

# D

**D.** *abbr.* **1.** DISTRICT. **2.** DEFENDANT. **3.** DIGEST.

**D.A.** *abbr.* **1.** DISTRICT ATTORNEY. **2.** See *deposit account* under ACCOUNT.

**dactylography** (dak-tə-log-rə-fee), *n.* The scientific study of fingerprints as a method of identification. — **dactylographic** (dak-til-ə-graf-ik), *adj.*

**dailia.** See DALUS.

**dailus.** See DALUS.

**daily balance.** The final daily accounting for a day on which interest is to be accrued or paid.

**average daily balance.** The average amount of money in an account (such as a bank account or credit-card account) during a given period. • This amount serves as the basis for computing interest or a finance charge for the period.

**daily newspaper.** See NEWSPAPER.

**daisy chain.** A series of purchases and sales of the same stock by a small group of securities dealers attempting to drive up the stock's price to attract unsuspecting buyers' interest. • Once the buyers have invested (i.e., are caught up in the chain), the traders sell for a quick profit, leaving the buyers with overpriced stock. This practice is illegal.

**dalus** (day-ləs), *n.* [Law Latin "a dale"] *Hist.* **1.** A dale; a ditch. **2.** A measure of land being a thin strip of pasture between two plowed furrows. — Also termed *dailus*; *dailia*.

**damage**, *adj.* Of or relating to monetary compensation for loss or injury to a person or property <a damage claim> <a damage award>. — Also termed *damages* <a damages claim>. Cf. DAMAGES.

**damage**, *n.* Loss or injury to person or property <actionable damage resulting from negligence>.

**damage-cleer** (dam-ij kleer), *n.* [fr. Latin *damna clericorum* "clerk's compensation"] *Hist.* A set fee payable by a plaintiff to the Court of the Common Pleas, King's Bench, or Exchequer before execution on an award of damages. • The fee — later abolished by statute — was originally a gratuity to the court clerks for preparing special pleadings. — Also spelled *damage cleere*. — Also termed *damna clericorum*.

"Damage cleere, *damna clericorum*, was assessed by the tenth part in the common pleas, and by the twentieth part in the king's bench and exchequer, of all damages, exceeding five marks, recovered either by verdict, confession, or judgment of the court, in all actions upon the case, covenant, trespass, battery, false imprisonment, dower, and all others, wherein the damages were uncertain, which the plaintiff was obliged to pay to the prothonotary, or chief officer of that court, wherein they were recovered before he could have execution for them. But this is taken away by 17 Car. 2, c. 6." *Termes de la Ley* 141 (1st Am. ed. 1812).

**damage feasant** (dam-ij fez-ənt or fee-zənt), *n.* [fr. French *faisant dommage*] *Hist.* Doing damage. • This phrase usu. refers to injury to a person's land caused by another person's animals trespassing on the property and eating the crops or treading the grass. By law, the owner of the damaged property could distrain and impound the animals until compensated by the animals' owner. But the impounder had to feed the animals and could not sell or harm them. The term was introduced during the reign of Edward III. — Also spelled *damage faisant*. — Also termed *damnum facientes*.

**damage rule.** See LEGAL-INJURY RULE.

**damages**, *n. pl.* Money claimed by, or ordered to be paid to, a person as compensation for loss or injury <the plaintiff seeks \$8,000 in damages from the defendant>. — **damage**, *adj.*

"Damages are the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong." Frank Gahan, *The Law of Damages* 1 (1936).

**accumulative damages.** Statutory damages allowed in addition to amounts available under the common law. — Also termed *enhanced damages*.

**actual damages.** An amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses. — Also termed *compensatory damages*.

**added damages.** See *punitive damages*.

**additional damages.** Damages usu. provided by statute in addition to direct damages. • Additional damages can include expenses resulting from the injury, consequential damages, or punitive damages.

**benefit-of-the-bargain damages.** Damages that a breaching party to a contract must pay to the aggrieved party, equal to the amounts that the aggrieved party would have received, including profits, if the contract had been fully performed.

**compensatory damages** (kəm-pen-sə-tor-ee). 1. Damages sufficient in amount to indemnify the injured person for the loss suffered. — Often shortened to *compensatories*. 2. See *actual damages*.

**consequential damages.** Losses that do not flow directly and immediately from an injurious act, but that result indirectly from the act.

**continuing damages.** 1. Damages arising from the same injury. 2. Damages arising from the repetition of similar acts within a definite period.

**damages for lost expectations.** See *expectation damages*.

**damages ultra** (əl-trə). Additional damages claimed by a plaintiff who is not satisfied with the amounts the defendant paid into court.

**direct damages.** See *general damages*.

**discretionary damages.** Damages (such as mental anguish or pain and suffering) that are not definitive but are measurable by the enlightened conscience of an impartial juror.

**double damages.** Damages that, by statute, are twice the amount that the fact-finder determines is owed, or twice the amount of actual damages awarded. • In some cases, double damages are awarded in addition to actual damages, so the effect is the same as treble damages.

**enhanced damages.** 1. See *accumulative damages*. 2. *Patents*. Damages for patent infringement in an amount up to three times that of compensatory damages, at the discretion of the court, based on the egregiousness of the defendant's conduct, including the willfulness of the infringement.

**estimated damages.** See *liquidated damages*.

**excess damages.** Damages awarded to an insured — beyond the coverage provided by an insurance policy — because the insurer did not settle the claim within policy limits. • If the insurer acted in bad faith in not settling, the insured may have a claim to recover the excess damages from the insurer. — Also termed *excess-liability damages*.

**excessive damages.** A jury award that grossly exceeds the amount warranted by law based on the facts and circumstances of the case; unreasonable or outrageous damages, which are subject to reduction by remittitur. See REMITTITUR.

**exemplary damages.** See *punitive damages*.

**expectation damages.** Compensation awarded for the loss of what a person reasonably anticipated from a transaction that was not completed. — Also termed *expectancy damages*; *loss-of-bargain damages*; *lost-expectation damages*; *damages for lost expectations*.

“[I]f a person contracts to buy a new car, and then changes his mind overnight and cancels the contract, the seller is in principle entitled to recover his anticipated profit on the transaction even though he has not, at the time of the cancellation, done anything whatever in pursuance of the contract. A person who books a room in a hotel would in theory be liable to pay for the hotel's loss of profit even though he cancels in sufficient time for the hotel to be able to relet the room, so long only as the room in fact remains unlet because there are no takers. Damages of this kind are often called damages for lost expectations, or ‘expectation damages’, or ‘loss of bargain damages.’” P.S. Atiyah, *An Introduction to the Law of Contract* 310 (3d ed. 1981).

**fee damages.** Damages awarded to the owner of abutting property for injury caused by the construction and operation of an elevated railroad. • The term is used because the damage is to the property owner's easements of light, air, and access, which are parts of the fee.

**foreseeable damages.** Damages that a breaching party knew or should have been aware of when the contract was made.

**future damages.** Money awarded to an injured party for an injury's residual or projected effects that reduce the person's ability to function. • Examples are expected pain and suffering, loss or impairment of earning capacity, and projected medical expenses.

**general damages.** Damages that the law presumes follow from the type of wrong complained of. • General damages do not need to be specifically claimed or proved to have been

sustained. — Also termed *direct damages*; *necessary damages*.

**hedonic damages** (hi-don-ik). Damages that attempt to compensate the loss of the pleasure of being alive. • Such damages are not allowed in most jurisdictions.

**imaginary damages.** See *punitive damages*.

**inadequate damages.** Damages insufficient to fully and fairly compensate the parties; damages bearing no reasonable relation to the plaintiff's injuries, indicating prejudice, mistake, or other fact to support setting aside a jury's verdict.

**incidental damages.** 1. Losses reasonably associated with or related to actual damages. 2. A seller's commercially reasonable expenses incurred in stopping delivery or in transporting and caring for goods after a buyer's breach. UCC § 2-710. 3. A buyer's expenses reasonably incurred in caring for goods after a seller's breach. UCC § 2-715(1).

"What are incidental damages? The Code does not define incidental damages; rather 2-715(1) lists many expenses that are included as incidental damages. However, Comment 1 to 2-715 stresses that those listed 'are not intended to be exhaustive' but are merely illustrative of the typical kinds of incidental expenses that can be recovered under 2-715: (1) those associated with rightful rejection (for instance, inspection and storage); (2) those associated with a proper revocation of acceptance; and (3) those involved in effecting cover." 1 James J. White & Robert S. Summers, *Uniform Commercial Code* § 10-3, at 561-62 (4th ed. 1995).

**irreparable damages** (i-rep-ə-rə-bəl). Damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement, e.g., damages for a repeated public nuisance.

**land damages.** See *just compensation* under COMPENSATION.

**lawful damages.** Those damages fixed by law and ascertained in a court of law.

**liquidated damages.** An amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches. • If the parties to a contract have agreed on liquidated damages, the sum fixed is the measure of damages for a breach, whether it exceeds or falls short of the actual damages. — Also termed *stipulated damages*; *estimated damages*. See LIQUIDATED-DAMAGES CLAUSE. Cf. *unliquidated damages*; PENALTY CLAUSE.

"Where the terms of a contract specify a sum payable for non-performance, it is a question of construction whether this sum is to be treated as a *penalty* or as *liquidated damages*. The difference in effect is this: The amount recoverable in case of a penalty is not the sum named,

but the damage actually incurred. The amount recoverable as liquidated damages is the sum named as such. In construing these terms a judge will not accept the phraseology of the parties; they may call the sum specified 'liquidated damages,' but if the judge finds it to be a penalty, he will treat it as such." William R. Anson, *Principles of the Law of Contract* 470 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"The distinction between a penalty and genuine liquidated damages, as they are called, is not always easy to apply, but the Courts have made the task simpler by laying down certain guiding principles. In the first place, if the sum payable is so large as to be far in excess of the probable damage on breach, it is almost certainly a penalty. Secondly, if the same sum is expressed to be payable on any one of a number of different breaches of varying importance, it is again probably a penalty, because it is extremely unlikely that the same damage would be caused by these varying breaches. Thirdly, where a sum is expressed to be payable on a certain date, and a further sum in the event of default being made, this latter sum is prima facie a penalty, because mere delay in payment is unlikely to cause damage. Finally, it is to be noted that the mere use of the words 'liquidated damages' is not decisive, for it is the task of the Court and not of the parties to decide the true nature of the sum payable." P.S. Atiyah, *An Introduction to the Law of Contract* 316-17 (3d ed. 1981).

**loss-of-bargain damages.** See *expectation damages*.

**lost-expectation damages.** See *expectation damages*.

**moratory damages** (mor-ə-tor-ee or mahr-). *Civil law.* Damages for a delay in performing an obligation. • There must be a default before these damages can be recovered, while compensatory damages are recoverable for both a failure of performance and for a defective performance.

**multiple damages.** Statutory damages (such as double or treble damages) that are a multiple of the amount that the fact-finder determines to be owed. — Also termed *multiplied damages*. See *double damages*; *treble damages*.

"[T]he statutory multiple damages differ from the common law punitive damages in that punitive damages involved no fixed sum or limit. The fixed limit of multiple damages not only reduces their threat to the defendant and the potential for abuse, it also reduces the possibility of a measured deterrence. Likewise, because the enhancement of the award is fixed by the statutory multiple, there is no occasion for introducing evidence of the defendant's wealth as there is in the case of common law punitive damages . . . . Perhaps a more important distinction is that multiple damages statutes may be enacted for entirely non-punitive purposes. Specifically, some double or treble damages statutes, and also specified 'civil penalties,' are intended to provide a kind of liquidated damages for actual losses that cannot be proved or that are otherwise unrecognized by the law." Dan B. Dobbs, *Law of Remedies* § 3.12, at 359 (2d ed. 1993).

**necessary damages.** See *general damages*.

**nominal damages.** A trifling sum awarded when a legal injury is suffered but when there is no substantial loss or injury to be compensated. Cf. *substantial damages*.

“Nominal damages are damages awarded for the infraction of a legal right, where the extent of the loss is not shown, or where the right is one not dependent upon loss or damage, as in the case of rights of bodily immunity or rights to have one’s material property undisturbed by direct invasion. The award of nominal damages is made as a judicial declaration that the plaintiff’s right has been violated.” Charles T. McCormick, *Handbook on the Law of Damages* § 20, at 85 (1935).

**particular damages.** See *special damages*.

**pecuniary damages** (pə-kyoo-nee-er-ee). Damages that can be estimated and monetarily compensated. • Although this phrase appears in many old cases, it is now widely considered a redundancy — since damages are always pecuniary.

**presumptive damages.** See *punitive damages*.

**prospective damages.** Future damages that, based on the facts pleaded and proved by the plaintiff, can reasonably be expected to occur.

**proximate damages.** Damages directly, immediately, and naturally flowing from the act complained of. Cf. *speculative damages* (1).

**punitive damages.** Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit. • Punitive damages, which are intended to punish and thereby deter blameworthy conduct, are generally not recoverable for breach of contract. The Supreme Court has held that three guidelines help determine whether a punitive-damages award violates constitutional due process: (1) the reprehensibility of the conduct being punished; (2) the reasonableness of the relationship between the harm and the award; and (3) the difference between the award and the civil penalties authorized in comparable cases. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996). — Also termed *exemplary damages*; *vindictive damages*; *punitory damages*; *presumptive damages*; *added damages*; *aggravated damages*; *speculative damages*; *imaginary damages*; *smart money*; *punies*.

**reliance damages.** Damages awarded for losses incurred by the plaintiff in reliance on the contract.

“Reliance damages are . . . ‘real’ losses in a much more tangible way than losses of expectations. The distinction is nicely illustrated by *McRae v. Commonwealth Disposals Commission*. . . . In this case, . . . the defendants sold a shipwrecked tanker which they advertised as lying on a

certain reef in the Pacific, and the plaintiffs spent a substantial sum of money equipping a salvage expedition to go in search of the ship. The ship was wholly nonexistent, and the plaintiffs were held entitled to damages. Here it was clear that the plaintiffs had incurred substantial expenses — real losses — in reliance on the contract, and the Australian High Court awarded these reliance damages to the plaintiffs.” P.S. Atiyah, *An Introduction to the Law of Contract* 311 (3d ed. 1981).

**reliance-loss damages.** A reimbursement for losses or expenses that the plaintiff suffers in reliance on the defendant’s contractual promise that has been breached.

**remote damages.** See *speculative damages* (1).

**rescissory damages** (ri-sis-ə-ree or ri-siz-). Damages contemplated to restore a plaintiff to the position occupied before the defendant’s wrongful acts. • An award of rescissory damages may mean returning property to the original owner or, if that is not possible, paying the owner the monetary value of the property.

**restitution damages.** Damages awarded to a plaintiff when the defendant has been unjustly enriched at the plaintiff’s expense.

“Suppose A pays money to B in pursuance of a contract which turns out to be void, or perhaps is subsequently frustrated: clearly A cannot sue B for breach of contract. B’s promise to perform his side of the bargain is vitiated by the mistake or the frustrating event, so A’s lost expectations are losses which he must just put up with. But his claim to repayment of the money is evidently much stronger: for this money is a tangible loss to A and a tangible enrichment to B. So in this sort of case the money will often be recoverable, though English lawyers think of this as a quasi-contractual claim to recover money as on a total failure of consideration, and not a contractual claim to restitution damages. There is, however, no strong reason for refusing to call this a contractual action, any more than there is a reason for calling an action for damages quasi-contractual.” P.S. Atiyah, *An Introduction to the Law of Contract* 312 (3d ed. 1981).

**severance damages.** In a condemnation case, damages awarded to a property owner for diminution in the fair market value of land as a result of severance from the land of the property actually condemned; compensation awarded to a landowner for the loss in value of the tract that remains after a partial taking of the land.

**special damages.** Damages that are alleged to have been sustained in the circumstances of a particular wrong. • To be awardable, special damages must be specifically claimed and proved. — Also termed *particular damages*.

**speculative damages.** 1. Damages that are so uncertain that they will not be awarded. —

Also termed *remote damages*. **2.** See *punitive damages*.

**statutory damages.** Damages provided by statute (such as a wrongful death and survival statute), as distinguished from damages provided under the common law.

**stipulated damages.** See *liquidated damages*.

**substantial damages.** A considerable sum awarded to compensate for a significant loss or injury. Cf. *nominal damages*.

"Substantial damages . . . are the result of an effort at measured compensation, and are to be contrasted with nominal damages which are in no sense compensatory, but merely symbolic." Charles T. McCormick, *Handbook on the Law of Damages* § 20, at 85 (1935).

**temporary damages.** Damages allowed for an intermittent or occasional wrong, such as a real-property injury whose cause can be removed or abated.

**treble damages.** Damages that, by statute, are three times the amount that the factfinder determines is owed. — Also termed *triple damages*.

**uncertain damages.** Damages that are not clearly the result of a wrong. • The rule against allowing recovery of uncertain damages refers to these damages, not damages that are uncertain only in amount.

**unliquidated damages.** Damages that have been established by a verdict or award but cannot be determined by a fixed formula, so they are left to the discretion of the judge or jury. Cf. *liquidated damages*.

**vindictive damages.** See *punitive damages*.

**damages, mitigation of.** See MITIGATION-OF-DAMAGES DOCTRINE.

**damages for detention.** See *noncontract demurrage* under DEMURRAGE.

**damages for lost expectations.** See *expectation damages* under DAMAGES.

**damages ultra.** See DAMAGES.

**dame.** **1.** The legal title of the wife of a knight or baronet. **2.** The female equivalent of a knight. **3.** A form of address to a woman of high rank. **4.** A matron. **5.** *Slang.* A woman. — Also termed (in senses 1 & 2) *domina*.

**damna** (dam-nə), *n.* [fr. Latin *damnum* "damage; loss"] *Hist.* **1.** Damages, exclusive of costs. **2.** Damages, inclusive of costs. **3.** The abbrevia-

tion of *damna clericorum*, the Latin equivalent to *damage-cleer*, being a portion of damages constituting the clerk's fee. See DAMAGE-CLEER.

**damna clericorum** (dam-nə kler-ə-kor-əm), *n.* See DAMAGE-CLEER.

**damnatus** (dam-nay-təs). [fr. Latin *damnare* "to condemn"] **1.** *Roman law.* A person condemned, esp. in a capital case. **2.** *Hist.* Something prohibited by law; something that is unlawful, as in *damnatus coitus* ("unlawful sexual connection").

**damn-fool doctrine.** *Insurance.* The principle that an insurer may deny (esp. liability) coverage when an insured engages in behavior that is so ill-conceived that the insurer should not be compelled to bear the loss resulting from the insured's actions. — Also termed *damned-fool doctrine*.

"The 'damn foolish acts' concept is not a perfect predictor of judicial decisions, both because of its own imprecision and because other considerations, such as a desire to assure an innocent third party a source of indemnification, may influence a court. However, especially when . . . the insured who acted foolishly has sufficient resources to provide compensation to the injured persons, analysis of a coverage issue on the basis of a 'damn fool' doctrine is frequently a very effective approach both to predicting and to understanding outcomes." Robert E. Keeton & Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* § 5.4, at 541 (1988).

**damnification**, *n.* Something that causes damage <damnification in the form of a penalty>.

**damnify**, *vb.* To cause loss or damage to; to injure <the surety was damnified by the judgment obtained against it>.

**damni injuriae actio** (dam-ni in-joor-ee-ee ak-shee-oh), *n.* [Latin "an action for wrongful damage"] *Roman law.* A person's right to sue someone who wrongfully injured or killed that person's slave or beast or wrongfully inflicted loss in some other way.

**damnosa hereditas** (dam-noh-sə hə-red-i-tas), *n.* [Latin "a losing inheritance"] **1.** *Roman & civil law.* An inheritance more onerous than beneficial, esp. because it is burdened with debt. **2.** *English law.* Property of a bankrupt that creditors will disclaim under the bankruptcy laws because income from the property will exceed revenues. **3.** Generally, anything that is acquired but turns out to be disadvantageous. — Also spelled *damnosa haereditas*.

**damnum** (dam-nəm), *n.* [Latin] A loss; damage suffered. Pl. **damna**. See AD DAMNUM.

**damnum absque injuria** (dam-nəm ab-skwee in-joor-ee-ə). See DAMNUM SINE INJURIA.

**damnum emergens** (dam-nəm i-mər-jenz), *n.* [Latin “damage arising”] *Roman law*. An actual realized loss (such as a decline in the value of property) as opposed to an expected future loss (such as loss of profit).

“These kinds of damage are distinguished by the commentators as *damnum emergens* and *lucrum cessans*, which may be rendered ‘positive damage’ and ‘loss of profit.’ The first may be immediate (*e.g.*, my slave is killed or has lost an eye), or consequential (I have lost his services — I have incurred medical expenses — he was one of a troupe of singers and the whole troupe is less valuable in consequence of his death or injury). Where there is no pecuniary loss there is no action. An action does not lie . . . for striking a slave if his value to me has not been depreciated by the blow nor for trespass to land unattended by damage.” R.W. Lee, *The Elements of Roman Law* 394 (4th ed. 1956).

**damnum facientes** (dam-nəm fay-shee-en-teez), *n.* See DAMAGE FEASANT.

**damnum fatale** (dam-nəm fə-tay-lee), *n.* [Latin “accidental damage”] *Roman law*. Damage caused by an unavoidable circumstance, such as a storm or a shipwreck, for which bailees or others will not be held liable. • But an exception was made for damages resulting from theft.

“The liability of innkeepers, carriers, and stable keepers, at Roman law, was provided for in the praetor’s edict. They were under an obligation to restore all goods which the guests or passengers had with them, or left in their charge, and they could not defend themselves by showing the utmost degree of diligence. Unavoidable accident, which no human prudence would avert or provide against, *damnum fatale*, or overwhelming force, *vis maior*, were, however, an adequate defense . . . . It was particularly noted that theft by a third person would not be permitted as a defense and the reason assigned was the fact that travelers have scarcely any chance to protect themselves against collusion between the innkeeper and the thief.” Max Radin, *Handbook of Roman Law* 254 (1927).

**damnum infectum** (dam-nəm in-fek-təm). [Latin] *Roman law*. Loss not yet suffered but threatened or apprehended, as when a neighbor’s building is about to collapse onto one’s property.

**damnum injuria datum** (dam-nəm in-joor-ee-ə day-təm). [Latin] *Roman law*. The willful or negligent damage to corporeal property.

**damnum sine injuria** (dam-nəm si-nee in-joor-ee-ə or sin-ay). [Latin “damage without wrongful act”] Loss or harm for which there is no legal remedy. — Also termed *damnum absque injuria*. Cf. INJURIA ABSQUE DAMNO.

“There are cases in which the law will suffer a man knowingly and wilfully to inflict harm upon another, and will not hold him accountable for it. Harm of this description — mischief that is not wrongful because it does not fulfill even the material conditions of responsibility — is called *damnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law (*in jus*), not in its modern and corrupt sense of harm.” John Salmond, *Jurisprudence* 372–73 (Glanville L. Williams ed., 10th ed. 1947).

“There are many forms of harm of which the law takes no account. Damage so done and suffered is called *damnum sine injuria*, and the reasons for its permission by the law are various and not capable of exhaustive statement. For example, the harm done may be caused by some person who is merely exercising his own rights; as in the case of the loss inflicted on individual traders by competition in trade, or where the damage is done by a man acting under necessity to prevent a greater evil.” R.F.V. Heuston, *Salmond on the Law of Torts* 13 (17th ed. 1977).

**Dan** (dan), *n.* [fr. Latin *dominus*] *Archaic*. In England, an honorable title for a man; the English equivalent to the Spanish *Don*. • The term evolved into the terms *Master*, *Mister*, and *Sir*.

**D & O liability insurance**. See *directors’ and officers’ liability insurance* under INSURANCE.

**danelaw** (dayn-law). *Hist.* **1.** A system of rules, introduced by the Danes during their invasions of England primarily in the ninth century and maintained principally in the midland and eastern counties where the invasions occurred. • Danelaw was the prevailing law in these regions from the reign of King Edgar to Edward the Confessor, who compiled a uniform law that included some Danelaw components. **2.** The counties in England where the Danish law was enforced primarily in the ninth and tenth centuries — Also termed *danelage*; *lex Danorum*.

“The Danish invasions of the ninth century subjected the eastern parts of the island to new Scandinavian influences. Where the Danes conquered, their ‘Danelaw’ prevailed. The very word ‘law’ is believed to have been given to the English language by the Danes.” J.H. Baker, *An Introduction to English Legal History* 3 (3d ed. 1990).

**danger**. **1.** Peril; exposure to harm, loss, pain, or other negative result. **2.** A cause of peril; a menace.

**apparent danger**. **1.** Obvious danger; real danger. **2.** *Criminal law*. The danger result-

ing from a person's overt demonstration of the intent to seriously injure or kill another, making it necessary for the threatened person to kill the offender. See SELF-DEFENSE.

**deterrent danger.** An obvious danger that an occupier of land creates to discourage trespassers, such as a barbed-wire fence or spikes on the top of a wall.

**imminent danger.** 1. An immediate, real threat to one's safety that justifies the use of force in self-defense. 2. *Criminal law.* The danger resulting from an immediate threatened injury sufficient to cause a reasonable and prudent person to defend himself or herself.

**retributive danger.** A concealed danger that an occupier of land creates to injure trespassers. • A retributive danger is lawful only to the extent that it could be justified if the occupier had inflicted the injury personally or directly to the trespasser. Thus, a spring gun or a landmine is an unlawful means of defending land against a trespasser.

**unavoidable danger.** 1. Inescapable danger. 2. A danger that is unpreventable, esp. by a person operating a vessel.

**danger-creation doctrine.** The theory that if a state's affirmative conduct places a person in jeopardy, then the state may be liable for the harm inflicted on that person by a third party. • This is an exception to the general principle that the state is not liable for an injury that a third party inflicts on a member of the public. — Also termed *danger-creation exception*. Cf. SPECIAL-RELATIONSHIP DOCTRINE.

**dangeria, n. Hist.** Payment by forest tenants to the lord so that they can plow and sow in time of mast feeding by swine in the forest.

**danger-invites-rescue doctrine.** The principle holding a defendant liable not only for injuries to the person that the defendant has imperiled, but also for injuries that a third person receives while trying to rescue the imperiled person.

"Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal. It places their effects within the range of the natural and probable. The wrong that imperils life is a wrong to the imperiled victim; it is a wrong also to his rescuer . . . The railroad company whose train approaches without signal is a wrongdoer toward the traveler surprised between the rails, but a wrongdoer also to the bystander who drags him from the path . . . The emergency begets the man. The wrongdoer may not have foreseen the coming of a deliverer. He

is accountable as if he had." *Wagner v. International Ry. Co.*, 133 N.E. 437, 437-38 (N.Y. 1921).

**danger of navigation.** See PERIL OF THE SEA.

**danger of river.** See PERIL OF THE SEA.

**dangerous, adj.** 1. (Of a condition, situation, etc.) perilous; hazardous; unsafe <a dangerous intersection>. 2. (Of a person, an object, etc.) likely to cause serious bodily harm <a dangerous weapon> <a dangerous criminal>.

**dangerous condition.** See CONDITION (5).

**dangerous criminal.** See CRIMINAL.

**dangerous drug.** See DRUG.

**dangerous instrumentality.** An instrument, substance, or condition so inherently dangerous that it may cause serious bodily injury or death without human use or interference. • It may serve as the basis for strict liability. See ATTRACTIVE-NUISANCE DOCTRINE. Cf. *deadly weapon* under WEAPON.

**dangerous-propensity test.** See DANGEROUS-TENDENCY TEST.

**dangerous-proximity test.** *Criminal law.* A common-law test for the crime of attempt, focusing on whether the defendant is dangerously close to completing the offense. • Factors include the gravity of the potential crime, the apprehension of the victim, and the uncertainty of the crime's occurrence. See ATTEMPT (2).

**dangerous situation.** Under the last-clear-chance doctrine, the circumstance in which a plaintiff operating a motor vehicle has reached a position (as on the path of an oncoming train) that cannot be escaped by the exercise of ordinary care. — Also termed *situation of danger*. See LAST-CLEAR-CHANCE DOCTRINE.

**dangerous-tendency test.** A propensity of a person or animal to inflict injury. • The test is used, esp. in dog-bite cases, to determine whether an owner will be held liable for injuries caused by the owner's animal. — Also termed *dangerous-propensity test*.

**dangerous weapon.** See WEAPON.

**danger-utility test.** See RISK-UTILITY TEST.

**danism** (dan-iz-əm), *n.* [fr. Greek *daneismos* "a loan"] *Hist.* The lending of money on usury.

**Darden hearing.** *Criminal procedure.* An ex parte proceeding to determine whether disclosure of an informer's identity is pertinent to establishing probable cause when there is otherwise insufficient evidence to establish probable cause apart from the arresting officer's testimony about an informer's communications. • The defense attorney may be excluded from the hearing but can usu. submit questions to be used by the judge in the examination. *People v. Darden*, 313 N.E.2d 49 (N.Y. 1974).

**dare** (dair-ee), *vb.* [Latin "to give"] *Roman law.*  
 1. To give; to transfer (something, esp. property). • The transfer can be made to discharge a debt, to create an obligation, or to make a gift.  
 2. To appoint a representative.

**dare ad remanentiam** (dair-ee ad rem-ə-nen-shee-əm), *vb.* [Latin "to give in fee or forever"] To transfer (esp. a remainder) in fee or forever.

**darraign** (də-rayn), *vb.* [fr. Latin *derationare*; fr. French *disrener*] *Hist.* 1. To displace; to disarrange. 2. To respond to an accusation; to settle a dispute. — Also spelled *deraign*; *derayne*.

**darrein** (dar-ayn), *adj.* [fr. French *dernier* "the last"] The last, as in *darrein presentment* ("the last presentment"). See DARREIN CONTINUANCE; ASSIZE OF DARREIN PRESENTMENT.

**darrein continuance** (dar-ayn kən-tin-yoo-ənts), *n.* [fr. French *dernier continuance* "the last continuance"] *Hist.* Every plea of a new matter after the last entry of a plea on the record. • Every entry of a pleading after the first pleading on the record was called a *continuance*. — Also spelled *dareyne continuance*.

**darrein presentment** (dar-ayn pri-zent-mənt), *n.* See ASSIZE OF DARREIN PRESENTMENT.

**darrein seisin** (dar-ayn see-zin), *n.* [French "last seisin"] *Hist.* A tenant's plea in a writ of right. See SEISIN.

**date.** 1. The day when an event happened or will happen <date of trial>. 2. A period of time in general <at a later date>. 3. An appointment at a specified time <no dates are available>.

**date of bankruptcy.** The date when a court declares a person to be bankrupt; the date of

bankruptcy adjudication. • This date may coincide with the voluntary-filing date.

**date of cleavage.** The filing date of a voluntary-bankruptcy petition. • With a few exceptions, only the debts existing at this time are dischargeable.

**date of injury.** The inception date of an injury; the date of an accident causing an injury.

**date of issue.** 1. *Commercial law.* An arbitrary date (for notes, bonds, and other documents in a series) fixed as the beginning of the term for which they run; the date that a stock or bond bears on its face, not the date on which it is actually signed, delivered, or put into circulation. • When a bond is delivered to a purchaser, it is considered "issued." But this concept is distinguishable from the "date of issue," which remains fixed, regardless of the date of sale or delivery. 2. *Insurance.* The date specified in the policy as the "date of issue," not the date on which the policy is executed or delivered, and regardless of other dates that may be specified in the policy or elsewhere, such as the date that the policy is to "take effect."

**date of maturity.** The date when a debt falls due, such as a debt on a promissory note or bond.

**declaration date.** The date when corporate directors declare a dividend. Cf. DIVIDEND DATE; EX-DIVIDEND DATE.

**dividend date.** See DIVIDEND DATE.

**payable date.** The official date on which shareholder dividends or distributions become payable. — Also termed *record date*.

**payment date.** The date on which stock dividends or interest checks are paid to shareholders.

**record date.** The date on which a stockholder must own shares to be entitled to vote or receive a dividend. — Also termed *date of record*. See EX-DIVIDEND DATE.

**settlement date.** 1. The date on which an investor must pay the broker for securities purchased. 2. The date on which a seller must deliver negotiable certificates for securities sold.

**submission date.** 1. The date that a case is to be submitted to a court for determination. 2. The date on which an investor must pay the broker for securities purchased. 3. The date on which a seller must deliver negotiable certificates for securities sold.



**date certain.** A fixed or appointed day; a specified day, esp. a date fixed by an instrument such as a deed. — Also termed (in French law) *date certaine* (**dat sair-tayn**).

**date of bankruptcy.** See DATE.

**date of cleavage.** See DATE.

**date of injury.** See DATE.

**date of issue.** See DATE.

**date of maturity.** See DATE.

**date of record.** See *record date* under DATE.

**date rape.** See RAPE.

**datio** (**day-shee-oh**), *n.* [fr. Latin *dare* “to give”] *Roman law.* **1.** An act of giving, as in *datio in solutum* (“giving in payment”). **2.** An appointment, as in *datio tutoris* (“appointment of a guardian”).

**datio in solutum** (**day-shee-oh in sə-l[y]oo-təm**). *Roman law.* The discharging of an obligation by the giving and acceptance of something other than the thing due.

**dation** (**day-shən**), *n.* [fr. Latin *dare* “to give”] *Civil law.* A grant of something the recipient is actually entitled to, such as an office.

**dation en paiement** (**day-shən in pay-mənt or da-syon ahn pay-mon**), *n.* [French “a giving in payment”] *Civil law.* **1.** An exchange of something instead of money to satisfy a debt. See ACCORD AND SATISFACTION. **2.** A method of satisfying a mortgage debt by transferring the mortgaged property when the mortgage exceeds the property’s value and the mortgage-holder is willing to accept the property in satisfaction of the debt. • *Dation en paiement* requires court approval after petition and notice.

**dative** (**day-tiv**), *n.* [fr. French *datif* “of giving”] **1.** *Roman & civil law.* An appointment made by judicial or magisterial authority; esp., something granted that is not provided by law or a will. • In Scotland, an executor-dative is a court-appointed executor. **2.** *Hist.* Something that can be given or retracted at will, such as an appointment to a nonperpetual office. — Also spelled *datif*.

**datum** (**day-təm**), *n.* [fr. Latin *dare* “to give”] **1.** A piece of information. **2.** *Hist.* Something given or executed. **3.** A date.

**Daubert hearing** (**daw-bərt or doh-ber**). A hearing conducted by federal district courts, usu. before trial, to determine whether proposed expert testimony meets the federal requirements for relevance and reliability, as clarified by the Supreme Court in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993). See DAUBERT TEST.

**Daubert test.** A method that federal district courts use to determine whether expert testimony is admissible under Federal Rule of Evidence 702, which generally requires that expert testimony consist of scientific, technical, or other specialized knowledge that will assist the fact-finder in understanding the evidence or determining a fact in issue. • In its role as “gatekeeper” of the evidence, the trial court must decide whether the proposed expert testimony meets the requirements of relevance and reliability. The court applies the test outside the jury’s presence, usu. during a pretrial *Daubert* hearing. At the hearing, the proponent must show that the expert’s underlying reasoning or methodology, and its application to the facts, are scientifically valid. In ruling on admissibility, the court considers a flexible list of factors, including (1) whether the theory can be or has been tested, (2) whether the theory has been subjected to peer review or publication, (3) the theory’s known or potential rate of error and whether there are standards that control its operation, and (4) the degree to which the relevant scientific community has accepted the theory. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993). The Supreme Court has held that similar scrutiny must be applied to nonscientific expert testimony. *Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167 (1999). Variations of the *Daubert* test are applied in the trial courts of most states. See *scientific knowledge* under KNOWLEDGE.

**daughter.** **1.** A parent’s female child. **2.** A female descendant. **3.** A female child in a parent-child relationship.

**daughter-in-law.** The wife of one’s son.

**Davis-Bacon Act.** A federal law originally enacted in 1931 to regulate the minimum-wage rates payable to employees of federal public-works projects. 40 USCA § 276a.

**day.** 1. Any 24-hour period; the time it takes the earth to revolve once on its axis <we have a day to prepare a mandamus petition>. 2. The period between the rising and the setting of the sun <day or night>. — Also termed *natural day*. 3. Sunlight <we can see it in the day>. 4. The period when the sun is above the horizon, along with the period in the early morning and late evening when a person's face is discernible. 5. Any specified time period, esp. as distinguished from other periods <the good old days> <a day's work>. — Also termed (in senses 2, 3, and 4) *daytime*. Cf. NIGHT.

**adjournment day.** 1. The day on which an organization, such as a court or legislature, adjourns. 2. *Hist.* A later day appointed by the judges at regular sittings at *nisi prius* to try an issue of fact not then ready for trial.

**adjournment day in error.** *Hist.* A day scheduled for completion of matters not finished on the affirmance day of the term.

**affirmance day general.** *Hist.* In the Court of Exchequer, a day appointed after the beginning of every term to affirm or reverse judgments.

**answer day.** The last day for a defendant to file and serve a responsive pleading in a lawsuit. • Under the Federal Rules of Civil Procedure, a defendant generally must serve an answer (1) within 20 days after being served with the summons and complaint, or (2) if a defendant timely waives service at the plaintiff's request, within 60 days after the request for waiver was sent. Fed. R. Civ. P. 4(d), 12(a). — Also termed *answer date*; *appearance date*; *appearance day*.

**artificial day.** The period from the rising to the setting of the sun. — Also termed *solar day*; *dies solaris*.

**astronomical day.** See *solar day* (2).

**banking day.** See BANKING DAY.

**business day.** A day that most institutions are open for business, usu. a day on which banks and major stock exchanges are open, excluding Saturdays and Sundays.

**calendar day.** A consecutive 24-hour day running from midnight to midnight. — Also termed *natural day*.

**common day.** In England, an ordinary court day.

**court day.** A day on which a particular court is open for court business.

**dedication day.** *Hist.* A day on which people from several villages gathered in one place to celebrate the feast day of the saint and patron of a church.

**entire day.** An undivided day, rather than parts of two or more days aggregated to form a 24-hour period. • An entire day must have a legal, fixed, precise time to begin and end. A statute referring to an *entire day* contemplates a 24-hour period beginning and ending at midnight.

**ferial day** (*feer-ee-əl*). *Hist.* 1. A day free from labor, pleading, and service of process; a holiday. 2. A working day, under a 1449 statute (27 Hen. 6, ch. 5).

**juridical day** (*juu-rid-i-kəl*). A day on which legal proceedings can be held. — Also termed *judicial day*. Cf. *nonjudicial day*; NONJURIDICAL.

**law day.** See LAW DAY.

**lay day.** *Maritime law.* A day allowed for loading and unloading cargo without penalty to the parties chartering the vessel.

**love day.** *Hist.* 1. A day when neighbors amicably settled a dispute. 2. A day when one neighbor helped another without payment.

**natural day.** 1. The 24-hour period from midnight to midnight. — Also termed *calendar day*. 2. The period between sunrise and sunset. — Also termed *artificial day*.

**nonjudicial day.** A day when courts do not sit or when legal proceedings cannot be conducted, such as a Sunday or legal holiday. See LEGAL HOLIDAY; NON JURIDICUS. Cf. *juridical day*.

**peremptory day.** A day assigned for trial or hearing, without further opportunity for postponement.

**quarter day.** *Hist.* One of four days during a year that money owed (such as rent) was legally or customarily payable.

**return day.** 1. A day on which a defendant must appear in court (as for an arraignment). 2. A day on which a defendant must file an answer. 3. A day on which a proof of service must be returned to court. 4. A day on which a writ of execution must be returned to court. 5. A day specified by law for counting votes in an election. — Also termed *return date*.

**solar day.** 1. See *artificial day*. 2. The 24-hour period from noon to noon. — Also termed *astronomical day*.

**daybook.** A merchant's original record of daily transactions.

**day in court.** 1. The right and opportunity, in a judicial tribunal, to litigate a claim, seek relief, or defend one's rights. 2. The right to be noti-

fied and given an opportunity to appear and to be heard when one's case is called.

**day loan.** See LOAN.

**day order.** See ORDER (4).

**day rule.** See DAY WRIT.

**days in bank.** Particular days set aside by the Court of Common Pleas for specific matters, including the appearance of parties and service of process. — Also termed *dies in banco*.

"There are in each of these terms stated days called *days in bank, dies in banco*; that is, days of appearance in the court of common pleas. They are generally at the distance of about a week from each other, and regulated by some festival of the church. On some one of these days in bank all original writs must be made returnable . . ." 3 William Blackstone, *Commentaries on the Laws of England* 277 (1768).

**daysman (dayz-mən).** *Hist.* 1. An arbitrator; an elected judge; an umpire. 2. A day laborer. — Also spelled *deiesman*.

**days of grace.** 1. GRACE PERIOD. 2. *Int'l law.* A timed exemption from prize law that is granted to enemy merchant ships when they are caught unawares by the outbreak of war.

**daytime.** See DAY (2), (3), (4).

**daywork.** 1. Short-term employment that is intended to last only for a day, or for a few days. 2. *Hist.* In England, a measure of land being the amount of arable land that can be plowed in a day. — Also termed *daywere*.

**day writ.** *English law.* A Queen's Bench writ allowing a prisoner to leave prison to conduct business (such as attending trial at the Court of Assizes), as long as the prisoner returns by 9:00 p.m. — Also termed *day rule*.

**D.B.** *abbr.* DOMESDAY BOOK.

**d/b/a.** *abbr.* Doing business as. • The abbreviation usu. precedes a person's or business's assumed name <Paul Smith d/b/a Paul's Dry Cleaners>.

**d.b.e.** *abbr.* DE BENE ESSE.

**d.b.n.** See *administration de bonis non* under ADMINISTRATION.

**d.b.n. c.t.a.** See *administration de bonis non cum testamento annexo* under ADMINISTRATION.

**D.C.** *abbr.* 1. DISTRICT OF COLUMBIA. 2. See *district court* under COURT.

**DCF.** See *discounted cash flow* under CASH FLOW.

**de** (də or duu). [French] Of; about. • This is a French preposition often used to show the genitive case, as in *breve de droit* ("writ of right").

**de** (dee or day). [Latin] Of; about; concerning; respecting; by; from; out of; affecting. • This preposition is used in the titles of English statutes, of original and judicial writs, and of court proceedings.

**deacon.** 1. *Eccles. law.* In certain churches, a member of the clerical order who assists the priest in various duties, including the presentation of the sacrament. • It is the third order of the Church of England below bishops and priests. A deacon is not allowed to consecrate the Holy Communion or pronounce absolution but can perform most of the other priestly duties. 2. An elected or appointed officer of a church who assists a minister or priest in various duties.

**dead asset.** See ASSET.

**deadbeat.** *Slang.* A person who does not pay debts or financial obligations, usu. with the suggestion that the person is also adept or experienced at evading creditors.

**dead freight.** See FREIGHT.

**deadhand control.** The use of executory interests that vest at some indefinite and remote time in the future to restrict alienability and to ensure that property remains in the hands of a particular family or organization. • The rule against perpetuities restricts this activity, which is sometimes referred to either as the power of the dead hand (*mortua manus*) or as trying to retain property *in mortua manu*. See MORTMAIN.

**dead letter.** 1. A law or practice that, although not formally abolished, is no longer used, observed, or enforced. 2. A piece of mail that can be neither delivered nor returned because it lacks correct addresses for both the intended recipient and the sender.

**deadlock**, *n.* 1. A state of inaction resulting from opposition or lack of compromise. 2. *Corporations.* The blocking of corporate action by one or more factions of shareholders or directors who disagree about a significant aspect of corporate policy. — **deadlock**, *vb.*

**deadlocked jury.** See *hung jury* under JURY.

**deadly force.** See FORCE.

**deadly weapon.** See WEAPON.

**deadly weapon per se.** See WEAPON.

**dead man's part.** *Hist.* By custom in certain places, the portion of a dead man's estate given to the administrator. • That portion ranged from one-third (if the deceased had a wife and children) to the entire estate amount (if the deceased had no wife or children). — Also termed *death's part*; (in Scots law) *dead's part*.

"If the deceased leaves a widow and children, his substance . . . is divided into three parts; one of which belongs to the widow, another to the children, and the third to the administrator: if only a widow, or only children, they shall respectively, in either case, take one moiety, and the administrator the other: if neither widow nor child, the administrator shall have the whole. And this portion, or *dead man's part*, the administrator was wont to apply to his own use, till the statute I Jac. II. c. 17 declared that the same should be subject to the statute of distributions." 2 William Blackstone, *Commentaries on the Laws of England* 518 (1766).

**dead man's statute.** A law prohibiting the admission of a decedent's statement as evidence in certain circumstances, as when an opposing party or witness seeks to use the statement to support a claim against the decedent's estate. — Also termed *dead person's statute*.

**de admensuratione dotis** (dee ad-men-s[y]uu-ray-shee-oh-nee doh-tis), *n.* [Law Latin "of the admeasurement of dower"] *Hist.* A writ available to an heir (or the heir's guardian if the heir is an infant) to reduce the dower of the ancestor's widow who, while the heir was an infant, was assigned more dower than she was entitled to.

"If the heir or his guardian do not assign her dower within the term of quarantine, or do assign it unfairly, she has her remedy at law, and the sheriff is appointed to assign it. Or if the heir (being under age) or his guardian assign more than she ought to have, it may be afterwards remedied by writ of *admeasurement of dower*." 2 William Blackstone, *Commentaries on the Laws of England* 136 (1766).

**dead person's statute.** See DEAD MAN'S STATUTE.

**dead pledge.** *Archaic.* See MORTGAGE (1).

**dead rent.** A mining-lease payment, either in addition to or as part of the royalty, that must be made whether or not the mine is working. • The purpose of the provision is to secure the working of the mine. See *delay rental* under RENTAL.

**dead-ship doctrine.** *Maritime law.* The rule that admiralty law no longer applies to a ship when its purpose has been so changed that it is no longer a vessel because it has no further navigation function.

**dead's part.** See DEAD MAN'S PART.

**dead stock.** Goods that remain in inventory because there is no market for them.

**dead storage.** The stowage of goods, esp. motor vehicles, for a long time in a public storage area, as opposed to the daily or regular stowage of goods in active use. Cf. LIVE STORAGE.

**dead time.** Time that does not count for a particular purpose, such as time not included in calculating an employee's wages or time not credited toward a prisoner's sentence.

**dead use.** A future use.

**de advisamento consilii nostri** (dee ad-vi-zə-men-toh kən-sil-ee-i nos-tri). [Law Latin] With or by the advice of our council. • This phrase was formerly used in writs of summons to Parliament.

**de aequitate** (dee ee-kwə-tay-tee). [Latin] In equity.

**de aestimato** (dee es-ti-may-toh), *n.* [Latin "for the estimation of something in money"] *Roman law.* An action available to an owner of goods against a person who received the goods but failed, after a certain period, to either pay the owner an agreed price after finding a purchaser or return the goods to the owner. • The transaction, or *aestimatum*, was an innominate contract often used by traveling merchants or second-hand dealers who, after purchasing items, could then resell them at higher prices or return them to the owner. — Also termed *actio aestimatoria*.

**de aetate probanda** (dee ee-tay-tee proh-ban-də), *n.* [Law Latin “of (about) proving age”] *Hist.* A writ ordering the sheriff to summon a jury to determine whether an heir of a tenant holding an estate directly of the Crown was old enough to receive the estate.

**deafforest.** See DISAFFOREST.

**deal**, *n.* **1.** An act of buying and selling; the purchase and exchange of something for profit <a business deal>. **2.** An arrangement for mutual advantage <the witness accepted the prosecutor’s deal to testify in exchange for immunity>. **3.** An indefinite quantity <a great deal of money>.

**deal**, *vb.* **1.** To distribute (something) <to deal drugs>. **2.** To transact business with (a person or entity) <to deal with the competitor>. **3.** To conspire with (a person or entity) <to deal for the account>.

**dealer**, *n.* **1.** A person who purchases goods or property for sale to others; a retailer. **2.** A person or firm that buys and sells securities for its own account as a principal, and then sells to a customer. See DEAL, *n.* & *vb.*

**registered dealer.** A dealer registered or required to be registered under the Securities Exchange Act of 1934.

**dealer’s talk.** See PUFFING.

**de allocatione facienda** (dee al-ə-kay-shee-oh-nee fay-shee-en-də), *n.* [Law Latin “for making allowance”] *Hist.* A writ directed to the treasurer and barons of the Exchequer allowing certain officers (such as accountants and customs collectors) to have in their accounts the funds necessary to make certain payments.

**de alto et basso** (dee al-toh et bas-oh), *n.* [fr. French *haut et de bass* “of high and low”] *Hist.* The total submission of all differences — great or small — to arbitration.

**de ambitu** (dee am-bi-tyoo). [Latin “of going around”] Of devious methods of securing a position, as through bribery. • Several Roman laws (such as the *Lex Julia de Ambitu*) dealt with this problem.

**de ampliori gratia** (dee am-pli-or-I gray-shee-ə). [Latin] Of more abundant or more full grace.

**dean**. **1.** *Eccles. law.* An officer who leads a chapter, parish, or other subdivision of a church, usu. upon a bishop’s request or appointment.

“A dean and chapter are the council of the bishop, to assist him with their advice in affairs of religion, and also in the temporal concerns of his see . . . . All ancient deans are elected by the chapter, by *conge d’eslire* from the king, and letters missive of recommendation; in the same manner as bishops: but in those chapters, that were founded by Henry VIII out of the spoils of the dissolved monasteries, the deanery is donative . . . . The chapter, consisting of canons or prebendaries, are sometimes appointed by the king, sometimes by the bishop, and sometimes elected by each other.” 1 William Blackstone, *Commentaries on the Laws of England* 370-71 (1765).

**2.** In a school, college, or university, the administrative or academic head. • In larger schools, there may be several kinds of deans, such as a dean of admissions and a dean of student affairs. Within a university, there may be deans of specific schools. **3.** The head or commander of a group of ten, such as ten soldiers or ten monks.

**de anno bissextili** (dee an-oh bis-sek-sti-li), *n.* [Law Latin “of the bissextile year”] *Hist.* A law of Henry III advising the justices of the bench that in a case requiring something to be done within a year, the leap-year day and the day before should be counted as one day.

**de annua pensione** (dee an-yoo-ə pen-shee-oh-nee), *n.* [Law Latin “of annual pension”] *Hist.* A royal writ demanding payment from an abbey or prior, of a yearly pension for the king’s chaplain named in the writ.

