M. Walker, *Principles of Scottish Private Law* 11 (4th ed. 1988).

**consent, n.** Agreement, approval, or permission as to some act or purpose, esp. given voluntarily by a competent person. • Consent is an affirmative defense to assault, battery, and related torts, as well as such torts as defamation, invasion of privacy, conversion, and trespass. — **consent, vb.** — **consensual, adj.**

"The consent [to a contract] is none the less 'genuine' and 'real,' even though it be induced by fraud, mistake, or duress. Consent may be induced by a mistaken hope of gain or a mistaken estimate of value or by the lie of a third person, and yet there is a contract and we do not doubt the 'reality of the consent.' Fraud, mistake, and duress are merely collateral operative facts that co-exist with the expressions of consent and have a very important effect upon the resulting legal relations." William R. Anson, *Principles of the Law of Contract* 199 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919).

**express consent.** Consent that is clearly and unmistakably stated.

**implied consent.** Consent inferred from one's conduct rather than from one's direct expression.

**informed consent.** 1. A person's agreement to allow something to happen, made with full knowledge of the risks involved and the alternatives. 2. A patient's knowing choice about treatment or a procedure, made after a physician or other healthcare provider discloses whatever information a reasonably prudent provider in the medical community would provide to a patient regarding the risks involved in the proposed treatment.

**consentaneous, adj.** See CONSENSUAL.

**consent calendar.** 1. A schedule of informal hearings involving a child, usu. arranged when it appears that the child's best interests will be served, if the case is heard informally. • The child and all interested parties must first consent before the case goes on the consent calendar. 2. A list of legislative bills that, having no anticipated objection, may be enacted into law without a vote. • The term also applies to a similar list maintained by an administrative agency. — Also termed (in sense 2) *unanimous-consent calendar*.

**consent decree.** See DECREE.

**consent dividend.** See DIVIDEND.

**consentient, adj.** See CONSENSUAL.

**consent judgment.** See *agreed judgment* under JUDGMENT.

**consent jurisdiction.** See JURISDICTION.

**consent order.** See *consent decree* under DECREE.

**consent search.** See SEARCH.

**consent to be sued.** Agreement in advance to be sued in a particular forum. See COGNOVIT CLAUSE.

**consent to notice.** A provision stating that notice required by a document may be given beforehand or to a designated person.

**consequential contempt.** See CONTEMPT.

**consequential damages.** See DAMAGES.

**consequential economic loss.** See ECONOMIC LOSS.

**consequential loss.** See LOSS.

**conservation.** *Environmental law.* The supervision, management, and maintenance of natural resources; the protection, improvement, and use of natural resources in a way that ensures the highest social as well as economic benefits.

**conservator** (kən-sər-və-tər or kən-sər-vay-tər), *n.* A guardian, protector, or preserver. — **conservatorship, n.**

**managing conservator.** 1. A person appointed by a court to manage the estate or affairs of someone who is legally incapable of doing so; GUARDIAN (1). 2. *Family law.* In the child-custody laws of some states, the parent who has primary custody of a child, with the right to establish the child's primary domicile. See CUSTODY.

**possessory conservator.** *Family law.* In the child-custody laws of some states, the parent who has visitation rights, but not the primary custody rights, of the child.

**conservator of the peace.** See PEACE OFFICER.

**consideration, n.** 1. Something of value (such as an act, a forbearance, or a return promise) received by a promisor from a promisee. • Consideration, or a substitute such as promissory estoppel, is necessary for an agreement to

be enforceable. **2. Hist.** A court's judgment. — Also termed (in Roman law) *consideratio*.

"A 'consideration' has been explained to be 'any act of the plaintiff from which the defendant, or a stranger, derives a benefit or advantage, or any labour, detriment, or inconvenience sustained by the plaintiff, however small the detriment or inconvenience may be, if such act is performed, or inconvenience suffered by the plaintiff with the assent, express or implied, of the defendant, or, in the language of pleading, at the special instance and request of the defendant.'" Thomas E. Holland, *The Elements of Jurisprudence* 286 (13th ed. 1924).

"A consideration in its widest sense is the reason, motive, or inducement, by which a man is moved to bind himself by an agreement. It is not for nothing that he consents to impose an obligation upon himself, or to abandon or transfer a right. It is in *consideration* of such and such a fact that he agrees to bear new burdens or to forgo the benefits which the law already allows him." John Salmond, *Jurisprudence* 359 (Glanville L. Williams ed., 10th ed. 1947).

"The word 'consideration' has been around for a long time, so it is tempting to think we have had a theory of consideration for a long time. In fact until the nineteenth century the word never acquired any particular meaning or stood for any theory." Grant Gilmore, *The Death of Contract* 18 (1974).

**adequate consideration.** Consideration that is fair and reasonable under the circumstances of the agreement. Cf. *sufficient consideration*.

"It is helpful to observe precision in use of vocabulary when analyzing consideration issues. Distinguish carefully between 'adequate' consideration and 'sufficient' consideration. 'Adequacy' refers to whether there was a fair bargain involving an exchange of equal values. 'Sufficiency' refers to whether the consideration is legally sufficient to enforce a promise, and this requires only that there be some legal detriment incurred as a bargained exchange for the other party's promise." Claude Rohwer & Gordon D. Schaber, *Contracts in a Nutshell* 83 (4th ed. 1997).

**and other good and valuable consideration.** See *other consideration*.

**concurrent consideration.** Consideration arising at the same time as other consideration, or where the promises are simultaneous.

**continuing consideration.** An act or performance extending over time.

**due consideration.** See *sufficient consideration*.

**executed consideration.** A consideration that has been wholly given; past consideration as opposed to present or future consideration.

**executory consideration** (eg-zek-yə-tor-ee). A consideration that is to be given only after formation of the contract; present or future

consideration as opposed to past consideration.

**express consideration.** Consideration that is specifically stated in an instrument.

**fair consideration.** 1. Consideration that is equal in value to the thing being exchanged; consideration given for property or for an obligation in either of the following circumstances: (1) when given in good faith as an exchange for the property or obligation, or (2) when the property or obligation is received in good faith to secure a present advance or prior debt in an amount not disproportionately small as compared with the value of the property or obligation obtained. — Also termed *fair and valuable consideration*. 2. Consideration that is honest, reasonable, and free from suspicion, but not strictly adequate or full.

**future consideration.** 1. Consideration to be given in the future; esp., consideration that is due after the other party's performance. 2. Consideration that is a series of performances, some of which will occur after the other party's performance. 3. Consideration the specifics of which have not been agreed on between the parties. Cf. *past consideration*.

**good and valuable consideration.** See *legal consideration*.

**good consideration.** 1. Consideration based on natural love or affection or on moral duty <good consideration, being based purely on affection, does not amount to valuable consideration>. • Such consideration is usu. not valid for the enforcement of a contract. — Also termed *meritorious consideration*; *moral consideration*.

"A good consideration is that of *blood*, or the natural love and affection which a person has to his children, or any of his relatives. . . . A good consideration is not of itself sufficient to support a promise, any more than the moral obligation which arises from a man's passing his word; neither will the two together make a binding contract; thus a promise by a father to make a gift to his child will not be enforced against him. The consideration of natural love and affection is indeed good for so little in law, that it is not easy to see why it should be called a *good consideration* . . ." Joshua Williams, *Principles of the Law of Personal Property* 95-96 (11th ed. 1881).

"Stated simply, good or meritorious consideration is nothing more than motive or moral obligation." 3 Richard A. Lord, *Williston on Contracts* § 7:16, at 325-26 (4th ed. 1992).

2. Loosely, valuable consideration; consideration that is adequate to support the bargained-for exchange between the parties <his agreement to pay the offering price was good consideration for the sale>.

**gratuitous consideration** (grə-t[y]oo-i-təs). Consideration that, not being founded on any detriment to the party who gives it, will not support a contract; a performance for which a party was already obligated.

**illegal consideration.** Consideration that is contrary to the law or public policy, or prejudicial to the public interest. • Such consideration does not support a contract.

**immoral consideration.** A consideration that so offends societal norms as to be invalid. • A contract supported by immoral consideration is usu. voidable or unenforceable.

**implied consideration.** Consideration that is inferred by law from the parties' actions.

**impossible consideration.** Consideration stemming from a promise or performance that cannot be fulfilled.

**inadequate consideration.** Consideration that does not involve an exchange of equal values.

**invented consideration.** Fictional consideration created by a court to prevent the invalidation of a contract that lacks consideration.

**legally sufficient consideration.** See *sufficient consideration*.

**meritorious consideration.** See *good consideration*.

**moral consideration.** See *good consideration*.

**nominal consideration.** Consideration that is so insignificant as to bear no relationship to the value of what is being exchanged (e.g., \$10 for a piece of real estate). • Such consideration can be valid, since courts do not ordinarily examine the adequacy of consideration (although they do often inquire into such issues as fraud and duress). — Also termed *peppercorn*.

"Offers made in consideration of one dollar paid or promised are often irrevocable . . . . The irrevocability of an offer may be worth much or little to the offeree, and the courts do not ordinarily inquire into the adequacy of the consideration bargained for. Hence a comparatively small payment may furnish consideration for the irrevocability of an offer proposing a transaction involving much larger sums. But gross disproportion between the payment and the value of the option commonly indicates that the payment was not in fact bargained for but was a mere formality or pretense. In such a case there is no consideration . . . . Nevertheless, such a nominal consideration is regularly held sufficient to support a short-time option proposing an exchange on fair terms. The fact that the option is an appropriate preliminary step in the conclusion of a socially useful transaction provides a sufficient substantive basis for enforcement, and a signed writing taking a form appropriate to a bargain satisfies the desiderata of form. In the absence of statute,

however, the bargaining form is essential: a payment of one dollar by each party to the other is so obviously not a bargaining transaction that it does not provide even the form of an exchange." Restatement (Second) of Contracts § 87 cmt. b (1981).

**other consideration.** Additional things of value to be provided under the terms of a contract, usu. unspecified in the contract, deed, or bill of sale, because they are too numerous to conveniently list, or to avoid public knowledge of the total amount of consideration. — Also termed *other good and valuable consideration*.

**past consideration.** An act done or a promise given by a promisee before making a promise sought to be enforced. • Past consideration is not consideration for the new promise because it has not been given in exchange for this promise (although exceptions exist for new promises to pay debts barred by limitations or debts discharged in bankruptcy). See *PREEXISTING-DUTY RULE*. Cf. *future consideration*.

"A past consideration is, in effect, no consideration at all; that is to say, it confers no benefit on the promisor, and involves no detriment to the promisee in respect of his promise. It is some act or forbearance in time past by which a man has benefited without thereby incurring any legal liability." William R. Anson, *Principles of the Law of Contract* 149 (Arthur L. Corbin ed., 3d Am. ed. 1919).

**sufficient consideration.** Enough consideration — as a matter of law — to support a contract. — Also termed *due consideration*; *legally sufficient consideration*. Cf. *adequate consideration*.

**valuable consideration.** Consideration that is valid under the law; consideration that either confers a pecuniarily measurable benefit on one party or imposes a pecuniarily measurable detriment on the other. — Also termed *good and valuable consideration*; *legal consideration*.

"By a valuable consideration is meant something of value given or promised by one party in exchange for the promise of the other. . . . The thing thus given by way of consideration must be of some *value*. That is to say, it must be material to the interests of one or the other or both of the parties. It must either involve some gain or benefit to the promisor by way of recompense for the burden of his promise, or it must involve some loss or disadvantage to the promisee for which the benefit of the promise is a recompense." John Salmond, *Jurisprudence* 360 (Glanville L. Williams ed., 10th ed. 1947).

**consideration, failure of.** See *FAILURE OF CONSIDERATION*.

**consideration, want of.** See *WANT OF CONSIDERATION*.

**consideratum est per curiam** (kən-sid-ə-ray-təm est pər kyoor-ee-əm). [Latin] *Hist.* It is considered by the court. • This was the formal language preceding the judgment of a common-law court. Cf. IDEO CONSIDERATUM EST.

"A judgment is the decision or sentence of the law, given by a court of justice, as the result of proceedings instituted therein for the redress of an injury. The language of the judgment is not, therefore, that 'it is decreed,' or 'resolved,' by the court, but that 'it is considered by the court,' *consideratum est per curiam*, that the plaintiff recover his debt, etc. In the early writers, *considerare*, *consideratio* always means the judgment of a court." 1 John Bouvier, *Bouvier's Law Dictionary* 619 (8th ed. 1914).

**consign** (kən-sɪn), *vb.* **1.** To transfer to another's custody or charge. **2.** To give (goods) to a carrier for delivery to a designated recipient. **3.** To give (merchandise or the like) to another to sell, usu. with the understanding that the seller will pay the owner for the goods from the proceeds.

**consignee** (kən-si-nee or kən-). One to whom goods are consigned.

**consignment** (kən-sɪn-mənt). **1.** The act of consigning goods for custody or sale. **2.** A quantity of goods delivered by this act, esp. in a single shipment. **3.** Under the UCC, a transaction in which a person delivers goods to a merchant for the purpose of sale, and (1) the merchant deals in goods of that kind under a name other than the name of the person making delivery, is not an auctioneer, and is not generally known by its creditor to be substantially engaged in selling others' goods, (2) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery, (3) the goods are not consumer goods immediately before delivery, and (4) the transaction does not create a security interest that secures an obligation. UCC § 9-102(a)(13).

**consignment sale.** See SALE.

**consignor** (kən-si-nər or kən-si-nor). One who dispatches goods to another on consignment.

**consiliarius** (kən-sil-ee-air-ee-əs). [fr. Latin *consilium* "advice"] **1.** *Roman law.* A person who advises a magistrate; one who sits with the judge and assists in deciding cases. See CONCILIUM (1). **2.** *Hist.* A counselor learned in law. See APOCRISARIUS.

**consimili casu** (kən-sim-ə-ll kay-s[y]oo), *n.* [Latin "in a like case"] *Hist.* A writ of entry allowing the holder of a reversionary interest in

land to sue for the return of land alienated by a life tenant or a tenant by the curtesy. • This writ originated in the Statute of Westminster 2 (13 Edw. I) ch. 24 (1285), which expanded the writs available to litigants by requiring the Chancery to issue a writ for any situation that called for a writ similar to one that had previously issued *consimili casu* ("in a like case"). Specifically, the statute provided (in Latin) that "as often as it shall happen in chancery that in one case a writ is found, and in a like case [*in consimili casu*], falling under the same right, and requiring like remedy, no writ is to be found, the clerks of chancery shall agree in making a writ . . ." Many other writs were framed under Westminster 2, but this particular writ's close association with the statute led to its taking the generic name. See ACTIONES NOMINATAE.

**Consistorium** (kən-sis-tor-ee-əm). [Latin] *Roman law.* An imperial council that functioned both as a general council of state and as a supreme court of law.

**consistory court** (kən-sis-tər-ee). *Eccles. law.* In England, a diocesan court exercising jurisdiction over church property, such as a cemetery, and other ecclesiastical matters. • Consistory courts are presided over by the bishop's chancellor or the chancellor's commissary. In some instances, appeals may be taken to the High Court of Justice. Cf. BISHOP'S COURT.

**consobrini** (kən-sə-brɪ-nɪ). [Latin] *Roman law.* First cousins; children of brothers or sisters.

**consol** (kən-sol or kən-sol). See *annuity bond* under BOND (3).

**Consolato del Mare** (kawn-soh-lah-toh del mah-ray). [Italian "consulate of the sea"] *Hist. Maritime law.* An influential collection of European maritime customs, referred to by commercial judges (*consuls*) in ports of the kingdom of Aragon and other Mediterranean maritime towns. • The *Consolato del Mare* was published in Barcelona in the 15th century and soon became one of the leading maritime codes of Europe.

**consolidate**, *vb.* **1.** To combine or unify into one mass or body. **2.** *Corporations.* To unite (two or more corporations) to create one new corporation. **3.** *Civil procedure.* To combine, through court order, two or more actions involving the same parties or issues into a single action ending in a single judgment or, sometimes, in separate judgments. Cf. MERGER (7).

**consolidated appeal.** See APPEAL.

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

**consolidated financial statement.** See FINANCIAL STATEMENT.

**consolidated laws.** See CODE (1).

**consolidated mortgage.** See MORTGAGE.

**Consolidated Omnibus Budget Reconciliation Act of 1985.** A federal statute that requires employers who offer group health coverage to their employees to continue to do so for a prescribed period (usu. 18 to 36 months) after employment has terminated so that the employee can continue to benefit from group health rates until becoming a member of another health-insurance plan. • The statute temporarily continues group coverage for a person no longer entitled to receive it, such as a terminated employee or an overage dependent. — Abbr. COBRA.

“In the absence of any type of statutory vesting provision (which would render benefits nonforfeitable), terminated employees were generally left without health care coverage while they were looking for another job. While some state insurance laws provide for limited continuation coverage or individual conversion options, these alternatives were not available in all states . . . . Thus, COBRA was designed to fill this void, by providing a statutorily mandated mechanism for enabling terminated employees (and their eligible family members) to continue to have access to group health coverage at group rates until they can get another job or otherwise arrange for replacement coverage.” I.M. Golub et al., *COBRA Handbook* § 1.1, at 1-2 (1994).

**consolidated return.** See TAX RETURN.

**consolidated school district.** See SCHOOL DISTRICT.

**consolidated security.** See SECURITY.

**consolidating statute.** See STATUTE.

**consolidation, n.** 1. The act or process of uniting; the state of being united. 2. *Corporations.* The unification of two or more corporations by dissolving the existing ones and creating a single new corporation. — Also termed *consolidation of corporations*. Cf. MERGER (7). 3. *Corporations. Archaic.* A union of the stock, property, or franchises of two or more companies whereby the conduct of their affairs is permanently — or for a long period — put under one management, whether the agreement between

them is by lease, sale, or other form of contract, and whether the effect is the dissolution of one, both, or neither of the companies. 4. *Civil procedure.* The court-ordered unification of two or more actions, involving the same parties and issues, into a single action resulting in a single judgment or, sometimes, in separate judgments. — Also termed *consolidation of actions*. Cf. JOINDER. — **consolidate, vb.** — **consolidatory** (kən-sol-ə-day-tər-ee), *adj.*

**procedural consolidation.** See JOINT ADMINISTRATION.

**substantive consolidation.** *Bankruptcy.* The merger of two or more bankruptcy cases, usu. pending against the same debtor or related debtors, into one estate for purposes of distributing the assets, usu. resulting in the two estates sharing assets and liabilities, and in the extinguishment of duplicate claims and claims between the debtors.

**consolidation loan.** See LOAN.

**consolidation of actions.** See CONSOLIDATION.

**consolidation of corporations.** See CONSOLIDATION.

**consonant statement.** See STATEMENT.

**consortium** (kən-sor-shee-əm). 1. The benefits that one person, esp. a spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, and (between spouses) sexual relations <a claim for loss of consortium>. See LOSS OF CONSORTIUM.

**filial consortium** (fil-ee-əl). A child's society, affection, and companionship given to a parent.

**parental consortium.** A parent's society, affection, and companionship given to a child.

**spousal consortium.** A spouse's society, affection, and companionship given to the other spouse.

2. *Hist.* The services of a wife or daughter, the loss of which gives rise to a cause of action. • A husband could, for example, bring an action against a person who had injured his wife, “whereby he lost the help or companionship (of his wife)” (*per quod consortium amisit*). 3. A group of companies that join or associate in an enterprise <several high-tech businesses formed a consortium to create a new supercomputer>. 4. *Roman law.* A community of undivided goods existing among coheirs after the death of the head of their family (*paterfamilias*). Pl. **consortiums, consortia.**

**consortship** (kon-sort-ship). *Maritime law*. An agreement by which salvors agree to work together to salvage wrecks, the recovery being apportioned among the salvors. • Consortships reduce interference from other salvors, and help to prevent collisions at sea between operators attempting to salvage the same wreck.

**conspicuous**, *adj.* (Of a term or clause) clearly visible or obvious. • Whether a printed clause is conspicuous as a matter of law usu. depends on the size and style of the typeface. Under the UCC, a term or clause is conspicuous if it is written in a way that a reasonable person against whom it is to operate ought to notice it. UCC § 1-201(10). See FINE PRINT.

**conspicuous place**. For purposes of posting notices, a location that is reasonably likely to be seen.

**conspiracy**, *n.* An agreement by two or more persons to commit an unlawful act; a combination for an unlawful purpose. • In criminal law, conspiracy is a separate offense from the crime that is the object of the conspiracy. — Also termed *criminal conspiracy*. — **conspiratorial**, *adj.* Cf. ATTEMPT (2); SOLICITATION (2).

"*Conspiracie (conspiratio)* though both in Latine and French it be used for an agreement of men, to doe any thing either good or bad: yet in our lawyers bookes, it is alway taken in the evill part." John Cowell, *The Interpreter* (1607).

"[Conspiracy is an] elastic, sprawling and pervasive offense, . . . so vague that it almost defies definition. Despite certain elementary and essential elements, it also, chameleon-like, takes on a special coloration from each of the many independent offenses on which it may be overlaid. It is always 'predominantly mental in composition' because it consists primarily of a meeting of minds and an intent." *Krulewitch v. United States*, 336 U.S. 440, 445-48, 69 S.Ct. 716, 719-20 (1949) (Jackson, J., concurring).

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

**chain conspiracy**. A single conspiracy in which each person is responsible for a distinct act within the overall plan, such as an agreement to produce, import, and distribute narcotics in which each person performs only one function. • All participants are interested in the overall scheme and liable for all other participants' acts in furtherance of that scheme.

"In a 'chain' conspiracy, the court looks to whether the parties serve as links in a chain. In *Blumenthal v. United States* (1947), the Supreme Court found that the parties had agreed to sell liquor at prices exceeding the ceiling set by regulations of the Office of Price Administration. The Court found that the agreements were steps in the

formulation of one larger general conspiracy. By reason of all having knowledge of the plan's general scope and common end, the disposing of whiskey, they could be drawn together in a single conspiracy." Ellen S. Podgor & Jerold H. Israel, *White Collar Crime in a Nutshell* 52 (2d ed. 1997).

**circle conspiracy**. See *wheel conspiracy*.

**civil conspiracy**. An agreement between two or more persons to commit an unlawful act that causes damage to a person or property.

**conspiracy in restraint of trade**. See RESTRAINT OF TRADE.

**hub-and-spoke conspiracy**. See *wheel conspiracy*.

**intra-enterprise conspiracy**. *Antitrust*. A conspiracy existing between two subsidiaries, divisions, or other parts of the same firm. — Also termed *bathtub conspiracy*.

**sedition conspiracy**. A criminal conspiracy to forcibly (1) overthrow or destroy the U.S. government, (2) oppose its authority, (3) prevent the execution of its laws, or (4) seize or possess its property. 18 USCA § 2384.

**wheel conspiracy**. A conspiracy in which a single member or group (the "hub") separately agrees with two or more other members or groups (the "spokes"). • The person or group at the hub is the only part liable for all the conspiracies. — Also termed *circle conspiracy*; *hub-and-spoke conspiracy*.

**conspirator**, *n.* A person who takes part in a conspiracy.

**unindicted conspirator**. A person who has been identified by law enforcement as a member of a conspiracy, but who has not been named in the indictment charging the person's fellow conspirator with conspiracy. • Prosecutors often name someone an unindicted conspirator because any statement that the unindicted conspirator has made in the course and furtherance of the conspiracy is admissible against the indicted defendants. — Also termed *unindicted coconspirator*.

**conspire**, *vb.* To engage in conspiracy; to join in a conspiracy.

**constable** (kon-stə-bəl), *n.* 1. A peace officer responsible for minor judicial duties, such as serving writs and warrants, but with less authority and smaller jurisdiction than a sheriff. 2. In the United Kingdom, a police officer; also, the title of a police officer. — **constabulary** (kən-stab-yə-ler-ee), *adj.* — **constabulary** (body or force), *n.*



**constablewick** (kon-stə-bəl-wik). *Hist.* In the United Kingdom, the territorial jurisdiction of a constable. Cf. BAILWICK.

**constant dollars.** The value of current money expressed as a percentage of its buying power in a previous year as determined by the consumer price index.

**constat** (kon-stat). [Latin "it is settled"] *Hist.* A certificate made by the Clerk of the Pipe and the auditors of the Exchequer at the request of a person intending to plead in the Court of Exchequer for the discharge of some item. • The *constat* certified what appeared on record.

**constate** (kən-stayt), *vb.* To establish, constitute, or ordain. • *Constate* usu. appears in relation to corporate documents; for example, the *constating* instruments of a corporation are its charter, organic law, or grant of powers to it.

**constituency.** The residents of an electoral district.

**constituent, adj.** 1. (Of a component) that helps make up or complete a unit or a whole <a constituent element of the criminal offense>. 2. (Of an assembly) able to frame or amend a constitution <a constituent council>.

**constituent, n.** 1. A person who gives another the authority to act as a representative; a principal who appoints an agent. 2. Someone who is represented by a legislator or other elected official. 3. One part of something that makes up a whole; an element. — **constituency, n.**

**constituent element.** An essential component of a crime or cause of action.

**constituere** (kon-sti-tyoo-ə-ree), *vb.* [Latin "to appoint"] *Hist.* To appoint (someone). • *Constituere* was used principally in powers of attorney: *attornavi et in loco meo constitui* ("I have attorned and put in my place").

**constituted authority.** See AUTHORITY (3).

**constitutio** (kon-sti-t[y]oo-shee-oh). [Latin "a decree"] 1. *Roman law.* An imperial decree; a law issued by the emperor; later, a collection of laws. • The *constitutiones* took various forms, including *orationes* (laws submitted to the Senate), *edicta* (laws — usu. of a general character — put forth by the emperor without Senate approval), *mandata* (administrative directives

to imperial officials), *decreta* (decisions by the emperor in legal cases), and *rescripta* (the emperor's responses to questions posed by litigants or imperial officials). Over time, the rapidly increasing number of *constitutiones* prompted their arrangement into collections such as the Theodosian Code and the Code of Justinian. Pl. **constitutiones** (kon-sti-t[y]oo-shee-oh-nee-z). See CODEX THEODOSIANUS; JUSTINIAN CODE.

"The name *constitutiones*, applied to the law-making utterances of the Roman emperors, had a very different meaning from our word 'constitution,' used to denote the fundamental, organic law of the state. Every official public document issuing from the emperor, and creating, declaring, or modifying law, was a *constitutio*. . . . [A]nd it is hardly necessary to say that, although professing to come from the person of the emperor, they were actually composed by jurists, and usually by those who stood first in their profession." James Hadley, *Introduction to Roman Law* 6-7 (1881).

2. *Civil law.* A settlement achieved without a trial; the sum paid according to the settlement.

3. *Hist.* In England, a statute; a provision of a statute.

**constitution. 1.** The fundamental and organic law of a nation or state, establishing the conception, character, and organization of its government, as well as prescribing the extent of its sovereign power and the manner of its exercise.

**flexible constitution.** A constitution that is not defined or set apart in a distinct document and that is not distinguishable from other law in the way in which its terms can be legislatively altered. • The British constitution is of this type.

**rigid constitution.** A constitution embodied in a special and distinct enactment, the terms of which cannot be altered by ordinary forms of legislation. • The U.S. Constitution, which cannot be changed without the consent of three-fourths of the state legislatures or through a constitutional convention, is of this type.

**unwritten constitution.** The customs and values, some of which are expressed in statutes, that provide the organic and fundamental law of a state or country that does not have a single written law functioning as a constitution.

2. The written instrument embodying this fundamental law.

**constitutional, adj.** 1. Of or relating to a constitution <constitutional rights>. 2. Proper under a constitution <constitutional actions>.

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

**constitutional convention.** An assembly of state or national delegates who meet to frame, amend, or revise their constitution.

**constitutional court.** See COURT.

**constitutional-fact doctrine.** **1.** The rule that federal courts are not bound by an administrative agency's findings of fact when the facts involve whether the agency has exceeded constitutional limitations on its power, esp. regarding personal rights. • Instead, the courts are charged with making an independent inquiry based on the record. **2.** The now discredited rule that a federal appellate court is not bound by a trial court's findings of fact when constitutional rights are implicated. Cf. JURISDICTIONAL-FACT DOCTRINE.

**constitutional freedom.** A basic liberty guaranteed by the Constitution or Bill of Rights, such as the freedom of speech. — Also termed *constitutional protection*.

**constitutional homestead.** See HOMESTEAD.

**constitutional immunity.** See IMMUNITY (1).

**constitutionality, n.** The quality or state of being constitutional <the constitutionality of the senator's bill is questionable>.

**constitutionalize, vb.** **1.** To provide with a constitution <constitutionalize the new government>. **2.** To make constitutional; to bring in line with a constitution <the court plans to constitutionalize the segregated school district>. **3.** To make a constitutional question out of a question of law <the dissenter accused the majority of unnecessarily constitutionalizing its decision>.

**constitutional law.** **1.** The body of law deriving from the U.S. Constitution and dealing primarily with governmental powers, civil rights, and civil liberties. **2.** The body of legal rules that determine the constitution of a state with a flexible constitution.

**constitutional limitation.** A constitutional provision that restricts the powers of a governmental branch, department, agency, or officer.

**constitutional monarchy.** See *limited monarchy* under MONARCHY.

**constitutional office.** A public position that is created by a constitution, rather than by a statute.

**constitutional officer.** A government official whose office is created by a constitution, rather than by a statute; one whose term of office is fixed and defined by a constitution.

**constitutional protection.** See CONSTITUTIONAL FREEDOM.

**constitutional question.** A legal issue resolvable by the interpretation of a constitution, rather than a statute.

**constitutional right.** A right guaranteed by a constitution; esp., one guaranteed by the U.S. Constitution or by a state constitution.

**constitutional taking.** See TAKING (2).

**constitutional tort.** See TORT.

**constitutiones principum.** [Latin] *Roman law*. Roman imperial enactments, which were the sole form of legislation in the third century A.D.

**Constitutions of Clarendon.** *Hist.* Statutes enacted in 1164, during the reign of Henry II, by which the jurisdiction of the ecclesiastical courts was limited and the clerics' exemptions from secular jurisdiction were greatly narrowed.

"During the first half of the twelfth century the claims of the church were growing, and the duty of asserting them passed into the hands of men who were not mere theologians but expert lawyers. Then, as all know, came the quarrel between Henry and Becket. In the Constitutions of Clarendon (1164) the king offered to the prelates a written treaty, a treaty which, so he said, embodied the 'customs' of his ancestors, more especially of his grandfather. Becket, after some hesitation, rejected the constitutions. The dispute waxed hot; certain of the customs were condemned by the pope. The murder followed . . . [F]rom [Henry's] time onwards the lay courts, rather than the spiritual, are the aggressors and the victors in almost every contest." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law* 124-25 (2d ed. 1898).

**constitutor** (kon-stə-t[y]oo-tər). [Latin "an orderer, arranger"] *Roman law*. A person who, by agreement, becomes responsible for the payment of another's debt.

**constitutum** (kon-sti-t[y]oo-təm). [Latin "agreed arrangement"] *Roman law*. **1.** An agreement to pay (one's own or another's) existing debt. • A *constitutum* was not a novation;

the creditor could still sue the original debtor. It differed from a stipulation because it had to be for an existing debt. **2.** The fixing of a day for the repayment of money owed.

**constitutum debiti** (kon-sti-t[y]oo-təm deb-ə-ti). [Latin “debt agreement”] *Roman law*. A promise to discharge an existing liability that is either one’s own (*constitutum debiti proprii*) or another’s (*constitutum debiti alieni*).

**constitutum possessorium** (kon-sti-t[y]oo-təm pah-ses-sor-ee-əm). [Latin “possessory agreement”] *Roman law*. A type of constructive delivery in which mediate possession is transferred while the immediate possession remains in the transferor; the agreement by which this transfer is brought about. • In the context of a security interest, the pledged property may remain in the possession of the debtor, but as bailee of the creditor. For the other two types of constructive delivery, see ATTORNMENT; TRADITIO BREVI MANU.

“[Another] form of constructive delivery is that which the commentators on the civil law have termed *constitutum possessorium* . . . . Any thing may be effectually delivered by means of an agreement that the possessor of it shall for the future hold it no longer on his own account but on account of someone else. . . . [I]f I buy goods from a warehouseman, they are delivered to me so soon as he has agreed with me that he will hold them as warehouseman on my account. The position is then exactly the same as if I had first taken actual delivery of them, and then brought them back to the warehouse, and deposited them there for safe custody.” John Salmond, *Jurisprudence* 306 (Glanville L. Williams ed., 10th ed. 1947).

**construction, n.** **1.** The act of building by combining or arranging parts or elements; the thing so built. **2.** The act or process of interpreting or explaining the sense or intention of a writing (usu. a statute, opinion, or instrument). — **construct** (for sense 1), *vb.* — **construe** (for sense 2), *vb.*

“Construction, as applied to written law, is the art or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where that intention is rendered doubtful either by reason of apparently conflicting provisions or directions, or by reason of the fact that the given case is not explicitly provided for in the law.” Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* 1 (1896).

“Some authors have attempted to introduce a distinction between ‘interpretation’ and ‘construction.’ Etymologically there is, perhaps, such a distinction; but it has not been accepted by the profession. For practical purposes any such distinction may be ignored, in view of the real object of both interpretation and construction, which is merely to ascertain the meaning and will of the lawmaking body, in order that it may be enforced.” William M.

Lile et al., *Brief Making and the Use of Law Books* 337 (3d ed. 1914).

“There is no explanation of the distinction between interpretation and construction [in Blackstone], nor can it be inferred from the matters dealt with under each head. The distinction is drawn in some modern works, but it is not taken in this book because it lacks an agreed basis. Some writers treat interpretation as something which is only called for when there is a dispute about the meaning of statutory words, while speaking of construction as a process to which all statutes, like all other writings, are necessarily subject when read by anyone. Others treat interpretation as something which is mainly concerned with the meaning of statutory words, while regarding construction as a process which mainly relates to the ascertainment of the intention of the legislature.” Rupert Cross, *Statutory Interpretation* 18 (1976).

**contemporaneous construction.** An interpretation given at or near the time when a writing was prepared, usu. by one or more persons involved in its preparation. — Also termed *contemporaneous and practical interpretation*.

**liberal construction.** An interpretation that applies a writing in light of the situation presented and that tends to effectuate the spirit and purpose of the writing. — Also termed *equitable construction*; *loose construction*; *broad interpretation*.

“Liberal construction . . . expands the meaning of the statute to embrace cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used. It resolves all reasonable doubts in favor of the applicability of the statute to the particular case.” William M. Lile et al., *Brief Making and the Use of Law Books* 343 (3d ed. 1914).

**literal construction.** See *strict construction*.

**purposive construction** (pər-pə-siv). An interpretation that looks to the “evil” that the statute is trying to correct (i.e., the statute’s purpose). — Also termed *teleological interpretation*.

**strict construction.** **1.** An interpretation that considers only the literal words of a writing. — Also termed *literal construction*; *literal interpretation*. See STRICT CONSTRUCTIONISM. **2.** A construction that considers words narrowly, usu. in their historical context. • This type of construction treats statutory and contractual words with highly restrictive readings. — Also termed *strict interpretation*. **3.** The philosophy underlying strict interpretation of statutes; STRICT CONSTRUCTIONISM.

“Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within

its spirit or reason, not so as to defeat the manifest purpose of the Legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case." William M. Lile et al., *Brief Making and the Use of Law Books* 343 (3d ed. 1914).

"Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meanings may be wider than the other, and the strict (i.e., narrow) sense is not necessarily the strict (i.e., literal) sense." John Salmond, *Jurisprudence* 171 n.(t) (Glanville L. Williams ed., 10th ed. 1947).

**construction act.** See ACT (3).

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

**construction contract.** See CONTRACT.

**construction financing.** See *interim financing* under FINANCING.

**construction lien.** See *mechanic's lien* under LIEN.

**construction mortgage.** See MORTGAGE.

**construction warranty.** See WARRANTY (2).

**constructive, adj.** Legally imputed; having an effect in law though not necessarily in fact. • Courts usu. give something a constructive effect for equitable reasons <the court held that the shift supervisor had constructive knowledge of the machine's failure even though he did not actually know until two days later>. See LEGAL FICTION. Cf. ACTUAL.

**constructive adverse possession.** See ADVERSE POSSESSION.

**constructive assent.** See ASSENT.

**constructive authority.** See AUTHORITY (1).

**constructive bailment.** See BAILMENT.

**constructive breach.** See *anticipatory breach* under BREACH OF CONTRACT.

**constructive breaking into a house.** A breaking made out by construction of law, as when a burglar gains entry by threat or fraud.

**constructive condition.** See CONDITION (2).

**constructive contempt.** See CONTEMPT.

**constructive contract.** See *implied-in-law contract* under CONTRACT.

**constructive conversion.** See CONVERSION (2).

**constructive custody.** See CUSTODY (1).

**constructive delivery.** See DELIVERY.

**constructive desertion.** See DESERTION.

**constructive discharge.** See DISCHARGE (7).

**constructive dividend.** See DIVIDEND.

**constructive escape.** See ESCAPE (2).

**constructive eviction.** See EVICTION.

**constructive force.** See FORCE.

**constructive fraud.** See FRAUD.

**constructive intent.** See INTENT (1).

**constructive knowledge.** See KNOWLEDGE.

**constructive larceny.** See LARCENY.

**constructive loss.** See *constructive total loss* (1) under LOSS.

**constructive malice.** See *implied malice* under MALICE.

**constructive murder.** See *felony murder* under MURDER.

**constructive notice.** See NOTICE.

**constructive payment.** See PAYMENT.

**constructive possession.** See POSSESSION.

**constructive-receipt doctrine.** The rule that gross income under a taxpayer's control before it is actually received (such as accumulated interest income that has not been withdrawn) must be included by the taxpayer in gross income, unless the actual receipt is subject to significant constraints. IRC (26 USCA) § 451.

**constructive reduction to practice.** See REDUCTION TO PRACTICE.

**constructive search.** See SEARCH.

**constructive seisin.** See *seisin in law* under SEISIN.

**constructive service.** See SERVICE (2).

**constructive taking.** See TAKING (1).

**constructive total loss.** See LOSS.

**constructive transfer.** See TRANSFER.

**constructive trust.** See TRUST.

**construe** (kən-stroo), *vb.* To analyze and explain the meaning of (a sentence or passage) <the court construed the language of the statute>.

**constuprate** (kən-st[y]ə-prayt). *Archaic.* To rape or violate (a person).

**consuetudinarius** (kən-swə-t[y]oo-di-nair-ee-əs). [fr. Latin *consuetudo* "custom"] *Hist. Eccles. law.* A book containing the rites and forms of divine offices or customs of abbeys and monasteries.

**consuetudinary law.** See LAW.

**Consuetudines Feudorum** (kən-swə-t[y]oo-dineezyoo-dor-əm). [Law Latin "the customs of fiefs"] *Hist.* FEUDORUM LIBRI.

**consuetudinibus et serviciis** (kən-swə-t[y]oo-din-ə-bəs et sər-vish-ee-is). [Law Latin "customs and services"] *Hist.* A writ of right that lay against a tenant who withheld rent or services from the lord.

**consuetudo** (kən-swə-t[y]oo-doh). [Latin "custom"] **1.** *Roman law.* Custom; long-established usage or practice. **2.** *Hist.* Customary law. • *Consuetudo* generally bears this sense, referring to law that has been long approved by the will of the people. It is a broad term that includes both the common law and the statutory law of England. **3.** *Hist.* A duty or tax.

**consuetudo anglicana** (kən-swə-t[y]oo-doh ang-gli-kay-noh). [Law Latin "the custom of England"] *Hist.* The English common law, as distinguished from Roman or civil law.

**consuetudo curiae** (kən-swə-t[y]oo-doh kyoor-ee-ee). [Latin] *Hist.* The custom or practice of a court.

**consuetudo mercatorum** (kən-swə-t[y]oo-doh mər-kə-tor-əm). [Latin "the custom of merchants"] *Hist.* See LAW MERCHANT. — Also termed *consuetudo mercatoria*.

**consul** (kən-səl), *n.* **1.** A governmental representative living in a foreign country to oversee commercial and other matters involving the representative's home country and its citizens in that foreign country. • Because they are not diplomatic agents, consuls are subject to local law and jurisdiction. — **consular** (kən-sə-lər), *adj.* — **consulship** (kən-səl-ship), *n.*

"Consuls are commercial, not diplomatic agents. They reside abroad for the purpose of protecting the individual interests of traders, travellers, and mariners belonging to the State which employs them. . . . They exercise jurisdiction over their countrymen, their persons are inviolable, their residences may be used as asylums in the case of war or tumult, and in fact they possess more than the ordinary diplomatic immunities." T.J. Lawrence, *A Handbook of Public International Law* 86-87 (10th ed. 1925).

"Consuls are not diplomatic agents; they perform various services for a state or its subjects in another state, without, however, representing the former in the full sense. They may be nationals of either state, and generally they are made subject to the authority of the diplomatic representative of the state for which they act. They watch over commercial interests of the state for which they act; collection information for it; help its nationals with advice, administer their property if they die abroad, and register their births, deaths, and marriages; they authenticate documents for legal purposes, take depositions from witnesses, visa passports, and the like." J.L. Briery, *The Law of Nations* 216 (5th ed. 1955).

"The usual criterion used for the distinction between diplomats and consuls is the representative character of the former of which the latter are devoid. However, this distinction is not altogether correct. Undoubtedly diplomatic agents have a general representative character since in all matters and relations they represent their country in the state to which they are accredited. Consuls, on the other hand, as state organs, also represent their country in another state, but only in matters within their competence. Thus, the representative character of consuls is, like their competence, specific, and secondary to that of diplomatic agents." Constantin Economides, "Consuls," in 1 *Encyclopedia of Public International Law* 770 (1992).

**consul general.** A high-ranking consul appointed to a strategically important region and often having supervisory powers over other regions or other consuls.

**2. Roman law.** One of two chief magistrates elected annually during the Republic to exercise supreme authority. • Under the Empire, the consulship was reduced to a sinecure, held by appointees of the emperor or the emperor himself.

"The principal inheritors of the royal authority and dignity were the two consuls elected by the comitia centuriata. They enjoyed equal powers. In the calendar the year was distinguished by their names. They convoked and initiated legislation in either comitia. In special emergencies, particularly in times of grave crisis, either consul might appoint a dictator who exercised supreme authority, but not beyond six months, unless re-appointed. . . . It was abolished by Justinian in A.D. 541, though later emperors continued to assume the title." R.W. Lee, *The Elements of Roman Law* 14 (4th ed. 1956).

**consular court.** See COURT.

**consular invoice.** See INVOICE.

**consular jurisdiction.** The exercise of a judicial function by a consul in a foreign territory, as by performing a wedding ceremony between nationals of the country represented by the consul.

**consular law.** The law relating to consuls, developed through custom and multitudes of bilateral consular agreements.

**consular marriage.** See MARRIAGE (1).

**consular relations.** *Int'l law.* The aggregate of relations established between two countries through the exercise of consuls' functions on behalf of a sending state within the territory of a receiving state. See SENDING STATE; RECEIVING STATE.

**consulate** (**kon-sə-lit**). **1.** The office or jurisdiction of a consul <the senator advised the businessman to notify the U.S. consulate in Kuwait before visiting the country>. **2.** The location of a consul's office or residence <the family was staying on the second floor, just above the Turkish consulate>.

**foreign consulate.** The consulate of a foreign country in the receiving state.

**3.** Government by consuls <after the French Revolution, the Directory was overthrown and the Consulate was created>. • This sense of *consulate* is based on the original Roman meaning ("chief magistrate") — not on the modern sense of an overseas representative of a country.

**consul general.** See CONSUL.

**consultation, n.** **1.** The act of asking the advice or opinion of someone (such as a lawyer). **2.** A meeting in which parties consult or confer. **3.** *Int'l law.* The interactive methods by which states seek to prevent or resolve disputes. —

**consult, vb.** — **consulting, consultative, adj.**

**consulting expert.** See EXPERT.

**consumable, n.** A thing (such as food) that cannot be used without changing or extinguishing its substance. Cf. NONCONSUMABLE.

**consumer.** A person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes. 40 CFR § 721(b)(1).

**consumer boycott.** See BOYCOTT.

**consumer-contemplation test.** A method of imposing product liability on a manufacturer if the evidence shows that a product's danger is greater than what a reasonable consumer would expect. — Also termed *consumer-user-contemplation test*; *consumer-expectation test*. Cf. RISK-UTILITY TEST.