**de annuo reditu** (dee an-yoo-oh red-i-tyoo), *n.* [Law Latin “for a yearly rent”] *Hist.* A writ to recover an annuity payable in goods or money.

**Dean of the Arches.** *English law.* The presiding judge of the Court of Arches. See COURT OF ARCHES.

**de apostata capiendo** (dee ə-pos-tə-tə kap-ee-en-doh), *n.* [Law Latin “of the taking of an apostate”] *Hist.* A writ ordering a sheriff to apprehend and return to an abbey a person who had entered the abbey, professed the religious order, and then left and wandered around the country.

**de arbitratione facto** (dee ahr-bi-tray-shee-oh-nee fak-toh), *n.* [Law Latin “of arbitration had”] *Hist.* A writ staying an action already settled by arbitration.

**de arrestandis bonis ne dissipentur** (dee ar-ə-stan-dis boh-nis nee dis-ə-pen-tər), *n.* [Law Latin “of goods arrested lest they be dispersed”] *Hist.* A writ to seize goods from a party to ensure that the goods do not disappear while a lawsuit is pending.

**de arrendando ipsum qui pecuniam recepit** (dee ar-ə-stan-doh ip-səm kwī pə-kyoo-nee-əm ri-see-pit), *n.* [Law Latin “for the apprehension of one who took the king’s money”] *Hist.* A writ ordering the arrest of a person who took the king’s money for war service, and then hid to keep from serving.

**de asportatis religiosorum** (dee as-por-tay-tis ri-lij-ee-oh-sor-əm), *n.* [Law Latin “concerning the property of religious persons carried away”] *Hist.* A statute of Edward I passed to curb abuses of clerical possessions, including the removal of those possessions to foreign countries.

**de assisa proroganda** (dee ə-si-zə proh-rə-gan-də), *n.* [Law Latin “of the proroguing of an assize”] *Hist.* A writ ordering justices to postpone an assize because a party is busy in the Crown’s service.

**death.** The ending of life; the cessation of all vital functions and signs. — Also termed *decease*; *demise*.

**brain death.** The bodily condition of showing no response to external stimuli, no spontaneous movements, no breathing, no reflexes, and a flat reading (usu. for a full day) on a machine that measures the brain’s electrical activity. — Also termed *legal death*.

**civil death.** See CIVIL DEATH.

**immediate death.** 1. See *instantaneous death*. 2. A death occurring within a short time after an injury or seizure, but not instantaneously.

“A distinction has been made between ‘instantaneous’ and ‘immediate’ death . . . . As an example of ‘immediate’ rather than ‘instantaneous’ death . . . the situation in which a blow on the head produces unconsciousness and renders the victim incapable of intelligent thought, speech, or action for several minutes until he dies.” 22A Am. Jur. 2d *Death* § 43, at 159 (1988).

**instantaneous death.** Death occurring in an instant or within an extremely short time after an injury or seizure. • It is a factor in determining an award of damages for the victim’s pain and suffering. — Sometimes also termed *immediate death*.

“Although the possibility of a death that is truly simultaneous with the injury that caused it has been denied, it

has been pointed out that death may be so contemporaneous with the fatal injury as to be instantaneous in the sense that there could be no recovery for the victim’s pain and suffering. Ordinarily, death is not regarded as instantaneous if an appreciable length of time elapsed between the injury and the death. Indeed, even where the injury causing the death is necessarily fatal and death results therefrom in a few moments, it has been held that although it would commonly be called an instantaneous death, still if the injured person survives the injury for a brief period, it may not be said that the death is instantaneous . . . . In such case it is immaterial that the period of time between the injury and death is short.” 22A Am. Jur. 2d *Death* § 43, at 158 (1988).

**legal death.** See *brain death*.

**natural death.** 1. Bodily death, as opposed to civil death. 2. Death from causes other than accident or violence; death from natural causes. — Also termed *mors naturalis*. Cf. *violent death*. See NATURAL-DEATH ACT.

**presumptive death.** Death inferred from proof of the person’s long, unexplained absence, usu. after seven years.

**simultaneous death.** The death of two or more persons in the same mishap, under circumstances that make it impossible to determine who died first. See SIMULTANEOUS-DEATH ACT; COMMORIENTES.

**violent death.** Death accelerated by human intervention and resulting from a sharp blow, explosion, gunfire, or the like. Cf. *natural death*.

**death, contemplation of.** See CONTEMPLATION OF DEATH.

**death action.** See WRONGFUL-DEATH ACTION.

**deathbed declaration.** See *dying declaration* under DECLARATION (6).

**death benefits.** An amount paid to a beneficiary on the death of an insured.

**death by misadventure.** See ACCIDENTAL KILLING.

**death case.** 1. A criminal case in which the death penalty may be or has been imposed. 2. WRONGFUL-DEATH ACTION.

**death certificate.** An official document issued by a public registry verifying that a person has died, with information such as the date and time of death, the cause of death, and the signature of the attending or examining physician.

**death-knell doctrine.** A rule allowing an interlocutory appeal if precluding an appeal until final judgment would moot the issue on appeal and irreparably injure the appellant's rights. ● Once recognized as an exception to the final-judgment rule, the doctrine was limited by the U.S. Supreme Court in *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 98 S.Ct. 2454 (1978). There, the Court held that the death-knell doctrine does not permit an immediate appeal of an order denying class certification. But the doctrine still applies in some contexts. For example, the doctrine allows an immediate appeal of the denial of a temporary restraining order when the lack of an appeal would leave nothing to be considered in the trial court. *Wortatzeck v. Arizona Bd. of Executive Clemency*, 117 F.3d 400 (9th Cir. 1997). — Also termed *death-knell exception*. See FINAL-JUDGMENT RULE.

**Death on the High Seas Act.** A federal law, enacted in 1920, permitting a wrongful-death action to be filed in U.S. district court for a death occurring on the high seas (i.e., seas beyond any state or territory's waters). 46 USCA app. §§ 761–767. — Abbr. DOHSA.

**death penalty.** 1. State-imposed death as punishment for a serious crime. — Also termed *capital punishment*. 2. A penalty that makes a person or entity ineligible to participate in an activity that the person or entity previously participated in. ● The penalty is usu. imposed because of some type of gross misconduct.

**death-penalty sanction.** See SANCTION.

**death-qualified jury.** See JURY.

**death row.** The area of a prison where those who have been sentenced to death are confined.

**death sentence.** See SENTENCE.

**deathsman.** An executioner; a hangman.

**death's part.** See DEAD MAN'S PART.

**death statute.** A law that protects the interests of a decedent's family and other dependents, who may recover in damages what they would reasonably have received from the decedent if the death had not occurred. Cf. SURVIVAL STATUTE.

**death tax.** See TAX.

**death trap.** 1. A structure or situation involving an imminent risk of death. 2. A situation that is seemingly safe but actually quite dangerous.

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

**de attornato recipiendo** (dee a-tor-nay-toh rip-ee-en-doh), *n.* [Law Latin “of receipt of an attorney”] *Hist.* A writ requiring a court to receive and admit an attorney for a party.

**de audiendo et terminando** (dee aw-dee-end-doh et tər-mi-nan-doh), *n.* [Law Latin “for hearing and determining”] *Hist.* A writ or commission directing certain justices to hear and resolve particular cases resulting from a riot, including those involving heinous misdemeanors, breaches of the peace, and trespass. Cf. COMMISSION OF OYER AND TERMINER.

**de averiis captis in withernamium** (dee ə-veer-ee-is kap-tis in with-ər-nay-mee-əm), *n.* [Law Latin “for taking cattle in withernam”] *Hist.* A writ directing a sheriff to detain a defendant's cattle because the defendant had unlawfully taken the plaintiff's cattle out of the county. ● The defendant's cattle would be detained until the sheriff could replevy the plaintiff's cattle.

**de averiis replegiandis** (dee ə-veer-ee-is riplee-jee-an-dis), *n.* [Law Latin “of replevying beasts”] *Hist.* A writ ordering a sheriff to replevy someone's beasts or chattels that had been unlawfully taken and detained. ● This is the old writ of replevin.

**de banco** (dee or də bang-koh). [Law Latin] Of the bench. ● In England, the term applied to justices of the Court of Common Pleas.

**debarment**, *n.* The act of precluding someone from having or doing something; exclusion or hindrance. — **debar**, *vb.*

**debasement.** 1. The act of reducing the value, quality, or purity of something; esp., the act of lowering the value of coins by either reducing the weight of gold and silver in the coins or increasing the coins' alloy amounts. 2. Degradation. 3. The state of being degraded.

**debauch** (di-bawch), *vb.* 1. *Archaic.* To draw (a person) away from duty; to lead (a person) astray. 2. To corrupt (a person) with lewdness; to seduce (someone). 3. To mar or spoil (a person or thing).

**debauchery** (di-bawch-ə-ree), *n.* Excessive indulgence in sensual pleasures; sexual immorality or excesses. — **debauch**, *vb.*

**debellatio** (deb-ə-lay-shee-oh). [Latin] *Int'l law.* A means of ending a war and acquiring territory when one of the belligerent countries has been so soundly defeated that its adversary is able to decide alone the fate of the defeated country's territory; conquest followed by annexation. — Also termed *subjugation*.

"[There are] three possible alternative meanings of *debellatio* in international law. The first is that *debellatio* denotes the change wrought by the conquest and total subjugation of a State together with that State's annexation by the conqueror. The second view is that *debellatio* corresponds to the total defeat of an enemy State, its occupation, and the elimination of a vital component of Statehood; in this view, *debellatio* implies the extinction of the old State, but it leaves open the legal future of the occupied territory (annexation or the founding of one or more new States). The third view is that *debellatio* only describes a factual situation and that even the elimination of all the State organs combined with the occupation of the territory does not exclude the continuing existence of that State. It is mainly the second and the third meanings of *debellatio* which have been advocated for the situation of Germany since the end of World War II." Karl-Ulrich Meyn, "Debellatio," in 1 *Encyclopedia of Public International Law* 166 (1992).

**de bene esse** (dee bee-nee es-ee also day ben-ay es-ay), *adv.* [Law Latin "of well-being"] As conditionally allowed for the present; in anticipation of a future need <Willis's deposition was taken *de bene esse*>. — Abbr. *d.b.e.* — **de bene esse**, *adj.*

**debenture** (di-ben-chər). **1.** A debt secured only by the debtor's earning power, not by a lien on any specific asset. **2.** An instrument acknowledging such a debt. **3.** A bond that is backed only by the general credit and financial reputation of the corporate issuer, not by a lien on corporate assets. — Also termed *debenture bond*; *unsecured bond*; *naked debenture*; *plain bond*. Cf. **BOND** (3).

**convertible debenture.** A debenture that the holder may change or convert into some other security, such as stock.

**convertible subordinated debenture.** A debenture that is subordinate to another debt but can be converted into a different security.

**sinking-fund debenture.** A debenture that is secured by periodic payments into a fund established to retire long-term debt.

**subordinate debenture.** A debenture that is subject to the prior payment of ordinary debentures and other indebtedness.

**4. English law.** A company's security for a monetary loan. • The security usu. creates a charge on company stock or property. **5.** A customhouse certificate providing for a refund of the duties on imported goods when the importer reexports the goods rather than selling them in the country where they were imported.

**debenture bond.** See **DEBENTURE** (3).

**debenture indenture.** An indenture containing obligations not secured by a mortgage or other collateral. • It is a long-term financing vehicle that places the debenture holder in substantially the same position as a bondholder secured by a first mortgage.

**debenture stock.** **1. English law.** A type of bond representing money borrowed by a company using its property or other fixed assets as security. **2.** Stock that is issued under a contract providing for periodic, fixed payments.

**debet et detinet** (dee-bet or deb-et et det-i-net or det-ə-nət). [Law Latin] *Hist.* He owes and detains. • This phrase was used in declarations in actions for debt when the original creditor sued the original debtor. The declaration stated that the defendant "owes to" as well as "detains from" the plaintiff the debt or thing in question; thus, the action was said to be "in the *debet et detinet*." But if the action was brought against someone other than the original debtor (such as an executor, for a debt due from the testator), then the action was said to be "in the *detinet* alone." Cf. **DETINET**.

**debet sine breve** (dee-bet or deb-et si-nee breev or bree-vee), *n.* [Law Latin "debt without a writ"] **1.** An action for debt commenced under a bill rather than a writ. **2.** A debt confessed by judgment. — Abbr. *d.s.b.* — Also termed *debitum sine breve*; *debit sans breve*. See **CONFESSION OF JUDGMENT**.

**de bien et de mal** (də byen ay də mal). [Law French]. See **DE BONO ET MALO**.

**de biens le mort** (də beenz læ mor[t]). [Law French] *Hist.* Of the goods of the deceased.

**de bigamis** (dee big-ə-mis), *n.* [Law Latin "concerning men twice married"] *Hist.* The statute of 4 Edw. I. st. 3, so called from the opening words of the fifth chapter. See **BIGAMUS**.

**debit.** **1.** A sum charged as due or owing. **2.** In bookkeeping, an entry made on the left side of



a ledger or account, noting an increase in assets or a decrease in liabilities. 3. An account balance showing that something remains due to the holder of the account. Cf. CREDIT (6).

**debita laicorum** (deb-i-tə lay-ə-kor-əm), *n.* [Law Latin “debts of laity”] *Hist.* The debts recoverable in civil courts.

**debit card.** A card used to pay for purchases by electronic transfer from the purchaser’s bank account. Cf. CREDIT CARD.

**debitor.** *Roman law.* Someone who has a legal obligation to someone else. Cf. CREDITOR (1).

**debitor non praesumitur donare** (deb-i-tor non pri-zyoo-mi-tur doh-nair-ee), *n.* [Law Latin “a debtor is not presumed to make a gift”] *Hist.* The presumption that any payment from a debtor is intended to satisfy the debt, unless the disposition clearly shows the debtor’s intent to make a donation.

**debitrix** (deb-ə-triks), *n.* [Latin] *Archaic. Civil law.* A female debtor.

**debit sans breve.** See DEBET SINE BREVE.

**debitum** (deb-i-təm), *n.* [Latin] Something owing; a debt. Cf. INDEBITUM.

**debitum in praesenti solvendum in futuro** (deb-ə-təm in pri-zen-ti sol-ven-dəm in fyoot[y]oor-oh). [Latin] A present debt (or obligation) to be paid at a future time; a debt or obligation complete when contracted, but of which the performance cannot be required until some future period.

**debitum sine breve.** See DEBET SINE BREVE.

**de bonis asportatis** (dee boh-nis as-pər-tay-tis). See *trespass de bonis asportatis* under TRESPASS.

**de bonis non** (dee boh-nis non). See *administration de bonis non* under ADMINISTRATION.

**de bonis non administratis** (dee boh-nis non ad-min-ə-stray-tis). [Law Latin] *Hist.* Of the goods not administered. • When the first administrator of an intestate estate dies or is removed, the second administrator is called an administrator *bonis non*, who administers the goods not administered by the previous executor.

**de bonis non amovendis** (dee boh-nis non ay-moh-ven-dis), *n.* [Latin “of goods not to be moved”] *Hist.* A writ directing the sheriffs of London to make sure that a defendant’s goods are not removed while the defendant’s writ of error on a judgment is pending.

**de bonis propriis** (dee boh-nis proh-pree-is), *n.* [Law Latin “of his own goods”] *Hist.* A judgment allowing execution on an administrator’s individual property rather than the property of an estate, as when the administrator mismanages the estate. Cf. DE BONIS TESTATORIS.

**de bonis testatoris** (dee boh-nis tes-tə-tor-is), *n.* [Law Latin “of the goods of the testator”] *Hist.* A judgment awarding execution on a testator’s property, rather than the individual property of an administrator. Cf. DE BONIS PROPRIIS.

**de bonis testatoris ac si** (dee boh-nis tes-tə-tor-is ak si). [Law Latin “from the goods of the testator if he has any, and if not, from those of the executor”]. *Hist.* A judgment holding an executor responsible if the testator’s estate is insufficient or if the executor falsifies a pleading as a release.

**de bonne memoire** (də bawn mem-wahr). [Law French] Of sound mind; of good memory. — Also spelled *de bone memorie*. See MIND AND MEMORY; COMPOS MENTIS.

**de bono et malo** (dee boh-noh et mal-oh), *n.* [Law Latin “for good and evil”] *Hist.* 1. For good and evil. • A criminal defendant indicated full submission to the jury’s verdict by placing himself or herself at the jury’s mercy *de bono et malo*. — Also termed *de bien et de mal*. 2. A special writ of jail delivery issued by the justices of assize to enable them to try all criminal defendants who were in jail where the court traveled. • Formerly, the judges were required to issue a separate writ for every prisoner. This was replaced by a general commission of jail delivery.

“[T]hey have . . . a commission of general *gaol delivery*; which empowers them to try and deliver every prisoner, who shall be in the gaol when the judges arrive at the circuit town, whenever indicted, or for whatever crime committed. It was anciently the course to issue special writs of *gaol delivery* for each particular prisoner, which were called the writs *de bono et malo*: but, these being found inconvenient and oppressive, a *general commission* for all the prisoners has long been established in their stead. So that, one way or other, the gaols are cleared, and all offenders tried, punished, or delivered, twice in every year: a constitution of singular use and excel-

lence." 4 William Blackstone, *Commentaries on the Laws of England* 267 (1769).

**de bono gestu** (dee boh-noh jes-t[y]oo). [Law Latin] For good behavior.

**debt. 1.** Liability on a claim; a specific sum of money due by agreement or otherwise <the debt amounted to \$2,500>. **2.** The aggregate of all existing claims against a person, entity, or state <the bank denied the loan application after analyzing the applicant's outstanding debt>. **3.** A nonmonetary thing that one person owes another, such as goods or services <her debt was to supply him with 20 international first-class tickets on the airline of his choice>. **4.** A common-law writ by which a court adjudicates claims involving fixed sums of money <he brought suit in debt>. — Also termed (in sense 4) *writ of debt*.

"The action of debt lies where a party claims the recovery of a debt; that is, a liquidated or certain sum of money due him. The action is based upon contract, but the contract may be implied, either in fact or in law, as well as express; and it may be either a simple contract or a specialty. The most common instances of its use are for debts: (a) Upon unilateral contracts express or implied in fact. (b) Upon quasi-contractual obligations having the force and effect of simple contracts. (c) Upon bonds and covenants under seal. (d) Upon judgments or obligations of record. (e) Upon obligations imposed by statute." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 52, at 132 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**active debt.** *Civil law.* A debt due to another person.

**ancestral debt.** An ancestor's debt that an heir can be compelled to pay.

**antecedent debt. 1. Contracts.** An old debt that may serve as consideration for a new promise if the statute of limitations has run on the old debt. See *PREEXISTING-DUTY RULE*. **2. Bankruptcy.** A debtor's prepetition obligation that existed before a debtor's transfer of an interest in property. • For a transfer to be preferential, it must be for or on account of an antecedent debt. See *PREFERENTIAL TRANSFER*.

**bad debt.** A debt that is uncollectible and that may be deductible for tax purposes.

**bonded debt.** A debt secured by a bond; a business or government debt represented by issued bonds.

**community debt.** A debt that is chargeable to the community of husband and wife rather than to either individually. See *COMMUNITY PROPERTY*.

**consumer debt.** A debt incurred by someone primarily for a personal, family, or household purpose.

"What are 'consumer' debts? Section 101(8) defines a consumer debt as follows: 'consumer debt means debt incurred by an individual primarily for a personal, family, or household purpose.' The touchstone is the debtor's use of the money. The nature of the collateral, the business of the creditor and the form of the loan are all irrelevant. A loan of \$25,000 from a Credit Union to pay for a child's education is a consumer debt, but the same loan used to finance the opening of an accounting business is not a consumer debt. This is so irrespective of the nature of the collateral put up for the debt." David G. Epstein et al., *Bankruptcy* § 7-45, at 579 (1993).

**contingent debt.** A debt that is not presently fixed but that may become fixed in the future with the occurrence of some event.

**convertible debt.** A debt whose security may be changed by a creditor into another form of security.

**debt by simple contract.** See *simple-contract debt*.

**debt by special contract.** See *special-contract debt*.

**debt by specialty contract.** See *special-contract debt*.

**debt of record.** A debt evidenced by a court record, such as a judgment.

**exigible debt.** A liquidated and demandable debt; a matured claim.

**fixed debt.** Generally, a permanent form of debt commonly evidenced by a bond or debenture; long-term debt. — Also termed *fixed liability*.

**floating debt.** Short-term debt that is continuously renewed to finance the ongoing operations of a business or government.

**fraudulent debt.** A debt created by fraudulent practices.

**funded debt. 1.** A state or municipal debt to be paid out of an accumulation of money or by future taxation. **2.** Secured long-term corporate debt meant to replace short-term, floating, or unsecured debt.

**general debt.** A governmental body's debt that is legally payable from general revenues and is backed by the full faith and credit of the governmental body.

**hypothecary debt.** A lien on an estate.

**individual debt.** (*usu. pl.*) Debt personally owed by a partner, rather than by the partnership.

**installment debt.** A debt that is to be repaid in a series of payments at regular times over a specified period.

**judgment debt.** A debt that is evidenced by a legal judgment or brought about by a successful lawsuit against the debtor.

**legal debt.** A debt recoverable in a court of law.

**liquidated debt.** A debt whose amount has been determined by agreement of the parties or by operation of law.

**liquid debt.** A debt that is due immediately and unconditionally.

**long-term debt.** Generally, a debt that will not come due within the next year.

**mutual debts.** Cross-debts of the same kind and quality between two persons.

**national debt.** See NATIONAL DEBT.

**nondischargeable debt.** See NONDISCHARGEABLE DEBT.

**passive debt.** A debt that, by agreement between the debtor and creditor, is interest-free.

**preferential debt.** A debt that is legally payable before others, such as an employee's wages.

**privileged debt.** A debt that has priority over other debts if a debtor becomes insolvent; a secured debt.

**public debt.** A debt owed by a municipal, state, or national government.

**secured debt.** A debt backed by collateral.

**short-term debt.** Collectively, all debts and other liabilities that are payable within one year. — Also termed *current liability*.

**simple-contract debt.** A debt that is either oral or written but is not of record and not under seal. — Also termed *debt by simple contract*.

**special-contract debt.** A debt due, or acknowledged to be due, by an instrument under seal, such as a deed of covenant or sale, a lease reserving rent, or a bond. — Also termed *debt by special contract*; *debt by specialty contract*; *specialty debt*.

"Any contract in short whereby a determinate sum of money becomes due to any person, and is not paid but remains in action merely, is a contract of debt. And, taken in this light, it comprehends a great variety of acquisition; being usually divided into debts of record, debts by special, and debts by simple contract." 2 William Blackstone, *Commentaries on the Laws of England* 464 (1766).

**subordinate debt.** A debt that is junior or inferior to other types or classes of debt.

**unliquidated debt.** A debt that has not been reduced to a specific amount, and about which there may be a dispute.

**unsecured debt.** A debt not supported by collateral or other security.

**debt adjustment.** See DEBT POOLING.

**debt by simple contract.** See *simple-contract debt* under DEBT.

**debt by special contract.** See *special-contract debt* under DEBT.

**debt by specialty contract.** See *special-contract debt* under DEBT.

**debt capital.** See CAPITAL.

**debt consolidation.** See DEBT POOLING.

**debtee.** *Archaic.* See CREDITOR (1).

**debt-equity ratio.** See DEBT-TO-EQUITY RATIO.

**debt financing.** See FINANCING.

**debt instrument.** A written promise to repay a debt, such as a promissory note, bill, bond, or commercial paper.

**debt limitation.** A ceiling placed on borrowing by an individual, business, or government. ● The constitutions of many states prohibit the states from incurring debt in excess of a stated amount. Other state constitutions allow states to incur debt above a stated amount only through a vote of the people. — Also termed *limitation on indebtedness*.

**debt of record.** See DEBT.

**debtor.** 1. One who owes an obligation to another, esp. an obligation to pay money. 2. *Bankruptcy.* A person who files a voluntary petition or against whom an involuntary petition is filed. — Also termed *bankrupt*. 3. *Secured transactions.* A person who either (1) has a property interest — other than a security interest or other lien — in collateral, even if the person is not an obligor, or (2) is a seller of accounts, chattel paper, payment intangibles, or promissory notes. UCC § 9-102(a)(19). — Abbr. Dr.

**absconding debtor.** A debtor who flees from creditors to avoid having to pay a debt. ●

Absconding from a debt was formerly considered an act of bankruptcy. See ACT OF BANKRUPTCY.

**account debtor.** A person obligated on an account, chattel paper, or general intangible.

• The UCC exempts from the definition of *account debtor* a person obligated to pay a negotiable instrument, even if the instrument constitutes chattel paper. UCC § 9-105(1)(a).

**joint debtor.** One of two or more debtors jointly liable for the same debt.

**judgment debtor.** See JUDGMENT DEBTOR.

**new debtor.** *Secured transactions.* A person that becomes bound as debtor under a security agreement previously entered into by another person. UCC §§ 9-102(a)(39), 9-203(c).

**debtor-in-possession.** *Bankruptcy.* A Chapter 11 or 12 debtor that continues to operate its business as a fiduciary to the bankruptcy estate. • With certain exceptions, the debtor-in-possession has all the rights, powers, and duties of a Chapter 11 trustee. — Abbr. DIP.

**debtor rehabilitation.** See REHABILITATION (3).

**Debtor's Act of 1869.** An English statute that, among other things, (1) abolished imprisonment for debt except in certain cases, as when a debtor owed a debt to the Crown or a debtor had money but refused to pay a debt, (2) abolished arrest by mesne process, that is, by compelling the defendant to appear and give bail unless it was believed that the defendant would leave the country, (3) made it a misdemeanor to obtain credit under false pretenses or to defraud creditors, and (4) defined how warrants and judgment orders would be executed.

**debt pooling.** An arrangement by which a person's debts are consolidated and creditors agree to accept lower monthly payments or to take less money. — Also termed *debt consolidation*; *debt adjustment*.

**debt ratio.** A corporation's total long-term and short-term liabilities divided by the firm's total assets. • A low debt ratio indicates conservative financing and thus usu. an enhanced ability to borrow in the future. — Also termed *debt-to-total-assets ratio*.

**debt retirement.** Repayment of debt; RETIREMENT (3).

**debt security.** See SECURITY.

**debt service.** **1.** The funds needed to meet a long-term debt's annual interest expenses, principal payments, and sinking-fund contributions. **2.** Payments due on a debt, including interest and principal.

**debt-to-equity ratio.** A corporation's long-term debt divided by its owners' equity, calculated to assess its capitalization. — Also termed *debt-equity ratio*; *debt-to-net-worth ratio*.

**debt-to-total-assets ratio.** See DEBT RATIO.

**de caetero** (dee see-tə-roh) [Latin "about the other"] Henceforth; in the future. — Also spelled *de cetero*.

**de calceto reparando** (dee kal-sə-toh rep-ə-ran-doh), *n.* [Law Latin "for repairing a causeway"] *Hist.* A writ directing a sheriff to dis-train residents of a place to repair a road.

**decanatus** (dek-ə-nay-təs), *n.* [Law Latin] *Hist.* A group of ten people; a decenary. See DECANUS.

**decania** (di-kay-nee-ə), *n.* [Law Latin] *Hist.* A dean's office; a dean's territory.

**decanus** (di-kay-nəs), *n.* [fr. Greek *dekanos* "a dean"] **1.** *Roman law.* An officer commanding ten soldiers. **2.** *Eccles. & Civil law.* A leader of ten people, as in *decanus monasticus* ("dean of ten monks"). **3.** The dean of a cathedral.

**de capitalibus dominus feodi** (dee kap-ə-tay-lə-bəs dom-ə-nəs fee-ə-dī). [Law Latin] *Hist.* From the highest lord of the fee. • This term was primarily used in old charters to state that the tenure of an estate was to be held of the chief lord of the fee, rather than of the immediate grantor.

**decapitation** (dee-kap-ə-tay-shən). *Hist.* The act of cutting off a head; a beheading. • This was once a common method of capital punishment.

**de capite minutis** (dee kap-ə-tee mi-n[y]o-tis), *n.* [Latin "of those who have lost their status"] *Roman law.* A title in the *Pandects*, referring to people who lost their civil status.

**de cartis reddendis** (dee kahr-tis ri-den-dis), *n.* [Law Latin "for restoring charters"] *Hist.* A writ ordering redelivery of a charter or deed; a writ of detinue. See DETINUE.

**de catallis reddendis** (dee kə-tal-is ri-den-dis), *n.* [Law Latin “of chattels to be restored”] *Hist.* A writ ordering a bailee to deliver chattels kept from the owner. • This was replaced by the writ of detinue. See DETINUE.

**de cautione admittenda** (dee kaw-shee-oh-nee ad-mi-ten-də), *n.* [Law Latin “of security to be taken”] *Hist.* A writ ordering a bishop who had imprisoned an excommunicated person for contempt, even though the prisoner had offered bail and promised to obey the church in the future, to take the offered security and release the prisoner.

**decease**, *n.* See DEATH.

**decease**, *vb.* To die; to depart from life.

**decendent** (di-see-dənt), *n.* A dead person, esp. one who has died recently. — Also termed *deceased*.

**nonresident decendent.** A decendent who was domiciled outside the jurisdiction in question (such as probate jurisdiction) at the time of death.

**decendent's estate.** See ESTATE.

**deceit**, *n.* **1.** The act of intentionally giving a false impression <the juror's deceit led the lawyer to believe that she was not biased>. **2.** A tort arising from a false representation made knowingly or recklessly with the intent that another person should detrimentally rely on it <the new homeowner sued both the seller and the realtor for deceit after discovering termites>. **3.** See *fraudulent misrepresentation* under MISREPRESENTATION. — **deceive**, *vb.* See FRAUD; MISREPRESENTATION.

“The tort of deceit consists in the act of making a wilfully false statement with the intent that the plaintiff shall act in reliance on it, and with the result that he does so act and suffers harm in consequence. . . . There are four main elements in this tort: (1) there must be a false representation of fact; (2) the representation must be made with knowledge of its falsity; (3) it must be made with the intention that it should be acted on by the plaintiff, or by a class of persons which includes the plaintiff, in the manner which resulted in damage to him; (4) it must be proved that the plaintiff has acted upon the false statement and has sustained damage by so doing.” R.F.V. Heuston, *Salmond on the Law of Torts* 387 (17th ed. 1977).

**decem tales** (des-em tay-leez), *n.* [Law Latin “ten such people”] *Hist.* A writ directing a sheriff to summon ten people for a jury panel when a sufficient number have not already appeared.

**decemviri litibus judicandis** (di-sem-və-rī lī-ti-bəs joo-də-kan-dis), *n.* [Latin “ten persons to decide lawsuits”] *Roman law.* A group of five senators and five knights who assisted the elected magistrate in deciding legal disputes.

**decenary.** *Hist.* A town or district consisting of ten freeholding families. • A freeholder of the decenary (a *decennarius*) was bound by frankpledge to produce any wrongdoer living in the decenary. — Also spelled *decennary*. — Also termed *decenna*; *tithing*. Cf. FRANKPLEDGE.

“The civil division of the territory of England is into counties, of those counties into hundreds, of those hundreds into tithings or towns. Which division, as it now stands, seems to owe its original to king Alfred; who, to prevent the rapines and disorders which formerly prevailed in the realm, instituted tithings; so called from the Saxon, because *ten* freeholders, with their families, composed one. These all dwelt together, and were sureties or free pledges to the king for the good behavior of each other; and, if any offence was committed in their district, they were bound to have the offender forthcoming. And therefore anciently no man was suffered to abide in England above forty days, unless he were enrolled in some tithing or decenary.” 1 William Blackstone, *Commentaries on the Laws of England* 110 (1765).

**decency.** The state of being proper, as in speech or dress; the quality of being seemly.

**decenna** (di-sen-ə), *n.* [fr. Latin *decem* “ten”] See DECENARY.

**decennarius** (des-ə-nair-ee-əs), *n.* [Law Latin “a deciner”] One of ten families of freeholders comprising a decenary. See DECENARY.

**decennary.** See DECENARY.

**deceptive act.** As defined by the Federal Trade Commission and most state statutes, conduct that is likely to deceive a consumer acting reasonably under similar circumstances. — Also termed *deceptive practice*; *deceptive sales practice*.

**deceptive advertising.** Advertising containing false or misleading statements <a fictitious testimonial about a product or service may constitute deceptive advertising>.

**deceptive practice.** See DECEPTIVE ACT.

**deceptive sales practice.** See DECEPTIVE ACT.

**deceptive warranty.** See WARRANTY (2).

**de certificando** (dee sər-ti-fi-kan-doh), *n.* [Law Latin “about something to be certified”] A writ requiring something to be certified, similar to certiorari. See CERTIFICANDO DE RECOGNITIONE STAPULAE.

**decertify**, *vb.* **1.** To revoke the certification of. **2.** To remove the official status of (a labor union) by withdrawing the right to act as a collective-bargaining agent. **3.** (Of a court) to overrule a previous order that created a class for purposes of a class action; to officially undo (a class). — **decertification**, *n.* Cf. CERTIFY.

**de certiorando** (dee sər-shee-ə-ran-doh), *n.* [Law Latin “about certification”] A writ ordering a sheriff to certify a fact.

**decessus** (di-ses-əs), *n.* [fr. Latin *decidere* “to depart”] **1.** Roman law. A death. **2.** A departure. • This term has been used in both the civil and common law, esp. in reference to the desertion of a ground in a previous pleading in favor of another. See DEPARTURE.

**de champertia** (dee kam-pər-shee-ə), *n.* [Law Latin “about champerty”] *Hist.* A writ ordering justices of the bench to enforce the champerty laws. See CHAMPERTOR; CHAMPERTY.

**de char et de sank** (də shahr ay də sangk). [Law French] *Hist.* Of flesh and blood.

**de chimino** (dee kim-ə-noh), *n.* [Law Latin “writ of way”] *Hist.* A writ to enforce a right-of-way.

**de cibariis utendis** (dee si-bair-ee-əs yoo-ten-dis), *n.* [Law Latin “of victuals to be used”] *Hist.* The statute of 10 Edw. 3 ch. 3 restraining entertainment expenses. • This was one of several statutes limiting luxury spending.

**decies tantum** (desh-ee-eez or dee-shee-eez tan-təm), *n.* [Law Latin “ten times as much”] *Hist.* A writ ordering a juror who accepted a bribe for a verdict to pay ten times the bribery amount, half to the suing party and half to the Crown.

“Decies tantum is a writ that lies where a juror in any inquest takes money of the one part or other, to give his verdict; then he shall pay ten times as much as he hath received: and every one that will sue may have this action, and shall have the one half, and the king the other . . . . And the same law is of all other actions popular, where one part is to the king, the other to the party that sues. Also the embracers, who procure such inquests, shall be punished in the same manner, and they shall have imprisonment a year. But no justice shall

inquire thereof *ex officio*, but only at the suit of the party.” *Termes de la Ley* 146 (1st Am. ed. 1812).

**decimae** (des-ə-mee), *n.* [fr. Latin *decem* “ten”] *Eccles. law.* **1.** The tenth part of the annual profits of a benefice originally payable to the Pope, and later to the Crown by 26 Hen. 8, ch. 3.

“The tenths, or *decimae*, were the tenth part of the annual profit of each living . . . which was also claimed by the holy see . . . . But this claim of the pope met with a vigorous resistance from the English parliament; and a variety of acts were passed to prevent and restrain it . . . . But the popish clergy, blindly devoted to the will of a foreign master, still kept it on foot; sometimes more secretly, sometimes more openly and avowedly . . . . And, as the clergy expressed this willingness to contribute so much of their income to the head of the church, it was thought proper (when in the same reign the papal power was abolished, and the king was declared the head of the church of England) to annex this revenue to the crown . . . .” 1 William Blackstone, *Commentaries on the Laws of England* 274 (1765).

**2.** Tithes paid to the church, often in grain or wool.

**decimation** (des-ə-may-shən). **1.** A major destruction of people; a great loss of life. **2.** *Hist.* A tithing; a payment of the tenth part. **3.** *Hist.* A punishment, esp. by death, of every tenth person by lot. • Under Roman law, *decimatio legonis* referred to the execution by lot of every tenth soldier for mutiny or other neglect of duty.

**decision**, *n.* A judicial determination after consideration of the facts and the law; esp., a ruling, order, or judgment pronounced by a court when considering or disposing of a case. — **decisional**, *adj.* See JUDGMENT; OPINION.

**appealable decision.** A decree or order that is sufficiently final to receive appellate review (such as an order granting summary judgment), or an interlocutory decree or order that is immediately appealable, usu. by statute (such as an order denying immunity to a police officer in a civil-rights suit). — Also termed *reviewable issue*. See COLLATERAL-ORDER DOCTRINE.

**final decision.** See *final judgment* under JUDGMENT.

**interlocutory decision.** See *interlocutory order* under ORDER (2).

**decisional law.** See CASELAW.

**decision on the merits.** See *judgment on the merits* under JUDGMENT.

**decisive oath.** See OATH.

**decisory oath.** See *decisive oath* under OATH.

**Decker test.** See SUBJECT-MATTER TEST.

**declarant** (di-klair-ənt), *n.* **1.** One who has made a statement <in accordance with the rules of evidence, the statement was offered to prove the declarant's state of mind>. **2.** One who has signed a declaration, esp. one stating an intent to become a U.S. citizen <the declarant grew up in Italy>.

**declaration, n.** **1.** A formal statement, proclamation, or announcement, esp. one embodied in an instrument.

**declaration of dividend.** A company's setting aside of a portion of its earnings or profits for distribution to its shareholders. See DIVIDEND.

**declaration of homestead.** A statement required to be filed with a state or local authority, to prove property ownership to claim homestead-exemption rights. See HOMESTEAD.

**declaration of intention.** An alien's formal statement resolving to become a U.S. citizen and to renounce allegiance to any other government or country.

**declaration of legitimacy.** A formal pronouncement that a child is legitimate.

**declaration of trust.** **1.** The act by which the person who holds legal title to property or an estate acknowledges that the property is being held in trust for another person or for certain specified purposes. **2.** The instrument that creates a trust. — Also termed (in sense 2) *trust instrument*; *trust deed*; *trust agreement*.

**2. Int'l law.** The part of a treaty containing the stipulations under which the parties agree to conduct their actions; TREATY. **3. Int'l law.** A country's unilateral pronouncement that affects the rights and duties of other countries.

**declaration of war.** A country's announcement that it is officially engaged in war against another country.

**4.** A document that governs legal rights to certain types of real property, such as a condominium or a residential subdivision. **5.** A listing of the merchandise that a person intends to bring into the United States. • This listing is given to U.S. Customs when one enters the country. **6. Evidence.** An unsworn statement made by someone having knowledge of facts relating to an event in dispute.

**declaration against interest.** A statement by a person who is not a party to a suit and is not available to testify at trial, discussing a matter that is within the declarant's personal knowledge and is adverse to the declarant's interest. • Such a statement is admissible into evidence as an exception to the hearsay rule. Fed. R. Evid. 804(b)(3). See *admission against interest* under ADMISSION.

**declaration of pain.** A person's exclamation of present pain, which operates as an exception to the hearsay rule. Fed. R. Evid. 803(3).

**declaration of state of mind.** A person's state-of-mind statement that operates as an exception to the hearsay rule. Fed. R. Evid. 803(3).

**dying declaration.** A statement by a person who believes that death is imminent, relating to the cause or circumstances of the person's impending death. • The statement is admissible in evidence as an exception to the hearsay rule. — Also termed *deathbed declaration*.

**self-serving declaration.** An out-of-court statement made to benefit one's own interest.

**7. Common-law pleading.** The plaintiff's first pleading in a civil action. • It is an amplification of the original writ on which the action is founded, with the additional circumstances of the time and place of injury. In a real action, the declaration is called a *count*. Today the equivalent term in English law is *statement of claim*; in most American jurisdictions, it is called a *petition* or *complaint*. — Also termed *narratio*. See COUNT (3). Cf. PLEA (2).

"The declaration is a statement of all material facts constituting the plaintiff's cause of action in a methodical and legal form. It consists of the following parts: (a) Statement of title of court. (b) Statement of venue in the margin. (c) The commencement. (d) The body, or statement of the cause of action. (e) The conclusion." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 76, at 192 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**declaration in chief.** A declaration for the principal cause of action.

**8.** A formal, written statement — resembling an affidavit but not notarized or sworn to — that attests, under penalty of perjury, to facts known by the declarant. • Such a declaration, if properly prepared, is admissible in federal court with the same effect as an affidavit. 28 USCA § 1746. — Also termed *declaration under penalty of perjury*; *unsworn declaration under penalty of perjury*. Cf. AFFIDAVIT. **9. Int'l law.** An oral or written statement, unilaterally made, by which a state expresses its will, intent, or opinion when acting in the field of

international relations. **10.** See *declaratory judgment* under JUDGMENT. — **declare**, *vb.* — **declaratory**, *adj.*

**declaration date.** See DATE.

**declaration of a desire for a natural death.** See LIVING WILL.

**declaration of alienage.** See ALIENAGE.

**declaration of dividend.** See DECLARATION (1).

**declaration of estimated tax.** A required IRS filing by certain individuals and businesses of current estimated tax owed, accompanied by periodic payments of that amount. • The requirement ensures current collection of taxes from taxpayers (such as self-employed persons) whose incomes are not fully taxed by payroll withholding. IRC (26 USCA) §§ 6315, 6654.

**declaration of homestead.** See DECLARATION (1).

**Declaration of Independence.** The formal proclamation of July 4, 1776, in the name of the people of the American colonies, asserting their independence from the British Crown and announcing themselves to the world as an independent nation.

**declaration of legitimacy.** See DECLARATION (1).

**declaration of no defenses.** See WAIVER OF DEFENSES.

**declaration of pain.** See DECLARATION (6).

**Declaration of Paris.** An international agreement, signed by Great Britain, France, Turkey, Sardinia, Austria, Prussia, and Russia in 1856 (at the end of the Crimean War), providing that (1) privateering is illegal, (2) with the exception of contraband, a neutral flag covers an enemy's goods, (3) with the exception of contraband, neutral goods cannot be confiscated under a hostile flag, and (4) a blockade must work to be binding. • The agreement was later adopted by most other maritime powers, except the United States and a few others.

“The Declaration of Paris is one of the greatest triumphs won by commercial interests over the strict rules of maritime warfare. Its importance resides in its first three articles. Article 4 did no more than formulate a principle acknowledged for more than a century. Construed strictly it requires an impossibility; for no block-

ade, however strict, can always ‘prevent access to the coast of the enemy.’ But it is clear that the words were meant to be understood in a reasonable sense as merely prohibitory of ineffective or ‘paper’ blockades . . . . Article 1 struck at a most objectionable practice. The current of opinion had long been running strongly against the use of privateers. . . . Article 2 . . . has provoked an enormous amount of controversy. Together with Article 3 it amounted to a new departure in the law of maritime capture. Up to 1856 the great naval powers had been divided between the old principle that the liability of goods to capture should be determined by the character of their owner, and the more modern principle . . . that the character of the ship in which the goods were laden should settle their fate.” 1 R.H. Inglis Palgrave, *Palgrave's Dictionary of Political Economy* 520–21 (Henry Higgs ed., 2d ed. 1925).

**declaration of rights.** An action in which a litigant requests a court's assistance not because any rights have been violated but because those rights are uncertain. • Examples include suits for a declaration of legitimacy, of nullity of marriage, of the legality or illegality of the conduct of state officers, and of the authoritative interpretation of wills. See *declaratory judgment* under JUDGMENT.

**declaration of state of mind.** See DECLARATION (6).

**Declaration of Taking Act.** The federal law regulating the government's taking of private property for public use under eminent domain. 40 USCA § 258a. • Fair compensation must be paid for the property.

**declaration of trust.** See DECLARATION (1).

**declaration of war.** See DECLARATION (3).

**declaration under penalty of perjury.** See DECLARATION (8).

**declarator of trust** (*di-klar-ə-tər or di-klair-ə-tər or -tor*). A common-law action against a trustee who holds property under a title *ex facie* for the trustee's own benefit.

**declaratory** (*di-klar-ə-tor-ee or di-klair-*), *adj.*  
 1. Clearly; manifestly <a declaratory statute>.  
 2. Explanatory <a declaratory judgment>.

**declaratory decree.** See *declaratory judgment* under JUDGMENT.

**declaratory judgment.** See JUDGMENT.

**declaratory-judgment act.** A federal or state law permitting parties to bring an action to



determine their legal rights and positions regarding a controversy not yet ripe for adjudication, as when an insurance company seeks a determination of coverage before deciding whether to cover a claim. See *declaratory judgment* under JUDGMENT.

**declaratory part of a law.** A portion of a law clearly defining rights to be observed or wrongs to be avoided.

**declaratory precedent.** See PRECEDENT.

**declaratory statute.** See STATUTE.

**declaratory theory.** The belief that judges' decisions never make law but instead merely constitute evidence of what the law is. • This antiquated view — held by such figures as Coke and Blackstone — is no longer accepted.

"There are ... at least three good reasons why the declaratory theory should have persisted for some time after the modern English doctrine [of precedent] had begun to take shape. In the first place, it appealed to believers in the separation of powers, to whom anything in the nature of judicial legislation would have been anathema. Secondly, it concealed a fact which Bentham was anxious to expose, namely, that judge-made law is retrospective in its effect. If in December a court adjudges that someone is liable, in consequence of his conduct during the previous January, it would certainly appear to be legislating retrospectively, unless the liability is based on an earlier Act of Parliament, or unless the court is simply following a previous decision. A way of disguising the retrospective character of such a judgment would be to maintain the doctrine that the court really was doing no more than state a rule which anyone could have deduced from well-known principles or common usage, for the conduct in question would then have been prohibited by the law as it stood in January. The third reason for the persistence of the declaratory theory may be thought to justify its retention in a revised form today. When confronted with a novel point, judges always tend to speak as though the answer is provided by the common law." Rupert Cross & J.W. Harris, *Precedent in English Law* 30 (4th ed. 1991).

**de claro die** (dee klair-oh di-ee). [Law Latin "by clear day"] By daylight.

**de clauso fracto** (dee klaw-zoh frak-toh). [Law Latin] Of a breach of close. See CLAUSUM FREGIT.

**de clerico admittendo** (dee kler-ə-koh ad-mi-ten-doh), *n.* [Law Latin "for admitting a clerk"] *Hist.* A writ of execution commanding a bishop to accept a nominee for a vacant benefice. • A benefice's patron could enforce the right to fill a vacancy (the right of *presentation*) in the Court of Common Pleas by writ of *quare*

## declining-balance depreciation method

*impedit.* — Also termed *admittendo clerico*; *ad admittendum clericum*. Cf. ADVOWSON; PRESENTATION; QUARE IMPEDIT.

**de clerico capto per statutum mercatorium deliberando** (dee kler-ə-koh kap-toh pər stə-tyoo-təm mər-kə-tor-ee-əm di-lib-ə-ran-doh), *n.* [Law Latin "for delivering a clerk arrested on a statute merchant"] *Hist.* A writ ordering the release of a clerk imprisoned for breaching a statute merchant. — Often shortened to *de clerico capto per statutum mercatorium*.

**de clerico convicto commisso gaolae in defectu ordinarii deliberando** (dee kler-ə-koh kən-vik-toh kə-mis-oh jay-[ə]-lee in di-fekt[y]oo di-lib-ə-ran-doh). [Law Latin "for delivering a cleric convicted and committed to gaol in defect of his ordinary"] *Hist.* A writ ordering the delivery of a cleric to his ordinary (i.e., superior) when the cleric did not claim benefit of clergy and consequently was convicted of a felony. See ORDINARY (1); BENEFIT OF CLERGY (1).

**de clerico infra sacros ordines constituto, non eligendo in officium** (dee kler-ə-koh in-frə sak-rohs or-di-nee-z kon-sti-tyoo-toh, non el-i-jen-doh in ə-fish-ee-əm). [Law Latin "for not electing a clerk in holy orders to office"] *Hist.* A writ ordering a cleric's release from secular office. • The writ was addressed to the bailiff or other person who had forced a cleric to take a bailiwick or other secular office.

**de clero** (dee kleer-oh), *n.* [Law Latin "concerning the clergy"] The statute of 25 Edw. 3 addressing clerical matters, including presentations and indictments.

**declination** (dek-lə-nay-shən). **1.** A deviation from proper course <declination of duty>. **2.** An act of refusal <declination of a gift>. **3.** A document filed by a fiduciary who chooses not to serve. **4.** At common law, a plea to the court's jurisdiction by reason of the judge's personal interest in the lawsuit.

**declinatory exception** (di-klɪn-ə-tor-ee). A dilatory objection to a court's jurisdiction.

**declinatory plea.** *Hist.* A pretrial plea claiming benefit of clergy. — Also termed *plea of sanctuary*. See BENEFIT OF CLERGY.

**declining-balance depreciation method.** See DEPRECIATION METHOD.

**decoctor** (di-kok-tər or -tor), *n.* [fr. Latin *deciquere* “to waste”] *Roman law.* A bankrupt; a defaulting debtor.

**de coelo usque ad inferos** (dee see-loh əs-kwee ad in-fər-nohs). [Latin] From heaven to the center of the earth. • This phrase expressed a common-law maxim about the extent of a real-property owner’s ownership interest in the property.

**decollatio** (dee-kah-lay-shee-oh), *n.* [fr. Latin *de* “off” + *collum* “neck”] *Hist.* In England and Scotland, an act of beheading. See DECAPITATION.

**decolonization.** *Int’l law.* The process by which a colonial power divests itself of sovereignty over a colony — whether a territory, a protectorate, or a trust territory — so that the colony is granted autonomy and eventually attains independence.

**de communi dividundo** (dee kə-myoo-ni di-vi-dən-doh), *n.* [Latin “for dividing a thing held in common”] *Roman & civil law.* An action to partition common property. — Also termed *actio de communi dividendo*.

**de comon droit** (də kah-mən droyt). [Law French] *Hist.* By the common law; of common right. See COMMON LAW.

**de computo** (dee kom-py-ə-toh), *n.* [Law Latin “of account”] *Hist.* A writ ordering a defendant to either give a reasonable accounting to the plaintiff or explain why such an accounting should not be required. • This was the foundation for an action of account. See ACCOUNT (3).

**de concilio curiae** (dee kən-sil-ee-oh kyoor-ee-ee). [Law Latin] By the advice of the court; by the direction of the court. — Also spelled *de consillio curiae*.

**De Conflictu Legum** (dee kən-flik-too lee-gəm), *n.* [Latin] Concerning the conflict of laws. • This is a title to several works on the conflict of laws.

**De Conjunctim Feoffatis** (dee kən-jəŋk-təm fee-fay-tis), *n.* [Law Latin “concerning persons jointly enfeoffed”] *Hist.* The title of the statute of Edward I preventing delays caused by tenants pleading, in novel disseisins or other actions, that someone else was jointly seised with them.

**de consanguineo** (dee kon-sang-gwin-ee-oh), *n.* See COSINAGE.

**de consanguinitate** (dee kon-sang-gwin-i-tay-tee), *n.* See COSINAGE.

**de consilio** (dee kən-sil-ee-oh). [Law Latin] Of counsel. • This term often referred to the advice or counsel to commit a crime.

**deconstruction,** *n.* In critical legal studies, a method of analyzing legal principles or rules by breaking down the supporting premises to show that these premises might also advance the opposite rule or result. — Also termed *trashing*. — **deconstructionist,** *adj. & n.*

**de continuando assisam** (dee kən-tin-yoo-əndoh ə-si-zəm), *n.* [Law Latin “for continuing an assize”] A writ to continue an assize.

**de contumace capiendo** (dee kon-tyə-may-see kap-ee-en-doh), *n.* [Law Latin “for arresting a contumacious person”] *Hist.* A writ issuing out of the Court of Chancery at the request of an ecclesiastical court that has found a person to be in contempt. • This writ came into use after the Ecclesiastical Courts Act of 1813 removed ecclesiastical courts’ power to excommunicate litigants who failed to comply with a court order. Cf. EXCOMMUNICATO CAPIENDO.

“In 1812 the case of Mary Ann Dix — a woman not of age, who was imprisoned for two years on a writ de excommunicato capiendo for not paying costs in a suit for defamation — aroused the Legislature. In the following year it was enacted that excommunication should cease to exist as part of the process of the ecclesiastical courts to enforce appearance, and as a punishment for contempt. . . . [F]or the writ de excommunicato capiendo was substituted the writ de contumace capiendo; and the rules applying to the older writ were made applicable to the new.” 1 William Holdsworth, *A History of English Law* 632 (7th ed. 1956).

**de copia libelli deliberanda** (dee koh-pee-ə lib-el-i di-lib-ə-ran-də), *n.* [Law Latin “for delivering a copy of a libel”] *Hist. Eccles. law.* A writ ordering an ecclesiastical-court judge (such as the Dean of Arches) to provide the defendant with a copy of the plaintiff’s complaint.

**de coronatore eligendo** (dee kor-ə-nə-tor-ee el-i-jen-doh), *n.* [Law Latin “for electing a coroner”] *Hist.* A writ ordering a sheriff to call an election of a coroner to fill a vacant office. See CORONER (2).

**de coronatore exonerando** (dee kor-ə-nə-tor-ee eg-zon-ə-ran-doh), *n.* [Law Latin “for removing a coroner”] A writ ordering the sheriff

to remove a coroner from office for a reason stated in the writ. See CORONER (2).

"The coroner is chosen for life: but may be removed, either by being made sheriff, or chosen verderor, which are offices incompatible with the other; or by the king's writ *de coronatore exonerando*, for a cause to be therein assigned, as that he is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it." 1 William Blackstone, *Commentaries on the Laws of England* 336 (1765).

**de corpore comitatus** (dee kor-pə-ree kom-ə-tay-təs). [Law Latin] From the body of the county. • This term was esp. used to distinguish a body of the county at large from a smaller area or *de vicineto* ("from a neighborhood").

**de corrodio habendo** (dee kə-roh-dee-oh hən-ben-doh), *n.* [Law Latin "writ for having a corody"] *Hist.* A writ to obtain an allowance, esp. of meat or other sustenance, from a religious house for a royal servant living there.

**decoy, vb.** To entice (a person) without force; to inveigle <the victim was decoyed out of her home> <the defendant was decoyed into the county and then served with process>. Cf. ENTRAPMENT.

**decoy letter.** A letter prepared and mailed to detect a criminal who has violated the postal or revenue laws.

**decreasing term insurance.** See INSURANCE.

**decree, n.** 1. Traditionally, a judicial decision in a court of equity, admiralty, divorce, or probate — similar to a judgment of a court of law <the judge's decree in favor of the will's beneficiary>. 2. Any court order, but esp. one in a matrimonial case <divorce decree>. See JUDGMENT; ORDER (2); DECISION.

**consent decree.** A court decree that all parties agree to. — Also termed *consent order*.

**decree absolute.** A ripened decree nisi; a court's decree that has become unconditional because the time specified in the decree nisi has passed. — Also termed *order absolute*; *rule absolute*.

**decree nisi** (ni-si). A court's decree that will become absolute unless the adversely affected party shows the court, within a specified time, why it should be set aside. — Also termed *nisi decree*; *order nisi*; *rule nisi*. See NISI.

**decree of distribution.** An instrument by which heirs receive the property of a deceased person.

**decree of insolvency.** A probate-court decree declaring an estate's insolvency.

**decree of nullity.** A decree declaring a marriage to be void *ab initio*. See NULLITY OF MARRIAGE.

**decree pro confesso** (proh kən-fes-oh). *Equity practice.* A decree entered in favor of the plaintiff as a result of the defendant's failure to timely respond to the allegations in the plaintiff's bill.

"A decree pro confesso in equity is similar to a default judgment in an action at law. If a defendant in an equity suit fails to answer the plaintiff's petition within the prescribed time period, the bill will be taken pro confesso, and a decree entered in favor of the plaintiff.... However, whereas a default judgment in an action at law effects an admission of pleaded facts and conclusions of law... a decree pro confesso in an equity action admits only the material and well pleaded facts in the petition and does not admit the legal claims upon which the plaintiff seeks relief." 27A Am. Jur. 2d *Equity* § 249, at 733-34 (1996).

**deficiency decree.** See *deficiency judgment* under JUDGMENT.

**final decree.** See *final judgment* under JUDGMENT.

**interlocutory decree.** See *interlocutory judgment* under JUDGMENT.

**decreet** (di-kreet), *n.* [fr. Latin *decretum*] *Scots law.* A court's final judgment; a decree.

**decreet absolvitor** (ab-zol-vi-tər or -tor), *n.* *Scots law.* A judgment for a defendant, either by a dismissal of a claim or by an acquittal.

**decreet arbitral** (ahr-bi-trəl), *n.* *Scots law.* 1. An arbitration award. 2. A form for an arbitration award. — Also termed *decree arbitral*.

**decreet cognitionis causa** (kog-nish-ee-oh-nis kaw-zə), *n.* *Scots law.* A judgment in a suit involving a plaintiff creditor suing a debtor's heir to attach the heir's lands.

**decreet condemnator** (kon-dem-nay-tər or -tor), *n.* *Scots law.* A judgment for the plaintiff.

**decreet of valuation of teinds** (teendz), *n.* *Scots law.* A court of sessions judgment determining the proper amount of tithes to be paid to church officers for their services.

**decrementum maris** (dek-rə-men-təm mar-is). [Latin "decrease of the sea"] The receding of the sea from the land.

**decrepit** (di-krep-it), *adj.* (Of a person) disabled; physically or mentally incompetent to such an extent that the individual would be helpless in a personal conflict with a person of ordinary health and strength.

**decreta** (di-kree-tə), *n.* [Latin "decisions"] *Roman law.* Judgments of magistrates; esp., sentences pronounced by the emperor as the supreme judge. See DECRETUM.

"*Decreta.* In Roman law decisions of magistrates given after investigation of a case by *cognitio* . . . and in particular, decisions of the emperor as judge of first instance after trial by *cognitio*, or as a judge of appeal. As the highest authority in the State the emperor could interpret the law freely and even introduce new principles. Consequently imperial decisions were authoritative interpretations of the law or even innovatory and regarded as statements binding for the future, and as such quoted by the jurists. They were not only communicated to the parties but recorded in the records of the imperial court and private persons might obtain copies of them." David M. Walker, *The Oxford Companion to Law* 343 (1980).

**decretal** (di-kree-təl), *adj.* Of or relating to a decree.

**decretal interdict.** See INTERDICT (1).

**decretal order.** See ORDER (2).

**decretals** (di-kree-təlz), *n.* *Eccles. law.* Canonical epistles written either by the Pope or by the Pope and his cardinals to settle controversial matters; esp., the second part of the *Corpus Juris Canonici*, canonical epistles consisting mainly of: (1) *Decretales Gregorii Noni*, a collection by Raymundus Barcinus, chaplain to Gregory IX, dating from about 1227; (2) *Decretales Bonifacii Octavi*, a collection by Boniface VIII in the year 1298; (3) *Clementinae*, a collection of Clement V, published in the year 1308; and (4) the *Extravagantes*, a collection by John XXII and other bishops. — Also (in Law Latin) *Decretales.* See CANON LAW.

**decretist** (di-kree-tist), *n.* In medieval universities, a law student; esp., a student of the decretals.

**decretum** (di-kree-təm), *n.* [Latin "a decision having mandatory force"] **1.** *Roman law.* An emperor's judgment in a matter; a type of imperial constitution. **2.** *Eccles. law.* An ecclesiastical law, as distinguished from a secular law. Pl. *decreta.* See DECRETA.

**Decretum Gratiani** (di-kree-təm gray-shee-ay-nl), *n.* [Latin "Gratian's decree"] See CONCORDIA DISCORDANTIUM CANONUM.

**decriminalization**, *n.* The legislative act or process of legalizing an illegal act <many doctors seek the decriminalization of euthanasia>. — **decriminalize**, *vb.* Cf. CRIMINALIZATION (1).

**decrowning.** The act of depriving someone of a crown.

**decry** (di-kri), *vb.* To speak disparagingly about (someone or something).

**de cuius** (dee kyoo-jəs or ki-əs). [Latin] From whom. • This term is used to designate (1) the person by or through whom another claimed something, or (2) the person whose legal position is in issue.

**de curia claudenda** (dee kyoor-ee-ə klaw-dendə), *n.* [Law Latin "of enclosing a court"] *Hist.* A writ ordering a person to build a wall or fence around his or her house to avoid disturbing a neighbor.

**decurio** (di-kyoor-ee-oh), *n.* [Latin "a decurion"] *Roman law.* A municipal senator belonging to a municipal council responsible for managing the internal affairs of the municipality.

**de cursu** (dee kər-s[y]oo). [Law Latin] Of course. • This term usu. refers to regular, formal proceedings as distinguished from incidental, summary proceedings.

**de custode admittendo** (dee kə-stoh-dee admi-ten-doh), *n.* [Law Latin "of admitting a guardian"] *Hist.* A writ to admit a guardian.

**de custode amovendo** (dee kə-stoh-dee ay-moh-ven-doh), *n.* [Law Latin "of removing a guardian"] *Hist.* A writ to remove a guardian.

**de custodia terrae et haeredis** (dee kə-stoh-dee-ə ter-ee et her-ə-dis), *n.* [Law Latin "of right of ward"] *Hist.* A writ allowing a guardian in a knight's service to obtain custody of an infant ward.

**de debito** (dee deb-i-toh), *n.* [Law Latin "of debt"] *Hist.* A writ of debt. — Sometimes shortened to *debito*.

**de debitore in partes secando** (dee deb-i-tor-ee in pah-teez si-kan-doh), *n.* [Latin "of cut-

ting a debtor in pieces"] *Roman law*. The title of a law in the Twelve Tables, meaning either literally to cut a debtor into pieces or merely to divide the debtor's estate. See TWELVE TABLES.

"DE DEBITORE IN PARTES SECANDO . . . [S]ome writers contending for the literal signification, while others have supposed it to be only a figurative expression . . . The latter view has been adopted by Montesquieu, Bynkershoek, Heineccius and Taylor . . . The literal meaning, on the other hand, is advocated by Aulus Gellius and other writers of antiquity, and receives support from an expression (*semoto omni cruciatu*) in the Roman Code itself . . . This is also the opinion of Gibbon, Gravina, Pothier, Hugo and Niebuhr." 1 Alexander Burrill, *A Law Dictionary and Glossary* 432 (2d ed. 1867).

**de deceptione** (dee di-sep-shee-oh-nee), *n.* [Law Latin "of deceit"] *Hist.* A writ available to a party who was deceived and damaged by someone acting in the party's name.

**de deoneranda pro rata portionis** (dee de-on-ə-ran-də proh ray-tə por-shee-oh-nis), *n.* [Law Latin "of the disburdening of a pro rata share"] *Hist.* A writ for someone who is forced to pay rent that others are supposed to proportionately contribute to.

**dedi** (dee-dī). [Latin] *Hist.* I have given. • *Dedi* is a conveyancing term that implies a warranty of title. Cf. CONCESSI.

"Dedi is a warranty in law to the feoffee and his heirs: as if it be said in a feoffment A. B. hath given and granted, & c. it is a warranty." *Termes de la Ley* 148 (1st Am. ed. 1812).

**dedication**, *n.* *Property.* The donation of land or creation of an easement for public use. — **dedicate**, *vb.* — **dedicatory**, *adj.*

**common-law dedication.** A dedication made without a statute, consisting in the owner's appropriation of land, or an easement in it, for the benefit or use of the public, and the acceptance, by or on behalf of the land or easement. — Often shortened to *dedication*.

**dedication by adverse user.** A dedication arising from the adverse, exclusive use by the public with the actual or imputed knowledge and acquiescence of the owner.

**express dedication.** A dedication explicitly manifested by the owner.

**implied dedication.** A dedication presumed by reasonable inference from the owner's conduct.

**statutory dedication.** A dedication for which the necessary steps are statutorily pre-

scribed, all of which must be substantially followed for an effective dedication.

**tacit dedication.** A dedication of property for public use arising from silence or inactivity and without an express agreement.

**dedication and reservation.** A dedication made with reasonable conditions, restrictions, and limitations.

**dedication day.** See DAY.

**de die in diem** (dee di-ee in di-em). [Law Latin] From day to day; daily.

**dedi et concessi** (dee-dī et kən-sēs-i). [Law Latin] I have given and conveyed. • These were the words generally used to convey a gift.

**dedimus et concessimus** (ded-ə-məs et kən-sēs-i-məs). [Law Latin] We have given and granted. • These words were used in a conveyance when there was more than one grantor or when the grant was from the Crown.

**dedimus potestatem** (ded-ə-məs poh-tes-tay-təm). [Law Latin "we have given power"] 1. A commission issuing from the court before which a case is pending, authorizing a person named in the commission to compel the attendance of certain witnesses, to take their testimony on the written interrogatories and cross-interrogatories attached to the commission, to reduce the answers to writing, and to send it sealed to the court issuing the commission. 2. In England, a chancery writ commissioning the persons named in the writ to take certain actions, including administering oaths to defendants and justices of the peace. • The writ was formerly used to commission a person to take action such as acknowledging a fine and appointing an attorney for representation in court. Before the Statute of Westminster (1285), an attorney could not appear on behalf of a party without this writ. — Also termed *dedimus potestatem de attorino faciendo*.

"Dedimus potestatem is a writ that lies where a man sues in the king's court, or is sued, and cannot well travel, then he shall have this writ directed to some justice, or other discreet person in the country, to give him power to admit some man for his attorney, or to levy a fine, or to take his confession, or his answer, or other examination, as the matter requires." *Termes de la Ley* 148 (1st Am. ed. 1812).

**dediticii** (ded-i-tish-ee-i or dee-di-ti-shee-i), *n.* [Latin "those who have surrendered"] *Roman law.* Enemies who on surrender were granted their freedom or by the Lex Aelia Sentia, slaves (esp. criminals) who on being freed were denied

citizenship. • Justinian abolished this status. — Also spelled *dedititii*.

“Slaves who before manumission had been subjected to degrading punishment (*e.g.* had been branded or made to fight in the arena) were given, on manumission, a special status, viz. that of enemies surrendered at discretion (*dediticii*). A *dediticius*, though free and not a slave, had none of the rights of a citizen, could never under any circumstances better his position (*e.g.* become a citizen), and was not allowed to live within 100 miles of Rome.” R.W. Leage, *Roman Private Law* 67 (C.H. Ziegler ed., 2d ed. 1942).

**dedition** (di-**dish**-ən), *n.* [fr. Latin *deditio* “give up”] A surrender of something, such as property.

**de diversis regulis juris antiqui** (dee di-vər-sis **reg**-yə-lis **joor**-is an-tī-kwī), *n.* [Latin “of various rules of ancient law”] *Roman law*. The last in the collection of Digest titles containing 211 maxims. See DIGEST.

**de dolo malo** (dee **doh**-loh **mal**-oh). [Latin] Of or based on fraud. See *ACTIO DE DOLO MALO*.

**de domo reparanda** (dee **doh**-moh rep-ə-ran-də), *n.* [Law Latin “to repair a house”] *Hist.* A writ ordering a cotenant to contribute to the expenses of maintaining common property.

**De Donis Conditionalibus** (dee **doh**-nis kən-dish-ee-ə-nal-i-bəs). An English statute, enacted in 1285, that gave rise to the ability to create a fee tail. — Often shortened to *De Donis*.

“[A]fter *De Donis*, the formula ‘to A and the heirs of his body’ gave to A an estate known as an *estate in fee tail*. Because A had no power to transfer an estate in fee simple absolute, it became theoretically possible for persons like O to tie up the ownership of land in a single family for hundreds of years. We say *theoretically possible* because by 1472 a way would be found for the tenant in tail (as A was called) to transfer an estate in fee simple absolute despite *De Donis*.” Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 29 (2d ed. 1984).

**de dote assignanda** (dee **doh**-tee as-ig-nan-də), *n.* [Law Latin “for assigning dower”] *Hist.* A writ ordering a royal escheater to provide dower to a widow of a tenant holding an estate directly from the Crown.

**de dote unde nil habet** (dee **doh**-tee ən-dee nil **hay**-bet), *n.* [Law Latin “of dower whereof she has none”] A writ ordering a tenant interfering with a widow’s right to dower to provide a reasonable dower. — Also termed *writ of dower*.

“DE DOTE UNDE NIL HABET. This is a writ of right in its nature . . . It must be brought by the widow as demandant, against the tenant of the freehold, that is, the heir or his alienee, and its effect is to enable the former to recover from the latter the seisin of a third part of the tenements in demand, to be set forth to her in severalty by metes and bounds, together with damages and costs.” 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 433 (2d ed. 1867).

**deductible**, *adj.* Capable of being subtracted, esp. from taxable income. See DEDUCTION (2).

**deductible**, *n.* 1. Under an insurance policy, the portion of the loss to be borne by the insured before the insurer becomes liable for payment. Cf. SELF-INSURED RETENTION.

**straight deductible**. A deductible that is a specified, fixed amount.

2. The insurance-policy clause specifying the amount of this portion.

**deduction**, *n.* 1. The act or process of subtracting or taking away. 2. *Tax*. An amount subtracted from gross income when calculating adjusted gross income, or from adjusted gross income when calculating taxable income. — Also termed *tax deduction*. Cf. EXEMPTION (3); TAX CREDIT.

**additional standard deduction**. The sum of the additional amounts that a taxpayer who turns 65 or becomes blind before the close of the taxable year is entitled to deduct.

**charitable deduction**. A deduction for a contribution to a qualified charity or other tax-exempt institution. See CHARITABLE CONTRIBUTION (2); CHARITABLE ORGANIZATION.

**deduction in respect of a decedent**. A deduction that accrues to the point of death but is not recognizable on the decedent’s final income-tax return because of the accounting method used, such as an accrued-interest expense of a cash-basis debtor.

**itemized deduction**. An expense (such as a medical expense, home-mortgage interest, or a charitable contribution) that can be subtracted from adjusted gross income to determine taxable income.

**marital deduction**. A federal tax deduction allowed for lifetime and testamentary transfers from one spouse to another. IRC (26 USCA) §§ 2056, 2523.

**miscellaneous itemized deduction**. Generally, an itemized deduction of job or investment expenses; a deduction other than those allowable in computing adjusted gross income, those enumerated in IRC (26 USCA)

§ 67(b), and personal exemptions. • This type of deduction is allowed only to an itemizing taxpayer whose total miscellaneous itemized deductions exceed a statutory percentage of adjusted gross income.

**standard deduction.** A specified dollar amount that a taxpayer can deduct from adjusted gross income, instead of itemizing deductions, to determine taxable income.

**3.** The portion of a succession to which an heir is entitled before a partition. **4.** The act or process of reasoning from general propositions to a specific application or conclusion. Cf. INDUCTION (2). — **deduct** (for senses 1–3), *vb.* — **deduce** (for sense 4), *vb.*

**deduction for new.** See NEW-FOR-OLD (1).

**de ea re ita censuere** (dee ee-ə ree i-tə sens[y]oo-ə-ree). [Latin] Concerning that matter they have so decreed. • This phrase was used to record decrees of the Roman senate. — Abbr. *d.e.r.i.c.*

**deed, n.** **1.** Something that is done or carried out; an act or action. **2.** A written instrument by which land is conveyed. **3.** At common law, any written instrument that is signed, sealed, and delivered and that conveys some interest in property. — **deed, vb.** Cf. CONVEYANCE; BILL OF SALE.

“A deed is a writing sealed and delivered. For if either a parchment without writing be delivered as one’s deed, yet it is not his deed, though an obligation be afterwards written in it: or if it be a writing but not sealed at the time of the delivery of it as his deed, it is a scrole and not his deed. Or if I make and seal a deed, and the party take it without my delivery, I may plead it is not my deed.” Sir Henry Finch, *Law, or a Discourse Thereof* 108 (1759).

“All deeds are documents, but not all documents are deeds. For instance, a legend chalked on a brick wall, or a writing tattooed on a sailor’s back may be documents but they are not deeds. A deed is, therefore, a particular kind of document. It must be a *writing* and a writing on *paper* or its like, e.g., vellum or parchment. Any instrument under seal is a deed if made between private persons. It must be *signed, sealed, and delivered*. A deed must either (a) effect the transference of an interest, right or property, or (b) create an obligation binding on some person or persons, or (c) confirm some act whereby an interest, right, or property has already passed.” Gerald Dworkin, *Ogden’s Construction of Deeds and Statutes* 1 (5th ed. 1967).

**absolute deed.** A deed that conveys title without condition or encumbrance. — Also termed *deed absolute*.

**administrator’s deed.** A document that conveys property owned by a person who has died intestate.

**bargain-and-sale deed.** A deed that conveys property to a buyer for valuable consideration but that lacks any guarantee from the seller about the validity of the title. See BARGAIN AND SALE.

**composition deed.** A deed reflecting the terms of an agreement between a debtor and a creditor to discharge or adjust a debt.

**counterdeed.** A secret deed, executed either before a notary or under a private seal, that voids, invalidates, or alters a public deed.

**deed absolute.** See *absolute deed*.

**deed in fee.** A deed conveying the title to land in fee simple, usu. with covenants.

**deed in lieu of foreclosure.** A deed by which a borrower conveys fee-simple title to a lender in satisfaction of a mortgage debt and as a substitute for foreclosure. • This deed is often referred to simply as “deed in lieu.”

**deed of covenant.** A deed to do something, such as a document providing for periodic payments by one party to another (usu. a charity) for tax-saving purposes. • The transferor can deduct taxes from the payment and, in some cases, the recipient can reclaim the deducted tax.

**deed of distribution.** A fiduciary’s deed conveying a decedent’s real estate.

**deed of gift.** A deed executed and delivered without consideration. — Also termed *gratuitous deed*.

**deed of inspectorship.** *Hist.* An instrument reflecting an agreement between a debtor and creditor to appoint a receiver to oversee the winding-up of the debtor’s affairs on behalf of the creditor.

**deed of partition.** A deed that divides land held by joint tenants, tenants in common, or coparceners.

**deed of release.** A deed that surrenders full title to a piece of property upon payment or performance of specified conditions.

**deed of separation.** An instrument governing a spouse’s separation and maintenance.

**deed of settlement.** **1.** A deed to settle something, such as the distribution of property in a marriage. **2. English law.** A deed formerly used to form a joint-stock company.

**deed of trust.** A deed conveying title to real property to a trustee as security until the grantor repays a loan. • This type of deed resembles a mortgage. — Also termed *trust deed; trust indenture*.

**deed poll.** A deed made by and binding on only one party, or on two or more parties having similar interests. • It is so called because, traditionally, the parchment was “polled” (that is, shaved) so that it would be even at the top (unlike an indenture). — Also spelled *deed-poll*. Cf. *INDENTURE*.

**deed to lead uses.** A common-law deed prepared before an action for a fine or common recovery to show the object of those actions.

**deed without covenants.** See *quitclaim deed*.

**defeasible deed.** A deed containing a condition subsequent causing title to the property to revert to the grantor or pass to a third party.

**disentailing deed.** *Hist.* A tenant-in-tail’s assurance that the estate tail will be barred and converted into an estate in fee. • The Fines and Recoveries Act (3 & 4 Will. 4 ch. 74) introduced this way of barring an entail. It authorized nearly every tenant in tail, if certain conditions were met, to dispose of the land in fee simple absolute and thus to defeat the rights of all persons claiming under the tenant.

**full-covenant-and-warranty deed.** See *warranty deed*.

**general warranty deed.** See *warranty deed*.

**gift deed.** A deed given for a nominal sum or for love and affection.

**grant deed.** A deed containing, or having implied by law, some but not all of the usual covenants of title; esp., a deed in which the grantor warrants that he or she (1) has not previously conveyed the estate being granted, (2) has not encumbered the property except as noted in the deed, and (3) will convey to the grantee any title to the property acquired after the date of the deed.

**latent deed.** A deed kept in a strongbox or other secret place, usu. for 20 years or more.

**mineral deed.** A conveyance of an interest in the minerals in or under the land.

**mortgage deed.** The instrument creating a mortgage. • A mortgage deed typically must contain (1) the name of the mortgagor, (2) words of grant or conveyance, (3) the name of the mortgagee, (4) a property description sufficient to identify the mortgaged premises, (5) the mortgagor’s signature, and (6) an acknowledgment. To be effective and binding, a mortgage deed must also be delivered.

**quitclaim deed.** A deed that conveys a grantor’s complete interest or claim in certain real property but that neither warrants

nor professes that the title is valid. — Often shortened to *quitclaim*. — Also termed *deed without covenants*. Cf. *warranty deed*.

“A quitclaim deed purports to convey only the grantor’s present interest in the land, if any, rather than the land itself. Since such a deed purports to convey whatever interest the grantor has at the time, its use excludes any implication that he has good title, or any title at all. Such a deed in no way obligates the grantor. If he has no interest, none will be conveyed. If he acquires an interest after executing the deed, he retains such interest. If, however, the grantor in such deed has complete ownership at the time of executing the deed, the deed is sufficient to pass such ownership. . . . A seller who knows that his title is bad or who does not know whether his title is good or bad usually uses a quitclaim deed in conveying.” Robert Kratovil, *Real Estate Law* 49 (6th ed. 1974).

**release deed.** A deed that is issued once a mortgage has been discharged, explicitly releasing and reconveying to the mortgagor the entire interest conveyed by an earlier deed of trust.

**sheriff’s deed.** A deed that gives ownership rights in property bought at a sheriff’s sale.

**special warranty deed.** 1. A deed in which the grantor covenants to defend the title against only those claims and demands of the grantor and those claiming by and under the grantor. 2. In a few jurisdictions, a quitclaim deed. Cf. *warranty deed*.

**statutory deed.** A warranty-deed form prescribed by state law and containing certain warranties and covenants even though they are not included in the printed form.

**support deed.** A deed by which a person (usu. a parent) conveys land to another (usu. a son or daughter) with the understanding that the grantee will support the grantor for life. • Support deeds often result in litigation.

**tax deed.** A deed showing the transfer of title to real property sold for the nonpayment of taxes. See *office grant* under *GRANT*; *tax sale* under *SALE*. Cf. *TAX CERTIFICATE*.

**title deed.** A deed that evidences a person’s legal ownership of property. See *TITLE*.

**trust deed.** See *deed of trust*.

**warranty deed.** A deed containing one or more covenants of title; esp., a deed that expressly guarantees the grantor’s good, clear title and that contains covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims. — Also termed *general warranty deed*; *full-covenant-and-warranty deed*. See *WARRANTY* (1). Cf. *quitclaim deed*; *special warranty deed*.



**wild deed.** A recorded deed that is not in the chain of title, usu. because a previous instrument connected to the chain of title has not been recorded.

**deed box.** *Archaic.* A box in which deeds of land title are traditionally kept. • Such a box is considered an heirloom in the strict sense. See HEIRLOOM (1).

**deed of agency.** A revocable, voluntary trust for payment of a debt.

**deed of crime.** See ACTUS REUS.

**deed of feoffment.** See FEOFFMENT.

**deed without covenants.** See *quitclaim deed* under DEED.

**de ejectione custodiæ** (dee ee-jek-shee-oh-nee kəs-toh-dee-ee). [Latin *ejectment de gard* “ejectment of a ward”] *Hist.* A writ available to a guardian after being ejected from the ward’s land during the ward’s minority. • The writ lay to recover the land or person of the ward, or both. The French equivalent was *ejectment de garde*.

**de ejectione firmæ** (dee ee-jek-shee-oh-nee fər-mee). [Latin “ejectment of farm”] *Hist.* A writ or action of trespass to obtain the return of lands or tenements to a lessee for a term of years that had been ousted by the lessor or by a reversioner, remainderman, or stranger. • The lessee was then entitled to a writ of ejection to recover, at first, damages for the trespass only, but later the term itself, or the remainder of it, with damages. This action is the foundation of the modern action of ejectment. See EJECTMENT.

“A writ then of *ejectione firmæ*, or action of trespass in *ejectment*, lieth, where lands or tenements are let for a term of years; and afterwards the lessor, reversioner, remainder-man, or any stranger, doth eject or oust the lessee of his term. In this case he shall have his writ of *ejection*, to call the defendant to answer for entering on the lands so demised to the plaintiff for a term that is not yet expired, and ejecting him. And by this writ the plaintiff shall recover back his term, or the remainder of it, with damages.” 3 William Blackstone, *Commentaries on the Laws of England* 199 (1768).

**deem, vb.** **1.** To treat (something) as if (1) it were really something else, or (2) it has qualities that it doesn’t have <although the document was not in fact signed until April 21, it explicitly states that it must be deemed to have been signed on April 14>. **2.** To consider, think, or judge <she deemed it necessary>.

“‘Deem’ is a useful word when it is necessary to establish a legal fiction either positively by ‘deeming’ something to be something it is not or negatively by ‘deeming’ something not to be something which it is. . . . All other uses of the word should be avoided. Phrases like ‘if he deems fit’ or ‘as he deems necessary’ or ‘nothing in this Act shall be deemed to . . .’ are objectionable as unnecessary deviations from common speech. ‘Thinks’ or ‘considers’ are preferable in the first two examples and ‘construed’ in the third. . . . ‘Deem’ is useful but dangerous. It creates an artificiality and artificiality should not be resorted to if it can be avoided.” G.C. Thornton, *Legislative Drafting* 83–84 (2d ed. 1979).

**deemed transferor.** *Tax.* A person who holds an interest in a generation-skipping trust on behalf of a beneficiary, and whose death will trigger the imposition of a generation-skipping transfer tax. • A *deemed transferor* is often a child of the settlor. For example, a grandfather could establish a trust with income payable for life to his son (who, because he is only one generation away from his father, is also known as a *nonskip person*) with the remainder to his grandson, a beneficiary also known as the *skip person*. When the son dies, the trust will be included in his gross estate for determining the generation-skipping transfer tax. IRC (26 USCA) §§ 2601–2663. See GENERATION-SKIPPING TRANSFER; *generation-skipping transfer tax* under TAX; *generation-skipping trust* under TRUST; SKIP PERSON; NONSKIP PERSON.

**deep issue.** See ISSUE (1).

**deep pocket.** **1.** (*pl.*) Substantial wealth and resources <the plaintiff nonsuited the individuals and targeted the corporation with deep pockets>. **2.** A person or entity with substantial wealth and resources against which a claim may be made or a judgment may be taken <that national insurance company is a favorite deep pocket among plaintiff’s lawyers>.

**Deep Rock doctrine.** *Bankruptcy.* The principle by which unfair or inequitable claims presented by controlling shareholders of bankrupt corporations may be subordinated to claims of general or trade creditors. • The doctrine is named for a corporation that made fraudulent transfers to its parent corporation in *Taylor v. Standard Gas & Elec. Co.*, 306 U.S. 307, 59 S.Ct. 543 (1939).

**de escaeta** (dee es-kee-tə), *n.* [Law Latin “of escheat”] *Hist.* A writ authorizing a lord to recover land when the lord’s tenant died without an heir. See ESCHEAT.

**de escambio monetæ** (dee es-kam-bee-oh mō-nee-tee), *n.* [Law Latin “of exchange of mon-

ey"] *Hist.* A writ authorizing a merchant to prepare a bill of exchange.

**de essendo quietum de theolonio** (dee e-sen-doh kwi-ee-təm dee thee-ə-loh-nee-oh), *n.* [Law Latin "of being quit of toll"] *Hist.* A writ authorizing a person who is exempt from paying a toll to enforce the exemption without harassment. — Also spelled *de essendo quietum de tolonio*.

**de essonio de malo lecti** (dee e-soh-nee-oh dee mal-oh lek-ti), *n.* [Law Latin "of essoyn of *malum lecti* (sickness of bed)"] *Hist.* A writ ordering a determination whether a person is truly sick after the person has issued an essoyn claiming sickness as an excuse for not appearing in court.

**de estoveriis habendis** (dee es-tə-veer-ee-is hə-ben-dis), *n.* [Law Latin "for having estovers"] *Hist.* A writ allowing a wife divorced *a mensa et thoro* ("from bed and board") to recover alimony.

"In case of divorce *a mensa et thoro*, the law allows alimony to the wife which is that allowance, which is made to a woman for her support out of her husband's estate; being settled at the discretion of the ecclesiastical judge, on consideration of all the circumstances of the case. This is sometimes called her *estovers* for which, if he refuses payment, there is; (besides the ordinary process of excommunication) a writ at common law *de estoveriis habendis*, in order to recover it . . . . It is generally proportioned to the rank and quality of the parties. But in case of elopement, and living with an adulterer, the law allows her no alimony." 1 William Blackstone, *Commentaries on the Laws of England* 429 (1765).

**de estrepamento** (dee e-strep-ə-men-toh), *n.* [Law Latin "of enstrepment"] *Hist.* A writ to prevent waste by a tenant while a suit to recover the land is pending against the tenant. • Because this writ was only auxiliary to a real action to recover land, and because equity afforded the same relief by injunction, the writ fell into disuse and was abolished by 3 & 4 Will. 4, ch. 27. — Also termed *writ of estrepement*. See ESTREPEMENT.

**de eu et trene** (də yoo ay trayn). [French] *Hist.* Of water and whip of three cords. • This term referred to a neife who, as a servant, could be corporally punished. See NEIFE.

**de eve et de treve** (də ev ay də trev). [Law French] *Hist.* From grandfather and great-grandfather's great-grandfather. • This phrase described the ancestral rights of lords to their villeins.

**de excommunicato capiendo** (dee eks-kə-myoo-ni-kay-toh kap-ee-en-doh), *n.* [Law Latin "for taking an excommunicated person"] *Hist. Eccles. law.* A writ ordering a sheriff to imprison an excommunicated person until the person reconciled with the church. • It was replaced by the writ *de contumace capiendo*. See DE CONTUMACE CAPIENDO.

**de excommunicato deliberando** (dee eks-kə-myoo-ni-kay-toh di-lib-ə-ran-doh), *n.* [Law Latin "for delivering an excommunicated person"] *Hist. Eccles. law.* A writ releasing an excommunicated person from prison upon a certification by the person's superior that the person has reconciled with the church.

**de excommunicato recipiendo** (dee eks-kə-myoo-ni-kay-toh ri-kap-ee-en-doh), *n.* [Law Latin "for retaking an excommunicated person"] *Hist. Eccles. law.* A writ ordering the rearrest of an excommunicated person who had been released but had not reconciled with the church or given security for a reconciliation.

**de excusationibus** (dee ek-skyoo-zay-shee-oh-ni-bəs), *n.* [Latin "of excuses"] *Roman law.* The first title of the 27th book of the Digest, containing a person's legal excuses from serving as *tutor* or *curator*. • It is primarily made up of part of the Greek work of Herennius Modestinus. See DIGEST.

**de executione facienda in withernamium** (dee ek-sə-kyoo-shee-oh-nee fay-shee-en-də in with-ər-nay-mee-əm), *n.* [Law Latin "for making execution in withernam"] *Hist.* A writ of execution in withernam. • This is a type of *capis in withernam* directing the sheriff to take from the defendant goods equal in value to the goods that the defendant took from the plaintiff.

**de executione iudicii** (dee ek-sə-kyoo-shee-oh-nee joo-dish-ee-1), *n.* [Law Latin "of execution of judgment"] *Hist.* A writ ordering a sheriff or bailiff to execute a judgment.

**de exemplificatione** (dee ig-zem-pli-fi-kay-shee-oh-nee), *n.* [Law Latin "of exemplification"] A writ ordering the transcription of an original record.

**de exoneratione sectae** (dee ig-zon-ə-ray-shee-oh-nee sek-tee), *n.* [Law Latin "of exoneration of suit"] *Hist.* A writ exempting the king's ward from being sued in any court lower than the Court of Common Pleas (such as a county

court, hundred court, leet, or court baron) during the time of the wardship.

**de expensis civium et burgensium** (dee ek-spen-sis siv-ee-əm et bər-jen-see-əm), *n.* [Law Latin “for levying the expenses of burgesses”] *Hist.* A writ ordering the sheriff to levy the expenses of each citizen and burgess of Parliament.

**de expensis militum levandis** (dee ek-spen-sis mil-ə-təm lə-van-dis), *n.* [Law Latin “for levying the expenses of knights”] *Hist.* A writ ordering the sheriff to levy an allowance for knights of the shire in Parliament.

**deface** (di-fays), *vb.* **1.** To mar or destroy (a written instrument, signature, or inscription) by obliteration, erasure, or superinscription. **2.** To detract from the value of (a coin) by punching, clipping, cutting, or shaving. **3.** To mar or injure (a building, monument, or other structure). — **defacement**, *n.*

**defacere.** See DIFFACERE.

**de facto** (di fak-toh *also* dee or day), *adj.* [Law Latin “in point of fact”] **1.** Actual; existing in fact; having effect even though not formally or legally recognized <a de facto contract> **2.** Illegitimate but in effect <a de facto government>. Cf. DE JURE.

**de facto adoption.** See ADOPTION.

**de facto contract of sale.** See CONTRACT.

**de facto corporation.** See CORPORATION.

**de facto court.** See COURT.

**de facto dissolution.** See DISSOLUTION.

**de facto government.** See GOVERNMENT.

**de facto judge.** See JUDGE.

**de facto marriage.** See MARRIAGE (1).

**de facto merger.** See MERGER.

**de facto officer.** See *officer de facto* under OFFICER (1).

**de facto segregation.** See SEGREGATION.

**de facto taking.** See TAKING (2).

**defalcation** (dee-fal-kay-shən), *n.* **1.** EMBEZZLEMENT. **2.** Loosely, the failure to meet an obligation; a nonfraudulent default. **3.** *Archaic.* A deduction; a setoff. — **defalcate** (di-fal-kayt or dee-), *vb.* — **defalcator**, *n.*

**defalk** (di-fawl), *vb.* *Archaic.* To deduct (a debt); to set off (a claim).

**de falso judicio** (dee fal-soh or fawl-soh joo-dish-ee-oh), *n.* [Law Latin “of false judgment”] *Hist.* A writ of false judgment; a writ to reverse an inferior court’s ruling.

**de falso moneta** (dee fal-soh or fawl-soh mah-nee-tə), *n.* [Law Latin “of false money”] *Hist.* The statute of Edward I providing that persons importing certain coins (called “pollards” and “crokards”) would forfeit both their goods and their lives.

**defamacast** (di-fam-ə-kast). Defamation by television or radio broadcast. See DEFAMATION.

**defamation**, *n.* **1.** The act of harming the reputation of another by making a false statement to a third person. ● If the alleged defamation involves a matter of public concern, the plaintiff is constitutionally required to prove both the statement’s falsity and the defendant’s fault. **2.** A false written or oral statement that damages another’s reputation. — **defame**, *vb.* See LIBEL; SLANDER. Cf. DISPARAGEMENT.

“The wrong of defamation consists in the publication of a false and defamatory statement concerning another person without lawful justification. That person must be in being. Hence not only does an action of defamation not survive for or against the estate of a deceased person, but a statement about a deceased or unborn person is not actionable at the suit of his relatives, however great their pain and distress, unless the statement is in some way defamatory of them.” R.F.V. Heuston, *Salmond on the Law of Torts* 138 (17th ed. 1977).

“Defamation . . . is involved in two related harms, libel and slander. A familiar statement is that libel is written whereas slander is oral. This covers the idea in a general way but tends to mislead because defamation may be published without the use of words and hence be neither written nor oral. Thus libel may be perpetrated by hanging a person in effigy and slander, by sign or gesture.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 489 (3d ed. 1982).

**defamation per quod.** Defamation that either (1) is not apparent but is proved by extrinsic evidence showing its injurious meaning or (2) is apparent but is not a statement that is actionable per se.

**defamation per se.** A statement that is defamatory in and of itself and is not capable of an innocent meaning.

**defamatory**, *adj.* (Of a statement or communication) tending to harm a person's reputation, usu. by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person's business.

"No exhaustive definition of 'defamatory' emerges from the cases for, as Lord Reid once said, it is not for the judges to 'frame definitions or to lay down hard and fast rules. It is their function to enunciate principles and much that they say is intended to be illustrative or explanatory and not to be definitive' [*Cassell & Co. Ltd. v. Broome* (1972) AC 1027, 1085]. One can nevertheless achieve a working description by combining two statements, namely: a defamatory statement is one which injures the reputation of another by exposing him to hatred, contempt, or ridicule, or which tends to lower him in the esteem of right-thinking members of society." R.W.M. Dias & B.S. Markesinis, *Tort Law* 423-24 (2d ed. 1989).

**defamatory libel.** See LIBEL.

**defamatory statement.** A statement that tends to injure the reputation of a person referred to in it. • The statement is likely to lower that person in the estimation of reasonable people and in particular to cause that person to be regarded with feelings of hatred, contempt, ridicule, fear, or dislike.

**defames** (di-fay-meez or di-fahm), *adj.* [Law French] Infamous.

**default**, *n.* The omission or failure to perform a legal or contractual duty; esp., the failure to pay a debt when due. — **default**, *vb.* — **defaulter**, *n.*

**defaulter.** 1. A person who is in default. 2. A person who misappropriates or fails to account for money held in the person's official or fiduciary capacity.

**default judgment.** 1. A judgment entered against a defendant who has failed to plead or otherwise defend against the plaintiff's claim, often by failing to appear at trial. 2. A judgment entered as a penalty against a party who does not comply with an order, esp. an order to comply with a discovery request. — Also termed *judgment by default*. See JUDGMENT.

**nil-dicit default judgment** (nil di-sit). [Latin "he says nothing"] A judgment for the plaintiff entered after the defendant fails to file a timely answer, often after appearing in the case by filing a preliminary motion. — Also termed *nihil-dicit default judgment*. — Often shortened to *nihil dicit*.

**no-answer default judgment.** A judgment for the plaintiff entered after the defendant fails to timely answer or otherwise appear.

**post-answer default judgment.** A judgment for the plaintiff entered after the defendant files an answer, but fails to appear at trial or otherwise provide a defense on the merits.

**defeasance** (di-fee-zənts), *n.* 1. An annulment or abrogation; VOIDANCE. 2. The fact or an instance of bringing an estate or status to an end, esp. by conditional limitation. 3. A condition upon the fulfillment of which a deed or other instrument is defeated or made void; a contractual provision containing such a condition. — Also termed *defeasance clause*. 4. *Hist.* A collateral deed made simultaneously with a conveyance and containing a condition by which the main deed might be defeated or made void. — Also spelled *defeazance*. — **defease**, *vb.*

"A defeazance is a collateral deed, made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be *defeated* or totally undone." 2 William Blackstone, *Commentaries on the Laws of England* 327 (1766).

**defeasance clause.** A mortgage provision stating that the conveyance to the mortgagee will be ineffective if the mortgagor pays the debt on time.

**defeasible**, *adj.* (Of an act, right, agreement, or position) capable of being annulled or avoided <defeasible deed>. See *fee simple defeasible* under FEE SIMPLE.

**defeasible deed.** See DEED.

**defeasible estate.** See ESTATE.

**defeasible fee simple.** See *fee simple defeasible* under FEE SIMPLE.

**defeasible remainder.** See REMAINDER.

**defeasible title.** See TITLE (2).

**defeasive**, *adj.* *Rare.* Capable of defeating <a counterclaim defeasive of the plaintiff's right to recovery>.

**defeat**, *vb.* 1. To deprive (someone) of something expected, usu. by an antagonistic act <to defeat the opponent in an election>. 2. To annul or render (something) void <to defeat title>. 3.

To vanquish; to conquer (someone or something) <to defeat the armies>. **4.** To frustrate (someone or something) <the expenditures defeat the bill's purpose>.

**defect, n.** An imperfection or shortcoming, esp. in a part that is essential to the operation or safety of a product. — **defective, adj.**

**apparent defect.** See *patent defect*.

**design defect.** A product imperfection occurring when the seller or distributor could have reduced or avoided a foreseeable risk of harm by adopting a reasonable alternative design, and when, as a result of not using the alternative, the product is not reasonably safe.

**fatal defect.** A serious defect capable of nullifying a contract.

**hidden defect.** A product imperfection that is not discoverable by reasonable inspection and for which a seller or lessor is generally liable if the flaw causes harm. • Upon discovering a hidden defect, a purchaser may revoke a prior acceptance. UCC § 2-608(1)(b). — Also termed *latent defect*; *inherent defect*.

**manufacturing defect.** An imperfection in a product that departs from its intended design even though all possible care was exercised in its assembly and marketing.

**marketing defect. 1.** The failure to adequately warn of a potential risk of harm that is known or should have been known about a product or its foreseeable use. **2.** The failure to adequately instruct the user about how to use a product safely.

**patent defect.** A defect that is apparent to a normally observant person, esp. a buyer on a reasonable inspection. — Also termed *apparent defect*.

**product defect.** An imperfection in a product that has a manufacturing defect or design defect, or is faulty because of inadequate instructions or warnings.

**defective, adj. 1.** (Of a position, right, act, or process) lacking in legal sufficiency <defective execution of documents> <defective service of process>. **2.** (Of a product) containing an imperfection or shortcoming in a part essential to the product's safe operation <defective wiring caused the accident>.

**defective condition.** An unreasonably dangerous state that might well cause physical harm beyond that contemplated by the ordinary user or consumer who purchases the product. See PRODUCTS LIABILITY.

**defective performance.** See PERFORMANCE.

**defective pleading.** See PLEADING (1).

**defective product.** See PRODUCT.

**defective record.** See RECORD.

**defective title.** See TITLE (2).

**defective verdict.** See VERDICT.

**defect of form.** An imperfection in the style, manner, arrangement, or nonessential parts of a legal document, as distinguished from a substantive defect. Cf. DEFECT OF SUBSTANCE.

**defect of parties.** A failure to include all necessary parties in a lawsuit.

**defect of substance.** An imperfection in the substantive part of a legal document, as by omitting an essential term. Cf. DEFECT OF FORM.

**defectus** (di-fek-təs), *n.* [fr. Latin *deficere* "to be deficient"] *Hist.* A defect; a deficiency.

**defectus sanguinis** (di-fek-təs sang-gwi-nis). [Latin "defect of blood"] *Hist.* A failure of issue, often resulting in an escheat. See ES-CHEAT.

**defence.** See DEFENSE.

**defend, vb. 1.** To deny, contest, or oppose (an allegation or claim) <the corporation vigorously defended against the shareholder's lawsuit>. **2.** To represent (someone) as an attorney <the accused retained a well-known lawyer to defend him>.

**defendant** (di-fen-dənt). A person sued in a civil proceeding or accused in a criminal proceeding. — Abbr. D. Cf. PLAINTIFF.

**defendant in error.** *Archaic.* In a case on appeal, the prevailing party in the court below. See APPELLEE; RESPONDENT (1).

**defendant's gain.** The amount of money or the value of property that a criminal defendant has obtained by committing a crime. • Some states, such as New York, consider the defendant's gain when assessing a criminal fine or ordering restitution.

**defendemus** (di-fen-də-məs). [fr. Latin *defendere*] We will defend. • This term was used in conveyancing to require the donor and the donor's heirs to defend the donee against any attempted encumbrance not specifically agreed to. Although *defendum* was not a warranty, it became part of the warranty clause "shall and will warrant and forever defend."

**defender**. One who defends, such as the defendant in a lawsuit, a person using self-defense, or defense counsel.

**defendere** (di-fen-də-ree), *vb.* [Law Latin] To deny; to defend.

**defendere se per corpus suum** (di-fen-də-ree see pər kɔr-pəs s[y]oo-əm), *vb.* [Law Latin "to defend himself by his own body"] *Hist.* To agree to a trial by judicial combat; to agree to a duel.

**defendere unica manu** (di-fen-də-ree yoo-nə-kə man-yoo), *n.* [Law Latin "to defend with one hand"] *Hist.* A denial of an accusation under oath.

**Defender of the Faith.** See DEFENSOR FIDEI.

**defendour** (day-fon-duur), *n.* [Law French] *Hist.* A defendant; the party accused in an appeal.

**defeneration** (dee-fen-ə-ray-shən), *n.* [fr. Latin *de* "of" + *foenero* "to lend upon usury"] *Hist.* The act of lending money at a usurious interest rate.

**defenestration** (dee-fen-ə-stray-shən). The act of throwing someone or something out a window.

**defense** (di-fen[t]s). **1.** A defendant's stated reason why the plaintiff or prosecutor has no valid case; esp., a defendant's answer, denial, or plea <her defense was that she was 25 miles from the building at the time of the robbery>.