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

**Consumer Credit Code.** See UNIFORM CONSUMER CREDIT CODE.

**Consumer Credit Protection Act.** A federal statute that safeguards the consumer in connection with the use of credit by (1) requiring full disclosure of the terms of the loan agreement, including finance charges, (2) restricting the garnishment of wages, and (3) regulating the use of credit cards (15 USCA §§ 1601-1693). • Many states have adopted consumer-credit-protection acts. — Also termed *Truth in Lending Act* (abbr. TILA). See UNIFORM CONSUMER CREDIT CODE.

**consumer-credit sale.** See SALE.

**consumer-credit transaction.** A transaction by which a person receives a loan for buying consumer goods or services. • Consumer-credit transactions are usu. subject to regulations enacted for the consumer's protection.

**consumer debt.** See DEBT.

**consumer-expectation test.** See CONSUMER-CONTEMPLATION TEST.

**consumer finance company.** See FINANCE COMPANY.

**consumer goods.** See GOODS.

**consumer-goods transaction.** *Secured transactions.* A transaction in which (1) an individual incurs an obligation primarily for personal, family, or household purposes, and (2) a security interest in consumer goods secures the obligation. UCC § 9-102(a)(16).

**consumer law.** The area of law dealing with consumer transactions — that is, a person's obtaining credit, goods, real property, or services for personal, family, or household purposes. — Also termed *consumer-transactions law*.

**consumer lease.** See LEASE.

**consumer loan.** See LOAN.

**consumer price index.** An index that tracks the price of goods and services purchased by the average consumer and that is published monthly by the U.S. Bureau of Labor Statistics. — Abbr. CPI. — Also termed *cost-of-living index*. Cf. PRODUCER PRICE INDEX.

**consumer product.** An item of personal property that is distributed in commerce and is normally used for personal, family, or household purposes. 15 USCA § 2301(1).

**consumer-protection law.** A state or federal statute designed to protect consumers against unfair trade and credit practices involving consumer goods, as well as to protect consumers against faulty and dangerous goods.

**consumer transaction.** A bargain or deal in which a party acquires property or services primarily for a personal, family, or household purpose.

**consumer-transactions law.** See CONSUMER LAW.

**consumer-user-contemplation test.** See CONSUMER-CONTEMPLATION TEST.

**consummate** (kən-səm-it), *adj.* Completed; fully accomplished. • *Consummate* was used frequently at common law to describe the status of a contract or an estate, such as the transformation of a husband's interest in his wife's inheritance from that of a tenant by the curtesy *initiate* to a tenant by curtesy *consummate* upon her death (assuming that a child had

been born during the marriage). See *curtesy consummate* under CURTESY.

**consummate** (kən-sə-mayt), *vb.* **1.** To bring to completion; esp., to make (a marriage) complete by sexual intercourse. **2.** To achieve; fulfill. **3.** To perfect; carry to the highest degree.

**consummate dower.** See DOWER.

**consummate lien.** See LIEN.

**consumption.** The act of destroying a thing by using it; the use of a thing in a way that thereby exhausts it.

**consumption tax.** See TAX.

**containment.** *Int'l law.* The policy of restricting the ideological and territorial expansion of one's enemy. • This was the basic philosophy of the United States during the Cold War.

**contango** (kən-tang-goh). *Securities.* **1.** A market in which long-term futures or options contracts sell at a premium over short-term contracts. — Also termed *normal market*. **2.** The premium so paid. • The premium paid for securities with longer maturities reflects the cost of holding the commodity for future delivery.

**contemn** (kən-tem), *vb.* To treat (as laws or court orders) with contemptuous disregard. See CONTEMPT.

**contemner** (kən-tem-ər or -nər). A person who is guilty of contempt before an instrumentality of government, such as a court or legislature. — Also spelled *contemnor*.

**contemplation of bankruptcy.** The thought of declaring bankruptcy because of the inability to continue current financial operations, often coupled with action designed to thwart the distribution of assets in a bankruptcy proceeding. — Also termed *contemplation of insolvency*.

**contemplation of death.** The thought of dying, not necessarily from an imminent danger, but as the compelling reason to transfer property to another. See *gift causa mortis* under GIFT.

**contemplation of insolvency.** See CONTEMPLATION OF BANKRUPTCY.

**contemporanea expositio** (kən-tem-pə-ray-nee-ə eks-pə-zish-ee-oh). [Latin "contemporanea"]

neous exposition"] The doctrine that the best meaning of a statute or document is the one given by those who enacted it or signed it, and that the meaning publicly given by contemporary or long professional usage is presumed to be the true one, even if the language may have a popular or an etymological meaning that is very different.

**contemporaneous and practical interpretation.** See *contemporaneous construction* under CONSTRUCTION.

**contemporaneous construction.** See CONSTRUCTION.

**contemporaneous-construction doctrine.** The rule that the initial interpretation of an ambiguous statute by an administrative agency or lower court is entitled to great deference if the interpretation has been used over a long period.

**contemporaneous-objection rule.** The doctrine that a proper objection to the admission of evidence must be made at trial for the issue of admissibility to be considered on appeal.

**contemporary community standard.** The gauge by which a fact-finder decides whether material is obscene, judging by its patent offensiveness and its pruriency in the locale at a given time. See OBSCENITY (1).

"Both pruriency and patent offensiveness are determined by 'contemporary community standards.' But what is the relevant community? In *Miller*, the Court rejected the contention that only a national community standard, free of local biases, would provide adequate First Amendment protection and allowed lower courts to use local standards in defining what is obscene. Subsequent cases have made it clear that the state may choose to omit reference to any particular geographic community, state or local, although it may do so. If a geographic reference is omitted, each jury is free to ascertain the contemporary community standard." Jerome A. Barron & C. Thomas Dienes, *Constitutional Law in a Nutshell* 396 (3d ed. 1995).

**contempt, n.** 1. The act or state of despising; the condition of being despised. 2. Conduct that defies the authority or dignity of a court or legislature. ● Because such conduct interferes with the administration of justice, it is punishable, usu. by fine or imprisonment. See CONTUMACY. — Also termed *contempt of court* — **contemptuous, adj.**

"Contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb

the proceedings or to impair the respect due to such a body." Edward M. Dangel, *Contempt* § 1, at 2 (1939).

**civil contempt.** The failure to obey a court order that was issued for another party's benefit. ● A civil-contempt proceeding is coercive or remedial in nature. The usual sanction is to confine the contemner until he or she complies with the court order.

**consequential contempt.** 1. Contempt that, although not amounting to gross insolence or direct opposition, tends to create a universal disregard of the power and authority of courts and judges. 2. See *constructive contempt*.

**constructive contempt.** Contempt that is committed outside of court, as when a party disobeys a court order. — Also termed *consequential contempt*; *indirect contempt*.

**contempt of Congress.** Deliberate interference with the duties and powers of Congress, such as a witness's refusal to answer a question from a congressional committee. ● Contempt of Congress is a criminal offense. 2 USCA § 192.

**criminal contempt.** An act that obstructs justice or attacks the integrity of the court. ● A criminal-contempt proceeding is punitive in nature. — Also termed *common-law contempt*.

"Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both." *Bloom v. Illinois*, 391 U.S. 194, 201, 88 S.Ct. 1477, 1481 (1968).

**direct contempt.** Contempt that is committed in open court, as when a lawyer insults a judge on the bench.

**indirect contempt.** See *constructive contempt*.

**contempt power.** The power of a public institution (as Congress or a court) to punish someone who shows contempt for the process, orders, or proceedings of that institution.

**contempt proceeding.** See PROCEEDING.

**contenement** (kən-ten-ə-mənt). *Hist.* 1. Freehold land held by a feudal tenant, esp. land used to support the tenant. ● Magna Carta exempted this property from seizure.

"Contenement, (*contenementum*) seemeth to be the free hold land, which lyeth to a mans tenement or dwelling house, that is in his owne occupation. For *magna carta*. ca. 14. you have these words: A free man shall not be amerced for a small fault, but after the quantity of the fault: and for a great fault, after the maner thereof, saving to him his contenement or free hold. And a merchant likewise shal be amerced saving to him his



merchandies: and any other villaine then owens, shal be amerced saving his wainage. . . .” John Cowell, *The Interpreter* (1607).

**2.** A person’s reputation or standing in the community. • Though *contenement* as used in this sense is also rooted in the ownership of land, it may stem from the Law French *countenance* (“countenance”) rather than the Law Latin *contenementum* (“with tenement”), as used in sense 1.

“Contenement signifies his Countenance, Credit, or Reputation, which he hath, together with, and by reason of his Freehold; and in this sense does the Statute of 1 Edw. 3 and *Old Nat. Br.* use it, where *Countenance* is used for *Contenement*: The Armor of a Soldier is his Countenance; the Books of a Schollar, his Countenance; and the like.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

**content-based restriction.** *Constitutional law.* A restraint on the substance of a particular type of speech. • This type of restriction can survive a challenge only if it is based on a compelling state interest and its measures are narrowly drawn to accomplish that end. See SPEECH (1).

**contentious jurisdiction.** See JURISDICTION.

**contentious possession.** See *hostile possession* under POSSESSION.

**contents unknown.** A statement placed on a bill of lading to show that the carrier does not know what is inside shipped containers. • Carriers use this phrase in an attempt to limit their liability for damage to the goods shipped.

**content-valid test.** A job-applicant examination that bears a close relationship to the skills required by the job. • Content-validation studies are often performed in employment-discrimination cases that contest the validity of an examination.

“The simplest form of test validation is where the test replicates major portions of the job, as for example, where a test measuring typing or computer literacy is used to select a secretarial support person. . . . A content valid test must measure or replicate a ‘representative sample’ of the job’s duties. It is not valid if it measures only a small portion of those duties. For example, fire fighters may need to write reports, but a grammar test is too narrow to be content valid.” Mack A. Player, *Federal Law of Employment Discrimination in a Nutshell* 101 (3d ed. 1992).

**conterminous, adj.** **1.** Sharing a common boundary <the surveyor set a new line between the conterminous counties>. **2.** Enclosed with-

in a common boundary <all 48 conterminous states of this country>.

**contest (kən-test), vb.** **1.** To strive to win or hold; contend <he chose to contest for the prize>. **2.** To litigate or call into question; challenge <they want to contest the will>. **3.** To deny an adverse claim or assert a defense to it in a court proceeding <she contests that charge>. — **contest (kən-test), n.**

**contestability clause (kən-tes-tə-bil-ə-tee).** *Insurance.* A policy provision setting forth when and under what conditions the insurer may contest a claim or void the policy based on a representation or omission made when the policy was issued. • Contestability clauses usu. lapse after two years. — Also termed *contestable clause*. Cf. INCONTESTABILITY CLAUSE.

**contestant.** One who contests the validity of a will. — Also termed *objectant*; *caveator*.

**contestatio litis (kon-tes-tay-shee-oh li-tis).** [Latin “contestation of suit”] **1.** *Roman law.* A position statement in an action, given by the litigants to the praetor for approval and submission to a judge (*judex*) for a decision.

“Both parties being present, or represented, before the praetor, the plaintiff stated the nature of his claim and asked for an action. It lay in the discretion of the praetor to give or to refuse it. . . . If, in the event, the praetor refused any action at all, or any action which the plaintiff was willing to accept, the matter was at an end. . . . If, on the other hand, subject to the direction and approval of the praetor, the parties agreed upon the issues to be referred . . . [a] document framed in identical terms was issued to the *judex* by the praetor as his authority to act. This ceremonial in which three persons concurred (plaintiff, defendant, praetor) was the *litis contestatio*.” R.W. Lee, *The Elements of Roman Law* 179–80 (4th ed. 1956).

**2.** *Hist.* The development in a lawsuit — brought about by the litigants’ alternating statements — of a point in controversy. **3.** *Hist.* An issue developed by the litigants’ alternating statements. **4.** CONTESTATION OF SUIT. — Also termed *litis contestatio*. See LITIS-CONTESTATION.

**contestation of suit (kon-tes-tay-shən).** *Eccles. law.* The point in an action when the defendant answers the plaintiff’s libel (i.e., complaint); the plea and joinder of an issue. — Also termed *contestatio litis*.

**context, n.** **1.** The surrounding text of a word or passage, used to determine the meaning of that word or passage <his remarks were taken out of context>. **2.** Setting or environment <in the

context of foreign relations>. — **contextual**, *adj.*

**contiguity** (kon-ti-gyoo-ə-tee), *n.* The state or condition of being contiguous <contiguity existed between the two adjoining tracts of land>.

**contiguous** (kən-tig-yoo-əs), *adj.* **1.** Touching at a point or along a boundary; ADJOINING <Texas and Oklahoma are contiguous>. **2.** Near in time or sequence; successive <contiguous thunder and lightning>.

**contiguous zone.** *Int'l law.* An area abutting and extending beyond the territorial sea, in which countries have limited powers to enforce customs as well as fiscal, sanitary, and immigration laws.

**Continental Congress.** The first national governmental assembly in the United States, formed in 1774 to protest British treatment of the colonies. ● The Second Continental Congress, commencing in 1775, adopted the Declaration of Independence and served as the national government until the Articles of Confederation were ratified in 1781.

**contingency** (kən-tin-jən-see). **1.** An event that may or may not occur; a possibility. **2.** The condition of being dependent on chance; uncertainty. **3.** CONTINGENT FEE.

**contingency fee.** See CONTINGENT FEE.

**contingency reserve.** See *contingent fund* under FUND.

**contingency with a double aspect.** A contingent remainder existing along with a second remainder, the latter taking the remainder only if the first fails. ● In the following example, this type of remainder would arise if A never has children: "to A for life, and if A has children, then to the children and their heirs forever; and if A dies without children, then to B and B's heirs forever." See *contingent remainder* under REMAINDER.

**contingent** (kən-tin-jənt), *adj.* **1.** Possible; uncertain; unpredictable <the trust was contingent, and the contingency never occurred>. **2.** Dependent on something else; conditional <her acceptance of the position was contingent upon the firm's agreeing to guarantee her husband a position as well>.

**contingent annuity.** See ANNUITY.

**contingent beneficiary.** See BENEFICIARY.

**contingent claim.** See CLAIM (4).

**contingent debt.** See DEBT.

**contingent estate.** See ESTATE.

**contingent fee.** A fee charged for a lawyer's services only if the lawsuit is successful or is favorably settled out of court. ● Contingent fees are usu. calculated as a percentage of the client's net recovery (such as 25% of the recovery if the case is settled, and 33% if the case is won at trial). — Also termed *contingency fee*; *contingency*.

**reverse contingent fee.** A fee in which a defense lawyer's compensation depends in whole or in part on how much money the lawyer saves the client, given the client's potential liability — so that the lower the settlement or judgment, the higher the lawyer's fee. ● For example, if a client might be liable for up to \$2 million, and agrees to pay the lawyer 40% of the difference between \$1 million and the amount of the settlement or judgment, then a settlement of \$800,000 would result in a fee of \$80,000 (40% of the \$200,000 under the threshold amount of \$1 million). — Also termed *negative contingent fee*; *defense contingent fee*; *reverse bonus*.

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

**contingent guaranty.** See GUARANTY.

**contingent interest.** See INTEREST (2).

**contingent-interest mortgage.** See MORTGAGE.

**contingent legacy.** See LEGACY.

**contingent liability.** See LIABILITY.

**contingent ownership.** See OWNERSHIP.

**contingent remainder.** See REMAINDER.

**contingent trust.** See TRUST.

**contingent use.** See USE (4).

**contingent will.** See WILL.

**continual claim.** *Hist.* A formal claim to a tract of land made by an out-of-possession owner who is deterred from taking possession by a menace of some type. • The claim — called *continual* because it had to be renewed annually — preserved the claimant's right to the land. The owner had to make the claim as near to the land as could be done safely. This procedure gave the disseised person the same benefits (such as the right to devise the land) as a legal entry. The continual claim was abolished early in the 19th century.

"Continual claim is, where a man hath right to enter into certain lands whereof another is seised in fee, or fee tail, and dares not enter for fear of death or beating, but approaches as nigh as he dares, and makes claim thereto within the year and day before the death of him that hath the lands . . ." *Termes de la Ley* 114 (1st Am. ed. 1812).

**continual injury.** See INJURY.

**continuance, n.** **1.** The act of keeping up, maintaining, or prolonging <continuance of the formal tradition>. **2.** Duration; time of continuing <the senator's continuance in office>. **3. Procedure.** The adjournment or postponement of a trial or other proceeding to a future date <motion for continuance>. — **continue, vb.** Cf. RECESS (1).

**continuando** (kən-tin-yoo-an-doh). [Law Latin "by continuing"] *Hist.* An allegation charging that the trespass or other wrongful act complained of constitutes a continuing tort against the plaintiff's property.

"In trespasses of a permanent nature, where the injury is continually renewed, (as by spoiling or consuming the herbage with the defendant's cattle) the declaration may allege the injury to have been committed by *continuation* from one given day to another, (which is called laying the action with a *continuando*) and the plaintiff shall not be compelled to bring separate actions for every day's separate offence." 3 William Blackstone, *Commentaries on the Laws of England* 212 (1768).

**continuation agreement.** *Partnership.* An agreement among the partners that, in the event of dissolution, the business of the partnership can be continued without the necessity of liquidation. Cf. BUY-SELL AGREEMENT (1).

"Normally, a continuation agreement would have some type of provision for purchasing the interest of a deceased or expelled partner. However, such a provision is not necessary. Courts have enforced agreements that give the estate of the deceased partner nothing." Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 269, at 461 (2d ed. 1990).

**continuation in part.** A patent application filed during the lifetime of an earlier applica-

tion by the same applicant, repeating a substantial part of the earlier application but adding to or subtracting from it. 35 USCA § 120. — Abbr. CIP.

**continued bond.** See *annuity bond* under BOND (3).

**continuing, adj.** **1.** (Of an act or event) that is uninterrupted <a continuing offense>. **2.** (Of status or power) that needs no renewal; enduring <continuing stockholders> <continuing jurisdiction>.

**continuing breach.** See BREACH OF CONTRACT.

**continuing consideration.** See CONSIDERATION.

**continuing contract.** See CONTRACT.

**continuing covenant.** See COVENANT (1).

**continuing damages.** See DAMAGES.

**continuing guaranty.** See GUARANTY.

**continuing injury.** See INJURY.

**continuing judicial education.** Continuing legal education for judges, usu. organized and sponsored by a governmentally subsidized body and often involving topics such as judicial writing, efficient decision-making, caseload management, and the like. — Abbr. CJE.

**continuing jurisdiction.** See JURISDICTION.

**continuing-jurisdiction doctrine.** **1.** The rule that a court retains power to enter and enforce a judgment over a party even though that party is no longer subject to a new action. **2. Family law.** The rule that once a court has acquired jurisdiction over a child-custody or support case, that court continues to have jurisdiction to modify orders, even if the child or a parent moves to another state.

**continuing legal education.** **1.** The process or system through which lawyers extend their learning beyond their law-school studies, usu. by attending seminars designed to sharpen lawyering skills or to provide updates on legal developments within particular practice areas. • In some jurisdictions, lawyers have annual or biennial requirements to devote a given number of hours (usu. 12–15) to continuing legal education. **2.** The enhanced skills or knowledge

derived from this process. **3.** The business field in which educational providers supply the demand for legal seminars, books, audiotapes, and videotapes designed to further the education of lawyers. — Abbr. CLE.

**continuing nuisance.** See NUISANCE.

**continuing objection.** See OBJECTION.

**continuing offense.** See OFFENSE (1).

**continuing part-time judge.** See JUDGE.

**continuing trespass.** See TRESPASS.

**continuing warranty.** See *promissory warranty* under WARRANTY (3).

**continuing wrong.** See WRONG.

**continuity** (kon-ti-n[y]oo-ə-tee). *Int'l law.* The principle that upheavals and revolutions within a country — as well as changes in governmental forms, the extent of a country's territory, and measures taken during a military occupation — do not affect the existence of the country and therefore cannot lead to its extinction.

**continuity of business enterprise.** A doctrine covering acquisitive reorganizations whereby the acquiring corporation must continue the target corporation's historical business or must use a significant portion of the target's business assets in a new business to qualify the exchange as a tax-deferred transaction.

**continuity-of-enterprise doctrine.** See SUBSTANTIAL-CONTINUITY DOCTRINE.

**continuity-of-entity doctrine.** See MERE-CONTINUATION DOCTRINE.

**continuity of existence.** See CONTINUITY-OF-LIFE DOCTRINE.

**continuity of interest.** **1.** A doctrine covering acquisitive reorganizations whereby a target corporation's shareholders must retain a share in the acquiring corporation to qualify the exchange as a tax-deferred transaction. **2.** A judicial requirement for divisive reorganizations whereby a target corporation's shareholders must retain an interest in both the distributing and the controlled corporations to qualify the exchange as a tax-deferred transaction.

**continuity-of-life doctrine.** The principle that the withdrawal, incapacity, bankruptcy, or death of the owner of an entity (esp. a corporation) does not end the entity's existence. — Also termed *continuity of existence*.

**continuous-adverse-use principle.** The rule that the uninterrupted use of land — along with the other elements of adverse possession — will result in a successful claim for adverse possession. — Also termed *uninterrupted-adverse-use principle*. See ADVERSE POSSESSION.

**continuous easement.** See EASEMENT.

**continuous injury.** See *continual injury* under INJURY.

**continuous-representation doctrine.** The principle that the limitations period for bringing a legal-malpractice action is tolled as long as the lawyer continues the representation that is related to the negligent act or omission.

**continuous-treatment doctrine.** The principle that the limitations period for bringing a medical-malpractice action is tolled while the patient continues treatment that is related to the negligent act or omission.

**continuous trigger.** See TRIPLE TRIGGER.

**contort** (kon-tort), *n.* **1.** (*usu. pl.*) The overlapping domain of contract law and tort law.

"I have occasionally suggested to my students that a desirable reform in legal education would be to merge the first-year courses in Contracts and Torts into a single course which we could call Contorts." Grant Gilmore, *The Death of Contract* 90 (1974).

**2.** A specific wrong that falls within that domain.

**contra** (kon-trə), *prep.* Against or contrary to. ● As a citation signal, *contra* denotes that the cited authority supports a contrary view.

"Observe in the note citing cases in support of a proposition mentioned in the text whether any of the cases follow the word *contra*, which means that a contrary rule has been laid down in them." Frank Hall Childs, *Where and How to Find the Law* 78-79 (1922).

**contra account.** See ACCOUNT.

**contraband** (kon-trə-band), *n.* **1.** Illegal or prohibited trade; smuggling. **2.** Goods that are unlawful to import, export, or possess. — **contraband**, *adj.*

**absolute contraband.** Goods used primarily for war, such as arms and ammunition, as well as clothing and equipment of a military character.

**conditional contraband.** Goods susceptible of being used for warlike and peaceful purposes, such as coal and food. — Also termed *incipitibus usus*.

**contraband per se.** Property whose possession is unlawful regardless of how it is used. Cf. *derivative contraband*.

**derivative contraband.** Property whose possession becomes unlawful when it is used in committing an illegal act. Cf. *contraband per se*.

**contra bonos mores (kon-trə boh-nohs mor-eéz).** [Latin “against good morals”] Offensive to the conscience and to a sense of justice. ● Contracts *contra bonos mores* are voidable. — Also termed *contra bonos mores et decorum; adversus bonos mores*.

“Whatever is *contra bonos mores et decorum*, the principles of our law prohibit, and the King’s court, as the general censor and guardian of the public manners, is bound to restrain and punish.” *Jones v. Randall*, 98 E.R. 706, 707 (1774) (per Mansfield, C.J.).

**contracausator (kon-trə-kaw-zay-tər).** *Hist.* A criminal; a person prosecuted for a crime.

**contraceptivism.** *Hist.* The criminal offense of distributing or prescribing contraceptives.

**contract, n. 1.** An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law <a binding contract>. **2.** The writing that sets forth such an agreement <a contract is valid if valid under the law of the residence of the party wishing to enforce the contract>.

“The term contract has been used indifferently to refer to three different things: (1) the series of operative acts by the parties resulting in new legal relations; (2) the physical document executed by the parties as the lasting evidence of their having performed the necessary operative acts and also as an operative fact in itself; (3) the legal relations resulting from the operative acts, consisting of a right or rights *in personam* and their corresponding duties, accompanied by certain powers, privileges, and immunities. The sum of these legal relations is often called ‘obligation.’ The present editor prefers to define contract in sense (3) . . . .” William R. Anson, *Principles of the Law of Contract* 13 n.2 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“A contract is a promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. This definition may not be entirely satisfactory since it requires a subsequent definition of the circumstances un-

der which the law does in fact attach legal obligation to promises. But if a definition were attempted which should cover these operative facts, it would require compressing the entire law relating to the formation of contracts into a single sentence.” Samuel Williston, *A Treatise on the Law of Contracts* § 1, at 1–2 (Walter H.E. Jaeger ed., 3d ed. 1957) (footnote omitted).

“The term ‘contract’ is also used by lay persons and lawyers alike to refer to a document in which the terms of a contract are written. Use of the word in this sense is by no means improper so long as it is clearly understood that rules of law utilizing the concept ‘contract’ rarely refer to the writing itself. Usually, the reference is to the agreement; the writing being merely a memorial of the agreement.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 1.1, at 3 (4th ed. 1998).

**3.** Loosely, an unenforceable agreement between two or more parties to do or not to do a thing or set of things; a compact <when they finally agreed, they had a contract>. **4.** A promise or set of promises by a party to a transaction, enforceable or otherwise recognizable at law; the writing expressing that promise or set of promises <when the lessor learned that the rooms were to be used for the delivery of blasphemous lectures, he declined to carry out his contract>.

“The promissory element present in every contract is stressed in a widely quoted definition: ‘A contract is a promise, or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.’ [1 Samuel Williston, *Contracts* § 1.1 (4th ed. 1990).] This, like similar definitions, is somewhat misleading. While it is true that a promise, express or implied, is a necessary element in every contract, frequently the promise is coupled with other elements such as physical acts, recitals of fact, and the immediate transfer of property interests. In ordinary usage the contract is not the promise alone, but the entire complex of these elements.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 1.1, at 1–2 (4th ed. 1998).

**5.** Broadly, any legal duty or set of duties not imposed by the law of tort; esp., a duty created by a decree or declaration of a court <an obligation of record, as a judgment, recognition, or the like, is included within the term “contract”>. **6.** The body of law dealing with agreements and exchange <the general theory of contract>. **7.** The terms of an agreement, or any particular term <there was no express contract about when the money was payable>. — **contract, vb.** — **contractual, adj.**

**accessory contract.** A contract entered into primarily for the purpose of carrying out a principal contract. ● The principal types are suretyship, indemnity, pledge, warranty, and ratification. Cf. *principal contract*.

**adhesion contract.** A standard-form contract prepared by one party, to be signed by the party in a weaker position, usu. a con-

sumer, who has little choice about the terms. — Also termed *contract of adhesion*; *adhesory contract*; *adhesionary contract*; *take-it-or-leave-it contract*; *leonine contract*.

"Some sets of trade and professional forms are extremely one-sided, grossly favoring one interest group against others, and are commonly referred to as contracts of adhesion. From weakness in bargaining position, ignorance, or indifference, unfavored parties are willing to enter transactions controlled by these lopsided legal documents." Quintin Johnstone & Dan Hopson, Jr., *Lawyers and Their Work* 329-30 (1967).

**aleatory contract** (ay-lee-ə-tor-ee). A contract in which at least one party's performance depends on some uncertain event that is beyond the control of the parties involved. • Most insurance contracts are of this type. — Also termed *hazardous contract*. Cf. *certain contract*.

**alternative contract**. A contract in which the performing party may elect to perform one of two or more specified acts to satisfy the obligation; a contract that provides more than one way for a party to complete performance, usu. permitting that party to choose the manner of performance. — Also termed *alternative-methods-of-performance contract*.

**assessment contract**. A contract in which the payment of a benefit is dependent on the collection of an assessment levied on persons holding similar contracts. See *assessment insurance* under INSURANCE.

**best-efforts contract**. A contract in which a party undertakes to use best efforts to fulfill the promises made; a contract in which the adequacy of a party's performance is measured by the party's ability to fulfill the specified obligations. • Although the obligor must use best efforts, the risk of failure lies with the obligee. To be enforceable, a best-efforts term must generally set some kind of goal or guideline against which the efforts may be measured. See BEST EFFORTS.

**bilateral contract**. A contract in which each party promises a performance, so that each party is an obligor on that party's own promise and an obligee on the other's promise. — Also termed *mutual contract*; *reciprocal contract*.

"In a bilateral contract a promise, or set of promises on one side, is exchanged for a promise or a set of promises on the other side. In a unilateral contract, on the other hand, a promise on one side is exchanged for an act (or a forbearance) on the other side. Typical examples of bilateral contracts are contracts of sale, the buyer promising to pay the price and the seller promising to deliver the goods. A typical example of a unilateral contract is a promise of a reward for the finding of lost property followed by the actual finding of the property." P.S.

Atiyah, *An Introduction to the Law of Contract* 32 (3d ed. 1981).

**blanket contract**. A contract covering a group of products, goods, or services for a fixed period.

**bona fide contract** (boh-nə fid or fi-dee). A contract in which equity may intervene to correct inequalities and to adjust matters according to the parties' intentions.

**certain contract**. A contract that will be performed in a stipulated manner. Cf. *aleatory contract*.

**collateral contract**. A side agreement that relates to a contract, which, if unintegrated, can be supplemented by evidence of the side agreement; an agreement made before or at the same time as, but separately from, another contract. See COLLATERAL-CONTRACT DOCTRINE.

"The term 'collateral contract' has no very precise meaning in the law. It is generally used as a label for a contract which is collateral, or by the side of, another contract. A great many examples of implied or constructive contracts created by the Courts are collateral in a broad sense. . . . [A]lthough the normal presumption is that the parties intend a written contract to be exclusive evidence of their intentions, it is always open to a party to show that in fact the writing did not exclusively represent their intentions, because of a 'collateral' contract made during the negotiations but not incorporated in the written instrument." P.S. Atiyah, *An Introduction to the Law of Contract* 80-81, 161 (3d ed. 1981).

**commutative contract** (kə-myoo-tə-tiv or kom-yə-tay-tiv). *Civil law*. A contract in which one party's performance is correlative to the performance of the other, so that non-performance by either affords a defense to the other. Cf. *independent contract*; *synallagmatic contract*.

**conditional contract**. An agreement that is enforceable only if another agreement is performed or if another particular prerequisite or condition is satisfied.

**conditional sales contract**. See *retail installment contract*.

**consensual contract**. *Hist.* A contract arising from the mere consensus of the parties, without any formal or symbolic acts performed to fix the obligation. • Although the consensual contract was known to the common law, it originated in Roman law, where it embraced four types of contracts in which informal consent alone was sufficient: (1) an agency agreement (*mandatum*), (2) a partnership agreement (*societas*), (3) a sale (*emptio venditio*), or (4) a letting or hiring (*locatio conductio*). Cf. *real contract*.

"[T]he peculiarity of these Consensual Contracts is that no formalities are required to create them out of the Pact. Much that is indefensible, and much more that is obscure, has been written about the Consensual Contracts, and it has even been asserted that in them the *consent* of the Parties is more emphatically given than in any other species of agreement. But the Consensual merely indicates that the Obligation is here annexed at once to the *Consensus*. The *Consensus*, or mutual assent of the parties, is the final and crowning ingredient in the Convention, and it is the special characteristic of agreements falling under one of the four heads of Sale, Partnership, Agency, and Hiring, that, as soon as the assent of the parties has supplied this ingredient, there is *at once* a Contract. The *Consensus* draws with it the Obligation, performing, in transactions of the sort specified, the exact functions which are discharged, in the other contracts, by the *Res* or Thing. . . ." Henry S. Maine, *Ancient Law* 322-23 (10th ed. 1884).

**construction contract.** A contract setting forth the specifications for a building project's construction. • This type of contract is usually secured by performance and payment bonds to protect both the owner and the subcontractors.

**constructive contract.** See *implied-in-law contract*.

**continuing contract.** A contract calling for periodic performances.

**contract for deed.** A conditional sales contract for the sale of real property. — Also termed *installment land contract*; *land sales contract*; *land contract*.

**contract for sale.** 1. A contract for the present transfer of property for a price. — Also termed *contract of sale*. 2. A contract to sell goods at a future time. — Also termed (in sense 2) *contract to sell*.

**contract implied in fact.** See *implied-in-fact contract*.

**contract implied in law.** See *implied-in-law contract*.

**contract of adhesion.** See *adhesion contract*.

**contract of beneficence.** See *gratuitous contract*.

**contract of benevolence.** See *gratuitous contract*.

**contract of insurance.** See INSURANCE POLICY.

**contract of record.** A contract that is declared by a court and entered into the court's record. • Contracts of record include judgments, recognizances, and (in England) statutes staple.

"Contracts of record are not really contracts at all, but are transactions which, being entered on the records of

certain courts called 'courts of record,' are conclusive proof of the facts thereby appearing, and could formerly be enforced by action of law as if they had been put in the shape of a contract." 1 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 282 (1883).

"A contract of record is in point of fact no contract at all, and has nothing whatever to do with the law of contracts. These so-called contracts are the obligations incurred by a judgment or recognition of a Court of Record. They came to be called contracts only because they were enforceable by the same type of action as was used for genuinely contractual cases in the old common-law system of procedure." P.S. Atiyah, *An Introduction to the Law of Contract* 31 (3d ed. 1981).

**contract of sale.** See *contract for sale* (1).

**contract to satisfaction.** See *satisfaction contract*.

**contract to sell.** See *contract for sale* (2).

**contract uberrimae fidei** (yoo-ber-ə-mee fi-dee-1). A contract in which the parties owe each other duties with the utmost good faith.

"In a certain restricted group of contracts good faith is peculiarly necessary owing to the relationship between the parties, and in these cases — known as contracts *uberrimae fidei* — there is a full duty to disclose all material facts. The typical instance of such contracts is the contract of insurance. Here the duty to disclose all material facts to the insurer arises from the fact that many of the relevant circumstances are within the exclusive knowledge of one party, and it would be impossible for the insurer to obtain the facts necessary for him to make a proper calculation of the risk he is asked to assume without this knowledge." P.S. Atiyah, *An Introduction to the Law of Contract* 221-22 (3d ed. 1981).

**contract under seal.** A formal contract that requires no consideration and has the seal of the signer attached. • Modern statutes have mostly eliminated the special effects of a sealed contract. It must be in writing or printed on paper or parchment and is conclusive between the parties when signed, sealed, and delivered. Delivery is made either by actually handing it to the other party (or party's representative) or by stating an intention that the deed be operative even though it is retained in the possession of the party executing it. — Also termed *sealed contract*; *special contract*; *specialty contract*; *specialty*; *deed*; *covenant*.

"The only formal contract of English law is the *contract under seal*, sometimes also called a deed and sometimes a specialty. It is the only *formal contract*, because it derives its validity neither from the fact of agreement, nor from the consideration which may exist for the promise of either party, but from the *form* in which it is expressed." William R. Anson, *Principles of the Law of Contract* 82 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"Contracts under seal also bear little resemblance to ordinary contracts, although here at least the liability is based on a promise. A contract under seal, that is to say

a deed, . . . is a written promise or set of promises which derives its validity from the form, and the form alone, of the executing instrument. In point of fact the 'form' of the deed is nowadays surprisingly elastic. The only necessities are that the deed should be intended as such, and should be signed, sealed, and delivered. The sealing, however, has now become largely a fiction, an adhesive wafer simply being attached to the document in place of a genuine seal. Similarly, 'delivery' is not literally necessary, provided that there is a clear intention that the deed should be operative." P.S. Atiyah, *An Introduction to the Law of Contract* 31 (3d ed. 1981).

**cost-plus contract.** A contract in which payment is based on a fixed fee or a percentage added to the actual cost incurred.

**de facto contract of sale.** A contract purporting to pass property but defective in some element.

**dependent contract.** A contract conditioned or dependent on another contract.

**deposit contract.** An agreement between a financial institution and its customer governing the treatment of deposited funds and the payment of checks and other demands against the customer's account.

**destination contract.** A contract in which a seller bears the risk of loss until the goods arrive at the destination. UCC § 2-509. Cf. *shipment contract*.

**discharged contract.** See *void contract* (2).

**divisible contract.** See *severable contract*.

**dual contract.** A contract between parties who have made two contracts for the same transaction, sometimes so that one may be used to defraud another (such as a lender) as to the terms of the parties' actual agreement.

**employment contract.** A contract between an employer and employee in which the terms and conditions of employment are stated.

**engineering, procurement, and construction contract.** A fixed-price, schedule-intensive construction contract — typically used in the construction of single-purpose projects, such as energy plants — in which the contractor agrees to a wide variety of responsibilities, including the duties to provide for the design, engineering, procurement, and construction of the facility; to prepare start-up procedures; to conduct performance tests; to create operating manuals; and to train people to operate the facility. — Abbr. EPC contract. — Also termed *turnkey contract*. See SINGLE-PURPOSE PROJECT.

**entire-output contract.** See *output contract*.

**escrow contract.** The agreement among buyer, seller, and escrow holder, setting forth

the rights and responsibilities of each. See ESCROW.

**evergreen contract.** A contract that renews itself from one term to the next in the absence of contrary notice by one of the parties.

**executed contract.** 1. A contract that has been fully performed by both parties. 2. A signed contract.

**executory contract** (eg-zek-yə-tor-ee). 1. A contract that remains wholly unperformed or for which there remains something still to be done on both sides, often as a component of a larger transaction and sometimes memorialized by an informal letter agreement, by a memorandum, or by oral agreement.

"If a contract is wholly executory, and the legal duties of the parties are as yet unfulfilled, it can be discharged by mutual consent, the acquittance of each from the other's claims being the consideration for the promise of each to waive his own." William R. Anson, *Principles of the Law of Contract* 138 (Arthur L. Corbin ed., 3d Am. ed. 1919).

2. **Bankruptcy.** A contract under which debtor and nondebtor each have unperformed obligations and the debtor, if it ceased further performance, would have no right to the other party's continued performance.

**express contract.** A contract whose terms the parties have explicitly set out. — Also termed *special contract*. Cf. *implied contract*.

**financial contract.** *Securities.* An arrangement that (1) takes the form of an individually negotiated contract, agreement, or option to buy, sell, lend, swap, or repurchase, or other similar individually negotiated transaction commonly entered into by participants in the financial markets; (2) involves securities, commodities, currencies, interest or other rates, other measures of value, or any other financial or economic interest similar in purpose or function; and (3) is entered into in response to a request from a counterparty for a quotation, or is otherwise entered into and structured to accommodate the objectives of the counterparty to the arrangement.

**fixed-price contract.** A contract in which the buyer agrees to pay the seller a definite and predetermined price regardless of increases in the seller's cost or the buyer's ability to acquire the same goods in the market at a lower price.

**formal contract.** *Hist.* A written contract under seal.

**futures contract.** See FUTURES CONTRACT.

**gambling contract.** An agreement to engage in a gamble; a contract in which two parties wager something, esp. money, for a



chance to win a prize. — Also termed *gaming contract*.

“Generally, under or apart from statutes so providing, or prohibiting such contracts or transactions, gambling contracts and transactions are illegal and void and cannot be enforced; and such contracts are void ab initio. . . . A gambling contract is invalid, no matter what outward form it may assume, and no ingenuity can make it legal.” 38 C.J.S. *Gaming* § 26, at 138–39 (1996).

**government contract.** See *procurement contract*.

**gratuitous contract** (grə-t[y]oo-i-təs). A contract made for the benefit of a promisee who does not give consideration to the promisor. — Also termed *contract of beneficence*; *contract of benevolence*. Cf. *onerous contract*.

**grubstake contract.** A contract between two parties in which one party provides the grubstake — money and supplies — and the other party prospects for and locates mines on public land. • Each party acquires an interest in the mine as agreed to in the contract. Grubstake contracts are used chiefly in the western United States. In some states, such as Alaska, a request for grubstake money is considered the offer of a security and must be registered. — Also termed *grubstaking contract*.

**guaranteed-sale contract.** A contract between a real-estate agency and a property owner in which the agency agrees to buy the property at a guaranteed price after a specified length of time if it has not been sold under the listing agreement. • The guaranteed price is usu. a substantial discount from the listed price. — Also termed *guaranteed-purchase contract*.

**hazardous contract.** See *aleatory contract*.

**illegal contract.** A promise that is prohibited because the performance, formation, or object of the agreement is against the law. • Technically speaking, an illegal contract is not a contract at all, so the phrase is a misnomer.

“An illegal contract is exceptionally difficult to define. It does not merely mean a contract contrary to the criminal law, although such a contract would indubitably be illegal. But a contract can well be illegal without contravening the criminal law, because there are certain activities which the law does not actually prohibit, but at the same time regards as contrary to the public interest and definitely to be discouraged, for instance, prostitution. While a void contract is not necessarily illegal, an illegal contract is often void. However, the consequences of an illegal contract differ somewhat from those usually produced by a simply void contract, so illegal contracts are usually accorded separate treatment.” P.S. Atiyah, *An Introduction to the Law of Contract* 38 (3d ed. 1981).

**illusory contract.** An agreement in which one party gives as consideration a promise that is so insubstantial as to impose no obligation. • The insubstantial promise renders the contract unenforceable.

**immoral contract.** A contract that so flagrantly violates societal norms as to be unenforceable.

**implied contract.** 1. An implied-in-law contract. 2. An implied-in-fact contract. Cf. *express contract*.

**implied-in-fact contract.** A contract that the parties presumably intended, either by tacit understanding or by the assumption that it existed. — Also termed *contract implied in fact*.

**implied-in-law contract.** An obligation imposed by law because of the conduct of the parties, or some special relationship between them, or because one of them would otherwise be unjustly enriched. • An implied-in-law contract is not actually a contract, but instead a remedy that allows the plaintiff to recover a benefit conferred on the defendant. — Also termed *contract implied in law*; *quasi-contract*; *constructive contract*. See UNJUST ENRICHMENT.

“[A]dventurous courts have turned to the idea of a ‘contract implied in law,’ a ‘quasi-contract’ — not really a contract, a legal fiction necessary to promote the ends of justice and, in particular, to prevent ‘unjust enrichment.’” Grant Gilmore, *The Death of Contract* 73–74 (1974).

“Since . . . claims for the redress of unjust enrichment did not fit comfortably into either the category of contract or that of tort, they came to be described as claims in *quasi-contract*. Some of them were originally characterized as being in *quantum meruit* (as much as he deserved), a form of action used for claims to payment for services. This procedural term has persisted and is sometimes used inexactly as a synonym for the more general term *quasi-contract*, which refers to any money claim for the redress of unjust enrichment.” E. Allan Farnsworth, *Contracts* § 2.20, at 103 (2d ed. 1990).

**impossible contract.** A contract that the law will not enforce because there is no feasible way for one of the parties to perform. See IMPOSSIBILITY (3).

**independent contract.** A contract in which the mutual acts or promises of the parties have no relation to each other, either as equivalents or as considerations. Cf. *commutative contract*.

**informal contract.** See *parol contract* (2).

**innominate contract** (i-nom-ə-nit). *Civil law.* A contract not classifiable under any particular name; a contract for which the law supplies nothing in addition to the express

agreement of the parties. — Also termed *innominate real contract*. Cf. *nominate contract*.

**installment contract.** A contract requiring or authorizing the delivery of goods in separate lots, or payments in separate increments, to be separately accepted. • Under the UCC, this type of agreement will be considered one contract even if it has a clause stating that each delivery is a separate contract. UCC § 2-612.

**installment land contract.** See *contract for deed*.

**integrated contract.** See INTEGRATED CONTRACT.

**invalid contract.** A contract that is either void or voidable. — Also termed *invalid agreement*.

**investment contract.** See INVESTMENT CONTRACT.

**joint contract.** A contract in which two or more promisors are together bound to fulfill its obligations, or one in which two or more promisees are together entitled to performance. Cf. *severable contract*.

**land contract.** See *contract for deed*.

**land sales contract.** See *contract for deed*.

**leonine contract.** See *adhesion contract*.

**letter contract.** In federal contract law, a written contract with sufficient provisions to permit the contractor to begin performance.

**leverage contract.** See LEVERAGE CONTRACT.

**literal contract.** 1. *Roman law.* A type of written contract originally created by — and later evidenced by — an entry of the sum due on the debit side of a ledger, binding a signatory even though the signatory receives no consideration. See LITERIS OBLIGATIO.