"Defence is defined to be that which is alleged by a party proceeded against in an action or suit, as a reason why the plaintiff should not recover or establish that which he seeks by his complaint or petition." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 240 (2d ed. 1899).

**affirmative defense.** A defendant's assertion raising new facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all allegations in the complaint are true. • Examples of affirmative

defenses include duress and contributory negligence (in a civil case) and insanity and self-defense (in a criminal case).

**capacity defense.** A defense based on the defendant's inability to be held accountable for an illegal act or the plaintiff's inability to prosecute a lawsuit (as when the plaintiff was a corporation, but has lost its corporate charter). See CAPACITY.

**collateral defense** (kə-lat-ə-rəl). *Criminal law.* A defense of justification or excuse not involving a rebuttal of the allegation and therefore collateral to the elements that the prosecutor must prove. See EXCUSE (2); JUSTIFICATION (2).

**dilatory defense** (dil-ə-tor-ee). A defense that temporarily obstructs or delays a lawsuit but does not address the merits.

**equitable defense.** A defense formerly available only in a court of equity but now maintainable in a court of law. • Examples include mistake, fraud, illegality, and failure of consideration.

**frivolous defense.** A defense that has no basis in fact or law.

**full defense.** A technical common-law defensive plea, stated at length and without abbreviation. • The plea is obsolete because of the pleading requirements in federal and state rules of civil procedure.

**inconsistent defense.** A defense so contrary to another defense that the acceptance of one requires abandonment of the other. • For example, a person accused of murder cannot claim both self-defense and the alibi of having been in a different city when the murder took place.

**insanity defense.** See INSANITY DEFENSE.

**issuable defense.** *Common-law pleading.* A plea on the merits setting forth a legal defense. Cf. *issuable plea* under PLEA.

**justification defense.** See JUSTIFICATION DEFENSE.

**legal defense.** A complete and adequate defense in a court of law.

**meritorious defense** (mer-ə-tor-ee-əs). **1.** A defense that addresses the substance or essentials of a case rather than dilatory or technical objections. **2.** A defense that appears likely to succeed or has already succeeded.

**partial defense.** A defense going either to part of the action or toward mitigation of damages.

**peremptory defense** (pär-emp-tər-ee). A defense that questions the plaintiff's legal right to sue or contends that the right to sue has been extinguished.

**pretermitted defense** (pree-tər-mit-id). A defense available to a party that must be pleaded at the right time or be waived.

**sham defense.** A fictitious, untrue defense, made in bad faith.

**2.** A defendant's method and strategy in opposing the plaintiff or the prosecution; a doctrine giving rise to such a method or strategy <the lawyer advised her client to adopt a passive defense and to avoid taking the witness stand>.

**derivative defense.** A defense that rebuts the criminal elements that a prosecutor must establish to justify the submission of a criminal case to a jury.

**dwelling defense.** See CASTLE DOCTRINE.

**empty-chair defense.** See EMPTY-CHAIR DEFENSE.

**3.** One or more defendants in a trial <the defense rests>. **4. Commercial law.** A basis for avoiding liability on a negotiable instrument <the drawer asserted a real defense against the holder in due course>.

**personal defense.** An ordinary defense in a contract action — such as failure of consideration or nonperformance of a condition — that the maker or drawer of a negotiable instrument is precluded from raising against a person who has the rights of a holder in due course. • A personal defense can be asserted only against a transferee who is not a holder in due course. — Also termed *limited defense*.

**real defense.** A type of defense that is good against any possible claimant, so that the maker or drawer of a negotiable instrument can raise it even against a holder in due course. • The ten real defenses are (1) fraud in the factum, (2) forgery of a necessary signature, (3) adjudicated insanity that, under state law, renders the contract void from its inception, (4) material alteration of the instrument, (5) infancy, which renders the contract voidable under state law, (6) illegality that renders the underlying contract void, (7) duress, (8) discharge in bankruptcy, or any discharge known to the holder in due course, (9) a suretyship defense (for example, if the holder knew that one indorser was signing as a surety or accommodation party), and (10) a statute of limitations (generally three years after dishonor or acceptance on a draft and six years after demand or other due date on a

note). — Also termed *absolute defense*; *universal defense*.

**5.** Measures taken by a country or individual to protect against an attack. See SELF-DEFENSE; NATIONAL DEFENSE (1).

**self-defense.** See SELF-DEFENSE.

**6.** A country's military establishment. See NATIONAL DEFENSE (2). — Also spelled (esp. in BrE) *defence*.

**defense attorney.** A lawyer who represents a defendant in a civil or criminal case. — Also termed *defense counsel*; *defense lawyer*.

**defense contingent fee.** See *reverse contingent fee* under CONTINGENT FEE.

**defense counsel.** See DEFENSE ATTORNEY.

**Defense Department.** An executive department of the federal government, responsible for coordinating and overseeing military affairs and the agencies responsible for national security. • The Department was established as the National Military Establishment in 1947, by combining the War and the Navy Departments. Its name was changed to Department of Defense in 1949. The Department's components include the Army, the Air Force, the Navy, the Marine Corps, and the Joint Chiefs of Staff. It is headed by the Secretary of Defense, who is answerable to the President as Commander-in-Chief. — Also termed *Department of Defense* (abbr. DOD).

**defense lawyer.** See DEFENSE ATTORNEY.

**defense-month.** See FENCE-MONTH.

**defense of habitation.** See CASTLE DOCTRINE.

**defense of others.** A justification defense available if one harms or threatens another when defending a third person. See JUSTIFICATION (2).

**defense of property.** A justification defense available if one harms or threatens another when defending one's property. See JUSTIFICATION (2).

**defense of self.** See SELF-DEFENSE.

**defensiva** (dee-fen-si-və), *n.* [Latin "a protector"] *Hist.* A warden of the Marches, being one of many lords appointed by the Crown to defend England's borders.

**defensive allegation.** *Hist. Eccles. law.* A defendant's pleading of the facts relied upon that require the plaintiff's response under oath.

"The proceedings in the ecclesiastical courts are therefore regulated according to the practice of the civil and canon laws . . . . [T]heir ordinary course of proceeding is; first, by *citation*, to call the party injuring before them. Then . . . to set forth the complainant's ground of complaint. To this succeeds the *defendant's answer* upon oath; when, if he denies or extenuates the charge, they proceed to *proofs* by witnesses examined, and their depositions taken down in writing, by an officer of the court. If the defendant has any circumstances to offer in his defence, he must also propound them in what is called his *defensive allegation*, to which he is entitled in his turn to the *plaintiff's answer* upon oath, and may from thence proceed to *proofs* as well as his antagonist." 3 William Blackstone, *Commentaries on the Laws of England* 100 (1768).

**defensive collateral estoppel.** See COLLATERAL ESTOPPEL.

**defensor** (di-fen-sər or -sor), *n.* [fr. Latin *defendere* "to forbid"] **1.** *Roman law.* A defender of another's interests in court; an advocate, esp. for a corporation. Cf. PROCURATOR LITIS. **2.** *Roman law.* DEFENSOR CIVITATIS. **3.** *Hist. Eccles. law.* An advocate or patron of a church; a church warden. **4.** *Hist.* A guardian; a protector; a defender.

**defensor civitatis** (di-fen-sər siv-i-tay-tis), *n.* [Latin "defender of the city"] *Roman law.* An officer conducting public business, including protecting people, esp. the poor, from legal injustices, adjudicating certain minor offenses and pecuniary matters, and acting as a notary in the execution of a will or other transfer. — Often shortened to *defensor*.

**defensor fidei** (di-fen-sər fi-dee-i), *n.* [Latin "defender of the faith"] A unique title of the sovereign of England, first granted by Pope Leo X to Henry VIII for writing against Martin Luther. • The Pope later withdrew the title because of Henry's harsh regulation of the church, but the title was again bestowed on the King by Parliament. The term is similar to the application of "Catholic" to the Spanish sovereign and "Most Christian" to the French sovereign. — Also termed *Defender of the Faith*.

**defensum** (di-fen-səm), *n.* [Law Latin "an inclosure"] *Hist.* **1.** A portion of an open field allotted for corn or hay but not for feeding. **2.** A wood partially enclosed to prevent the cattle from damaging the undergrowth. **3.** A prohibition.

**defer**, *vb.* **1.** To postpone; to delay <to defer taxes to another year>. **2.** To show deference to (another); to yield to the opinion of <because it was a political question, the courts deferred to the legislature>.

**deferment**, *n.* **1.** The act of delaying; postponement <deferment of a judicial decision>. **2.** *Military law.* A delay in serving in the military. **3.** *Military law.* A delay in serving confinement that results from a court-martial until the sentence has been approved and its execution has been ordered. • The convening authority may grant a deferment. — **defer**, *vb.*

**deferral of taxes.** The postponement of paying a tax from one year to another, as by contributing money to an IRA, for which earnings and contributions will be taxed only when the money is withdrawn.

**deferral state.** Under the Age Discrimination in Employment Act (ADEA), a state that has its own antidiscrimination legislation and enforcement mechanism, so that the time to file a federal lawsuit under the ADEA is postponed until state remedies have been exhausted.

**deferred adjudication.** See *deferred judgment* under JUDGMENT.

**deferred-adjudication probation.** See *deferred judgment* under JUDGMENT.

**deferred annuity.** See ANNUITY.

**deferred charge.** An expense not currently recognized on an income statement but carried forward on the balance sheet as an asset to be written off in the future <insurance premiums are a deferred charge>.

**deferred claim.** A claim postponed to a future accounting period.

**deferred compensation.** See COMPENSATION.

**deferred credit.** A credit (such as a premium on an issued bond) that is required to be spread over later accounting periods.

**deferred dividend.** See DIVIDEND.

**deferred expense.** See EXPENSE.

**deferred income.** See INCOME.

**deferred-interest bond.** See BOND (3).



**deferred judgment.** See JUDGMENT.

**deferred lien.** See LIEN.

**deferred payment.** A principal-and-interest payment that is postponed; an installment payment.

**deferred-payment annuity.** See *deferred annuity* under ANNUITY.

**deferred prosecution.** See *deferred judgment* under JUDGMENT.

**deferred revenue.** See *prepaid income* under INCOME.

**deferred sentence.** See SENTENCE.

**deferred stock.** See STOCK.

**deficiency, n.** **1.** A lack, shortage, or insufficiency. **2.** A shortfall in paying taxes; the amount by which the tax properly due exceeds the sum of the amount of tax shown on a taxpayer's return. — Also termed *tax deficiency*; *income-tax deficiency*; *deficiency in tax*. **3.** The amount still owed when the property secured by a mortgage is sold at a foreclosure sale for less than the outstanding debt; esp., the shortfall between the proceeds from a foreclosure sale and an amount consisting of the principal debt plus interest plus the foreclosure costs. See *deficiency judgment* under JUDGMENT.

**deficiency assessment.** See ASSESSMENT.

**deficiency bill.** See BILL (3).

**deficiency decree.** See *deficiency judgment* under JUDGMENT.

**deficiency dividend.** See DIVIDEND.

**deficiency in tax.** See DEFICIENCY (2).

**deficiency judgment.** See JUDGMENT.

**deficiency letter.** An SEC letter to a registrant of a securities offering, detailing the ways in which the registration statement fails to meet federal disclosure requirements. — Also termed *letter of comment*; *letter of comments*.

**deficiency notice.** See NINETY-DAY LETTER.

**deficiency suit.** An action to recover the difference between a mortgage debt and the amount realized on foreclosure. See *deficiency judgment* under JUDGMENT.

**deficit. 1.** A deficiency or disadvantage; a deficiency in the amount or quality of something.

*trade deficit.* In economics, the excess of merchandise imports over merchandise exports during a specific period. — Also termed *trade gap*. Cf. *trade surplus* under SURPLUS.

**2.** An excess of expenditures or liabilities over revenues or assets.

**deficit spending.** Expenditures in excess of income, usu. from borrowed funds rather than actual revenues or surplus.

**defile (di-fil), vb.** **1.** To make dirty; to physically soil. **2.** To figuratively tarnish; to dishonor. **3.** To make ceremonially unclean; to desecrate. **4.** To morally corrupt (someone). **5. Archaic.** To debauch (a person); to deprive (a person) of chastity.

**defilement (di-fil-mənt), n.** **1.** An act of defiling. **2.** A condition of being defiled.

**define, vb.** **1.** To state or explain explicitly. **2.** To fix or establish (boundaries or limits). **3.** To set forth the meaning of (a word or phrase).

**defined-benefit plan.** See EMPLOYEE BENEFIT PLAN.

**defined-contribution plan.** See EMPLOYEE BENEFIT PLAN.

**defined pension plan.** See PENSION PLAN.

**defined term.** In legal drafting, a word or phrase given a specific meaning for purposes of the document in which it appears; a *definiendum*.

*de fine force* (dee fi-nee fors). [Law French] Of pure necessity.

*de fine non capiendo pro pulchre placitando* (dee fi-nee non kap-ee-en-doh proh pəl-kree plas-ə-tan-doh), *n.* [Law Latin “of not taking a fine for amending a bad pleading”] *Hist.* A writ prohibiting the imposition of a fine for bad pleading. See BEAUPLEADER.

*de fine pro redisseisina capiendo* (dee fi-nee proh ree-dis-see-zin-ə kap-ee-en-doh), *n.* [Law

Latin "of a fine paid for one imprisoned for redisseisin"] *Hist.* A writ releasing a person who paid a reasonable fine after being imprisoned for a redisseisin.

**de finibus levatis** (dee fi-nə-bəs lə-vay-tis), *n.* [Law Latin "concerning fines levied"] *Hist.* The statute requiring any levied fines to be read solemnly in open court. 27 Edw. 1.

**definite sentence.** See *determinate sentence* under SENTENCE.

**definitio** (def-ə-nish-ee-oh), *n.* [fr. Latin *definire* "definition"] *Civil law.* 1. A definition; an explanation of something. 2. The establishment of a general rule. 3. A boundary.

**definition.** The meaning of a term as explicitly stated in a drafted document such as a contract, a corporate bylaw, an ordinance, or a statute; a definiens.

**lexical definition.** A dictionary-style definition of a word, purporting to give the full meaning of a term.

**stipulative definition.** A definition that, for purposes of the document in which it appears, arbitrarily clarifies a term with uncertain boundaries or that includes or excludes specified items from the ambit of the term.

**definitive judgment.** See *final judgment* under JUDGMENT.

**definitive partition.** See PARTITION.

**definitive sentence.** See *determinate sentence* under SENTENCE.

**deflation**, *n.* A general decline in the price of goods and services. — **deflate**, *vb.* — **deflationary**, *adj.* Cf. INFLATION; DISINFLATION.

**deforce**, *vb.* 1. To keep (lands) from the true owner by means of force. 2. To oust (another) from possession by means of force. 3. To detain (a creditor's money) unjustly and forcibly. — **deforciant**, *n.*

"The character of the action of debt is well illustrated by the form of the writ as given by Glanville. It directs the sheriff to order the debtor to render a stated sum which he owes to the plaintiff, 'and whereof the plaintiff complains that the defendant unjustly deforces him,' and, if he will not obey, he is to be summoned before the King's Court. The plaintiff is 'deforced' of money just as in a writ of right he is 'deforced' of land. It is true that the term 'deforces' disappeared from the writ shortly after Glanville's time, the word *debet* taking its place; but this

seems to have been a matter of form, not of substance. The plaintiff sought to recover the money due as his property." William F. Walsh, *Outlines of the History of English and American Law* 411 (1924).

**deforcement.** 1. An act of keeping lands from the true owner by force. 2. An act of ousting another from possession by means of force. 3. An act of detaining a creditor's money unjustly and forcibly.

**deforciant** (di-for-shənt), *n.* [fr. Law Latin *deforcians* "a deforcer"] A person who prevents another from taking possession of property; the defendant in an action of fine. See FINE (1).

**deforciare** (di-for-shee-air-ee), *vb.* [fr. Law Latin *defortiare* "to deforce"] *Hist.* To withhold property (such as land and tenements) from the true owner.

**deforciatio** (di-for-shee-ay-shee-oh), *n.* [Law Latin "a distress"] *Hist.* A seizure of goods to satisfy a debt.

**de forisfactura maritagii** (dee for-is-fak-tyoor-ə mar-ə-tay-jee-ī), *n.* [Law Latin "of forfeiture of marriage"] *Hist.* A writ forfeiting a marriage.

**defossion** (di-fosh-in), *n.* [fr. Latin *de* "down" + *fodere* "dig"] The punishment of being buried alive.

**de frangentibus prisonam** (dee fran-jen-ti-bəs priz-ə-nəm), *n.* [Latin "of those who break prison"] *Hist.* The statute providing that an escaped prisoner will not be put to death or forfeit a limb simply for escaping from prison unless the original crime required that penalty upon conviction. 1 Edw. 2.

**defraud**, *vb.* To cause injury or loss to (a person) by deceit. See FRAUD.

**defraudation.** An act of privation by fraud.

**defrauder.** See FRAUDFEASOR.

**defunct**, *adj.* Dead; extinct <defunct corporation>.

**defunct marriage.** A marriage in which both parties, by their conduct, indicate their intent to no longer be married.

**defunctus** (di-fəŋk-təs), *adj.* [Latin] Dead, as in *defunctus sine prole* ("dead without (leaving) issue").

**de furto** (dee fər-toh), *n.* [Latin "of theft"] *Hist.* In England, a type of criminal appeal.

**degaster** (day-gas-tay), *vb.* [fr. Old French *dégaster* "to spoil"] To waste.

**de gestu et fama** (dee jes-ty[y]oo et fay-mə), *n.* [Law Latin "of behavior and reputation"] *Hist.* A writ available to a person whose character and reputation had been impeached.

**degradation** (deg-rə-day-shən). **1.** A reduction in rank, degree, or dignity; specif., censure of a clergy member by divestiture of holy orders, either by word or by a solemn divestiture of robes and other insignia. **2.** A moral or intellectual decadence or degeneration; a lessening of a person's or thing's character or quality <degradation of resources>. **3.** A wearing down of something, as by erosion.

**de gratia** (dee gray-shee-ə). [Latin] Of favor; by grace, as in *de speciali gratia* ("of special grace or favor").

**degree.** **1.** Generally, a classification or specification <degrees of proof>. **2.** An incremental measure of guilt or negligence; a level based on the seriousness of an offense <murder in the first degree>. **3.** A stage in a process; a step in a series of steps toward an end <the statute went through several degrees of development>. **4.** A stage in intensity <a high degree of legal skill is required>. **5.** In the line of descent, a measure of removal determining the proximity of a blood or marital relationship <the judge was recused because she was related to the plaintiff within the second degree of affinity> <the council member did not participate in the vote because he was related to one of the bidders within the first degree of consanguinity>. — Also termed *degree of kin*. See AFFINITY (2); CONSANGUINITY.

**equal degree.** A relationship between two or more relatives who are the same number of steps away from a common ancestor.

**prohibited degree.** A degree of relationship so close (as between brother and sister) that marriage between the persons is forbidden by law. • Generally, with slight variations from jurisdiction to jurisdiction, the law forbids marriages between all persons lineally related and within the third civil-law degree of relationship. — Also termed *forbidden degree*.

**6.** A title conferred on a graduate of a school, college, or university, either after the completion of required studies or in honor of special achievements <she began studying for the bar exam the day after receiving her law degree>. Cf. DIPLOMA (3).

**degree of care.** A standard of care to be exercised in a given situation. See CARE.

**highest degree of care.** **1.** The degree of care exercised commensurate with the danger involved. **2.** The degree of care applied by people in the business or profession of dealing with the given situation. — Also termed *extraordinary care*; *utmost care*.

**degree of crime.** **1.** A division or classification of a single crime into several grades of guilt, according to the circumstances surrounding the crime's commission, such as aggravating factors present or the type of injury suffered. **2.** A division of crimes generally, such as felonies or misdemeanors.

**degree of kin.** See DEGREE.

**degree of negligence.** One of the varying levels of negligence typically designated as slight negligence, ordinary negligence, and gross negligence. See NEGLIGENCE.

"Although the common law concept of degrees of negligence has been criticized or repudiated in many jurisdictions, the usefulness of the view at common law that degrees of negligence exist is still recognized in a number of jurisdictions, particularly in regard to the distinction between ordinary and gross negligence. Furthermore, legislators have not been dissuaded from using the degrees of negligence concept when it is helpful to achieve a legislative purpose." 57A Am. Jur. 2d *Negligence* § 233, at 274 (1989).

**degree of proof.** See BURDEN OF PRODUCTION.

**de haerede deliberando illi qui habet custodiam terrae** (dee hi-ree-dee di-lib-ə-ran-doh il-I kwi hay-bət kə-stoh-dee-əm ter-ee), *n.* [Law Latin "for delivering an heir to him who has wardship of the land"] *Hist.* A writ ordering the sheriff to deliver an heir to a person who had wardship.

**de haerede rapto et abducto** (dee hi-ree-dee rap-toh et ab-dək-toh), *n.* [Law Latin "of an heir ravished and carried away"] *Hist.* A writ allowing a lord to recover a ward who had been taken by another person.

**de haeretico comburendo** (dee hi-ret-i-koh kom-byə-ren-doh), *n.* [Law Latin "of burning a

heretic"] *Hist.* 1. A writ ordering the execution by burning of a heretic who, after having already been convicted of heresy by the bishop and recanted, was again convicted by a secular court. — Also termed *writ de haeretico comburendo*.

"And . . . we find among our ancient precedents a writ *de haeretico comburendo*, which is thought by some to be as ancient as the common law itself. However, it appears from thence, that the conviction of heresy by the common law was not in any petty ecclesiastical court, but before the archbishop himself in a provincial synod; and that the delinquent was delivered over to the king to do as he should please with him: so that the crown had a control over the spiritual power, and might pardon the convict by issuing no process against him; the writ *de haeretico comburendo* being not a writ of course, but issuing only by the special direction of the king in council." 4 William Blackstone, *Commentaries on the Laws of England* 46-47 (1769).

"But the case of Sawtre (1400) is a clear case in which the rule of the canon law was applied. He was convicted of heresy before the Bishop of Norwich and recanted his heresy. He fell again into heresy, and was condemned by the archbishop and his provincial Council, as a relapsed heretic. On this conviction the king issued a writ *de haeretico comburendo*. This case clearly shows that the common law recognized the rule of the canon law . . ." 1 William Holdsworth, *A History of English Law* 617 (7th ed. 1956).

2. The first English penal law against heresy, enacted in 1401 (2 Hen. 4, ch. 15). • The law authorized the burning of defendants who relapsed or refused to abandon their heretical opinions.

"The first English statute that denounced the penalty of death against heretics was passed in the year 1401. Whether before that statute the law that was in force in our land demanded or suffered that such persons should be burnt is a question that has been eagerly debated; on it in the days of Elizabeth and James I depended the lives of Anabaptists and Arians; it has not yet lost its interest; but it is a question that buzzes in a vacuum, for until Lollardy became troublesome there was too little heresy in England to beget a settled course of procedure." 2 Frederick Pollock & Frederic Maitland, *The History of English Law Before the Time of Edward I* 544 (1899).

**de homagio respectuando** (dee hə-may-jee-oh ri-spek-tyoo-an-doh), *n.* [Law Latin "for respiting or postponing homage"] *Hist.* A writ to postpone an homage. See HOMAGE.

**de homine capto in withernamium** (dee hom-ə-nee kap-toh in with-ər-nay-mee-əm), *n.* [Law Latin "for taking a man in withernam"] *Hist.* A writ to seize and jail a person who took a bondman out of the county to keep the bondman from being replevied. • The defendant was jailed without bail until the bondman was returned. See WITHERNAM.

**de homine replegiando** (dee hom-ə-nee ri-plee-jee-an-doh), *n.* [Law Latin "for replevying a man"] A writ to replevy a person out of jail or out of the custody of another person after giving security that the replevied person will answer any charge.

"The writ *de homine replegiando* lies to replevy a man out of prison, or out of the custody of any private person, (in the same manner that chattels taken in distress may be replevied . . .) upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. And, if the person be conveyed out of the sheriff's jurisdiction, the sheriff may return that he is eloiigned . . . upon which a process issues . . . to imprison the defendant himself, without bail . . . till he produces the party. But this writ is guarded with so many exceptions, that it is not an effectual remedy in numerous instances, especially where the crown is concerned." 3 William Blackstone, *Commentaries on the Laws of England* 129 (1768).

**dehors** (də-hor or də-horz). [Law French] Outside; beyond the scope of <the court cannot consider the document because it is dehors the record>.

**de identitate nominis** (dee i-den-tə-tay-tee nom-ə-nis), *n.* [Law Latin "of identity of name"] *Hist.* A writ to free a person mistaken for someone else with the same name and then falsely arrested and imprisoned. — Also termed *de idemptitate nominis*.

**de idiota inquirendo** (dee id-ee-oh-tə in-kwi-ren-doh or in-kwə-ren-doh). [Latin "of inquiring concerning an idiot"] *Hist.* A writ directing the sheriff to open an inquiry before a jury of 12 into whether a person is an idiot, that is, mentally incapable of managing personal affairs.

**Dei gratia** (dee-I gray-shee-ə). [Latin] By the grace of God. • This phrase was often used in rulers' titles to show that their authority was by divine right. It was also formerly used in titles of magistrates and other officers.

**de iis qui ponendi sunt in assisis** (dee i-əs kwī pə-nen-dī sɛnt in ə-si-zɛz), *n.* [Law Latin "of those who are to be put on assises"] *Hist.* The statute establishing juror qualifications. 21 Edw. 1.

**de incremento** (dee in-krə-men-toh). [Law Latin "of increase"] *Hist.* Additional. • Costs *de incremento* are costs awarded by a court in addition to costs awarded by the jury.

**de ingressu** (dee in-gres-[y]oo), *n.* [Law Latin "of entry"] *Hist.* A writ allowing entry into lands or tenements.

**de injuria** (dee in-juor-ee-ə). [Law Latin "of injury"] *Hist.* Of injury. • A traverse *de injuria*, contained in a replication in a trespass action, denies the defendant's excuse for the wrong done. See TRAVERSE.

**de inofficioso testamento** (dee in-ə-fish-ee-oh-soh tes-tə-men-toh). [Latin] *Hist.* Concerning an inofficious or undutiful will. • This was a title of Roman law. See INOFFICIOSUS.

**de integro** (dee in-tə-groh), *n.* [Latin] Again; a second time.

**de intrusione** (dee in-troo-zhee-oh-nee), *n.* [Law Latin "of intrusion"] *Hist.* A writ available to a reversioner when the tenant dies and a stranger occupies the land.

**dejeration** (dej-ə-ray-shən). The act of taking a solemn oath.

**de jure** (di juur-ee *also* dee or day), *adj.* [Law Latin "as a matter of law"] Existing by right or according to law <de jure segregation during the pre-Brown era>. Cf. DE FACTO; DE GRATIA.

**de jure corporation.** See CORPORATION.

**de jure officer.** See *officer de jure* under OFFICER (1).

**de jure segregation.** See SEGREGATION.

**delantal** (di-lan-təl). [Old English] *Hist.* See UT-LAND.

**de la plus belle** (də lah ploo bel), *adj.* [Law French] *Hist.* Of the most fair. • This term described a form of dower assigned out of the husband's best tenements. The term was used in military tenures but was abolished by St. 12 Car. 2, ch. 24. — Also termed *de la plus beale*.

**de latere** (dee lat-ər-ee). [Latin] Of collaterals; from the side.

**delatio** (di-lay-shee-oh), *n.* [fr. Latin *deferre* "to denounce"] *Roman & civil law.* 1. An accusation. 2. Information.

**delator** (di-lay-tər or -tor), *n.* [fr. Latin *deferre* "to denounce"] *Roman & civil law.* 1. An accuser. 2. An informer.

**delatura** (del-ə-tyoor-ə), *n.* [fr. Latin *deferre* "to denounce"] *Hist.* A reward given to an informer.

**delay**, *n.* 1. The act of postponing or slowing <the continuance was sought for no purpose other than delay>. 2. An instance at which something is postponed or slowed <the delay in starting the trial made it difficult for all the witnesses to attend>. 3. The period during which something is postponed or slowed <during the delay, the case settled>. 4. *Civil law.* The period within which a party to a suit must take some action, such as perfecting an appeal or responding to a written-discovery request <the delay for responding to written interrogatories is 15 days after the date they are served on the responding party>.

**delayed appeal.** See APPEAL.

**delayed-compliance order.** *Environmental law.* An order issued by the Environmental Protection Agency or by a state agency to an existing source of pollutants, whereby the deadline for complying with an implementation plan is postponed. See IMPLEMENTATION PLAN.

**delayed funds availability.** A hold that a bank places on uncollected funds that are represented by a deposited check. — Abbr. DFA.

**delayed rental.** See RENTAL.

**del bien estre** (del been es-tər). [Law French] *Hist.* Of well-being. See DE BENE ESSE.

**del credere** (del kred-ə-ray or kray-də-ray), *adj.* [Italian] Of belief or trust.

"'Del credere' agents for the sale of goods, in consideration of a higher payment than usual, become responsible for the solvency of the person to whom they sell them." Thomas E. Holland, *The Elements of Jurisprudence* 304 (13th ed. 1924).

**del credere agent.** See AGENT.

**del credere bailiff.** See FACTOR.

**del credere commission.** A factor's commission that is increased because the factor guarantees the payment to the principal of all debts that become due through the agency relationship.

**del credere factor.** See *del credere agent* under AGENT.

**delectus personae** (di-**lek**-təs pər-**soh**-nee). [Latin “choice of the person”] The rule that when personal relations are important, a person cannot be compelled to associate with another person. • Based on this principle, a partner has the right to accept or reject a candidate proposed as a new partner.

**delegable duty.** See DUTY (1).

**delegate** (del-ə-**git**), *n.* One who represents or acts for another person or a group.

**delegated legislation.** See REGULATION (3).

**delegatee** (del-ə-gə-**tee**). An agent or representative to whom a matter is delegated.

**delegation, n.** 1. The act of entrusting another with authority or empowering another to act as an agent or representative <delegation of contractual duties>. 2. A group of representatives <a large delegation from Texas>. — **delegate** (del-ə-**gayt**) (for sense 1), *vb.* — **delegable** (del-ə-gə-**bəl**) (for sense 1), *adj.*

**delegation doctrine.** *Constitutional law.* The principle (based on the separation-of-powers concept) limiting Congress’s ability to transfer its legislative power to another governmental branch, esp. the executive branch. • Delegation is permitted only if Congress prescribes an intelligible principle to guide an executive agency in making policy. — Also termed *nondelegation doctrine*. See *legislative veto* under VETO.

**delegation of duties.** *Contracts.* A transaction by which a party to a contract arranges to have a third party perform the party’s contractual duties.

**delegation of powers.** A transfer of authority by one branch of government to another branch or to an administrative agency. See DELEGATION DOCTRINE.

**de legatis et fidei commissis** (dee li-**gay**-tis et fi-dee-i kə-**mis**-is). [Latin] Of legacies and trusts. • This is a title in the Pandects.

**de lege ferenda** (dee **lee**-jee fə-**ren**-də). [Latin “from law to be passed”] *Int’l law.* A principle created to apply to a given situation, rather than from existing precedents; law created for changing circumstances. Cf. DE LEGE LATA.

“It is not sufficient for the codifiers of international law to study the subject matter solely from the juridical aspect, or to rely only on the ‘state practice, precedent

and doctrine.’ . . . [T]he systematic development of sociological inquiries concerning international law is indispensable for the human future, at any rate, insofar as the human future is deemed to depend on the role of international law. It seems indispensable, moreover, not only for the development of international law *de lege ferenda*, but also for the clarification of its present content *de lege lata*.” R.P. Dhokalia, *The Codification of Public International Law* 334-35 (1970).

**de lege lata** (dee **lee**-jee lay-**tə**). [Latin “from law passed”] *Int’l law.* 1. Existing law. 2. The principle that a court should decide based on actual law and not on how it thinks the law ought to be. Cf. DE LEGE FERENDA.

**deleterious** (del-ə-**teer**-ee-əs), *adj.* 1. Poisonous <deleterious toxins>. 2. Unwholesome; psychologically or physically harmful <deleterious influence>.

**de libera falda** (dee **lib**-ər-ə fal-**də** or **fawl**-də), *n.* [Law Latin “of free fold”] *Hist.* A writ allowing a free feeding, esp. of sheep on land. • This was a form of *quod permittat*.

**de libera piscaria** (dee **lib**-ər-ə pi-**skair**-ee-ə), *n.* [Law Latin “of free fishery”] *Hist.* A writ allowing an exclusive right to fish on public navigable water. • This was a form of *quod permittat*.

**deliberate** (di-**lib**-[ə]-**rit**), *adj.* 1. Intentional; premeditated; fully considered. 2. Unimpulsive; slow in deciding.

**deliberate elicitation.** *Criminal procedure.* The purposeful yet covert drawing forth of an incriminating response (usu. not during a formal interrogation) from a suspect whose Sixth Amendment right to counsel has attached but who has not waived that right. • Deliberate elicitation may occur, for example, when a police officer engages an arrested suspect in conversation on the way to the police station. Deliberate elicitation violates the Sixth Amendment. *Massiah v. United States*, 377 U.S. 201, 84 S.Ct. 1199 (1964).

**deliberate-indifference instruction.** See JEWELL INSTRUCTION.

**deliberate speed, with all.** As quickly as the maintenance of law and order and the welfare of the people will allow, esp. with respect to the desegregation of public schools. *Brown v. Board of Educ.*, 347 U.S. 483, 74 S.Ct. 686 (1954).

**deliberation, n.** The act of carefully considering issues and options before making a decision or

taking some action; esp., the process by which a jury reaches a verdict, as by analyzing, discussing, and weighing the evidence. — **deliberate** (di-lib-ə-rayt), *vb.*

**deliberative-process privilege.** See PRIVILEGE (1).

**de libero passagio** (dee lib-ər-oh pə-say-jee-oh), *n.* [Law Latin “of free passage”] *Hist.* A writ allowing free passage over water. • This was a form of *quod permittat*.

**de libertate probanda** (dee lib-ər-tay-tee proh-ban-də), *n.* [Law Latin “for proving liberty”] *Hist.* A writ directing a sheriff to take security from a person accused of being a villein and to protect that person from harassment until the person’s status was determined by the justices of assize.

**de libertatibus allocandis** (dee lib-ər-tay-tə-bəs al-ə-kan-dis), *n.* [Law Latin “for allowing liberties”] *Hist.* A writ allowing a person entitled to certain liberties to obtain them.

**de licentia transfretandi** (dee li-sen-shee-ə trans-frə-tan-di), *n.* [Law Latin “of permission to cross the sea”] *Hist.* A writ ordering wardens of seaports, on certain conditions, to permit any person named in the writ to cross the sea.

**delict** (di-likht), *n.* [Latin *delictum* “an offense”] A violation of the law; a tort; a wrong. — Also termed (in Roman law) *delictum*; (in French law) *délict*.

“A delict is a civil wrong. It is an infringement of another’s interests that is wrongful irrespective of any prior contractual undertaking to refrain from it — though there may also be one. It entitles the injured party to claim compensation in civil proceedings — though criminal proceedings aimed at punishing the wrongdoer may also ensue.” 1 P.Q.R. Boberg, *The Law of Delict* 1 (1984).

**private delict.** A wrong regarded primarily as a matter of compensation between individuals.

**public delict.** A wrong for which the community as a whole takes steps to punish the offender. Cf. *public tort* under TORT.

**quasi-delict.** 1. *Roman law.* An offense for which some person other than the actual perpetrator is held responsible, such as a master for the wrongdoing of a slave.

“QUASI-DELICT . . . Justinian enumerates four cases of obligations said to arise quasi ex delicto. The implication seems to be that in all of them the law creates a

liability though the defendant may not in fact be to blame. The cases are the following: — (1) The judge who ‘makes the case his own’ . . . incurs a penalty fixed by the magistrate at discretion . . . (2) If anything was thrown, or poured, from an upper room . . . the occupier was liable for double the damage . . . (3) If a thing was kept placed or suspended over a way used by the public . . . there was a penalty . . . which might be recovered from the occupier . . . (4) Ship-owners, innkeepers and stable-keepers were liable for damage or theft committed by slaves or free persons in their employ . . .” R.W. Lee, *The Elements of Roman Law* 401–02 (4th ed. 1956).

2. See *quasi-offense* under OFFENSE (2).

**delictal.** See DELICTUAL.

**deliction** (di-lik-shən). The loss of land by gradual, natural changes, such as erosion resulting from a change in the course of a river or stream. Cf. ACCRETION (1); ALLUVION; AVULSION (2); EROSION.

**delictual** (di-lik-chə-wəl), *adj.* Of, relating to, or involving a delict; TORTIOUS. — Also termed *delictal*.

**delictual fault.** *Civil law.* A legal obligation arising between people independent of any prior contractual or other legal relationship between them, such as the obligation arising when one person commits a tort against another person.

**delictum.** See DELICT.

**delimitation.** The act of marking a boundary or fixing a limit.

**delimit** (di-lim-it), *vb.* To mark (a boundary); to fix (a limit).

**delimitation.** A fixing of limits or boundaries.

**delinquency, n.** 1. A failure or omission; a violation of a law or duty. See JUVENILE DELINQUENCY. 2. A debt that is overdue in payment.

**delinquency charge.** See CHARGE.

**delinquent, adj.** 1. (Of a person) failing to perform an obligation. 2. (Of a person) guilty of serious antisocial or criminal conduct. 3. (Of an obligation) past due or unperformed.

**delinquent, n.** 1. A person who fails to perform an obligation. 2. A person guilty of serious antisocial or criminal conduct. See JUVENILE DELINQUENT.

**delinquent child.** See CHILD.

**delinquent minor.** See JUVENILE DELINQUENCY.

**delinquent tax.** See TAX.

**delirium.** 1. A disordered mental state, often occurring during illness. 2. Exaggerated excitement. 3. A delusion; a hallucination.

**delisting, n.** The suspension of the privilege of having a security listed on an exchange. • Delisting results from failing to meet the exchange's listing requirements, as by not complying with the minimum net-asset requirement. — **delist, vb.** Cf. DEREGISTRATION.

**délit.** See DELICT.

**deliverance.** 1. A jury's verdict. 2. A judicial opinion or judgment. 3. A court's order directing that a person in custody be released; esp., such an order by an ecclesiastical court. — Also termed *writ of deliverance*. 4. *Archaic.* In a replevin action, a writ ordering the redelivery to the owner of goods.

**second deliverance. Hist.** A second replevin remedy after the plaintiff has been nonsuited and the distrained property has been returned to the defendant. — Also termed *writ of second deliverance*.

“And at the common law, the plaintiff might have brought another replevin, and so *in infinitum*, to the intolerable vexation of the defendant. Wherefore the statute of Westm. 2, c. 2 restrains the plaintiff, when nonsuited, from suing any fresh replevin, but allows him a *judicial writ* issuing out of the original record, and called a writ of *second deliverance*, in order to have the same distress again delivered to him, on giving the like security as before. And, if the plaintiff be a second time nonsuit, or if the defendant has judgment upon verdict . . . he shall have a writ or *return irreplevisable*; after which no writ of second deliverance shall be allowed.” 3 William Blackstone, *Commentaries on the Laws of England* 150 (1767).

5. Such a release (as in sense 3) or redelivery (as in sense 4).

**delivery, n.** 1. The formal act of transferring or conveying something, such as a deed; the giving or yielding possession or control of something to another. 2. The thing so transferred or conveyed. — **deliver, vb.** Cf. LIVERY.

**absolute delivery.** A delivery that is complete upon the actual transfer of the instrument from the grantor's possession. • Such a delivery usu. does not depend on recordation.

**actual delivery.** The act of giving real and immediate possession to the buyer or the buyer's agent.

**conditional delivery.** A delivery that passes possession only upon the happening of a specified event.

**constructive delivery.** An act that amounts to a transfer of title by operation of law when actual transfer is impractical or impossible. • For example, the delivery of a deposit-box key by someone who is ill and immobile amounts to a constructive delivery of the box's contents even though the box may be miles away. For the three traditional types of constructive delivery, see ATTORNMENT; CONSTITUTUM POSSESSORIUM; TRADITIO BREVI MANU.

**good delivery. Securities.** The basic conditions for delivery of a security, including that (1) the certificate is in good condition, (2) the certificate belongs to the person transferring it, (3) the certificate is properly indorsed, and (4) any legal documents necessary for negotiability must accompany the certificate.

**second delivery.** A legal delivery by the depositary of a deed placed in escrow.

**symbolic delivery.** The constructive delivery of the subject matter of a sale by the actual delivery of an article that represents the item, that renders access to it possible, or that provides evidence of the purchaser's title to it, such as the key to a warehouse or a bill of lading for goods on shipboard.

**unconditional delivery.** A delivery that immediately passes both possession and title and that takes effect immediately.

**delivery bond.** See *forthcoming bond* under BOND (2).

**delivery in escrow.** The physical transfer of something to an escrow agent to be held until some condition is met, at which time the agent will release it. • An example of such a delivery is a stock buyer's transfer of cash to a bank that will give the seller the cash upon receiving the stock certificates. This type of delivery creates immediate conditional rights in the promisee. The device may be used to create an option contract in which the promisee has the option. See ESCROW.

**delivery of deed.** The placing of a deed in the grantee's hands or within the grantee's control. • By this act, the grantor shows an intention that the deed operates immediately as a conveyance.



**delivery order.** A written order to deliver goods, directed to a warehouseman, carrier, or other person who ordinarily issues warehouse receipts or bills of lading. UCC § 7-102(1)(d).

**de lunatico inquirendo** (dee loo-nat-ə-koh inkwə-ren-doh), *n.* [Law Latin “for inquiring about a lunatic”] *Hist.* A writ or commission to determine whether a person is a lunatic. — Also termed *commission of lunacy*.

**dem.** *abbr.* DEMISE.

**de magna assisa eligenda** (dee mag-nə ə-si-zə el-i-jen-də), *n.* [Law Latin “of choosing the grand assize”] *Hist.* A writ ordering a sheriff to first summon 4 knights to give oaths before the justices of assize and then choose 12 more knights to form a grand assize to determine who had the right in a writ of right.

**de malo** (dee mal-oh). [Law Latin] Of illness. ● This term defined certain legal excuses, such as *de malo lecti* (“of illness in bed”), *de malo veniendi* (“of illness or misfortune in coming where the court is”), and *de malo villae* (“of illness in town where the court is”).

**demand, n. 1.** The assertion of a legal right.

**cross-demand.** A party’s demand opposing an adverse party’s demand. See COUNTERCLAIM; CROSS-CLAIM.

**incidental demand.** *Civil law.* A plea by which a party other than the plaintiff asserts a claim that is related to the plaintiff’s suit. ● Examples include a cross-claim, a demand against a third party, an intervention, and a reconventional demand. La. Code Civ. Proc. art. 1031.

**legal demand.** A lawful demand made by an authorized person.

**main demand.** *Civil law.* A plaintiff’s principal or primary claim against one or more defendants, contained in an original or validly amended pleading. — Also termed *principal demand*; *principal action*.

**reconventional demand.** *Civil law.* A plea by which a defendant asserts any claim that it has against the plaintiff, or any offset against the plaintiff’s claim. ● This plea is similar to the common-law counterclaim. La. Code Civ. Proc. 1061 et seq.

**2.** A request for payment of a debt or an amount due.

**personal demand.** An in-person demand for payment upon the drawer, maker, or acceptor of a bill or note.

**3.** In economics, the intensity of buyer pressure on the availability and cost of a commodity or service.

**aggregate demand. 1.** The total amount spent on goods and services in an economy during a specific period. **2.** The total demand for a firm’s products and services during a specific period.

**derived demand.** Product demand that is related to another product’s demand.

**demand, vb. 1.** To claim as one’s due; to require; to seek relief. **2.** To summon; to call into court.

**demandant.** *Archaic.* The plaintiff in a real action (the defendant being called a *tenant*). See *real action* under ACTION.

**demand clause.** A provision in a note allowing the holder to compel full payment if the maker fails to meet an installment.

**demand deposit.** See DEPOSIT (2).

**demand draft.** See *sight draft* under DRAFT.

**demand for document inspection.** See REQUEST FOR PRODUCTION.

**demand for relief.** See PRAYER FOR RELIEF.

**demand instrument.** An instrument payable on demand, at sight, or on presentation, as opposed to an instrument that is payable at a set future date. — Also termed *demand note*.

**demand letter.** A letter by which one party explains its legal position in a dispute and requests that the recipient take some action (such as paying money owed), or else risk being sued. ● Under some statutes (esp. consumer-protection laws), a demand letter is a prerequisite for filing a lawsuit.

**demand loan.** See *call loan* under LOAN.

**demand note.** See NOTE (1); DEMAND INSTRUMENT.

**demand of oyer.** *Hist.* The assertion of a party’s right to hear, read, or inspect a deed of which profert is made by the opposing party in a pleading. See OYER (3).

**demand of view.** *Hist.* In a real action, a defendant's request to see the thing at issue to ascertain its identity and the circumstances of the claim. • If a real action was brought against a tenant who did not know what land was at issue, the tenant might demand a view. See VIEW (4).

**demand-pull inflation.** See INFLATION.

**demandress.** *Archaic.* A female demandant.

**de manucaptione** (dee man-yə-kap-shee-oh-nee), *n.* [Law Latin "of manucaption"] *Hist.* A writ ordering a sheriff to release on sufficient bail an accused felon whose initial offer of bail had been rejected.

**de manutenendo** (dee man-yə-tə-nen-doh), *n.* [Law Latin "of maintenance"] *Hist.* A writ against a person who has wrongfully meddled in a lawsuit by providing assistance to a party to continue the litigation. See MAINTENANCE (6).

**demarcation line.** *Int'l law.* A provisional border having the function of separating territories under different jurisdictions, usu. established when the political situation does not admit a final boundary arrangement. — Also termed *line of demarcation*.

**démarche** (day-mahrsh). [French "gait; walk"] An oral or written diplomatic statement, esp. one containing a demand, offer, protest, threat, or the like. — Also spelled *demarche*.

**de maritagio amisso per defaultam** (dee mar-ə-tay-jee-oh ə-mis-oh pər də-fawl-təm), *n.* [Law Latin] *Hist.* A writ available to a tenant of a frankmarriage to regain land lost by default.

**de me** (dee mee). [Latin] Of me. • This phrase appeared in feudal grants to confirm that a superior lord's permission was not needed for the conveyance. This was distinguished from a conveyance *a me de superiore meo* ("from me of my superior"), in which the estate is to be held of the superior, and is invalid unless confirmed by the superior. Cf. A ME.

**demeanor.** Outward appearance or behavior, such as facial expressions, tone of voice, gestures, and the hesitation or readiness to answer questions. • In evaluating a witness's credibility, the jury may consider the witness's demeanor.

**demeanor evidence.** See EVIDENCE.

**demease** (di-meez), *n.* *Hist.* Death.

**de medietate linguae** (dee mee-dee-ə-tay-tee ling-gwee). [Law Latin] Of half-tongue. • This term describes a jury made up of an equal number of natives and aliens. Edward III originally provided for such a jury in commercial cases when one party was an alien. It was later extended to criminal cases. If enough aliens could not be found, trial proceeded with the available number.

**de medio** (dee mee-dee-oh), *n.* [Law Latin "of mesne"] *Hist.* A writ against a mesne (i.e., middle) lord to protect an undertenant from harassment by a paramount lord for rent actually due from the mesne lord. — Also termed *writ of mesne*.

**de melioribus damnis** (dee mee-lee-or-ə-bəs dam-nis). [Law Latin] Of the better damages. • This term describes a plaintiff's election of the defendant against which to take judgment when the jury has mistakenly awarded separate damages against two or more defendants for a joint tort. Under these circumstances, the plaintiff could take a judgment against the defendant that had been assessed the greatest damages, and then enter a *nolle prosequi* against the others.

**demented, adj.** Not of sound mind; insane.

**dementenant en avant** (də-men-tə-nahnt on ə-vahnt). [Law French] From this time forward.

**de mercatoribus** (dee mər-kə-tor-ə-bəs), *n.* [Latin "of merchants"] *Hist.* The title of two statutes enacted in the 11th and 13th years of the reign of Edward I, providing that the land of a business debtor could be held by a creditor as security until the debt was paid.

"But by the statute *de mercatoribus* . . . the whole of a man's lands was liable to be pledged in a statute merchant, for a debt contracted in trade; though one-half of them was liable to be taken in execution for any other debt of the owner." 1 William Blackstone, *Commentaries on the Laws of England* 161 (1765).

**demesne** (di-mayn or di-meen), *n.* [French] **1.** At common law, land held in one's own right, and not through a superior. **2.** Domain; realm. — Also spelled *demain*.

**ancient demesne.** *Hist.* A manor that was held by the Crown at the time of William the Conqueror and was recorded in the Domesday Book.

**demesne as of fee.** *Hist.* Complete ownership of something.

"But there is this distinction between the two species of hereditaments: that, of a corporeal inheritance a man shall be said to be seised in his *demesne, as of fee*; of an incorporeal one, he shall only be said to be seised *as of fee*, and not in his *demesne*. For, as incorporeal hereditaments are in their nature collateral to, and issue out of, lands and houses, their owner hath no property, *dominium*, or *demesne*, in the *thing* itself, but hath only something derived out of it; resembling the *servitudes*, or services, of the civil law." 2 William Blackstone, *Commentaries on the Laws of England* 106 (1766).

**demesne land.** See LAND.

**demesne land of the Crown.** See *Crown land* under LAND.

**demesnial** (di-may-nee-əl or di-meen-ee-əl), *adj.* Of or relating to a *demesne*.

**demi** (dem-ee), *n.* [French] Half; the half. • The term is most often a combining form, as in *demi-sangue*.

**demidietas** (dem-ee-di-ə-tas), *n.* [Law Latin] A half; a moiety.

**demilitarization.** *Int'l law.* The process by which a country obligates itself not to station military forces — or to maintain military installations — in specified areas or zones within its territory.

**demilitarized zone.** *Int'l law.* A territorial area in which a country is obligated not to station military forces or maintain military installations.

**demimark.** *Hist.* Half a mark; money equal to ten shillings and eight pence, required to be tendered in a writ of right to force the demandant to prove seisin.