“Though an obligation could be created by a literal contract in the time of Gaius, the so-called literal contract of Justinian was not, in itself, a means of creating an obligation, but was the *evidence* of an obligation created in some other way . . . . The true literal contract, as described by Gaius, may be defined as a means of creating an obligation to pay money by a fictitious entry . . . in the creditor’s account book . . . with the consent of the intended debtor. A, with B’s consent, enters the fact that B is indebted to him . . . and thereupon B is under an obligation to pay, though no money has passed between them.” R.W. Leage, *Roman Private Law* 316-17 (C.H. Ziegler ed., 2d ed. 1930).

2. *Civil law.* A contract fully evidenced by a writing and binding on the signatory.

**marine contract.** A contract relating to maritime affairs, including navigation, marine insurance, affreightment, maritime

loans, and shipping. — Also termed *maritime contract*.

**maritime contract.** A contract that relates to a vessel in its use as such, to navigation on navigable waters, to transportation by sea, or to maritime employment. • An action on a maritime contract falls within the admiralty jurisdiction.

**marketing contract.** 1. A business’s agreement with an agency or other association for the promotion of sales of the business’s goods or services. 2. An agreement between a cooperative and its members, by which the members agree to sell through the cooperative, and the cooperative agrees to obtain an agreed price.

**mixed contract.** 1. *Civil law.* A contract in which the respective benefits conferred are unequal. 2. A contract for both the sale of goods and services. • The UCC may apply to a mixed contract if the primary contract purpose is for the sale of goods.

**mutual contract.** See *bilateral contract*.

**naked contract.** See NUDUM PACTUM.

**nominate contract (nom-ə-nit).** *Civil law.* A contract distinguished by a particular name, such as sale, insurance, or lease, the very use of which determines some of the rules governing the contract and the contractual rights of the parties, without the need for special stipulations. • The contracts are generally divided into four types: (1) real (arising from something done), (2) oral (arising from something said), (3) literal (arising from something written), and (4) consensual (arising from something agreed to). Cf. *innominate contract*.

**nude contract.** See NUDUM PACTUM.

**onerous contract.** *Civil law.* A contract in which each party is obligated to perform in exchange for each party’s promise of performance. Cf. *gratuitous contract*.

**option contract.** See OPTION (2).

**oral contract.** See *parol contract* (1).

**output contract.** A contract in which a buyer promises to buy all the goods or services that a seller can supply during a specified period and at a set price. • The quantity term is measured by the seller’s output. — Also termed *entire-output contract*. Cf. *requirements contract*.

**parol contract (pə-rohl or par-əl).** 1. A contract or modification of a contract that is not in writing or is only partially in writing. — Also termed *oral contract*; *parol agreement*; (loosely) *verbal contract*. 2. At common

law, a contract not under seal, although it could be in writing. — Also termed *informal contract*; *simple contract*. See PAROL-EVIDENCE RULE.

**pignorative contract** (pig-nə-ray-tiv). *Civil law*. A contract in which the seller of real property, instead of relinquishing possession of the property that is theoretically sold, gives the buyer a lien; a contract of pledge, hypothecation, or mortgage of realty.

**precontract**. A contract that precludes a party from entering into a comparable agreement with someone else. Cf. LETTER OF INTENT.

**principal contract**. A contract giving rise to an accessory contract, as an agreement from which a secured obligation originates. Cf. *accessory contract*.

**procurement contract**. A contract in which a government receives goods or services. ● A procurement contract, including the bidding process, is subject to government regulation. See FEDERAL ACQUISITION REGULATION. — Also termed *government contract*.

**public contract**. A contract that, although it involves public funds, may be performed by private persons and may benefit them.

**quasi-contract**. See *implied-in-law contract*.

**real contract**. **1. Hist.** A contract in which money or other property passes from one party to another. ● This term, derived from the Roman law, referred to contracts concerning both personal and real property. **2. Roman law.** A contract requiring something more than mere consent, such as the lending of money or the delivery of a thing. Cf. *consensual contract*.

"The essence of . . . the real contracts, was that, at the time the agreement was made, one party, by delivering something belonging to him to the other party to the contract, imposed on that other an obligation to return the thing itself or, in the case of things intended to be consumed, an equivalent in kind. As the Roman lawyers expressed it, the contractual obligation was created by something being handed over. . . ." R.W. Leage, *Roman Private Law* 292 (C.H. Ziegler ed., 2d ed. 1930).

"The term 'real contract' is in common use in the Civil law, and though not commonly used by judges or writers in the common law, nevertheless describes certain obligations enforced in England from very early times. A real contract is an obligation arising from the possession or transfer of a res." Samuel Williston, *A Treatise on the Law of Contracts* § 8, at 19 (Walter H.E. Jaeger ed., 3d ed. 1957).

**reciprocal contract**. See *bilateral contract*.

**requirements contract**. A contract in which a seller promises to supply all the goods or services that a buyer needs during a specific

period and at a set price, and in which the buyer promises (explicitly or implicitly) to obtain those goods or services exclusively from the seller. ● The quantity term is measured by the buyer's requirements. Cf. *output contract*.

**retail installment contract**. A contract for the sale of goods under which the buyer makes periodic payments and the seller retains title to or a security interest in the goods. — Also termed *retail installment contract and security agreement*; *conditional sales contract*. Cf. *chattel mortgage* under MORTGAGE.

**satisfaction contract**. A contract by which one party agrees to perform to the reasonable satisfaction of the other. — Also termed *contract to satisfaction*.

**sealed contract**. See *contract under seal*.

**self-determination contract**. Under the Indian Self-Determination and Education Assistance Act, an agreement by which the federal government provides funds to an Indian tribe and allows the tribe to plan and administer a program that would otherwise be administered by the federal government. 25 USCA § 450b(j).

**service contract**. A contract to perform a service; esp., a written agreement to provide maintenance or repairs on a consumer product for a specified term. 15 USCA § 2301(8).

**severable contract**. A contract that includes two or more promises each of which can be enforced separately, so that failure to perform one of the promises does not necessarily put the promisor in breach of the entire contract. — Also termed *divisible contract*; *several contract*. See SEVERABILITY CLAUSE. Cf. *joint contract*.

"A severable contract . . . is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample." Ivan Horniman, *Wharton's Law Lexicon* 215 (13th ed. 1925).

**shipment contract**. A contract in which a seller bears the risk of damage to the items sold only until they are brought to the place of shipment. ● If a contract for the sale of goods does not address the terms of delivery, it is presumed to be a shipment contract. UCC §§ 2-319, 2-504, 2-509. Cf. *destination contract*.

"In the jargon of commercial lawyers, a contract that requires or authorizes the seller to send the goods to the buyer but does not require that he deliver them at any

particular destination is called a 'shipment contract.' Generally, in shipment contracts, risk of loss passes to the buyer at the point of shipment, which is also the point of 'delivery,' while in 'destination contracts' (seller must deliver at a particular destination) risk passes upon seller's tender at destination." 1 James J. White & Robert S. Summers, *Uniform Commercial Code* § 3-5, at 128-29 (4th ed. 1995).

**simple contract.** See *parol contract* (2).

**simulated contract.** *Civil law.* A contract that, although clothed in concrete form, has no existence in fact; a sham contract. • A simulated contract can be declared a sham and avoided by an interested party, including a creditor of one of the parties to the contract. — Also termed *simulation*.

**special contract.** 1. See *contract under seal*. 2. A contract with peculiar provisions that are not ordinarily found in contracts relating to the same subject matter. 3. See *express contract*.

**specialty contract.** See *contract under seal*.

**standard-form contract.** A usu. preprinted contract containing set clauses, used repeatedly by a business or within a particular industry with only slight additions or modifications to meet the specific situation.

**stock-option contract.** A negotiable instrument that gives the holder the right to buy or sell — for a specified price within a fixed time limit — a certain number of shares of the corporation's stock. See *stock option* under OPTION.

**subcontract.** A contract made by a party to another contract for carrying out the other contract, or a part of it.

**subscription contract.** See SUBSCRIPTION (3).

**substituted contract.** A contract between parties to a prior contract that takes the place of and discharges the previous obligation. • A substituted contract differs from a novation (as "novation" is traditionally defined) in that the latter requires the substitution for the original obligor of a third person not a party to the original agreement; when the obligee accepts the third party, the agreement is immediately discharged. In contrast to both substituted contract and novation, an executory accord does not immediately discharge an obligation; rather, the obligation is discharged on performance, often by a third person rather than the original obligor. Cf. NOVATION; ACCORD (2).

"[A] substituted contract immediately discharges the prior claim which is merged into the new agreement. Consequently, in the absence of an express agreement to the contrary, the original claim can no longer be enforced. In the event of a breach, any action would have to

be brought on the substituted agreement. . . . The concept of 'substituted contract' was created largely to circumvent the unsatisfactory rules that until recently governed executory accords. Now that these rules have been modernized, the next step should be the reabsorption of the substituted contract into the executory accord. . . . [T]he untidy distinction between executory accords and substituted contracts should not be allowed to complicate litigation about routine claim settlements." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 21.6, at 803 (4th ed. 1998).

**synallagmatic contract** (sin-ə-lag-mat-ik). [fr. Greek *synallagma* "mutual agreement"] *Civil law.* A contract in which the parties obligate themselves reciprocally, so that the obligation of each party is correlative to the obligation of the other. • A synallagmatic contract is characterized by correlative obligations, whereas a commutative contract is characterized by correlative performances. The term *synallagmatic contract* is essentially the civil-law equivalent of the common law's *bilateral contract*. Cf. *commutative contract*.

**tacit contract.** A contract in which conduct takes the place of written or spoken words in the offer or acceptance (or both).

**take-it-or-leave-it contract.** See *adhesion contract*.

**take-or-pay contract.** A contract requiring the buyer to either purchase and receive a minimum amount of a product at a set price ("take") or pay for this minimum without taking immediate delivery ("pay"). • These contracts are often used in the energy and oil-and-gas businesses.

**third-party-beneficiary contract.** A contract that directly benefits a third party and that gives the third party a right to sue any of the original contracting parties for breach.

**unconscionable contract.** See *unconscionable agreement* under AGREEMENT.

**unenforceable contract.** A valid contract that, because of some technical defect, cannot be enforced; a contract having some legal consequences, but that may not be enforced in an action for damages or specific performance in the face of certain defenses, such as the statute of frauds. • Unenforceable contracts share many features with voidable contracts, but unlike the latter, in some instances they may be enforced indirectly. Restatement (Second) of Contracts § 8 cmt. a (1981). — Also termed *agreement of imperfect obligation*.

"The difference between what is voidable and what is unenforceable is mainly a difference between substance and procedure. A contract may be good, but incapable of proof owing to lapse of time, want of written form, or failure to affix a revenue stamp. Writing in the first

cases, a stamp in the last, may satisfy the requirements of law and render the contract enforceable, but it is never at any time in the power of either party to avoid the transaction. The contract is unimpeachable, only it cannot be proved in court." William R. Anson, *Principles of the Law of Contract* 19-20 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"An unenforceable contract is a somewhat anomalous concept, fortunately now of small importance. We have already mentioned that certain types of contract are required by statute to be evidenced in writing, and that if this requirement is not satisfied, the contracts are regarded as unenforceable, but not void. There are, in fact, only two such contracts left now, namely a contract of guarantee and a contract for the sale of an interest in land. For most practical purposes an unenforceable contract is not much better than a void contract, since the most important characteristic of a valid contract is that it is enforceable." P.S. Atiyah, *An Introduction to the Law of Contract* 38 (3d ed. 1981).

**unilateral contract.** A contract in which only one party makes a promise or undertakes a performance.

"[M]any unilateral contracts are in reality gratuitous promises enforced for good reason with no element of bargain." P.S. Atiyah, *An Introduction to the Law of Contract* 126 (3d ed. 1981).

"If A says to B, 'If you walk across the Brooklyn Bridge I will pay you \$100,' A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 2-10(a), at 64-65 (4th ed. 1998).

**valid contract.** A contract that is fully operative in accordance with the parties' intent. — Also termed *valid agreement*.

**variable annuity contract.** *Securities.* An annuity whose payments vary according to how well the fund (usu. made up of common stocks) that backs it is performing. SEC Rule 0-1(e)(1) (17 CFR § 270.0-1(e)(1)). See *variable annuity* under ANNUITY.

**verbal contract.** See *parol contract* (1).

**voidable contract.** A contract that can be affirmed or rejected at the option of one of the parties; a contract that is void as to the wrongdoer but not void as to the party wronged, unless that party elects to treat it as void.

"A voidable contract is a contract which, in its inception, is valid and capable of producing the results of a valid contract, but which may be 'avoided', i.e. rendered void at the option of one (or even, though rarely, of both) of

the parties." P.S. Atiyah, *An Introduction to the Law of Contract* 37-38 (3d ed. 1981).

**void contract.** 1. A contract that is of no legal effect, so that there is really no contract in existence at all.

"Strictly speaking, a 'void contract' is a contradiction in terms; for the words describe a state of things in which, despite the intention of the parties, no contract has been made. Yet the expression, however faulty, is a compendious way of putting a case in which there has been the outward semblance without the reality of contract." William R. Anson, *Principles of the Law of Contract* 18 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"A valid contract is, of course, simply a contract of full force and effect, not vitiated in any way. A so-called void contract, on the other hand, is really a contradiction in terms inasmuch as a contract has already been defined in terms applicable only to a valid contract. However, the term is convenient and is universally used. For purposes of exposition, it is convenient to treat void contracts as falling, broadly speaking, into main categories. On the one hand, are cases where one of the normal requirements for the creation of a contract is absent, while, on the other hand, are cases where all the normal requirements are satisfied, but the contract is void because the law disapproves of its purpose or the terms by which it seeks to achieve that purpose. Typical examples of contracts which are void because one of the normal requirements is absent are contracts in which the acceptance of an offer has not been communicated or in which a promise is given gratuitously. Typical examples of contracts which are void because of their terms or objects are wagering contracts, and contracts prejudicial to family relations." P.S. Atiyah, *An Introduction to the Law of Contract* 36-37 (3d ed. 1981).

2. A contract that has been fully performed. — Also termed *discharged contract*.

"Not only is the term 'void contract' in itself technically inaccurate, but a contract is sometimes said to be void, not because it was destitute of legal effect from its commencement, but because it has been fully performed, and so has ceased to have legal operation. It would be more proper to describe such a contract as 'discharged.'" William R. Anson, *Principles of the Law of Contract* 20 (Arthur L. Corbin ed., 3d Am. ed. 1919).

3. Loosely, a voidable contract.

"Again the word 'void' has been used, even by judges and the framers of statutes, where 'voidable' is meant. One illustration will suffice. By 17 *Geo. III*, c. 50, failure to pay certain duties at an auction is stated to make a bidding 'nul and void to all intents,' but this does not entitle a purchaser who has repented of his bargain to avoid the contract by his own wrong, that is by refusal to pay the statutory duty. The contract is voidable at the option of the party who has not broken the condition imposed by law." William R. Anson, *Principles of the Law of Contract* 20-21 (Arthur L. Corbin ed., 3d Am. ed. 1919).

**wagering contract.** 1. A contract the performance of which depends on the happening of an uncertain event, made entirely for sport.  
2. A contract in which an uncertain event

affects or results from a business transaction. ● With this type of wagering contract, a business person is protected from a trade risk.

**written contract.** A contract whose terms have been reduced to writing.

“Written contracts are also commonly signed, but a written contract may consist of an exchange of correspondence, of a letter written by the promisee and assented to by the promisor without signature, or even of a memorandum or printed document not signed by either party. Statutes relating to written contracts are often expressly limited to contracts signed by one or both parties. Whether such a limitation is to be implied when not explicit depends on the purpose and context.” Restatement (Second) of Contracts § 95 cmt. c (1981) (citations omitted).

**contract, freedom of.** See FREEDOM OF CONTRACT.

**contract bond.** See PERFORMANCE BOND.

**contract carrier.** See *private carrier* under CARRIER.

**Contract Clause.** See CONTRACTS CLAUSE.

**contract demurrage.** See DEMURRAGE.

**contractee.** *Rare.* A person with whom a contract is made.

**contract for deed.** See CONTRACT.

**contract for sale.** See CONTRACT.

**contract implied in fact.** See *implied-in-fact contract* under CONTRACT.

**contract implied in law.** See *implied-in-law contract* under CONTRACT.

**contract loan.** See *add-on loan* under LOAN.

**contract not to compete.** See *noncompetition covenant* under COVENANT (1).

**contract not to sue.** See *covenant not to sue* under COVENANT (1).

**contract of adhesion.** See *adhesion contract* under CONTRACT.

**contract of affreightment** (ə-frayt-mənt). *Maritime law.* An agreement for carriage of goods by water. ● This type of contract *usu.* takes the form of a bill of lading or charterpar-

ty. — Abbr. COA. See *bareboat charter* under CHARTER; CHARTERPARTY.

**contract of beneficence** (bə-nef-ə-sənts). See *gratuitous contract* under CONTRACT.

**contract of benevolence.** See *gratuitous contract* under CONTRACT.

**contract of insurance.** See INSURANCE POLICY.

**contract of record.** See CONTRACT.

**contract of sale.** See *contract for sale* (1) under CONTRACT.

**contractor.** 1. A party to a contract. 2. More specif., one who contracts to do work or provide supplies for another.

**general contractor.** One who contracts for the completion of an entire project, including purchasing all materials, hiring and paying subcontractors, and coordinating all the work. — Also termed *original contractor*; *prime contractor*.

**independent contractor.** See INDEPENDENT CONTRACTOR.

**subcontractor.** See SUBCONTRACTOR.

**contract rate.** See INTEREST RATE.

**Contracts Clause.** The clause of the U.S. Constitution prohibiting states from passing a law that would impair private contractual obligations. ● The Supreme Court has generally interpreted this clause so that states can regulate private contractual obligations if the regulation is reasonable and necessary. U.S. Const. art. I, § 10, cl. 1. — Also termed *Contract Clause*; *Obligation of Contracts Clause*.

**contract system.** *Hist.* The practice of leasing prisoners out to private individuals for the prisoners' labor.

**contract to satisfaction.** See *satisfaction contract* under CONTRACT.

**contract to sell.** See *contract for sale* (2) under CONTRACT.

**contractual duty.** See DUTY (1).

**contract uberrimae fidei.** See CONTRACT.

**contract under seal.** See CONTRACT.

**contractus** (kən-trak-təs). [Latin] *Roman law*. A contract; an agreement between two or more parties, usu. to create an actionable bond between them. See CONTRAHERE.

"The texts of the Roman Law do not supply a definition of contract. The words *contractus* — *contrahere* — like 'contract' in English, are used in various senses, sometimes wider, sometimes narrower. Labeo gives *contractus* the meaning of a reciprocal obligation, such as purchase and sale, hire, partnership. But when the Romans speak of obligation arising from contract, they mean obligations arising from convention or agreement. In Roman law it was far from being the case that all agreements which might be expected to produce a legal obligation did so." R.W. Lee, *The Elements of Roman Law* 285 (4th ed. 1956).

**contractus bonae fidei** (kən-trak-təs boh-nee fi-dee-i). [Latin "contract of good faith"] *Roman law*. A contract requiring that the parties perform their duties in good faith. • In an action brought on a *contractus bonae fidei*, the plaintiff had to assert that he had not acted in bad faith. All consensual contracts were considered *contractus bonae fidei*. Essentially, then, the phrase was typically used when a remedy was being sought for a breach.

**contract zoning**. See ZONING.

**contradictory motion**. See MOTION.

**contrafactio** (kon-trə-fak-shee-oh). [Law Latin] *Hist.* The act of counterfeiting. • The word appeared frequently in the phrase *contrafactio sigilli regis* ("counterfeiting the king's seal").

**contra formam collationis** (kon-trə for-məm kə-lay-shee-oh-nis). [Latin "against the form of a collation"] *Hist.* A writ to regain lands given to a religious society in exchange for perpetual alms. • The writ was usu. sought by an heir of the person who had given the land away.

**contra formam feoffmenti** (kon-trə for-məm feef-men-ti). [Latin "contrary to the form of the feoffment"] *Hist.* A writ that commanded a landowner to stop demanding from a tenant more services than those included in the tenant's deed to the land. — Also spelled *contra formam feoffamenti*.

"Contra formam feoffamenti is a writ that lies where a man before the statute of *quia emptores terrarum*, made 18 Ed. 1, infeoffed another by deed to do certain service; if the feoffor or his heirs distrain him to do other service than is comprised in the deed, then the tenant shall have this writ, commanding him not to distrain him to do other service than is comprised in the deed." *Termes de la Ley* 116 (1st Am. ed. 1812).

**contra formam statuti** (kon-trə for-məm stə-tyoo-ti). [Law Latin] Contrary to the form of the statute. See AGAINST THE FORM OF THE STATUTE.

**contrahere** (kən-tray-hə-ree), *vb.* [Latin "draw together"] *Roman law*. 1. To establish or enter into a formal relationship, as between husband and wife, creditor and debtor, by mutual agreement. 2. To commit a crime. 3. To accept an inheritance. 4. Generally, to perform any act of legal significance. See CONTRACTUS.

**contra jus belli** (kon-trə jəs bel-i). [Latin] Against the law of war.

**contra jus commune** (kon-trə jəs kə-myoo-nee). [Latin] Against common right or law; contrary to the rule of the common law.

**contra legem terrae** (kon-trə lee-jəm ter-ee). [Latin] Against the law of the land.

**contra non valentem**. See DOCTRINE OF CONTRA NON VALENTEM.

**contra omnes gentes** (kon-trə om-nee-z jen-teez). [Latin] *Hist.* Against all people. • These were the traditional words of warranty in a deed.

**contra pacem** (kon-trə pay-səm). [Latin] Against the peace. • This term was formerly used in indictments to signify that the alleged offense is against the public peace.

**contraplacitum** (kon-trə-plas-ə-təm). [Latin] *Hist.* A counterplea.

**contra proferentem** (kon-trə prof-ə-ren-təm). [Latin "against the offeror"] The doctrine that, in interpreting documents, ambiguities are to be construed unfavorably to the drafter. — Also spelled *contra proferentes*. — Also termed *ambiguity doctrine*.

**contrarotulator** (kon-trə-roch-yə-lay-tər or kon-trə-roh-tyə-lay-tər). [Latin "controller"] *Hist.* A person responsible for collecting and managing funds on behalf of the Crown or other government office. • A variety of controllers existed in England, including the *contrarotulator customarum* (controller of the customs), *contrarotulator hospitii domini regis* (controller of the king's household), and *contrarotulator pipae* (controller of the pipe — i.e., an officer who collected debts due to the Exchequer).

**contrary to law.** **1.** (Of an act or omission) illegal. **2.** (Of a jury verdict) in conflict with established law.

**contrary to the evidence.** (Of an argument) that is counter to the weight of the evidence presented at a contested hearing.

**contra tabula.** See BONORUM POSSESSIO CONTRA TABULAS.

**contravene** (kon-træ-veen), *vb.* **1.** To violate or infringe; to defy <the soldier contravened the officer's order, and then went AWOL>. **2.** To come into conflict with; to be contrary to <the court held that the regulation contravenes public policy>.

**contravening equity.** See EQUITY.

**contravention** (kon-træ-ven-shən). **1.** An act violating a legal condition or obligation; esp., an entail heir's act that conflicts with the entail provision. **2.** *French law.* A criminal breach of a law, treaty, or agreement; a minor violation of the law. • A contravention is traditionally punishable by *peines de police*, usu. a fine not exceeding 15 francs and imprisonment not exceeding three days. See *public-welfare offense* under OFFENSE.

"We might get [terminological] help from the practice of Continental Europe in which three classes of punishable offenses are maintained — crimes, delicts, and contraventions. The last word is used for those minor violations of regulations, all of them necessary enough for public safety and convenience, which are so numerous and so detailed in our lives. It is a convenient term and is widely used in the United States for just such acts, but it has not yet been made official. The Continental practice has the advantage of using the word crimes only for really serious offenses, which is in conformity with popular feeling on the subject." Max Radin, *The Law and You* 92 (1948).

**3.** *Scots law.* An action brought for breach of a peace bond. See *LAWBURROWS*. **4.** *Hist. Scots law.* An act committed in violation of a legal condition or obligation, esp. one done by an entail heir contrary to a deed.

**contrectatio** (kon-trek-tay-shee-oh), *n.* [fr. Lat. in *contrectare* "to touch or handle"] *Hist.* The act of laying hands on another's property with the intent of taking, misappropriating, or misusing it. • This term implied a greater culpability than simply taking property without the owner's permission and, under the Roman law, could rise to the level of theft (*furtum*).

**contributing cause.** See CAUSE (1).

**contributing to the delinquency of a minor.**

The offense of an adult's engaging in conduct involving a minor — or in the presence of a minor — likely to result in delinquent conduct.

• Examples include encouraging a minor to shoplift, to lie under oath, or to commit vandalism. — Also termed *contributing to delinquency*. See JUVENILE DELINQUENCY. Cf. IMPAIRING THE MORALS OF A MINOR.

**contribution.** **1.** The right that gives one of several persons who are liable on a common debt the ability to recover ratably from each of the others when that one person discharges the debt for the benefit of all; the right to demand that another who is jointly responsible for a third party's injury supply part of what is required to compensate the third party. — Also termed *right of contribution*. **2.** A tortfeasor's right to collect from others responsible for the same tort after the tortfeasor has paid more than his or her proportionate share, the shares being determined as a percentage of fault. **3.** The actual payment by a joint tortfeasor of a proportionate share of what is due. Cf. INDEMNITY. **4.** WAR CONTRIBUTION.

**contribution bar.** Preclusion of a defendant having contribution rights against other defendants, who have settled their dispute with the plaintiff, from seeking contribution from them.

• The bar is usu. allowed in exchange for a credit against any judgment the plaintiff obtains against the nonsettling defendant.

**contribution clause.** See COINSURANCE CLAUSE.

**contribuione facienda** (kon-tri-byoo-shee-oh-nee fay-shee-en-də). [Latin "writ for making contribution"] *Hist.* A writ to compel a tenant in common to contribute to a fellow tenant who has paid more than the tenant's share of a sum for which all the tenants are liable.

"*Contribuione facienda* is a writ that lieth in case where more are bound to one thing, & one is put to the whole burden. . . . If tenents in comon or joynt, hold a mill (*pro indiviso*) & equally take the profits therof, the mill falling to decay, & one or more of them refusing to contribute toward the reparation therof, the rest shall have this writ. . . ." John Cowell, *The Interpreter* (1607).

**contribution margin.** The difference between a product's selling price and its cost of production. • The contribution margin indicates the amount of funds available for profit and payment of fixed costs.

**contributory** (kən-trib-yə-tor-ee), *adj.* **1.** Tending to bring about a result. **2.** (Of a pension



fund) that receives contributions from both the employer and the employees.

**contributory, n.** 1. One who contributes or who has a duty to contribute. 2. A contributing factor. 3. *Hist.* A person who, as a result of being or representing a past or present member of a corporation, is liable to contribute to the corporation's debts upon its winding up.

**contributory infringement.** See INFRINGEMENT.

**contributory negligence.** See NEGLIGENCE.

**contributory-negligence doctrine.** *Torts.* The principle that completely bars a plaintiff's recovery if the damage suffered is partly the plaintiff's own fault. • Most states have abolished this doctrine and have adopted instead a comparative-negligence scheme. See NEGLIGENCE. Cf. COMPARATIVE-NEGLIGENCE DOCTRINE.

**contributory pension plan.** See PENSION PLAN.

**control, n.** The direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise; the power or authority to manage, direct, or oversee <the principal exercised control over the agent>.

**superintending control.** The general supervisory control that a higher court in a jurisdiction has over the administrative affairs of a lower court within that jurisdiction.

**working control.** The effective control of a corporation by a person or group who owns less than 50% of the stock.

**control, vb.** 1. To exercise power or influence over <the judge controlled the proceedings>. 2. To regulate or govern <by law, the budget office controls expenditures>. 3. To have a controlling interest in <the five shareholders controlled the company>.

**control group.** The persons with authority to make decisions on a corporation's behalf.

**control-group test.** A method of determining whether the attorney-client privilege protects communications made by corporate employees, by providing that those communications are protected only if made by an employee who is a member of the group with authority to direct the corporation's actions as a result of that communication. • The U.S. Supreme Court rejected the control-group test in *Upjohn Co. v.*

*United States*, 449 U.S. 383, 101 S.Ct. 677 (1981). Cf. SUBJECT-MATTER TEST.

**controlled company.** See COMPANY.

**controlled corporate groups.** See CONTROLLED GROUP.

**controlled corporation.** See CORPORATION.

**controlled foreign corporation.** See CORPORATION.

**controlled group.** *Tax.* Two or more corporations whose stock is substantially held by five or fewer persons. • The Internal Revenue Code subjects these entities (such as parent-subsidiary or brother-sister groups) to special rules for computing tax liability. — Also termed *controlled corporate groups*. IRC (26 USCA) §§ 851(c)(3), 1563(a).

**controlled-securities-offering distribution.** See *securities-offering distribution* under DISTRIBUTION.

**controlled substance.** Any type of drug whose possession and use is regulated by law, including a narcotic, a stimulant, or a hallucinogen. See DRUG.

**controlled-substance act.** A federal or state statute that is designed to control the distribution, classification, sale, and use of certain drugs. • Most states have enacted these laws, which are usu. modeled on the Uniform Controlled Substances Act.

**controller.** See COMPTROLLER.

**controlling interest.** See INTEREST (2).

**controlling person.** See CONTROL PERSON.

**controlling shareholder.** See SHAREHOLDER.

**control person.** *Securities.* A person who has actual control or significant influence over the issuer of securities, as by directing corporate policy. • The control person is subject to many of the same requirements applicable to the sale of securities by the issuer. — Also termed *controlling person*.

"[T]he question of who is a control person is highly factual and is not dependent upon ownership of any specific percentage. For example, it has been held that someone owning eight percent of a company's stock was

not a control person...." 1 Thomas Lee Hazen, *The Law of Securities Regulation* § 4.24, at 279 (3d ed. 1995).

**control premium.** See PREMIUM (3).

**control stock.** Stock belonging to a control person at the time of a given transaction. — Also termed *control shares*.

**control test.** See IRRESISTIBLE-IMPULSE TEST.

**control-your-kid law.** See PARENTAL-RESPONSIBILITY STATUTE.

**controver** (kən-troh-vər). *Hist.* A person who concocts false news.

**controversy.** 1. A disagreement or a dispute, esp. in public. 2. A justiciable dispute. 3. *Constitutional law.* A case that requires a definitive determination of the law on the facts alleged for the adjudication of an actual dispute, and not merely a hypothetical, theoretical, or speculative legal issue. — Also termed (in senses 2 & 3) *actual controversy*. See CASE-OR-CONTROVERSY REQUIREMENT.

"What is a 'case or controversy' that is justiciable in the federal courts? The answer of Chief Justice Hughes is classic if cryptic. He said: 'A *controversy* in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.' [*Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41, 57 S.Ct. 461, 464 (1937) (Hughes, C.J.)] Unfortunately, this definition, though often quoted, turns upon labels that the Court had used in the past to describe cases before it, and the labels themselves are 'elastic, inconstant, and imprecise.'" Charles Alan Wright, *The Law of Federal Courts* § 12, at 60-61 (5th ed. 1994).

**public controversy.** A controversy involving issues that are debated publicly and that have substantial ramifications for persons other than those engaged in it. • A participant in a public controversy may be deemed a public figure for purposes of a defamation suit arising from the controversy. See PUBLIC FIGURE.

"The nature and extent of an individual's involvement in a public controversy is determined by three factors: (1) the extent to which participation in it is voluntary; (2) the extent to which there is access to channels of effective communication in order to counteract false statements; and (3) the prominence of the role played in the public controversy." 50 Am. Jur. 2d *Libel and Slander* § 75, at 390 (1995).

**controvert** (kon-trə-vərt or kon-trə-vərt), *vb.* To dispute or contest; esp., to deny (as an allegation in a pleading) or oppose in argument <the allegations in Peck's pleadings were never adequately controverted>.

**contubernium** (kon-t[y]uu-bər-nee-əm). [Latin] *Roman law.* A marriage-like union between slaves.

"No such thing as marriage among slaves was, or could be, recognized by the law. As slaves were wholly subject to the disposal of their masters, no unions having the character of permanence or sacredness could exist among them: such a union, if it existed, would abridge the master's power of absolute control. Among slaves there could only be *contubernium*, cohabitation of the sexes for a longer or shorter time, but no legal *matrimonium*." James Hadley, *Introduction to Roman Law* 111 (1881).

**contumace capiendo.** See DE CONTUMACE CAPIENDO.

**contumacious conduct.** See CONDUCT.

**contumacy** (kon-t[y]uu-mə-see), *n.* Contempt of court; the refusal of a person to follow a court's order or direction. — **contumacious**, *adj.* See CONTEMPT.

**contumax.** *Hist.* 1. A person found to be in contempt of court. 2. A person who is accused of a crime but refuses to appear and answer the charge.

**contumely** (kon-t[y]uu-mə-lee or kən-t[y]oo-mə-lee), *n.* Insulting language or treatment; scornful rudeness.

**contutor** (kən-t[y]oo-tər). [Latin] *Roman law.* A co-guardian of a ward. • Appointment as a co-guardian could be accomplished by testament or by court order.

**conusance** (kon-yə-zənts). *Hist.* 1. Cognizance; jurisdiction. • The word *conusance* is actually an archaic form of *cognizance*. See COGNIZANCE (1); CLAIM OF COGNIZANCE. 2. JUDICIAL NOTICE. 3. An acknowledgment (of a debt, act, or opposing claim). • Examples of *conusance* include an acknowledgment in replevin that the defendant took the sued-for goods, or an acknowledgment in a land transfer (by *fine*) that the grantee is entitled to the land. See FINE (1).

**conusant** (kon-yə-zənt), *adj.* (Of a person) having cognizance or knowledge. See COGNIZANCE.

**conusee** (kon-yə-zee). See COGNIZEE.

**conusor** (kon-yə-zər or -zor). See COGNIZOR.

**convene, vb.** 1. To call together; to cause to assemble. 2. *Eccles. law.* To summon to respond to an action. See CONVENTIO (1).

"When the defendant was brought to answer, he was said to be convened, — which the canonists called *conventio*, because the plaintiff and defendant met to contest." 1 John Bouvier, *Bouvier's Law Dictionary* 668 (8th ed. 1914).

3. *Civil law.* To bring an action.

**convening authority.** *Military law.* An officer (usu. a commanding officer) with the power to convene, or who has convened, a court-martial.

**convening order.** *Military law.* An instrument that creates a court-martial. • The convening order specifies (1) the type of court-martial and its time and place, (2) the names of the members and the trial and defense counsel, (3) the name of the military judge, if one has been detailed, and (4) if necessary, the authority by which the court-martial has been created.

**conventicle** (kən-ven-tə-kəl). [fr. Latin *conventiculum* "small assembly"] 1. An assembly of a clandestine or unlawful character. 2. An assembly for religious worship; esp., a secret meeting for worship not sanctioned by law. 3. A place where such meetings are held.

**conventio** (kən-ven-shee-oh). [fr. Latin *convenire* "to come together"] 1. *Eccles. law.* The act of convening the parties to an action by summoning the defendant. 2. *Hist.* An agreement or convention; an agreement between two or more persons respecting a legal relation between them. See CONVENTION (1).

"Conventio is a word much used both in Ancient and Modern Law-pleadings, for an Agreement or Covenant." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

**convention.** 1. An agreement or compact, esp. one among nations; a multilateral treaty <the Geneva Convention>. See TREATY. 2. An assembly or meeting of members belonging to an organization or having a common objective <an ABA convention>. 3. A generally accepted rule or practice; usage or custom <the court dispensed with the convention of having counsel approach the bench>.

**conventional, adj.** 1. Customary; orthodox; traditional <conventional motion practice>. 2. Depending on, or arising from, the agreement of the parties, as distinguished from something arising by law <conventional subrogation>. 3.

Arising by treaty or convention <conventional international law>.

**conventional custom.** See CUSTOM.

**conventional interest.** See INTEREST (3).

**conventionalism.** A jurisprudential conception of legal practice and tradition holding that law is a matter of respecting and enforcing legal and social rules.

"Conventionalism makes two postinterpretive, directive claims. The first is positive: that judges must respect the established legal conventions of their community except in rare circumstances. It insists, in other words, that they must treat as law what convention stipulates as law. Since convention in Britain establishes that acts of Parliament are law, a British judge must enforce even acts of Parliament he considers unfair or unwise. This positive part of conventionalism most plainly corresponds to the popular slogan that judges should follow the law and not make new law in its place. The second claim, which is at least equally important, is negative. It declares that there is no law — no right flowing from past political decisions — apart from the law drawn from those decisions by techniques that are themselves matters of convention, and therefore that on some issues there is no law either way." Ronald Dworkin, *Law's Empire* 116 (1986).

**conventional law.** A rule or system of rules agreed on by persons for the regulation of their conduct toward one another; law constituted by agreement as having the force of special law between the parties, by either supplementing or replacing the general law of the land. • The most important example is conventional international law, but there are many lesser examples such as rules and regulations of a country club or professional association, or the rules of golf, basketball, or any other game. — Also termed (in international law) *treaty-made law*; *treaty-created law*.

**conventional lien.** See LIEN.

**conventional loan.** See *conventional mortgage* under MORTGAGE.

**conventional mortgage.** See MORTGAGE.

**conventional obligation.** See OBLIGATION.

**conventional remission.** See REMISSION.

**conventional sequestration.** See SEQUESTRATION.

**conventional subrogation.** See SUBROGATION.

**conventionē** (kən-ven-shee-oh-nee). [Latin] *Hist.* A writ for the breach of a written covenant. • This writ was often used when parties wished to convey land by fine. — Also termed *writ of covenant*. See FINE (1).

**conventus** (kən-ven-təs). [Latin] *Roman law.* 1. An assembly. • *Conventus magnatum vel procerum* (“the assembly of the nobles”) was an ancient name for Parliament. 2. A judicial assize held within a province.

**conventus juridicus** (kən-ven-təs juu-rid-i-kəs). [Latin “judicial assembly”] *Roman law.* A court session held by a provincial governor in the leading cities of the province.

**conversion, n.** 1. The act of changing from one form to another; the process of being exchanged.

**equitable conversion.** The act of treating real property as personal property, or vice versa, in certain circumstances. • Courts usu. apply the doctrine of equitable conversion to recognize the transfer of land when a party dies after the signing of an agreement to sell real property but before the transfer of title. Equitable conversion is based on the maxim that equity regards as done that which ought to be done.

**forced conversion.** The conversion of a convertible security, after a call for redemption, when the value of the security that it may be converted to is greater than the amount that will be received if the holder permits the security to be redeemed.

2. *Tort & criminal law.* The wrongful possession or disposition of another’s property as if it were one’s own; an act or series of acts of willful interference, without lawful justification, with any chattel in a manner inconsistent with another’s right, whereby that other person is deprived of the use and possession of the chattel. — **convert, vb.**

“There are three distinct methods by which one man may deprive another of his property, and so be guilty of a conversion and liable in an action for trover — (1) by wrongly taking it, (2) by wrongly detaining it, and (3) by wrongly disposing of it. The term conversion was originally limited to the third of these cases. To convert goods meant to dispose of them, or make away with them, to deal with them, in such a way that neither owner nor wrongdoer had any further possession of them: for example, by consuming them, or by destroying them, or by selling them, or otherwise delivering them to some third person. Merely to take another’s goods, however wrongfully, was not to convert them. Merely to detain them in defiance of the owner’s title was not to convert them. The fact that conversion in its modern sense includes instances of all three modes in which a man may be

wrongfully deprived of his goods, and not of one mode only, is the outcome of a process of historical development whereby, by means of legal fictions and other devices, the action of trover was enabled to extend its limits and appropriate the territories that rightly belonged to other and earlier forms of action.” R.F.V. Heuston, *Salmond on the Law of Torts* 94 (17th ed. 1977).

“By conversion of goods is meant any act in relation to goods which amounts to an exercise of dominion over them, inconsistent with the owner’s right of property. It does not include mere acts of damage, or even an asportation which does not amount to a denial of the owner’s right of property; but it does include such acts as taking possession, refusing to give up on demand, disposing of the goods to a third person, or destroying them.” William Geldart, *Introduction to English Law* 143 (D.C.M. Yardley ed., 9th ed. 1984).

**constructive conversion.** Conversion consisting of an action that in law amounts to the appropriation of property. • Constructive conversion could be, for example, an appropriation that was initially lawful.

**conversion by detention.** Conversion by detaining a chattel in a way that is adverse to the owner or other lawful possessor. • The mere possession of a chattel without title is not conversion. The defendant must have shown an intention to keep it in defiance of the plaintiff.

**conversion by estoppel.** A judicial determination that a conversion has taken place — though in truth one has not — because a defendant is estopped from offering a defense. • This occurs, for example, under the traditional rule that a bailee is estopped from denying the bailor’s title even if the bailor has no title to the chattel.

**conversion by taking.** Conversion by taking a chattel out of the possession of another with the intention of exercising a permanent or temporary dominion over it, despite the owner’s entitlement to use it at all times.

**conversion by wrongful delivery.** Conversion by depriving an owner of goods by delivering them to someone else so as to change the possession.

**conversion by wrongful destruction.** Conversion by willfully consuming or otherwise destroying a chattel belonging to another person.

**conversion by wrongful disposition.** Conversion by depriving an owner of goods by giving some other person a lawful title to them.

**direct conversion.** The act of appropriating the property of another to one’s own benefit, or to the benefit of another. • A direct conversion is per se unlawful, and the traditional

requirements of demand and refusal of the property do not apply.

**fraudulent conversion.** Conversion that is committed by the use of fraud, either in obtaining the property or in withholding it.

**involuntary conversion.** The loss or destruction of property through theft, casualty, or condemnation.

**conversion premium.** *Securities.* The surplus at which a security sells above its conversion price.

**conversion price.** *Securities.* The contractually specified price per share at which a convertible security can be converted into shares of common stock.

**conversion ratio.** **1.** The number of common shares into which a convertible security may be converted. **2.** The ratio of the face amount of the convertible security to the conversion price.

**conversion security.** See SECURITY.

**conversion value.** A convertible security's value as common stock. • For example, a bond that can be converted into ten shares of stock worth \$40 each has a conversion value of \$400. See BOND CONVERSION.

**convertible arbitrage.** See *kind arbitrage* under ARBITRAGE.

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

**convertible collision insurance.** See INSURANCE.

**convertible debenture.** See DEBENTURE.

**convertible debt.** See DEBT.

**convertible insurance.** See INSURANCE.

**convertible security.** See SECURITY.

**convertible stock.** See *convertible security* under SECURITY.

**convertible subordinated debenture.** See DEBENTURE.

**convey, vb.** To transfer or deliver (something, such as a right or property) to another, esp. by deed or other writing.

**conveyance** (kən-vay-ənts), *n.* **1.** The voluntary transfer of a right or of property.

**absolute conveyance.** A conveyance in which a right or property is transferred to another free of conditions or qualifications (i.e., not as a security). Cf. *conditional conveyance*.

**conditional conveyance.** A conveyance that is based on the happening of an event, usu. payment for the property; a mortgage. Cf. *absolute conveyance*.

**derivative conveyance.** See *secondary conveyance*.

**innocent conveyance.** *Hist.* A leaseholder's conveyance of the leaseholder's property interest — that is, something less than a fee simple. • It is a conveyance of an equitable interest.

**mesne conveyance** (meen). An intermediate conveyance; one occupying an intermediate position in the chain of title between the first grantee and the present holder.

**original conveyance.** See *primary conveyance*.

**present conveyance.** A conveyance made with the intent that it take effect at once rather than in the future.

**primary conveyance.** A conveyance that creates an estate. • Examples of primary conveyances include feoffment, gift, grant, lease, exchange, and partition. — Also termed *original conveyance*. Cf. *secondary conveyance*.

“Of conveyances by the common law, some may be called *original*, or *primary* conveyances; which are those by means whereof the benefit or estate is created or first arises: others are *derivative* or *secondary*; whereby the benefit or estate, originally created, is enlarged, restrained, transferred, or extinguished.” 2 William Blackstone, *Commentaries on the Laws of England* 309 (1766).