**de minimis** (də min-ə-mis), *adj.* [Latin "of the least"] 1. Trifling; minimal. 2. (Of a fact or thing) so insignificant that a court may overlook it in deciding an issue or case. 3. DE MINIMIS NON CURAT LEX.

**de minimis non curat lex** (də min-ə-mis non kyoor-at leks). [Latin] The law does not concern itself with trifles. — Often shortened to *de minimis*.

**de minis** (dee min-is), *n.* [Latin "of threats"] *Hist.* A writ ordering a person to keep the peace when the person has threatened another

person with bodily harm or property destruction.

**deminutio** (dee-mi-n[y]oo-shee-oh), *n.* [fr. Latin *deminuere* "taking away"] *Roman law.* A deprivation or loss. • The term appeared, for example, in the phrase *capitis deminutio* "the loss of civil status." — Also spelled *diminutio*.

**demi-sangue** (dem-ee-sang). [Law French] Half-blood; blood on either the father's or the mother's side. — Also termed *demy-sangue*.

**demise** (di-miz), *n.* 1. The conveyance of an estate by will or lease <the demise of the land for one year>. 2. The instrument by which such a conveyance is accomplished <the demise set forth the terms of the transfer>. 3. The passing of property by descent or bequest <a testator's demise of \$100,000 to charity>. 4. The death of a person or (figuratively) of a thing <the corporation's untimely demise>. — Abbr. dem. — **demise, vb.**

**demise of the Crown.** The immediate, automatic transfer of a kingdom to a successor upon a sovereign's death or long absence from the throne.

"The king never dies. Henry, Edward, or George may die; but the king survives them all. For immediately upon the decease of the reigning prince in his natural capacity, his kingship or imperial dignity, by act of law, without any . . . interval, is vested at once in his heir; who is, *eo instanti*, king to all intents and purposes. And so tender is the law of supposing even a possibility of his death, that his natural dissolution is generally called his *demise* . . . an expression which signifies merely a transfer of property; for . . . when we say the demise of the crown, we mean only that, in consequence of the disunion of the king's body natural from his body politic, the kingdom is transferred or demised to his successor; and so the royal dignity remains perpetual." 1 William Blackstone, *Commentaries on the Laws of England* 242 (1765).

**joint demise.** In an ejectment action, a demise made by two or more persons in one declaration.

**separate demise.** In an ejectment action, a demise made solely by the lessor.

**several demise.** (*often pl.*) *Hist.* In an ejectment action, a list of demises by all people potentially owning the property at issue, used to ensure that the plaintiff had proved a lease from the person actually having title. See EJECTMENT.

**single demise.** In an ejectment action, a declaration containing one demise. See EJECTMENT.

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

**demise charterer.** See *demise charter* under **charter**.

**demised premises.** Property that has been leased.

**demisi** (di-mī-zī). [fr. Latin *demittere*] I have demised. • This was the operative phrase in a lease.

**demissio** (di-mīsh-ee-oh), *n.* [fr. Latin *demittere* "to demise"] *Hist.* A lease or other transfer. • In an ejection action, this term was used in the phrase *ex demissione* ("on the demise") to show that a nominal plaintiff (a fictitious person) held an estate on a demise from the real plaintiff.

**de mittendo tenorem recordi** (dee mi-ten-doh tē-nor-əm ri-kor-di), *n.* [Law Latin "of sending the tenor of a record"] *Hist.* A writ to certify a record under seal.

**demobilization.** A dismissal of troops from active service.

**democracy, n.** Government by the people, either directly or through representatives. — **democratic, adj.** Cf. REPUBLIC.

**de moderata misericordia capienda** (dee mod-ə-ray-tə miz-ə-ri-kor-dee-ə kap-ee-en-də), *n.* [Law Latin "for taking a moderate amercement"] *Hist.* A writ ordering a bailiff to take a moderate penalty from a party who had been excessively penalized in a court not of record. • The writ was founded on Magna Carta.

**de modo decimandi** (dee moh-doh des-ə-man-di), *n.* [Law Latin] *Eccles. law.* Of a mode of tithing. • This refers to any special kind of tithing by custom that is different from the general law that usu. required the tenth part of an annual increase. For example, it could mean a twelfth part of a quantity of hay rather than a tenth part or a couple of hens instead of a normal tithing of eggs. — Also termed *modus decimandi*; *modus*.

**demonetization.** A disuse of a metal in coinage; a withdrawal of the value of a metal as money <the demonetization of gold in the United States>.

**demonstratio** (dem-ən-stray-shee-oh). [fr. Lat-in *demonstrare* "to show"] *Roman law.* **1.** A description, as in *falsa demonstratio* (a false description of something or someone in a will).

**2.** The statement of facts in a formula, forming the basis of a claim. See FORMULA (1).

**demonstrative bequest.** See BEQUEST.

**demonstrative evidence.** See EVIDENCE.

**demonstrative legacy.** See LEGACY.

**demote, vb.** To lower (a person) in rank, position, or pay. See DEGRADATION.

**demur** (di-mər), *vb.* To file a demurrer; to object to the legal sufficiency of a claim alleged in a pleading without admitting or denying the truth of the facts stated. See DEMURRER.

**demurrable** (di-mər-ə-bəl), *adj.* (Of a claim, pleading, etc.) subject to a demurrer <a demurrable pleading>. See DEMURRER.

**demurrage** (di-mər-ij). (*usu. pl.*) *Maritime law.* A liquidated penalty owed by a charterer to a shipowner for the charterer's failure to load or unload cargo by a certain time.

**contract demurrage.** A demurrage paid by a vessel's charterer if the time to unload the vessel at port takes longer than that agreed upon in the charterer's contract with the shipowner. Cf. DISPATCH MONEY.

"The contract may also provide that if ... the loading time exceeds that fixed by the charter, the charterer will pay a liquidated compensation termed 'contract demurrage.'" Frank L. Maraist, *Admiralty in a Nutshell* 56 (2d ed. 1988).

**noncontract demurrage.** Demurrage not provided by contract, but ordered by a court. — Also termed *damages for detention*.

"After the ... days on contract demurrage have expired, the charterer of course still remains liable for further delay, but the liability now is one for noncontract demurrage, which will be fixed by the court just as would any other unliquidated claim for damages. Non-contract demurrage may also be referred to as 'damages for detention.'" Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* § 4-8, at 212 (2d ed. 1975).

**demurrage lien.** See LIEN.

**demurrant** (di-mər-ənt). A party who interposes a demurrer. See DEMURRER.

**demurrer** (di-mər-ər). [Law French *demorer* "to wait or stay"] A pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer. • In most jurisdictions, such

a pleading is now termed a *motion to dismiss*, but the demurrer is still used in a few states, including California, Nebraska, and Pennsylvania. Cf. DENIAL (1).

"The word 'demurrer,' derived from the Latin *demorari*, or the French *demorrer*, meaning to 'wait or stay,' imports that the party demurring waits or stays in his proceedings in the action until the judgment of the court is given whether he is bound to answer to so insufficient a pleading. Each party may demur to what he deems an insufficient pleading of the other. The demurrer was *general* when it was to matter of substance; it was *special* when it was made to matter of form, and must specifically point out the defect." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 15 (2d ed. 1899).

**demurrer ore tenus.** An oral demurrer. See ORE TENUS.

"The codes either expressly or by implication require all pleadings to be in writing. To this proposition there is the apparent exception that objections to the jurisdiction of the court, or to the sufficiency of a pleading, that it does not state a cause of action or defence, may be raised on the trial by what is sometimes called a demurrer *ore tenus* (that is, orally, — by word of mouth)." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 179 (2d ed. 1899).

**general demurrer.** See *general exception* (1) under EXCEPTION (1).

**parol demurrer.** *Hist.* A suspension of proceedings during the minority of an infant.

**speaking demurrer.** A demurrer that cannot be sustained because it introduces new facts not contained in the original complaint.

**special demurrer.** An objection that questions the form of the pleading and states specifically the nature of the objection, such as that the pleading violates the rules of pleading or practice.

**demurrer book.** A record of the demurrer issue used by the court and counsel in argument.

**demurrer to evidence.** A party's objection or exception that the evidence is legally insufficient to make a case. • Its effect, upon joinder in the demurrer by the opposite party, is that the jury is discharged and the demurrer is entered on record and decided by the court. A demurrer to evidence admits the truth of all the evidence and the legal deductions from that evidence.

**demurrer to interrogatories.** The objection or reason given by a witness for failing to answer an interrogatory.

**demutualization, n.** The process of converting a mutual insurance company (which is owned

by its policyholders) to a stock insurance company (which is owned by outside shareholders), usu. as a means of increasing the insurer's capital by allowing the insurer to issue shares.

• About half the states have demutualization statutes authorizing such a conversion. — **demutualize, vb.**

**demy-sanguie.** See DEMI-SANGUE.

**den and strond (den an[d] strond).** *Hist.* Permission for a ship to run aground or strand itself.

**denarius (di-nair-ee-əs), n.** [Law Latin "penny"] **1.** *Roman law.* The principal silver coin used by the Romans. **2.** *Hist.* An English penny; a pence. **3.** (*pl.*) *Slang.* Money in general. Pl. **denarii.** — Also termed *denier*.

**denarius Dei (di-nair-ee-əs dee-I), n.** [Law Latin "God's penny"] *Hist.* Earnest money exchanged by contracting parties, so called because the money was originally given either to the church or to the poor. • The *denarius Dei* was not part of the consideration. See ARRA.

**denationalization. 1.** *Int'l law.* The unilateral act of a country in depriving a person of nationality, whether by administrative decision or by operation of law. • Strictly, the term does not cover a person's renunciation of citizenship. **2.** The act of returning government ownership and control of an industry or function to private ownership and control. — **denationalize, vb.**

**de nativo habendo (dee nā-ti-voh hə-ben-doh), n.** [Law Latin "about a serf to be held"] *Hist.* A writ directing a sheriff to apprehend and return a runaway serf to the serf's lord. • A trial on the writ would determine the lord's ownership status.

**de natura brevium (dee nā-tyoor-ə bree-vee-ə).** [Latin] Concerning the nature of writs. • This was a common title of textbooks on English medieval law.

**denial, n. 1.** A refusal or rejection; esp., a court's refusal to grant a request presented in a motion or petition <denial of the motion for summary judgment>. **2.** A defendant's response controverting the facts that a plaintiff has alleged in a complaint; a repudiation <the worker's denial that physical contact occurred>. Cf. DEMURRER.

**conjunctive denial.** A response that controverts all the material facts alleged in a complaint.

**disjunctive denial.** A response that controverts the truthfulness of two or more allegations of a complaint in the alternative.

**general denial.** A response that puts in issue all the material assertions of a complaint or petition. — Also termed *general plea*.

**qualified general denial.** A general denial of all the allegations except the allegations that the pleader expressly admits.

“The qualified general denial most frequently is used when a limited number of allegations in the complaint are to be admitted. This form of denial also is employed when defendant cannot expressly deny an averment in his opponent’s pleading and therefore cannot submit a general denial, although defendant wants to put plaintiff to his proof on that averment by interposing a denial of knowledge or information sufficient to form a belief or a denial on information and belief.” 5 Charles Alan Wright & Arthur Miller, *Federal Practice and Procedure* § 1266, at 405 (1990).

**specific denial.** A separate response applicable to one or more particular allegations in a complaint.

**3.** A refusal or rejection <denial of an employment application>. **4.** A deprivation or withholding <denial of due process>. — **deny**, *vb*.

**denial of justice.** *Int’l law.* A defect in a country’s organization of courts or administration of justice, resulting in the country’s violating its international legal duties to protect aliens. ● A denial of justice is a wrongful act under international law. — Also termed *justitia denegata*; *déni de justice*; *refus de justice*.

**denier**, *n.* **1.** (də-nyay) [French fr. Latin *denarius*] DENARIUS (1), (3). **2.** (di-nī-ər). [Law French] *Hist.* Denial; refusal, as in refusal to pay rent when demanded.

**Denier à Dieu** (də-nyay ah dyoo or dyoo). [French “God’s money”] *French law.* Earnest money exchanged by contracting parties. See DENARIUS DEI.

**denization** (den-ə-zay-shən). The act of making a person a denizen. See DENIZEN.

**denize** (den-iz or di-niz), *vb.* To make (a person) a denizen. See DENIZEN.

**denizen** (den-ə-zən). **1.** A person given certain rights in a foreign nation or living habitually in a foreign nation. **2.** *English law.* A person who

holds a position midway between being an alien and a natural-born or naturalized subject.

**Denman’s Act.** *Hist.* **1.** The (English) Evidence Act of 1843, providing that no person offered as a witness can be excluded because of incapacity due to a past crime or an interest in the proceedings. — Also termed *Lord Denman’s Act*. **2.** The (English) Criminal Procedure Act of 1865 that allowed defense counsel to sum up evidence as allowed in a civil trial, to prove contradictory statements of an adverse witness, to prove a previous criminal conviction of an adverse witness, and to compare disputed handwriting. — Also termed *Mr. Denman’s Act*.

**denomination.** **1.** An act of naming. **2.** A collective designation, esp. of a religious sect.

**de non decimando** (dee non des-ə-man-doh), *n.* [Law Latin “of not paying tithes”] *Eccles. law.* A claim for release from paying a tithe. — Also termed *modus de non decimando*.

“A prescription *de non decimando* is a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. Thus the king by his prerogative is discharged from all tithes. So a vicar shall pay no tithes to the rector, nor the rector to the vicar . . . . But these privileges are personal to both the king and the clergy; for their tenant or lessee shall pay tithes . . . . And from this original have sprung all the lands, which, being in lay hands, do at present claim to be tithe-free: for, if a man can show his lands to have been such abbey lands, and also immemorially discharged of tithes . . . this is now a good prescription, *de non decimando*. But he must show both these requisites for abbey lands, without a special ground of discharge, are not discharged of course; neither will any prescription *de non decimando* avail in total discharge of tithes, unless it relates to such abbey lands.” 2 William Blackstone, *Commentaries on the Laws of England* 31–32 (1766).

**de non procedendo ad assisam** (dee non proh-sə-den-doh ad ə-sī-zəm), *n.* [Law Latin “of not proceeding to take an assize”] *Hist.* A writ ordering justices not to hold an assize in a particular case.

**de non residentia clerici regis** (dee non rez-ə-den-shee-ə kler-ə-sī ree-jis), *n.* [Law Latin “of the nonresidence of a parson employed in royal service”] *Hist.* A writ to excuse a parson from nonresidence because the parson is busy serving the Crown. See NONRESIDENCE (1).

**de non sane memorie** (dee non sayn mem-ə-ree). [Law French] Of unsound memory; of unsound mind. See MIND AND MEMORY; NON COMPOS MENTIS.

**denotative fact.** See FACT.

**denounce, vb.** 1. To condemn openly, esp. publicly. 2. To declare (an act or thing) to be a crime and prescribe a punishment for it. 3. To accuse or inform against. 4. To give formal notice to a foreign country of the termination of (a treaty).

**denouncement.** 1. An act of accusation or condemnation <denouncement of a thief>. 2. A declaration of a threatened action <denouncement of war> <denouncement of a treaty>. 3. In Mexican law, an application for a grant to work a mine that is either newly discovered or forfeited <the denouncement was granted>. 4. *Archaic.* A formal announcement; a declaration <a denouncement of a doctrine>. — Also termed *denunciation*. — **denunciatory, denunciative, adj.**

**de novi operis nuntiatione.** See NOVI OPERIS NUNTIATIO.

**de novo** (di **noh**-voh or dee-), *adj.* Anew.

**hearing de novo.** See HEARING.

**trial de novo.** See TRIAL DE NOVO.

**venire facias de novo** (və-**ni**-ree fay-shee-əs dee **noh**-voh). See VENIRE FACIAS.

**de novo review.** See *appeal de novo* under APPEAL.

**density zoning.** See *cluster zoning* under ZONING.

**denumeration.** An act of making a present payment.

**denunciation.** See DENOUNCEMENT.

**denuntiatio** (di-nən-shee-ay-shee-oh), *n.* [Latin] 1. *Roman & civil law.* A declaration intended to protect or set in motion the enforcement of the declarer's right; esp., a report of a crime. 2. *Hist.* A summons; a public notice. 3. *Scots law.* A report of someone to be a rebel.

**deodand** (dee-ə-dand). *Hist.* An old English practice of forfeiting to the Crown a thing (such as an animal) that has done wrong. • This practice was abolished in 1846.

“[W]hen in 1716 the coroner's jury of Yarmouth declared a stack of timber which had fallen on a child to be forfeited as a deodand, it was ransomed for 30s., which was paid over to the child's father.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 7 (16th ed. 1952).

**de odio et atia** (dee oh-dee-oh et ay-shee-ə), *n.* [Law Latin “of hatred and malice”] *Hist.* A writ ordering a sheriff to summon a 12-member jury to inquire whether a prisoner jailed for murder was charged for a good reason or only because of ill-will and to determine whether bail should be set. • If the prisoner was accused out of spite or had committed the crime in self-defense, then another writ called *tradas in ballim* would have been issued ordering the sheriff to release the prisoner on bail if the sheriff could find 12 good citizens of the county to vouch for the prisoner. This writ, similar to *habeas corpus*, was first mentioned in Magna Carta. — Also termed *breve de bono et malo*.

**de onerando pro rata portione** (dee on-ə-ran-doh proh **ray**-tə por-shee-oh-nee), *n.* [Law Latin “of charging according to a ratable proportion”] *Hist.* A writ for a joint tenant or cotenant who is distrained for more rent than is proportionately required.

**de pace et legalitate tenenda** (dee pay-see et lə-gal-ə-tay-tee tə-nen-də). [Latin] *Hist.* A writ for keeping the peace and adherence to the laws (or good behavior). — Also termed *de pace et legalitate tuenda*.

**de pace et plagis** (dee pay-see et play-jis), *n.* [Law Latin “of breach of peace and wounds”] *Hist.* A type of criminal appeal used in cases of assault, wounding, and breach of the peace.

**de pace et roberia** (dee pay-see et roh-beer-ee-ə), *n.* [Law Latin “of breach of peace and robbery”] *Hist.* A type of criminal appeal used in cases of robbery and breach of the peace.

**de parco fracto** (dee pahr-koh frak-toh), *n.* [Law Latin “of pound breach”] *Hist.* A writ against someone, esp. an owner, who breaks into a pound to rescue animals that have been legally distrained and impounded.

“And, being thus in the custody of the law, the taking them back by force is looked upon as an atrocious injury, and denominated a *rescous*, for which the distreinor has a remedy in damages, either by writ of *rescous*, in case they were going to the pound, or by writ *de parco fracto*, or *pound-breach*, in case they were actually impounded.”  
3 William Blackstone, *Commentaries on the Laws of England* 146 (1768).

**de partitione facienda** (dee pahr-tish-ee-oh-nee fay-shee-en-də), *n.* [Law Latin] *Hist.* A writ to partition lands or tenements.

**department, n.** 1. A division of a greater whole; a subdivision <a legal department>. 2. A

country's division of territory, usu. for governmental and administrative purposes, as in the division of a state into counties <France has regional departments similar to states>. **3.** A principal branch or division of government <legislative department>; specif., a division of the executive branch of the U.S. government, headed by a secretary who is a member of the President's cabinet <Department of Labor>. — **departmental**, *adj.*

**Department of Defense.** See DEFENSE DEPARTMENT.

**Department of Energy.** A federal department that oversees a comprehensive national energy plan, including the research, development, and demonstration of energy technology; energy conservation; the nuclear-weapons program; and pricing and allocation. — Abbr. DOE.

**Department of Justice.** The federal executive division that is responsible for federal law enforcement and related programs and services. ● The U.S. Attorney General heads this department, which has separate divisions for prosecuting cases under federal antitrust laws, tax laws, environmental laws, and criminal laws. The department also has a civil division that represents the U.S. government in cases involving tort claims and commercial litigation. — Abbr. DOJ.

**Department of State.** See STATE DEPARTMENT.

**Department of the Interior.** A federal department responsible for managing federally owned land and natural resources, and for overseeing American Indian reservations. ● The Department administers a number of agencies, including the Bureau of Land Management, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey. — Also termed *Interior Department*.

**Department of Transportation.** The federal executive division that is responsible for programs and policies concerning transportation. ● Through a series of specialized agencies, this department oversees aviation, highways, railroads, mass transit, the U.S. merchant marine, and other programs. — Abbr. DOT.

**departure, n.** **1.** A deviation or divergence from a standard rule, regulation, measurement, or course of conduct <an impermissible departure from sentencing guidelines>.

**downward departure.** In the federal sentencing guidelines, a court's imposition of a

sentence more lenient than the standard guidelines propose, as when the court concludes that a criminal's history is less serious than it appears.

**lateral departure.** In the federal sentencing guidelines, a sentence that allows a defendant to avoid incarceration through community or home confinement. — Also termed *lateral sentencing*.

**upward departure.** In the federal sentencing guidelines, a court's imposition of a sentence harsher than the standard guidelines propose, as when the court concludes that a criminal's history did not take into account additional offenses committed while the prisoner was out on bail.

**2.** A variance between a pleading and a later pleading or proof <the departure between the plaintiff's pleadings and the actual evidence was significant>. **3.** A party's desertion of the ground (either legal or factual) taken in the immediately preceding pleading and resort to another ground <the defendant's departure from the asserted alibi necessitated a guilty plea>. — **depart**, *vb.*

**departure in despite of court.** *Hist.* A failure of a tenant in a real action to appear on demand. ● A tenant, having once appeared in a real action, was considered to be constructively present until again called. So if the tenant failed to appear when demanded, the tenant was said to have departed in despite (in contempt) of court.

**dépeçage** (dep-ə-sahzh). [French "dismemberment"] A court's application of different state laws to different issues in a legal dispute; choice of law on an issue-by-issue basis.

**depeculation** (dee-pek-yə-lay-shən). *Hist.* An embezzlement from the public treasure. Cf. PECULATION.

**dependency.** **1.** A land or territory geographically distinct from the country governing it, but belonging to the country and governed by its laws. ● The Philippines was formerly a dependency of the United States. Cf. COMMONWEALTH; TERRITORY. **2.** A relationship between two persons or things whereby one is sustained by the other or relies on the other for support or necessities.

**dependency exemption.** See EXEMPTION.



**dependent**, *n.* 1. One who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else.

**lawful dependent**. 1. One who receives an allowance or benefits from the public, such as social security. 2. One who qualifies to receive a benefit from private funds as determined within the terms of the laws governing the distribution.

**legal dependent**. A person who is dependent according to the law; a person who derives principal support from another and usu. may invoke laws to enforce that support.

**partial dependent**. *Workers' compensation*. A person whose partial reliance on an employee covered under workers'-compensation law for support entitles him or her to receive death benefits if the employee is killed on the job.

2. *Tax*. A relative, such as a child or parent, for whom a taxpayer may claim a personal exemption if the taxpayer provides more than half the person's support during the taxable year. — Also termed *lawful dependent*. — **dependent**, *adj.*

**dependent claim**. See CLAIM (6).

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

**dependent contract**. See CONTRACT.

**dependent covenant**. See COVENANT (1).

**dependent coverage**. See COVERAGE.

**dependent intervening cause**. A cause of an accident or injury that occurs between the defendant's behavior and the injurious result, but that does not change the defendant's liability.

**dependent promise**. See PROMISE.

**dependent relative revocation**. The doctrine that regards as mutually dependent the acts of destroying a will and substituting a new one when both acts are the result of one plan, so that, if a testator fails to complete the substitution, it is presumed that the testator would have preferred the old will to take effect. • This doctrine is a specific application of the rule that the testator's intent governs.

**dependent state**. See *nonsovereign state* under STATE (1).

## *de ponendo sigillum ad exceptionem*

**de perambulatione facienda** (dee pə-ram-byə-lay-shee-oh-nee fay-shee-en-də), *n.* [Law Latin "for making perambulation"] *Hist.* A writ ordering the sheriff to go with 12 knights of the county to settle a boundary dispute by walking about to determine the proper boundary between adjacent towns or lordships.

**de placito** (dee plas-ə-toh), *n.* [Law Latin] Of a plea. • These words were used in a declaration describing the particular action being brought, as in *de placito debit* ("of a plea of debt").

**de plagis et mahemio** (dee play-jis et mə-hee-mee-oh), *n.* [Law Latin "of wounds and mayhem"] *Hist.* A type of criminal appeal used in cases of wounding and maiming.

**de plano** (dee play-noh). [Latin "from ground level"] 1. *Roman law*. Informally; in a summary manner. • The praetor would administer justice *de plano* when he stood on the same level with the parties instead of sitting on an elevated bench. 2. *Hist.* Clearly; manifestly, as in *de bigamis*. See DE BIGAMIS. 3. *Hist.* By collusion. 4. *Scots law*. Forthwith.

**de plegiis acquietandis** (dee plee-jee-is ə-kwi-ə-tan-dis), *n.* [Law Latin "for acquitting or releasing pledges"] *Hist.* A writ ordering repayment to a surety by a principal who had failed to make a required payment that the surety then had to cover.

**depletable economic interest**. A mineral-land interest subject to depletion by the removal (by drilling or mining) of the mineral that is the subject of the interest.

**depletion**, *n.* An emptying, exhausting, or wasting of an asset, esp. of a finite natural resource such as oil. — **deplete**, *vb.* — **depletive**, *adj.*

**depletion allowance**. See ALLOWANCE (3).

**depletion reserve**. *Accounting*. A charge to income reflecting the decrease in the value of a wasting asset, such as an oil reserve.

**depone** (di-pohn), *vb.* *Scots law*. To testify. See DEPOSE.

**de ponendo sigillum ad exceptionem** (dee pə-nen-doh si-jil-əm ad ek-sep-shee-oh-nəm), *n.* [Law Latin "for putting a seal to an exception"] *Hist.* A writ directing justices of assize to preserve exceptions taken by a party in a case.

**deponent** (di-poh-nənt), *n.* **1.** One who testifies by deposition. **2.** A witness who gives written testimony for later use in court; AFFIANT. — **depone**, *vb.*

**depopulatio agrorum** (dee-pop-yoo-lay-shee-oh ə-gror-əm), *n.* [Law Latin “depopulating the county”] *Hist.* The crime of destroying or ravaging a country. ● A person could not claim the benefit of clergy for this crime.

**depopulation.** **1.** A reduction in population. **2.** *Hist.* A species of waste by which the kingdom’s population was diminished. See DEPOPULATIO AGRORUM.

**deportatio** (dee-por-tay-shee-oh), *n.* [fr. Latin *deportare* “to carry away”] *Roman law.* Permanent exile of a condemned criminal. ● The person’s legal rights were virtually eliminated, all property was forfeited, and the person was “taken out of the number of Roman citizens” (*ex numero civium Romanorum tollitur*). Cf. RELEGATIO.

“Deportatio. Perpetual banishment of a person condemned for a crime. It was the severest form of banishment since it included additional penalties, such as seizure of the whole property, loss of Roman citizenship, confinement to a definite place. Under the Principate it replaced the former *interdictio aqua et igni*. The emperor could grant the deportee full amnesty, which restored him to his former rights (*postliminium*). Places of *deportatio* were islands (*in insulam*) near the Italian shore or an oasis in the Libyan desert.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* 432 (1953).

**deportation** (dee-por-tay-shən), *n.* The act or an instance of removing a person to another country; esp., the expulsion or transfer of an alien from a country. — **deport**, *vb.*

**depose** (di-pohz), *vb.* **1.** To examine (a witness) in a deposition <the defendant’s attorney will depose the plaintiff on Tuesday>. **2.** To testify; to bear witness <the affiant deposes and states that he is at least 18 years old>. **3.** To remove from office or from a position of power; dethrone <the rebels sought to depose the dictator>.

**deposit**, *n.* **1.** The act of giving money or other property to another who promises to preserve it or to use it and return it in kind; esp., the act of placing money in a bank for safety and convenience. **2.** The money or property so given.

**demand deposit.** A bank deposit that the depositor may withdraw at any time without prior notice to the bank.

**direct deposit.** The payment of wages by transferring the payment directly into the employee’s bank account, usu. by electronic transfer.

**frozen deposit.** A bank deposit that cannot be withdrawn, as when the financial institution is insolvent.

**general deposit.** **1.** A bank deposit of money that is commingled with other depositors’ money. **2.** A bank deposit that is to the depositor’s credit, thus giving the depositor a right to the money and creating a debtor-creditor relationship between the bank and the depositor. ● A bank is not required to return the actual money deposited as a general deposit, as it must with a special deposit; the bank need return only an equivalent sum.

**special deposit.** A bank deposit that is made for a specific purpose, that is kept separately, and that is to be returned to the depositor. ● The bank serves as a bailee or trustee for a special deposit. — Also termed *specific deposit*.

**time deposit.** A bank deposit that is to remain for a specified period or on which notice must be given to the bank before withdrawal.

**3.** Money placed with a person as earnest money or security for the performance of a contract. ● The money will be forfeited if the depositor fails to perform. — Also termed *security deposit*. **4. Copyright.** The placing of two copies of a published work with the Library of Congress within three months of publication. ● This requirement is independent of copyright registration. **5. Civil law.** A bailment of goods to be kept by the bailee without payment; a gratuitous caretaking of an object. — Also termed *depositum*; *naked deposit*; *gratuitous deposit*. See *gratuitous bailment* under BAILMENT.

**involuntary deposit.** A deposit made by accidentally leaving or placing personal property in another’s possession. See *involuntary bailment* under BAILMENT.

**necessary deposit.** A bailment, usu. made by reason of emergency or other necessity, that prevents the depositor from freely choosing the depository. ● A necessary deposit occurs, for example, when a person entrusts goods to a stranger during a fire.

**quasi-deposit.** An involuntary deposit made when one party lawfully possesses property merely by finding it.

**voluntary deposit.** A deposit made by the mutual consent of the bailor and bailee.

**deposit account.** See ACCOUNT.

**depository.** **1.** A person or institution that one leaves money or valuables with for safekeeping <a title-insurance officer is the depository of the funds>. • When a depository is a company, it is often termed a *safe-deposit company*. Cf. DEPOSITORY. **2.** A gratuitous bailee. See DEPOSIT (6).

**depository bank.** See BANK.

**deposit box.** See SAFE-DEPOSIT BOX.

**deposit company.** See COMPANY.

**deposit contract.** See CONTRACT.

**deposit in court.** The placing of money or other property that represents a person's potential liability in the court's temporary custody, pending the outcome of a lawsuit. — Also termed *deposit into the registry of the court*.

**deposit insurance.** See INSURANCE.

**deposit into the registry of the court.** See DEPOSIT IN COURT.

**deposition** (dep-ə-zish-ən). **1.** A witness's out-of-court testimony that is reduced to writing (usu. by a court reporter) for later use in court or for discovery purposes. **2.** The session at which such testimony is recorded.

**apex deposition.** The deposition of a person whose position is at the highest level of a company's hierarchy. • Courts often preclude an apex deposition unless (1) the person to be deposed has particular knowledge regarding the claim, and (2) the requesting party cannot obtain the requested — and discoverable — information through less intrusive means.

**deposition de bene esse** (dee bee-nee es-ee also day ben-ay es-ay). A deposition taken from a witness who will likely be unable to attend a scheduled trial or hearing. • If the witness is not available to attend trial, the testimony is read at trial as if the witness were present in court. See *testimony de bene esse* under TESTIMONY.

**deposition on written questions.** A deposition given in response to a prepared set of written questions, as opposed to a typical oral deposition. — Formerly also termed *deposition on written interrogatories*.

“The advantage of a deposition on written questions is that counsel for the parties need not go to some distant

place to be present at the taking of the deposition. Instead they serve on each other questions and cross questions — and even redirect and recross questions — that they wish to have put to the deponent. These are then sent to the officer who is to take the deposition. The officer puts the questions to the witness, records the answers, and transcribes and files the deposition as with an oral deposition. The officer is merely to record what the witness says in response to the various questions propounded to him or her.” Charles Alan Wright, *The Law of Federal Courts* § 85, at 618–19 (5th ed. 1994).

**oral deposition.** A deposition given in response to oral questioning by a lawyer.

**30(b)(6) deposition.** Under the Federal Rules of Civil Procedure, the deposition of an organization, through the organization's designated representative. • Under Rule 30(b)(6), a party may take the deposition of an organization, such as a corporation. The notice of deposition (or subpoena) may name the organization and may specify the matters to be covered in the deposition. The organization must then designate a person to testify about those matters on its behalf. Fed. R. Civ. P. 30(b)(6). Most states authorize a similar procedure under state-court procedural rules.

**deposit of title deeds.** A pledge of real property as security for a loan, by placing with the lender, as pledgee, the title-deed to the land.

**depositor, n.** One who makes a deposit. See DEPOSIT.

**depository** (di-poz-ə-tor-ee), *n.* A place where one leaves money or valuables for safekeeping <the grade school's depository for used books>. Cf. DEPOSITORY.

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

**depository institution.** **1.** An organization formed under state or federal law, authorized by law to receive deposits, and supervised and examined by a government agency for the protection of depositors. **2.** A trust company or other institution authorized by law to exercise fiduciary powers similar to those of a national bank. • The term does not include an insurance company, a Morris Plan bank, an industrial loan company, or a similar bank unless its deposits are insured by a federal agency.

**depository-transfer check.** See CHECK.

**Depository Trust Corporation.** The principal central clearing agency for securities transactions on the public markets. — Abbr. DTC.

**deposit premium.** The initial premium paid by an insured pending the final premium adjustment.

**deposit ratio.** The ratio of total deposits to total capital.

**deposit slip.** A bank's acknowledgment of an amount received on a certain date by a depositor.

**depositum** (di-poz-i-təm). See *gratuitous bailment* under BAILMENT; DEPOSIT (5).

**deposit warrant.** See WARRANT (2).

**de post disseisina** (dee pohst dis-see-zin-ə), *n.* [Law Latin "of past disseisin"] *Hist.* A writ for recovery of land by a person who had previously recovered the land from a disseisor by a *praecipe quod reddat* or on a default or reddition, but who was again disseised by the same disseisor.

**de praerogativa regis** (dee pri-rog-ə-ti-və ree-jis). See PRAEROGATIVA REGIS.

**de praesenti** (dee pri-zen-ti). [Law Latin] In the present tense; of the present.

**depraved, adj.** (Of a person or crime) corrupt; perverted; heinous.

**depraved-heart murder.** See MURDER.

**depreciable life.** See USEFUL LIFE.

**depreciation** (di-pree-shee-ay-shən), *n.* A decline in an asset's value because of use, wear, or obsolescence. — **depreciate, vb.** — **depreciable, adj.** Cf. APPRECIATION; AMORTIZATION (2).

**accumulated depreciation.** The total depreciation currently recorded on an asset. ● On the balance sheet, an asset's total cost less accumulated depreciation reflects the asset's book value. — Also termed *accrued depreciation*.

**annual depreciation.** The annual loss to property due to regular wear and tear.

**functional depreciation.** Depreciation that results from the replacement of equipment that is not yet worn out, but that is obsolete in light of a new invention or improved machinery allowing more efficient and satisfactory production.

**depreciation method.** A set formula used in estimating an asset's use, wear, or obsolescence over the asset's useful life. ● This method is useful in calculating the allowable annual tax deduction for depreciation. See USEFUL LIFE.

**accelerated depreciation method.** A depreciation method that yields larger deductions in the earlier years of an asset's life and smaller deductions in the later years.

**annuity depreciation method.** A depreciation method that allows for a return of imputed interest on the undepreciated balance of an asset's value. ● The imputed interest is subtracted from the current depreciation amount before it is credited to the accumulated depreciation accounts.

**declining-balance depreciation method.** A method of computing the annual depreciation allowance by multiplying the asset's undepreciated cost each year by a uniform rate that may not exceed double the straight-line rate or 150 percent.

**double-declining depreciation method.** A depreciation method that spreads over time the initial cost of a capital asset by deducting in each period twice the percentage recognized by the straight-line method and applying that double percentage to the undepreciated balance existing at the start of each period.

**replacement-cost depreciation method.** A depreciation method that fixes an asset's value by the price of its substitute.

**sinking-fund depreciation method.** A depreciation method that accounts for the time value of money by setting up a depreciation-reserve account that earns interest, resulting in a gradual yearly increase in the depreciation deduction.

**straight-line depreciation method.** A depreciation method that writes off the cost or other basis of the asset by deducting the expected salvage value from the initial cost of the capital asset, and dividing the difference by the asset's estimated useful life.

**sum-of-the-years'-digits depreciation method.** A method of calculating the annual depreciation allowance by multiplying the depreciable cost basis (cost minus salvage value) by a constantly decreasing fraction, which is represented by the remaining years of useful life at the beginning of each year divided by the total number of years of useful life at the time of acquisition. — Sometimes shortened to *SYD method*.

**unit depreciation method.** A depreciation method — directly related to the productivity

of the asset — that divides the asset's value by the estimated total number of units to be produced, and then multiplies the unit cost by the number of units sold during the year, representing the depreciation expense for the year.

**units-of-output depreciation method.** A method by which the cost of a depreciable asset, minus salvage value, is allocated to the accounting periods benefited based on output (as miles, hours, number of times used, and the like).

**depreciation reserve.** An account, esp. of a public utility, built up to offset the depreciation of property because of time and use, so that at the end of the property's service, there is enough money to replace the property.

**depredation.** The act of plundering; pillaging.

**depression.** A period of economic stress that persists over an extended period, accompanied by poor business conditions and high unemployment. Cf. RECESSION.

**deprivation.** 1. An act of taking away <deprivation of property>. 2. A withholding of something <deprivation of food>. 3. The state of being without something; wanting <deprivation from lack of food>. 4. A removal or degradation from office <deprivation of the bishop>.

**Deprizio doctrine.** *Bankruptcy.* The rule that a debtor's payment to an outside creditor more than 90 days before a bankruptcy filing is voidable as a preferential transfer if it benefits an inside creditor. *Levit v. Ingersoll Rand Fin. Corp.* (In re V.N. *Deprizio Constr. Co.*), 874 F.2d 1186 (7th Cir. 1989).

**de procedendo ad iudicium** (dee proh-sə-dē-doh ad joo-dish-ee-əm), *n.* [Law Latin "for proceeding in an assise"] *Hist.* A chancery writ ordering a lower court to proceed to judgment in a case that had been wrongfully stayed. • If the lower-court justices refused, they could be punished for contempt.

**de proprietate probanda** (dee prə-pri-ə-tay-tee prə-ban-də), *n.* [Law Latin "for proving property"] *Hist.* A writ ordering a sheriff to investigate the ownership of distrained goods claimed by a defendant in a replevin action.

"If therefore the distreiner claims any such property, the party replevying must sue out a writ *de proprietate probanda*, in which the sheriff is to try, by an inquest, in whom the property previous to the distress subsisted. And if it be found to be in the distreiner, the sheriff can

proceed no farther; but must return the claim of property to the court of king's bench or common pleas, to be there farther prosecuted, if thought advisable, and there finally determined." 3 William Blackstone, *Commentaries on the Laws of England* 148 (1768).

**deputy, n.** A person appointed or delegated to act as a substitute for another, esp. for an official. — **deputize, depute, vb.**

**general deputy.** 1. A deputy appointed to act in another officer's place and execute all ordinary functions of the office. 2. See *deputy sheriff* under SHERIFF.

**special deputy.** A deputy specially appointed to serve a particular purpose, such as keeping the peace during a riot.

**deputy sheriff.** See SHERIFF.

**de quarantina habenda** (dee kwahr-ən-ti-nə hə-ben-də), *n.* [Law Latin "of return of quarantine"] *Hist.* A writ ordering a sheriff to give a widow possession of part of her husband's estate, after she had been wrongfully ejected but before dower is assigned. See QUARANTINE.

**de quo** (dee kwoh). [Latin] Of which. • These were formal words used in a writ of entry, as in a writ of entry "in the quo" or "in the *quibus*." — Also termed *de quibus*.

**de raptu virginum** (dee rap-t[y]oo vər-jə-nəm), *n.* [Latin "of the ravishment of virgins"] *Hist.* A writ for taking an appeal in a rape case.

**de rationabilibus divisis** (dee rash-ən-ə-bil-i-bəs di-vi-sis), *n.* [Law Latin "of the fixing of reasonable boundaries"] *Hist.* A writ to settle the boundaries between property owners of different towns when one owner claimed a trespass by the other.

**de rationabili parte bonorum** (dee rash-[ee]-ə-nay-bə-li pahr-tee bə-nor-əm), *n.* [Law Latin "of reasonable share of goods"] *Hist.* A writ allowing the wife and children of a dead man to recover a reasonable share of his goods from his executors after his debts were paid. • This writ was usu. founded on custom rather than the general law.

**de recordo et processu mittendis** (dee ri-kor-doh et proh-ses-[y]oo mi-ten-dis), *n.* [Law Latin "of the sending of the record and process of a cause to a superior court"] A type of writ of error.

**de recto** (dee **rek**-toh), *n.* [Law Latin] A writ of right to recover both the seisin and the property. — Also termed *breve de recto*. See WRIT OF RIGHT.

**de recto de advocacione** (dee **rek**-toh dee ad-və-kay-shee-oh-nee), *n.* [Law Latin “of the right of advowson”] *Hist.* A writ restoring a person’s right to present a clerk to a benefice when that right had been interfered with. • It was abolished by St. 3 & 4 Will. 4, ch. 27.

**de recto de rationabili parte** (dee **rek**-toh dee rash-[ee]-ə-nay-bə-li pahr-tee), *n.* [Law Latin “of right of reasonable part”] *Hist.* A writ allowing one coparcener or blood relative owning land in fee simple to obtain a rightful share from the other. • It was abolished by St. 3 & 4 Will. 4, ch. 27.

**de recto patens** (dee **rek**-toh pay-tenz), *n.* [Law Latin “of right patent”] *Hist.* The highest writ of right under the law given to an owner in fee simple to recover the possession and use of land from the freehold tenant. — Also termed *breve magnum de recto*.

**de redisseisina** (dee ree-dis-see-zin-ə), *n.* [Law Latin “of redisseisin”] *Hist.* A writ for recovery of land or rent by a person who had previously recovered the land or rent by an assize of novel disseisin, but who was again disseised by the same disseisor. • This writ is similar to *de post disseisina*. See *DE POST DISSEISINA*; *DISSEISIN*.

**deregistration**, *n.* The point at which an issuer’s registration under section 12 of the Securities Exchange Act of 1934 is no longer required because of a decline in the number of holders of the issuer’s securities. 15 USCA § 78l. — **deregister**, *vb.* Cf. *DELISTING*.

**deregulation**, *n.* The reduction or elimination of governmental control of business, esp. to permit free markets and competition. — **deregulate**, *vb.*

**derelict** (der-ə-likht), *adj.* 1. Forsaken; abandoned; cast away <derelict property>.

**quasi-derelict.** (Of a ship or similar vessel) temporarily or involuntarily deserted or abandoned, as when the crew is dead or otherwise incapable of navigating the ship.

2. Lacking a sense of duty; in breach of a legal or moral obligation <the managers were unquestionably derelict in their duties>.

**derelict**, *n.* 1. Personal property abandoned or thrown away by the owner with an intent to no longer claim it, such as a boat deserted or abandoned at sea by a master or crew.

**quasi-derelict.** A ship that has been abandoned temporarily or involuntarily.

2. Land uncovered by receding water from its former bed. 3. A street person or vagrant; a hobo.

**dereliction** (der-ə-lik-shən), *n.* 1. Abandonment, esp. through neglect or moral wrong.

**dereliction in the performance of duties.** *Military law.* Willful or negligent failure to perform assigned duties; culpable inefficiency in performing assigned duties.

2. An increase of land caused by the receding of a sea, river, or stream from its usual water-mark. See *RELICTION*.

**de replegiore de averiis.** See *DE AVERIIS REPLEGIANDIS*.

**de rescussu** (dee ri-skəs-[y]oo), *n.* [Law Latin “of rescue”] *Hist.* A writ available when cattle were distrained or persons were arrested, and then rescued.

**de retorno habendo** (dee ri-tor-noh hə-ben-doh). [Law Latin] For having a return. • This term applied to (1) a judgment for a defendant in a replevin action, (2) a writ of execution for a defendant awarded judgment in a replevin action, and (3) a surety provided by a plaintiff at the beginning of a replevin action.

**d.e.r.i.c. abbr.** *DE EA RE ITA CENSUERE*.

**de rien culpable** (də reen kəl-pə-bəl). [Law French] Guilty of nothing; not guilty.

**derivative**, *n.* A volatile financial instrument whose value depends on or is derived from the performance of a secondary source such as an underlying bond, currency, or commodity. — Also termed *derivative instrument*.

“Derivatives transactions may be based on the value of foreign currency, U.S. Treasury bonds, stock indexes, or interest rates. The values of these underlying financial instruments are determined by market forces, such as movements in interest rates. Within the broad panoply of derivatives transactions are numerous innovative financial instruments whose objectives may include a hedge against market risks, management of assets and liabilities, or lowering of funding costs; derivatives may also be used as speculation for profit.” *Procter & Gamble Co. v. Bankers Trust Co.*, [1996–1997 Transfer Binder]

Fed. Sec. L. Rep. (CCH) ¶99,229, at 95,238 (S.D. Ohio 1996).

**derivative acquisition.** See ACQUISITION.

**derivative action. 1.** A suit by a beneficiary of a fiduciary to enforce a right belonging to the fiduciary; esp., a suit asserted by a shareholder on the corporation's behalf against a third party (usu. a corporate officer) because of the corporation's failure to take some action against the third party. — Also termed *derivative suit*; *shareholder derivative suit*; *stockholder derivative suit*; *representative action*. Cf. DIRECT ACTION (3). **2.** A lawsuit arising from an injury to another person, such as a husband's action for loss of consortium arising from an injury to his wife caused by a third person.

**derivative contraband.** See CONTRABAND.

**derivative conveyance.** See *secondary conveyance* under CONVEYANCE.

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

**derivative estate.** See ESTATE.

**derivative evidence.** See EVIDENCE.

**derivative instrument.** See DERIVATIVE.

**derivative-jurisdiction doctrine.** The principle that a case is not properly removable unless it is within the subject-matter jurisdiction of the state court from which it is removed.

**derivative liability.** See LIABILITY.

**derivative possession.** See POSSESSION.

**derivative suit.** See DERIVATIVE ACTION (1).

**derivative title.** See TITLE (2).

**derivative-use immunity.** See *use immunity* under IMMUNITY (3).

**derivative work.** *Copyright.* A copyrightable creation that is based on a preexisting product, such as a translation, musical arrangement, fictionalization, motion-picture version, abridgment, or any other recast or adapted form, and that only the holder of the copyright on the original form can produce or give permission to another to produce. Cf. COMPILATION (1).

## descendibility of future interests

"[W]hile a compilation consists merely of the selection and arrangement of pre-existing material without any internal changes in such material, a derivative work involves recasting or transformation, i.e., changes in the pre-existing material, whether or not it is juxtaposed in an arrangement with other pre-existing materials. A catalog constitutes a compilation, and a translation of a pre-existing work constitutes a derivative work." 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 3.02, at 3-5 (Supp. 1997).

**derived demand.** See DEMAND (3).

**derogation** (der-ə-gay-shən), *n.* **1.** The partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force <statutes in derogation of the common law>. **2.** Disparagement; depreciation in value or estimation <some argue that the derogation of family values has caused an increase in crime>. **3.** Detraction, prejudice, or destruction (of a grant or right) <an attorney may be punished for derogation from professional integrity>. — **derogate** (der-ə-gayt), *vb.*

**derogation from grant.** A provision in an instrument of transfer (such as a deed) that diminishes, avoids, or otherwise operates against the grant itself.

**derogatory clause.** *Wills & estates.* A clause that a testator inserts secretly in a will, containing a provision that any later will not having that precise clause is invalid. • A derogatory clause seeks to protect against a later will extorted by undue influence, duress, or violence.

**de salva gardia** (dee sal-və gahr-dee-ə), *n.* [Law Latin "of safeguard"] A writ issued to protect strangers from harm while pursuing their legal rights in England.

**de salvo conductu** (dee sal-voh kən-dək-t[y]oo). [Law Latin "of safe conduct"] A writ of safe conduct.

**de sa vie** (də sa vee). [Law French] Of one's own life, as distinguished from *pur autre vie* ("for another's life").

**descendant** (di-sen-dənt), *n.* One who follows in lineage, such as a child or grandchild — but not a collateral relative. Cf. ASCENDANT.

**descendibility of future interests.** The legal possibility that a future interest (such as a remainder or an executory interest) can legally pass by inheritance.

**descendible**, *adj.* (Of property) capable of passing by descent or being inherited.

**descent**, *n.* **1.** The acquisition of real property by law, as by inheritance; the passing of intestate real property to heirs. See SUCCESSION (2). Cf. DISTRIBUTION (1); PURCHASE (2). **2.** The fact or process of originating from a common ancestor. — **descend**, *vb.*

**collateral descent.** Descent in a collateral or oblique line, from brother to brother or cousin to cousin. • With collateral descent, the donor and donee are related through a common ancestor.

**direct-line descent.** See *lineal descent*.

**immediate descent.** **1.** A descent directly to an heir, as from a grandmother to granddaughter, brought about by the earlier death of the mother. **2.** A direct descent without an intervening link in consanguinity, as from mother to daughter.

**lineal descent.** Descent in a direct or straight line, as from father or grandfather to son or grandson. — Also termed *direct-line descent*.

**maternal-line descent.** Descent between two persons, traced through the mother of the younger.

**mediate descent.** **1.** A descent not occurring immediately, as when a granddaughter receives land from her grandmother, which first passed to the mother. **2.** A direct descent occurring through a link in consanguinity, as when a granddaughter receives land from her grandfather directly.

“The law categorizes descents as either lineal or collateral, and as mediate or immediate. The term mediate or immediate descent may denote either the passing of the estate, or the relationship between the intestate and the heir. The classification of descents as mediate or immediate describes the proximity of the descent, while the characterization as lineal or collateral refers to the direction of the descent.” 23 Am. Jur. 2d, *Descent and Distribution* § 49, at 787–88 (1983).

**paternal-line descent.** Descent between two persons, traced through the father of the younger.

**descent cast.** *Hist.* The devolution of realty that has been acquired by disseisin, abatement, or intrusion, upon an heir whose ancestor died intestate. • This tolled the real owner’s right of entry until the owner brought a legal action. — Also termed *descent which tolls entry*.

**descriptio personae** (di-skrip-shee-oh pər-soh-nee). [Law Latin] Description of the person. • This phrase, typically used to identify or de-

scribe a person in a contract or deed, is not essential to a document’s validity. Cf. *designatio personae*.

**description.** **1.** A delineation or explanation of something by an account setting forth the subject’s characteristics or qualities <description of a patentable process>. **2.** A representation by words or drawing of something seen or heard or otherwise experienced <description of the criminal> <description of the accident>. **3.** An enumeration or specific identification of something <description of items in the estate>. **4.** LEGAL DESCRIPTION.

**descriptive mark.** A trademark merely describing the goods to which it is affixed. • The trademark will be protected only if the user can demonstrate secondary meaning. — Also termed *descriptive trademark*. See SECONDARY MEANING.

“The bar against descriptive marks simply reflects the requirement of distinctiveness. 15 U.S.C.A. § 1052(e)(1). It often is said that a mark should not be analyzed in a piecemeal fashion. Instead, the mark as a whole must be tested for descriptiveness or secondary meaning. A mark that merely describes a product cannot possibly distinguish one producer from another. As an obvious example, ‘apple’ would be a descriptive name for that fruit, and, as a mark, would serve only to confuse the consumer, for it would tell nothing about the different origins of a selection of apples produced by different producers. Moreover, to allow an owner to pre-empt the term ‘apple’ would afford the owner a monopoly of something that is necessary to describe the goods for sale.” Arthur Miller & Michael Davis, *Intellectual Property: Patents, Trademarks, and Copyright in a Nutshell* 163 (2d ed. 1990).

**de scutagio habendo** (dee skyoo-tay-jee-oh hə-ben-doh), *n.* [Law Latin “for having scutage”] *Hist.* **1.** A writ ordering a tenant-in-chief by knight’s service to serve in a war, send a substitute, or pay a sum of money. **2.** A writ authorizing a lord who had served in the war or paid the required fine, to recover the scutage from his knights’ fees. See SCUTAGE.

“Such a baron, having proved that he fulfilled his contract or paid his fine, will have a royal writ *de scutagio habendo*, whereby the sheriff will be ordered to cause him to have the scutage due from his tenants. Still, before he can get his scutage, he has to obtain something that the king is apt to treat as a favour.” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 270 (2d ed. 1898).

**desecrate**, *vb.* To divest (a thing) of its sacred character; to defile or profane (a sacred thing).

**de secta ad molendinum** (dee sek-tə ad mə-len-di-nəm), *n.* [Law Latin “of suit at mill”]



*Hist.* A writ forcing a person to continue grinding corn at a particular mill, as was customary, or to give a good reason why the custom should not be continued.

"There are also other services, due by ancient *custom* and *prescription* only. Such is that of doing suit to another's mill: where the persons, resident in a particular place, by usage time out of mind have been accustomed to grind their corn at a certain mill; and afterwards any of them go to another mill, and withdraw their suit . . . from the ancient mill. This is not only a damage, but an injury, to the owner . . . And for this injury the owner shall have a writ *de secta ad molendum* commanding the defendant to do his suit at that mill . . . or show good cause to the contrary: in which action the validity of the prescription may be tried, and if it be found for the owner, he shall recover damages against the defendant." 3 William Blackstone, *Commentaries on the Laws of England* 234-35 (1768).

**de sectis non faciendis** (dee sek-tis non fay-shee-en-dis), *n.* [Law Latin "of not doing services"] *Hist.* A writ exempting a ward or dower from performing certain services.

**desegregation, n.** 1. The abrogation of policies that separate people of different races into different institutions and facilities (such as public schools). 2. The state of having had such policies abrogated. — **desegregate, vb.** Cf. INTEGRATION (3).

**de seisin habenda** (dee see-zin-ə hæ-ben-də), *n.* [Law Latin "of holding seisin"] *Hist.* A writ ordering the sovereign to deliver seisin of lands and tenements to a lord, after holding them for the allowed year and a day because the lord's tenant committed a felony.

**deserter. Int'l law.** A soldier who unilaterally leaves national military service with the intention of reneging on military obligations either permanently or for the duration of a military operation; a person who illegally abandons a military force, often by seeking refuge in a foreign territory or by joining enemy forces.

**desertion, n.** The willful and unjustified abandonment of a person's duties or obligations, esp. to military service or to a spouse or family. • In family law, the five elements of spousal desertion are (1) a cessation of cohabitation, (2) the lapse of a statutory period, (3) an intention to abandon, (4) a lack of consent from the abandoned spouse, and (5) a lack of spousal misconduct that might justify the abandonment. — Also termed *gross neglect of duty*. — **desert, vb.**

**constructive desertion.** One spouse's misconduct that forces the other spouse to leave the marital abode.

**criminal desertion.** One spouse's willful failure without just cause to provide for the care, protection, or support of the other spouse who is in ill health or needy circumstances.

**obstinate desertion.** Desertion by a spouse who persistently refuses to return to the marital home, so that the other spouse has grounds for divorce. • Before the advent of no-fault divorce, this term was commonly used in divorce statutes. The term was often part of the longer phrase *willful, continued, and obstinate desertion*.

**deserts.** See JUST DESERTS.

**design, n.** 1. A plan or scheme. 2. Purpose or intention combined with a plan.

**formed design. Criminal law.** The deliberate and fixed intention to kill, though not necessarily a particular person. See PREMEDITATION.

3. The pattern or configuration of elements in something, such as a work of art. 4. *Patents.* The drawing or the depiction of an original plan for a novel pattern, model, shape, or configuration that is chiefly decorative or ornamental. — **design, vb.**

**designate, n.** See DESIGNEE.

**designated public forum.** See PUBLIC FORUM.

**designating petition.** A document used to designate a candidate for a party nomination at a primary election or for election to a party position.

**designatio personae** (dez-æg-nay-shee-oh pər-sōh-nee). [Law Latin] Designation of the person. • This phrase was used to specifically identify a person in a contract or deed, often as a word of limitation (e.g., "to my eldest son"). Cf. DESCRIPTIO PERSONAE.

**design defect.** See DEFECT.

**design-defect exclusion.** See EXCLUSION (3).

**designedly, adv.** Willfully; intentionally.

**designee.** A person who has been designated to perform some duty or carry out some specific role. — Also termed *designate* (dez-ig-nət), *n.*

**designer drug.** See DRUG.

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

**design review.** A process by which a building permit is not issued until the proposed building meets the architectural standards established by land-use regulations. — Also termed *architectural review*.

**desist.** To stop or leave off. See CEASE-AND-DE-SIST ORDER.

**desk audit.** See AUDIT.

**de son tort** (də sawn [or son] tor[t]). [Law French “by his own wrongdoing”] Wrongful.

*executor de son tort.* See EXECUTOR.

*trustee de son tort.* See TRUSTEE.

**de son tort demesne** (də sawn tor[t] di-mayn). [Law French] Of a person’s own wrong. • This is the law French equivalent of the Latin phrase *de injuria*. See DE INJURIA.

**despitus** (di-spi-tas or des-pi-tas). [Law Latin] 1. Contempt. 2. A contemptible person.

**despoil** (di-spoil), *vb.* To deprive (a person) of possessions illegally by violence or by clandestine means; to rob. — **despoliation** (di-spo-lee-ay-shən), *n.* — **despoilment**, *n.*

**desponsation** (dee-spon-say-shən). *Archaic.* The act of betrothal; the act of contracting for marriage.

**despot** (des-pət), *n.* 1. A ruler with absolute power and authority. 2. A tyrant. — **despotic** (di-spot-ik), *adj.*

**despotism** (des-pə-tiz-əm). 1. A government by a ruler with absolute, unchecked power. 2. Total power or controlling influence.

**de statuto mercatorio** (dee stə-tyoo-toh mər-kə-tor-ee-oh), *n.* [Law Latin “of statute merchant”] *Hist.* A writ ordering the imprisonment of someone who forfeits a statute-merchant bond until the debt has been paid. See STATUTE MERCHANT.

**de statuto stapulae** (dee stə-tyoo-toh stay-pyə-lee), *n.* [Law Latin “of statute staple”] *Hist.* A writ to seize the property of and imprison a person who forfeits a staple-statute bond. See STATUTE STAPLE.

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

**destination contract.** See CONTRACT.

**destination du père de famille** (des-tee-nah-syawn doo pair də fa-mee). [French “destination of the father of the family”] *Hist.* A property use that the owner has intentionally established on one part of the property in favor of another part.

**destitute** (des-ti-t[y]oot), *adj.* Not possessing the necessities of life; lacking possessions and resources; indigent.

**destitutive fact.** See *divestitive fact* under FACT.

**destructibility**, *n.* The capability of being destroyed by some action, turn of events, or operation of law. — **destructible**, *adj.*

**destructibility of contingent remainders.** *Property.* The common-law doctrine requiring a future interest to vest by the time it is to become possessory or else suffer total destruction (the interest then reverting to the grantor). • This doctrine has been abolished in all but a few American jurisdictions; the abolishing statutes are commonly termed *anti-destructibility statutes*. — Also termed *destructibility rule*.

“The destructibility rule still exists in its old common-law form in Florida. Various authors have suggested that it also exists unchanged in Arkansas, North Carolina, Oregon, Pennsylvania, South Carolina, and Tennessee; but there are no statutes or recent decisions to clarify the rule’s status in these states.” Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 79 n.46 (2d ed. 1984).

**destructible trust.** See TRUST.

**desuetude** (des-wə-t[y]ood). 1. Lack of use; obsolescence through disuse. 2. The doctrine holding that if a statute or treaty is left unenforced long enough, the courts will no longer regard it as having any legal effect even though it has not been repealed.

“[T]he doctrine of desuetude has had in all legal systems a very limited and cautious application. For the anachronistic statute a better remedy may be found through reinterpretation in the light of new conditions; as Gray remarks with some irony. ‘It is not as speedy or as simple a process to interpret a statute out of existence as to repeal it, but with time and patient skill it can often be done.’” Lon L. Fuller, *Anatomy of the Law* 38 (1968) (quoting John Chipman Gray, *The Nature and Sources of Law* 192 (1921)).

“There is no doctrine of desuetude in English law, so a statute never ceases to be in force merely because it is

obsolete. Normally there must be an express repeal, but the whole or part of an enactment may be impliedly repealed by a later statute." Rupert Cross, *Statutory Interpretation* 3 (1976).

**de superoneratione pasturae** (dee soo-pə-roh-nə-ray-shee-oh-nee pas-tyə-ree), *n.* [Law Latin "of surcharge of pasture"] *Hist.* A judicial writ against a person who was initially brought into county court for putting too many cattle on pasture, and later was impleaded in the same court on the same charge, and the cause was removed to the superior court at Westminster.

**de tabulis exhibendis** (dee tab-yə-lis ek-si-ben-dis), *n.* [Latin] *Roman law.* Of producing the tablets of a will. • This was a subject covered under Roman exhibitory interdicts governing the production of documents. A will of a deceased person had to be produced and opened to determine whether the applicant had rights under it.

**detachiare** (di-tak-ee-air-ee or di-tash-ee-air-ee), *vb.* [Law Latin] *Hist.* To seize a person or property by a writ of attachment or other legal remedy.

**detainer.** 1. The action of detaining, withholding, or keeping something in one's custody.

**forcible detainer.** See FORCIBLE DETAINER.

**unlawful detainer.** The unjustifiable retention of the possession of real property by one whose original entry was lawful, as when a tenant holds over after lease termination despite the landlord's demand for possession.

2. The confinement of a person in custody. 3. A writ authorizing a prison official to continue holding a prisoner in custody.

**de tallagio non concedendo** (dee tə-lay-jee-oh non kon-sə-den-doh), *n.* [Law Latin "of not granting tallage"] *Hist.* The title of a statute declaring that no taxes will be imposed by the king or his heirs without the consent of the archbishops, bishops, earls, barons, knights, and other freemen of the realm. • The statute has been used to support the constitutional doctrine disallowing taxation except by Parliament. 34 Edw. 1 st. 4.

**detection.** The act of discovering or revealing something that was hidden, esp. to solve a crime.

"There is a clear distinction between inducing a person to do an unlawful act and setting a trap to catch him in the execution of a criminal plan of his own conception. There is also a distinction between the terms 'detection'

and 'entrapment,' as applied to the activities of law enforcement officers. Legitimate detection of crime occurs when officers test a suspected person by offering him an opportunity to transgress the law in such manner as is usual in the activity alleged to be unlawful. On the other hand, entrapment occurs when officers induce a person to violate the law when he would not otherwise do so." 21 Am. Jur. 2d *Criminal Law* § 202 (1981).

**de tempore cujus contrarium memoria hominum non existit** (dee tem-pə-ree k[y]oo-jəs kən-trair-ee-əm mə-mor-ee-ə hom-ə-nəm non eg-zis-tit). [Latin] From time whereof the memory of man does not exist to the contrary. See LEGAL MEMORY.

**de tempore in tempus et ad omnia tempora** (dee tem-pə-ree in tem-pəs et ad om-nee-ə tem-pə-rə). [Latin] From time to time, and at all times.

**de temps dont memorie ne court** (də tahñ dawn mem-ə-ree nə koor). [Law French] From time whereof memory does not run; time out of human memory. See LEGAL MEMORY.

**détente** (day-tahnt). [French] 1. The relaxation of tensions between two or more parties, esp. nations. 2. A policy promoting such a relaxation of tensions. 3. A period during which such tensions are relaxed. Cf. ENTENTE; ALLIANCE.

**detentio** (di-ten-shee-oh), *n.* [Latin] 1. *Roman law.* NATURALIS POSSESSIO. 2. *Hist.* Detention; detainment, as opposed to *captio* ("taking").

**detention, n.** 1. The act or fact of holding a person in custody; confinement or compulsory delay. — **detain, vb.**

**investigative detention.** The holding of a suspect without formal arrest during the investigation of the suspect's participation in a crime. • Detention of this kind is constitutional only if probable cause exists.

**pretrial detention.** The holding of a defendant before trial on criminal charges either because the established bail could not be posted or because release was denied. — Also termed *temporary detention*.

**preventive detention.** Confinement imposed usu. on a criminal defendant who has threatened to escape or has otherwise violated the law while awaiting trial, or on a mentally ill person who may cause harm.

2. An employee's custody of the employer's property without being considered as having legal possession of it.

**detention hearing.** See HEARING.

**detention in a reformatory.** A juvenile offender's sentence of being sent to a reformatory school for some period.

**determinable, *adj.*** 1. Liable to end upon the happening of a contingency; terminable <fee simple determinable>. 2. Able to be determined or ascertained <the delivery date is determinable because she kept the written invoice>.

**determinable easement.** See EASEMENT.

**determinable estate.** See ESTATE.

**determinable fee.** 1. See *fee simple determinable* under FEE SIMPLE. 2. See *base fee* under FEE (2).

**determinate hospitalization.** A fixed period of hospitalization, usu. by civil commitment.

**determinate obligation.** See OBLIGATION.

**determinate sentence.** See SENTENCE.

**determination, *n.*** 1. A final decision by a court or administrative agency <the court's determination of the issue>.

***initial determination.*** The first determination made by the Social Security Administration of a person's eligibility for benefits.

2. The ending or expiration of an estate or interest in property, or of a right, power, or authority <the easement's determination after four years>. — **determine, *vb.***

**determination letter.** A letter issued by the Internal Revenue Service in response to a taxpayer's request, giving an opinion about the tax significance of a transaction, such as whether a nonprofit corporation is entitled to tax-exempt status. — Also termed *ruling letter*.

**determinative judgment.** See *final judgment* under JUDGMENT.

**determinism.** (*sometimes cap.*) A philosophy that human behavior is governed primarily by preexisting conditions, such as family or environmental factors, and is not influenced by will. — **deterministic, *adj.***

**deterrence, *n.*** The act or process of discouraging certain behavior, particularly by fear; esp.,

as a goal of criminal law, the prevention of criminal behavior by fear of punishment. — **deter, *vb.*** — **deterrent, *adj.*** Cf. REHABILITATION (1); RETRIBUTION (1).

***general deterrence.*** A goal of criminal law generally, or of a specific conviction and sentence, to discourage people from committing crimes.

***special deterrence.*** A goal of a specific conviction and sentence to dissuade the offender from committing crimes in the future.

**deterrent, *n.*** Something that impedes; something that prevents <a deterrent to crime>.

**deterrent danger.** See DANGER.

**deterrent punishment.** See PUNISHMENT.

***de theolonio*** (dee thee-ə-loh-nee-oh), *n.* [Law Latin "of toll"] *Hist.* A writ of trespass available to a person prevented from taking toll. See TOLL.

**detinet (det-i-net).** [Latin] He detains. • An action in debt may be in detinet when the plaintiff alleges that the defendant wrongfully kept goods, as distinguished from wrongfully taking them. An action in debt may also be in *detinet* when it is brought by or against someone other than an original party to the debt, such as an executor. An action of replevin is in *detinet* when the defendant retains possession of the property until after the judgment. Cf. DEBET ET DETINET.

**detinue (det-i-nyoo or -noo).** A common-law action to recover personal property wrongfully taken by another. Cf. REPLEVIN; TROVER.

"A claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in actual possession of them, and who, upon proper demand, fails or refuses to deliver them up without lawful excuse. Detinue at the present day has two main uses. In the first place, the plaintiff may desire the specific restitution of his chattels and not damages for their conversion. He will then sue in detinue, not in trover. In the second place, the plaintiff will have to sue in detinue if the defendant sets up no claim of ownership and has not been guilty of trespass; for the original acquisition in *detinue sur bailment* was lawful." R.F.V. Heuston, *Salmond on the Law of Torts* 111 (17th ed. 1977).

***detinue of goods in frankmarriage.*** *Hist.* A writ allowing a divorced wife to obtain the goods given to her during the marriage.

***detinue sur bailment*** (det-i-nyoo sər bayl-mənt) [Law French] *Hist.* An action to recov-

er property that the defendant acquired by bailment but refuses to return.

**detinuit** (di-tin-yoo-it). [Latin] He has detained.

• An action is said to be *in the detinuit* when the plaintiff finally recovers possession of the property claimed under a writ of replevin.

**detour**, *n.* *Torts.* An employee's minor deviation from the employer's business for personal reasons. • Because a detour falls within the scope of employment, the employer is still vicariously liable for the employee's actions. Cf. FROLIC.

**detournement** (di-tuurn-mənt), *n.* An employee's misappropriation of the employer's funds.

**detractio**, *n.* The removal of property from one state to another after transfer of title by a will or inheritance.

**de transgressione** (dee trans-gresh-ee-oh-nee), *n.* [Law Latin "of trespass"] The general name of various writs of trespass. See TRESPASS.

**de transgressione, ad audiendum et terminandum** (dee trans-gresh-ee-oh-nee, ad aw-dee-en-dəm et tər-mi-nan-dəm), *n.* [Law Latin "of determining and hearing a misdemeanor"] *Hist.* A commission for hearing and determining an outrage or misdemeanor.

**detriment**. 1. Any loss or harm suffered by a person or property. 2. *Contracts.* The relinquishment of some legal right that a promisee would have otherwise been entitled to exercise.

"A promise or an act may be a detriment although on balance the promisor is making a good bargain. Thus a promise to pay £10,000 for a Rolls Royce worth £12,000, is none the less a detriment, and a good consideration for a promise to deliver the car." P.S. Atiyah, *An Introduction to the Law of Contract* 101 (3d ed. 1981).

**detriment to a promisee.** *Contracts.* Consideration offered by a promisee to a promisor, esp. in a unilateral contract requiring an act from the promisee though the promisor has the power to revoke the promise.

**detrimental reliance.** See RELIANCE.

**detunicari** (di-tyoo-ni-kair-i), *vb.* [Latin "to be revealed"] To discover; to lay open.

**de una parte** (dee yoo-nə pahr-tee), *n.* [Latin] Of one party. • A deed is *de una parte* when only one party grants something to another, as distinguished from a deed *inter partes*. See INTER PARTES.

**deuterogamy** (d[y]oo-tər-og-ə-mee). [fr. Greek *deuterogamia* "second marriage"] A second marriage after the death of, or annulment or divorce from, the first spouse. — Also termed *digama*; *digamy*.

**de uxore rapta et abducta** (dee ək-sor-ee rap-tə et ab-dək-tə), *n.* [Law Latin "of seizing and carrying away a man's wife"] *Hist.* A writ of trespass for a man whose wife had been raped and carried away.

**devadiatus** (di-vad-ee-ay-təs), *n.* [Law Latin] *Hist.* A defendant without a surety. — Also termed *divadiatus*.

**devaluation**, *n.* The reduction in the value of one currency in relation to another currency. — **devalue**, *vb.* Cf. REVALUATION.

**devastation**. 1. An executor's squandering or mismanagement of the deceased's estate. 2. An act of destruction.

**devastaverunt** (di-vas-tə-veer-ənt). [Latin pl. of *devastavit* "he (or she) has wasted"] They have wasted. • This word usu. referred to both an executor's waste of a decedent's property and the action against the executor for that waste.

**devastavit** (dev-ə-stay-vit). [Latin "he (or she) has wasted"] A personal representative's failure to administer a decedent's estate promptly and properly, esp. by spending extravagantly or misapplying assets. • A personal representative who commits waste in this way becomes personally liable to those having claims on the assets, such as creditors and beneficiaries.

**de vasto** (dee vas-toh), *n.* [Law Latin "of waste"] A writ allowing a reversioner or remainderman to compel a tenant for life or for years to appear and answer for the waste and resulting damage to the plaintiff's inheritance.

**developed water.** See WATER.

**developing country.** *Int'l law.* A country that is not as economically or politically advanced as the main industrial powers. • They are located mostly in Africa, Asia, Eastern Europe, the Middle East, and South America. — Also termed *developing state*; *underdeveloped country*; *less-developed country*; *Third World country*.

"Pertinent terminology has undergone extensive changes in the past 40 years. At the very start, before the category found its way into official texts, economic and political writings referred mainly to 'poor' or 'backward'

countries. In the late 1940s, the term 'underdeveloped countries' came into common usage in economic literature and in the jargon of international organizations. It was replaced in the 1950s by the term 'less developed countries,' for which the current 'developing countries' was eventually substituted. These terms are essentially interchangeable as they refer to the same group and kind of countries. However, variations in the use of the term reflect significant changes in the perception of the central issue, namely, economic development, as well as responses to justified sensitivities on the part of the countries principally concerned." A.A. Fatouros, "Developing States," in 1 *Encyclopedia of Public International Law* 1017 (1992).

**development.** 1. A human-created change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filing, grading, paving, excavating, and drilling. 2. An activity, action, or alteration that changes undeveloped property into developed property.

**development disability.** See DISABILITY (1).

**development-stage company.** See COMPANY.

**de ventre inspiciendo** (dee ven-tree in-spish-ee-en-doh), *n.* [Law Latin "of (or for) inspecting the belly"] 1. A writ allowing a presumptive heir to summon a jury of matrons to verify the pregnancy of a widow suspected of feigning the pregnancy to produce a supposed heir. — Also termed *ad ventrem inspiciendum*. See *venire facias tot matronas* under VENIRE FACIAS.

"And this gives occasion to a proceeding at common law, where a widow is suspected to feign herself with child, in order to produce a supposititious heir to the estate: an attempt which the rigor of the Gothic constitutions esteemed equivalent to the most atrocious theft, and therefore punished with death. In this case with us the heir presumptive may have a writ *de ventre inspiciendo* to examine whether she be with child, or not . . . and, if the widow be upon due examination found not pregnant, any issue she may afterwards produce, though within nine months, will be bastard." 1 William Blackstone, *Commentaries on the Laws of England* 444 (1765).

2. A writ providing a temporary stay of execution if a jury of matrons determines that a woman scheduled for execution and claiming pregnancy is "quick with child." • The execution would be postponed until after the birth, but if the woman became pregnant a second time before execution, she had no remedy. — Sometimes shortened to *ventre inspiciendo*. — Also spelled *de ventre in spiciendo*.

**de verbo in verbum** (dee vər-boh in vər-bəm). [Law Latin] Word for word.

**devest** (di-vest), *vb.* 1. *Hist.* To deprive (a person) of possession, title, or property. 2. To take; to draw away.

**deviance**, *n.* The quality or state of departing from established norms, esp. in social customs. — **deviate** (dee-vee-ayt), *vb.* — **deviant**, *adj. & n.* — **deviate** (dee-vee-ət), *n.*

**deviation.** *Marine insurance.* 1. An unnecessary departure from the course fixed by express agreement, by maritime custom, or by the discretion of a reasonably careful and skillful navigator. 2. An unreasonable delay in pursuing this course.

**deviation doctrine.** 1. A principle allowing variation from a term of a will or trust to avoid defeating the document's purpose. 2. A principle allowing an agent's activity to vary slightly from the scope of the principal's permission. 3. The rule that an insurance policy covering a ship's voyage is canceled if the ship deviates unreasonably from its course.

**deviation-well survey.** An examination to determine whether a well is bottomed under another person's land.

**device.** 1. An invention or contrivance; any result of design. 2. A scheme to trick or deceive; a stratagem or artifice, as in the law relating to fraud.

**de vicineto** (dee vi-sin-ə-toh or -si-nə-toh). [Law Latin] From a vicinage; from a neighborhood. • This term was generally used in reference to a jury pool. See DE CORPORE COMITATUS.

**de vi laica amovenda** (dee vi lay-ə-kə ay-moh-ven-də), *n.* [Law Latin "of removing a lay force"] *Hist.* A writ allowing a parson claiming rights to a church to order a sheriff to remove a group of laymen who had gathered with another parson at the church and prevented the new parson from entering.

**deviling** (dev-ə-ling). 1. The act of a barrister handing a brief over to another to handle a case. 2. The practice of a junior barrister who drafts pleadings or other documents for a senior barrister who approves them, signs them, and is ultimately responsible for the work. — Also spelled *devilling*.

**devil on the neck.** *Hist.* A torture device made of irons that fastened to a person's neck and legs and then wrenched together to either grad-

ually or quickly break the person's back. • It was often used to coerce confessions.

**devisable**, *adj.* **1.** Capable of being bequeathed by a will. **2.** Capable of being invented. **3.** Feigned.

**devisavit vel non** (dev-ə-say-vit [or -zay-vit] vel non), *n.* [Law Latin "he (or she) devises or not"] *Hist.* An issue directed from a chancery court to a court of law to determine the validity of a will that has been contested, as by an allegation of fraud or testamentary incapacity. See VEL NON.

**devise** (di-vīz), *n.* **1.** The act of giving property (usu. real property) by will. **2.** The provision in a will containing such a gift. **3.** Property (usu. real property) disposed of in a will. **4.** A will disposing of real property. Cf. TESTAMENT (1). — **devise**, *vb.* Cf. BEQUEST; LEGACY.

**conditional devise.** A devise that depends on the occurrence of some uncertain event.

**executory devise.** An interest in land, created by will, that takes effect in the future and depends on a future contingency; a limitation, by will, of a future estate or interest in land when the limitation cannot, consistently with legal rules, take effect as a remainder. • An executory devise, which is a type of conditional limitation, differs from a remainder in three ways: (1) it needs no particular estate to support it, (2) with it a fee simple or lesser estate can be limited after a fee simple, and (3) with it a remainder can be limited in a chattel interest after a particular estate for life is created in that interest. See *conditional limitation* under LIMITATION.

**general devise.** A devise that passes the testator's lands without specifically enumerating or describing them.

**lapsed devise.** A devise that fails because the deviser outlives the named recipient.

**residuary devise.** A devise of the remainder of the testator's real property left after other specific devises are taken.

**specific devise.** A devise that passes a particular piece of property.

**devisee** (dev-ə-zee or di-vī-zee). A recipient of property (usu. real property) by will.

**first devisee.** The first devisee designated to receive an estate under a will.

**next devisee.** The devisee who receives the remainder of an estate in tail, as distinguished from the first devisee.

**residuary devisee.** The person named in a will who takes the testator's real property that remains after the other devises.

**deviser.** One who invents or contrives <the deviser of these patents>.

**devisor.** One who disposes of property (usu. real property) in a will.

**devoir** (də-vvahr or dev-wahr). *Hist.* A duty; a tax. — Also spelled *devoire*.

"Devoire is as much as to say a duty. It is used in the statute of 2 R. 2, cap. 3, where it is provided, that all the western merchants, being of the king's amity, shall pay all manner of customs and subsidies, and other *devoire* of Calais." *Termes de la Ley* 168 (1st Am. ed. 1812).

**devolution** (dev-ə-loo-shən), *n.* The act or an instance of transferring one's rights, duties, or powers to another; the passing of such rights, duties, or powers by transfer or succession <the federal government's devolution of police power to the states>. — **devolutionary**, *adj.*

**devolutive appeal.** See APPEAL.

**devolve** (di-vahlv), *vb.* **1.** To transfer (rights, duties, or powers) to another. **2.** To pass (rights, duties, or powers) by transmission or succession. See DEVOLUTION.

**devy** (də-vī), *vb.* [Law French] To die.

**de warrantia chartae** (dee wə-ran-shee-ə kahr-tee), *n.* [Law Latin "of a warranty of charter"] *Hist.* A writ allowing a tenant enfeoffed with a warranty, who was impleaded in an assize or other action in which the tenant could not call upon the warranty, to compel the feoffor to assist the tenant with a plea or defense, or else to pay damages and the value of the land, if it is recovered against the tenant.

"This we still make use of in the form of common recoveries, which are grounded on a writ of entry; a species of action that we may remember relies chiefly on the weakness of the tenant's title, who therefore vouches another person to warrant it . . . In assises indeed, where the principal question is whether the demandant or his ancestors were or were not in possession till the ouster happened, and the title of the tenant is little (if at all) discussed, there no voucher is allowed; but the tenant may bring a writ of *warrantia chartae* against the warrantor, to compel him to assist him with a good plea or defence, or else to render damages and the value of the land, if recovered against the tenant." 3 William Blackstone, *Commentaries on the Laws of England* 299 (1768).

**de warrantia diei** (dee wə-ran-shee-ə di-ee-I), *n.* [Law Latin “of warranty of day”] *Hist.* A writ ordering a judge not to default a party for nonappearance because the Crown warranted that the party was busy in its service.

**dextrarius** (dek-strair-ee-əs), *Hist.* One at the right hand of another.

**dextras dare** (dek-strəs dair-ee), *vb.* [Latin “to give right hands”] **1.** To shake hands to show friendship. **2.** To give oneself up to the power of another.

**DFA.** *abbr.* DELAYED FUNDS AVAILABILITY.

**diaconate** (di-ak-ə-nit), *n.* [Law Latin] A deacon's office.

**diaconus** (di-ak-ə-nəs), *n.* [Law Latin] A deacon. See DEACON.

**diagnosis** (di-əg-noh-sis). **1.** The determination of a medical condition (such as a disease) by physical examination or by study of its symptoms. **2.** The result of such an examination or study. Cf. PROGNOSIS.

**clinical diagnosis.** A diagnosis from a study of symptoms only.

**physical diagnosis.** A diagnosis from physical examination only.

**dialectic** (di-ə-lek-tik), *n.* **1.** A school of logic that teaches critical examination of the truth of an opinion, esp. by discussion or debate. • The method was applied by ancient philosophers, such as Plato and Socrates, primarily in the context of conversational discussions involving questions and answers, and also by more modern philosophers, such as Immanuel Kant, who viewed it as a theory of fallacies, and G.W.F. Hegel, who applied the term to his philosophy proceeding from thesis, to antithesis, to synthesis. **2.** An argument made by critically examining logical consequences. **3.** A logical debate. **4.** A disputant; a debater. Pl. **dialectics.**

**diallage** (di-al-ə-jee), *n.* [fr. Greek *diallagē* “interchange”] A rhetorical figure of speech in which arguments are placed in several points of view, and then brought to bear on one point.

**Dialogus de Scaccario** (di-al-ə-gəs dee skə-kair-ee-oh), *n.* [Law Latin “a dialogue of or about the Exchequer”] *Hist.* A treatise, written during the reign of Henry II, on the Court of Exchequer, set up in imaginary dialogue form between a master and a disciple. • Although

some originally attributed the work to Gervase of Tilbury, it was probably written by Richard Fitz Nigel, the bishop of London under Richard I, and the former Treasurer of the Exchequer.

“The *Dialogus de Scaccario* is an anonymous book, but there can be little doubt that we are right in ascribing it to Richard Fitz Neal: that is to say, to Richard the son of that Nigel, bishop of Ely . . . The book stands out as a unique book in the history of medieval England, perhaps in the history of medieval Europe. A high officer of state, the trusted counsellor of a powerful king, undertakes to explain to all whom it may concern the machinery of government. He will not deal in generalities, he will condescend to minute details. Perhaps the book was not meant for the general public so much as for the numerous clerks who were learning their business in the exchequer, but still that such a book should be written, is one of the wonderful things of Henry's wonderful reign.” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 161-62 (2d ed. 1898).

**dianatic** (di-ə-nat-ik). See DIANOETIC.

**dianoetic** (di-ə-noh-et-ik), *n.* [Greek *dianoetikos*, fr. *dia-* “through” + *noein* “to revolve in the mind”] *Archaic.* A form of logical reasoning that proceeds from one subject to another. — Also termed (erroneously) *dianatic.*

**diarchy.** See DYARCHY.

**diarium** (di-air-ee-əm), *n.* [fr. Latin *dies* “day”] *Roman law.* An allowance (usu. of food) needed for a day; a daily allowance of food or pay. Pl. **diaria** (di-air-ee-ə).

**diatim** (di-ay-təm). [fr. Latin *dies* “day”] Every day; daily.

**dica** (di-kə), *n.* [Law Latin] An account tally. See TALLY (1).

**dicast** (di-kast or dik-ast), *n.* [Greek *dikastes*] *Hist.* An ancient Greek officer sitting as both judge and juror. • Each dicast was generally a free citizen over the age of 30. The dicasts sat together in groups of between 100 to 500, according to each case's importance, and decided cases by a majority.

**dictate**, *vb.* **1.** To pronounce orally for transcription. **2.** To order; to command authoritatively.

**dictation.** **1.** The act of speaking words to be transcribed. **2.** The words so transcribed.

**dictator.** **1.** *Roman law.* An absolute ruler appointed in an emergency for a term of six months and subject to reappointment.



"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 reappointed. This was, in effect, a temporary reversion to monarchy." R.W. Lee, *The Elements of Roman Law* 14 (4th ed. 1956).

2. A person, esp. a ruler, with absolute authority.

**dictum** (dik-təm), *n.* 1. A statement of opinion or belief considered authoritative because of the dignity of the person making it. 2. A familiar rule; a maxim. 3. OBITER DICTUM. Pl. **dicta**.

"As a dictum is by definition no part of the doctrine of the decision, and as the citing of it as a part of the doctrine is almost certain to bring upon a brief maker adverse comment, lawyers are accustomed to speak of a dictum rather slightly, and sometimes they go so far as to intimate a belief that the pronouncing of a dictum is the doing of a wrong. Yet it must not be forgotten that dicta are frequently, and indeed usually, correct, and that to give an occasional illustration, or to say that the doctrine of the case would not apply to some case of an hypothetical nature, or to trace the history of a doctrine, even though it be conceded, as it must, that such passages are not essential to the deciding of the very case, is often extremely useful to the profession." William M. Lile et al., *Brief Making and the Use of Law Books* 307 (3d ed. 1914).

**dictum proprium** (dik-təm proh-pree-əm). A personal or individual dictum that is given by the judge who delivers an opinion but that is not necessarily concurred in by the whole court and is not essential to the disposition. — Also termed (loosely) *dictum propria*.

**gratis dictum** (gray-tis dik-təm). 1. A voluntary statement; an assertion that a person makes without being obligated to do so. 2. A court's stating of a legal principle more broadly than is necessary to decide the case. 3. A court's discussion of points or questions not raised by the record or its suggestion of rules not applicable in the case at bar.

**judicial dictum**. An opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision. Cf. OBITER DICTUM.

**obiter dictum**. See OBITER DICTUM.

**simplex dictum** (sim-pleks dik-təm). An unproved or dogmatic statement. See IPSE DIXIT.

**dictum de Kenilworth** (dik-təm dee ken-əl-worth), *n.* [Law Latin "edict of Kenilworth"] *Hist.* A declaration of an agreement between Edward I and the barons who had opposed him under the leadership of Simon de Montfort. ● The agreement, which concerned rent on the

lands forfeited in the rebellion, was so called because it was made at Kenilworth castle in Warwickshire in A.D. 1266. It was published in the *Statutes of the Realm* and 52 Hen. 3.

**dictum page**. See *pinpoint citation* under CITATION.

**dictum propria**. See *dictum proprium* under DICTUM.

**diei dictio** (di-ee-I dik-shee-oh), *n.* [Latin "appointing a day"] *Roman law*. 1. A magistrate's notice appointing a day for trial. 2. The service of a summons.

**diem clausit extremum** (di-əm klaw-zit ek-stree-məm), *n.* [Law Latin "he closed his last day"] *Hist.* 1. A chancery writ, founded on the statute of Marlbury, ordering the county escheator, after the death of a chief tenant of the Crown, to summon a jury to determine the amount and value of land owned by the chief tenant, to determine the next heir, and to reclaim the property for the Crown. ● It was a type of inquisition post mortem.

"Diem clausit extremum is a writ that lies where the king's tenant that holds in chief, dies; then this writ shall be directed to the excheator, to inquire of what estate he was seised, who is next heir, and his age, and of the certainty and value of the land, and of whom it is holden; and the inquisition shall be returned into the chancery, which is commonly called *the office after the death of that person*." *Termes de la Ley* 169 (1st Am. ed. 1812).

2. An Exchequer writ ordering a sheriff to summon a jury to investigate a Crown debtor's place of death and amount of property owned, and to levy the property of the deceased's heirs and executors. ● It was established by the Crown Suits Act of 1865 and repealed by the Crown Proceedings Act of 1947.

"And there is another writ of diem clausit extremum awarded out of the exchequer, after the death of an accountant or debtor of his majesty, to levy the debt of his heir, executor, administrator's lands or goods." *Termes de la Ley* 169 (1st Am. ed. 1812).

**dies** (di-eez), *n.* [Latin] A day; days.

**dies ad quem** (di-eez ad kwem), *n.* [Latin "the day to which"] *Civil law*. An ending date for a transaction; the ending date for computing time, such as the day on which interest no longer accrues.

**dies amoris** (di-eez ə-mor-is), *n.* [Law Latin] *Hist.* A day of favor; esp., a day set by the court for the defendant to make an appearance. ● This was usu. the fourth day of the term, which was the first day the court nor-

mally sat for business. In addition, the defendant usu. had three days of grace from the summons to appear, but an appearance on the fourth day *quarto die post* ("on the fourth day thereafter") was usu. sufficient.

**dies a quo** (dī-eez ay kwoh), *n.* [Latin "the day from which"] *Civil law.* A transaction's commencement date; the date from which to compute time, such as a day when interest begins to accrue.

**dies cedit** (dī-eez see-dit), *n.* [Latin "the time begins to run"] *Roman & Scots law.* The day on which an interest, esp. a legacy, vests; the day on which a condition obligation becomes due. — Also termed *dies cedens*. Cf. *dies venit*.

"A legacy was due, or became a valid right, either at the death of the testator or the occurrence of a condition precedent. This vesting of the property or the accruing of an obligation determined the content and nature of the interests involved. What the legatary got was discovered by examining what the legacy actually carried with it on the day when it became vested. To express the fact that the legacy had become vested, the technical expression *dies cedit* was used." Max Radin, *Handbook of Roman Law* 434-35 (1927).

**dies comitiales** (dī-eez kə-mish-ee-ay-leez), *n.* [Latin] *Roman law.* The 190 days in the year when an election could be held or the people could assemble as a legislative body. • The praetors could not hold court while a legislative assembly was in session.

**dies communes in banco** (dī-eez kə-myoo-nee-z in bang-koh), *n.* [Law Latin "common days in banc"] 1. Regular appearance dates in court. — Also termed *common-return days*. 2. An enactment printed under the Statutes of Henry III, regulating continuances and writ return dates. • Examples include the *Statutes of the Realm*, *Statutes of Uncertain Date*, and *Statutes at Large*.

**dies datus** (dī-eez day-təs), *n.* [Law Latin "a given day"] A continuance, esp. for a defendant before a declaration is filed; a time of respite in a case. • A continuance granted after the filing of the declaration is called an *imparlance*. See *IMPARLANCE*.

**dies datus in banco** (dī-eez day-təs in bang-koh), *n.* [Law Latin "a day given in the bench"] A day given in bank, as distinguished from a day at *nisi prius*.

**dies datus partibus** (dī-eez day-təs pahrtə-bəs), *n.* [Law Latin "a day given to the parties"] A continuance; an adjournment.

**dies datus prece partium** (dī-eez day-təs pree-see pahr-shee-əm), *n.* [Law Latin "a day given at the prayer of the parties"] A day given at the parties' request.

**dies Dominicus** (dī-eez də-min-i-kəs), *n.* [Latin] The Lord's day; Sunday.

**dies excrescens** (dī-eez ek-skree-sənz), *n.* [Law Latin "the increasing day"] The additional day in a leap year.

**dies fasti** (dī-eez fas-tī), *n.* [Latin] *Roman law.* A day when justice could be administered; a day when the praetor could officially pronounce the three words "do," "dico," and "addico." — Also called *triverbial days*. See *dies juridicus*. Cf. *NEFASTUS*.

**dies feriati** (dī-eez fer-ee-ay-tī), *n.* [Latin] *Roman & civil law.* A holiday; holidays.

**dies gratiae** (dī-eez gray-shee-ee), *n.* [fr. Law French *jour de grace*] *Hist.* A day of grace, usu. granted to the plaintiff.

**dies in banco.** See *DAYS IN BANK*.

**dies intercesi** (dī-eez in-tər-si-zī), *n.* [Latin "divided days"] *Roman law.* A day when the courts were open for only part of the day.

**dies juridicus** (dī-eez juu-rid-i-kəs), *n.* [Latin] A day when justice can be administered. • This term was derived from the civil-law term *dies fasti*.

**dies legitimus** (dī-eez lə-jit-i-məs), *n.* [Latin] *Roman law.* A lawful day; a law day.

**dies marchiae** (dī-eez mahr-kee-ee), *n.* [Law Latin "a day of the march"] *Hist.* In the reign of Richard II, the annual day set aside for the wardens of the English and Scottish borders to hold peace talks and resolve differences.

**dies nefasti** (dī-eez nee-fas-tī), *n.* See *NEFASTUS*; *dies non juridicus*.

**dies non** (dī-eez non). See *dies non juridicus*.

**dies non juridicus** (dī-eez non juu-rid-i-kəs), *n.* [Law Latin "a day not juridical"] A day exempt from court proceedings, such as a holiday or a Sunday. — Often shortened to *dies non*.

**dies pacis** (dī-eez pay-sis), *n.* [Law Latin "day of peace"] *Hist.* A day of peace. • The days were originally divided into two categories: *dies pacis ecclesiae* ("a day of the peace of the church") and *dies pacis regis* ("a day of the Crown's peace").

**dies religiosi** (dī-eez ri-lij-ee-oh-sī). [Latin] *Roman law.* Religious days on which it was unlawful to transact legal or political business.

**dies solaris** (dī-eez sə-lair-is), *n.* [Law Latin "a solar day"] See *solar day* under *DAY*.

**dies solis** (dī-eez soh-lis), *n.* [Latin "day of the sun"] *Roman law.* Sunday.

**dies utiles** (di-eez yoo-tə-leez), *n.* [Latin "available days"] *Roman law.* A day when something can be legally done, such as a day a person can apply to the court to claim an inheritance.

**dies venit** (di-eez vee-nit), *n.* [Latin "the day has come"] *Roman & Scots law.* The date when an interest is both vested and actionable. • It is usu. the day when a legatee can claim payment of a legacy. — Also termed *dies veniens*. Cf. *dies cedit*.

"But the legacy, though vested, is not yet so completely the property of the legatary that he may bring an action for it. To express the fact that such a right of action accrues, the term *dies venit* was used. In general, it may be said that *dies veniens* occurred when, and not until, the *heres* has actually entered upon the inheritance. But, of course, if the legacy was conditional, the *heres* may enter before the condition happens. In that case, *dies veniens* will occur simultaneously with *dies cedens*; i.e., the legacy will vest and the bequest become actionable at the same moment." Max Radin, *Handbook of Roman Law* 435 (1927).

**dies votorum** (di-eez voh-tor-əm), *n.* [Latin "a day of vows"] A wedding day.

**diet.** **1.** A regimen, esp. of food. **2.** A governing body's meeting day for legislative, political, or religious purposes; specif., a national assembly of various European countries, such as the diet of the German empire, which was summoned by the emperor regularly to perform various functions, including levying taxes, enacting laws, and declaring war. **3.** *Scots law.* A day to perform a duty, such as a court sitting day, an appearance day, and a criminal pleading or trial day. — Also spelled *dyet*.

"In procedure on indictment there are two diets, the pleading diet, when the accused is called to plead, and the trial diet when, if he has pled not guilty, he is tried." David M. Walker, *The Oxford Companion to Law* 357 (1980).

**dieta** (di-ee-tə), *n.* [fr. Latin *dies* "day"] *Hist.* **1.** A day's journey. **2.** A day's work. **3.** A day's expenses.

**dietary law.** Any of the body of laws observed by orthodox Jews regulating which foods may be eaten, how the foods must be prepared and served, and what combinations and contacts (as between meat and milk) are prohibited.

**di. et fi.** (di et fi). *abbr.* DILECTO ET FIDELI.

**Dieu et mon droit** (dyuu ay mawn drwah). [French "God and my right"] The motto of the royal arms of England. • It was first used by Richard I and, with the exception of Elizabeth I, was continually used from Edward III to

William III, who used the motto *je maintiendrey*. Queen Anne used Elizabeth I's motto, *semper eadem*, but *Dieu et mon droit* has been used since her death.

**Dieu son acte** (dyuu sawn akt), *n.* [Law Latin "an act of God"] *Hist.* An act of God, beyond human control.

**diffacere** (di-fay-sə-ree), *vb.* [fr. Old French *defacer*] *Hist.* To deface; to mutilate. — Also termed *disfacere*; *defacere*.

**differential pricing.** The setting of the price of a product or service differently for different customers. See PRICE DISCRIMINATION.

**difforcicare** (di-for-shee-air-ee), *vb.* [Law Latin "to deny"] *Hist.* To keep (something) from someone; to deny (something) to someone.

**diffused surface water.** See WATER.

**DIF system.** See DISCRIMINANT FUNCTION.

**digama** (dig-ə-mə). See DEUTEROGAMY.

**digamy** (dig-ə-mee). See DEUTEROGAMY.

**digest, n.** **1.** An index of legal propositions showing which cases support each proposition; a collection of summaries of reported cases, arranged by subject and subdivided by jurisdiction and court. • The chief purpose of a digest is to make the contents of reports available and to separate, from the great mass of caselaw, those cases bearing on some specific point. The American Digest System covers the decisions of all American courts of last resort, state and federal, from 1658 to present. — *Abbr.* D.

"An important and numerous class of books included in the general division designated as books of secondary authority is the group known by the generic name of 'Digests.' A Digest is essentially an index to Cases. But it is much more than an ordinary index, for it indicates the holdings and (in some, though not all, publications) the facts of each case. Any particular digest is a summary of the case law coming within its scope, and its units are summaries of particular points of particular cases. What the syllabi of a reported case are to that case, a digest is to many cases. Were a digest simply a collection of citations to cases, arranged logically according to the contents of such cases, it would be a search book; but, being a summary of the case law, it is a book of secondary authority." William M. Lile et al., *Brief Making and the Use of Law Books* 68 (3d ed. 1914).

**2. Civil law.** A compilation and systematic discussion of the various areas of law; chiefly, the Pandects of Justinian in 50 books, known

as the *Digest*. — Also termed *digesta*; *digests*. See PANDECT.

**digital signature.** See SIGNATURE.

**dignatory tort.** See TORT.

**dignitary.** 1. A person who holds a high rank or honor. 2. *Eccles. law.* A person who, by virtue of holding a benefice (such as a cathedral), is preeminent over ordinary priests and canons.

**dignity, n.** 1. The state of being noble; the state of being dignified. 2. An elevated title or position. 3. A person holding an elevated title; a dignitary. 4. A right to hold a title of nobility, which may be hereditary or for life.

“Dignities may be hereditary, such as peerages . . . or for life, such as life peerages and knighthoods. The dignities of peerages and baronetcies are created by writ or letters patent, that of knighthood by dubbing as knight. A dignity of inheritance may also exist by prescription. Dignities of inheritance are incorporeal hereditaments having been originally annexed to the possession of certain lands or created by a grant of those lands and are generally limited to the grantee and his heirs or his heirs of the body. If heirs are not mentioned, the grantee holds for life only. The heirs are determined by the rules which governed the descent of land prior to 1926.” David M. Walker, *The Oxford Companion to Law* 358 (1980).

**dijudication** (di-joo-də-kay-shən). *Archaic.* A judicial determination.

**dilapidations, action for** (də-lap-ə-day-shənz). *Hist.* A tort action brought by a new incumbent of a benefice for the disrepair of the houses or buildings on the benefice. • The incumbent — whether of a rectory, a vicarage, or a chapel — sued the executors or administrators of the incumbent’s deceased predecessor (who was not liable while living). The incumbent of a benefice was bound to maintain the parsonage, farm buildings, and chancel in good and substantial repair, restoring and rebuilding when necessary, according to the original plan. But the incumbent need not supply or maintain anything in the nature of ornament.

**dilatory** (dil-ə-tor-ee), *adj.* Tending to cause delay <the judge’s opinion criticized the lawyer’s persistent dilatory tactics>.

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

**dilatory exception.** See EXCEPTION (1).

**dilatory fiduciary.** See FIDUCIARY.

**dilatory motion.** See MOTION.

**dilatory plea.** See PLEA (3).

**dilecto et fidei** (di-lek-toh et fi-dee-li). [Law Latin] To his beloved and faithful. • This phrase was used in various writs. — Abbr. *di. et fi.*

**diligence.** 1. A continual effort to accomplish something. 2. Care; caution; the attention and care required from a person in a given situation. • The Roman-law equivalent is *diligentia*. See DILIGENTIA.