**secondary conveyance.** A conveyance that follows an earlier conveyance and that serves only to enlarge, confirm, alter, restrain, restore, or transfer the interest created by the primary conveyance. — Also termed *derivative conveyance*. Cf. *primary conveyance*.

**voluntary conveyance.** A conveyance made without valuable consideration, such as a deed in favor of a relative.

**2.** The transfer of a property right that does not pass by delivery of a thing or merely by agreement. **3.** The transfer of an interest in real property from one living person to another, by means of an instrument such as a deed. **4.** The document (usu. a deed) by which such a transfer occurs. **5.** A means of transport; a vehicle. **6.** *Bankruptcy.* A transfer of an inter-

est in real or personal property, including an assignment, release, monetary payment, or the creation of a lien or encumbrance. — Also termed (in sense 6) *bond for deed*. See FRAUDULENT CONVEYANCE; PREFERENTIAL TRANSFER.

**conveyancer** (kən-vay-ən-sər). A lawyer who specializes in real-estate transactions. ● In England, a *conveyancer* is a solicitor or licensed conveyancer who examines title to real estate, prepares deeds and mortgages, and performs other functions relating to the transfer of real property.

**conveyancing** (kən-vay-ən-sing). The act or business of drafting and preparing legal instruments, esp. those (such as deeds or leases) that transfer an interest in real property.

“*Conveyancing* is the art or science of preparing documents and investigating title in connection with the creation and assurance of interests in land. Despite its connection with the word ‘conveyance’, the term in practice is not limited to use in connection with old system title but is used without discrimination in the context of all types of title.” Peter Butt, *Land Law* 7 (2d ed. 1988).

**conveyancing counsel**. Three to six lawyers who are appointed by the Lord Chancellor to assist the High Court of Justice with opinions in matters of property titles and conveyancing. — Also termed *conveyancing counsel of the Supreme Court*; (formerly) *conveyancing counsel to the Court of Chancery*.

**conveyee** (kən-vay-ee). One to whom property is conveyed.

**conveyor** (kən-vay-ər or -or). One who transfers or delivers title to another.

**convicium** (kən-vish-ee-əm). [Latin] *Roman law*. Reproach, abuse, reviling, or insult.

**convict** (kən-vikt), *n.* A person who has been found guilty of a crime and is serving a sentence of confinement for that crime; a prison inmate.

**convict** (kən-vikt), *vb.* To find (a person) guilty of a criminal offense upon a criminal trial, a plea of guilty, or a plea of *nolo contendere* (no contest).

**conviction** (kən-vik-shən), *n.* **1.** The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty. **2.** The judgment (as by a jury verdict) that a person is guilty of a crime. **3.** A strong belief or opinion.

**abiding conviction**. A settled conviction; a definite conviction based on a thorough examination of the case.

**summary conviction**. A conviction of a person for a violation or minor misdemeanor as the result of a trial before a magistrate sitting without a jury.

**conviction rate**. Within a given area or for a given time, the number of convictions (including plea bargains) as a percentage of the total number of prosecutions undertaken.

**convivium** (kən-viv-ee-əm). [Latin “banquet”] *Hist.* Tenure that binds the tenant to provide meat and drink for the lord at least once a year.

**convocation**. See *provincial synod* under SYNOD.

**convoy**, *n.* A protective escort, esp. for ships. — **convoy**, *vb.*

**co-obligee**. One of two or more persons to whom an obligation is owed. See OBLIGEE.

**co-obligor**. One of two or more persons who have undertaken an obligation. See OBLIGOR.

**cool blood**. *Criminal law*. In the law of homicide, the finding that the defendant’s emotions were not in such an excited state that they interfered with his or her faculties and reason. — Also termed *cool state of blood*. See COLD BLOOD. Cf. HEAT OF PASSION.

**Cooley doctrine**. *Constitutional law*. The principle that Congress has exclusive power under the Commerce Clause to regulate the national as well as the local aspects of national commercial matters, and that the states may regulate those aspects of interstate commerce so local in character as to require diverse treatment. ● The Supreme Court has abandoned the *Cooley* doctrine in favor of a balancing test for Commerce Clause cases. *Cooley v. Port Board of Wardens*, 53 U.S. (12 How.) 299 (1851).

**cooling-off period**. **1.** During a dispute, a period during which no action may be taken by either side. **2.** A period during which a buyer may cancel a purchase. **3.** An automatic delay in some states between the filing of divorce papers and the divorce hearing. **4. Securities.** A period (usu. at least 20 days) between the filing of a registration and the effective registration.

**cooling time.** *Criminal law.* Time to recover cool blood after great excitement, stress, or provocation, so that one is considered able to contemplate, comprehend, and act with reference to the consequences that are likely to follow. See COOL BLOOD.

“[O]ne who controls his temper time after time, following repeated acts of provocation, may have his emotion so bottled-up that the final result is an emotional explosion. . . . [I]n such a case the ‘cooling time’ begins to run not from earlier acts, but from ‘the last straw.’ . . . As was the position in regard to the adequacy of the provocation, so the early holding was that the cooling time was a matter of law for the court.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 100 (3d ed. 1982).

**cool state of blood.** See COOL BLOOD.

**cooperation.** **1.** An association of individuals who join together for a common benefit. **2.** *Patents.* A unity of action to a common end or result, not merely joint or simultaneous action. **3.** *Int’l law.* The voluntary coordinated action of two or more countries occurring under a legal régime and serving a specific objective.

**cooperation clause.** *Insurance.* A policy provision requiring that the insured assist the insurer in investigating and defending a claim.

**cooperative, n.** **1.** An organization or enterprise (as a store) owned by those who use its services. **2.** A dwelling (as an apartment building) owned by its residents, to whom the apartments are leased. — Often shortened to *coop*; *co-op*.

**cooperative cause.** See CAUSE (1).

**cooperative corporation.** See CORPORATION.

**cooperative federalism.** Distribution of power between the federal government and the states in which each recognizes the powers of the other but shares those powers to jointly engage in governmental functions.

**co-opt, vb.** **1.** To add as a member. **2.** To assimilate; absorb.

**co-optation** (koh-ahp-tay-shən), *n.* The act of selecting a person to fill a vacancy (usu. in a close corporation). — **co-optative, adj.**

**coordinate jurisdiction.** See *concurrent jurisdiction* under JURISDICTION.

**coordination-of-benefits clause.** See COB CLAUSE.

**coowner, n.** A person who is in concurrent ownership, possession, and enjoyment of property with one or more others; a tenant in common, a joint tenant, or a tenant by the entirety. — **coown, vb.** — **coownership, n.**

**cop a plea, vb.** *Slang.* (Of a criminal defendant) to plead guilty to a lesser charge as a means to avoid standing trial for a more serious offense. See PLEA BARGAIN.

**coparcenary** (koh-pahr-sə-ner-ee), *n.* An estate that arises when two or more persons jointly inherit from one ancestor, the title and right of possession being shared equally by all. • Coparcenary was a form of coownership created by common-law rules of descent upon intestacy when two or more persons together constituted the decedent’s heir. Typically, this situation arose when the decedent was survived by no sons but by two or more daughters, so that the daughters took as coparceners. — Also termed *parcenary*; *tenancy in coparcenary*. — **coparcenary, adj.**

**coparcener** (koh-pahr-sə-nər). A person to whom an estate descends jointly, and who holds it as an entire estate. — Also termed *parcener*.

“But sometimes two or more persons together constituted the heir, and in this case they took the land as ‘parceners’ or ‘coparceners,’ the latter expression being the more common. . . . In theory of law coparceners together constituted a single heir: ‘they be but one heire, and yet severall persons.’ They were called parceners because, as already seen, every coparcener had a common law right to have a partition made.” Robert E. Megarry & H.W.R. Wade, *The Law of Real Property* 456-57 (5th ed. 1984).

**coparticeps** (koh-pahr-tə-seps). [fr. Latin *particeps* “sharing”] See COPARCENER.

**copartner.** A member of a partnership; PARTNER.

**copartnership.** See PARTNERSHIP. • The terms *copartnership* and *partnership* are equally old — each having first appeared in the 1570s.

**coparty.** A litigant or participant in a legal transaction who has a like status with another party; a party on the same side of a lawsuit. See CODEFENDANT; COPLAINTIFF.

**copayment.** A fixed amount that a patient pays to a healthcare provider according to the terms of the patient’s health plan. — Often shortened to *copyay*.

**copia libelli deliberanda.** See DE COPIA LIBELLI DELIBERANDA.

**complaintiff.** One of two or more plaintiffs in the same litigation. Cf. CODEFENDANT.

**coprincipal. 1.** One of two or more participants in a criminal offense who either perpetrate the crime or aid a person who does so. **2.** One of two or more persons who have appointed an agent whom they both have the right to control.

**copulative condition.** See CONDITION (2).

**copy, n.** An imitation or reproduction of an original. • In the law of evidence, a copy is generally admissible to prove the contents of a writing. Fed. R. Evid. 1003. See BEST-EVIDENCE RULE.

“The noun ‘copy’ ordinarily connotes a tangible object that is a reproduction of the original work; the courts have generally found no reason to depart from this usage in the law of copyright.” 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 4.08[B], at 4-47 (Supp. 1995).

**certified copy.** A duplicate of an original (usu. official) document, certified as an exact reproduction usu. by the officer responsible for issuing or keeping the original. — Also termed *attested copy*; *exemplified copy*; *verified copy*; *verification*.

**conformed copy.** An exact copy of a document bearing written explanations of things that were not or could not be copied, such as a note on the document indicating that it was signed by a person whose signature appears on the original.

**examined copy.** A copy (usu. of a record, public book, or register) that has been compared with the original or with an official record of an original.

**exemplified copy.** See *certified copy*.

**true copy.** A copy that, while not necessarily exact, is sufficiently close to the original that anyone can understand it.

**verified copy.** See *certified copy*.

**copycat drug.** See *generic drug* under DRUG.

**copyhold. Hist.** A base tenure requiring the tenant to provide the customary services of the manor, as reflected in the manor’s court rolls. • Copyhold tenure descended from pure villeinage; over time, the customs of the manor, as reflected on the manor’s rolls, dictated what services a lord could demand from a copyhold-

er. This type of tenure was abolished by the Law of Property Act of 1922, which converted copyhold land into freehold or leasehold land. — Also termed *copyhold tenure*; *customary estate*; *customary freehold*; *tenancy by the verge*; *tenancy par la verge*; *tenancy by the rod*. See *base tenure* under TENURE; VILLEINAGE.

“Out of the tenure by villeinage, copyhold tenure developed . . . . By the end of the fifteenth century, to hold by copy of the court roll, to be a ‘copyholder,’ was a definite advantage, and, in most cases the holders had for many generations been personally free. The fusing of several different types of payment had also gone on, so that there was little difference between a holder in socage who had commuted the services for a sum of money and a copyholder who had done the same, except the specific dues of *heriot* and *merchet*. In Coke’s time, a very large part of the land of England was still held by copyhold.” Max Radin, *Handbook of Anglo-American Legal History* 371 (1936).

**copyholder. Hist.** A tenant by copyhold tenure. — Also termed *tenant by the verge*; *tenant par la verge*.

**copyright, n. 1.** A property right in an original work of authorship (such as a literary, musical, artistic, photographic, or film work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work. **2.** The body of law relating to such works. • Federal copyright law is governed by the Copyright Act of 1976. 17 USCA §§ 101-1332. — Abbr. c. — **copyright, vb.** — **copyrighted, adj.**

“The development of copyright law in England was shaped by the efforts of mercantile interests to obtain monopoly control of the publishing industry — similar to those of the guilds that were instrumental in shaping patent and trademark law . . . . American copyright law came to distinguish between the ‘common law’ right of an author to his unpublished creations, and the statutory copyright that might be secured upon publication. Until recently, therefore, an author had perpetual rights to his creation, which included the right to decide when, if, and how to publish the work, but that common law right terminated upon publication at which time statutory rights become the sole rights, if any, to which the author was entitled. This distinction was altered by the Copyright Act of 1976, which shifts the line of demarcation between common law and statutory copyright from the moment of publication to the moment of fixation of the work into tangible form.” Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 280-82 (2d ed. 1990).

“What is copyright? From copyright law’s beginnings close to three centuries ago, the term has meant just what it says: the right to make copies of a given work — at first it meant simply written work — and to stop others from making copies without one’s permission.” Paul Goldstein, *Copyright’s Highway* 3 (1994).



"Before the 1976 Copyright Act swept virtually all copyrightable subject matter within the exclusive domain of federal protection, the term 'copyright' implied a statutory right created by Congress in order to 'Promote the Progress of Science.' Our first copyright act, in 1790, protected only maps, charts, and books. Protection gradually was extended to musical compositions and graphic works. In the middle of the nineteenth century, photography was developed and then protected, followed at the end of the century by motion pictures (although they were protected as photographs). As the twentieth century comes to a close, digital technology and multimedia forms of authorship seriously challenge the gradual, compartmentalized approach to granting new rights and new subject matter. . . ." 1 William F. Patry, *Copyright Law and Practice* 1 (1994).

**common-law copyright.** A property right that arose when the work was created, rather than when it was published. • Under the Copyright Act of 1976, which was effective on January 1, 1978, common-law copyright was largely abolished for works created after the statute's effective date, but it still applies in a few areas. Notably, a common-law copyright received before January 1, 1978, remains entitled to protection.

**Copyright Clause.** U.S. Const. art. I, § 8, cl. 8, which gives Congress the power to secure to authors the exclusive rights to their writings for a limited time.

**copyright infringement.** See INFRINGEMENT.

**copyright notice.** A notice that a work is copyright-protected, usu. placed in each published copy of the work. • Since March 1, 1989, such notice is not required for a copyright to be valid (although it continues to provide certain procedural advantages).

**copyright owner.** One who holds exclusive rights to copyrighted material. 17 USCA § 101.

**coram** (kor-əm), *prep.* [Latin] (Of a person) before; in the presence of.

**coram domino rege** (kor-əm dom-ə-noh ree-jee). [Latin] *Hist.* Before our lord the king.

**coram ipso rege** (kor-əm ip-soh ree-jee). [Latin] *Hist.* Before the king himself. — Also termed *coram ipso domino rege*.

"The court of king's bench (so called because the king used formerly to sit there in person, the style of the court still being *coram ipso rege*) is the supreme court of common law in the kingdom. . . ." 3 William Blackstone, *Commentaries on the Laws of England* 41 (1768).

**coram nobis** (kor-əm noh-bis). [Latin "before us"] *Hist.* 1. A writ of error taken from a judgment of the King's Bench. • "Before us" refers to the sovereign, in contrast to the writ *coram vobis* ("before you"), which refers to any court other than King's Bench, esp. the Court of Common Pleas. 2. A writ of error directed to a court for review of its own judgment and predicated on alleged errors of fact. — Also termed *writ of error coram nobis*; *writ of coram nobis*.

**coram non iudice** (kor-əm non joo-di-see). [Latin "not before a judge"] 1. Outside the presence of a judge. 2. Before a judge or court that is not the proper one or that cannot take legal cognizance of the matter.

**coram paribus** (kor-əm par-ə-bəs). [Latin] *Hist.* Before the peers. • This phrase appeared in deed attestations.

**Coram Rege Court.** See KING'S BENCH.

**coram sectatoribus** (kor-əm sek-tə-tor-ə-bəs). [Law Latin] *Hist.* Before the suitors.

**coram vobis** (kor-əm voh-bis), *n.* [Latin "before you"] *Hist.* 1. A writ of error directed to a court other than the King's Bench, esp. the Court of Common Pleas, to review its judgment.

"Certain errors in the process of the court, committed by the defaults of the clerks, or as to matters of fact, could be remedied by the court itself. The writ issued for this purpose was called a writ of error 'coram vobis' if the error was in the Common Pleas; 'coram nobis' if it was in the King's Bench." 1 William Holdsworth, *A History of English Law* 224 (7th ed. 1956).

2. A writ of error sent by an appellate court to a trial court to review the trial court's judgment based on an error of fact. — Also termed *writ of error coram vobis*.

**core proceeding.** *Bankruptcy.* A proceeding involving claims that substantially affect the debtor-creditor relationship, such as an action to recover a preferential transfer. • In such a proceeding, the bankruptcy court, as opposed to the district court, conducts the trial or hearing and enters a final judgment. Cf. RELATED PROCEEDING.

**corespondent.** 1. A coparty who responds to a petition, such as a petition for a writ of certiorari. 2. In some states, a coparty who responds to an appeal. 3. *Family law.* In a divorce suit based on adultery, the person with whom the

spouse is accused of having committed adultery. See RESPONDENT.

**corium forisfacere** (kor-ee-əm for-is-fay-sə-ree). [Law Latin “to forfeit skin”] *Hist.* To whip (a person, esp. a servant) as punishment. — Also termed *corium perdere*.

**corium redimere** (kor-ee-əm ri-dim-ər-ee). [Latin] *Hist.* To redeem one’s skin. • This referred to a person who paid restitution for an offense.

**cornage** (kor-nij). [fr. Anglo-French *corne* “horn”] *Hist.* 1. A type of grand-serjeanty military tenure in which the tenant was bound to blow a horn to alert others whenever an enemy approached. 2. A form of tenure entitling a landowner to rent based on the number of horned cattle owned by the tenant. • Cornage may have developed into a type of serjeanty or knight-service tenure that obligated the tenant to blow a horn to warn of invaders, esp. along the border with Scotland. See KNIGHT-SERVICE; SERJEANTY. — Also termed (in senses 1 & 2) *horn tenure*. 3. A tribute of corn due only on special occasions, as distinguished from a regularly provided service. • This term has often been spelled *coraage* or *coraagium*, stemming perhaps from a spelling error in the 1569 edition of Bracton’s *De Legibus et Consuetudinibus Angliae*.

**Cornelian law.** See LEX CORNELIA.

**corner**, *n.* 1. The common end of two survey lines; an angle made by two boundary lines.

**existent corner.** A corner whose location can be verified by an original landmark, a surveyor’s field notes, or other reliable evidence.

**lost corner.** A point in a land description, such as a landmark or natural object, whose position cannot be reasonably determined from traces of the original marks or other acceptable evidence. • The location can be determined by reference to one or more independent points remaining in the description.

**obliterated corner.** A corner that can be located only with evidence other than that put in place by the original surveyor.

2. The acquisition of control over all or a dominant quantity of a commodity with the purpose of artificially enhancing the price, carried out by purchases and sales of the commodity — and of options and futures — in a way that depresses the market price so that the participants are enabled to purchase the commodity at satisfactory prices and withhold it

from the market for a time, thereby inflating its price. • A corner accomplished by confederation, with the purpose of raising or depressing prices and operating on the market, is a criminal conspiracy if the means are unlawful.

**cornering the market.** The act or process of acquiring ownership or control of a large portion of the available supply of a commodity or security, permitting manipulation of the commodity’s or security’s price.

**Corn Products doctrine.** *Tax.* The principle that a capital asset should be narrowly defined to exclude inventory-related property that is integrally tied to the day-to-day operations of a business. *Corn Products Refining Co. v. C.I.R.*, 350 U.S. 46, 76 S.Ct. 20 (1955).

**corody** (kor- or kahr-ə-dee). *Hist.* An allowance of money, accommodation, food, or clothing given by a religious house to a royal servant. • The Crown was entitled to these benefits only from houses it had founded. — Also spelled *corrody*.

“Corrody is a partition for one’s sustenance. Be it bread, ale, herring, a yearly robe, or sum of money for the robe. So of a chamber, and stable for my horses, when the same is coupled with other things . . .” Sir Henry Finch, *Law, or a Discourse Thereof* 162 (1759).

**corollary** (kor- or kahr-ə-ler-ee), *n.* A proposition that follows from a proven proposition with little or no additional proof; something that naturally follows.

**corona** (kə-roh-nə). [Latin] *Hist.* The Crown. • This term formerly appeared in criminal pleadings, e.g., *placita coronae* (“pleas of the Crown”).

**coronation case.** Any of the many lawsuits for breach of contract resulting from the postponement of the coronation of Edward VII because of his illness. • In one case, for example, the defendant had agreed to hire a ship for watching the naval review by King Edward VII and for a day’s cruise around the fleet. The court held that the contract was not frustrated by the cancellation of the naval review — the day’s cruise around the fleet was still possible, and indeed, the ship could have been used for many other purposes.

**coronator** (kor- or kahr-ə-nay-tər). [fr. Latin *corona* “crown”] A coroner. See CORONER (2).

“The formal title of *custos* (or occasionally *conservator*) *placitorum corone* continued to be used throughout the Middle Ages, but the more convenient shorter forms

*coronarius*, which was confined to a short period around 1200, and CORONATOR rapidly gained greater currency. The English form was 'coroner' or 'crownner.'" R.F. Hunnisett, *The Medieval Coroner* 1 n.1 (1961).

**coronatore eligendo.** See DE CORONATORE ELIGENDO.

**coronatore exonerando.** See DE CORONATORE EXONERANDO.

**coroner** (*kor-* or *kahr-ə-nər*). **1.** A public official whose duty is to investigate the causes and circumstances of any death that occurs suddenly, suspiciously, or violently. See MEDICAL EXAMINER. **2. Hist.** A royal official with countywide jurisdiction to investigate deaths, to hold inquests, and to assume the duties of the sheriff if need be. • The coroner acted as a check on the sheriff, a local officer whose growing power threatened royal control over the counties. The coroner reported criminal activity to the king's justices in eyre. When the eyre court arrived in a county, it collected the coroner's roll to learn what had occurred in the county during the eyre's absence. The justices fined the coroner if he failed to produce the roll, or if they learned of criminal activity in the county from a source other than the roll.

"The office of coroner was established in September 1194, when the justices in eyre were required to see that three knights and one clerk were elected in every county as 'keepers of the pleas of the crown.' These were the first county coroners.... Throughout the Middle Ages the coroner could be ordered to perform almost any duty of an administrative or inquisitorial nature within his bailiwick, either alone or with the sheriff, but there were other duties which belonged more specifically to his office and which he performed without being ordered. These consisted of holding inquests upon dead bodies, receiving adjurations of the realm made by felons in sanctuary, hearing appeals, confessions of felons and appeals of approvers, and attending and sometimes organising exactions and outlawries promulgated in the county court. These were the 'crown pleas' which the coroner had to 'keep'...." R.F. Hunnisett, *The Medieval Coroner* 1 (1961).

**coroner's court.** See COURT.

**coroner's inquest.** See INQUEST.

**coroner's jury.** See JURY.

**corpnership.** [Portmanteau word probably formed fr. *corporation* + *partnership*] A limited partnership (usu. having many public investors as limited partners) whose general partner is a corporation.

**corporale sacramentum** (*kor-pə-ray-lee sak-rə-men-təm*). Corporal oath. See OATH.

**corporal oath.** See OATH.

**corporal punishment.** See PUNISHMENT.

**corporate, adj.** Of or relating to a corporation, esp. a business corporation <corporate bonds>.

**corporate acquisition.** The takeover of one corporation by another if both parties retain their legal existence after the transaction. Cf. MERGER (7).

**corporate agent.** See AGENT.

**corporate authority.** **1.** The power rightfully wielded by officers of a corporation. **2.** In some jurisdictions, a municipal officer, esp. one empowered to represent the municipality in certain statutory matters.

**corporate body.** See CORPORATION.

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

**corporate books.** Written records of a corporation's activities and business transactions.

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

**corporate citizenship.** Corporate status in the state of incorporation, though a corporation is not a citizen for the purposes of the Privileges and Immunities Clause of the U.S. Constitution.

**corporate counsel.** See COUNSEL.

**corporate crime.** See CRIME.

**corporate distribution.** See DISTRIBUTION.

**corporate domicile.** See DOMICILE.

**corporate entity.** See ENTITY.

**corporate franchise.** See FRANCHISE (2).

**corporate immunity.** See IMMUNITY (2).

**corporate indenture.** See INDENTURE.

**corporate-mortgage trust.** A financing device in which debentures are issued and secured by

property held in trust. • An independent trustee protects the interests of those who purchase the debentures.

**corporate name.** See NAME.

**corporate officer.** See OFFICER (1).

**corporate-opportunity doctrine.** The rule that a corporation's directors, officers, and employees are precluded from using information gained as such to take personal advantage of any business opportunities that the corporation has an expectancy right or property interest in, or that in fairness should otherwise belong to the corporation. • In a partnership, the analogous principle is the *firm-opportunity doctrine*.

**corporate purpose.** The general scope of the business objective for which a corporation was created. • A statement of corporate purpose is commonly required in the articles of incorporation.

**corporate raider.** A person or business that attempts to take control of a corporation, against its wishes, by buying its stock and replacing its management. — Often shortened to *raider*. — Also termed *hostile bidder*; *unfriendly suitor*. Cf. WHITE KNIGHT.

**corporate seal.** See SEAL.

**corporate speech.** See SPEECH.

**corporate stock.** See STOCK.

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

**corporate veil.** The legal assumption that the acts of a corporation are not the actions of its shareholders, so that the shareholders are exempt from liability for the corporation's actions. See PIERCING THE CORPORATE VEIL.

**corporate welfare.** See WELFARE.

**corporation, n.** An entity (usu. a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it. — Also termed *corporation aggregate*; *aggre-*

*gate corporation*; *body corporate*; *corporate body*. — **incorporate, vb.** — **corporate, adj.** See COMPANY.

“A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. . . . [I]t possesses only those properties which the charter of its creation confers upon it.” *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819) (Marshall, J.).

**acquired corporation.** The corporation that no longer exists after a merger or acquisition.

**admitted corporation.** A corporation licensed or authorized to do business within a particular state.

**aggressor corporation.** A corporation that attempts to obtain control of a publicly held corporation by (1) a direct cash tender, (2) a public exchange offer to shareholders, or (3) a merger, which requires the agreement of the target's management.

**alien corporation.** See *foreign corporation*.

**brother-sister corporation.** See *sister corporation*.

**business corporation.** A corporation formed to engage in commercial activity for profit. Cf. *nonprofit corporation*.

**C corporation.** A corporation whose income is taxed through it rather than through its shareholders. • Any corporation not electing S-corporation tax status under the Internal Revenue Code is a C corporation by default. — Also termed *subchapter-C corporation*. Cf. *S corporation*.

**charitable corporation.** A nonprofit corporation that is dedicated to benevolent purposes and thus entitled to special tax status under the Internal Revenue Code. — Also termed *eleemosynary corporation*. See CHARITABLE ORGANIZATION.

**civil corporation.** Any corporation other than a charitable or religious corporation.

**clearing corporation.** A corporation whose capital stock is held by or for a national security exchange or association registered under federal law such as the Securities Exchange Act of 1934.

**close corporation.** A corporation whose stock is not freely traded and is held by only a few shareholders (often within the same family). • The requirements and privileges of close corporations vary by jurisdiction. — Also termed *closely held corporation*; *closed corporation*.

**collapsible corporation.** A corporation formed to give a short-term venture the appearance of a long-term investment in order

to portray income as capital gain, rather than profit. • The corporation is typically formed for the sole purpose of purchasing property. The corporation is usu. dissolved before the property has generated substantial income. The Internal Revenue Service treats the income earned through a collapsible corporation as ordinary income rather than as capital gain. IRC (26 USCA) § 341(a). Cf. *collapsible partnership* under PARTNERSHIP.

**controlled corporation.** A corporation in which the majority of the stock is held by one individual or firm.

**controlled foreign corporation.** *Tax.* A foreign corporation in which more than 50% of the stock is owned by U.S. citizens who each own 10% or more of the voting stock. • These shareholders (known as *U.S. shareholders*) are required to report their pro rata share of certain passive income of the corporation. — Abbr. CFC. IRC (26 USCA) §§ 951-964.

**cooperative corporation.** An entity that has a corporate existence, but is primarily organized for the purpose of providing services and profits to its members and not for corporate profit. • The most common kind of cooperative corporation is formed to purchase real property, such as an apartment building, so that its shareholders may lease the apartments. See COOPERATIVE (1).

**corporation aggregate.** *Hist.* A corporation made up of a number of individuals. Cf. *corporation sole*.

“The first division of corporations is into *aggregate* and *sole*. Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue forever: of which kind are the mayor and commonalty of a city, the head and fellows of a college, the dean and chapter of a cathedral church.” 1 William Blackstone, *Commentaries on the Laws of England* 457 (1765).

“The corporation aggregate is the typical corporation, which, at any given time, normally contains a number of individuals as members. This number may be great or small, varying from the hundreds of thousands of burgesses of a large borough to the two members of a private joint-stock company. It is even said that a corporation aggregate would not necessarily cease to exist if all its members died, leaving no successors; and this is, probably, sound doctrine.” Edward Jenks, *The Book of English Law* 118 (P.B. Fairsted ed., 6th ed. 1967).

**corporation by estoppel.** A business that is deemed, by operation of law, to be a corporation because a third party dealt with the business as if it were a corporation, thus preventing the third party from holding a shareholder or officer of the corporation individually liable. See ESTOPPEL.

**corporation by prescription.** A corporation that, though lacking a charter, has acquired its corporate status through a long period of operating as a corporation. • Such an entity may engage in any enterprises that are not manifestly inconsistent with the purposes for which it is assumed to have been created. — Also termed *common-law corporation*.

**corporation de facto.** See *de facto corporation*.

**corporation de jure.** See *de jure corporation*.

**corporation for profit.** See *for-profit corporation*.

**corporation sole.** A series of successive persons holding an office; a continuous legal personality that is attributed to successive holders of certain monarchical or ecclesiastical positions, such as kings, bishops, rectors, vicars, and the like. • This continuous personality is viewed, by legal fiction, as having the qualities of a corporation. Cf. *corporation aggregate*.

“It would have been quite possible to explain in the same way the devolution of the lands of the Crown, or of a bishopric, or of a rectory, from the sovereign, bishop, or rector, to his successor; but English law has preferred to introduce for this purpose the fiction, peculiar to itself, of a ‘corporation sole.’” Thomas E. Holland, *The Elements of Jurisprudence* 350-51 (13th ed. 1924).

“But English Law knows another kind of corporation, the ‘corporation sole’, in which the group consists, not of a number of contemporary members, but of a succession of single members, of whom only one exists at any given time. This kind of corporation has been described by eminent legal writers as a ‘freak’; but it is a freak which undoubtedly has a legal existence. It has been said that the Crown is the only common law lay corporation sole; though the Master of Trinity College, Cambridge, has been claimed as another example, and statutory examples, such as the Public Trustee and the Treasury Solicitor, are conspicuous. But the examples of ecclesiastical corporations sole are numerous. Every diocesan bishop, every rector of a parish, is a corporation sole, and can acquire and hold land (and now also personal property) even during the vacancy of the see or living, for the benefit of his successors, and can bind his successors by his lawful conveyances and contracts. But, obviously, the distinction between the bishop or rector, in his personal and in his corporate character, is even harder to grasp than that between the members of a corporation aggregate and the corporation itself . . . .” Edward Jenks, *The Book of English Law* 118-19 (P.B. Fairsted ed., 6th ed. 1967).

**de facto corporation** (di fak-toh). An incompletely formed corporation whose existence operates as a defense to personal liability of the directors, officers, and shareholders who in good faith thought they were operating the business as a duly formed corporation. — Also termed *corporation de facto*.

**de jure corporation** (di juur-ee). A corporation formed in accordance with all applicable laws and recognized as a corporation for liability purposes. — Also termed *corporation de jure*.

**domestic corporation.** **1.** A corporation that is organized and chartered under the laws of a state. • The corporation is considered *domestic* by the chartering state. Cf. *foreign corporation.* **2. Tax.** A corporation created or organized in the United States or under federal or state law. IRC (26 USCA) § 7701(a)(4).

**dormant corporation.** **1.** An inactive corporation; a legal corporation that is presently not operating. **2.** A corporation whose authority to do business has been revoked or suspended either by operation of law (as by failure to pay franchise taxes) or by an act of the government official responsible for the corporation's authority.

**dummy corporation.** A corporation whose only function is to hide the principal's identity and to protect the principal from liability.

**ecclesiastical corporation** (i-klee-zee-as-təkəl). *English law.* A corporation that is organized for spiritual purposes or for the administration of property held for religious uses. • This type of corporation is composed exclusively of ecclesiastics. — Also termed *religious corporation.* Cf. *lay corporation.*

"Ecclesiastical corporations. Corporations created for the furtherance of religion. . . . They are of two kinds: (1) corporations sole, *i.e.*, bishops, certain deans, parsons and vicars; and (2) corporations aggregate, *i.e.*, deans and chapters, and formerly prior and convent, abbot and monks, and the like. Such corporations are called 'religious corporations,' or 'religious societies,' in the United States." 1 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 432 (1883).

**eleemosynary corporation.** See *charitable corporation.*

**foreign corporation.** A corporation that was organized and chartered under the laws of another state, government, or country <in Arizona, a California corporation is said to be a foreign corporation>. — Also termed *alien corporation.* Cf. *domestic corporation.*

"'Foreign' is defined as 'not native or domestic.' This is the meaning given to the word in the various judicial definitions of foreign corporations. With respect to a particular state or country, a corporation created by or under the laws of that state or country is a 'domestic corporation,' and any corporation that owes its existence to the laws of another state, government or country is a 'foreign corporation.' The difference between a domestic and a foreign corporation of the same kind is one of status, determined by considerations that are external to the corporation and not internal or organic. Moreover, foreign corporations of all classes fall equally within the

definition. In many jurisdictions foreign corporations are defined by statute, and the statutory definitions do not differ in substance from that stated above." 17 *Fletcher Cyclopedia on the Law of Private Corporations* § 8290, at 6-7 (1998).

**for-profit corporation.** A corporation organized for the purpose of making a profit; a business corporation. — Also termed *corporation for profit; moneyed corporation.*

**government corporation.** See *public corporation* (3).

**joint-venture corporation.** A corporation that has joined with one or more individuals or corporations to accomplish some specified project.

**lay corporation.** *English law.* A corporation made up of laypersons, and existing for a business or charitable purpose. Cf. *ecclesiastical corporation.*

**limited-liability corporation.** See *limited-liability company* under COMPANY.

**migratory corporation.** A corporation formed under the laws of another state than that of the incorporators' residence for the purpose of carrying on a significant portion of its business in the state of the incorporators' residence or in a state other than where it was incorporated.

**moneyed corporation.** **1.** A corporation that uses money capital in its business, esp. one (such as a bank) that engages in the exchange or lending of money. **2.** See *for-profit corporation.*

**multinational corporation.** A company with operations in two or more countries, generally allowing it to transfer funds and products according to price and demand conditions, subject to risks such as changes in exchange rates or political instability.

**multistate corporation.** A corporation incorporated under the laws of two or more states.

**municipal corporation.** See MUNICIPAL CORPORATION.

**municipal corporation de facto.** See MUNICIPAL CORPORATION.

**nonprofit corporation.** A corporation organized for some purpose other than making a profit, and usu. afforded special tax treatment. — Also termed *not-for-profit corporation.* Cf. *business corporation.*

**nonstock corporation.** A corporation that does not issue shares of stock as evidence of ownership but instead is owned by its members in accordance with a charter or agreement. • Examples are mutual insurance com-

panies, charitable organizations, and private clubs.

**not-for-profit corporation.** See *nonprofit corporation*.

**parent corporation.** A corporation that has a controlling interest in another corporation (called a *subsidiary corporation*), usu. through ownership of more than one-half the voting stock. — Often shortened to *parent*. — Also termed *parent company*.

**political corporation.** See *public corporation* (2).

**private corporation.** A corporation founded by and composed of private individuals principally for a nonpublic purpose, such as manufacturing, banking, and railroad corporations (including charitable and religious corporations).

**professional corporation.** A corporation that provides services of a type that requires a professional license. • A professional corporation may be made up of architects, accountants, physicians, veterinarians, or the like. — Abbr. P.C.

**public corporation.** 1. A corporation whose shares are traded to and among the general public. — Also termed *publicly held corporation*. 2. A corporation that is created by the state as an agency in the administration of civil government. — Also termed *political corporation*. 3. A government-owned corporation that engages in activities that benefit the general public, usu. while remaining financially independent. • Such a corporation is managed by a publicly appointed board. — Also termed (in sense 3) *government corporation*; *public-benefit corporation*.

**public-service corporation.** A corporation whose operations serve a need of the general public, such as public transportation, communications, gas, water, or electricity. • This type of corporation is usu. subject to extensive governmental regulation.

**quasi-corporation.** An entity that exercises some of the functions of a corporation but that has not been granted corporate status by statute; esp., a public corporation with limited authority and powers (such as a county or school district). — Also sometimes termed *quasi-municipal corporation*. Cf. MUNICIPAL CORPORATION.

**quasi-public corporation.** A for-profit corporation providing an essential public service. • An example is an electric company or other utility.

**railroad corporation.** A company organized to construct, maintain, and operate railroads. — Also termed *railroad company*.

“A railroad company or corporation is usually regarded as a private corporation, and justly so, as contrasted with a strictly public corporation, such as a city, county, township, or the like governmental subdivision, but it is not a private corporation in the strict sense that an ordinary business corporation is, for it is charged with duties of a public nature that distinguish it from a purely and strictly private corporation.” 1 Byron K. Elliott & William F. Elliott, *A Treatise on the Law of Railroads* § 3, at 7 (3d ed. 1921).

**registered corporation.** A publicly held corporation a security of which is registered under § 12 of the Securities Exchange Act of 1934. • The corporation is subject to the Act’s periodic disclosure requirements and proxy regulations. 15 USCA § 781.

**religious corporation.** A corporation created to carry out some religious purpose.

**S corporation.** A corporation whose income is taxed through its shareholders rather than through the corporation itself. • Only corporations with a limited number of shareholders can elect S-corporation tax status under Subchapter S of the Internal Revenue Code. — Also termed *subchapter-S corporation*; *tax-option corporation*. Cf. *C corporation*.

**shell corporation.** A corporation that has no active business and usu. exists only in name as a vehicle for another company’s business operations.

**sister corporation.** One of two or more corporations controlled by the same, or substantially the same, owners. — Also termed *brother-sister corporation*.

**small-business corporation.** 1. A corporation having 75 or fewer shareholders and otherwise satisfying the requirements of the Internal Revenue Code provisions permitting a subchapter S election. IRC (26 USCA) § 1361. See *S corporation*. 2. A corporation receiving money for stock (as a contribution to capital and paid-in surplus) totaling not more than \$1,000,000, and otherwise satisfying the requirements of the Internal Revenue Code section 1244(c), thereby enabling the shareholders to claim an ordinary loss on worthless stock. IRC (26 USCA) § 1244(c).

**sole corporation.** A corporation having or acting through only a single member.

**spiritual corporation.** A corporation whose members are spiritual persons, such as bishops, rectors, and abbots.

**stock corporation.** A corporation in which the capital is contributed by the shareholders and divided into shares represented by certificates.

**subchapter-C corporation.** See *C corporation*.

**subchapter-S corporation.** See *S corporation*.

**subsidiary corporation.** A corporation in which a parent corporation has a controlling share. — Often shortened to *subsidiary*.

**surviving corporation.** A corporation that acquires the assets and liabilities of another corporation by a merger or takeover.

**target corporation.** A corporation over which control is being sought by another party. See TAKEOVER.

**thin corporation.** A corporation with an excessive amount of debt in its capitalization. See *thin capitalization* under CAPITALIZATION.

**trading corporation.** A corporation whose business involves the buying and selling of goods.

**tramp corporation.** A corporation chartered in a state where it does not conduct business.

**U.S.-owned foreign corporation.** A foreign corporation in which 50% or more of the total combined voting power or total value of the stock is held directly or indirectly by U.S. citizens. IRC (26 USCA) § 904(g)(6). • If the dividend or interest income paid by a U.S. corporation is classified as a foreign source, the U.S. corporation is treated as a U.S.-owned foreign corporation. IRC (26 USCA) § 861.

**Corporation Act.** *Hist.* A 1661 English statute (13 Car. 2, St. 2, ch. 1) prohibiting the holding of public office by anyone who would not take the Anglican sacrament and the oaths of supremacy and allegiance. • The Act was repealed by the Promissory Oaths Act of 1871.

**corporation aggregate.** See CORPORATION.

**corporation by estoppel.** See CORPORATION.

**corporation by prescription.** See CORPORATION.

**corporation counsel.** See COUNSEL.

**corporation court.** See COURT.

**corporation de facto.** See *de facto corporation* under CORPORATION.

**corporation de jure.** See *de jure corporation* under CORPORATION.

**corporation for profit.** See *for-profit corporation* under CORPORATION.

**corporation sole.** See CORPORATION.

**corporator (kor-pə-ray-tər).** 1. A member of a corporation. 2. INCORPORATOR.

“Usually, a member of a corporation, in which sense it includes a stockholder; also, one of the persons who are the original organizers or promoters of a new corporation. The corporators are not the corporation, for either may sue the other.” William C. Anderson, *A Dictionary of Law* 266 (1889).

**corporeal (kor-por-ee-əl), adj.** Having a physical, material existence; tangible <land and fixtures are corporeal property>. — **corporeality, n.** Cf. INCORPOREAL.

**corporeal hereditament.** See HEREDITAMENT.

**corporeal ownership.** See OWNERSHIP.

**corporeal possession.** See POSSESSION.

**corporeal property.** See PROPERTY.

**corporeal thing.** See THING.

**corps diplomatique (kor dee-plə-ma-teeek).** DIPLOMATIC CORPS.

**corpus (kor-pəs), n.** [Latin “body”] 1. An abstract collection or body. 2. The property for which a trustee is responsible; the trust principal. — Also termed *res*; *trust estate*; *trust fund*; *trust property*; *trust res*. 3. Principal (as of a fund or estate), as opposed to interest or income. Pl. **corpora (kor-pə-rə)**, **corpuses (kor-pə-səz)**.

**corpus comitatus (kor-pəs kom-ə-tay-təs).** [Latin “the body of a county”] *Hist.* Places not part of the “high seas” and hence where admiralty jurisdiction did not originally extend.

**corpus corporatum (kor-pəs kor-pə-ray-təm).** [Latin] *Hist.* A corporate body; a corporation.

**corpus cum causa (kor-pəs kəm kaw-zə).** [Law Latin “the body with the cause”] *Hist.* A writ issuing out of Chancery to remove both a per-



son and a record from an inferior court in order to review a judgment issued by the inferior court.

"The first use of the writ to challenge imprisonment was in cases of privilege; an officer of a central court, or a litigant there, could be released from imprisonment in another court by writ of privilege in habeas corpus form. The Court of Chancery at the same time developed a similar procedure for reviewing the cause of imprisonment in an inferior tribunal; this species of writ was called *corpus cum causa*, and it became a common remedy against the misuse of borough jurisdiction in the fifteenth century." J.H. Baker, *An Introduction to English Legal History* 168 (3d ed. 1990).

**corpus delicti** (kor-pəs də-lik-tī or -tee). [Latin "body of the crime"] 1. The fact of a transgression; ACTUS REUS.

"[T]he definition of 'corpus delicti' often becomes important. (a) Essentially it signifies merely the fact of the specific loss or injury sustained, e.g., death of a victim or burning of a house. (b) To this is added also, by most courts, the criminal agency of some person (i.e., not mere accident). (c) A few courts also include evidence of the accused's identity with the deed; but this is absurd, for it virtually signifies making 'corpus delicti' synonymous with the whole charge. — Many courts treat this rule with a pedantic and unpractical strictness." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 310 (1935).

"One of the important rules of evidence in criminal cases is that which requires proof of the *corpus delicti*. Literally defined this term means 'the body of the offense,' or 'the substance of the crime.' In popular language it is used to describe the visible evidence of the crime, such as the dead body of a murdered person. Properly used, however, it is applicable to any crime and relates particularly to the act element of criminality; that is, that a certain prohibited act has been committed or result accomplished and that it was committed or accomplished by a criminal human agency." Justin Miller, "The Criminal Act," in *Legal Essays in Tribute to Orrin Kip McMurray* at 469, 478 (1935).

"The phrase 'corpus delicti' does not mean dead body, but body of the crime, and every offense has its corpus delicti. Its practical importance, however, has been very largely limited to the homicide cases. It concerns the usability in a criminal case of a confession made by the defendant outside of court." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 140 (3d ed. 1982).

2. Loosely, the material substance on which a crime has been committed; the physical evidence of a crime, such as the corpse of a murdered person.

**corpus delicti rule.** *Criminal law.* The doctrine that prohibits a prosecutor from proving the corpus delicti based solely on a defendant's extrajudicial statements. • The prosecution must establish the *corpus delicti* with corroborating evidence to secure a conviction.