“Care, or the absence of *negligentia*, is *diligentia*. The use of the word diligence in this sense is obsolete in modern English, though it is still retained as an archaism of legal diction. In ordinary usage, diligence is opposed to idleness, not to carelessness.” John Salmond, *Jurisprudence* 393 n.(i) (Glanville L. Williams ed., 10th ed. 1947).

**due diligence.** 1. The diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. — Also termed *reasonable diligence*. 2. *Corporations & securities.* A prospective buyer’s or broker’s investigation and analysis of a target company, a piece of property, or a newly issued security. • A failure to exercise due diligence may sometimes result in liability, as when a broker recommends a security without first investigating it adequately.

**extraordinary diligence.** Extreme care that a person of unusual prudence exercises to secure rights or property.

**great diligence.** The diligence that a very prudent person exercises in handling his or her own property like that at issue. — Also termed *high diligence*.

**low diligence.** See *slight diligence*.

**necessary diligence.** The diligence that a person is required to exercise to be legally protected.

**ordinary diligence.** The diligence that a person of average prudence would exercise in handling his or her own property like that at issue.

**reasonable diligence.** 1. A fair degree of diligence expected from someone of ordinary prudence under circumstances like those at issue. 2. See *due diligence* (1).

**slight diligence.** The diligence that a person of less than common prudence takes with his or her own concerns. — Also termed *low diligence*.

**special diligence.** The diligence expected from a person practicing in a particular field of specialty under circumstances like those at issue.

**3. Scots law.** A court-issued warrant to compel something, such as the attendance of a witness. **4.** The legal process of attaching property for the payment of debt.

**diligent, adj.** Careful; attentive; persistent in doing something.

**diligentia** (dil-ə-jen-shee-ə), *n.* [Latin] *Roman law.* Carefulness; diligence. • The failure to exercise *diligentia* might make a person liable if contractually obliged to look after another's interests, or it might result in tort liability. Cf. NEGLIGENTIA. See DILIGENCE.

**diligentia exactissima** (dil-ə-jen-shee-ə eks-ak-tis-ə-mə), *n.* [Latin] Extraordinary diligence that a head of a family habitually exercises in business. — Also termed *diligentia exacta*; *diligentia boni patrisfamilias*. See *extraordinary diligence* under DILIGENCE.

**diligentia quam suis rebus** (dil-ə-jen-shee-ə kwam s[y]oo-is ree-bəs), *n.* [Latin] The care that an ordinary person exercises in managing his or her affairs. See *ordinary diligence* under DILIGENCE.

"The texts distinguish two standards of diligence, a higher and a lower. The higher is the diligence which the good father of a family habitually exhibits in his own affairs (*diligentia exacta* or *exactissima* — *diligentia boni patrisfamilias*). The lower is the diligence which the person in question exhibits in his own affairs (*diligentia quam suis rebus*). This may, in fact, reach a high degree of diligence or it may not. But, at least, where this standard is applied nothing extraordinary is expected. It is a concrete standard. It is enough that the person in question pursues his normal course. According to a traditional terminology, where the first standard is applied, there is said to be liability for *culpa levis in abstracto* — slight negligence in the abstract; in the second case there is liability for *culpa levis in concreto* — slight negligence in the concrete." R.W. Lee, *The Elements of Roman Law* 288 (4th ed. 1956).

**diligent inquiry.** A careful and good-faith probing to ascertain the truth of something.

**diligiatu** (də-lij-ee-ay-təs), *n.* [fr. Latin *dis* "apart" + *ligius* "under legal protection"] A person cast out of the law's protection; an outlaw.

**Dillon's rule.** The doctrine that a unit of local government may exercise only those powers that the state expressly grants to it, the powers necessarily and fairly implied from that grant,

and the powers that are indispensable to the existence of the unit of local government. • For the origins of this rule, see 1 John F. Dillon, *The Law of Municipal Corporations* § 89, at 115 (3d ed. 1881).

**dilution. 1.** The act or an instance of diminishing a thing's strength or lessening its value. **2. Corporations.** The reduction in the monetary value or voting power of stock by increasing the total number of outstanding shares. **3. Constitutional law.** The limitation of the effectiveness of a particular group's vote by legislative reapportionment or political gerrymandering. • Such dilution violates the Equal Protection Clause. — Also termed *vote dilution*. **4. Trademarks.** The impairment of a trademark's strength or effectiveness caused by the use of the mark on an unrelated product, usu. blurring the trademark's distinctive character or tarnishing it with an unsavory association. • Trademark dilution may occur even when the use is not competitive and when it creates no likelihood of confusion.

**dilution doctrine.** *Trademarks.* The rule protecting a trademark from a deterioration in strength, as when a person seeks to use the mark for an unrelated product.

**dimidietas** (dim-ə-dī-ə-tas), *n.* [Law Latin] *Hist.* Half of something; a moiety.

**dimidium** (di-mid-ee-əm), *n.* [Latin "half"] *Hist. 1.* Half; a half — as in *dimidium unius libratae* ("half a pound"). **2.** An undivided half of something.

**dimidius** (di-mid-ee-əs), *adj.* [Latin "half"] *Hist. 1.* Half; doubled. **2.** Loosely, incomplete.

**diminished capacity.** See CAPACITY (3).

**diminished responsibility.** See *diminished capacity* under CAPACITY (3).

**diminutio.** See DEMINUTIO.

**diminution** (dim-ə-n[y]oo-shən), *n.* **1.** The act or process of decreasing, lessening, or taking away. **2.** An incompleteness or lack of certification in a court record sent from a lower court to a higher one for review. — **diminish** (for sense 1), *vb.*

**diminution-in-value method.** A way of calculating damages for breach of contract based on

a reduction in market value that is caused by the breach.

**dimissoriae litterae** (dim-ə-sor-ee-ee lit-ər-ee), *n.* [Latin "dimissory letters"] *Eccles. law.* Dimissory letters; apostles. See APOSTLE.

**dimissory letters** (dim-ə-sor-ee). **1.** *Hist. Eccles. law.* Documents allowing a clergy member to leave one diocese for another. **2.** *Eccles. law.* Documents provided by one bishop to enable another bishop to ordain a candidate already ordained in the former bishop's diocese.

**diocesan** (di-ɒs-ə-sən), *adj.* Of or belonging to a diocese; of or relating to the relationship between a bishop and the clergy within the diocese.

**diocesan court.** See COURT.

**diocesan mission.** A mission performing its work in a single diocese.

**diocesan synod.** See SYNOD.

**diocese** (di-ə-sees or -sis). **1.** *Roman law.* The division of the Roman empire into provinces. **2.** *Eccles. law.* An archbishop's jurisdiction, including governance over several bishops, who each control a parish. **3.** *Eccles. law.* A bishop's jurisdiction. • Several dioceses together are governed by an archbishop.

**dioichia** (di-ɔy-kee-ə), *n.* [fr. Latin *diocesis* "a diocese"] A district over which a bishop exercises his spiritual functions.

**DIP.** *abbr.* DEBTOR-IN-POSSESSION.

**diploma.** **1.** *Roman law.* A letter giving permission to use the imperial post. **2.** *Hist.* A royal charter; letters patent. **3.** A document that evidences or memorializes graduation from a school or society. Cf. DEGREE (6). **4.** A document that evidences a license or privilege to practice a profession, such as medicine.

**diplomacy, n.** *Int'l law.* **1.** The art and practice of conducting negotiations between national governments.

**open diplomacy.** Diplomacy carried on with free access to interested observers and members of the press.

**parliamentary diplomacy.** The negotiations and discussions carried out in interna-

tional organizations according to their rules of procedure.

**secret diplomacy.** Diplomacy carried on behind closed doors. — Also termed *quiet diplomacy*.

**shuttle diplomacy.** Diplomatic negotiations assisted by emissaries, who travel back and forth between negotiating countries. • In legal contexts, the term *usu.* refers to a similar approach used by a mediator in negotiating the settlement of a lawsuit. The mediator travels back and forth between different rooms, one of which is assigned to each side's decision-makers and counsel. The mediator relays offers and demands between the rooms and, by conferring with the parties about their positions and about the uncertainty of litigation, seeks to reach an agreed resolution of the case.

**2.** Loosely, foreign policy. **3.** The collective functions performed by a diplomat. — **diplomatic, adj.** — **diplomat, n.**

**diplomatic agent.** See AGENT.

**diplomatic bag.** See DIPLOMATIC POUCH.

**diplomatic corps.** *Int'l law.* The ambassador and other diplomatic personnel assigned by their government to a foreign capital.

**diplomatic immunity.** See IMMUNITY (1).

**diplomatic pouch.** **1.** A bag containing official correspondence, documents, or articles intended exclusively for official communications of a nation with its missions, consular posts, or delegations. **2.** The contents of the bag. — Also termed *diplomatic bag; valise diplomatique*.

**diplomatic protection.** Protection given by one country's representatives to a person, *usu.* an individual, against another country's violation of international law.

"The term diplomatic protection is not altogether precise. First, not only diplomatic agents and missions and other foreign offices may and do exercise diplomatic protection, but also, at a different level, consuls, and, although very rarely, military forces. Secondly, the term diplomatic protection does not clearly denote the boundary line to other diplomatic activities for the benefit of individuals, such as mere promotion of interests in one's own nationals in a foreign State, or friendly intercessions with foreign authorities. Thus, diplomatic or consular actions to obtain concessions or other government contracts for nationals from the receiving State, or the arrangement of legal defense for a justly imprisoned national are not diplomatic protection in our sense; they are usually neither directed against the other State nor

based on a real or alleged violation of international law. All these last-mentioned activities may be called diplomatic protection only if the term is taken in a very broad sense." William Karl Geck, "Diplomatic Protection," in 1 *Encyclopedia of Public International Law* 1046 (1992).

**diplomatic relations.** *Int'l law.* The customary form of permanent contact and communication between sovereign countries.

**diplomatics.** The science of deciphering and authenticating ancient writings. • The principles were largely developed by the Benedictine Dom Mabillon in his 1681 work entitled *De re diplomatica*. — Also termed *diplomatic (n.)*.

"Diplomatics, the science derived from the study of ancient diplomas, so called from being written on two leaves, or on double tablets. The Romans used the term more specially for the letters of license to use the public conveyances provided at the different stations, and generally for public grants. Subsequently it attained a more extended signification, and in more modern times has been used as a general term for ancient imperial and ecclesiastical acts and grants, public treaties, deeds of conveyance, letters, wills, and similar instruments, drawn up in forms and marked with peculiarities varying with their dates and countries. With the revival of literature, the importance of such documents in verifying facts and establishing public and private rights led to their being brought together from the historical works and the monastic registers in which they had been copied, or, in rarer instances, from public and ecclesiastical archives where the originals were still preserved. Then arose questions of authenticity, and doubts of the so-called originals; disputants defended or condemned them; and, in order to establish principles for distinguishing the genuine from the forged, treatises were written on the whole subject of these diplomas." 7 *Encyclopaedia Britannica* 220 (9th ed. 1907).

**Diplomatic Security Service.** A bureau of the U.S. Department of State having responsibility for protecting the Secretary of State and domestic and foreign dignitaries, as well as for investigating criminal activities such as identity-document fraud involving U.S. passports and visas. • The Service now employs some 800 special agents (members of the U.S. Foreign Service), who are located throughout the United States and in scores of embassies worldwide.

**diptych (dip-tik), n.** [fr. Latin *diptycha* fr. Greek *diptycha* "two-leaved"] 1. *Roman law.* Two tablets usu. made of wood or metal and tied with string through holes at the edges so that they could fold over (like a book with two leaves). • Diptychs were often used to send letters, and the text was sometimes written using a stylus, once on the inside waxed leaves and again on the outside, so that it could be read without opening the tablets. 2. *Hist. Eccles. law.* Tablets used by the church, esp. to

register names of those making supplication, and to record births, marriages, and deaths. 3. *Hist. Eccles. law.* The registry of those names.

"The recitation of the name of any prelate or civil ruler in the diptychs was a recognition of his orthodoxy; its omission, the reverse. The mention of a person after death recognized him as having died in the communion of the church, and the introduction of his name into the list of saints or martyrs constituted canonization. In liturgics the diptychs are distinguished as *the diptychs of the living* and *the diptychs of the dead*, the latter including also the commemoration of the saints . . . In the Western Church the use of the diptychs died out between the ninth and the twelfth century; in the Eastern Church it still continues." 2 *The Century Dictionary and Cyclopedia* (1895).

"Diptychs were used in the time of the Roman empire for sending letters . . . The consula and quaestors used, on assuming office, to send diptychs containing their names and portraits to their friends . . . The early Christians used tablets thus made in the celebration of divine worship . . . They were placed on . . . the pulpits, or reading desks, which may still be seen in ancient basilicas at the west end of the choir or presbytery; and from them were read to the congregation of the faithful the names of the celebrating priests, of those who occupied the superior positions in the Christian hierarchy, of the saints, martyrs, and confessors, and, in process of time, also of those who had died in the faith . . . The inscription on the diptychs of deaths and baptisms, naturally led to the insertion of *dates*, and the diptychs seem thus to have grown into calendars, and to have been the germ from which necrologies, lists of saints, and almanacs have been developed." 7 *Encyclopaedia Britannica* 223-24 (9th ed. 1907).

**dirationare (di-ray-shee-ə-nair-ee), vb.** [fr. Latin *dis* "thoroughly" + *ratiocinari* "to reason"] *Hist.* 1. To prove; to establish one's right. 2. To disprove; to refute (an allegation).

**direct (di-rekt), adj.** 1. (Of a thing) straight; undeviating <a direct line>. 2. (Of a thing or a person) straightforward <a direct manner> <direct instructions>. 3. Free from extraneous influence; immediate <direct injury>. 4. Of or relating to passing in a straight line of descent, as distinguished from a collateral line <a direct descendant> <a direct ancestor>. 5. (Of a political action) effected by the public immediately, not through representatives <direct resolution> <direct nomination>.

**direct, n.** See DIRECT EXAMINATION.

**direct, vb.** 1. To aim (something or someone). 2. To cause (something or someone) to move on a particular course. 3. To guide (something or someone); to govern. 4. To instruct (someone) with authority. 5. To address (something or someone).

**direct action.** 1. A lawsuit by an insured against his or her own insurance company rather than against the tortfeasor and the tortfeasor's insurer. 2. A lawsuit by a person claiming against an insured but suing the insurer directly instead of pursuing compensation indirectly through the insured. 3. A lawsuit to enforce a shareholder's rights against a corporation. Cf. DERIVATIVE ACTION (1).

**direct-action statute.** A statute that grants an injured party direct standing to sue an insurer instead of the insured tortfeasor. • Under Rhode Island's direct-action statute, for example, an injured party may bring a direct action against an insurer when good-faith efforts to serve process on the insured are unsuccessful. These statutes exist in several states, including Alabama, Arkansas, Louisiana, Minnesota, New York, Pennsylvania, and Wisconsin.

**direct affinity.** See AFFINITY.

**direct and proximate cause.** See *proximate cause* under CAUSE (1).

**direct appeal.** See APPEAL.

**direct attack.** An attack on a judgment made in the same proceeding as the one in which the judgment was entered. • Examples of direct attacks are appeals and motions for new trial. Cf. COLLATERAL ATTACK.

**direct beneficiary.** See *intended beneficiary* under BENEFICIARY.

**direct cause.** See *proximate cause* under CAUSE (1).

**direct charge-off accounting method.** See ACCOUNTING METHOD.

**direct confession.** See CONFESSION.

**direct contempt.** See CONTEMPT.

**direct conversion.** See CONVERSION (2).

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

**direct damages.** See *general damages* under DAMAGES.

**direct deposit.** See DEPOSIT (2).

**direct economic loss.** See ECONOMIC LOSS.

**directed verdict.** See VERDICT.

**direct estoppel.** See COLLATERAL ESTOPPEL.

**direct evidence.** See EVIDENCE.

**direct examination.** The first questioning of a witness in a trial or other proceeding, conducted by the party who called the witness to testify. — Often shortened to *direct*. — Also termed *examination-in-chief*. Cf. CROSS-EXAMINATION; REDIRECT EXAMINATION.

**direct financing.** See FINANCING.

**direct infringement.** See *patent infringement* under INFRINGEMENT.

**direct injury.** See INJURY.

**direct interest.** See INTEREST (2).

**direction** (di-*rek*-shən). 1. The course taken in relation to the point toward which something or someone is moving; a point to or from which a person or thing moves <the storm moved in a northerly direction>. 2. The course on which something is aimed <the direction of the trial>. 3. An act of guidance <under the chair's direction>. 4. An order; an instruction on how to proceed <the judge's direction to the jury>. See JURY INSTRUCTION. 5. The address to the court contained on a bill of equity <the direction on the bill>. 6. A board of directors; a board of managers <the direction met on Wednesday>.

**directive to physicians.** See LIVING WILL.

**direct line.** See LINE.

**direct-line descent.** See *lineal descent* under DESCENT.

**direct loss.** See LOSS.

**directly, adv.** 1. In a straightforward manner. 2. In a straight line or course. 3. Immediately.

**direct notice.** See NOTICE.

**director** (di-*rek*-tər). 1. One who manages, guides, or orders; a chief administrator. 2. A person appointed or elected to sit on a board that manages the affairs of a corporation or company by electing and exercising control



over its officers. See BOARD OF DIRECTORS. Cf. OFFICER (1).

**affiliated director.** See *outside director*.

**class director.** **1.** A director whose term on a corporate board is staggered with those of the other directors to make a hostile takeover more difficult. **2.** A director elected or appointed to a corporate board to represent a special-interest group, e.g., the preferred stockholders.

**dummy director.** A board member who is a mere figurehead and exercises no real control over the corporation's business.

**inside director.** A director who is also an employee, officer, or major shareholder of the corporation.

**interlocking director.** A director who simultaneously serves on the boards of two or more corporations that deal with each other or have allied interests.

**outside director.** A nonemployee director with little or no direct interest in the corporation. — Also termed *affiliated director*.

**provisional director.** A director appointed by a court to serve on a close corporation's deadlocked board of directors.

**direct order of alienation.** *Real estate.* The principle that a grantee who assumes the debt on a mortgaged property is required to pay the mortgage debt if the original mortgagor defaults.

**Director of Public Prosecutions.** An officer (usu. a barrister or solicitor of ten years' standing) who advises the police and prosecutes criminal cases in England and Wales under the supervision of the Attorney General.

**Director of the Mint.** An officer appointed by the President, with the advice and consent of the Senate, to control and manage the U.S. Mint and its branches.

**directors' and officers' liability insurance.** — Also termed *D & O insurance*. See INSURANCE.

**directory, n.** **1.** A book containing an alphabetical list of names, addresses, and telephone numbers, esp. those of a city's or area's residents and businesses. **2.** Any organization's publication containing information on its members or business, such as a legal directory. **3. Eccles. law.** A church's book of directions for conducting worship. • One of the primary directories is the *Directory for the Public Worship*

*of God*, prepared by the Assembly of Divines in England in 1644 to take the place of the Book of Common Prayer that had been abolished by Parliament. It was ratified by Parliament in 1645 and adopted by the Scottish Parliament and General Assembly of the Church of Scotland that same year. A directory in the Roman Catholic Church contains instructions for saying the mass and offices each day of the year. **4.** A small governing body; specif., the five-member executive body that governed France from 1795–1799 during the French Revolution until it was overthrown by Napoleon and succeeded by the consulate.

**directory call.** *Property.* In a land description, a general description of the areas in which landmarks or other calls are found. See CALL (5); LOCATIVE CALLS.

**directory provision.** A statutory or contractual sentence or paragraph in which a directory requirement appears.

**directory requirement.** A statutory or contractual instruction to act in a way that is advisable, but not absolutely essential — in contrast to a mandatory requirement. • A directory requirement is frequently introduced by the word *should* or, less frequently, *shall*.

**directory statute.** See STATUTE.

**directory trust.** See TRUST.

**direct-participation program.** An investment vehicle that is financed through the sale of securities not traded on an exchange or quoted on NASDAQ and that provides flow-through tax consequences to the investors.

**direct payment.** See PAYMENT.

**direct placement.** **1.** The sale by a company, such as an industrial or utility company, of an entire issue of securities directly to a lender (such as an insurance company or group of investors), instead of through an underwriter. • This type of offering is exempt from SEC filing requirements. **2.** PRIVATE PLACEMENT (1).

**direct possession.** See *immediate possession* under POSSESSION (3).

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

**direct-reduction mortgage.** See MORTGAGE.

**direct selling.** **1.** Selling to a customer without going through a dealer. **2.** Selling to a retailer without going through a wholesaler.

**direct skip.** *Tax.* A generation-skipping transfer of assets, either directly or through a trust. • A direct skip may be subject to a generation-skipping transfer tax — either a gift tax or an estate tax. IRC (26 USCA) §§ 2601–2602. See GENERATION-SKIPPING TRANSFER; *generation-skipping transfer tax* under TAX; SKIP PERSON.

**direct tax.** See TAX.

**direct trust.** See *express trust* under TRUST.

**diribitores** (di-rib-ə-tor-eez), *n.* [Latin “sorters of votes”] *Roman law.* Officers who distributed voting ballots to the public.

**diriment impediment** (dir-ə-mənt im-ped-ə-mənt), *n.* [fr. Latin *dirimens impedimentum* “nullifying impediment”] *Hist.* A bar to marriage (such as a close familial relationship) that annuls a marriage as a matter of law.

**dirt-for-debt transfer.** A transaction in which a bankrupt debtor satisfies all or part of a secured debt by transferring the collateral to the creditor.

**disability.** **1.** The inability to perform some function; an objectively measurable condition of impairment, physical or mental <his disability entitled him to workers’-compensation benefits>. — Also termed *incapacity*.

**developmental disability.** An impairment of general intellectual functioning or adaptive behavior.

**partial disability.** A worker’s inability to perform all the duties that he or she could do before an accident, even though the worker can still engage in some gainful activity on the job.

**permanent disability.** A disability that will indefinitely prevent a worker from performing some or all of the duties that he or she could do before an accident.

**physical disability.** An incapacity caused by a physical defect or infirmity, or by bodily imperfection or mental weakness.

**temporary disability.** A disability that exists until an injured worker is as far restored as the nature of the injury will permit.

**temporary total disability.** Total disability that is not permanent.

**total disability.** A worker’s inability to perform employment-related duties because of a physical or mental impairment.

**2.** Incapacity in the eyes of the law <most of a minor’s disabilities are removed when he or she turns 18>. — Also termed *incapacity*.

**civil disability.** The condition of a person who has had a legal right or privilege revoked as a result of a criminal conviction, as when a person’s driver’s license is revoked after a DWI conviction. Cf. CIVIL DEATH (2).

**disability benefits.** See DISABILITY COMPENSATION.

**disability clause.** A life-insurance-policy provision providing for a waiver of premiums during the policyholder’s period of disability, and sometimes providing for monthly payments equal to a percentage of the policy’s face value.

**disability compensation.** Payments from public or private funds to a disabled person who cannot work, such as social-security or workers’-compensation benefits. — Also termed *disability benefits*.

**disability insurance.** See INSURANCE.

**disability retirement plan.** See EMPLOYEE BENEFIT PLAN.

**disable, vb.** **1.** To deprive (someone or something) of the ability to function; to weaken the capability of (someone or something). **2.** To impair; to diminish. **3.** To legally disqualify (someone); to render (someone) legally incapable.

**disabled person.** See PERSON.

**disablement, n.** **1.** The act of incapacitating or immobilizing. **2.** The imposition of a legal disability.

**disabling restraints.** Limits on the alienation of property. • These restraints are sometimes void as being against public policy.

**disabling statute.** See STATUTE.

**disadvocate** (dis-ad-və-kair-ee), *vb.* [Law Latin] To deny; to disavow.

**disaffirm** (dis-ə-fərm), *vb.* **1.** To repudiate; to revoke consent; to disclaim the intent to be

bound by an earlier transaction. **2.** To declare (a voidable contract) to be void.

**disaffirmance** (dis-ə-fərm-ənts). An act of denial; a repudiation, as of an earlier transaction. **2.** A declaration that a voidable contract (such as one entered into by a minor) is void. — Also termed *disaffirmation*.

“Disaffirmance is an operative act whereby the legal relations created by an infant’s contract are terminated and discharged and other legal relations substituted. Inasmuch as the infant’s executory promise does not operate to create any legal duty in him (the infant being at all times at liberty or *privileged* not to perform), his disaffirmance is not the discharge of such a duty. A return promise by an adult, however, creates a legal duty and the infant has a correlative right *in personam*. A disaffirmance terminates these.” William R. Anson, *Principles of the Law of Contract* 181 (Arthur L. Corbin ed., 3d Am. ed. 1919).

**disafforest** (dis-ə-for-əst or -fahr-əst), *vb.* [fr. French *desaforester*] *Hist.* To free lands from the restrictions of the forest laws and return them to the status of ordinary lands. — Also termed *deafforest*.

**disagreement**. **1.** A difference of opinion; a lack of agreement. **2.** A quarrel. **3.** An annulment; a refusal to accept something, such as an interest in an estate.

**disallow**, *vb.* **1.** To refuse to allow (something). **2.** To reject (something).

**disalt** (dis-awlt), *vb.* *Hist.* To disable (a person).

**disappeared person**. A person who has been absent from home for at least seven continuous years and who, during that period, has not communicated with the person most likely to know his or her whereabouts. See SEVEN-YEARS’-ABSENCE RULE; MISSING PERSON.

**disappropriation**. **1.** *Eccles. law.* The alienation of church property from its original use; the severance of property from church ownership or possession. **2.** The release of property from individual ownership or possession.

**disapprove**, *vb.* **1.** To pass unfavorable judgment on (something). **2.** To decline to sanction (something).

**disarmament**. *Int’l law.* The negotiated or voluntary reduction of military arms, esp. nuclear weapons, to a greatly reduced level or to nil. Cf. ARMS CONTROL.

**disaster**. A calamity; a catastrophic emergency.

**disaster area**. A region officially declared to have suffered a catastrophic emergency, such as a flood or hurricane, and therefore eligible for government aid.

**disaster loss**. See LOSS.

**disavow** (dis-ə-vow), *vb.* To disown; to disclaim knowledge of; to repudiate <the company disavowed the acts of its agent>. — **disavowal**, *n.*

**disbarment**, *n.* The action of expelling a lawyer from the bar or from the practice of law, usu. because of some disciplinary violation. — Also termed *striking off the roll*. — **disbar**, *vb.*

**disbocatio** (dis-bə-kay-shee-oh), *n.* [fr. Law Latin *dis-* + *boscus* “wood”] *Hist.* The conversion of forest to pasture.

**disbursement** (dis-bərs-mənt), *n.* The act of paying out money, commonly from a fund or in settlement of a debt or account payable <dividend disbursement>. — **disburse**, *vb.*

**DISC.** *abbr.* DOMESTIC INTERNATIONAL SALES CORPORATION.

**discarcare** (dis-kahr-kair-ee), *vb.* [fr. Latin *dis-* + *carcare* “to charge”] *Hist.* To unload (cargo), usu. from a ship. — Also termed *discargare*.

**disceptatio causae** (di-sep-tay-shee-oh kaw-ze), *n.* [Latin “debate about a case”] *Roman law.* The argument by the advocates of both sides of a dispute.

**discharge** (dis-chahrj), *n.* **1.** The payment of a debt or satisfaction of some other obligation. **2.** The release of a debtor from monetary obligations upon adjudication of bankruptcy; RELEASE (1). **3.** The dismissal of a case. **4.** The canceling or vacating of a court order. **5.** The release of a prisoner from confinement. **6.** The relieving of a witness, juror, or jury from further responsibilities in a case. **7.** The firing of an employee.

**constructive discharge**. A termination of employment brought about by making the employee’s working conditions so intolerable that the employee feels compelled to leave.

“Most constructive discharges fall into one of two basic fact patterns. First, the employer can cause a constructive discharge by breaching the employee’s contract of employment in some manner short of termination. Second, the employer can make working conditions so intolerable

erable that the employee feels compelled to quit." Mark A. Rothstein et al., *Employment Law* § 9.7, at 539 (1994).

**retaliatory discharge.** A discharge that is made in retaliation for the employee's conduct (such as reporting unlawful activity by the employer to the government) and that clearly violates public policy. • Most states have statutes allowing an employee who is dismissed by retaliatory discharge to recover damages.

**unconditional discharge.** 1. A release from an obligation without any conditions attached. 2. A release from confinement without any parole requirements to fulfill.

**wrongful discharge.** A discharge for reasons that are illegal or that violate public policy.

8. The dismissal of a member of the armed services from military service <the sergeant was honorably discharged>. — **discharge** (dis-*chahrj*), *vb.*

**administrative discharge.** A military-service discharge given by administrative means and not by court-martial.

**bad-conduct discharge.** A punitive discharge that a court-martial can give a member of the military, usu. as punishment for repeated minor offenses. — Abbr. BCD.

**dishonorable discharge.** The most severe punitive discharge that a court-martial can give to a member of the military. • A dishonorable discharge may result from conviction for an offense recognized in civilian law as a felony or of a military offense requiring severe punishment. Only a general court-martial can give a dishonorable discharge.

**general discharge.** One of the administrative discharges given to a member of the military who does not qualify for an honorable discharge.

**honorable discharge.** A formal final judgment passed by the government on a soldier's entire military record, and an authoritative declaration that he or she has left the service in a status of honor. • Full veterans' benefits are given only to a person honorably discharged.

**undesirable discharge.** One of the administrative discharges given to a member of the military who does not qualify for an honorable discharge.

**dischargeability proceeding.** *Bankruptcy.* A hearing to determine whether a debt is dischargeable or is subject to an exception to discharge. 11 USCA § 523.

**dischargeable claim.** *Bankruptcy.* A claim that can be discharged in bankruptcy.

**discharged contract.** See *void contract* under CONTRACT.

**discharge hearing.** *Bankruptcy.* A hearing at which the court informs the debtor either that a discharge has been granted or the reasons why a discharge has not been granted. See REAFFIRMATION HEARING.

**discharge in bankruptcy.** 1. The release of a debtor from personal liability for prebankruptcy debts. 2. A bankruptcy court's decree releasing a debtor from that liability.

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

**disciplinary proceeding.** An action brought to reprimand, suspend, or expel a licensed professional or other person from a profession or other group because of unprofessional, unethical, improper, or illegal conduct. • A disciplinary proceeding against a lawyer may result in the lawyer's being suspended or disbarred from practice.

**disciplinary rule.** (*usu. cap.*) A mandatory regulation stating the minimum level of professional conduct that a professional must sustain to avoid being subject to disciplinary action. • For lawyers, the disciplinary rules are found chiefly in the Model Code of Professional Responsibility. — Abbr. DR. Cf. ETHICAL CONSIDERATION.

**discipline, n.** 1. Punishment intended to correct or instruct; esp., a sanction or penalty imposed after an official finding of misconduct. 2. Control gained by enforcing compliance or order. 3. *Military law.* A state of mind inducing instant obedience to a lawful order, no matter how unpleasant or dangerous such compliance might be. — **discipline, vb.** — **disciplinary, adj.**

**disclaimer, n.** 1. A renunciation of one's legal right or claim. 2. A repudiation of another's legal right or claim. 3. A writing that contains such a renunciation or repudiation. — **disclaim, vb.**

**disclaimer of warranty.** An oral or written statement intended to limit a seller's liability for defects in the goods sold. • In some circumstances, printed words must be specific and conspicuous to be effective.

**patent disclaimer.** A patent applicant's amendment of a specification to relinquish part of the claim to the invention. • When part of the invention is not patentable, such a disclaimer can be filed to help ensure the validity of the rest of the patent. See SPECIFICATION (3).

**qualified disclaimer.** A person's refusal to accept an interest in property so that he or she can avoid having to pay estate or gift taxes. • To be effective under federal tax law, the refusal must be in writing and must be executed no later than nine months from the time when the interest was created. IRC (26 USCA) § 2518.

**disclosed principal.** See PRINCIPAL (1).

**disclosure, n.** The act or process of making known something that was previously unknown; a revelation of facts <a lawyer's disclosure of a conflict of interest>. — **disclose, vb.** — **disclosural, adj.** See DISCOVERY; INITIAL DISCLOSURE.

**compulsory disclosure.** A mandatory disclosure of information, as of matters within the scope of the discovery rules. See DISCOVERY (2).

**full disclosure.** A complete revelation of all material facts.

**discommon** (dis-kom-ən), *vb.* **1.** To deprive of the right of common (e.g., the right to pasture). **2.** To deprive (something, esp. land) of commonable character. • A person could discommon land by separating or enclosing it. **3.** To deprive (someone) of the privileges of a place, such as the right to a church fellowship.

**discontinuance** (dis-kən-tin-yoo-ənts), *n.* **1.** The termination of a lawsuit by the plaintiff; a voluntary dismissal or nonsuit. See DISMISSAL; NONSUIT. **2.** The termination of an estate-tail by a tenant in tail who conveys a larger estate in the land than is legally allowed.

"Such is . . . the injury of *discontinuance*; which happens when he who hath an estate-tail, maketh a larger estate of the land than by law he is entitled to do: in which case the estate is good, so far as his power extends who made it, but no farther. As if tenant in tail makes a feoffment in fee-simple, or for the life of the feoffee, or in tail; all which are beyond his power to make, for that by the common law extends no farther than to make a lease for his own life: the entry of the feoffee is lawful during the life of the feoffer; but if he retains the possession after the death of the feoffer, it is an injury, which is termed a discontinuance; the ancient legal estate, which ought to have survived to the heir in tail, being gone, or at least suspended, and for a while discontinued." 3 William

Blackstone, *Commentaries on the Laws of England* 171-72 (1768).

**discontinuee, n.** A person who receives an entailed estate from the tenant in tail; one whose acquisition of an entailed estate causes a discontinuance of the fee tail heirs' right to the estate. Cf. DISCONTINUOR.

**discontinuing easement.** See *discontinuous easement* under EASEMENT.

**discontinuor, n.** A tenant in tail whose conveyance of the entailed estate causes a discontinuance. Cf. DISCONTINUEE.

**discontinuous easement.** See EASEMENT.

**disconvenable** (dis-kən-vee-nə-bəl), *adj.* [Law French] *Archaic.* Unfit; improper.

**discount, n.** **1.** A reduction from the full amount or value of something, esp. a price. **2.** An advance deduction of interest when a person lends money on a note, bill of exchange, or other commercial paper, resulting in its present value. See PRESENT VALUE. **3.** The amount by which a security's market value is below its face value. Cf. PREMIUM (3). — **discount, vb.**

**bulk discount.** See *volume discount*.

**cash discount. 1.** A seller's price reduction in exchange for an immediate cash payment. **2.** A reduction from the stated price if the bill is paid on or before a specified date.

**functional discount. 1.** A supplier's price discount given to a purchaser based on the purchaser's role (such as warehousing or advertising) in the supplier's distributive system. • This type of discount typically reflects the value of services performed by the purchaser for the supplier. If a functional discount constitutes a reasonable reimbursement for the purchaser's actual marketing functions, it does not constitute unlawful price discrimination and does not violate anti-trust laws. **2.** A supplier's price discount based on the purchaser's relative distance from the supplier in the chain of distribution. • For example, a wholesaler or distributor usu. receives a greater discount than a retailer.

**quantity discount.** See *volume discount*.

**trade discount. 1.** A discount from list price offered to all customers of a given type — for example, a discount offered by a lumber dealer to building contractors. **2.** The difference between a seller's list price and the price at

which the dealer actually sells goods to the trade.

**volume discount.** A price decrease based on a large-quantity purchase. — Also termed *bulk discount*; *quantity discount*.

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

**discount broker.** See BROKER.

**discounted cash flow.** See CASH FLOW.

**discount interest.** See INTEREST (3).

**discount loan.** See LOAN.

**discount market.** See MARKET.

**discount rate.** See INTEREST RATE.

**discount share.** See *discount stock* under STOCK.

**discount stock.** See STOCK.

**discount yield.** See YIELD.

**discoverable, adj.** Subject to pretrial discovery <the defendant's attorney argued that the defendant's income-tax returns were not discoverable during the liability phase of the trial>.

**discovered-peril doctrine.** See LAST-CLEAR-CHANCE DOCTRINE.

**discover** (dis-kəv-ərt), *adj.* **1.** *Archaic.* Uncovered; exposed. **2.** Not married, esp. a widow or a woman who has never married.

**discovery, n.** **1.** The act or process of finding or learning something that was previously unknown <after making the discovery, the inventor immediately applied for a patent>. **2.** Compulsory disclosure, at a party's request, of information that relates to the litigation <the plaintiff filed a motion to compel discovery>. ● The primary discovery devices are interrogatories, depositions, requests for admissions, and requests for production. Although discovery typically comes from parties, courts also allow limited discovery from nonparties. **3.** The facts or documents disclosed <the new associate spent all her time reviewing discovery>. — **discover, vb.** — **discoverable, adj.**

"Discovery has broad scope. According to Federal Rule 26, which is the model in modern procedural codes, inquiry may be made into 'any matter, not privileged,

that is relevant to the subject matter of the action.' Thus, discovery may be had of facts incidentally relevant to the issues in the pleadings even if the facts do not directly prove or disprove the facts in question." Geoffrey C. Hazard, Jr. & Michele Taruffo, *American Civil Procedure: An Introduction* 115 (1993).

**postjudgment discovery.** Discovery conducted after judgment has been rendered, usu. to determine the nature of the judgment debtor's assets or to obtain testimony for use in future proceedings. — Also termed *posttrial discovery*.

**pretrial discovery.** Discovery conducted before trial to reveal facts and develop evidence. ● Modern procedural rules have broadened the scope of pretrial discovery to prevent the parties from surprising each other with evidence at trial.

**discovery abuse. 1.** The misuse of the discovery process, esp. by making overbroad requests for information that is unnecessary or beyond the scope of permissible disclosure. **2.** The failure to respond adequately to proper discovery requests. — Also termed *abuse of discovery*.

"The term 'discovery abuse' has been used as if it were a single concept, but it includes several different things. Thus, it is useful to subdivide 'abuse' into 'misuse' and 'overuse.' What is referred to as 'misuse' would include not only direct violation of the rules, as by failing to respond to a discovery request within the stated time limit, but also more subtle attempts to harass or obstruct an opponent, as by giving obviously inadequate answers or by requesting information that clearly is outside the scope of discovery. By 'overuse' is meant asking for more discovery than is necessary or appropriate to the particular case. 'Overuse,' in turn, can be subdivided into problems of 'depth' and of 'breadth,' with 'depth' referring to discovery that may be relevant but is simply excessive and 'breadth' referring to discovery requests that go into matters too far removed from the case." Charles Alan Wright, *The Law of Federal Courts* § 81, at 580 (5th ed. 1994).

**discovery immunity.** A (usu. statutory) prohibition that excludes certain documents or information from discovery.

**discovery policy.** See *claims-made policy* under INSURANCE POLICY.

**discovery rule. Civil procedure.** The rule that a limitations period does not begin to run until the plaintiff discovers (or reasonably should have discovered) the injury giving rise to the claim. ● The discovery rule usu. applies to injuries that are inherently difficult to detect, such as those resulting from medical malpractice. See STATUTE OF LIMITATIONS. Cf. OCCURRENCE RULE.

**discovery vein.** See VEIN.

**discredit**, *vb.* To destroy or impair the credibility of (a witness, a piece of evidence, or a theory); to lessen the degree of trust to be accorded to (a witness or document). — **discredit**, *n.*

**discreet** (di-skreet), *adj.* Exercising discretion; prudent; judicious; discerning.

**discrete** (di-skreet), *adj.* Individual; separate; distinct.

**discretion** (di-skresh-ən). 1. A public official's power or right to act in certain circumstances according to personal judgment and conscience. — Also termed *discretionary power*.

**administrative discretion.** A public official's or agency's power to exercise judgment in the discharge of its duties.

**judicial discretion.** The exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. — Also termed *legal discretion*.

**prosecutorial discretion.** A prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, plea-bargaining, and recommending a sentence to the court.

2. *Criminal & tort law.* The capacity to distinguish between right and wrong, sufficient to make a person responsible for his or her own actions. 3. Wise conduct and management; cautious discernment; prudence.

**discretion, abuse of.** See ABUSE OF DISCRETION.

**discretionary** (di-skresh-ə-ner-ee), *adj.* (Of an act or duty) involving an exercise of judgment and choice, not an implementation of a hard-and-fast rule. • Such an act by a court may be overturned only after a showing of abuse of discretion.

**discretionary account.** An account that allows a broker access to a customer's funds to purchase and sell securities or commodities for the customer based on the broker's judgment and without first having to obtain the customer's consent to the purchase or sale.

**discretionary act.** A deed involving an exercise of personal judgment and conscience. — Also

termed *discretionary function*. See DISCRETION; ABUSE OF DISCRETION.

**discretionary damages.** See DAMAGES.

**discretionary function.** See DISCRETIONARY ACT.

**discretionary immunity.** See IMMUNITY (1).

**discretionary order.** See ORDER (4).

**discretionary power.** See DISCRETION (1).

**discretionary review.** See REVIEW.

**discretionary trust.** See TRUST.

**discriminant function** (di-skrim-ə-nənt). An IRS method of selecting tax returns to be audited. • The method consists of (1) using a computer program to identify returns with a high probability of error (such as those showing a disproportionate amount of deductible expenses), and (2) having examiners manually review the selected returns to determine which ones should be audited. — Also termed *DIF system*.

**discriminatee** (di-skrim-ə-nə-tee). A person unlawfully discriminated against.

**discrimination**, *n.* 1. The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or handicap. • Federal law, including Title VII of the Civil Rights Act, prohibits employment discrimination based on any one of those characteristics. Other federal statutes, supplemented by court decisions, prohibit discrimination in voting rights, housing, credit extension, public education, and access to public facilities. State laws provide further protections against discrimination. 2. Differential treatment; esp., a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.

"The dictionary sense of 'discrimination' is neutral while the current political use of the term is frequently non-neutral, pejorative. With both a neutral and a non-neutral use of the word having currency, the opportunity for confusion in arguments about racial discrimination is enormously multiplied. For some, it may be enough that a practice is called discriminatory for them to judge it wrong. Others may be mystified that the first group condemns the practice without further argument or inquiry. Many may be led to the false sense that they have

actually made a moral argument by showing that the practice discriminates (distinguishes in favor of or against). The temptation is to move from 'X distinguishes in favor of or against' to 'X discriminates' to 'X is wrong' without being aware of the equivocation involved." Robert K. Fullinwider, *The Reverse Discrimination Controversy* 11-12 (1980).

**age discrimination.** Discrimination based on age. • Federal law prohibits age discrimination in employment against people who are age 40 or older.

**gender discrimination.** See *sex discrimination*.

**invidious discrimination** (in-vid-ee-əs). Discrimination that is offensive or objectionable, esp. because it involves prejudice or stereotyping.

**racial discrimination.** Discrimination based on race.

**reverse discrimination.** Preferential treatment of minorities, usu. through affirmative-action programs, in a way that adversely affects members of a majority group. See AFFIRMATIVE ACTION.

**sex discrimination.** Discrimination based on gender, esp. against women. — Also termed *gender discrimination*.

**3.** The effect of state laws that favor local interests over out-of-state interests. • Such a discriminatory state law may still be upheld if it is narrowly tailored to achieve an important state interest. — **discriminate**, *vb.* — **discriminatory**, *adj.* Cf. FAVORITISM.

**discriminatory tariff.** See TARIFF (2).

**discussion.** **1.** The act of exchanging views on something; a debate. **2.** *Civil law.* A creditor's act of exhausting all remedies against the principal debtor before proceeding against the guarantor. See BENEFIT OF DISCUSSION.

**disease.** **1.** A deviation from the healthy and normal functioning of the body <the drug could not be linked to his disease>. **2.** (*pl.*) Special classes of pathological conditions with similar traits, such as having similar causes and affecting similar organs <respiratory diseases> <occupational diseases>. **3.** Any disorder; any depraved condition.

**functional disease.** A disease that prevents, obstructs, or interferes with an organ's special function, without anatomical defect or abnormality in the organ itself.

**industrial disease.** See OCCUPATIONAL DISEASE.

**occupational disease.** See OCCUPATIONAL DISEASE.

**organic disease.** A disease that is caused by an injury to, or lesion or malfunction in, an organ.

**disembarrass**, *vb.* To free from embarrassment; to extricate or disentangle one thing from another.

**disenfranchise** (dis-ən-fran-chīz), *vb.* To deprive (a person) of the right to exercise a franchise or privilege, esp. to vote. — Also termed *disfranchise*.

**disenfranchisement** (dis-ən-fran-chīz-mənt or -fran-chīz-mənt). **1.** The act of depriving a member of a corporation or other organization of a right, as by expulsion. **2.** The act of taking away the right to vote in public elections from a citizen or class of citizens. — Also termed *disfranchisement*.

**disentailing deed.** See DEED.

**disentailing statute** (dis-ən-tayl-ing). A statute regulating or prohibiting disentailing deeds. See *disentailing deed* under DEED.

**disentailment** (dis-ən-tayl-mənt), *n.* The act or process by which a tenant in tail bars the entail on an estate and converts it into a fee simple, thereby nullifying the rights of any later claimant to the fee tail. — **disentail**, *vb.*

**disentitle** (dis-ən-tīt-əl), *vb.* To deprive (someone) of a title or claim <the plaintiff's actions disentitled her from recovering damages>.

**disfacere.** See DIFFACERE.

**disfigurement** (dis-fig-yər-mənt). An impairment or injury to the appearance of a person or thing.

**disfranchise.** See DISENFRANCHISE.

**disfranchisement.** See DISENFRANCHISEMENT.

**disgavel** (dis-gav-əl), *vb.* *Hist.* To convert (gavelkind land) into ordinary freehold land. See GAVELKIND.

**disgorgement**, *n.* The act of giving up something (such as profits illegally obtained) on demand or by legal compulsion. — **disgorge**, *vb.*



**disgrading.** *Hist.* **1.** The act of degrading. **2.** The depriving of an order; the depriving of a dignity.

"Disgrading, or degrading, is when a man having taken upon him a dignity temporal or spiritual, is afterwards thereof deprived, be he knight, clerk or other. Whereof if a clerk be delivered to his ordinary, and cannot clear himself of the offence whereof he is convicted by the jury, he shall be disgraded for it; which is nothing else but the deprivation of him from those orders he hath taken upon him, as priesthood, deaconship, or otherwise. . . . In like manner there is disgrading of a knight . . . . And it is worthy the observation, that by the canon law there are two kinds of disgradings; the one summary, by word only, and the other solemn, by divesting the party disgraded from those ornaments and rites which are the ensigns of his order or degree." *Termes de la Ley* 175-76 (1st Am. ed. 1812).

**disguised dividend.** See *informal dividend* under DIVIDEND.

**disguised installment sale.** See INSTALLMENT SALE.

**disherison** (dis-her-ə-zən). See DISINHERITANCE.

**disheritor** (dis-her-ə-tər or -tor). *Archaic.* A person who deprives someone of an inheritance.

**dishonest act.** See FRAUDULENT ACT.

**dishonor, vb.** **1.** To refuse to accept or pay (a negotiable instrument) when presented. See NOTICE OF DISHONOR; WRONGFUL DISHONOR. **2.** To deface or defile (something, such as a flag). — **dishonor, n.**

**dishonorable discharge.** See DISCHARGE (8).

**disincarcerate, vb.** To release (a person) from jail; to set free.

**disincentive, n.** A deterrent (to a particular type of conduct), often created, intentionally or unintentionally, through legislation <federal tax law creates a disincentive to marriage> <sales taxes provide a disincentive to excessive consumer spending>.

**disinflation.** A period or process of slowing down the rate of inflation. Cf. DEFLATION.

**disinherison** (dis-in-her-ə-zən), *n.* See DISINHERITANCE.

**disinheritance, n.** **1.** The act by which an owner of an estate deprives a would-be heir of the expectancy to inherit the estate. **2.** The state of

being disinherited. — Also termed *disherison*; *disinherison*. — **disinherit, vb.**

**disinter** (dis-in-tər), *vb.* **1.** To exhume (a corpse). **2.** To remove (something) from obscurity. — **disinterment** (dis-in-tər-mənt), *n.*

**disinterested, adj.** Free from bias, prejudice, or partiality; not having a pecuniary interest <a disinterested witness>. — **disinterest, disinterestedness, n.**

**disinterested witness.** See WITNESS.

**disintermediation.** The process of bank depositors' withdrawing their funds from accounts with low interest rates to put them into investments that pay higher returns.

**disinvestment, n.** **1.** The consumption of capital. **2.** The withdrawal of investments, esp. on political grounds. — Also termed (in sense 2) *divestment*. — **disinvest, vb.**

**disjoinder** (dis-joyn-dər). The undoing of the joinder of parties or claims. See JOINDER. Cf. MISJOINDER; NONJOINDER.

**disjuncta** (dis-jəŋk-tə), *n.* [Latin] *Roman & civil law.* Things (usu. words or phrases) that are separated or opposed. — Also spelled *disjuncta*. Cf. CONJUNCTA.

**disjunctim** (dis-jəŋk-təm), *adv.* [Latin] *Roman law.* Separately; severally. ● A condition imposed *disjunctim*, for example, would bind the persons severally, rather than jointly. — Also spelled *disiunctim*. Cf. CONJUNCTIM.

**disjunctive allegation.** See ALLEGATION.

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

**disjunctive denial.** See DENIAL.

**disme** (dīm), *n.* [Law French] A tithe; a tenth part, as in a tithe due the clergy equal to the tenth of all spiritual livings as required by the statute 25 Edw. 3, st. 7. ● This is the Law French equivalent to the Latin *decimae*. Pl. **dismes.** See DECIMAE.

**dismemberment.** *Archaic. Int'l law.* **1.** The disappearance of a country as a result of a treaty or an annexation, whereby it becomes part of one or more other countries. **2.** The reduction of a country's territory by annexation or cession, or the secession of one part. **3.** The extin-

guishment of a country and the creation of two or more new countries from the former country's territory.

**dismiss, vb.** **1.** To send (something) away; specif., to terminate (an action or claim) without further hearing, esp. before the trial of the issues involved. **2.** To release or discharge (a person) from employment. See DISMISSAL.

**dismissal, n.** **1.** Termination of an action or claim without further hearing, esp. before the trial of the issues involved.