**corpus juris** (kor-pəs joor-is). [Latin "body of law"] The law as the sum or collection of laws <*Corpus Juris Secundum*>. — Abbr. C.J.

**corpus juris Angliae** (kor-pəs joor-is ang-lee-ee). The entire body of English law, comprising the common law, statutory law, equity, and special law in its various forms.

**Corpus Juris Canonici** (kor-pəs joor-is kə-non-ə-sī). [Latin] *Hist.* The body of the canon law, compiled from the decrees and canons of the Roman Catholic Church. • The *Corpus Juris Canonici* emerged during the 12th century, beginning with the publication of Gratian's *Decretum* (1141–1150). In addition to the *Decretum*, it includes Raymond of Pennafort's *Liber Extra* (1234), the *Liber Sextus* of Pope Boniface VIII (1298), the *Clementines* of Pope Clement V (1313), the *Extravagantes Joannis* of Pope John XXII (1325), and *extravagantes* published by Pope John's successors (1499–1502). In 1582, the entire collection was edited by a commission of church dignitaries and officially named the *Corpus Juris Canonici*. It remained the Catholic Church's primary body of law until the promulgation of the Code of Canon Law in 1917, now replaced by that of 1983.

"After Gratian, later papal enactments, called 'decretals,' were collected and issued by the authority of various popes. . . . A revised edition of such 'decretals' . . . was presented to Pope Gregory IX in 1234 — only a short while, therefore, after the final form of Magna Carta in 1225 — and issued by him with statutory force. The revision freely made changes in the text of the enactments and the resulting compilation in four 'books' was regarded as a 'Code,' corresponding to the 'Code' of Justinian, just as the *Decretum* of Gratian corresponded to the Digest. . . . All these compilations and collections were, from the sixteenth century on, known as the *Corpus Juris Canonici*, the 'Body of Canon Law,' and formed the basis of the law administered in the Church courts." Max Radin, *Handbook of Anglo-American Legal History* 33–34 (1936).

**Corpus Juris Civilis** (kor-pəs joor-is sə-vil-is or sə-vī-lis). The body of the civil law, compiled and codified under the direction of the Roman emperor Justinian in A.D. 528–534. • The collection includes four works — the Institutes, the Digest (or Pandects), the Code, and the Novels. The title *Corpus Juris Civilis* was not original, or even early, but was modeled on the *Corpus Juris Canonici* and given in the 16th century and later to editions of the texts of the four component parts of the Roman law. See ROMAN LAW (1).

**corpus possessionis** (kor-pəs pə-zes[h]-ee-oh-nis). [Latin] *Roman law*. A thing possessed by someone. See *animus possidendi* under ANIMUS.

**corpus pro corpore** (kor-pəs proh kor-pə-ree). [Latin] *Hist.* Body for body. • This phrase commonly expressed the liability of a surety in a civil action (a mainpernor). See MAINPRISE.

**correal** (kor-ee-əl or kə-ree-əl), *adj.* Of or relating to liability that is joint and several. • Under Roman law, a *correal* debtor who paid an entire obligation had no right of action against a co-debtor. See CORREUS; SOLIDARY.

"If Aulus, having first obtained from Titius the promise of a hundred aurei, turned to Seius and said, *Spondesne mihi, Sei, cosdem centum aureos dare?* (Do you engage, Seius, to give me the same one hundred aurei?), then if Seius answered, *Spondeo*, there was one single obligation for a hundred aurei, binding in full on each of the two debtors. Aulus could demand a hundred from Titius or a hundred from Seius, and in case of non-payment could sue either one, taking his choice between them, for the full amount. If either paid the hundred, whether willingly or by compulsion, the other was released: for there was but one debt, and that was now discharged. This kind of obligation is called correal obligation (correal, from *con*, and *reus* or *rei*, connected parties, parties associated in a common debt or credit)." James Hadley, *Introduction to Roman Law* 258 (1881).

**correality** (kor-ee-əl-ə-tee), *n.* The quality or state of being correal; the relationship between parties to an obligation that terminates when an entire payment is made by one of two or more debtors to a creditor, or a payment is made by a debtor to one of two or more creditors.

"But there were circumstances, apart from indivisibility, in which each of the parties might be liable in full. . . . Several were liable or entitled, each *in solidum*, under an obligation, but the thing was due only once. Satisfaction by, or to, one of those liable, or entitled, ended the whole obligation, and action by one of the joint creditors, or against one of the debtors, not only 'novated' the obligation between the actual parties, but destroyed it altogether as against the others. This relation is commonly called correality (*correi debendi vel credendi*)." W.W. Buckland, *A Manual of Roman Private Law* 349-50 (2d ed. 1953).

**correal obligation.** See OBLIGATION.

**corrected policy.** See INSURANCE POLICY.

**correction**, *n.* **1.** Generally, the act or an instance of making right what is wrong <mark your corrections in red ink>. **2.** A change in business activity or market price following and counteracting an increase or decrease in the activity or price <the broker advised investors

to sell before the inevitable stock-market correction>. See DOWN REVERSAL. **3.** (*usu. pl.*) The punishment and treatment of a criminal offender through a program of imprisonment, parole, and probation <Department of Corrections>. — **correct**, *vb.* — **corrective** (for senses 1 & 2), **correctional** (for sense 3), *adj.*

**correction, house of.** See PRISON.

**correctional institution.** See PRISON.

**correctional system.** A network of governmental agencies that administer a jurisdiction's prisons and parole system.

**corrective advertising.** Advertising that informs consumers that earlier advertisements contained a deceptive claim, and that provides consumers with corrected information. • This type of advertising may be ordered by the Federal Trade Commission.

**corrector of the staple.** *Hist.* A clerk who records merchants' transactions at a staple. See STAPLE (2).

**correi credendi** (kor-ee-I kri-den-dī). [Latin] *Roman law.* Joint creditors. — Also termed *correi stipulandi* (stip-yə-lan-dī). See STIPULATIO.

"The mode for *stipulatio* is stated in the Institutes. Of several stipulators (*correi credendi*, active correality) each asks the debtor and he answers once for all. Of several promisors (*correi debendi*, passive correality) the creditor asks each and they answer together." W.W. Buckland, *A Manual of Roman Private Law* 350 (2d ed. 1953).

**correi debendi** (kor-ee-I di-ben-dī). [Latin] *Roman & Scots law.* Joint debtors. — Also termed *correi promittendi* (proh-mi-ten-dī). See STIPULATIO.

"*Correi Debendi* — The name given by the Roman law to persons *jointly* bound. . . . In the Scotch law, if bound *severally*, and not *jointly and severally*, each is bound only for *his share*, whatever be the responsibility of the others." Hugh Barclay, *A Digest of the Law of Scotland* 196 (3d ed. 1865).

**correi stipulandi.** See CORREI CREDENDI.

**correlative** (kə-rel-ə-tiv), *adj.* **1.** Related or corresponding; analogous. **2.** Having or involving a reciprocal or mutually interdependent relationship <the term *right* is correlative with *duty*>.

**correlative-rights doctrine.** *Water law.* The principle that adjoining landowners must limit

their use of a common water source to a reasonable amount.

"Under the correlative rights doctrine ... rights to groundwater are determined by land ownership. However, owners of land overlying a single aquifer are each limited to a reasonable share of the total supply of groundwater. The share is usually based on the acreage owned." David H. Getches, *Water Law in a Nutshell* 249 (3d ed. 1997).

**correspondence audit.** See AUDIT.

**correspondent, n.** **1.** The writer of a letter or letters. **2.** A person employed by the media to report on events. **3.** A securities firm or financial institution that performs services for another in a place or market that the other does not have direct access to. — **correspond, vb.**

**correspondent bank.** See BANK.

**correus** (kor-ee-əs), *n.* [Latin] *Roman law.* A co-debtor to a contract (*stipulatio*); a joint debtor. Pl. **correi** (kor-ee-i). See STIPULATIO.

**corrigendum** (kor-ə-jen-dəm), *n.* [Latin "correction"] An error in a printed work discovered after the work has gone to press. — Also termed *erratum*. Pl. **corrigenda** (kor-ə-jen-də).

**corroborate** (kə-rob-ə-rayt), *vb.* To strengthen or confirm; to make more certain <the witness corroborated the plaintiff's testimony>.

**corroborating evidence.** See EVIDENCE.

**corroborating witness.** See WITNESS.

**corroboration** (kə-rob-ə-ray-shən), *n.* **1.** Confirmation or support by additional evidence or authority <corroboration of the witness's testimony>. **2.** Formal confirmation or ratification <corroboration of the treaty>. — **corroborate, vb.** — **corroborative** (kə-rob-ə-rə-tiv), *adj.* — **corroborator** (kə-rob-ə-ray-tər), *n.*

**corroborative evidence.** See *corroborating evidence* under EVIDENCE.

**corrupt, adj.** **1. Archaic.** (Of a person) subject to corruption of blood.

"[T]here are divers offences made Treason by Act of Parliament, whereof, though a Man be Attaint, yet his Blood, by Provisoes therein, is not corrupt, nor shall he forfeit any thing. . . ." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

**2.** Having an unlawful or depraved motive; esp., influenced by bribery.

**corrupt, vb.** **1. Archaic.** To impose corruption of blood on (a person). **2.** To change (a person's morals or principles) from good to bad.

**corruption. 1.** Depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; esp., the impairment of a public official's duties by bribery.

"The word 'corruption' indicates impurity or debasement and when found in the criminal law it means depravity or gross impropriety." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 855 (3d ed. 1982).

**2.** The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others.

**corruption in office.** See *official misconduct* under MISCONDUCT.

**corruption of blood.** A defunct doctrine, now considered unconstitutional, under which a person loses the ability to inherit or pass property as a result of an attainder or of being declared civilly dead. — Also termed *corruption of the blood*. See ATTAINDER; CIVIL DEATH.

"Corruption of blood is, when any one is attainted of felony or treason, then his blood is said to be corrupt; by means whereof neither his children, nor any of his blood, can be heirs to him, or to any other ancestor, for that they ought to claim by him. And if he were a noble or gentleman before, he and all his children are made thereby ignoble and ungentle. . . ." *Termes de la Ley* 125 (1st Am. ed. 1812).

**corruptly, adv.** In a corrupt or depraved manner; by means of corruption or bribery. ● As used in criminal-law statutes, *corruptly* usu. indicates a wrongful desire for pecuniary gain or other advantage.

**corrupt-motive doctrine.** *Criminal law.* The rule that conspiracy is punishable only if the agreement was entered into with an evil purpose, not merely with an intent to do the illegal act. ● This doctrine — which originated in *People v. Powell*, 63 N.Y. 88 (1875) — has been rejected by the Model Penal Code. — Also termed *Powell doctrine*.

**corrupt-practices act.** A federal or state statute that regulates campaign contributions and expenditures as well as their disclosure.

**corvée seigneuriale** (kor-vay sen-yuu-ree-ahl). [French] *Hist.* Services due the lord of the manor. — Often shortened to *corvée*.

**cosen**, *vb.* See COZEN.

**cosign**, *vb.* To sign a document along with another person, usu. to assume obligations and to supply credit to the principal obligor. — **cosignature**, *n.*

**cosigner**. See COMAKER.

**cosinage** (kəz-ən-ij). *Hist.* A writ used by an heir to secure the right to land held by a great-great-grandfather or certain collateral relatives. — Also spelled *cosenage*; *cousinage*. — Also termed *consanguineo*; *de consanguineo*; *de consanguinitate*. Cf. AIEL; BESAYEL.

“This remedy, by writ of assise, is only applicable to two species of injury by ouster, viz. *abatement*, and a recent or *novel disseisin*. . . . If the abatement happened on the death of one’s grandfather or grandmother, then an assise of *mort d’ancestor* no longer lies, but a writ of *ayle*, or *de avo*; if on the death of the great grandfather or great grandmother, then a writ of *besayle*, or *de proavo*; but if it mounts one degree higher, to the *tresayle*, or grandfather’s grandfather, or if the abatement happened upon the death of any collateral relation, other than those before-mentioned, the writ is called a writ of *cosinage*, or *de consanguineo*.” 3 William Blackstone, *Commentaries on the Laws of England* 185–86 (1768).

**cost**, *n.* 1. The amount paid or charged for something; price or expenditure. Cf. EXPENSE.

**aboriginal cost**. The cost of an asset incurred by the first company to use it for public utilities.

**acquisition cost**. An asset’s net price; the original cost of an asset. — Also termed *historical cost*; *original cost*.

**after cost**. A delayed expense; an expense, such as one for repair under a warranty, incurred after the principal transaction.

**applied cost**. A cost appropriated to a project before it has been incurred.

**average cost**. The sum of the costs of beginning inventory costs and the costs of later additions divided by the total number of available units.

**avoidable cost**. A cost that can be averted if production is held below a certain level so that additional expenses will not be incurred.

**carrying cost**. *Accounting.* The variable cost of stocking one unit of inventory for one year. ● Carrying cost includes the opportunity cost of the capital invested in the inventory. — Also termed *cost of carrying*.

**common cost**. See *indirect cost*.

**cost of completion**. *Contracts.* A measure of damages based on the expense incurred by the party not in breach to finish the promised performance.

**direct cost**. The amount of money for material, labor, and overhead to produce a product.

**distribution cost**. Any cost incurred in marketing a product or service, such as advertising, storage, and shipping.

**fixed cost**. A cost whose value does not fluctuate with changes in output or business activity; esp., overhead expenses such as rent, salaries, and depreciation. — Also termed *fixed charge*; *fixed expense*.

**flotation cost**. (*usu. pl.*) A cost incurred in issuing additional stock.

**historical cost**. See *acquisition cost*.

**implicit cost**. See *opportunity cost*.

**indirect cost**. A cost that is not specific to the production of a particular good or service, but that arises from production activity in general, such as overhead allocations for general and administrative activities. — Also termed *common cost*.

**manufacturing cost**. The cost incurred in the production of goods, including direct and indirect costs.

**marginal cost**. The additional cost incurred in producing one more unit of output.

**mixed cost**. A cost that includes fixed and variable costs.

**net cost**. The cost of an item, arrived at by subtracting any financial gain from the total cost.

**opportunity cost**. The cost of acquiring an asset measured by the value of an alternative investment that is forgone <her opportunity cost of \$1,000 in equipment was her consequent inability to invest that money in bonds>. — Also termed *implicit cost*.

**original cost**. See *acquisition cost*.

**prime cost**. The true price paid for goods on a bona fide purchase.

**replacement cost**. The cost of acquiring an asset that is as equally useful or productive as an asset currently held.

**social cost**. The cost to society of any particular practice or rule <although automobiles are undeniably beneficial to society, they carry a certain social cost in the lives that are lost every year on the road>.

**sunk cost.** A cost that has already been incurred and that cannot be recovered.

**tangible cost.** *Oil & gas.* A particular expense associated with drilling, such as the costs incurred for materials and land. • Drilling and testing costs are considered intangible.

**transaction cost.** (*usu. pl.*) A cost connected with a process transaction, such as a broker's commission, the time and effort expended to arrange a deal, or the cost involved in litigating a dispute.

**unit cost.** The cost of a single unit of a product or service; the total manufacturing cost divided by the number of units.

**variable cost.** The cost that varies in the short run in close relationship with changes in output.

2. (*pl.*) The charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees. — Also termed *court costs*.

3. (*pl.*) The expenses of litigation, prosecution, or other legal transaction, esp. those allowed in favor of one party against the other. — Also termed (in sense 3) *litigation costs*.

**accruing costs.** Costs and expenses incurred after judgment.

**costs of increase.** See COSTS OF INCREASE.

**costs of the day.** Costs incurred in preparing for trial.

**costs to abide event.** Costs incurred by a successful party who is entitled to an award of those costs incurred at the conclusion of the matter.

**cost accounting.** See *cost accounting method* under ACCOUNTING METHOD.

**cost accounting method.** See ACCOUNTING METHOD.

**cost and freight.** A term in a quoted sales price indicating that the quoted price includes the cost of the goods and freight charges to the named destination, but not insurance or other special charges. • During shipment, the risk of loss is on the buyer. — Abbr. C.F.; C & F; CandF.

**cost approach.** A method of appraising real property, based on the cost of building a new property with the same utility, assuming that an informed buyer would pay no more for the property than it would cost to build a new property having the same usefulness. Cf. MARKET APPROACH; INCOME APPROACH.

**cost basis.** See BASIS (2).

**cost-benefit analysis.** An analytical technique that weighs the costs of a proposed decision, holding, or project against the expected advantages, economic or otherwise.

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

**cost-book mining company.** An association of persons organized for the purpose of working mines or lodes, whose capital stock is divided into shares that are transferable without the consent of other members. • The management of the mine is entrusted to an agent called a purser.

**cost depletion.** *Oil & gas.* The recovery of an oil-and-gas producer's basis (i.e., investment) in a producing well by deducting the basis proportionately over the producing life of the well. Treas. Reg. § 1.611-2.

"Under cost depletion, the taxpayer in an oil and gas property deducts the basis in the property from the income as oil and gas are produced and sold. Cost depletion is calculated by a formula ... [that] relates the recovery of the taxpayer's investment to the proportion that the current unit sales of oil and gas bear to the total anticipated sales of oil and gas from the property. The investment is recovered ratably over the life of the reserves." John S. Lowe, *Oil and Gas Law in a Nutshell* 353 (3d ed. 1995).

**cost, insurance, and freight.** A term in a quoted sales price indicating that the price includes the cost of the goods as well as freight and insurance charges to the named destination. • During shipment, the risk of loss is on the buyer. But the seller must provide insurance at a specified amount (*usu.* at a minimum of 110%). — Abbr. C.I.F. Cf. FREE ALONGSIDE SHIP; FREE ON BOARD.

"'C.i.f.' is a mercantile symbol that is commonly used in international sales contracts. It is defined by section 2-320 of the UCC and by the Incoterms — 1953 and the Revised American Foreign Trade Definitions — 1941. Under all of these definitions the letters 'c.i.f.' mean that the price covers the cost of the goods, the cost of insuring them for the benefit of the order of the buyer, and the cost of carrying them to the named point, almost always the destination. Like the other mercantile symbols, the meaning of 'C.I.F.' may be varied by agreement." William D. Hawkland, *Uniform Commercial Code Series* § 2-320:01 (1984).

**C.I.F. destination.** A contractual term denoting that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. — Also termed *C.I.F. place of destination*.

**cost justification.** Under the Robinson-Patman Act, an affirmative defense against a charge of price discrimination dependent on the seller's showing that it incurs lower costs in serving those customers who are paying less. 15 USCA § 13(a).

**cost-of-capital method.** A means of measuring a utility's cost of acquiring debt and equity capital. • Regulatory commissions often use this method to determine a fair rate of return for the utility's investors.

**cost of carrying.** See *carrying cost* under COST.

**cost of completion.** See COST (1).

**cost-of-living clause.** A provision (as in a contract or lease) that gives an automatic wage, rent, or benefit increase tied in some way to cost-of-living rises in the economy. • A cost-of-living clause may also cover a decrease, though this is rare. See INFLATION.

**cost-of-living index.** See CONSUMER PRICE INDEX.

**cost-plus contract.** See CONTRACT.

**cost-push inflation.** See INFLATION.

**costs de incremento.** See COSTS OF INCREASE.

**costs of collection.** Expenses incurred in receiving payment of a note; esp., attorney's fees created in the effort to collect a note.

**costs of increase.** *Hist.* Costs of court that are awarded in addition to what a jury awards. • Juries usu. awarded the successful party only a small sum for costs. A party wishing to recoup the additional costs had to file an affidavit of increase setting forth what further costs were incurred by taking the matter through trial. — Also termed *costs de incremento*. See *affidavit of increase* under AFFIDAVIT.

**costs of the day.** See COST (3).

**costs to abide event.** See COST (3).

**cosurety.** A surety who shares the cost of performing suretyship obligations with another. See SURETY.

**cotarius** (kə-tair-ee-əs). [Law Latin] *Hist.* A socage-tenure serf who holds land by paying rent and providing some personal services to the

lord. • Both *cotarius* and *coterellus* serfs were also known as *cottagers*. Cf. COTERELLUS.

**cotenancy.** See TENANCY.

**coterellus** (kot-ə-rel-əs). [Law Latin] *Hist.* A serf who inhabits a cottage; a servile tenant whose person, issue, and goods are at the disposal of the lord. — Also spelled *coterell*. Cf. COTARIUS.

"Coterellus. . . . A cottager. Considered by Spelman and others, the same with *cotarius*. But Cowell makes the distinction that the *cotarius* had free socage tenure, and paid a stated firm (rent) in provisions or money, with some occasional customary service; whereas the *coterellus* seemed to have held in mere villenage, and had his person and issue and goods disposed at the pleasure of the lord." 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 387 (2d ed. 1867).

**coterminous** (koh-tər-mə-nəs), *adj.* 1. CONTERMINOUS (1). 2. (Of ideas or events) coextensive in time or meaning <Judge Smith's tenure was coterminous with Judge Jasper's>.

**cotland** (kot-lənd). *Hist.* Land held by a cottager, whether in socage or villeinage tenure.

**cotortfeasor** (koh-tort-fee-zər). One who, together with another, has committed a tort. See TORTFEASOR.

**cotrustee.** One of two or more persons in whom the administration of a trust is vested. • The cotrustees form a collective trustee and exercise their powers jointly. — Also termed *joint trustee*. See TRUSTEE.

**cotset** (kot-set). *Hist.* A villein who provides labor to a lord in exchange for a cottage and plot of land. — Also termed *cotsetus*.

**cottier** (kot-ee-ər). 1. *Hist.* A serf who lives in a cottage; a cottager. • Over time, *cottier* has come to refer to a day laborer or a rural dweller. 2. *Hist. Irish law.* A tenant who leases a house and a small (usu. two acre or less) plot of land.

**couchant and levant** (kow-chənt / lev-ənt), *adj.* See LEVANT AND COUCHANT.

**council.** 1. A deliberative assembly <the U.N. Security Council>.

**common council.** 1. In some cities, the lower branch of a city council. 2. In some cities, the city's governing board.

**select council.** In some states, the upper branch of a city council.

**2.** An administrative or executive body <a parish council>.

**councillor.** See COUNCILOR.

**Council of Economic Advisors.** A select group of economists who advise the U.S. President on economic issues. — Abbr. CEA.

**Council of the North.** *Hist.* A body used by the Tudors to administer the northern parts of England (esp. Yorkshire) during the 16th and 17th centuries. ● The council probably predated the Tudors, but Henry VIII revived it. In addition to enforcing Crown policy in the northern territories, the appointees (many of whom were lawyers) exercised wide criminal and civil jurisdiction. The Council disbanded ca. 1640.

**councilor, n.** A person who serves on a council, esp. at the local level. — Also spelled *councillor*. — **councillorship, n.**

**counsel, n. 1.** Advice or assistance <the lawyer's counsel was to petition immediately for a change of immigration status>. **2.** One or more lawyers who represent a client <the client acted on advice of counsel>. — In the singular, also termed *counselor*. Cf. ATTORNEY; LAWYER. **3.** *English law.* A member of the bar; BARRISTER.

**advisory counsel.** An attorney retained merely to give advice on a particular matter, as distinguished from one (such as trial counsel) actively participating in a case.

**appellate counsel.** A lawyer who represents a party on appeal. ● The term is often used in contrast with *trial counsel*.

**assigned counsel.** An attorney appointed by the court to represent a person, usu. an indigent person. — Also termed *court-appointed attorney*.

**corporate counsel.** An in-house attorney for a corporation.

**corporation counsel.** A city attorney in an incorporated municipality.

**counsel of record.** See ATTORNEY OF RECORD.

**general counsel. 1.** A lawyer or law firm that represents a client in all or most of the client's legal matters, but that sometimes refers extraordinary matters — such as litigation and intellectual-property cases — to other lawyers. **2.** The most senior lawyer in a

corporation's legal department, usu. also a corporate officer.

**house counsel.** See *in-house counsel*.

**independent counsel.** An attorney hired to provide an unbiased opinion about a lawsuit or to conduct an impartial investigation; esp., an attorney appointed by a governmental branch or agency to investigate alleged misconduct within that branch or agency. See *special prosecutor* under PROSECUTOR. Cf. *special counsel*.

**in-house counsel.** One or more lawyers employed by a company. — Also termed *house counsel*.

**junior counsel. 1.** The younger or lower-ranking of two or more attorneys employed on the same side of a case, esp. someone charged with the less important aspects of the case. **2.** *English law.* The barrister who assists Queen's Counsel.

**King's Counsel.** See KING'S COUNSEL.

**lead counsel. 1.** The more highly ranked lawyer if two or more are retained; the lawyer who manages or controls the case or cases, esp. in class actions or multidistrict litigation. — Also termed *senior counsel*; *attorney in charge*. **2.** QUEEN'S COUNSEL. — Also termed *leading counsel*.

**of counsel. 1.** A lawyer employed by a party in a case; esp., one who — although not the principal attorney of record — is employed to assist in the preparation or management of the case or in its presentation on appeal. **2.** A lawyer who is affiliated with a law firm, though not as a member, partner, or associate.

**Queen's Counsel.** See QUEEN'S COUNSEL.

**senior counsel. 1.** See *lead counsel*. **2.** See KING'S COUNSEL; QUEEN'S COUNSEL.

**special counsel.** An attorney employed by the state or political subdivision to assist in a particular case when the public interest so requires. — Also termed *special attorney*. Cf. *independent counsel*.

**standby counsel.** An attorney who is appointed to be prepared to represent a pro se criminal defendant if the defendant's self-representation ends. ● The standby counsel may also provide some advice and guidance to the defendant during the self-representation. — Also termed *advisory counsel*.

**trial counsel. 1.** A lawyer who represents a party at trial. ● The term is often used in contrast with *appellate counsel*. **2.** *Military law.* The person who prosecutes a case on the government's behalf.

**counsel, assistance of.** See ASSISTANCE OF COUNSEL.

**counsel, right to.** See RIGHT TO COUNSEL.

**counsel and procure.** See AID AND ABET.

**counsel of record.** See ATTORNEY OF RECORD.

**counselor.** See COUNSEL (2).

**count, n. Procedure.** **1.** The part of an indictment charging the suspect with a distinct offense. **2.** In a complaint or similar pleading, the statement of a distinct claim. Cf. DECLARATION (7).

"This word . . . is in our old law-books used synonymously with declaration . . . . But when the suit embraces two or more causes of action (each of which of course requires a different statement), or when the plaintiff makes two or more different statements of one and the same cause of action, each several statement is called a count, and all of them, collectively, constitute the declaration." 1 John Bouvier, *A Law Dictionary* 245 (1839).

**common count. Hist.** In a plaintiff's pleading in an action for debt, boilerplate language that is not founded on the circumstances of the individual case but is intended to guard against a possible variance and to enable the plaintiff to take advantage of any ground of liability that the proof may disclose. • In the action for indebitatus assumpsit, the common count stated that the defendant had failed to pay a debt as promised. See *indebitatus assumpsit* under ASSUMPSIT.

**general count.** A count that states the plaintiff's claim without undue particularity.

**money count. Hist.** A count, usu. founded on a simple contract, giving rise to a claim for payment of money.

"Simple contracts, express or implied, resulting in mere debts, are of so frequent occurrence as causes of action, that certain concise forms of counts were devised for suing upon them. These are called the 'indebitatus' or 'money counts.'" 2 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 833 (1883).

**multiple counts.** Several separate causes of action or charged offenses contained in a single pleading or indictment.

**omnibus count (ahm-ni-bas).** A count that combines into one count all money claims, claims for goods sold and delivered, claims for work and labor, and claims for an account stated.

**separate count.** One of two or more criminal charges contained in one indictment, each

charge constituting a separate indictment for which the accused may be tried.

**several count.** One of two or more counts in a pleading, each of which states a different cause of action.

**special count.** A section of a pleading in which the plaintiff's claim is stated with great particularity — usu. employed only when the pleading rules require specificity.

**3. Hist.** The plaintiff's declaration, or initial pleading, in a real action. See DECLARATION (7).

**4. Patents.** The part of a patent application that defines the subject matter in a priority contest (i.e., an *interference*) between two or more applications or between one or more applications and one or more patents. See INTERFERENCE (2).

**count, vb. 1.** In pleading, to declare or state; to narrate the facts that state a claim. **2. Hist.** To plead orally; to plead or argue a case in court.

**counter. Hist.** An advocate or professional pleader; one who counts (i.e., orally recites) for a client. • Counters had coalesced into an identifiable group practicing before the Common Bench by the beginning of the 13th century. They were the leaders of the medieval legal profession, and over time came to be known as *serjeants-at-law*. — Also spelled *countor*; *contor*; *counteur*. See SERJEANT-AT-LAW.

**counteraction.** See COUNTERCLAIM.

**counteraffidavit.** See AFFIDAVIT.

**counterbond.** See BOND (2).

**counterclaim, n.** A claim for relief asserted against an opposing party after an original claim has been made; esp., a defendant's claim in opposition to or as a setoff against the plaintiff's claim. — Also termed *counteraction*; *countersuit*; *cross-demand*. — **counterclaim, vb.** — **counterclaimant, n.** Cf. CROSS-CLAIM.

"Under [Fed. R. Civ. P.] Rule 13 the court has broad discretion to allow claims to be joined in order to expedite the resolution of all controversies between the parties in one suit. Rule 13(c) specifically provides that the counterclaimant is not limited by recovery sought by the opposing party but may claim relief in excess of that amount. Further, the general legal rule is that it is immaterial whether a counterclaim is legal or equitable for purposes of determining whether it properly is brought under Rule 13. . . . The expectation is that this liberal joinder policy will further the elimination of circuity of action and multiple litigation." 6 Charles Alan Wright et al., *Federal Practice and Procedure* § 1403, at 15-16 (2d ed. 1990).



**compulsory counterclaim.** A counterclaim that must be asserted to be cognizable, usu. because it relates to the opposing party's claim and arises out of the same subject matter. • If a defendant fails to assert a compulsory counterclaim in the original action, that claim may not be brought in a later, separate action (with some exceptions).

**permissive counterclaim.** A counterclaim that need not be asserted to be cognizable, usu. because it does not arise out of the same subject matter as the opposing party's claim or involves third parties over which the court does not have jurisdiction. • Permissive counterclaims may be brought in a later, separate action.

**counterdeed.** See DEED.

**counterfeisance** (kown-tər-fee-zənts). *Archaic.*  
The act of counterfeiting.

**counterfeit**, *vb.* To forge, copy, or imitate (something) without a right to do so and with the purpose of deceiving or defrauding; esp., to manufacture fake money (or other security) that might be used in place of the genuine article. • Manufacturing fake food stamps is considered counterfeiting. — **counterfeit**, *n.* — **counterfeit**, *adj.*

"Literally a *counterfeit* is an imitation intended to pass for an original. Hence it is spurious or false, and to *counterfeit* is to make false. For this reason the verbs *counterfeit* and *forge* are often employed as synonyms and the same is true to some extent of the corresponding nouns. No error is involved in this usage but it is important to distinguish between the words as far as possible when used as the labels of criminal offenses. In the most restricted sense, [c]ounterfeiting is the unlawful making of false money in the similitude of the genuine. At one time under English statutes it was made treason. Under modern statutes it is a felony." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 431-32 (3d ed. 1982).

**counterfeiter.** A person who makes an unauthorized imitation of something (esp. a document, currency, or another's signature) with the intent to deceive or defraud.

**counterfoil** (kown-tər-foyl), *n.* A detachable part of a writing on which the particulars of the main part are summarized. • The most common example is a check stub, on which the date, the payee, and the amount are typically noted.

**counterletter.** *Civil law.* A document by which a record owner of real property acknowledges that another actually owns the property. •

Counterletters are used when the property is to be reconveyed after a period. See *simulated contract* under CONTRACT.

**countermand** (kown-tər-mand), *n.* An action that has the effect of voiding something previously ordered; a revocation. — **countermand** (kown-tər-mand or kown-), *vb.*

**counteroffer**, *n.* *Contracts.* An offeree's new offer that varies the terms of the original offer and that therefore rejects the original offer. — **counteroffer**, *vb.* — **counterofferor**, *n.* See MIRROR-IMAGE RULE.

**counterpart**. **1.** In conveyancing, a corresponding part of an instrument <the other half of the indenture — the counterpart — could not be found>. **2.** One of two or more copies or duplicates of a legal instrument <this lease may be executed in any number of counterparts, each of which is considered an original>.

"Formerly 'part' was used as the opposite of 'counterpart,' in respect to covenants executed in duplicate, but now each copy is called a 'counterpart.'" 2 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 927 (1883).

**counterpart writ.** See WRIT.

**counterpromise**, *n.* A promise made in exchange for another party's promise <a promise supported by a counterpromise is binding in its inception>. — **counterpromise**, *vb.*

**counter-roll.** *Hist.* A record kept by an officer as a check on another officer's record, esp. the rolls maintained by a sheriff and a coroner.

**countersign**, *vb.* To write one's own name next to someone else's to verify the other signer's identity. — **countersignature**, *n.*

**countersuit.** See COUNTERCLAIM.

**countertrade.** A type of international trade in which purchases made by an importing nation are linked to offsetting purchases made by the exporting nation.

"Countertrade is barter in modern clothes. It developed rapidly as a form of doing business with the USSR and Eastern European nations in the 1970s and 1980s, before the major economic and political reforms tended to diminish its emphasis as a means of doing business." Ralph H. Folsom & Michael W. Gordon, *International Business Transactions* § 2.1, at 46 (1995).

**countervailable subsidy** (kown-tər-vayl-ə-bəl səb-sə-dee). A foreign government's subsidy on

the manufacture of goods exported to another country, giving rise to the importing country's entitlement to impose a countervailing duty on the goods if their import caused or threatens to cause material injury to domestic industry. See *countervailing duty* under DUTY (4).

**countervailing duty.** See DUTY (4).

**countervailing equity.** See EQUITY.

**counter will.** See *mutual will* under WILL.

**countez** (kawn-teez). [Law French] *Hist.* A direction given by a clerk of a court to a crier, after a jury was sworn, to count the jury members.

"Of this ignorance we may see daily instances, in the abuse of two legal terms of ancient French; one, the prologue to all proclamations, 'oyez, or hear ye,' which is generally pronounced most unmeaningly, 'O yes:' the other, a more pardonable mistake, viz., when a jury are all sworn, the officer bids the crier number them, for which the word in law-french is, 'countez;' but we now hear it pronounced in very good English, 'count these.' "

4 William Blackstone, *Commentaries on the Laws of England* 334 n.s (1769).

**Counting House of the King's Household.**

See BOARD OF GREEN CLOTH.

**country.** 1. A nation or political state. 2. The territory of such a nation or state.

**county.** The largest territorial division for local government within a state, generally considered to be a political subdivision and a quasi-corporation. • Every county exists as a result of a sovereign act of legislation, either constitutional or statutory, separating it from the rest of the state as an integral part of its territory and establishing it as one of the primary divisions of the state for purposes of civil administration. — Abbr. co.

"A county is a part of the realm, intirely governed by one sheriff under the king, but all subject to the general government of the realm; and therefore every county is as it were an intire body of itself, so that upon a feoffment of lands in many towns in one county, livery of seisin made in one parcel in any one of the towns in the name of all, sufficeth for all the lands in all the other towns within the same county: but upon a feoffment of lands in divers counties, there must be livery of seisin in every county." Sir Henry Finch, *Law, or a Discourse Thereof* 79 (1759).

**foreign county.** Any county separate from that of a county where matters arising in the former county are called into question, though both may lie within the same state or country.

**county agent.** See JUVENILE OFFICER.

**county attorney.** An attorney who represents a county in civil matters. • In some jurisdictions, county attorneys prosecute criminal offenders.

**county auditor.** See AUDITOR.

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

**county commissioner.** See COMMISSIONER.

**county court.** See COURT.

**county judge.** See JUDGE.

**county officer.** See OFFICER.

**county palatine** (pal-ə-tin or-tin). *Hist.* A county in which the lord held certain royal privileges, such as the right to pardon a felon or to have indictments recite that offenses were committed against the lord's — rather than the king's — peace. • In England, there were three such counties: Chester, Durham, and Lancaster. The separate legal systems in these counties was slowly eliminated; the last vestiges of a separate system were abolished by the Courts Act (1971). Cf. *proprietary government* under GOVERNMENT.

**county property.** Property that a county is authorized to acquire, hold, or sell.

**county purpose.** An objective pursued by a county; esp., one that a county levies taxes for.

**county seat.** The municipality where a county's principal offices are located. — Also termed *county town*.

**county supervisor.** See *county commissioner* under COMMISSIONER.

**county town.** See COUNTY SEAT.

**county warrant.** See WARRANT (3).

**coup d'état** (koo day-tah). [French "stroke of state"] A sudden, usu. violent, change of government through seizure of power.

**coupon** (koo-pon). An interest or dividend certificate that is attached to another instrument, such as a bond, and that may be detached and separately presented for payment of a definite sum at a specified time.

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

**coupon interest rate.** See *coupon rate* under INTEREST RATE.

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

**coupon rate.** See INTEREST RATE.

**coupon security.** See SECURITY.

**coupon yield.** See YIELD.

**Cour de Cassation.** See COURT OF CASSATION.

**courier.** A messenger, esp. one who delivers parcels, packages, and the like. • In international law, the term denotes a messenger duly authorized by a sending state to deliver a diplomatic pouch.

**course of business.** The normal routine in managing a trade or business. — Also termed *ordinary course of business*; *regular course of business*; *ordinary course*; *regular course*.

**course of dealing.** An established pattern of conduct between the parties to a particular transaction. • If a dispute arises, the parties' course of dealing can be used as evidence of how they intended to carry out the transaction. Cf. COURSE OF PERFORMANCE; *trade usage* under USAGE.

"A course of dealing is distinguishable from a course of performance. As defined by the [UCC], 'course of dealing' relates to conduct under other transactions which occurred with regularity prior to the formation of the present contract, while 'course of performance' relates to the conduct of the parties under the contract in question subsequent to its formation. However, in meaning the two expressions are essentially equivalent." Ronald A. Anderson, *Uniform Commercial Code* § 1-205:86 (1997).

**course of employment.** Events that occur or circumstances that exist as a part of one's employment; esp., the time during which an employee furthers an employer's goals through employer-mandated directives.

**course of performance.** A sequence of previous performance by either party after an agreement has been entered into, when a contract involves repeated occasions for performance and both parties know the nature of the performance and have an opportunity to object to it. • A course of performance accepted or acquiesced in without objection is relevant to determining the meaning of the agreement.

UCC § 2-208; § 2A-301(a). Cf. COURSE OF DEALING; *trade usage* under USAGE.

"[C]ommon law courts have recognized the necessity of learning how people usually talk and what they usually mean by their language before one interprets their contracts. . . . '[C]ourse of performance' refers to a pattern of performance of the contract that is the subject of the dispute, as contrasted to 'course of dealing' which refers to the pattern of performance in prior contracts between the same parties." Claude Rohwer & Gordon D. Schaber, *Contracts in a Nutshell* 171-73 (4th ed. 1997).

"The phrase 'course of performance' relates to the way the parties have acted in performance of the particular contract in question. The judicial inquiry on this point is limited to the way the parties have acted in carrying out the particular contract that is in controversy, as distinguished from a general pattern of dealing that may embrace many other contracts or transactions between the parties." Ronald A. Anderson, *Uniform Commercial Code* § 1-205:74 (1997).

**course of trade.** See *trade usage* under USAGE.

**court, n. 1.** A governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice <a question of law for the court to decide>.

"A court . . . is a permanently organized body, with independent judicial powers defined by law, meeting at a time and place fixed by law for the judicial public administration of justice." 1 William J. Hughes, *Federal Practice, Jurisdiction & Procedure* § 7, at 8 (1931).

2. The judge or judges who sit on such a governmental body <the court asked the parties to approach the bench>. 3. A legislative assembly <in Massachusetts, the General Court is the legislature>. 4. The locale for a legal proceeding <an out-of-court statement>. 5. The building where the judge or judges convene to adjudicate disputes and administer justice <the lawyers agreed to meet at the court at 8:00 a.m.>. — Also termed (in sense 5) *courthouse*.

**admiralty court.** See ADMIRALTY (1).

**appellate court.** A court with jurisdiction to review decisions of lower courts or administrative agencies. — Also termed *appeals court*; *appeal court*; *court of appeals*; *court of appeal*; *court of review*.

"Appellate courts are among the most important institutions of governance in the United States. Through their review of trial court and administrative agency decisions they ensure that those bodies function lawfully and that litigants receive justice under law. Moreover, they provide authoritative interpretations of statutory and constitutional provisions and control the shaping of the common law in response to ever-changing circumstances; they are thus major sources of law." Daniel John Meador & Jordana Simone Bernstein, *Appellate Courts in the United States* v (1994).

**Article I Court.** See *legislative court*.

**Article III Court.** See ARTICLE III COURT.

**bankruptcy court.** See BANKRUPTCY COURT.

**base court.** *Archaic.* An inferior court.

**basement court.** See BASEMENT COURT.

**business court.** A court that handles exclusively commercial litigation. • In the late 20th century, business courts emerged as a way to unclog the general dockets and to dispose of commercial cases more efficiently and consistently. — Also termed *commercial court*; *commercial division*.

**church court.** See *ecclesiastical court*.

**circuit court.** A court usu. having jurisdiction over several counties, districts, or states, and holding sessions in all those areas.

**civil court.** A court with jurisdiction over noncriminal cases. — Abbr. Civ. Ct.

**claims court.** See *court of claims*.

**Commerce Court.** *Hist.* A federal court having the power to review and enforce determinations of the Interstate Commerce Commission. • The Commerce Court existed from 1910 to 1913.

**commercial court.** **1.** See *business court*. **2.** *English law.* A court that hears business disputes under simplified procedures designed to expedite the trials. • This court was created in 1971 as part of the Queen's Bench Division of the High Court of Justice.

**commissioner's court.** In certain states, a court having jurisdiction over county affairs and often functioning more as a managerial group than as a judicial tribunal.

**common pleas court.** See COURT OF COMMON PLEAS.

**commonwealth court.** **1.** In some states, a court of general jurisdiction. **2.** In Pennsylvania, a court that hears suits against the state and reviews decisions of state agencies and officials.

**conciliation court.** See *small-claims court*.

**constitutional court.** A court named or described and expressly protected in a constitution.

**consular court** (kon-sə-lər). A court held by the consul of one country within the territory of another. • Consular courts are created by treaty, and their jurisdiction is usu. limited to civil cases. The last of the U.S. consular courts (Morocco) was abolished in 1956.

**coroner's court.** *English law.* A common-law court that holds an inquisition if a person

died a violent or unnatural death, died in prison, or died suddenly when the cause is not known. • The court also has jurisdiction over treasure trove.

**corporation court.** In some jurisdictions, a court that serves an incorporated municipality. See *municipal court*.

**county court.** A court with powers and jurisdiction dictated by a state constitution or statute. • The county court may govern administrative or judicial matters, depending on state law. — Also termed (in Louisiana) *parish court*.

**court above.** A court to which a case is appealed. — Also termed *higher court*; *upper court*.

**court a quo** (ay kwoh). A court from which a case has been removed or appealed.

**court below.** A trial court or intermediate appellate court from which a case is appealed. — Also termed *lower court*.

**court christian.** See *ecclesiastical court*.

**court of appeals.** **1.** An intermediate appellate court. — Also termed (as in California and England) *court of appeal*. **2.** In New York and Maryland, the highest appellate court within the jurisdiction.

**court of chivalry.** See HIGH COURT OF CHIVALRY.

**court of claims.** A court with the authority to hear claims made against a state (or its political subdivision) for cases in which the state has waived sovereign immunity. — Also termed *claims court*.

**court of competent jurisdiction.** A court that has the power and authority to do a particular act; one recognized by law as possessing the right to adjudicate a controversy.

**court of domestic relations.** See *family court*.

**court of equity.** A court that (1) has jurisdiction in equity, (2) administers and decides controversies in accordance with the rules, principles, and precedents of equity, and (3) follows the forms and procedures of chancery. Cf. *court of law*.

**court of first instance.** See *trial court*.

**court of general jurisdiction.** A court having unlimited or nearly unlimited trial jurisdiction in both civil and criminal cases.

**court of inquiry.** **1.** *Hist.* In English law, a court appointed by the monarch to ascertain whether it was proper to use extreme measures against someone who had been court-

martialed. **2. Hist.** In American law, an agency created under articles of war and vested with the power to investigate the nature of a transaction or accusation of an officer or soldier. **3.** In some jurisdictions, a procedure that allows a magistrate to examine witnesses in relation to any offense that the magistrate has a good-faith reason to believe was committed.

**court of last resort.** The court having the authority to handle the final appeal of a case, such as the U.S. Supreme Court.

**court of law.** **1.** Broadly, any judicial tribunal that administers the laws of a state or nation. **2.** A court that proceeds according to the course of the common law, and that is governed by its rules and principles. Cf. *court of equity*.

**court of limited jurisdiction.** A court with jurisdiction over only certain types of cases, or cases in which the amount in controversy is limited.

**court of ordinary.** See *probate court*.

**court of original jurisdiction.** A court where an action is initiated and first heard.

**court of record.** A court that is required to keep a record of its proceedings and that may fine and imprison people for contempt. • The court's records are presumed accurate and cannot be collaterally impeached. See OF RECORD (2).

**court of review.** See *appellate court*.

**court of special session.** A court that has no stated term and is not continuous, but is organized only for hearing a particular case.

**de facto court** (di fak-toh). **1.** A court functioning under the authority of a statute that is later adjudged to be invalid. **2.** A court established and acting under the authority of a *de facto* government.

**diocesan court.** *Eccles. law.* A court exercising general or limited jurisdiction (as determined by patent, local custom, or legislation) of matters arising within a bishop's diocese. • Diocesan courts include the consistorial court, the courts of the commissaries, and the courts of archdeacons.

**district court.** A trial court having general jurisdiction within its judicial district. — Abbr. D.C.

**divisional court.** An English court made up of two or more judges from the High Court of Justice sitting in special cases that cannot be disposed of by one judge. • Each division of the High Court has a divisional court, e.g., the Divisional Court of the Family Division.

With the exception of the Divisional Court of the Chancery Division, which has jurisdiction to review land-registration appeals from the county court, almost all judicial appeals are from decisions of a magistrates' court. The Divisional Court of the Queen's Bench Division hears appeals from the Crown Court or the magistrates' court by way of case stated in criminal prosecutions, which is the most frequent use of a divisional court.

**domestic court.** **1.** A court having jurisdiction at the place of a party's residence or domicile. **2.** See *family court*.

**domestic-relations court.** See *family court*.

**ecclesiastical court** (i-klee-zee-as-ti-kəl). **1.** A religious court that hears matters concerning a particular religion. **2.** In England, a court having jurisdiction over matters concerning the Church of England (the established church) as well as the duties and rights of the people serving it, but whose modern jurisdiction is limited to matters of ecclesiastical discipline and church property. — Also termed *church court*; *court christian*; *spiritual court*.

**examining court.** A lower court (usu. presided over by a magistrate) that determines probable cause and sets bail at a preliminary hearing in a criminal case.

**family court.** A court having jurisdiction over matters involving divorce, child custody and support, paternity, domestic violence, and other family-law issues. — Also termed *domestic-relations court*; *court of domestic relations*; *domestic court*.

**federal court.** A court having federal jurisdiction, including the U.S. Supreme Court, courts of appeals, district courts, bankruptcy courts, and tax courts. — Also termed *United States court*.

**foreign court.** **1.** The court of a foreign nation. **2.** The court of another state.

**full court.** A court session that is attended by all the court's judges; an en banc court. — Also termed *full bench*.

**higher court.** See *court above*.

**hot court.** A court, esp. an appellate court, that is familiar with the briefs filed in the case, and therefore with the issues, before oral argument. • Typically, a hot court controls the oral argument with its questioning, as opposed to listening passively to set presentations of counsel.

**housing court.** A court dealing primarily with landlord-and-tenant matters, including

disputes over maintenance, lease terms, and building and fire codes.

**hundred court.** *Hist.* In England, a larger court baron, held for all inhabitants of a particular hundred rather than a manor, in which the free suitors were the judges (jurors) and the steward the register. • A hundred court was not a court of record, and it resembled a court-baron in all respects except for its larger territorial jurisdiction. The last hundred court was abolished in 1971. — Also termed *hundred moot*. See COURT BARON.

**inferior court.** **1.** Any court that is subordinate to the chief appellate tribunal within a judicial system. **2.** A court of special, limited, or statutory jurisdiction, whose record must show the existence of jurisdiction in any given case to give its ruling presumptive validity. — Also termed *lower court*.

**instance court.** **1.** See *trial court*. **2.** *Hist.* The admiralty court in England exercising original jurisdiction in all cases except those involving prizes.

**insular court.** A federal court with jurisdiction over U.S. island territories, such as the Virgin Islands.

**intermediate court.** An appellate court that is below a court of last resort.

**justice court.** A court, presided over by a justice of the peace, that has jurisdiction to hear cases involving small amounts of money or certain specified claims (such as forcible-entry-and-detainer suits). — Also termed *justice-of-the-peace court*; *J.P. court*.

**juvenile court.** A court having jurisdiction over cases involving children under a specified age, usu. 18. — Also termed *children's court*.

**kangaroo court.** **1.** A self-appointed tribunal or mock court in which the principles of law and justice are disregarded, perverted, or parodied. • Kangaroo courts may be assembled by various groups, such as prisoners in a jail (to settle disputes between inmates) and players on a baseball team (to “punish” teammates who commit fielding errors). **2.** A court or tribunal characterized by unauthorized or irregular procedures, esp. so as to render a fair proceeding impossible. **3.** A sham legal proceeding.

**land court.** A court having jurisdiction over land-related matters including: (1) exclusive original jurisdiction of applications for registration of land titles and related questions, writs of entry and petitions to clear title to real estate, petitions to determine the validity and extent of municipal zoning ordinances,

bylaws, and regulations, and proceedings for foreclosure and redemption from tax titles; (2) original concurrent jurisdiction of declaratory judgment proceedings, shared with the supreme judicial, superior, and probate courts; and (3) original concurrent equity jurisdiction in land-related matters, except for cases of specific performance of land contracts. • Land courts today exist in the United States only in Massachusetts and Hawaii.

**landed-estates court.** *Hist. English law.* A statutorily established tribunal to dispose of encumbered real estate more promptly and easily than could be accomplished through the ordinary judicial machinery. • This type of court was first established in Ireland by acts of 11 & 12 Vict., ch. 48 and 12 & 13 Vict., ch. 77. The purpose of the court was to enable the owner, or any lessee of an unexpired term of 63 years or less, of encumbered land to apply to commissioners to direct a sale. The court served as a court of record and was called the Incumbered Estates Court. A later act abolished that court and created a new permanent tribunal called the Landed Estates Court. 21 & 22 Vict., ch. 72.

**legislative court.** A court created by a statute, as opposed to one authorized by a constitution. — Also termed (in federal law) *Article I court*.

**levy court.** *Hist.* A court that once existed in the District of Columbia, exercising many of the functions typical of county commissioners or county supervisors in the states, such as constructing and repairing roads and bridges.

**limited court.** A court having special jurisdiction conferred by statute, such as a probate court.

**local court.** A court whose jurisdiction is limited to a particular territory, such as a state, municipal, or county court.

**lord mayor's court.** A court of law and equity having jurisdiction in civil cases arising within the city of London and acting as the appellate court from the Chamberlain Court. • It was abolished by the Court Act of 1971.

**lower court.** See *court below*.

**magistrate's court** (*maj-i-strays* or *-strits*). **1.** A court with jurisdiction over minor criminal offenses. • Such a court also has the power to bind over for trial persons accused of more serious offenses. — Also termed *police court*. **2.** A court with limited jurisdiction over minor criminal and civil matters. — Sometimes spelled (esp. in England) *magistrates' court*. — Also termed (in England)

*court of petty sessions; court of summary jurisdiction.*

**mayor's court.** A municipal court in which the mayor presides as the judge, with jurisdiction over minor criminal (and sometimes civil) matters, traffic offenses, and the like.

**moot court.** See MOOT COURT.

**municipal court.** A court having jurisdiction (usu. civil and criminal) over cases arising within the municipality in which it sits. ● A municipal court's civil jurisdiction to issue a judgment is often limited to a small amount.

**naturalization court.** See NATURALIZATION COURT.

**orphan's court.** See *probate court.*

**parish court.** See *county court.*

**piepowder court.** See PIEPOWDER COURT.

**pretorial court.** *Hist.* A colonial court in Maryland with jurisdiction of capital crimes, consisting of the lord proprietary or his lieutenant-general and the council.

**prize court.** A court having jurisdiction to adjudicate the captures made at sea in time of war. See PRIZE (2).

**probate court.** A court with the power to declare wills valid or invalid, to oversee the administration of estates, and in some states to appoint guardians and approve the adoption of minors. — Also termed *surrogate's court; court of ordinary; county court; orphan's court* (abbr. o.c.). See PROBATE.

**provisional court.** A federal court with jurisdiction and powers governed by the order granting its authority, such as a temporary court established in a conquered or occupied territory.

**small-claims court.** A court that informally and expeditiously adjudicates claims that seek damages below a specified monetary amount, usu. claims to collect small accounts or debts. — Also termed *small-debts court; conciliation court.*

**spiritual court.** See *ecclesiastical court.*

**state court.** A court of the state judicial system, as opposed to a federal court.

**superior court.** **1.** In some states, a trial court of general jurisdiction. **2.** In Pennsylvania, an intermediate court between the trial court and the chief appellate court.

**supreme court.** See SUPREME COURT.

**surrogate's court.** See *probate court.*

**territorial court.** A U.S. court established in a U.S. territory (such as the Virgin Islands) and serving as both a federal and state court. ● The court was created under U.S. Const. art. IV, § 3, cl. 2.

**three-judge court.** A court made up of three judges; esp., a panel of three federal judges convened to hear a trial in which a statute is challenged on constitutional grounds. ● Three-judge courts were virtually abolished in 1976 when Congress restricted their jurisdiction to constitutional challenges to congressional reapportionments.

**trial court.** A court of original jurisdiction where the evidence is first received and considered. — Also termed *court of first instance; instance court.*

**United States court.** See *federal court.*

**upper court.** See *court above.*

**court administrator.** See ADMINISTRATOR (1).

**court-appointed attorney.** See *assigned counsel* under COUNSEL.

**court-appointed expert.** See *impartial expert* under EXPERT.

**court a quo.** See COURT.

**court baron.** *Hist.* A manorial court with jurisdiction over amounts in controversy of 40 shillings or less. ● According to some authorities, the court baron developed into two courts: the customary court baron for disputes involving copyholders, and the court baron proper (also known as the freeholders' court baron), in which freeholders were allowed to hold court concerning minor disputes.

"In Coke's day it was said that the lord of a manor had one court, 'a court baron,' for his freeholders and another court, 'a customary court,' for his copyholders, and that in the latter the lord or his steward was the judge. Now over his unfree men the lord had, according to the law of the king's court, almost unlimited power; short of maiming them he might do what he liked with them; and every tenant of an unfree tenement was a tenant at will. Nevertheless in the court rolls and the manuals for stewards which come to us from the thirteenth and fourteenth centuries we cannot discover two courts or two methods of constituting the court. Freeholders and serfs are said to owe suit to the same halimoot, and so far as we can see, the *curia* which pronounces judgment is always the same body." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 593 (2d ed. 1898).

**court below.** See COURT.

**court calendar.** A list of matters scheduled for trial or hearing; DOCKET (2).

**court christian.** See *ecclesiastical court* under COURT.

**court commissioner.** See COMMISSIONER.

**court costs.** See COST (2).

**court day.** See DAY.

**courtesy supervision.** Oversight of a parolee by a correctional agency located in a jurisdiction other than where the parolee was sentenced. • Courtesy supervision is usu. arranged informally between correctional authorities in cases in which the offense is not serious and the rehabilitative needs of the parolee are better served in another jurisdiction.

**Court for Consideration of Crown Cases Reserved.** *Hist.* A court established in 1848 to review questions of law arising in criminal cases. • Trial judges posed the postverdict questions of law to the Court, which decided whether error had been committed. The Court was abolished in 1907, and its jurisdiction was transferred to the Court of Criminal Appeal. — Also termed *Court for Crown Cases Reserved*.

“It was an old practice for the judge, in case of a conviction, if he felt a doubt as to the law, to respite judgment or sentence, and discuss the matter informally with the other judges. If they thought that the prisoner had been improperly convicted, he was pardoned. Statutory authority was given to this practice in 1848 by the establishment of the court for Crown Cases Reserved. All the judges were members of this court; and five, of whom the Lord Chief Justice must be one, formed a quorum.” 1 William Holdsworth, *A History of English Law* 217 (7th ed. 1956).

**Court for Divorce and Matrimonial Causes.** *Hist.* A court exercising jurisdiction over family issues, such as legitimacy and divorce. • The Court, which was established in 1857, acquired the matrimonial jurisdiction previously exercised by the ecclesiastical courts. It consisted of the Lord Chancellor, the Chief Justices of the Queen’s Bench and Common Pleas, the Chief Baron of Exchequer, the senior puisne judges of the last three courts, and the Judge Ordinary. In most instances, the Judge Ordinary heard the cases. The Judicature Act of 1873 abolished the Court and transferred its jurisdiction to the Probate Divorce and Admiralty Division (now Family Division) of the High Court of Justice.

**Court for the Correction of Errors.** A court having jurisdiction to review a lower court. •

The name was formerly used in New York and South Carolina.

**Court for the Relief of Insolvent Debtors.** *Hist.* A court located in London with jurisdiction over bankruptcy matters. • The Bankruptcy Act of 1861 abolished the Court.

**court for the trial of impeachments.** A tribunal empowered to try a government officer or other person brought before it by the process of impeachment. • The U.S. Senate and the British House of Lords have this authority, as do the upper houses of most state legislatures. — Also termed *impeachment court*; *court of impeachment*.

**court hand.** *Hist.* A script style used by English court clerks, the words being abbreviated and contracted according to a set of common principles for maintaining brevity and uniformity. • This type of writing, along with the use of Latin (except for technical or untranslatable phrases), was banned early in the 18th century in an effort to make court records more accessible to nonlawyers.

“[T]echnical Latin continued in use from the time of its first introduction, till the subversion of our ancient constitution under Cromwell; when, among many other innovations in the law, some for the better and some for the worse, the language of our records was altered and turned into English. But, at the restoration of king Charles, this novelty was no longer countenanced; the practitioners finding it very difficult to express themselves so concisely or significantly in any other language but the Latin. And thus it continued without any sensible inconvenience till about the year 1730, when it was again thought proper that the proceedings at law should be done into English, and it was accordingly so ordered by statute 4 Geo. II. c. 26. . . . What is said of the alteration of language by the statute 4 Geo. II. c. 26 will hold equally strong with respect to the prohibition of using the ancient immutable *court hand* in writing the records of other legal proceedings; whereby the reading of any record that is forty years old is now become the object of science, and calls for the help of an antiquarian.” 3 William Blackstone, *Commentaries on the Laws of England* 322–23 (1768).

**courthouse.** See COURT (5).

**court lands.** *Hist.* The part of a manor used for the lord’s household.

**court leet (kort leet).** *Hist.* A feudal court responsible for receiving frankpledges and notices of criminal accusations. • Courts leet exercised both governmental and judicial powers, but declined after the justices in eyre began to take over serious criminal cases. The court met once



or twice a year, and was presided over by the lord's steward, a lawyer who acted as judge.

**court-martial**, *n.* An ad hoc military court, convened under military authority, to try and punish those who violate the Uniform Code of Military Justice, particularly members of the armed forces. Pl. **courts-martial**. — **court-martial**, *vb.*

"Courts-martial are not a part of the federal judiciary system, and the procedure in such courts is regulated by the Articles of War, Army Regulations, orders of the President, and Military custom." *Altmayer v. Sanford*, 148 F.2d 161 (5th Cir. 1945).

**BCD special court-martial**. A special court-martial in which a possible punishment is a bad-conduct discharge (a "BCD").

**general court-martial**. A proceeding that is presided over by a military judge, and no fewer than five members (who serve as jurors), and that has jurisdiction over all the members of the armed forces. • It is the highest military trial court.

**special court-martial**. A proceeding that is presided over by a military judge and no fewer than three members (who serve as jurors) to hear noncapital offenses and prescribe a sanction of hard labor, dismissal, or extended confinement (up to six months). • It is the intermediate level of courts-martial.

**summary court-martial**. A proceeding presided over by a single commissioned officer who is jurisdictionally limited in what sanctions can be imposed. • It is the lowest level of courts-martial.

**court-martial order**. A written order containing the result of a court-martial trial.

**Court-Martial Reports**. A publication containing the opinions of the U.S. Court of Military Appeals and select decisions of the Courts of Military Review. • This publication appeared during the years 1951–1975. — Abbr. CMR.

**Court of Admiralty**. See HIGH COURT OF ADMIRALTY.

**court of ancient demesne**. *Hist.* A court made up of freeholders of land held by the Crown (i.e., an *ancient demesne*). • The freeholders acted as judges much the same way that freeholders of an ordinary manor would in a court baron. See *ancient demesne* under DEMESNE; COURT BARON.

**Court of Appeal**. An English court of civil and criminal appellate jurisdiction established by

the Judicature Acts of 1873 and 1875. • The court is made up of the Lord Chancellor, Lord Chief Justice, Master of the Rolls, President of the Family Division, Vice-Chancellor of the Chancery Division, former Lord Chancellors, Lords of Appeal in Ordinary, and Lords Justices of Appeal. In practice it is made up of the Master of Rolls and the Lords Justices. It sits in several divisions, each having three members.

**Court of Appeal in Chancery**. *Hist.* An English court of intermediate appeal in equity cases, established in 1851 and abolished in 1873–1875, when its jurisdiction was transferred to the Court of Appeal.

**court of appeals**. See COURT.

**Court of Appeals, U.S.** See UNITED STATES COURT OF APPEALS.

**Court of Appeals for the Armed Forces**. See UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.

**Court of Appeals for the Federal Circuit**. See UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.

**Court of Appeals in Cases of Capture**. *Hist.* A court responsible for reviewing state-court decisions concerning British ships captured by American privateers during the War of Independence. • The Court was established by Congress under the Articles of Confederation and served as the chief U.S. court from 1780 to 1787. It was the first federal court in the United States.

**Court of Archdeacon** (ahrch-dee-kən). *Hist. Eccles. law.* An inferior ecclesiastical court with jurisdiction over cases arising within the archdeaconry and probate matters. • Appeal was to the Bishop's Court. The Court of Archdeacon was abolished in 1967. — Also termed *Archdeacon's Court*; *Archdiaconal Court* (ahr-kə-di-ak-ən-əl).

**Court of Arches**. *Eccles. law.* The ecclesiastical court of the province of Canterbury, responsible for various appeals from provincial diocesan courts. • The court handled probate cases until the Court of Probate acquired jurisdiction in 1857. The Pope heard appeals from the Court of Arches until the break with Rome prompted a transfer of the appellate jurisdiction to the royal courts. The Judicial Committee of the Privy Council now hears certain appeals from

the Court of Arches. — Also termed *Arches Court of Canterbury*; *Court of Canterbury*; *Court of the Official Principal*. Cf. CHANCERY COURT OF YORK.

"The Court of Arches is the provincial court of the Archbishop of Canterbury. It is held by a judge generally called the *Dean of the Arches*. Its jurisdiction was important while testamentary cases were dealt with in the Ecclesiastical Courts. The name is derived from the fact that the court was originally held in the Church of St. Mary-Le-Bow (*Ecclesia Beatae Mariae de Arcubus*), the steeple of which is raised on stone pillars formed arch-wise like bent bows." W.J.V. Windeyer, *Lectures on Legal History* 184 n.11 (2d ed. 1949).

**Court of Assistants.** *Hist.* A colonial body organized in Massachusetts Bay Colony in 1630 to act as a legislature and court for the colony. See GENERAL COURT.

"The court of assistants, made up of governor, deputy governor, and magistrates, heard appeals from lower courts, and took original jurisdiction in certain cases — for example, cases of divorce. Below it were the county courts." Lawrence M. Friedman, *A History of American Law* 40 (2d ed. 1985).

**Court of Attachments.** *Hist.* An inferior forest court with jurisdiction over trespasses of the royal forests. • The judges of this court (the *verderers*) met every 40 days to hear charges made by the royal foresters. Major trespass cases were heard by the justices in eyre. — Also termed *wood-mote*. See VERDERER.

**Court of Audience.** *Hist. Eccles. law.* A court in which the two archbishops exercise personal jurisdiction. • This court was abolished in 1963.

"Just as the bishop did not deprive himself of all jurisdiction by delegation to an official or commissary, so the archbishop did not originally deprive himself of all jurisdiction by delegation to the official principal. He possessed a jurisdiction concurrent with that of the court of the Arches, which was exercised in the court of Audience. In later times this jurisdiction was exercised by the judge of the court of Audience. At one time the archbishop may have exercised a considerable part of this jurisdiction in this court." 1 William Holdsworth, *A History of English Law* 601 (7th ed. 1956).

**Court of Augmentations.** *Hist.* A court established in 1536 by Henry VIII to determine controversies arising from the royal policy of taking over property owned by monasteries. • The court was merged into the Court of Exchequer in 1554.

**Court of Canterbury.** See COURT OF ARCHES.

**Court of Cassation** (ka-say-shən). The highest court of France. • The court's name derives from its power to quash (*casser*) the decrees of

inferior courts. — Also termed (more formally) *Cour de Cassation*.

**court of chancery.** See CHANCERY (1).

**court of chivalry.** See HIGH COURT OF CHIVALRY.

**Court of Civil Appeals.** An intermediate appellate court in some states, such as Alabama and (formerly) Texas.

**court of claims.** 1. See COURT. 2. (*cap.*) See UNITED STATES COURT OF FEDERAL CLAIMS.

**Court of Common Pleas.** 1. *Hist.* A superior court having jurisdiction of all real actions and common pleas (i.e., actions between subjects). • The Court was presided over by a chief justice with four (later five) puisne judges. In 1873 it became the Common Pleas Division of the High Court of Justice. In 1881 it merged into the Queen's Bench Division. 2. An intermediate-level court in some states, such as Arkansas. 3. A trial court of general jurisdiction in some states, such as Ohio, Pennsylvania, and South Carolina. — Also termed *Court of Common Bench*. — Abbr. C.P.

"*Common pleas* is the kings Court now held in *Westminster* hall, but in auncient time moveable, as appeareth by the statute called *Magna charta*. . . . [U]ntill the time that *Henry* the third granted the great charter, there were but two courts in all, called the Kings courts: whereof one was the Exchequer, and the other, the kings bench, which was then called (*curia Domini regis*) and (*aula regis*) because it followed the court or king: and that upon the grant of that charter, the court of common pleas was erected and settled in one place certaine: viz. at *Westminster*. . . . All civill causes both reall and personall are, or were in former times, tryed in this court, according to the strict lawe of the realme: and by *Fortescue*, *cap. 50* it seemeth to have bene the onely court for reall causes." John Cowell, *The Interpreter* (1607).

**court of competent jurisdiction.** See COURT.

**court of conscience.** *Hist.* A local English court with jurisdiction of small-debt cases. • The court was so called because its judgments were supposed to reflect equity and good conscience. County courts assumed the jurisdiction of the courts of conscience in 1846.

**Court of Convocation.** *Eccles. law.* An assembly of high-ranking provincial officials and minor clergy having jurisdiction over cases of heresy, schism, and other purely ecclesiastical matters.

**Court of Criminal Appeals.** 1. For each armed service, an intermediate appellate court that

reviews court-martial decisions. • The court was established by the Military Justice Act of 1968. 10 USCA §§ 859-876. — Formerly termed *Court of Military Review* (abbr. CMR). **2.** In some jurisdictions, such as Texas and Oklahoma, the highest appellate court that hears criminal cases.

**Court of Customs and Patent Appeals.** *Hist.*

An Article III court created in 1929 to hear appeals in customs and patent cases. • This court was abolished in 1982 and was superseded by the U.S. Court of Appeals for the Federal Circuit.

**Court of Delegates.** *Hist. Eccles. law.*

A court serving as the final court of appeal for admiralty and ecclesiastical matters. • The Court was established in 1534 to serve in the stead of the Papal Curia when the English Church severed its ties with the Papacy. Six delegates made up the Court, usu. three persons trained in common law and three in civil law. This mixture led to confused rulings and unreliable precedents that hindered the Court's credibility and ultimately led to its dissolution. The Court was abolished in 1833 and its jurisdiction transferred to the Judicial Committee of the Privy Council. — Also termed *High Court of Delegates*.

"The crown had an absolute discretion as to the person to be appointed. But, as the lawyers of Doctors' Commons were the only lawyers acquainted with canon or civil law, certain of them were usually included in the commission. . . . It is not surprising to find that the [Court of Delegates] was unsatisfactory. It was a shifting body, so that no general rules of procedure could be established. It did not as a rule give reasons for its decisions. Its members were only paid a guinea a day; and consequently it was usually composed of the junior civilians. On them, the judges of the common law courts, appointed as delegates, were obliged to rely for their law. In consequence of the dissatisfaction felt at its working the Ecclesiastical Commission of 1832, in a special report, recommended the transfer of its jurisdiction to the Privy Council. . . ." 1 William Holdsworth, *A History of English Law* 605 (7th ed. 1956).

**court of domestic relations.** See *family court* under COURT.

**Court of Earl Marshal.** See HIGH COURT OF CHIVALRY.

**court of equity.** See COURT.

**court of error.** **1.** *Hist.* Formerly, the Court of Exchequer Chamber and the House of Lords. • Appeals from common-law courts lay to the Court of Exchequer Chamber, and then to the House of Lords until 1873, when the Judicial

Act gave jurisdiction of superior-court appeals to the Court of Appeal. Cf. COURT OF EXCHEQUER CHAMBER. **2.** Generally, a court having jurisdiction to review a lower court's rulings.

**Court of Errors and Appeals.** *Hist.* Formerly, the court of last resort in New Jersey and New York. — Also termed *High Court of Errors and Appeals*.

**Court of Exchequer** (eks-*chek*-ər or eks-*chek*-ər). *Hist.* A former English superior court responsible primarily for adjudicating disputes about the collection of public revenue. • In 1873 it became the Exchequer Division of the High Court of Justice. In 1881 that Division was merged into the Queen's Bench Division. See QUEEN'S BENCH DIVISION. Cf. CHAMBER OF ACCOUNTS.

**Court of Exchequer Chamber.** *Hist.* **1.** An informal assembly of common-law judges who (sometimes with the Lord Chancellor) gathered to discuss important cases that have adjourned pending an opinion from the Court. • This body never became a court of law in a technical sense, but judges gave great weight to its decisions. The last reported decision of this body is from 1738.

"Earlier than these two statutory courts was the practice, which apparently originated about the time of Edward I, of informal meetings of the judges in the Exchequer Chamber to decide matters connected with litigation. . . . The purpose of the meeting was to bring before the judges a point of law which caused difficulty and which had arisen in a case being heard before one or other of the courts. Any resolution passed did not constitute a judgment; it was left to the court concerned to make the appropriate decree, and the official record made no reference to the informal decision. . . . Civil cases were debated in the Exchequer Chamber as late as the seventeenth century, and criminal cases continued to be 'reserved' for full discussion by all the common law judges until the nineteenth century." A.K.R. Kiralfy, *Potter's Outlines of English Legal History* 202-04 (5th ed. 1958).

**2.** A court created by statute in 1357 to hear appeals from the Court of Exchequer. **3.** A court created by statute in 1585 to hear appeals from the King's Bench. • This court consisted of all the justices of the Common Pleas and the Barons of Exchequer who were serjeants. At least six judges were necessary to render a judgment.

"Parliament was only occasionally summoned in the sixteenth century; and as Parliament was the only court which could amend errors of the King's Bench, the want of a court which could hold regular sessions was much felt. To supply this want a new court of Exchequer Chamber was created in 1585 for the purpose of amend-

ing the errors of the King's Bench." 1 William Holdsworth, *A History of English Law* 244 (7th ed. 1956).

4. A court charged with hearing appeals from the common-law courts of record. • This court was created in 1830 by combining the courts created by the statutes of 1357 and 1585. Appeals from one common-law court were heard by judges from the other two courts.

"This complicated system of appellate courts was abolished in 1830, when a new Court of Exchequer Chamber was set up as the court of error from each of the three common law courts. It was composed of the judges of the two common law courts other than those of the court appealed from. At the same time the right of the King's Bench to hear error from the Common Pleas was abolished. From the judgment of this new court a further appeal still lay to the House of Lords. This court was thus, until the Judicature Act, 1873, a court of intermediate appeals. Its jurisdiction after the Judicature Act passed to the Court of Appeal which was then created." W.J.V. Windeyer, *Lectures on Legal History* 144 (2d ed. 1949).

**Court of Faculties.** *Eccles. law.* An archbishop's tribunal that grants special dispensations (such as a marriage license) and decides questions relating to monuments and mortuary matters. See MASTER OF THE FACULTIES.

**Court of Federal Claims, U.S.** See UNITED STATES COURT OF FEDERAL CLAIMS.

**court officer.** See OFFICER OF THE COURT.

**court of first instance.** See *trial court* under COURT.

**court of general jurisdiction.** See COURT.

**Court of General Quarter Sessions of the Peace.** *Hist. 1. English law.* A court of criminal jurisdiction held in each county (or borough) once in every quarter of a year. • The court was made up of a county's justices of the peace. It committed certain cases to the Assizes. Quarter Sessions were abolished in 1971, with most jurisdiction transferred to the Crown Court. — Often shortened to *Quarter Sessions; Sessions*.

"The court of general *quarter sessions* of the peace is a court that must be held in every county, once in every quarter of a year. . . . It is held before two or more justices of the peace, one of which must be of the *quorum*. The jurisdiction of this court, by statute 34 Edw. III. c. I. extends to the trying and determining all felonies and trespasses whatsoever, though they seldom, if ever, try any greater offence than small felonies within the benefit of clergy. . . ." 4 William Blackstone, *Commentaries on the Laws of England* 268 (1769).

2. A court held in some states four times a year with jurisdiction over misdemeanors and occasionally tasks of an administrative nature, such as the care of public roads and bridges. — Often shortened to *Quarter Session Court*. — Also termed *Court of Quarter Sessions of the Peace*.

**Court of Great Sessions in Wales.** *Hist. A* common-law court established in 1543 in Wales with jurisdiction equivalent to that of the English assizes. • The Court of Great Sessions was bound to follow English law, but not necessarily English case precedent. — Also termed *King's Great Sessions in Wales*.

"There was no outcry when, in 1536, 'the sinister usages and customs' of the Welsh were abrogated and Welsh subjects were granted the same laws and liberties as the English. . . . A new system of courts, called the Great Sessions in Wales, was set up. The courts were to sit twice a year in four circuits, each comprising three counties, and to each circuit were appointed justices 'learned in the laws of this realm'. These courts operated alongside the English courts, and they had the same jurisdiction in Wales as the King's Bench and Common Pleas had in England. . . . In 1830 the Great Sessions were abolished, and by complete procedural assimilation England and Wales became at last one unified jurisdiction, two extra circuits being added to the English assize system." J.H. Baker, *An Introduction to English Legal History* 37–38 (3d ed. 1990).

**Court of High Commission.** *Hist. Eccles. law.* A tribunal responsible for inquiring into religious offenses such as adultery, the holding of heretical opinions, and absence from church. • The High Commission was created to prosecute violations of the Acts of Supremacy and Uniformity (1559), the statutes that gave the Crown supreme power over the Church of England. From about 1580 on, the High Commission functioned as a court. The Court's broad powers and use of civil-law procedures in ways counter to the common law (such as compelling suspects to testify against themselves) sparked opposition to its existence. Its close relationship with the Court of Star Chamber hastened its demise (along with the Star Chamber) in 1641. — Also termed *High Commission Court*.

"[T]he court of the king's *high commission* in causes ecclesiastical . . . was intended to vindicate the dignity and peace of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. Under the shelter of which very general words, means were found in that and the two succeeding reigns, to vest in the high commissioners extraordinary and almost despotic powers, of fining and imprisoning; which they exerted much beyond the degree of the offence itself, and frequently over offences by no means of spiritual cognizance. For these reasons this court was justly abolished by Statute 16 Car. I, c. 11.

And the weak and illegal attempt that was made to revive it, during the reign of King James the second, served only to hasten that infatuated prince's ruin." 3 William Blackstone, *Commentaries on the Laws of England* 67-68 (1768).

**Court of Honor.** *Hist.* **1.** *English law.* A feudal court of the manor. **2.** *English law.* A court with jurisdiction to hear complaints concerning either affronts to honor or encroachments in precedence rights, heraldry, or coat-armor. **3.** A tribunal of army officers convened to review and punish any dereliction from a code of honor.

**Court of Hustings** (hæs-tingz). *Hist.* **1.** *English law.* A local court with jurisdiction over real and mixed actions, held in the Guildhall of London before the Recorder, the Lord Mayor, and Sheriff (the latter two officials serving as honorary judges). • This court dates from before the Conquest. **2.** Formerly, a local court in Virginia. — Also termed *curia burgi*. See HUSTING.

**court of impeachment.** See COURT FOR THE TRIALS OF IMPEACHMENT.

**court of inquiry.** See COURT.

**Court of International Trade, U.S.** See UNITED STATES COURT OF INTERNATIONAL TRADE.

**Court of Justice Seat.** See COURT OF THE CHIEF JUSTICE IN EYRE.

**Court of Justiciary, High.** See HIGH COURT OF JUSTICIARY.

**Court of King's Bench.** See KING'S BENCH.

**court of last resort.** See COURT.

**court of law.** See COURT.

**court of limited jurisdiction.** See COURT.

**Court of Magistrates and Freeholders.** *Hist.* A South Carolina court with criminal jurisdiction over alleged offenses committed by slaves and free persons of color.

**Court of Military Appeals.** See UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.

**Court of Military Review.** See COURT OF CRIMINAL APPEALS (1).

**court of nisi prius.** See NISI PRIUS.

**Court of Official Principal.** See COURT OF ARCHES.

**Court of Ordinary.** *Hist.* A Georgia court of probate jurisdiction.

**court of original jurisdiction.** See COURT.

**Court of Orphans.** *Hist.* In Maryland and Pennsylvania, a court exercising probate jurisdiction.

**Court of Oyer and Terminer.** **1.** *Hist.* An assize court commissioned by the Crown to pass through the counties two or more times a year and hear felonies and treason cases. • The judges sat by virtue of several commissions, each of which, strictly speaking, created a separate and distinct court. A judge with an *oyer and terminer* commission, for example, was allowed to hear only cases of felony and treason; he could not try persons charged with other criminal offenses. But if the judge also carried a commission of *gaol delivery* (as most did), he could try all prisoners held in gaol for any offense; in this way most Courts of Oyer and Terminer gathered full criminal jurisdiction. The jurisdiction of the assize courts was taken over by the Crown Court in 1971. See ASSIZE (1); COMMISSION OF OYER AND TERMINER; COMMISSION OF GAOL DELIVERY. **2.** In some states, a court of higher criminal jurisdiction.

**Court of Oyer and Terminer and General Gaol Delivery.** *Hist.* **1.** A court that carries the commissions of *oyer and terminer* and *gaol delivery*. **2.** In Pennsylvania, a court of criminal jurisdiction.

**Court of Peculiars.** *Hist. Eccles. law.* A branch of the Court of Arches that had jurisdiction over the provincial parishes of Canterbury that were exempt from the jurisdiction of the diocesan bishop and responsible to the metropolitan only. • The Court of Peculiars was abolished in the 19th century. See COURT OF ARCHES.

**court of petty sessions.** See *magistrate's court* under COURT.

**court of piepowder.** See PIEPOWDER COURT.

**Court of Pleas.** *Hist.* A court of the county palatine of Durham, having a local common-law jurisdiction. • It was abolished in 1873, and its jurisdiction was transferred to the High

Court. — Also termed *Court of Pleas of Durham*.

**Court of Policies of Insurance.** *Hist.* A court that determines in a summary way insurance-policy issues arising between merchants. • The Court's jurisdiction extended only to London, and appeal was taken to the Court of Chancery. The Court was abolished in 1863. — Also termed *Court of Policies of Assurance*.

**Court of Private Land Claims.** *Hist.* A federal court — in existence from 1891 to 1895 — with jurisdiction to hear private parties' claims to public-domain land located in the southwestern part of the United States and deriving from Spanish or Mexican grants.

**Court of Probate. 1.** *Hist.* A court established in 1857 to receive the testamentary jurisdiction formerly held by the ecclesiastical courts. • In 1873 the Court was merged into the High Court of Justice, where its jurisdiction was exercised by the Probate Divorce and Admiralty (now Family) Division. **2.** See *probate court* under COURT.

**Court of Quarter Sessions of the Peace.** See COURT OF GENERAL QUARTER SESSIONS OF THE PEACE.

**Court of Queen's Bench.** See QUEEN'S BENCH.

**court of record.** See COURT.

**Court of Regard.** *Hist.* A forest court responsible for looking into matters of waste and encroachment onto forest land (i.e., *purpresture*). • The Court also ensured that the feet of all mastiffs — a breed allowed in royal forests as guard dogs — within the forest were declawed and cut so as to prevent them from chasing deer.

**Court of Requests.** *Hist.* A royal court whose jurisdiction was mainly civil, though it exercised quasi-criminal jurisdiction in offenses such as riot and forgery. • Dating from 1483, the Court of Requests was a part of the Privy Council. It was disbanded in 1641 when Parliament limited the Privy Council's judicial functions. Cf. MASTER OF REQUESTS

"The establishment of the court of Requests was due to the large increase in the judicial business of the Council and the Chancery under the Tudors. . . . It was related both to the judicial side of the Council, which, as we shall see, came, in the course of the Tudor period, to be known as the court of Star Chamber, and to the court of Chancery. . . . [F]rom the end of Henry VIII's reign

onwards, the legal assessors of the court assumed entire control, with the result that it became a court which was quite separate from the court of Star Chamber. These legal assessors were styled Masters of Requests, and from their title the court got its name." 1 William Holdsworth, *A History of English Law* 412-13 (7th ed. 1956).

**court of review.** See *appellate court* under COURT.

**Court of Session. 1.** *Scots law.* The supreme Scottish civil court, having divisions for trials and for hearing appeals. • Its jurisdiction corresponds generally to the English High Court of Justice. It has two appellate chambers, the First and Second Division, and several Lords Ordinary, who sit singly as trial judges. **2.** In a few states, a court with jurisdiction over criminal cases.

**Court of Shepway.** *Hist.* The Court of the Lord Warden of the Cinque Ports, exercising civil jurisdiction. • The civil jurisdiction of the Cinque Ports was abolished in 1855.

**court of special session.** See COURT.

**Court of Star Chamber.** See STAR CHAMBER (1).

**court of summary jurisdiction.** See *magistrate's court* under COURT.

**Court of Swanimote.** See COURT OF SWEINMOTE.

**Court of Sweinmote (swayn-moht).** *Hist.* A medieval forest court with jurisdiction over a variety of matters, esp. the right to graze animals during the summer when deer were fawning. • The forest freeholders (the *sweins*) made up the jury of the Court. By the 14th century, the Court's jurisdiction had expanded, and it acquired a form similar to the eyre courts. During this period, the Court came to be referred to as the *Court of Swanimote* rather than the *Court of Sweinmote*.

**Court of the Chief Justice in Eyre (air).** *Hist.* An eyre court responsible for trying offenses against the forest laws. • The jurisdiction of this Court was similar to that of the Court of Sweinmote. — Also termed *Court of Justice Seat*.

**Court of the Earl Marshal.** See HIGH COURT OF CHIVALRY.

**Court of the Lord High Constable and Earl Marshal.** *Hist.* A court having jurisdiction over diverse military matters, such as treason, prisoners of war, and disputed coats of arms. • The Lord High Constable and the Earl Marshal were the top military officials of the Norman kings. After the office of Lord High Constable was forfeited in 1521, the court continued on as the *Court of the Earl Marshal*, but its jurisdiction was reduced to questions of chivalry only. Cf. HIGH COURT OF CHIVALRY.

**Court of the Lord High Admiral.** See HIGH COURT OF ADMIRALTY.

**Court of the Lord High Steward.** *Hist.* A court commissioned to try a peer indicted for treason or a felony. • The Court met only if the House of Lords was not in session. The Lord High Steward sat as a judge and decided questions of law, and the peers decided facts only. The Court last sat in 1688.

**Court of the Lord High Steward of the Universities.** *Hist.* A court convened to try scholars, esp. Oxford or Cambridge students, who have been indicted for treason, felony, or mayhem.

**Court of the Marshalsea (mahr-shəl-see).** *Hist.* A court that moved about with the king, and had jurisdiction over certain cases arising within 12 miles of the king's residence (an area known as the *verge*). • The Court's steward and marshal acted as judges of the Court, and heard criminal cases and the common pleas of debt, covenant, and certain trespasses. The court's migratory nature made it inconvenient for litigants, and prompted its abolition in 1849. — Also termed *Court of the Steward and Marshal*. Cf. PALACE COURT.

"Coke points out that all the Acts passed concerning this court restrained, or explained, but never added to its jurisdiction. He decided, in the *Case of the Marshalsea*, that it could not try the newer forms of action such as *assumpsit* and *trover*. Its once general jurisdiction had passed to the court of King's Bench, and the attitude of that court to the more limited court of the Marshalsea made the court of the Marshalsea almost useless. There were complaints in the seventeenth century of the conduct of its officials; and, as it was obliged to follow the king in his progresses, it was a court extremely inconvenient to use." 1 William Holdsworth, *A History of English Law* 208 (7th ed. 1956).

**Court of the Official Principal.** See COURT OF ARCHES.

**Court of the Steward of the King's Household.** *Hist.* A court having jurisdiction over

criminal cases involving a member of the royal household. • This court's jurisdiction was at first limited to acts of violence by the king's servants toward a member of the king's council, but it was later given broader criminal authority. The Court was abolished in 1828.

**Court of Verge.** See VERGE.

**Court of Veterans Appeals, U.S.** See UNITED STATES COURT OF VETERANS APPEALS.

**Court of Wards and Liveries.** *Hist.* A court created in 1540 to assert the Crown's right to income from a variety of feudal tenures. • The Court's unpopularity led to its abolition in 1660.

"[I]nquests of office were more frequently in practice than at present, during the continuance of the military tenures among us: when, upon the death of every one of the king's tenants, an inquest of office was held, called an *inquisitio post mortem*, to enquire of what lands he died seised, who was his heir, and of what age, in order to entitle the king to his marriage, wardship, relief, *primer-seisin*, or other advantages, as the circumstances of the case might turn out. To superintend and regulate these enquiries, the court of wards and liveries was instituted by statute 32 Hen. VIII c. 46 which was abolished at the restoration of king Charles the second, together with the oppressive tenures upon which it was founded." 3 William Blackstone, *Commentaries on the Laws of England* 258 (1768).

**courtoisie internationale.** See COMITY.

**court order.** See ORDER (2).

**court-packing plan.** An unsuccessful proposal — made in 1937 by President Franklin D. Roosevelt — to increase the number of U.S. Supreme Court justices from nine to fifteen. • The ostensible purpose of the proposal was to increase the Court's efficiency, but President Roosevelt wanted to appoint justices who would not block his administration's New Deal programs.

**court papers.** All documents that a party files with the court, including pleadings, motions, notices, and the like. — Often shortened to *papers*. — Also termed *suit papers*.

**court recorder.** See RECORDER.

**court reporter.** 1. A person who records testimony, stenographically or by electronic or other means, and when requested prepares a transcript <the deposition could not start until the court reporter arrived>. Cf. *court recorder* under RECORDER. 2. REPORTER OF DECISIONS.

**court roll.** *Hist.* A record of a manor's tenures; esp., a record of the terms by which the various tenants held their estates. • Copyhold tenure, for example, developed from the practice of maintaining court rolls. See COPYHOLD.

**courtroom.** The part of a courthouse where trials and hearings take place. Cf. *judge's chamber* under CHAMBER.

**court rules.** Regulations having the force of law and governing practice and procedure in the various courts, such as the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, the U.S. Supreme Court Rules, and the Federal Rules of Evidence, as well as any local rules that a court promulgates. — Also termed *rules of court*.

**courts of the franchise.** See FRANCHISE COURT.

**court system.** The network of courts in a jurisdiction.

**cousin.** **1.** A child of one's aunt or uncle. — Also termed *first cousin*; *full cousin*; *cousin-german*. **2.** A relative descended from one's ancestor (such as a grandparent) by two or more steps in a diverging line. **3.** Any distant relative by blood or marriage; a kinsman or kinswoman.

**cousin-in-law.** **1.** A husband or wife of one's cousin. **2.** A cousin of one's husband or one's wife.

**cousin once removed.** **1.** A child of one's cousin. **2.** A cousin of one's parent.

**cousin twice removed.** **1.** A grandchild of one's cousin. **2.** A cousin of one's grandparent.

**second cousin.** A person related to another by descending from the same great-grandfather or great-grandmother.

**third cousin.** A person related to another by descending from the same great-great-grandfather or great-great-grandmother.

**cousin-german.** See GERMAN.

**covenant** (kəv-ə-nənt), *n.* **1.** A formal agreement or promise, usu. in a contract.

**absolute covenant.** A covenant that is not qualified or limited by any condition. Cf. *conditional covenant*.

**affirmative covenant.** A covenant that obligates a party to do some act; esp., an agreement that real property will be used in a certain way. • An affirmative covenant is

more than a restriction on the use of property; it requires the owner to undertake certain specified acts.

**assertory covenant.** One that affirmatively states certain facts; an affirming promise under seal.

**auxiliary covenant** (awg-zil-yə-ree). A covenant that does not relate directly to the primary subject of the agreement, but to something connected to it. Cf. *principal covenant*.

**collateral covenant** (kə-lat-ə-rəl). A covenant entered into in connection with the grant of something, but that does not relate immediately to the thing granted; esp., a covenant in a deed or other sealed instrument not pertaining to the conveyed property. Cf. *inherent covenant*.

**concurrent covenant.** A covenant that requires performance by one party at the same time as another's performance.

**conditional covenant.** A covenant that is qualified by a condition. Cf. *absolute covenant*.

**continuing covenant.** A covenant that requires the successive performance of acts, such as an agreement to pay rent in installments.

**covenant in deed.** See *express covenant*.

**covenant in law.** See *implied covenant*.

**covenant not to compete.** See *noncompetition covenant*.

**covenant not to sue.** A covenant in which a party having a right of action agrees not to assert that right in litigation. — Also termed *contract not to sue*.

"A covenant not to sue is a promise by the creditor not to sue either permanently or for a limited period. If the promise is one never to sue it operates as a discharge just as does a release. The theory is that should the creditor sue despite his promise not to, the debtor has a counterclaim for damages for breach of the creditor's covenant not to sue which is equal to and cancels the original claim. . . . If the covenant is not to sue for a limited time, the modern view is that the covenant may be raised as an affirmative defense to any action brought in violation of the covenant." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 21-11, 878-79 (3d ed. 1987).

**dependent covenant.** A covenant that depends on a party's prior performance of some act or condition. • Until the performance, the other party does not have to perform. Cf. *concurrent covenant*; *independent covenant*.

**executed covenant.** A covenant that has been fully performed.



**executory covenant** (eg-zek-yə-tor-ee). A covenant that remains unperformed in whole or in part.

**express covenant.** A covenant created by the words of the parties. — Also termed *covenant in deed*. Cf. *implied covenant*.

**implied covenant.** A covenant that can be inferred from the whole agreement and the conduct of the parties. — Also termed *covenant in law*. Cf. *express covenant*.

**implied covenant of good faith and fair dealing.** An implied covenant to cooperate with the other party to an agreement so that both parties may obtain the full benefits of the agreement; an implied covenant to refrain from any act that would injure a contracting party's right to receive the benefit of the contract.

**implied negative covenant.** A covenant binding a grantor not to permit use of any reserved right in a manner that might destroy the benefits that would otherwise inure to the grantee.

**independent covenant.** A covenant that makes each party independently liable for its promises, regardless of the other party's actions.

**inherent covenant.** A covenant that relates directly to land, such as a covenant of quiet enjoyment. Cf. *collateral covenant*.

**intransitive covenant.** A covenant whose performance does not pass from the original covenantor to the covenantor's representatives. Cf. *transitive covenant*.

**joint covenant.** A covenant that binds two or more covenantors together. Cf. *several covenant*.

**negative covenant.** A covenant that requires a party to refrain from doing something; esp., in a real-estate financing transaction, the borrower's promise to the lender not to encumber or transfer the real estate as long as the loan remains unpaid.

**noncompetition covenant.** A contractual provision — typically found in employment, partnership, or sale-of-business agreements — in which one party agrees to refrain from conducting business similar to that of the other party. ● Courts generally enforce these clauses for the duration of the original business relationship, but clauses extending beyond termination must usu. be reasonable in scope, time, and territory. — Also termed *noncompete covenant*; *covenant not to compete*; *restrictive covenant*; *promise not to compete*; *contract not to compete*.

**positive covenant.** A covenant that requires a party to do something (such as to erect a fence within a specified time).

**principal covenant.** A covenant that relates directly to the principal matter of an agreement. Cf. *auxiliary covenant*.

**restrictive covenant.** See *noncompetition covenant*.

**several covenant.** A covenant that binds two or more covenantors separately. — Also termed *separate covenant*. Cf. *joint covenant*.

**transitive covenant.** A covenant whose duty of performance passes from the original covenantor to the covenantor's representatives. Cf. *intransitive covenant*.

**2. TREATY. 3.** A common-law action to recover damages for breach of contract under seal. **4.** A promise made in a deed or implied by law; esp., an obligation in a deed burdening or favoring a landowner.

"A covenant is properly defined as a promise made in deed, although in practice the term is used rather more loosely to mean simply an obligation affecting a landowner whether created by deed or not." Peter Butt, *Land Law* 334-35 (2d ed. 1988).

"In their nature, covenants are first cousins to easements appurtenant. The burdened land corresponds to a servient tenement, the benefitted land, to a dominant tenement. In concept, the main difference between easements and covenants is that, whereas an easement allows its holder to go upon and to do something upon the servient tenement, the beneficiary of a covenant may not enter the burdened land, but may require the owner of that land to do, or more likely not to do, something on that land." Roger A. Cunningham et al., *The Law of Property* § 8.13, at 467 (2d ed. 1993).

**affirmative covenant.** An agreement that real property will be used in a certain way. ● An affirmative covenant is more than a restriction on the use of property. It requires the owner to undertake certain acts on the property.

**covenant against encumbrances.** A grantor's promise that the property has no visible or invisible encumbrances. ● In a special warranty deed, the covenant is limited to encumbrances made by the grantor. — Also termed *general covenant against encumbrances*. Cf. *special covenant against encumbrances*.

**covenant appurtenant** (ə-pər-tə-nənt). A covenant that is connected with the grantor's land; a covenant running with the land. Cf. *covenant in gross*.

**covenant for further assurances.** A covenant to do whatever is reasonably necessary to perfect the title conveyed if it turns out to

be imperfect. See *further assurance* under ASSURANCE.

**covenant for possession.** A covenant giving a grantee or lessee possession of land.

**covenant for quiet enjoyment.** 1. A covenant insuring against the consequences of a defective title or any other disturbance of the title. 2. A covenant ensuring that the tenant will not be evicted or disturbed by the grantor or a person having a lien or superior title. ● This covenant is sometimes treated as being synonymous with *covenant of warranty*. — Also termed *covenant of quiet enjoyment*.

**covenant for title.** A covenant that binds the grantor to ensure the completeness, security, and continuance of the title transferred. ● This covenant usu. includes the covenants for seisin, against encumbrances, for the right to convey, for quiet enjoyment, and of warranty.

**covenant in gross.** A covenant that does not run with the land. Cf. *covenant appurtenant*.

**covenant of good right to convey.** See *covenant of seisin*.

**covenant of habitability** (hab-ə-tə-bil-ə-tee). See *implied warranty of habitability* under WARRANTY (2).

**covenant of nonclaim.** A covenant barring a grantor or the grantor's heirs from claiming title in the conveyed land.

**covenant of quiet enjoyment.** See *covenant for quiet enjoyment*.

**covenant of seisin** (see-zin). A covenant, usu. appearing in a warranty deed, stating that the grantor has an estate, or the right to convey an estate, of the quality and size that the grantor purports to convey. ● For the covenant to be valid, the grantor must have both title and possession at the time of the grant. — Also termed *covenant of good right to convey*; *right-to-convey covenant*.

**covenant of warranty.** A covenant by which the grantor agrees to defend the grantee against any lawful or reasonable claims of superior title by a third party and to indemnify the grantee for any loss sustained by the claim. ● This covenant is sometimes treated as being synonymous with *covenant for quiet enjoyment*. See WARRANTY (1).

**covenant running with the land.** A covenant that, because it relates to the land, binds successor grantees indefinitely. ● The land cannot be conveyed without the covenant. — Also termed *real covenant*.

“The important consequence of a covenant running with the land is that its burden or benefit will thereby be

imposed or conferred upon a subsequent owner of the property who never actually agreed to it. Running covenants thereby achieve the transfer of duties and rights in a way not permitted by traditional contract law.” Roger Bernhardt, *Real Property in a Nutshell* 212 (3d ed. 1993).

**covenant running with the title.** A covenant that is specific to the conveyance of title between a grantor and a grantee.

**covenant to convey.** A covenant in which the covenantor agrees to transfer an estate's title to the covenantee.

**covenant to renew.** An executory contract that gives a lessee the right to renew the lease.

**covenant to stand seised** (seezd). *Hist.* A covenant to convey land to a relative. ● This covenant could not be used to convey land to a stranger; the only consideration that supports the covenant is the relationship by blood or marriage.

**future covenant.** A covenant that can be breached only upon interference with the possession of the grantee or the grantee's successors. ● The covenants in this class are the covenant for further assurances, the covenant for quiet enjoyment, and the covenant of warranty. The distinction between future and present covenants becomes important in determining when the statute of limitations begins to run. Cf. *present covenant*.

**general covenant against encumbrances.** See *covenant against encumbrances*.

**implied reciprocal covenant.** A presumption that a promisee has, in return for a promise made respecting land, impliedly made a promise to the promisor respecting other land. — Also termed *implied reciprocal servitude*.

**present covenant.** A covenant that can be breached only at the time of conveyance. ● The three covenants in this class are the covenant against encumbrances, the covenant of right to convey, and the covenant of seisin. Cf. *future covenant*.

**real covenant.** See *covenant running with the land*.

**restrictive covenant.** 1. A private agreement, usu. in a deed or lease, that restricts the use or occupancy of real property, esp. by specifying lot sizes, building lines, architectural styles, and the uses to which the property may be put. — Also termed *restrictive covenant in equity*; *equitable easement*; *equitable servitude*. 2. See *noncompetition covenant* under COVENANT (1).

**right-to-convey covenant.** See *covenant of seisin*.

**special covenant against encumbrances.**

A grantor's promise that the property is free of encumbrances created by the grantor only, not the grantor's predecessors. See *special warranty deed* under WARRANTY DEED. Cf. *covenant against encumbrances*.

**covenant, *vb.*** To promise or undertake in a covenant; to agree formally.

**covenant against encumbrances.** See COVENANT (4).

**covenant appurtenant.** See COVENANT (4).

**covenantee** (kəv-ə-nən-tee). The person to whom a promise by covenant is made; one entitled to the benefit of a covenant.

**covenant for further assurances.** See COVENANT (4).

**covenant for possession.** See COVENANT (4).

**covenant for quiet enjoyment.** See COVENANT (4).

**covenant for title.** See COVENANT (4).

**covenant in deed.** See *express covenant* under COVENANT (1).

**covenant in gross.** See COVENANT (4).

**covenant in law.** See *implied covenant* under COVENANT (1).

**covenant marriage.** See MARRIAGE (1).

**covenant not to compete.** See *noncompetition covenant* under COVENANT (1).

**covenant not to sue.** See COVENANT (1).

**covenant of good right to convey.** See *covenant of seisin* under COVENANT (4).

**covenant of habitability.** See *implied warranty of habitability* under WARRANTY (2).

**covenant of quiet enjoyment.** See *covenant for quiet enjoyment* under COVENANT (4).

**covenant of seisin.** See COVENANT (4).

**covenant of warranty.** See COVENANT (4).

**covenantor** (kəv-ə-nən-tər or kəv-ə-nən-tor).

The person who makes a promise by covenant; one subject to the burden of a covenant. — Also spelled *covenanter*.

**covenant running with the land.** See COVENANT (4).

**covenant running with the title.** See COVENANT (4).

**covenant to convey.** See COVENANT (4).

**covenant to renew.** See COVENANT (4).

**covenant to stand seized.** See COVENANT (4).

**Coventry Act** (kəv-ən-tree or kov-). An 1803

English statute establishing the death penalty for anyone who, with malice aforethought, did "cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject; with the intention in so doing to maim or disfigure him."

"[At common law,] an injury such as cutting off [a man's] ear or nose did not constitute mayhem . . . , because it did not result in permanent disablement, but merely disfigured the victim. This was corrected by an early English statute. It seems that an assault was made upon Sir John Coventry on the street by persons who waylaid him and slit his nose in revenge for obnoxious words uttered by him in Parliament. This emphasized the weakness of the law of mayhem, and the so-called 'Coventry Act' was passed [in 1803]." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 239-40 (3d ed. 1982).

**coventurer** (koh-ven-chər-ər). A person who undertakes a joint venture with one or more persons. — Also termed *co-adventurer*. Cf. JOINT VENTURE.

**cover, *n.*** The purchase on the open market, by the buyer in a breach-of-contract dispute, of goods to substitute for those promised but never delivered by the seller. • Under UCC § 2-712, the buyer can recover from the seller the difference between the cost of the substituted goods and the original contract price.

**coverage, *n.*** 1. Inclusion of a risk under an insurance policy; the risks within the scope of an insurance policy. — **cover, *vb.***

**dependent coverage.** An insurance provision for protection of an insured's dependents.

**full coverage.** Insurance protection that pays for the full amount of a loss with no deduction.

2. The ratio between corporate pretax income and corporate liability for bond interest payments.

**coverage opinion.** See OPINION (2).

**coverage ratio.** A measurement of a firm's ability to cover its financing charges.

**cover-all clause.** See MOTHER HUBBARD CLAUSE (2).

**covered wages.** See WAGE.

**cover letter.** See TRANSMITTAL LETTER.

**cover note.** A written statement by an insurance agent confirming that coverage is in effect. • The cover note is distinguished from a binder, which is prepared by the insurance company.

**covert baron (kəv-ərt bɑr-ən).** [Law French] *Hist.* The condition or status of a married woman at common law. — Also written *cover-baron*. — Also termed *covert de baron*.

"By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and *cover*, she performs every thing; and is therefore called in our law-french a *feme-covert*; is said to be *covert-baron*, or under the protection and influence of her husband, her *baron*, or lord; and her condition during her marriage is called her *coverture*." 1 William Blackstone, *Commentaries on the Laws of England* 430 (1765).

**coverture (kəv-ər-chər also -tyoor), n.** *Archaic.* The condition of being a married woman <under former law, a woman under coverture was allowed to sue only through the personality of her husband>. — **covert (kəv-ərt), adj.**

"*Coverture*, is a french word signifying any thing that covereth, as apparell, a coverlet.... It is particularly applied in our common lawe, to the estate and condition of a married woman, who by the lawes of our realme, is in (*potestate viri*) and therefore disabled to contract with any, to the prejudice of her selfe or her husband, without his consent and privity; or at the least, without his allowance and confirmation." John Cowell, *The Interpreter* (1607).

"*Coverture* is by law applied to the state and condition of a married woman, who is *sub potestate viri*, (under the power of her husband) and therefore unable to contract with any to the damage of herself or husband, without his consent and privity, or his allowance and confirmation thereof. When a woman is married she is called a *Femme covert*, and whatever is done concerning her during marriage is said to be done during *coverture*."

*The Pocket Lawyer and Family Conveyancer* 96 (3d ed. 1833).

**covin (kəv-ən).** *Hist.* A secret conspiracy or agreement between two or more persons to injure or defraud another.

"Covin is a secret assent determined in the hearts of two or more, to the prejudice of another: As if a tenant for term of life, or tenant in tail, will secretly conspire with another, that the other shall recover against the tenant for life the land which he holds, & c. in prejudice of him in the reversion." *Termes de la Ley* 129 (1st Am. ed. 1812).

**covinous (kəv-ə-nəs), adj.** *Hist.* Of a deceitful or fraudulent nature.

**cozen (kəz-ən), vb.** *Hist.* To cheat or defraud. — Also spelled *cosen*.

**cozening (kəz-ən-ing).** *Hist.* A deceitful practice; the offense of cheating, or fraudulent dealing. — Also spelled *cosening*. Cf. STELLIONATUS.

"*Cosening* is an offence unnamed, whereby any thing is done guilefully in or out of contracts, which cannot be fitly termed by any special name. It is called *stellionatus* in the civile law...." John Cowell, *The Interpreter* (1607).

**C.P. abbr.** COURT OF COMMON PLEAS.

**CPA.** See *certified public accountant* under ACCOUNTANT.

**CPI. abbr.** CONSUMER PRICE INDEX.

**C.R. abbr.** CURIA REGIS.

**cracking, n.** A gerrymandering technique in which a geographically concentrated political or racial group that is large enough to constitute a district's dominant force is broken up by district lines and dispersed throughout two or more districts. Cf. PACKING; STACKING (2).

**craft union.** See UNION.

**cramdown, n.** Court confirmation of a Chapter 11 bankruptcy plan despite the opposition of certain creditors. • Under the Bankruptcy Code, a court may confirm a plan — even if it has not been accepted by all classes of creditors — if the plan (1) has been accepted by at least one impaired class, (2) does not discriminate unfairly, and (3) is fair and equitable. 11 USCA § 1129(b). — **cram down, vb.** See IMPAIRMENT.

**crashworthiness doctrine.** *Products liability.*

The principle that the manufacturer of a product will be held strictly liable for injuries occurring in a collision, even if the collision results from an independent cause, to the extent that a defect in the product causes injuries above and beyond those that would have occurred in the collision itself. — Also termed *second-collision doctrine*; *second-impact doctrine*.

**crastino** (*kras-tə-noh*). [Law Latin] *Hist.* Tomorrow; on the morrow. • The return day of writs, so-called because the court terms always began on a saint's day; writs were therefore returnable the day after.

**creancier** (*kree-ən-sər*). [Law French] *Hist.* A creditor. — Also spelled *creansour*.

**creativity.** *Copyright.* The degree to which a work displays imaginativeness beyond what a person of very ordinary talents might create. Cf. ORIGINALITY.

“Where creativity refers to the nature of the work itself, originality refers to the nature of the author's contribution to the work. Thus, a public domain painting may evince great creativity, but if a copyright claimant adds nothing of his own to it, by way of reproduction or otherwise, then copyright will be denied on the basis of lack of originality. Conversely, a work may be entirely the product of the claimant's independent efforts, and hence original, but may nevertheless be denied protection as a work of art if it is completely lacking in any modicum of creativity.” 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 2.08[B][2], at 2-88 (Supp. 1995).

**creator.** See SETTLOR (1).

**creature of statute.** A doctrine, governmental agency, etc. that would not exist but for a legislative act that brought it into being.

**credibility, n.** The quality that makes something (as a witness or some evidence) worthy of belief. — **credible, adj.**

**credible evidence.** See EVIDENCE.

**credible witness.** See WITNESS.

**credit, n.** 1. Belief; trust <the jury gave credit to Benson's version>. 2. One's ability to borrow money; the faith in one's ability to pay debts <a customer with good credit>. 3. The time that a seller gives the buyer to make the payment that is due <30 days' credit>. 4. The availability of funds either from a financial institution or under a letter of credit <the

bank extended a line of credit to the customer>.

**bank credit.** Credit that a bank makes available to a borrower.

**consumer credit.** Credit extended to an individual to facilitate the purchase of consumer goods and services.

**installment credit.** Consumer credit scheduled to be repaid in two or more payments, usu. at regular intervals. • The seller ordinarily exacts finance charges.

**noninstallment credit.** Consumer credit arranged to be repaid in a single payment. • Examples include doctors' and plumbers' bills.

**revolving credit.** A consumer-credit arrangement that allows the borrower to buy goods or secure loans on a continuing basis as long as the outstanding balance does not exceed a specified limit. — Also termed *open credit*; *revolving charge account*. Cf. *revolver loan* under LOAN.

5. LETTER OF CREDIT <the bank issued a credit in favor of the exporter>. 6. A deduction from an amount due; an accounting entry reflecting an addition to revenue or net worth <confirm that the credit was properly applied to my account>. Cf. DEBIT. 7. TAX CREDIT <the \$500 credit reduced his income-tax liability by \$500>.

**accumulated-earnings credit.** *Tax.* A deduction allowed in arriving at a corporation's accumulated taxable income. • It offsets the base on which the tax is assessed by reducing the taxable base by the greater of \$250,000 or the accumulated earnings retained for the reasonable needs of the corporation, reduced by the net capital gain. IRC (26 USCA) § 535. See *accumulated-earnings tax* under TAX.

**credit, vb.** 1. To believe <the jury did not credit his testimony>. 2. To enter (as an amount) on the credit side of an account <her account was credited with \$500>.

**credit balance.** *Accounting.* The status of an account when the sum of the credit entries exceeds the sum of the debit entries.

**credit bureau.** An organization that compiles information on people's creditworthiness and publishes it in the form of reports that are used chiefly by merchants and service-providers who deal directly with customers. • The practices of credit bureaus are regulated by federal (and often state) law. Most bureaus are members of

the Associated Credit Bureaus of America. Cf. CREDIT-REPORTING BUREAU.

**credit card.** An identification card used to obtain items on credit, usu. on a revolving basis. See *revolving credit* under CREDIT. Cf. DEBIT CARD.

**credit-card crime.** The offense of using a credit card to purchase something with knowledge that (1) the card is stolen or forged, (2) the card has been revoked or canceled, or (3) the card's use is unauthorized.

**credit freeze.** See FREEZE.

**credit insurance.** See INSURANCE.

**credit life insurance.** See INSURANCE.

**credit line.** See LINE OF CREDIT.

**credit memorandum.** A document issued by a seller to a buyer confirming that the seller has credited (i.e., reduced) the buyer's account because of an error, return, or allowance.

**credit mobilier.** A company or association that carries on a banking business by making loans on the security of personal property.

**creditor. 1.** One to whom a debt is owed; one who gives credit for money or goods. — Also termed *debtee*. **2.** A person or entity with a definite claim against another, esp. a claim that is capable of adjustment and liquidation. **3.** *Bankruptcy.* A person or entity having a claim against the debtor predating the order for relief concerning the debtor. **4.** *Roman law.* One to whom any obligation is owed, whether contractual or otherwise. Cf. DEBTOR.

**attaching creditor.** A creditor who has caused an attachment to be issued and levied on the debtor's property.

**bond creditor.** A creditor whose debt is secured by a bond.

**certificate creditor.** A creditor of a municipal corporation who receives a certificate of indebtedness rather than payment because the municipality cannot pay the debt. Cf. *warrant creditor*.

**conditional creditor.** *Civil law.* A creditor who has either a future right of action or a right of action in expectancy.

**creditor at large.** A creditor who has not established the debt by reducing it to judg-

ment, or who has not otherwise secured a lien on any of the debtor's property.

**domestic creditor.** A creditor who resides in the same state or country as the debtor or the debtor's property.

**double creditor.** A creditor who has a lien on two funds. Cf. *single creditor*.

**execution creditor.** A judgment creditor who has caused an execution to issue on the judgment.

**foreign creditor.** A creditor who resides in a different state or country from that of the debtor or the debtor's property.

**gap creditor.** *Bankruptcy.* A creditor who extends credit to, lends money to, or has a claim arise against the debtor in the period between the filing of an involuntary bankruptcy petition and the entry of the order for relief. • Under the Bankruptcy Code, a gap creditor's claim receives second priority, immediately below administrative claims. 11 USCA §§ 502(f), 507(a)(2).

**general creditor.** See *unsecured creditor*.

**hypothetical creditor.** *Bankruptcy.* An actual or code-created judicial-lien creditor or bona fide purchaser who establishes a bankruptcy trustee's status under the Bankruptcy Code's priority scheme, claiming property through the debtor at the time of the bankruptcy filing. 11 USCA § 544. — Also termed *hypothetical lien creditor*.

**joint creditor.** A creditor who is entitled, along with another creditor, to demand payment from a debtor.

**judgment creditor.** See JUDGMENT CREDITOR.

**junior creditor.** A creditor whose claim accrued after that of another creditor; a creditor who holds a debt that is subordinate to another's.

**known creditor.** A creditor whose identity or claim is either known or reasonably ascertainable by the debtor. • Known creditors are entitled to notice of the debtor's bankruptcy or corporate dissolution, as well as notice of any deadline for filing proofs of claim.

**lien creditor.** A creditor whose claim is secured by a lien on the debtor's property. UCC § 9-301(3).

**preferred creditor.** A creditor with a superior right to payment, such as a holder of a perfected security interest as compared to a holder of an unsecured claim. UCC § 9-301(1).

**principal creditor.** A creditor whose claim or demand greatly exceeds the claims of other creditors.

**prior creditor.** A creditor who is given priority in payment from the debtor's assets.

**secondary creditor.** A creditor whose claim is subordinate to a preferred creditor's.

**secured creditor.** A creditor who has the right, on the debtor's default, to proceed against collateral and apply it to the payment of the debt. — Also termed *secured party*.

“‘Secured party’ means (A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding; (B) a person that holds an agricultural lien; (C) a consignor; (D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold; or (E) if a security interest or agricultural lien is created or provided for in favor of a trustee, agent, collateral agent, or other representative, that representative.” UCC § 9-102(a)(50).

**single creditor.** In the marshaling of assets, a creditor with a lien on one fund. Cf. *double creditor*.

**subsequent creditor.** A creditor whose claim comes into existence after a given fact or transaction, such as the recording of a deed or the execution of a voluntary conveyance.

**unsecured creditor.** A creditor who, upon giving credit, takes no rights against specific property of the debtor. — Also termed *general creditor*.

**warrant creditor.** A creditor of a municipal corporation who is given a municipal warrant for the amount of the claim because the municipality lacks the funds to pay the debt. Cf. *certificate creditor*.

**creditor at large.** See CREDITOR.

**creditor beneficiary.** See BENEFICIARY.

**creditor's bill.** An equitable suit in which a judgment creditor seeks to reach property that cannot be reached by the process available to enforce a judgment. — Also termed *creditor's suit*.

**creditor's claim.** See CLAIM (5).

**creditors' committee.** *Bankruptcy.* A committee comprising representatives of the creditors in a Chapter 11 proceeding, formed to negotiate the debtor's plan of reorganization. • Generally, a committee has no fewer than 3 and no more than 11 members and serves as an advisory body. 11 USCA § 1102.

**creditors' composition.** See COMPOSITION.

**creditors' meeting.** See MEETING.

**creditor's suit.** See CREDITOR'S BILL.

**credit rating.** An evaluation of a potential borrower's ability to repay debt, prepared by a credit bureau at the request of a lender.

**credit report. 1.** A credit bureau's report on a person's financial status, usu. including the approximate amounts and locations of a person's bank accounts, charge accounts, loans, and other debts, bill-paying habits, defaults, bankruptcies, foreclosures, marital status, occupation, income, and lawsuits. See CREDIT BUREAU. **2.** The report of a credit-reporting bureau, usu. including highly personal information gathered through interviews with a person's friends, neighbors, and coworkers. See CREDIT-REPORTING BUREAU.

**credit-reporting bureau.** An organization that, on request, prepares investigative reports not just on people's creditworthiness but also on personal information gathered from various sources, including interviews with neighbors, friends, and coworkers. • These reports are used chiefly by employers (for prospective employees), insurance companies (for applicants), and landlords (for prospective tenants). — Also termed *investigating bureau*. Cf. CREDIT BUREAU.

**creditrix** (*kred-ə-triks*), *n.* [fr. Latin *credere* “to lend, entrust”] *Archaic. Civil law.* A female creditor.

**credit sale.** See SALE.

**credit service charge.** See SERVICE CHARGE.

**credit-shelter trust.** See *bypass trust* under TRUST.

**credit slip.** A document that allows a store customer to either purchase another item or receive cash or credit for merchandise the customer has returned to the store.

**credit union.** A cooperative association that offers low-interest loans and other consumer banking services to persons sharing a common bond — often fellow employees and their family members. • Most credit unions are regulated by the National Credit Union Administration. State-chartered credit unions are also subject

to regulation by the chartering state, and they may be regulated by state banking boards.

"Credit unions were the last major thrift institutions developed in the United States . . . . What distinguished credit unions from mutual savings banks and savings and loan associations was their emphasis on a common bond of workers, church members, or people in a local area, wanting to borrow relatively small amounts at reasonable interest rates from each other, and help each other save to meet these short-term needs. Their goal was to provide a low interest rate alternative (6-9 percent and preferably the lower) to loan sharks and pawnbrokers." William A. Lovett, *Banking and Financial Institutions Law in a Nutshell* 284 (1997).

**creditworthy**, *adj.* (Of a borrower) financially sound enough that a lender will extend credit in the belief that the chances of default are slight; fiscally healthy. — **creditworthiness**, *n.*

**creeping tender offer**. See TENDER OFFER.

**C reorganization**. See REORGANIZATION (2).

**cretion** (**kree**-shən). [fr. Latin *cernere* "to decide"] *Roman law*. 1. A method or form of accepting an inheritance by an heir who is appointed in a testament. • *Cretion* usu. had to be declared within 100 days from the date an heir received notice of the appointment. *Cretion* was formally abolished in A.D. 407.

"In the old law it was the practice to fix a time limit, usually of one hundred days, within which the heir was to make a formal acceptance, with the addition that if he failed to do so, he was to be disinherited and a substitute was to take the inheritance in his place. This formal acceptance was known as *cretio* from the Latin verb *cernere*=to decide. The practice had fallen into disuse before Justinian, who formally abolished it." R.W. Lee, *The Elements of Roman Law* 199 (4th ed. 1956).

2. The period within which an heir might decide whether to accept an inheritance. — Also termed *cretio* (**kree**-shee-oh). — **cretionary** (**kree**-shən-er-ee), *adj.*

**CRF**. *abbr.* CRIMINAL-REFERRAL FORM.

**crier** (**kri**-ər). 1. An officer of the court who makes public pronouncements as required by the court. See BAILIFF. 2. An auctioneer. — Also spelled *cryer*.

**criez la peez** (**kri**-eez læ **pees**). [Law French] *Hist.* Rehearse the concord (or peace). • This phrase was used to confirm the conveyance of land by fine. The serjeant or countor in attendance read the phrase aloud in court. See FINE (1).

**crim. con.** *abbr.* CRIMINAL CONVERSATION.

**crime**. A social harm that the law makes punishable; the breach of a legal duty treated as the subject-matter of a criminal proceeding. — Also termed *criminal wrong*. See OFFENSE.

"Understanding that the conception of *Crime*, as distinguished from that of *Wrong* or *Tort* and from that of *Sin*, involves the idea of injury to the State of collective community, we first find that the commonwealth, in literal conformity with the conception, itself interposed directly, and by isolated acts, to avenge itself on the author of the evil which it had suffered." Henry S. Maine, *Ancient Law* 320 (17th ed. 1901).

"It is a curious fact that all the minor acts enumerated in the penal code of a state like, say, New York are in law called crimes, which term includes both murder and overparking. It is a strong term to use for the latter, and of course the law has for centuries recognized that there are more serious and less serious crimes. At the common law, however, only two classes were recognized, serious crimes or felonies, and minor crimes or misdemeanors." Max Radin, *The Law and You* 91 (1948).

**administrative crime**. An offense consisting of a violation of an administrative rule or regulation that carries with it a criminal sanction.

**capital crime**. See *capital offense* under OFFENSE.

**common-law crime**. A crime that is punishable under the common law, rather than by force of statute. Cf. *statutory crime*.

**computer crime**. A crime requiring knowledge of computer technology, such as sabotaging or stealing computer data or using a computer to commit some other crime.

**consensual crime**. See *victimless crime*.

**corporate crime**. A crime committed either by a corporate body or by its representatives acting on its behalf. • Examples include price-fixing and consumer fraud.

**crime against nature**. See SODOMY.

**crime malum in se**. See MALUM IN SE.

**crime malum prohibitum**. See MALUM PROHIBITUM.

**crime of omission**. An offense that carries as its material component the failure to act.

**crime of passion**. A crime committed in the heat of an emotionally charged moment, with no opportunity to reflect on what is happening. See HEAT OF PASSION.

**crime of violence**. See *violent crime*.

**crime without victims**. See *victimless crime*.

**federal crime**. See FEDERAL CRIME.



**hate crime.** A crime motivated by the victim's race, color, ethnicity, religion, or national origin. • Certain groups have lobbied to expand the definition by statute to include a crime motivated by the victim's disability, gender, or sexual orientation. Cf. *hate speech* under SPEECH.

**high crime.** A crime that is offensive to public morality, though not necessarily a felony. • Under the U.S. Constitution, a civil officer's committing of a "high crime" is, along with treason and bribery, grounds for removal from office. U.S. Const. art. II, § 4. See IMPEACHABLE OFFENSE.

**index crime.** See *index offense* under OFFENSE.

**infamous crime** (in-fə-məs). **1.** At common law, a crime for which part of the punishment was infamy, so that one who committed it would be declared ineligible to serve on a jury, hold public office, or testify. • Examples are perjury, treason, and fraud. **2.** A crime punishable by imprisonment in a penitentiary. • The Fifth Amendment requires a grand-jury indictment for the prosecution of infamous (or capital) crimes, which include all federal felony offenses. See *indictable offense* under OFFENSE.

**instantaneous crime.** A crime that is fully completed by a single act, as arson or murder, rather than a series of acts. • The statute of limitations for an instantaneous crime begins to run with its completion.

**noninfamous crime.** A crime that does not qualify as an infamous crime. Cf. *infamous crime*.

**organized crime.** See ORGANIZED CRIME.

**political crime.** A crime (such as treason) directed against the government.

**quasi-crime.** **1.** An offense not subject to criminal prosecution (such as contempt or violation of a municipal ordinance) but for which penalties or forfeitures can be imposed. • The term includes offenses that give rise to *qui tam* actions and forfeitures for the violation of a public duty. **2.** An offense for which someone other than the actual perpetrator is held liable, the perpetrator being presumed to act on the command of the responsible party. See *quasi-delict* (1) under DELICT.

**signature crime.** A distinctive crime so similar in pattern, scheme, or modus operandi to previous crimes that it identifies a particular defendant as the perpetrator.

**status crime.** A type of crime of which a person is guilty by being in a certain condi-

tion or of a specific character, such as vagrancy. — Also termed *status offense*.

**statutory crime.** A crime punishable by statute. Cf. *common-law crime*.

**street crime.** Crime generally directed against a person in public, such as mugging, theft, or robbery.

**strict-liability crime.** A crime that does not require a *mens rea* element, such as speeding or attempting to carry a weapon aboard an aircraft.

**vice crime.** A crime of immoral conduct, such as gambling or prostitution.

**victimless crime.** A crime that is considered to have no direct victim, usu. because only consenting adults are involved. • Examples are possession of drugs and deviant sexual intercourse between consenting adults. — Also termed *consensual crime*; *crime without victims*.

"When a man's house has been robbed or his brother murdered, he is likely to take this complaint vigorously to the police and demand action. His presence on the scene dramatizes the need for law enforcement and gives sense and purpose to the work of the police and district attorney. In contrast, the absence of a prosecuting witness surrounds 'crimes without victims' with an entirely different atmosphere. Here it is the police who must assume the initiative. If they attempt to work without the aid of informers, they must resort to spying, and this spying is rendered all the more distasteful because what is spied upon is sordid and pitiable." Lon L. Fuller, *Anatomy of the Law* 44 (1968).

**violent crime.** A crime that has as an element the use, attempted use, threatened use, or substantial risk of use of physical force against the person or property of another. 18 USCA § 16. — Also termed *crime of violence*.

**white-collar crime.** See WHITE-COLLAR CRIME.

**crime against humanity.** *Int'l law.* A brutal crime that is not an isolated incident but that involves large and systematic actions, often cloaked with official authority, and that shocks the conscience of humankind. • Among the specific crimes that fall within this category are mass murder, extermination, enslavement, deportation, and other inhumane acts perpetrated against a population, whether in wartime or not.

**crime against international law.** See CRIME AGAINST THE LAW OF NATIONS.

**crime against nature.** See SODOMY.

**crime against peace.** *Int'l law.* An international crime in which the offenders plan, prepare, initiate, or wage a war of aggression or a war in violation of international peace treaties, agreements, or assurances.

**crime against the law of nations.** *Int'l law.* 1. A crime punishable under internationally prescribed criminal law or defined by an international convention and required to be made punishable under the criminal law of the member states. 2. A crime, such as piracy or a war crime, punishable under international criminal law. 3. A crime punishable under international law; an act that is internationally agreed to be of a criminal nature, such as genocide, piracy, or engaging in the slave trade. — Also termed *crime against international law*.

**crime against the person.** See CRIMES AGAINST PERSONS.

**crime-fraud exception.** The doctrine that neither the attorney-client privilege nor the attorney-work-product privilege protects attorney-client communications that are in furtherance of a current or planned crime or fraud. *Clark v. United States*, 289 U.S. 1, 53 S.Ct. 465 (1933); *In re Grand Jury Subpoena Duces Tecum*, 731 F.2d 1032 (2d Cir. 1984).

**crime insurance.** See INSURANCE.

**crime malum in se.** See MALUM IN SE.

**crime malum prohibitum.** See MALUM PROHIBITUM.

**crimen** (kri-mən), *n.* [Latin] 1. An accusation or charge of a crime. 2. A crime. Pl. **crimina** (krim-ə-nə).

**crimen falsi** (kri-mən fal-si or fawl-si). [Latin “the crime of falsifying”] 1. A crime in the nature of perjury. 2. Any other offense that involves some element of dishonesty or false statement. See Fed. R. Evid. 609(a)(2).

“The starting point [for perjury] seems to have been the so-called *crimen falsi*, — crime of falsifying. In the beginning, perhaps, one convicted of perjury was deemed too untrustworthy to be permitted to testify in any other case, and the idea grew until the term ‘*crimen falsi*’ included any crime involving an element of deceit, fraud or corruption.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 26 (3d ed. 1982).

**crimen furti** (kri-mən fər-ti). [Latin “the crime of stealing”] See THEFT.

**crimen incendii** (kri-mən in-sen-dee-i). [Latin “the crime of burning”] See ARSON.

**crimen innominatum** (kri-mən i-nom-ə-nay-təm). [Latin “the nameless crime”] See SODOMY.

**crimen majestatis** (kri-mən maj-ə-stay-tis). [Latin “crime against majesty”] *Hist.* High treason; any crime against the king’s person or dignity; LESE MAJESTY. • Under Roman law, *crimen majestatis* denoted any enterprise by a Roman citizen or other person against the emperor or the republic. — Also spelled *crimen maiestatis*. — Also termed *crimen laesae majestatis*. Cf. PERDUELLIO.

**crimen raptus** (kri-mən rap-təs). [Latin “the crime of rape”] See RAPE.

**crimen repetundarum** (kri-mən rep-ə-tən-dair-əm). [Latin] *Roman law.* The crime of bribery or extortion.

**crimen roberiae** (kri-mən rə-beer-ee-ee). [Latin “the crime of robbery”] ROBBERY.

**crime of omission.** See CRIME.

**crime of passion.** See CRIME.

**crime of violence.** See *violent crime* under CRIME.

**crimes against persons.** A category of criminal offenses in which the perpetrator uses or threatens to use force. • Examples include murder, rape, aggravated assault, and robbery. — Also termed *crimes against the person*. Cf. *offense against the person* under OFFENSE.

**crimes against property.** A category of criminal offenses in which the perpetrator seeks to derive an unlawful benefit from — or do damage to — another’s property without the use or threat of force. • Examples include burglary, theft, and arson (even though arson may result in injury or death). — Also termed *property crimes*. Cf. *offense against property* under OFFENSE.

**crimes against the person.** See CRIMES AGAINST PERSONS.

**crime statistics.** Figures compiled by a governmental agency to show the incidence of various types of crime within a defined geographic area during a specified time.

**crime without victims.** See *victimless crime* under CRIME.

**crimina extraordinaria** (*krim-ə-nə ek-stror-də-nair-ee-ə*). [Latin] *Roman law*. Extraordinary crimes.

**criminal, adj.** **1.** Having the character of a crime; in the nature of a crime <criminal mischief>. **2.** Connected with the administration of penal justice <the criminal courts>.

**criminal, n.** **1.** One who has committed a criminal offense. **2.** One who has been convicted of a crime.

**dangerous criminal.** A criminal who has either committed a violent crime or used force in trying to escape from custody.

**state criminal.** **1.** A person who has committed a crime against the state (such as treason); a political criminal. **2.** A person who has committed a crime under state law.

**criminal action.** See ACTION.

**criminal anarchy.** The doctrine that advocates the violent overthrow of government. • To promote this doctrine is a criminal offense. 18 USCA § 2385.

**criminal anthropology.** See CRIMINOLOGY.

**criminal assault.** See ASSAULT.

**criminal attempt.** See ATTEMPT.

**criminal battery.** See BATTERY.

**criminal behavior.** Conduct that causes social harm and is defined and punished by law.

**criminal capacity.** See CAPACITY (3).

**criminal charge.** See CHARGE (1).

**criminal code.** A code, usu. enacted by a legislature, setting out the elements of crimes and specifying punishments for their commission.

**criminal coercion.** See COERCION.

**criminal conspiracy.** See CONSPIRACY.

**criminal contempt.** See CONTEMPT.

**criminal conversation.** *Hist.* A tort action for adultery, brought by a husband against a third party who engaged in sexual intercourse with his wife. — Abbr. crim. con.

“An action (whether of trespass or case is uncertain, but probably trespass) formerly lay against one who had committed adultery with the wife of the plaintiff. It was known as an action for criminal conversation. The wife’s consent was irrelevant. The action was distinct from that of enticement: one may commit adultery without enticing a wife away from her husband. The action was no doubt a necessity when divorce could only be obtained by Act of Parliament: as Parliament was not a tribunal suitable for trying allegations of adultery it was reasonable to require the petitioner to establish the truth of his allegations before a court of law. The action might also have been justified on the ground that the plaintiff is in substance complaining of the invasion of privacy of his marriage, and the insult thereby caused to his honour as a husband.” R.F.V. Heuston, *Salmond on the Law of Torts* 358 (17th ed. 1977).

**criminal damage to property.** **1.** Injury, destruction, or substantial impairment to the use of property (other than by fire or explosion) without the consent of a person having an interest in the property. **2.** Injury, destruction, or substantial impairment to the use of property (other than by fire or explosion) with the intent to injure or defraud an insurer or lienholder. Cf. ARSON.

**criminal defendant.** The accused in a criminal proceeding.

**criminal desertion.** See DESERTION.

**criminal forfeiture.** See FORFEITURE.

**criminal fraud.** See FRAUD.

**criminal homicide.** See HOMICIDE.

**criminal infringement.** See INFRINGEMENT.

**criminal-instrumentality rule.** The principle that when a criminal act is committed, that act — rather than the victim’s negligence that made the crime possible — will be considered to be the crime’s proximate cause.

**criminal intent.** **1.** MENS REA. **2.** An intent to commit an actus reus without any justification, excuse, or other defense.

“The phrase ‘criminal intent’ is one that has been bandied about with various meanings not carefully distinguished. At times it has been used in the sense of the ‘intent to do wrong’ (the *outline* of the mental pattern which is necessary for crime in general), — as, for example, in the phrase ‘the mental element commonly called criminal intent.’ At times it has been used in the sense of mens rea as the mental element requisite for guilt of the very offense charged, ‘a varying state of mind which is the contrary of an innocent state of mind, whatever may be pointed out by the nature of the crime

as an innocent state of mind.' Often it is used to include criminal negligence as well as an actual intent to do the harmful deed, although at other times such negligence is referred to as a substitute, so to speak, for criminal intent in connection with certain offenses. Occasionally it is found in the sense of an intent to violate the law, — implying a knowledge of the law violated. On the other hand, as such knowledge is a factor not ordinarily required for conviction it has been pointed out that to establish ignorance of the law does not disprove criminal intent. Thus it has been said (assuming the absence of any circumstance of exculpation) 'whenever an act is criminal, the party doing the act is chargeable with criminal intent.' . . . This suggests a helpful guide for the use of the phrase 'criminal intent.' Some other term such as *mens rea* or guilty mind should be employed for more general purposes, and 'criminal intent' be restricted to those situations in which there is (1) an intent to do the *actus reus*, and (2) no circumstance of exculpation.' Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 832-34 (3d ed. 1982).

**criminalism.** **1.** A pathological tendency toward criminality. **2.** *Archaic.* The branch of psychiatry dealing with habitual criminals.

**criminalist** (*krim-ə-nəl-ist*). **1.** A person who practices criminalistics as a profession. **2.** *Archaic.* One versed in criminal law. **3.** *Archaic.* A psychiatrist who treats criminals. **4.** *Archaic.* A habitual criminal.

**criminalistics** (*krim-ə-nə-lis-tiks*), *n.* The science of crime detection, usu. involving the subsection of physical evidence to laboratory analysis, including ballistic testing, blood-fluid and tissue analysis, and other tests that are helpful in determining what happened. Cf. CRIMINOLOGY.

**criminaliter** (*krim-ə-nay-lə-tər*), *adv.* [Latin] Criminally. Cf. CIVILITER.

**criminality** (*krim-ə-nal-ə-tee*). **1.** The state or quality of being criminal. **2.** An act or practice that constitutes a crime.

**criminalization** (*krim-ə-nəl-ə-zay-shən*), *n.* **1.** The act or an instance of making a previously lawful act criminal, usu. by passing a statute. Cf. DECRIMINALIZATION; CIVILIZATION. **2.** The process by which a person develops into a criminal.

**criminalize** (*krim-ə-nəl-īz*), *vb.* To make illegal; to outlaw.

**criminal jurisdiction.** See JURISDICTION.

**criminal justice.** **1.** The methods by which a society deals with those who are accused of

having committed crimes. See LAW ENFORCEMENT (1). **2.** The field of study pursued by those seeking to enter law enforcement as a profession. ● Many colleges offer degrees in criminal justice, typically after two to four years of study. — Also termed (in sense 2) *police science*; *law enforcement*.

**criminal-justice system.** The collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded. ● The system typically has three components: law enforcement (police, sheriffs, marshals), the judicial process (judges, prosecutors, defense lawyers), and corrections (prison officials, probation officers, parole officers). — Also termed *law-enforcement system*.

**criminal law.** The body of law defining offenses against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted offenders.

"The criminal law represents the pathology of civilization." Morris R. Cohen, *Reason and Law* 70 (1961).

"Often the term 'criminal law' is used to include all that is involved in 'the administration of criminal justice' in the broadest sense. As so employed it embraces three different fields, known to the lawyer as (1) the substantive criminal law, (2) criminal procedure, and (3) special problems in the administration and enforcement of criminal justice. . . . The phrase 'criminal law' is more commonly used to include only that part of the general field known as the substantive criminal law. . . ." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1, 5 (3d ed. 1982).

**criminal lawyer.** See LAWYER.

**criminal libel.** See LIBEL.

**criminally negligent homicide.** See *negligent homicide* under HOMICIDE.

**criminal mischief.** See MALICIOUS MISCHIEF.

**criminal negligence.** See NEGLIGENCE.

**criminal policy.** The branch of criminal science concerned with limiting harmful conduct in society. ● It draws on information provided by criminology, and its subjects for investigation are (1) the appropriate measures of social organization for preventing harmful activities, and (2) the treatment to be accorded to those who have caused harm, whether the offenders are to be given warnings, supervised probation, medical treatment, or more serious deprivations of

life or liberty, such as imprisonment or capital punishment.

**criminal procedure.** The rules governing the mechanisms under which crimes are investigated, prosecuted, adjudicated, and punished. • It includes the protection of accused persons' constitutional rights.

**criminal proceeding.** See PROCEEDING.

**criminal process.** See PROCESS.

**criminal prosecution.** See PROSECUTION (2).

**criminal protector.** An accessory after the fact to a felony; one who aids or harbors a wrongdoer after the commission of a crime.

**criminal-referral form.** A form once required (from 1988 to 1996) for reporting every instance when a bank employee or affiliate committed or aided in committing a crime such as credit-card fraud, employee theft, or check-kiting. • This form, like the suspicious-transaction report, has since been superseded by the suspicious-activity report. — Abbr. CRF.

**criminal registration.** See REGISTRATION (1).

**criminal responsibility.** See RESPONSIBILITY (1), (2).

**criminal sanction.** See SANCTION.

**criminal science.** The study of crime with a view to discovering the causes of criminality, devising the most effective methods of reducing crime, and perfecting the means for dealing with those who have committed crimes. • The three main branches of criminal science are criminology, criminal policy, and criminal law.

**criminal solicitation.** See SOLICITATION.

**criminal statute.** See STATUTE.

**criminal syndicalism.** See SYNDICALISM.

**criminal trespass.** See TRESPASS.

**criminal wrong.** See CRIME.

**criminate, vb.** INCRIMINATE.

**crimination** (krim-ə-nay-shən), *n.* 1. INCRIMINATION. 2. An accusation or strong censure.

**criminative** (krim-ə-nay-tiv), *adj.* Of, relating to or involving incrimination or accusation. Cf. INFIRMATIVE.

**criminogenic, adj.** Tending to cause crime or criminality. — **criminogenesis, n.**

**criminology, n.** The study of crime and criminal punishment as social phenomena; the study of the causes of crime, comprising (1) criminal biology, which examines causes that may be found in the mental and physical constitution of an offender (such as hereditary tendencies and physical defects), and (2) criminal sociology, which deals with inquiries into the effects of environment as a cause of criminality. — Also termed *criminal anthropology*. — **criminological, adj.** — **criminologist, n.** Cf. CRIMINALISTICS.

**crimping, Hist.** The offense of decoying and confining persons to force them into military service. Cf. IMPRESSMENT (3).

**crit.** An adherent to the critical-legal-studies school of thought. — Also termed *CLSer*; *Critic*; *critter*.

**fem-crit.** A feminist adherent of critical legal studies.

**critical evidence.** See EVIDENCE.

**Critical Legal Studies. 1.** A school of thought advancing the idea that the legal system's manipulative nature masks its true function, which, according to the predominant Marxist wing of this school, is to perpetuate the socioeconomic status quo. **2.** The body of work produced by adherents to this school of thought. — Abbr. CLS.

**critical limitation. Patents.** A limitation essential either to the operativeness of an invention or to the patentability of a patent claim for the invention.

**Critical Race Theory. 1.** A reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities. • The term first appeared in 1989. Critical race theorists observe that even if the law is couched in neutral language, it cannot be neutral because those who fashioned it had their own subjective perspectives that, once enshrined in law, have disadvantaged minorities and even perpetuated racism. **2.** The body of

work produced by adherents to this theory. — Abbr. CRT.

**critical stage. 1.** The point in a criminal prosecution when the accused's rights may be prejudiced by the absence of legal representation. ● A defendant is entitled to counsel at critical stages, such as trial or a preliminary hearing, when the defendant's rights could be prejudiced. **2.** The point in a criminal prosecution when jeopardy attaches, when the jury is empaneled, or when a witness is sworn.

**critter.** See CRIT.

**crop insurance.** See INSURANCE.

**crops.** Products that are grown, raised, and harvested. ● Crops *usu.* are from the soil, but fruit grown on trees are also considered crops.

**basic crops.** Crops (such as wheat and corn) that are *usu.* subject to government-price supports.

**growing crops.** Crops that are in the process of growth. ● Judicial decisions vary on the growth stage at which a crop becomes a growing crop and on whether pasture grass is a growing crop. Growing crops are goods under UCC § 2-105(1). Cf. FARM PRODUCT.

**cross, n. 1.** CROSS-EXAMINATION. **2.** A sale of a large amount of stock privately traded between two parties. ● Although the transaction does not happen on the exchange floor, it typically requires exchange permission.

**cross-action.** See CROSS-CLAIM.

**cross-appeal.** See APPEAL.

**cross-bill.** See BILL (2).

**cross-claim, n.** A claim asserted between codefendants or coplaintiffs in a case and that relates to the subject of the original claim or counterclaim. — Also termed *cross-action*. — **cross-claim, vb.** — **cross-claimant, n.** Cf. COUNTERCLAIM.

“The courts have not always distinguished clearly between a cross-claim and a counterclaim, and have used one name where the other is proper under the rules, perhaps because in some states, and in the old equity practice, the term cross-complaint or cross-bill is used for what the rules regard as a counterclaim. Under Rule 13 a counterclaim is a claim against an opposing party, while a cross-claim is against a co-party. Further there is not the same freedom in asserting cross-claims that the rules provide for counterclaims. An unrelated claim

against an opposing party may be asserted as a permissive counterclaim, but only claims related to the subject matter of the original action, or property involved therein, are appropriate as cross-claims.” Charles Alan Wright, *The Law of Federal Courts* § 80, at 574 (5th ed. 1994).

**cross-collateral.** See COLLATERAL.

**cross-collateral clause.** An installment-contract provision allowing the seller, if the buyer defaults, to repossess not only the particular item sold but also every other item bought from the seller on which a balance remained due when the last purchase was made. — Also termed *dragnet clause*.

**cross-complaint. 1.** A claim asserted by a defendant against another party to the action. **2.** A claim asserted by a defendant against a person not a party to the action for a matter relating to the subject of the action.

**cross-default.** A provision under which default on one debt obligation triggers default on another obligation.

**cross-demand.** See DEMAND (3).

**cross-elasticity of demand.** *Antitrust.* A relationship between two products, *usu.* substitutes for each other, in which a price change for one product affects the price of the other.

**cross-error.** See ERROR (2).

**cross-examination, n.** The questioning of a witness at a trial or hearing by the party opposed to the party who called the witness to testify. ● The purpose of cross-examination is to discredit a witness before the fact-finder in any of several ways, as by bringing out contradictions and improbabilities in earlier testimony, by suggesting doubts to the witness, and by trapping the witness into admissions that weaken the testimony. The cross-examiner is typically allowed to ask leading questions but is traditionally limited to matters covered on direct examination and to credibility issues. — Also termed *cross-interrogation*. — **cross-examine, vb.** Cf. DIRECT EXAMINATION; RE-CROSS-EXAMINATION.

**cross-interrogatory.** See INTERROGATORY.

**cross-licensing.** *Patents.* The act, by two or more license holders, of exchanging licenses so that each may use or benefit from the other's patent.

**cross-marriage.** See MARRIAGE (1).

**cross-offer, n.** *Contracts.* An offer made to another in ignorance that the offeree has made the same offer to the offeror. — **cross-offer, vb.** — **cross-offeror, n.**

**cross-purchase buy-sell agreement. 1.** BUY-SELL AGREEMENT (1). **2.** A partnership insurance plan in which each partner individually buys and maintains enough insurance on the life or lives of other partners to purchase a deceased or expelled partner's equity.

**cross-question.** See QUESTION (1).

**cross-rate.** The exchange rate between two currencies expressed as the ratio of two foreign exchange rates in terms of a common third currency (usu. the U.S. dollar). • Foreign-exchange-rate dealers use cross-rate tables to look for arbitrage opportunities. See ARBITRAGE.

**cross-remainder.** See REMAINDER.

**Crown.** See KING.

**Crown case.** *English law.* A criminal action.

**Crown Court.** An English court having jurisdiction over major criminal cases. • Crown Courts date from 1971, when they assumed the criminal jurisdiction of the Assize Courts and all the jurisdiction of the Courts of Quarter Sessions.

**crowd jewel.** A company's most valuable asset, esp. as valued when the company is the subject of a hostile takeover. • A common antitakeover device is for the target company to sell its crown jewel to a third party so that the company will be less attractive to an unfriendly suitor. See SCORCHED-EARTH DEFENSE.

**Crown land.** See LAND.

**Crown loan.** See LOAN.

**CRT.** *abbr.* CRITICAL RACE THEORY.

**cruel and inhumane treatment.** A ground for divorce consisting in unjustifiably abusive conduct by one spouse toward the other.

**cruel and unusual punishment.** See PUNISHMENT.

**cruelty.** The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage.

**cruelty to animals.** A malicious or criminal-ly negligent act that causes an animal to suffer pain or death.

**extreme cruelty.** As a ground for divorce, one spouse's physical violence toward the other spouse, or conduct that destroys or severely impairs the other spouse's mental health.

**legal cruelty.** Cruelty that will justify granting a divorce to the injured party; specif., conduct by one spouse that endangers the life, person, or health of the other spouse, or creates a reasonable apprehension of bodily or mental harm.

**mental cruelty.** As a ground for divorce, one spouse's course of conduct that creates such anguish that it endangers the life, physical health, or mental health of the other spouse. See EMOTIONAL DISTRESS.

**physical cruelty.** As a ground for divorce, actual personal violence committed by one spouse against the other.

**cruelty to a child.** See *child abuse* under ABUSE.

**cruelty to children.** See *child abuse* under ABUSE.

**cry de pais** (krī də pay). [Law French] *Hist.* The cry of the country. • The hue and cry after an offender, as raised by the country (i.e., the people). — Also spelled *cri de pais*. See HUE AND CRY (1).

**cryer.** See CRIER.

**CSV.** See *cash surrender value* under VALUE.

**c.t.a.** See *administration cum testamento annexo* under ADMINISTRATION.

**cucking stool.** See CASTIGATORY.

**cui ante divortium** (ki [or kwī or kwee] an-tee də-vor-shee-əm). [Law Latin "to whom before divorce"] *Hist.* A writ of entry enabling a divorced woman to recover land that she had held in fee but that her husband had sold without her permission during the marriage. • The name of this writ derives from the words within it: *cui ipsa ante divortium inter eos celebratum, contradicere non potuit* ("whom she, before the divorce between them, could not

gainsay"). The writ was abolished in 1833. — Also termed *sur cui ante divortium*.

**cui in vita** (kɪ [or kwɪ or kweɪ] in vɪ-tə). [Law Latin "to whom in the life"] *Hist.* A writ of entry enabling a woman to recover land that she had held in fee but that her deceased husband had sold without her permission. • It is so called from the words of the writ: *cui ipsa in vita sua contradicere non potuit* ("whom she, in his lifetime, could not gainsay"). — Also termed *sur cui in vita*.

"Cui in vita, is a writ of entry, which a Widow hath against him, to whom her Husband alienated her Lands or Tenements in his life time, which must specifie, that *During his life*, she could not withstand it." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

**culpa** (kəl-pə). [Latin] *Roman & civil law.* Fault, neglect, or negligence; unintentional wrong. See NEGLIGENCE. Cf. CASUS; DOLUS.

**lata culpa** (lay-tə kəl-pə). [Latin "grave fault"] Gross negligence. • This phrase occurs most commonly in bailment law and in the law of the transport of persons. — Also termed *culpa lata*. See *gross negligence* under NEGLIGENCE.

**levis culpa** (lee-vis kəl-pə). [Latin "slight fault"] Ordinary negligence. — Also termed *culpa levis*. See *ordinary negligence* under NEGLIGENCE.

**levissima culpa** (lə-vis-ə-mə kəl-pə). [Latin "the slightest fault"] Slight negligence. — Also termed *culpa levissima*. See *slight negligence* under NEGLIGENCE.

**culpabilis** (kəl-pay-bə-lis), *adj.* [Latin] *Hist.* Guilty.

**culpability** (kəl-pə-bil-ə-tee), *n.* Blameworthiness; the quality of being culpable. • Except in cases of absolute liability, criminal culpability requires a showing that the person acted purposely, knowingly, recklessly, or negligently with respect to each material element of the offense.

"The concept of culpability is used as a reference point to assess the defendant's guilt and punishment even though, in the two contexts, culpability denotes different aspects of the defendant and the murder. At the guilt phase, culpability is most often used to refer to the state of mind that the defendant must possess. Also at the guilt phase, culpability may reflect a broader judgment about the defendant: when he is culpable for his conduct, it means that he is blameworthy and deserves punishment. At the punishment phase, the concept of culpability stands as the benchmark for when the death penalty is an appropriate punishment." Phyllis L. Crocker, *Con-*

*cepts of Culpability and Deathworthiness*, 66 *Fordham L. Rev.* 21, 35-36 (1997).

**culpable** (kəl-pə-bəl), *adj.* **1.** Guilty; blameworthy. **2.** Involving the breach of a duty.

**culpable accident.** See ACCIDENT.

**culpable intoxication.** See *voluntary intoxication* under INTOXICATION.

**culpable neglect.** See NEGLIGENCE.

**culpable negligence.** See NEGLIGENCE.

**culpa-in-contrahendo doctrine.** [Law Latin "fault in contracting"] The principle that parties must act in good faith during preliminary contract negotiations; esp., the principle that a breach by the offeror after the offeree has begun performance of a unilateral contract and is stopped by the offeror before completion will give rise to liability in tort.

**culpa lata.** See *lata culpa* under CULPA.

**culpa levis.** See *levis culpa* under CULPA.

**culpa levissima.** See *levissima culpa* under CULPA.

**culprit.** **1.** A person accused or charged with the commission of a crime. **2.** A person who is guilty of a crime. • *Culprit* may be a running together of *cul*, shortened from the Latin *culpabilis* ("guilty"), and *prit*, from Old French *prest* ("ready"), two words formerly used to orally plead at the outset of a criminal case.

"When the prisoner hath thus pleaded not guilty, *non culpabilis* . . . the clerk of the assise, or clerk of the arraigns, on behalf of the crown replies, that the prisoner is guilty, and that he is ready to prove him so. This is done by two monosyllables in the same spirit of abbreviation, '*cul. prit.*' which signifies first that the prisoner is guilty, (*cul. culpable*, or *culpabilis*) and then that the king is ready to prove him so; *prit, praesto sum*, or *paratus verificare* . . . How our courts came to express a matter of this importance in so odd and obscure a manner . . . can hardly be pronounced with certainty. It may perhaps, however, be accounted for by supposing that these were at first short notes, to help the memory of the clerk, and remind him what he was to reply; or else it was the short method of taking down in court, upon the minutes, the replication and averment; '*cul. prit*': which afterwards the ignorance of succeeding clerks adopted for the very words to be by them spoken. But however it may have arisen, the joining of issue . . . seems to be clearly the meaning of this obscure expression; which has puzzled our most ingenious etymologists, and is commonly understood as if the clerk of the ar-



raigns, immediately on plea pleaded, had fixed an opprobrious name on the prisoner, by asking him, 'culprit, how wilt thou be tried?' " 4 William Blackstone, *Commentaries on the Laws of England* 333-34 (1769).

**cultural agreement.** *Int'l law.* A bilateral or multilateral agreement between nations for the purpose of furthering cultural or intellectual relations.

**cultural property.** *Int'l law.* Movable and immovable property that has cultural significance, whether in the nature of antiquities and monuments of a classical age or important modern items of fine arts, decorative arts, and architecture. • Some writers prefer the term *cultural heritage*, which more broadly includes intangible cultural things such as folklore, crafts, and skills.

**cum dividend.** With dividend. • Stocks purchased cum dividend entitle the buyer to any pending declared dividends. Cf. EX DIVIDEND.

**cum grano salis** (kəm gray-noh say-lis or kuum grah-noh sah-lis). [Latin] With a grain of salt; with allowance for exaggeration; with reservations.

**cum onere** (kəm on-ə-ree). [Latin] With the burden. • An item acquired *cum onere* is taken subject to existing burdens and charges.

**cum pertinentiis** (kəm pər-tə-nen-shee-is). [Latin] With the appurtenances.

**cum rights.** With rights. • A *cum rights* purchaser of stock is entitled to rights that have been declared but not distributed, such as the right to purchase additional shares at a stated price. — Also termed *rights on*.

**cum testamento annexo** (kəm tes-tə-men-toh ə-nek-soh). See *administration cum testamento annexo* under ADMINISTRATION.

**cumulative dividend.** See DIVIDEND.

**cumulative-effects doctrine.** The rule that a transaction affecting interstate commerce in a trivial way may be taken together with other similar transactions to establish that the combined effect on interstate commerce is not trivial and can therefore be regulated under the Commerce Clause.

**cumulative evidence.** See EVIDENCE.

**cumulative legacies.** See LEGACY.

**cumulative offense.** See OFFENSE (1).

**cumulative preference share.** See *cumulative preferred stock* under STOCK.

**cumulative preferred stock.** See STOCK.

**cumulative punishment.** See PUNISHMENT.

**cumulative remedy.** See REMEDY.

**cumulative sentences.** See *consecutive sentences* under SENTENCE.

**cumulative stock.** See *cumulative preferred stock* under STOCK.

**cumulative testimony.** See TESTIMONY.

**cumulative-to-the-extent-earned dividend.** See DIVIDEND.

**cumulative traverse.** See TRAVERSE.

**cumulative voting.** See VOTING.

**cumulative zoning.** See ZONING.

**CUPOS.** *abbr.* Cohabiting unmarried person of the opposite sex. • Although this term is intended to be synonymous with POSSLQ (a person of the opposite sex sharing living quarters), it is more literally precise because it excludes married persons. See POSSLQ.

**cur.** *abbr.* CURIA (3).

**cura** (kyoor-ə), *n.* [Latin] *Roman law.* A guardianship that protects the interests of youths (from puberty to the age of 25) or incapacitated persons. Cf. TUTELA. Pl. *curae*.

"Cura was a form of guardianship indicated by the necessities of the case, with respect to persons who, though *sui juris*, were in need of protection. It was not regarded as a substitute for *patria potestas* as *tutela* was. . . . It extended to the person as well as the property, and in the latter respect is much the same as in the case of the *tutela* of infants." R.W. Leage, *Roman Private Law* 122 (C.H. Ziegler ed., 2d ed. 1930).

**cura furiosi** (kyoor-ə fyoor-ee-oh-sī). A guardianship for a person who was completely incapacitated from all acts.

"The *cura furiosi* empowered and bound the curator to manage the property of the lunatic on the lunatic's behalf." Rudolph Sohm, *The Institutes: A Textbook of the*

*History and System of Roman Private Law* 492 (James Crawford Ledlie trans., 3d ed. 1907).

**cura minorum** (kyoor-ə mi-nor-əm). A guardianship for a minor whose capacity of action was complete.

**cura prodigi** (kyoor-ə prah-də-jī). A guardianship for a person whose capacity of action was imperfect.

"The cura prodigi differed from the cura furiosi in that the prodigus, unlike the furiosus, was himself capable of performing any act by which he acquired a right or benefit. The appointment of a curator, however, precluded the prodigus from performing any act which operated to alienate property or to subject him to a liability; any such act, in order to be effectual, had to be concluded either by the curator on behalf of the prodigus or by the prodigus with the approval of the curator." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 492 (James Crawford Ledlie trans., 3d ed. 1907).

**cur. adv. vult. abbr.** CURIA ADVISARI VULT.

**curate** (kyuur-it). *Eccles. law.* **1.** A person in charge of a parish; a pastor. **2.** A member of the clergy who receives a stipend or salary to assist a vicar, rector, or pastor; an assistant to a parish priest.

**curatio** (kyə-ray-shee-oh). [fr. Latin *cura* "care"] *Roman law.* **1.** The power or duty of managing the property of a youth or incompetent person. **2.** The office of a curator. See CURA.

**curative admissibility.** See ADMISSIBILITY.

**curative-admissibility doctrine.** The rule that otherwise inadmissible evidence will be admitted to rebut inadmissible evidence placed before the fact-finder by the adverse party. ● The doctrine applies when a motion to strike cannot cure the prejudice created by the adverse party.

**curative instruction.** See JURY INSTRUCTION.

**curator** (kyuur-ə-tər or kyuur-ay-tər or kyuu-ray-tər), *n.* **1.** *Roman law.* A person who manages the affairs of another; a guardian. See CURA.

"One of the very oldest monuments of Roman legislation ... placed all free males who were of full years and rights under the temporary control of new class of guardians, called *Curatores*, whose sanction was required to validate their acts or contracts." Henry S. Maine, *Ancient Law* 134 (17th ed. 1901).

**curator ad litem** (kyuu-ray-tər ad li-təm). A curator appointed by a court to represent

the interests of a youth or incapacitated person during the proceedings before the court.

**curator bonorum** (kyuu-ray-tər bə-nor-əm). A person appointed by a court to administer the estate of an insolvent person.

**2.** A temporary guardian or conservator appointed by a court to care for the property or person of a minor or incapacitated person.

**interim curator.** *Hist.* A person appointed by a justice of the peace to hold a felon's property until a royal administrator could be assigned the task.

**3. Civil law.** A guardian who manages the estate of a minor, an absent person, or an incapacitated person. Pl. **curatores.**

**curator ad hoc** (kyuu-ray-tər ad hok). A court-appointed curator who manages a single matter or transaction; a special guardian.

**curatorship.** The office of a curator or guardian.

**curatrix** (kyuu-ray-triks). *Archaic.* A female curator.

**cure, vb.** **1.** To remove legal defects or correct legal errors. ● For example, curing title involves removing defects from title to unmarketable land so that title becomes marketable. **2.** The right of a seller under the UCC to correct a nonconforming delivery of goods, usu. within the contract period. — **curative, adj.**

**cure by verdict.** See AIDER BY VERDICT.

**curfew** (kər-fyoo). **1.** *Hist.* A law requiring that all fires be extinguished at a certain time in the evening, usu. announced by the ringing of a bell. **2.** A regulation that forbids people (or certain classes of them) from being outdoors between certain hours.

**curia** (kyoor-ee-ə). [Latin] **1.** *Roman law.* One of 30 divisions (three tribes of ten *curiae*) into which the Roman people were said to be divided by Romulus. **2.** *Roman law.* A legislative gathering, esp. of the Roman Senate; the building used for the assembly. Cf. *comitia curiata* under COMITIA. **3.** *Hist.* A judicial tribunal held in the sovereign's palace; a royal court. — **Abbr. cur.** **4.** *Hist.* A court. **5.** The papal court, including its functionaries and officials.

"The word *curia* in classical Latin is used in a number of ways. Apparently, it meant at first a subdivision of the people. It was also used, by a transfer which is not too clear, for the building in which the Roman Senate met. By an almost inevitable development it became the word

for the Senate itself and later the ordinary designation for the Council in municipalities of the later Empire. . . . How much of this was still recalled in Medieval times, we cannot tell, but . . . in the early Middle Ages, *curia* was a common word to describe both the groups of men who generally were found in attendance on pope, emperor, king or prince, and the groups which were summoned by him to give him counsel. The *curia* in the latter sense, however, was not really a casual group of persons, summoned spasmodically to advise the king or any other person. It had come to be in Feudal Europe the ordinary Latin word for the general meeting of the lord's vassals, which itself grew out of the Germanic *mot* or *thing*. . . . The *Curia* of the king was in theory a larger and more important example of the same kind of assemblage." Max Radin, *Handbook of Anglo-American Legal History* 46-48 (1936).

**curia admiralitatis** (kyoor-ee-ə ad-mə-ral-ə-tay-tis). [Law Latin] See HIGH COURT OF ADMIRALTY.

**curia advisari vult** (kyoor-ee-ə ad-və-sair-I vølt). [Latin] The court will be advised; the court will consider. • This phrase signaled a court's decision to delay judgment pending further consideration. In England, the phrase is still used in all Court of Appeal decisions when the judgment is reserved; that is, not delivered after the hearing. — Abbr. *cur. adv. vult*; *c.a.v.*

**curia baronis** (kyoor-ee-ə bə-roh-nis). [Law Latin] See COURT BARON.

**curia burgi** (kyoor-ee-ə bər-ji). See COURT OF HUSTINGS.

**curia cancellaria**. See CANCELLARIA.

**curia christianitatis** (kyoor-ee-ə kris-tee-an-ə-tay-tis). [Law Latin] See COURT CHRISTIAN.

**curia claudenda** (kyoor-ee-ə klaw-den-də). See DE CURIA CLAUDENDA.

**curia comitatus** (kyoor-ee-ə kom-ə-tay-təs). [Law Latin] See COUNTY COURT.

**curia domini** (kyoor-ee-ə dom-ə-ni). [Law Latin "lord's court"] *Hist.* A lord's house or hall, used as a meeting place for tenants during court sessions.

**curia magna** (kyoor-ee-ə mag-nə). [Law Latin "great court"] *Hist.* An ancient name for Parliament.

**curia palatii** (kyoor-ee-ə pə-lay-shee-i). [Law Latin "court of the palace"] PALACE COURT.

**curia regis** (kyoor-ee-ə ree-jis). [Latin "king's court"] *Hist. (usu. cap.)* The chief court in early Norman England, established by William the Conqueror. • The *curia regis* was a body of advisers who traveled with the king, advising him on political matters and acting as an appellate court in important or complicated cases. Over time the functions of the *curia regis* became exclusively judicial in nature. — Also termed *King's Court*; *aula regis*. — Abbr. *C.R.*

"[W]e are tempted to use terms which are more precise than those that were current in the twelfth century. In particular we are wont to speak of the *Curia Regis* without remembering that the definite article is not in our documents. Any court held in the king's name by the king's delegates is *Curia Regis*. Thus the institution of what in course of time will be a new tribunal, a Court of King's Bench or a Court of Common Pleas, may be found in some small rearrangement, some petty technical change, which at the moment passes unnoticed." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 153 (2d ed. 1898).

"The focal point of royal government was the *curia regis* (king's court), the body of advisers and courtiers who attended the king and supervised the administration of the realm. It was not a specific court of law, any more than the eyre was, but rather was the descendant of the Anglo-Saxon *witengemot* (meeting with the *witan*, or royal advisers) and the ancestor of the king's council which later subdivided into parliament and the privy council." J.H. Baker, *An Introduction to English Legal History* 20 (3d ed. 1990).

**curing title**. The act of removing defects from a land title to make it marketable.

**currency**. An item (such as a coin, government note, or banknote) that circulates as a medium of exchange. See LEGAL TENDER.

**blocked currency**. Currency or bank deposits that, by government restriction, may be used only within the country where they are located.

**fractional currency**. Paper money worth less than one dollar; esp., the currency issued by the federal government from 1863 to 1876.

**hard currency**. Currency backed by reserves, esp. gold and silver reserves.

**postal currency**. A fractional currency bearing a facsimile of postage stamps during the Civil War.

**soft currency**. Currency not backed by reserves and therefore subject to sharp fluctuations in value.

**United States currency**. Currency issued under the authority of the federal government.

**currency swap.** See SWAP.

**current account.** See *open account* under ACCOUNT.

**current asset.** See ASSET.

**current-cost accounting.** A method of measuring assets in terms of replacement cost. • This approach accounts for inflation by recognizing price changes in a company's assets and restating the assets in terms of their current cost.

**current expense.** See *operating expense* under EXPENSE.

**current funds.** See FUNDS (2).

**current income.** See INCOME.

**current liabilities.** See *short-term debt* under DEBT.

**current liability.** See LIABILITY.

**current market value.** The price at which an asset can be sold within the present accounting period.

**current money.** See MONEY.

**current obligation.** See OBLIGATION.

**current revenue.** See *current income* under INCOME.

**current wages.** See WAGE.

**current yield.** See YIELD.

**currit quattuor pedibus** (kər-it kwah-too-ər ped-ə-bəs). [Law Latin] It runs on four feet; it runs on all fours. See ON ALL FOURS.

**cursor** (kər-sə-tər). *Hist.* A chancery clerk responsible for making out original writs. • *Cursor* derives from the writs *de cursu* that the clerks wrote out.

**cursor baron.** *Hist.* An officer of the Court of Exchequer with administrative, but not judicial, duties. • Over time, as the Barons of the Exchequer took on more judicial rather than fiscal duties, the need for someone with financial experience became apparent. So in 1610 a cursor baron was appointed to sit alongside the judges. The office was abolished in 1856.

**cursor** (kər-sər). *Eccles. law.* An inferior officer of the papal court.

**curtesy** (kər-tə-see). At common law, a husband's right, upon his wife's death, to a life estate in the land that his wife owned during their marriage, assuming that a child was born alive to the couple. • This right has been largely abolished. Traditionally, the full phrase was *estate by the curtesy of England*. Cf. DOWER.

**curtesy consummate** (kər-tə-see kən-səm-it). The interest the husband has in his wife's estate after her death.

**curtesy initiate** (kər-tə-see i-nish-ee-it). The interest the husband has in his wife's estate after the birth of issue capable of inheriting, and before the death of the wife.

**curtilage** (kər-tə-lij). The land or yard adjoining a house, usu. within an enclosure. • Under the Fourth Amendment, the curtilage is an area usu. protected from warrantless searches. See OPEN-FIELDS DOCTRINE. Cf. MESSAGE.

**curtiles terrae** (kər-ti-leez ter-ee). [Law Latin] COURT LANDS.

**curtillium** (kər-til-ee-əm). [Law Latin] CURTILAGE.

**cushion.** See EQUITY (7).

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

**custode admittendo** (kə-stoh-dee ad-mi-ten-doh). See DE CUSTODE ADMITTENDO.

**custode amovendo** (kə-stoh-dee ay-moh-ven-doh). See DE CUSTODE AMOVENDO.

**custodes libertatis angliae auctoritate parliamenti** (kə-stoh-deez lib-ər-tay-tis ang-lee-ee awk-tor-ə-tay-tee parl-[y]ə-men-ti). [Latin] *Hist.* Guardians of the liberty of England by the authority of Parliament. • The style of all writs and judicial process that issued during the period between the execution of Charles I (January 1649) and the proclamation of Oliver Cromwell as Lord Protector (December 1653).

**custodes pacis** (kə-stoh-deez pay-sis). [Latin] *Hist.* Guardians (or *conservators*) of the peace. See PEACE OFFICER.

**custodial account.** See ACCOUNT.

**custodia legis.** See IN CUSTODIA LEGIS.

**custodial interrogation.** See INTERROGATION.

**custodial trust.** See TRUST.

**custodian, n.** **1.** A person or institution that has charge or custody of property, papers, or other valuables; GUARDIAN. **2. Bankruptcy.** A prepetition agent who has taken charge of any asset belonging to the debtor. 11 USCA § 101(11). — **custodianship, n.**

**custodian bank.** See BANK.

**custodia terrae et haeredis.** See DE CUSTODIA TERRAE ET HAEREDIS.

**custody, n.** **1.** The care and control of a thing or person for inspection, preservation, or security.

**constructive custody.** Custody of a person (such as a parolee or probationer) whose freedom is controlled by legal authority but who is not under direct physical control.

**penal custody.** Custody intended to punish a criminal offender.

**physical custody.** Custody of a person (such as an arrestee) whose freedom is directly controlled and limited.

**preventive custody.** Custody intended to prevent further dangerous or criminal behavior.

**protective custody.** The government's confinement of a person for that person's own security or well-being, such as a witness whose safety is in jeopardy or an incompetent person who may harm others.

**2.** The care, control, and maintenance of a child awarded by a court to a relative, usu. one of the parents, in a divorce or separation proceeding. — Also termed *managing conservatorship*; *legal custody*.

**divided custody.** An arrangement by which each parent has custody and full control of and responsibility for the child part of the time, with reciprocal visitation rights.

**joint custody.** An arrangement by which both parents share the responsibility for and authority over the child at all times. — Also termed *shared custody*.

"The statutes, and the cases as well, differ over the definition of joint custody. It is most often defined as meaning only that both parents will share in the decisions concerning the child's care, education, religion, medical treatment and general welfare." Homer H. Clark, Jr., *The Law of Domestic Relations in the United States* § 19.5, at 815 (2d ed. 1988).

**physical custody.** The right to have the child live with the person awarded custody by the court.

**shared custody.** See *joint custody*.

**sole custody.** An arrangement by which one parent has full control and responsibility to the exclusion of the other.

**3.** The detention of a person by virtue of lawful process or authority. — Also termed *legal custody*. — **custodial, adj.**

**custody hearing.** A judicial examination of the facts relating to parental custody in a divorce or separation proceeding.

**custody of the law.** The condition of property or a person being under the control of legal authority (as a court or law officer). See IN CUSTODIA LEGIS.

**custom, n.** **1.** A practice that by its common adoption and long, unvarying habit has come to have the force of law. See USAGE.

**conventional custom.** A custom that operates only indirectly through the medium of agreements, so that it is accepted and adopted in individual instances as conventional law between the parties to those agreements. — Also termed *usage*. See USAGE.

**general custom. 1.** A custom that prevails throughout a country and constitutes one of the sources of the law of the land. **2.** A custom that businesses recognize and follow. See *trade usage* under USAGE.

**legal custom.** A custom that operates as a binding rule of law, independently of any agreement on the part of those subject to it. — Often shortened to *custom*.

**local custom.** A custom that prevails in some defined locality only, such as a city or county, and constitutes a source of law for that place only. — Also termed *particular custom*; *special custom*.

**2. (pl.)** Duties imposed on imports or exports.

**3. (pl.)** The agency or procedure for collecting such duties. — **customary** (for sense 1), *adj.*

**custom and usage.** General rules and practices that have become generally adopted through unvarying habit and common use. Cf. CUSTOM (1); USAGE.

**customary, n.** A record of all the established legal and quasi-legal practices within a community.

**customary court baron.** See COURT BARON.

**customary dispatch.** See DISPATCH.

**customary estate.** See COPYHOLD.

**customary freehold.** See COPYHOLD.

**customary international law.** See INTERNATIONAL LAW.

**customary interpretation.** See INTERPRETATION.

**customary law.** Law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws. — Also termed *consuetudinary law*.

“In contrast with the statute, *customary law* may be said to exemplify *implicit law*. Let us, therefore, describe customary law in terms that will reveal to the maximum this quality of implicitness. A custom is not declared or enacted, but grows or develops through time. The date when it first came into full effect can usually be assigned only within broad limits. Though we may be able to describe in general the class of persons among whom the custom has come to prevail as a standard of conduct, it has no definite author; there is no person or defined human agency we can praise or blame for its being good or bad. There is no authoritative verbal declaration of the terms of the custom; it expresses itself not in a succession of words, but in a course of conduct.” Lon L. Fuller, *Anatomy of the Law* 71 (1968).

**customary seisin.** See *quasi seisin* under SEISIN.

**customary tenant.** See TENANT.

**customer's goods.** See GOODS.

**customer's man.** See *registered representative* under REPRESENTATIVE.

**customer's person.** See *registered representative* under REPRESENTATIVE.

**customhouse.** A building or office, esp. at a port, where duties or customs are collected and where ships are cleared for entering or leaving the port. — Also termed *customhouse*.

**customhouse broker.** See BROKER.

**custom of York.** See YORK, CUSTOM OF.

**Customs and Patent Appeals, Court of.** See COURT OF CUSTOMS AND PATENT APPEALS.

**customs broker.** See *customhouse broker* under BROKER.

**Customs Cooperation Council.** A specialized intergovernmental organization for the study of customs questions. • Established in 1952, the Council has its headquarters in Brussels. — Abbr. CCC.

**Customs Court, U.S.** See UNITED STATES CUSTOMS COURT.

**customs duty.** See DUTY (4).

**customs frontier.** *Int'l law.* The territorial boundary at which a country imposes customs duties.

**customs union.** *Int'l law.* A combination of two or more countries within a single customs area with a common external tariff, though each participating country remains politically independent. • The effect is that tariffs originally levied on the traffic of goods between those countries are abolished or else successively dismantled according to an agreed-upon scheme, and that common tariffs are imposed on imports from nonmembers.

**custos** (kæs-tahs *also* kæs-təs). [Latin] *Hist.* A keeper, protector, or guardian.

**Custos Brevium** (kæs-tahs bree-vee-əm). [Law Latin “keeper of the writs”] *Hist.* A clerk who receives and files the writs returnable to the Courts of King's Bench and Common Pleas. • The office was abolished in 1837. — Also termed *Keeper of the Briefs*.

**custos maris** (kæs-tahs mar-is). [Law Latin “warden of the sea”] *Hist.* A high-ranking naval officer; an admiral. — Also termed *seaward*; *seward*.

**custos morum** (kæs-tahs mor-əm) [Law Latin] Custodian of morals <H.L.A. Hart believed that courts should not be seen as the *custos morum*>. • This name was sometimes used in reference to the Court of King's Bench.

“[H]e [Viscount Simonds] approved the assertion of Lord Mansfield two centuries before that the Court of King's Bench was the *custos morum* of the people and had the superintendency of offences *contra bonos mores*.” Patrick Devlin, *The Enforcement of Morals* 88 (1968).

**custos placitorum coronae** (kəs-tahs plas-ə-tor-əm kə-roh-nee). [Law Latin] See CORONATOR.

**Custos Rotulorum** (kəs-tahs roch-yə-lor-əm or rot-yə-lor-əm). [Law Latin “keeper of the pleas of the Crown”] *Hist.* The principal justice of the peace in a county, responsible for the rolls of the county sessions of the peace. — Also termed *Keeper of the Rolls*.

**Custos Sigilli.** See KEEPER OF THE GREAT SEAL.

**custos spiritualium** (kəs-tahs spir-i-choo-ay-lee-əm or -tyoo-ay-lee-əm). [Law Latin “keeper of the spiritualities”] *Eccles. law.* A member of the clergy responsible for a diocese’s spiritual jurisdiction during the vacancy of the see.

**custos terrae** (kəs-tahs ter-ee). [Law Latin “keeper of the land”] *Hist.* Guardian, warden, or keeper of the land.

**custuma** (kəs-chə-mə or kəs-tyə-mə). [French *coustum* “toll” or “tribute”] *Hist.* A duty or impost.

**cutpurse.** *Hist.* A person who steals by cutting purses; a pickpocket.

**CVA.** *abbr.* UNITED STATES COURT OF VETERANS APPEALS.

**CVSG.** *abbr.* A call for the view of the Solicitor General — an invitation from the U.S. Supreme Court for the Solicitor General’s views on a pending petition for writ of certiorari in a case in which, though the government is not a party, governmental interests are involved.

**Cwth.** *abbr.* COMMONWEALTH (4).

**cyberlaw** (si-bər-law). The field of law dealing with computers and the Internet, including such issues as intellectual-property rights, freedom of expression, and free access to information.

**cybersquatting.** The act of reserving a domain name on the Internet, esp. a name that would be associated with a company’s trademark, and then seeking to profit by selling or licensing the name to the company that has an interest in being identified with it.

**cyberstalking.** The act of threatening, harassing, or annoying someone through multiple e-mail messages, as through the Internet, esp.

with the intent of placing the recipient in fear that an illegal act or an injury will be inflicted on the recipient or a member of the recipient’s family or household.

**cybertheft.** The act of using an online computer service, such as one on the Internet, to steal someone else’s property or to interfere with someone else’s use and enjoyment of property. ● Examples of cybertheft are hacking into a bank’s computer records to wrongfully credit one account and debit another, and interfering with a copyright by wrongfully sending protected material over the Internet.

**cyclical** (si-klə-kəl or sik-lə-kəl), *adj.* (Of a stock or an industry) characterized by large price swings that occur because of government policy, economic conditions, and seasonal changes.

**cy pres** (see **pray** also **si**). [Law French “as near as”] The equitable doctrine under which a court reforms a written instrument with a gift to charity as closely to the donor’s intention as possible, so that the gift does not fail. ● Courts use *cy pres* esp. in construing charitable gifts when the donor’s original charitable purpose cannot be fulfilled. Cf. DOCTRINE OF APPROXIMATION.

“The *cy pres* doctrine has been much discussed, if not a little severely criticised, and in many cases misunderstood. . . . The *cy pres* doctrine is one under which Courts of Chancery act, when a gift for charitable uses cannot be applied according to the exact intention of the donor. In such cases the courts will apply the gift, as nearly as possible (*cy pres*) in conformity with the presumed general intention of the donor; for it is an established maxim in the interpretation of wills, that a court is bound to carry the will into effect if it can see a general intention consistent with the rules of law, even if the particular mode or manner pointed out by the testator cannot be followed.” George T. Bispham, *The Principles of Equity* § 104, at 113–14 (11th ed. 1931).

“Although the reason for the adoption of the *cy pres* rule by the English chancery court in the middle ages is not known, various hypotheses as to the motives of the court have been suggested. The most plausible theory is that the chancellors, being ecclesiastics and trained in Roman law, resurrected this civil law doctrine in order to save gifts made for religious purposes and thereby subject the property to church control. Justification for the use of the doctrine was laid on the shoulders of the donor, the idea being that since the object of the testator in donating the money to charity was to obtain an advantageous position in the kingdom of heaven, he ought not to be frustrated in this desire because of an unexpected or unforeseen failure.” Edith L. Fisch, *The Cy Pres Doctrine in the United States* 4 (1950).

**cyrographarius** (si-roh-grə-fair-ee-əs). [Law Latin] *Hist.* See CHIROGRAPH (4).

**cyrographum** (si-rog-rə-fəm). [Law Latin] See CHIROGRAPH (2).