**dismissal for failure to prosecute.** See *dismissal for want of prosecution*.

**dismissal for want of equity.** A court's dismissal of a lawsuit on substantive, rather than procedural, grounds, usu. because the plaintiff's allegations are found to be untrue or because the plaintiff's pleading does not state an adequate claim.

**dismissal for want of prosecution.** A court's dismissal of a lawsuit because the plaintiff has failed to pursue the case diligently toward completion. — Abbr. DWOP. — Also termed *dismissal for failure to prosecute*.

**dismissal without prejudice.** A dismissal that does not bar the plaintiff from refileing the lawsuit within the applicable limitations period.

**dismissal with prejudice.** A dismissal, usu. after an adjudication on the merits, barring the plaintiff from prosecuting any later lawsuit on the same claim. • If, after a dismissal with prejudice, the plaintiff files a later suit on the same claim, the defendant in the later suit can assert the defense of *res judicata* (claim preclusion). See RES JUDICATA.

**involuntary dismissal.** A court's dismissal of a lawsuit because the plaintiff failed to prosecute or failed to comply with a procedural rule or court order. Fed. R. Civ. P. 41(b).

**voluntary dismissal.** A plaintiff's dismissal of a lawsuit at the plaintiff's own request or by stipulation of all the parties. Fed. R. Civ. P. 41(a).

**2.** A release or discharge from employment. See DISCHARGE (7).

**dismissal for cause.** A dismissal of a contract employee for a reason that the law or public policy has recognized as sufficient to warrant the employee's removal.

**3. Military law.** A court-martial punishment for an officer, commissioned warrant officer, cadet, or midshipman, consisting of separation from the armed services with dishonor. • A

dismissal can be given only by a general court-martial and is considered the equivalent of a dishonorable discharge. — **dismiss, vb.**

**dismissal compensation.** See SEVERANCE PAY.

**dismissal for cause.** See DISMISSAL (2).

**dismissal for failure to prosecute.** See *dismissal for want of prosecution* under DISMISSAL (1).

**dismissal for want of equity.** See DISMISSAL (1).

**dismissal for want of prosecution.** See DISMISSAL (1).

**dismissal without prejudice.** See DISMISSAL (1).

**dismissal with prejudice.** See DISMISSAL (1).

**dismissed for want of equity.** (Of a case) removed from the court's docket for substantive reasons, usu. because the plaintiff's allegations are found to be untrue or because the plaintiff's pleading does not state an adequate claim. See *dismissal for want of equity* under DISMISSAL (1).

**dismissed for want of prosecution.** (Of a case) removed from the court's docket because the plaintiff has failed to pursue the case diligently toward completion. See *dismissal for want of prosecution* under DISMISSAL (1).

**dismissed without prejudice.** (Of a case) removed from the court's docket in such a way that the plaintiff may refile the same suit on the same claim. See *dismissal without prejudice* under DISMISSAL (1); WITHOUT PREJUDICE.

**dismissed with prejudice.** (Of a case) removed from the court's docket in such a way that the plaintiff is foreclosed from filing a suit again on the same claim or claims. See *dismissal with prejudice* under DISMISSAL (1); WITH PREJUDICE.

**dismission.** *Archaic.* **1.** An act of dismissing <dismission of the jury>. **2.** A removal, esp. from office or position <dismission of the employee>. **3.** A decision that a suit cannot be maintained <dismission of the case>.

**dismortgage.** See REDEMPTION (4).

**disobedient child.** See *incorrigible child* under CHILD.

**disorder.** **1.** A lack of proper arrangement <disorder of the files>. **2.** An irregularity <a disorder in the proceedings>. **3.** A public disturbance; a riot <civil disorder>. **4.** A disturbance in mental or physical health <an emotional disorder> <a liver disorder>.

**disorderly conduct.** See CONDUCT.

**disorderly house.** **1.** A dwelling where people carry on activities that are a nuisance to the neighborhood. **2.** A dwelling where people conduct criminal or immoral activities. • Examples are brothels and drug houses. — Also termed *bawdy house*; *house of prostitution*; *house of ill fame*; *lewd house*.

"The keeping of one type of disorderly house — the bawdy house — is punished because it violates the social interest in maintaining proper standards of morality and decency. . . . As included here a house may be disorderly for other reasons. Any house in which disorderly persons are permitted to congregate, and to disturb the tranquility of the neighborhood by fighting, quarreling, swearing or any other type of disorder, is a disorderly house; and the keeping thereof is a misdemeanor at common law." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 487 (3d ed. 1982).

**disorderly person.** **1.** A person guilty of disorderly conduct. **2.** A person who breaches the peace, order, decency, or safety of the public, as defined by statute.

"Ordinarily, a person who is guilty of disorderly conduct is a 'disorderly person,' but where statutes define 'a disorderly person' and distinguish acts which may constitute the offense of disorderly conduct, the distinction is to be preserved and the different provisions relative to the different offenses particularly followed." 27 C.J.S. *Disorderly Conduct* § 1(1), at 509 (1959).

**disparagare** (di-spar-ə-gair-ee), *vb.* [Law Latin fr. Law French *disparager* "to disparage"] *Hist.* **1.** To disparage. **2.** To bring together unequal persons, as in a marriage between persons of unequal lineage. Cf. PARAGE.

**disparagatio** (di-spar-ə-gay-shee-oh), *n.* [Law Latin] *Hist.* Disparagement in marriage.

**disparagation** (di-spar-ə-gay-shən), *n.* [Law French] *Hist.* **1.** Disparagement. **2.** A marriage below one's station.

**disparage** (di-spar-ij), *vb.* **1.** *Hist.* To connect unequally (e.g., to marry below one's status). **2.** To dishonor (something or someone) by comparison. **3.** To unjustly discredit or detract from the reputation of (another's property, product, or business).

**disparagement** (di-spar-ij-mənt), *n.* A false and injurious statement that discredits or detracts from the reputation of another's property, product, or business. • To recover in tort for disparagement, the plaintiff must prove that the statement caused a third party to take some action resulting in specific pecuniary loss to the plaintiff. — Also termed *injurious falsehood*. — More narrowly termed *slander of title*; *trade libel*; *slander of goods*. Cf. DEFAMATION.

**disparaging instruction.** A jury charge that discredits or defames a party to a lawsuit.

**disparate impact** (dis-pə-rit). The adverse effect of a facially neutral practice (esp. an employment practice) that nonetheless discriminates against persons because of their race, sex, national origin, age, or disability and that is not justified by business necessity. • Discriminatory intent is irrelevant in a disparate-impact claim. — Also termed *adverse impact*.

**disparate treatment.** The practice, esp. in employment, of intentionally dealing with persons differently because of their race, sex, national origin, age, or disability. • To succeed on a disparate-treatment claim, the plaintiff must prove that the defendant acted with discriminatory intent or motive.

**disparity** (di-spar-ə-tee). Inequality; a difference in quantity or quality between two or more things.

**dispatch** (di-spach also dis-pach), *n.* **1.** A prompt sending off of something <a dispatch of the letter agreement>. **2.** A prompt completion of something <dispatch of a business transaction>. **3.** Something quickly sent <the dispatch was mailed>. **4.** *Maritime law.* The required diligence in discharging cargo <dispatch is required on all charters>.

**customary dispatch.** Dispatch that follows the rules, customs, and usages of the port where cargo is discharged.

**quick dispatch.** A speedy dispatch that does not strictly follow the customs of the port, esp. to avoid delays resulting from a crowded wharf.

**5.** *Maritime law.* DISPATCH MONEY.

**dispatch money.** *Maritime law.* An amount paid by a shipowner to a vessel's charterer if the vessel's cargo is unloaded at the port sooner than provided for in the agreement between the charterer and the shipowner. — Also

termed *dispatch*. Cf. *contract demurrage* under DEMURRAGE.

"Some charters contain a provision for 'dispatch money,' which is in the nature of a reward to the charterer for loading or unloading more rapidly than provided for — *i.e.*, in less time than the stipulated 'lay days.' Dispatch, where payable, is usually stated, just as is demurrage, in terms of a rate per day and pro rata part thereof." Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* § 4-8, at 212 (2d ed. 1975).

**dispauper** (dis-paw-pər), *vb.* To disqualify from being a pauper; to deprive (a person) of the ability to sue *in forma pauperis*. See IN FORMA PAUPERIS.

**dispensary** (di-spen-sər-ee), *n.* **1.** A place where drugs are prepared or distributed. **2.** An institution, usu. for the poor, where medical advice and medicines are distributed for free or at a discounted rate.

**dispensation** (dis-pen-say-shən). An exemption from a law, duty, or penalty; permission to do something that is ordinarily forbidden.

**dispersonare** (dis-pər-sə-nair-ee), *vb.* [Latin] *Hist.* To scandalize, disparage, or slander.

**displacement.** **1.** Removal from a proper place or position <displacement of a file> <displacement of an officer>. **2.** A replacement; a substitution <displacement of the lawyer with another>. **3.** A forced removal of a person from the person's home or country, esp. because of war <displacement of refugees>. **4.** A shifting of emotional emphasis from one thing to another, esp. to avoid unpleasant or unacceptable thoughts or tendencies <emotional displacement>.

**display right.** *Copyright.* A copyright holder's exclusive right to show or exhibit a copy of the protected work publicly, whether directly or by technological means. • For example, this right makes it illegal to transmit a copyrighted work over the Internet without permission.

**dispone** (dis-pohn), *vb.* [fr. Middle English *disponen* fr. Old French *disponer* "dispose"] **1.** *Archaic.* To dispose; to arrange. **2.** *Scots law.* To convey, transfer, or otherwise alienate (property).

**disponee.** See ALIENEE.

**dispono** (dis-poh-noh), *vb.* [Latin] *Scots law.* To grant or convey (land, etc.).

**disponor.** See ALIENOR.

**disposable earnings.** See *disposable income* under INCOME.

**disposable income.** See INCOME.

**disposable portion.** The portion of property that can be willed to anyone the testator chooses.

**disposing capacity.** See *testamentary capacity* under CAPACITY (3).

**Disposing Clause.** The clause of the U.S. Constitution giving Congress the power to dispose of property belonging to the federal government. U.S. Const. art. IV, § 3, cl. 2.

**disposition** (dis-pə-zish-ən), *n.* **1.** The act of transferring something to another's care or possession, esp. by deed or will; the relinquishing of property <a testamentary disposition of all the assets>. **2.** A final settlement or determination <the court's disposition of the case>.

**ambulatory disposition.** A judgment or sentence that is subject to amendment or revocation.

**3.** Temperament or character; personal makeup <a surly disposition>. — **dispose**, *vb.* — **dispositive**, *adj.*

**disposition hearing.** See HEARING.

**disposition without a trial.** The final determination of a criminal case without a trial on the merits, as when a defendant pleads guilty or admits sufficient facts to support a guilty finding without a trial.

**dispositive** (dis-pəz-ə-tiv), *adj.* Being a deciding factor; (of a fact or factor) bringing about a final determination.

**dispositive clause.** *Scots law.* In a deed, the clause of conveyance by which the grantor directs how to dispose of the property.

**dispositive fact.** See FACT.

**dispositive treaty.** See TREATY.

**dispossess** (dis-pə-zes), *vb.* To oust or evict (someone) from property. See DISPOSSESSION.

**dispossession** (dis-pə-zesh-ən), *n.* Deprivation of, or eviction from, possession of property; ouster.

**dispossessor.** A person who dispossesses.

**dispossess proceeding.** A summary procedure initiated by a landlord to oust a defaulting tenant and regain possession of the premises. See FORCIBLE ENTRY AND DETAINER.

**disprove, vb.** To refute (an assertion); to prove (an allegation) false.

**dispunishable, adj. Hist.** (Of an offense) not punishable; not answerable.

**disputable presumption.** See *rebuttable presumption* under PRESUMPTION.

**disputatio fori** (dis-pyoo-tay-shee-oh for-i), *n.* [Latin] *Roman law.* Argument before a court; the practice of legal advocacy.

**dispute, n.** A conflict or controversy, esp. one that has given rise to a particular lawsuit. — **dispute, vb.**

**major dispute.** *Labor law.* Under the Railway Labor Act, a disagreement about basic working conditions, often resulting in a new collective-bargaining agreement or a change in the existing agreement. • Under the Act, two classes of disputes — major and minor — are subject to mandatory arbitration. 45 USCA § 155. — Also termed *new-contract dispute*.

**minor dispute.** *Labor law.* Under the Railway Labor Act, a disagreement about the interpretation or application of a collective-bargaining agreement, as opposed to a disagreement over the formation of a new agreement. 45 USCA § 155.

**disqualification, n.** 1. Something that makes one ineligible; esp., a bias or conflict of interest that prevents a judge or juror from impartially hearing a case, or that prevents a lawyer from representing a party.

**vicarious disqualification.** Disqualification of all the lawyers in a firm or in an office because one of the lawyers is ethically disqualified from representing the client at issue. — Also termed *imputed disqualification*.

"In general, disqualification of a lawyer from representation, at least in multiple client-conflict scenarios, means disqualification of that lawyer's entire firm from the same representation. When a lawyer has been exclusively or chiefly responsible for the representation of a client

and that lawyer changes jobs, there is little question but that the imputed-disqualification rule will apply to disqualify the new firm from representing the opponent of the first client. But because lawyers often work for large organizations, . . . a question may arise about the application of the imputation rule when a lawyer has left employment . . . . If the lawyer had little or no responsibility in the first organization for the representation or if the lawyer can be effectively shielded from the representation in the new organization, or both, there may be no useful purpose served by imputing the lawyer's disqualification to the new organization . . . ." James E. Moliterno & John M. Levy, *Ethics of the Lawyer's Work* 151 (1993).

2. The act of making ineligible; the fact or condition of being ineligible. — **disqualify, vb.** Cf. RECUSAL.

**disrate, vb.** To reduce to a lower rank; esp., to reduce a ship or petty officer's rank.

**disrationare** (dis-ray-shee-ə-nair-ee), *n.* [Law Latin fr. Law French *desreigner* "to deraign"] *Hist.* To prove; to establish a title.

**disregarding the corporate entity.** See PIERCING THE CORPORATE VEIL.

**disrepair.** A state of being in need of restoration after deterioration or injury.

**disrepute.** A loss of reputation; dishonor.

**disruptive conduct.** See CONDUCT.

**disseise** (dis-seez), *vb.* To wrongfully deprive (a person) of the freehold possession of property.

**disseisee** (dis-see-zee). A person who is wrongfully deprived of the freehold possession of property. — Also termed *disseisitus*.

**disseisin** (dis-see-zin), *n.* The act of wrongfully depriving someone of the freehold possession of property; DISPOSSESSION. — Also spelled *disseizin*.

**fresh disseisin.** The right at common law of a person disseised of land to forcefully eject the disseisor from the land without resort to law, as long as the ejection occurred soon after the disseisin.

**disseisitrix.** See DISSEISORESS.

**disseisitus.** See DISSEISEE.

**disseisor** (dis-see-zər or -zər). A person who wrongfully deprives another of the freehold possession of property.

**disseisoress** (dis-see-zər-is). *Hist.* A female disseisor. — Also termed *disseisatrix*.

**dissemble** (di-sem-bəl), *vb.* **1.** *Archaic.* To physically disguise <to dissemble by wearing a mask>. **2.** To give a false impression about (something); to cover up (something) by deception <to dissemble the facts>.

**dissensus** (di-sen-səs), *n.* [Latin “disagreement”] *Roman law.* A mutually agreed annulment of a contractual obligation; an undoing of the *consensus* that created the obligation.

**dissent** (di-sent), *n.* **1.** A disagreement with a majority opinion, esp. among judges. **2.** See *dissenting opinion* under OPINION (1). **3.** A withholding of assent or approval. — **dissent** (di-sent), *vb.*

**dissent and appraisal, right of.** See APPRAISAL REMEDY.

**dissenters' right.** See APPRAISAL REMEDY.

**dissentiente** (di-sen-shee-en-tee). [Latin] Dissenting. • When used with a judge's name, it indicates a dissenting opinion.

**dissenting opinion.** See OPINION (1).

**dissignare** (di-sig-nair-ee), *vb.* [Law Latin] To break open a seal.

**dissipation.** The use of an asset for an illegal or inequitable purpose, such as a spouse's use of community property for personal benefit when a divorce is imminent.

**dissolute, adj.** (Of a person or thing) loosed from restraint; wanton; devoted to pleasure <dissolute person> <a dissolute lifestyle>.

**dissolution** (dis-ə-loo-shən), *n.* **1.** The act of bringing to an end; termination. **2.** The cancellation or abrogation of a contract, with the effect of annulling the contract's binding force and restoring the parties to their original positions. See RESCISSION. **3.** The termination of a corporation's legal existence by expiration of its charter, by legislative act, by bankruptcy, or by other means; the event immediately preceding the liquidation or winding-up process.

**de facto dissolution.** The termination and liquidation of a corporation's business, esp. because of an inability to pay its debts.

**involuntary dissolution.** The termination of a corporation administratively (for failure to file reports or pay taxes), judicially (for abuse of corporate authority, management deadlock, or failure to pay creditors), or through involuntary bankruptcy.

**voluntary dissolution.** A corporation's termination initiated by the board of directors and approved by the shareholders.

**4.** The termination of a previously existing partnership upon the occurrence of an event specified in the partnership agreement, such as a partner's withdrawal from the partnership. Cf. WINDING UP. — **dissolve, vb.**

**dissolution bond.** See *discharging bond* under BOND (2).

**dissolution of marriage.** See DIVORCE.

**dissolving condition.** See *resolutive condition* under CONDITION (2).

**dissuade, vb.** To persuade (someone) not to do something <to dissuade the expert from testifying>.

**distincte et aperte** (dis-tingk-tee et ə-pər-tee). [Law Latin] Distinctly; openly. • This phrase was formerly used in writs of error to refer to the return required to be made.

**distinctive name.** See NAME.

**distinctiveness, n.** The quality of a trademarked word, symbol, or device that identifies the goods of a particular merchant and distinguishes them from the goods of others. — **distinctive, adj.**

**distinguish, vb.** **1.** To note a significant factual, procedural, or legal difference in (an earlier case), usu. to minimize the case's precedential effect or to show that it is inapplicable <the lawyer distinguished the cited case from the case at bar>.

“In practice, courts do not concede to their predecessors the power of laying down very wide rules; they reserve to themselves the power to narrow such rules by introducing into them particular facts of the precedent case that were treated by the earlier court as irrelevant. This process is known as ‘distinguishing.’” John Salmond, *Jurisprudence* 192 (Glanville L. Williams ed., 10th ed. 1947).

**2.** To make a distinction <the court distinguished between willful and reckless conduct>. — **distinction**, *n.*

**distinguishable**, *adj.* (Of a case or law) different from, and thereby not controlling or applicable in, a given case or situation.

**distinguishing mark.** A physical indication or feature that identifies or delineates one person or thing from another <the voting ballots contained distinguishing marks so that they could not be counted>. See **DISTINCTIVENESS**.

**distracted**, *adj.* **1.** (Of a person) not concentrating. **2.** (Of a person) disordered.

**distractio** (di-strak-shee-oh), *n.* [Latin fr. *distrahere* “to draw apart”] *Roman law.* A separation or division into parts; an alienation or sale, such as a creditor’s sale of a pledge.

**distractio bonorum** (di-strak-shee-oh bæ-nor-əm), *n.* [Latin “the sale of goods”] *Roman law.* A curator’s sale of the property of an insolvent estate to satisfy creditors’ claims.

**distractio doctrine.** The rule that a plaintiff may not be guilty of contributory negligence if the plaintiff’s attention was diverted from a known danger by a sufficient cause. See *contributory negligence* under **NEGLIGENCE**.

**distractio pignoris** (di-strak-shee-oh pig-nor-is), *n.* [Latin “the sale of something pledged”] *Roman law.* A creditor’s sale of something pledged or hypothecated to obtain satisfaction on a debt.

**distrahere** (dis-tray-hæ-ree), *vb.* [fr. Latin *dis* “apart” + *trahere* “to draw”] To draw apart; to sell; to dissolve, as in a contract.

**distrain**, *vb.* **1.** To force (a person, usu. a tenant), by the seizure and detention of personal property, to perform an obligation (such as paying overdue rent). **2.** To seize (goods) by distress, a legal remedy entitling the rightful owner to recover property wrongfully taken. — **distrain**, *n.*

**distrainee.** One who is, or whose property is, distrained.

**distrainer.** Someone who seizes property under a distress. — Also spelled *distrainor*.

**distrain**. See **DISTRESS**.

**distress**, *n.* **1.** The seizure of another’s property to secure the performance of a duty, such as the payment of overdue rent. **2.** The legal remedy authorizing such a seizure; the procedure by which the seizure is carried out.

**distress damage feasant.** The right to seize animals or inanimate chattels that are damaging or encumbering land and to keep them as security until the owner pays compensation.

**distress infinite.** A distress that the sheriff can repeat from time to time to enforce the performance of something, as in summoning a juror or compelling a party to appear in court. • The goods must be returned after the delinquent person performs his or her duty.

“And, for the most part it is provided that distresses be reasonable and moderate; but, in the case of distress for fealty or suit of court, no distress can be unreasonable, immoderate, or too large: for this is the only remedy to which the party aggrieved is entitled, and therefore it ought to be such as is sufficiently compulsory; and, be it of what value it will, there is no harm done, especially as it cannot be sold or made away with, but must be restored immediately on satisfaction made. A distress of this nature, that has no bounds with regard to its quantity, and may be repeated from time to time until the stubbornness of the party is conquered, is called a *distress infinite*.” 3 William Blackstone, *Commentaries on the Laws of England* 231 (1768).

**grand distress.** *Hist.* In a *quare impedit* action in which the defendant has failed to appear, a distress of the defendant’s goods and lands to compel the defendant’s appearance.

**second distress.** A supplementary distress allowed when goods seized under the first distress are insufficient to satisfy the claim.

**3.** The property seized. — Also termed *distrain*.

**distressed goods.** See **GOODS**.

**distressed property.** See **PROPERTY**.

**distress sale.** See **SALE**.

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

**distributable net income.** The amount of distributions from estates and trusts that the beneficiaries will have to include in income.

**distribute** (di-strib-yoot), *vb.* **1.** To apportion; to divide among several. **2.** To arrange by class or order. **3.** To deliver. **4.** To spread out; to disperse.

**distributee** (di-strib-yoo-tee), *n.* **1.** A beneficiary entitled to payment. **2.** An heir, esp. one who obtains personal property from the estate of an intestate decedent.

**legal distributee.** A person whom the law would entitle to take property under a will.

**distribution**, *n.* **1.** At common law, the passing of personal property to an intestate decedent's heirs. Cf. DESCENT (1). **2.** The act or process of apportioning or giving out. — **distribute**, *vb.*

**controlled-securities-offering distribution.** See *securities-offering distribution* (1).

**corporate distribution.** A corporation's direct or indirect transfer of money or other property, or incurring of indebtedness to or for the benefit of its shareholders, such as a dividend payment out of current or past earnings.

**liquidating distribution.** A distribution of trade or business assets by a dissolving corporation or partnership. — Also termed *distribution in liquidation*.

**nonliquidating distribution.** A distribution of assets by a corporation or partnership that is not going out of business, such as a distribution of excess capital not necessary for current operations.

**partnership distribution.** A partnership's payment of cash or property to a partner out of earnings or as an advance against future earnings, or a payment of the partners' capital in partial or complete liquidation of the partner's interest.

**probate distribution.** The judicially supervised apportionment and division — usu. after the payment of debts and charges — of assets of an estate among those legally entitled to share.

**secondary distribution.** **1.** The public sale of a large block of previously issued stock. — Also termed *secondary offering*. See OFFERING. **2.** The sale of a large block of stock after the close of the exchange.

**securities-offering distribution.** **1.** An issuer's public offering of securities through a formal underwriting agreement with a broker-dealer. — Also termed *controlled-securities-offering distribution*. **2.** An issuer's public offering of securities on an informal basis, with or without brokers. — Also termed *uncontrolled-securities-offering distribution*.

**trust distribution.** The cash or other property paid or credited to a trust beneficiary.

**uncontrolled-securities-offering distribution.** See *securities-offering distribution* (2).

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

**distribution in kind.** A transfer of property in its original state, such as a distribution of land instead of the proceeds of its sale.

**distribution in liquidation.** See *liquidating distribution* under DISTRIBUTION.

**distribution right.** *Copyright.* A copyright holder's exclusive right to sell, lease, or otherwise transfer copies of the protected work to the public. See FIRST-SALE DOCTRINE.

**distributive** (di-strib-yə-tiv), *adj.* Of or relating to apportioning, dividing, and assigning in separate items or shares; of or relating to distributing.

**distributive clause.** A will or trust provision governing the distribution of income and gifts.

**distributive deviation.** A trustee's transfer of principal to the income beneficiaries when the income is inadequate to carry out the settlor's scheme of distribution, and without the permission of a remainderman who owns a future interest in the principal. • This practice is usu. impermissible except when life-income beneficiaries need the money to buy necessities.

**distributive finding.** A jury's decision partly in favor of one party and partly in favor of another.

**distributive justice.** See JUSTICE (1).

**distributive share.** **1.** The share that an heir or beneficiary receives from the legal distribution of an estate. **2.** The portion (as determined in the partnership agreement) of a partnership's income, gain, loss, or deduction that is passed through to a partner and reported on the partner's tax return. **3.** The share of assets or liabilities that a partner or partner's estate acquires after the partnership has been dissolved.

**distributor.** A wholesaler, jobber, or other manufacturer or supplier that sells chiefly to retailers and commercial users.

**distributorship.** A franchise held by a person or company who sells merchandise, usu. in a specific area to individual customers <a car distributorship>.

**dual distributorship.** A business structure in which one party operates a branch or deal-



ership on the same market level as one or more of its customers.

**district. 1.** A territorial area into which a country, state, county, municipality, or other political subdivision is divided for judicial, political, electoral, or administrative purposes. **2.** A territorial area in which similar local businesses or entities are concentrated, such as a theater district or an arts district. — Abbr. D.

**assessment district. Tax.** A usu. municipal subdivision in which separate assessments of taxable property are made.

**congressional district.** A geographical unit of a state from which one member of the U.S. House of Representatives is elected.

**floterial district** (floh-teer-ee-əl). A legislative district that includes several separate districts or political subdivisions that independently would not be entitled to additional representation, but whose conglomerate population entitles the district to another seat in the legislative body being apportioned.

**land district.** A federally created state or territorial division containing a U.S. land office that manages the disposition of the district's public lands.

**legislative district.** A geographical subdivision of a state for the purpose of electing legislative representatives.

**metropolitan district.** A special district, embracing parts of or entire cities and towns in a metropolitan area, created by a state to provide unified administration of one or more common services, such as water supply or public transportation.

**municipal utility district.** A publicly owned corporation, or a political subdivision, that provides the public with a service or services, such as water, electricity, gas, transportation, or telecommunications. — Abbr. MUD. — Also termed *public utility district*.

**school district.** See SCHOOL DISTRICT.

**special district.** A political subdivision that is created to bypass normal borrowing limitations, to insulate certain activities from traditional political influence, to allocate functions to entities reflecting particular expertise, and to provide a single service within a specified area <a transit authority is a special district>.

**district attorney.** A public official appointed or elected to represent the state in criminal cases in a particular judicial district; PROSECUTOR (1). — Abbr. D.A. — Also termed *public prosecu-*

*tor*; *state's attorney*; *prosecuting attorney*. Cf. UNITED STATES ATTORNEY.

**district clerk.** See CLERK (2).

**district court.** See COURT.

**district-court magistrate.** See MAGISTRATE.

**districting.** The act of drawing lines or establishing boundaries between geographic areas to create voting districts. See APPORTIONMENT; GERRYMANDERING.

**districtio** (di-strik-shee-oh), *n.* [Law Latin “distrain”] *Hist.* **1.** A distress; a distraint. **2.** The right of distress. **3.** Something (such as a good or animal) that can be distrained. **4.** A territory within which distraint can be exercised. **5.** Any compulsory proceeding.

**district judge.** See JUDGE.

**District of Columbia.** The seat of the U.S. government, situated on the Potomac River between Maryland and Virginia. ● Though neither a state nor a territory, it is constitutionally subject to the exclusive jurisdiction of Congress. — Abbr. D.C.

**district parish.** See PARISH.

**district school.** See SCHOOL.

**distringas** (di-string-gas), *n.* [Law Latin “you are to distrain”] **1.** A writ ordering a sheriff to distrain a defendant's property to compel the defendant to perform an obligation, such as appearing in court or giving up a chattel to a plaintiff awarded judgment in a detinue action. **2.** A writ ordering the sheriff to seize jurors' goods to compel them to appear for jury service. **3.** An equitable process of execution against a corporate body that has refused to obey a summons. **4. Hist.** An order, issued initially from the Court of Exchequer, then the Court of Chancery, and finally the High Court of Justice, for someone interested in purchasing Bank of England stock, temporarily restraining the bank officers from transferring the stock or paying a dividend on it. ● This proceeding was used to prevent fraudulent dealing by a trustee or other stockholder. The relief was only temporary, and if the bank received a request from the stockholder to permit a stock deal, the bank had to warn the distringing party to promptly obtain a restraining order or a writ of injunction, or else the stock deal would go through.

***distringas juratores*** (di-string-gas joor-ə-tor-eez), *n.* [Law Latin “you are to distrain the jurors”] *Hist.* A writ ordering the sheriff to distrain jurors or their property to compel their appearance before the judges of assize and *nisi prius* for jury duty on an appointed day.

***distringas nuper vicecomitem*** (di-string-gas n[y]oo-pər vi-see-kom-i-təm), *n.* [Law Latin “you are to distrain the late sheriff”] *Hist.* **1.** A writ ordering a sheriff’s successor to distrain the former sheriff’s property until the former sheriff brings in a defendant to answer the plaintiff’s charge, sells goods attached under a *feri facias*, or performs some other obligation that the former sheriff should have completed while still in office. **2.** A writ calling on an ex-sheriff to account for the proceeds taken in execution.

***distringas vice comitem*** (di-string-gas vi-see-kom-i-təm), *n.* [Law Latin “you are to distrain the sheriff”] *Hist.* A *distringas* writ ordering the coroner to distrain the sheriff for not executing a writ of *venditioni exponas*. See VENDITIONI EXPONAS.

***distringere*** (di-strinj-ə-ree), *vb.* [Latin] To distrain; to coerce; to compel. ● The first-person form of the verb was *distringo* (“I distrain”).

**disturbance**, *n.* **1.** An act causing annoyance or disquiet, or interfering with a person’s pursuit of a lawful occupation or the peace and order of a neighborhood, community, or meeting. **2.** At common law, a wrong done to an incorporeal hereditament by hindering the owner’s enjoyment of it.

**disturbance of common.** At common law, a wrongful interference with, or impediment to, another’s right to commonable property, such as a wrongful fencing or surcharge on the common.

“The disturbance of *common* comes next to be considered; where any act is done, by which the right of another to his common is incommoded or diminished. This may happen, in the first place, where one who hath no right of common, puts his cattle into the land; and thereby robs the cattle of the commoners of their respective shares of the pasture. Or if one, who hath a right of common, puts in cattle which are not commonable, as hogs and goats; which amounts to the same inconvenience” 3 William Blackstone, *Commentaries on the Laws of England* 237 (1768).

**disturbance of franchise.** At common law, a wrongful interference with a liberty or privilege.

“Disturbance of *franchises* happens when a man has the franchise of holding a court-leet, of keeping a fair or market, of free-warren, of taking toll, of seizing waifs or estrays, or (in short) any other species of franchise whatsoever, and he is disturbed or incommoded in the lawful exercise thereof.” 3 William Blackstone, *Commentaries on the Laws of England* 236 (1768).

**disturbance of patronage.** A wrongful obstruction of a patron from presenting a clerk to a benefice.

**disturbance of public meetings.** The unlawful interference with the proceedings of a public assembly.

“Generally speaking, any conduct which, being contrary to the usages of the particular sort of meeting and class of persons assembled, interferes with its due progress and services, or is annoying to the congregation in whole or in part, is a disturbance; and a meeting may be said to be ‘disturbed’ when it is agitated, aroused from a state of repose, molested, interrupted, hindered, perplexed, disquieted, or diverted from the object of the assembly.” 27 C.J.S. *Disturbance of Public Meetings* § 1, at 817 (1959).

**disturbance of public worship.** Any conduct that interferes with the peaceful, lawful assembly of people for religious exercises.

**disturbance of tenure.** A stranger’s ouster of a tenant from a tenancy. ● The tenant’s lord could recover damages for the ouster.

**disturbance of the peace.** See BREACH OF THE PEACE.

**disturbance of ways.** An impediment to a person’s lawful right-of-way, as by an obstruction.

**disturber.** See IMPEDITOR.

**disturbing the peace.** See BREACH OF THE PEACE.

**divadiatus.** See DEVADIATUS.

**diverse**, *adj.* **1.** Of or relating to different types <the attorney handles diverse cases ranging from probate matters to criminal law>. **2.** (Of a person or entity) having a different citizenship from the party or parties on the other side of the lawsuit <the parties are diverse because the plaintiffs are citizens of Illinois and the defendant is a New York citizen>. See *diversity jurisdiction* under JURISDICTION. **3.** (Of a group of people) including people of different races, sexes, nationalities, and cultural backgrounds <the school has a diverse student body>.

**diversification**, *n.* **1.** A company's movement into a broader range of products, usu. by buying firms already serving the market or by expanding existing operations <the soft-drink company's diversification into the potato-chip market has increased its profits>. **2.** The act of investing in a wide range of companies to reduce the risk if one sector of the market suffers losses <the prudent investor's diversification of the portfolio among 12 companies>. — **diversify**, *vb.*

**diversified holding company.** See COMPANY.

**diversified investment company.** See COMPANY.

**diversion**, *n.* **1.** A deviation or alteration from the natural course of things; esp., the unauthorized alteration of a watercourse to the prejudice of a lower riparian owner, or the unauthorized use of funds. **2.** A distraction or pastime. — **divert**, *vb.*

**diversion program.** A program that refers certain criminal defendants before trial to community programs on job training, education, and the like, which if successfully completed may lead to the dismissal of the charges. — Also termed *pretrial diversion*; *pretrial intervention*. Cf. *deferred judgment* under JUDGMENT.

**Diversité des courts** (di-vər-si-tay də koort). [Law French] A treatise on courts written in French, supposedly by Fitzherbert during the reign of Edward III. • It was printed initially in 1525 and again in 1534. — Also spelled *Diversité des courtes*.

"[F]or in the ancient treatise, entitled *diversité des courtes* ... we have a catalogue of the matters of conscience then cognizable by *subpoena* in chancery, which fall within a very narrow compass." 3 William Blackstone, *Commentaries on the Laws of England* 53 (1768).

**diversity**, *n.* **1.** DIVERSITY OF CITIZENSHIP. **2.** *Hist.* A plea that a prisoner to be executed is not the one that was accused and found guilty, at which point a jury is immediately impaneled to try the issue of the prisoner's identity.

**diversity**, *adj.* Of, relating to, or involving diversity jurisdiction <a diversity case>.

**diversity jurisdiction.** See JURISDICTION.

**diversity of citizenship.** A basis for federal-court jurisdiction that exists when (1) a case is between citizens of different states, or between a citizen of a state and an alien, and (2) the

matter in controversy exceeds a specific value (now \$75,000). 28 USCA § 1332. • For purposes of diversity jurisdiction, a corporation is considered a citizen of both the state of incorporation and the state of its principal place of business. An unincorporated association, such as a partnership, is considered a citizen of each state of which at least one of its members is a citizen. — Often shortened to *diversity*. See *diversity jurisdiction* under JURISDICTION.

**complete diversity.** In a multiparty case, diversity between both sides to the lawsuit so that all plaintiffs have different citizenship from all defendants. • Complete diversity must exist for a federal court to have diversity jurisdiction over the matter. The rule of complete diversity was first laid down by Chief Justice Marshall in *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806).

**manufactured diversity.** Improper or collusively created diversity of citizenship for the sole or primary purpose of creating federal jurisdiction. • Manufactured diversity is prohibited by 28 USCA § 1359.

**dives costs** (di-veez), *n.* Ordinary court costs granted to a successful party, as distinguished from limited costs (such as out-of-pocket costs) allowed to a successful pauper who sued or defended *in forma pauperis*. • The term derives from the name of Dives, the supposed name of the rich man in the parable of the rich man and Lazarus (*Luke* 16:19–31). *Dives* is a Latin word meaning "rich."

**divestitive fact.** See FACT.

**divestiture** (di-ves-tə-cher or di-), *n.* **1.** The loss or surrender of an asset or interest. **2.** A court order to a party to dispose of assets or property. **3.** *Antitrust.* A court order to a defendant to rid itself of property, securities, or other assets to prevent a monopoly or restraint of trade. — **divest**, *vb.*

**divestment**, *n.* **1.** *Property.* The cutting short of an interest in property before its normal termination. **2.** The complete or partial loss of an interest in an asset, such as land or stock. **3.** DISINVESTMENT (2). — **divest**, *vb.*

**divide-and-pay-over rule.** *Wills & estates.* The principle that if the only provisions in a testamentary disposition are words ordering that payment be made at some time after the testator's death, time will be of the essence and the interest is future and contingent rather than vested and immediate.

**divided court.** An appellate court whose opinion or decision in a particular case is not unanimous, esp. when the majority is slim, as in a 5-to-4 decision of the U.S. Supreme Court.

**divided custody.** See CUSTODY (2).

**divided-damages rule.** *Maritime law.* The obsolete principle that when two parties are jointly liable to a third party for a tort, each party is liable for only half the damages. ● The courts now apply a comparative-negligence standard.

“For over a hundred years admiralty law embraced the rule of ‘divided damages’ in collision cases . . . . In 1975, in *United States v. Reliable Transfer Co.*, 421 U.S. 397, 95 S.Ct. 1708, 44 L.Ed.2d 251 (1975), the Supreme Court jettisoned that inequitable and illogical rule in favor of proportionate allocation of fault among joint-tortfeasors in collision cases. Each vessel now is liable to the other offending vessel in contribution for that part of the total damages proportionate to its fault, and is liable for its per capita (virile) share only when the respective faults of the vessels are equal, or when proportionate fault can not be ascertained.” Frank L. Maraist, *Admiralty in a Nutshell* 165 (2d ed. 1988).

**dividend.** A portion of a company’s earnings or profits distributed pro rata to its shareholders, usu. in the form of cash or additional shares.

**accumulated dividend.** A dividend that has been declared but not yet paid. — Also termed *accrued dividend*.

**accumulative dividend.** See *cumulative dividend*.

**asset dividend.** A dividend paid in the form of property, usu. the company’s product, rather than in cash or stock. — Also termed *property dividend*.

**bond dividend.** A dividend in which a shareholder receives a bond instead of scrip, property, or money.

**capital-gain dividend.** A taxable payment to a mutual-fund shareholder. ● The payment is the shareholder’s proportional share of the net capital gains realized by securities sales from the mutual fund’s portfolio. — Also termed *capital-gain distribution*.

**cash dividend.** A dividend paid to shareholders in the form of money.

**consent dividend.** A dividend that is not actually paid to the shareholders, but is taxed to the shareholders and increases the basis in their stock investment. ● A corporation declares a consent dividend to avoid or reduce an accumulated-earnings or personal-holding-company penalty tax.

**constructive dividend.** A taxable benefit derived by a shareholder from the corporation

even though the benefit was not designated a dividend. ● Examples include excessive compensation, bargain purchases of corporate property, and shareholder use of corporate property.

**cumulative dividend.** A dividend that grows from year to year when not paid. ● A cumulative dividend is usu. on preferred shares, and it must be paid in full before common shareholders may receive any dividend. If the corporation does not pay a dividend in a particular year or period, it is carried over to the next year or period and must be paid before the common shareholders receive any payment. — Also termed *accumulative dividend*. Cf. *noncumulative dividend*.

**deferred dividend.** A dividend that is declared, but is payable at a future date.

**deficiency dividend.** A dividend paid to reduce or avoid personal-holding-company tax in a prior year.

**disguised dividend.** See *informal dividend*.

**extraordinary dividend.** A dividend paid in addition to a regular dividend, usu. because of exceptional corporate profits during the dividend period. — Also termed *extra dividend*; *nonrecurring dividend*; *special dividend*.

**fixed-return dividend.** A dividend that is constant throughout the investment’s life.

**informal dividend.** A payment of salary, rent, interest, or the like to or for a shareholder as a substitute for a dividend. — Also termed *disguised dividend*.

**liability dividend.** See *scrip dividend*.

**liquidation dividend.** A dividend paid to a dissolving corporation’s shareholders, usu. from the capital of the corporation, upon the decision to suspend all or part of its business operations. — Also termed *liquidating dividend*.

**nimble dividend.** A dividend paid out of current earnings when there is a deficit in the account from which dividends may be paid. ● Some state statutes prohibit nimble dividends.

**noncumulative dividend.** A dividend that does not accrue for the benefit of a preferred shareholder if there is a passed dividend in a particular year or period. Cf. *cumulative dividend*.

**nonrecurring dividend.** See *extraordinary dividend*.

**passed dividend.** A dividend that is not paid when due by a company that has a history of paying regular dividends.

**preferred dividend.** A dividend paid to preferred shareholders, who are generally paid a fixed amount and take priority over common shareholders.

**property dividend.** See *asset dividend*.

**reinvested dividend.** A dividend that is used to purchase additional shares in the corporation, instead of being taken in cash by the shareholder. See DIVIDEND-REINVESTMENT PLAN.

**scrip dividend.** A dividend paid in certificates entitling the holder to ownership of capital stock to be issued in the future. • This type of dividend usu. signals that the corporation's cash flow is poor. — Also termed *liability dividend*.

**special dividend.** See *extraordinary dividend*.

**stock dividend.** A dividend paid in stock expressed as a percentage of the number of shares already held by a shareholder.

**unpaid dividend.** A declared but unpaid dividend.

**year-end dividend.** An extra dividend paid at the end of the fiscal year depending on the amount of the profits.

**dividenda** (div-i-den-də), *n.* [fr. Latin *dividere* "to divide"] *Hist.* Something to be divided; an indenture.

**dividend addition.** An amount added to the face value of a life-insurance policy and purchased by using a dividend as a single premium payment.

**dividend-credit rule.** The principle that a corporate reserve fund amassed from unpaid dividends on preferred stock must be used to pay subsequent dividends on preferred stock before dividend payments on common stock. — Also termed *cast-iron-pipe doctrine*.

**dividend date.** The date on which a corporation distributes dividends to record owners of stock shares. See *record date* under DATE. Cf. EX-DIVIDEND DATE.

**dividend income.** See INCOME.

**dividend-payout ratio.** A profitability ratio computed by dividing annual dividends per share by earnings per share.

**dividend preference.** The right of a holder of preferred shares to receive a dividend before

the company pays dividends to holders of common shares. See *preferred stock* under STOCK.

**dividend-received deduction.** A deduction allowed to a corporate shareholder for dividends received from a domestic corporation. IRC (26 USCA) §§ 243–247.

**dividend-reinvestment plan.** A company-sponsored program that enables common shareholders to reinvest their dividends, plus additional voluntary payments, into shares of the entity's common stock, usu. with no sales charge, and sometimes at a discount from the stock's market price.

**dividend yield.** The current annual dividend divided by the market price per share.

**divinare** (div-i-nair-ee), *vb.* [Latin] To foretell or divine (something).

**divine law.** God's law, as distinguished from human law. See NATURAL LAW.

**divine right of kings.** The political theory that the sovereign is a direct representative of God and has the right to rule absolutely by virtue of birth.

"Divine Right of Kings . . . It originated in the mediaeval concept of God's award of temporal power to civil rulers and spiritual power to the Church. It was claimed by the earlier Stuart kings in England, and explains many of their attitudes in the struggle which developed between them and Parliament for political sovereignty . . . The principle of divine right was submerged during the Commonwealth but re-emerged under James II, but disappeared with his flight and abdication." David M. Walker, *The Oxford Companion to Law* 366 (1980).

**divine service.** **1. Hist.** A feudal tenure in which the tenants were obligated to perform special divine functions, such as singing at a certain number of masses or distributing a specified amount in alms. **2.** A public worship service.

**divisa** (di-vi-zə), *n.* [fr. French *diviser* "to divide"] **1.** A division, as of goods by a will; a devise. **2.** A boundary of neighboring lands. **3.** A court held on such a boundary to settle the tenants' disputes.

**divisible contract.** See *severable contract* under CONTRACT.

**divisible divorce.** See DIVORCE.

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

**divisim** (di-vi-zəm). [Law Latin] *Hist.* Severally; separately.

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

**divisional court.** See COURT.

**divisional security.** See SECURITY.

**division of fees.** See FEE-SPLITTING.

**division of powers.** The allocation of power between the national government and the states. • Under the Tenth Amendment, powers not delegated to the federal government are reserved to the states or to the people. But today the Tenth Amendment provides only a limited check on Congress's power to regulate the states. Cf. SEPARATION OF POWERS.

**division order.** *Oil & gas.* A sales contract for the purchase of oil or gas, directing the purchaser to pay for the value of the products in the proportions set out in the contract. • The purchaser usu. asks the lessee to provide complete abstracts of title, which the purchaser uses to obtain a title examination and a title opinion. The purchaser then prepares the division order, usu. requiring it to be executed by the operator, the royalty owners, and anyone else with an interest in production. Once the division order is executed and returned to the purchaser, payments begin for the products removed.

**divisum imperium** (di-vi-zəm im-peer-ee-əm), *n.* [Latin "a divided empire"] Divided jurisdiction; alternate jurisdiction, as of courts.

"This main sea begins at the low-water-mark. But between the high-water-mark and the low-water-mark, where the sea ebbs and flows, the common law and admiralty have *divisum imperium*, an alternate jurisdiction; one upon the water, when it is full sea; the other upon the land, when it is an ebb." 1 William Blackstone, *Commentaries on the Laws of England* 107 (1765).

**divorce.** The legal dissolution of a marriage by a court. — Also termed *marital dissolution*; *dissolution of marriage*. Cf. ANNULMENT.

**divisible divorce.** A divorce whereby the marriage itself is dissolved but the issues incident to the divorce, such as alimony, child custody, and visitation, are reserved until a later proceeding. • This type of divorce can be granted when the court has subject-matter jurisdiction but lacks personal jurisdiction over the defendant-spouse. — Also termed *bifurcated divorce*.

**divorce a mensa et thoro** (ay men-sə et thor-oh). [Latin "(divorce) from board and bed"] A partial or qualified divorce by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself. • This type of divorce, abolished in England in 1857, was the forerunner of modern judicial separation. — Also termed *separation a mensa et thoro*; *separation from bed and board*.

"[The Ecclesiastical Courts] grant also what is called a divorce *a mensa et thoro*, or rather what we should call a judicial separation, i.e. they release the parties from the duty of living together on grounds of cruelty or misconduct . . ." William Geldart, *Introduction to English Law* 38 (D.C.M. Yardley ed., 9th ed. 1984).

**divorce a vinculo matrimonii** (ay vingk-yə-loh ma-trə-moh-nee-i). [Latin "(divorce) from the chains of marriage"] A total divorce of husband and wife, dissolving the marriage tie and releasing the parties wholly from their matrimonial obligations. • This type of common-law divorce, which bastardizes any children from the marriage, is granted on grounds that existed before the marriage. In England, the Matrimonial Causes Act of 1857 introduced statutory divorce *a vinculo matrimonii*.

**ex parte divorce** (eks pahr-tee). A divorce proceeding in which only one spouse participates or appears in court.

**foreign divorce.** A divorce obtained outside the state or country in which one spouse resides.

**hotel divorce.** A form of collusive divorce — occurring before widespread passage of no-fault divorce laws — in which the spouses agree to fake an adultery scene to create "fault." Cf. *no-fault divorce*.

"Clearly a lawyer may not originate or participate in a scheme to make it appear to the court that a ground for divorce has occurred when this is not the fact. Such is the case in the so-called 'hotel divorces,' prevalent in jurisdictions where adultery is the only ground for divorce, and based on the principle that intercourse will be presumed from apparently uninhibited opportunity." Henry S. Drinker, *Legal Ethics* 123-24 (1953).

**legislative divorce.** *Hist.* 1. The legal termination of a particular marriage, enacted by the legislature rather than by a court. • Legislative divorces once existed in New England, but now courts perform all divorces. 2. See *parliamentary divorce*.

**limited divorce.** 1. A divorce with no provision that one spouse must provide financial support to the other. 2. Loosely, a legal separation.

**mail-order divorce.** A divorce obtained by parties who are not physically present or domiciled in the jurisdiction purporting to grant the divorce. • Such a divorce is not recognized in the United States because of the absence of the usual bases for jurisdiction.

**Mexican divorce.** A divorce obtained in Mexico by mail order or by the appearance of one spouse who does not have a Mexican domicile. • Neither type is recognized in the United States.

**migratory divorce.** A divorce obtained by a spouse who moves to, or temporarily resides in, another state or country to get the divorce.

**no-fault divorce.** A divorce in which the parties are not required to prove fault or grounds beyond a showing of the irretrievable breakdown of the marriage or irreconcilable differences. • The system of no-fault divorce was adopted throughout the United States during the late 1960s and the 1970s.

**Parliamentary divorce.** A divorce decreed by Parliament or a legislative act, as opposed to a court. — Also termed *legislative divorce*.

**pro-con divorce.** An uncontested divorce granted after only the plaintiff appears at the proceeding (since the defendant contests nothing).

**rabbinical divorce.** A divorce granted under the authority of a rabbi.

**divorce proctor.** A person (such as a guardian) who is appointed to protect the interest of the state or children in a divorce action.

**D.J.** See *district judge* under JUDGE.

**DJIA.** *abbr.* DOW JONES INDUSTRIAL AVERAGE.

**DL/C.** See *documentary letter of credit* under LETTER OF CREDIT.

**DNA identification.** A method of comparing a person's deoxyribonucleic acid (DNA) — a patterned chemical structure of genetic information — with the DNA in a biological specimen (such as blood, tissue, or hair) to determine if the person is the source of the specimen. — Also termed *DNA fingerprinting*; *genetic fingerprinting*. Cf. HLA TEST.

**do** (doh). [Latin] *Hist.* I give. • This phrase was considered the oldest and aptest words of a feoffment and gift.

**dock, n.** **1.** A structure that encloses water, often between two piers, in which ships are received for loading, unloading, safekeeping, or repair. **2.** The part of a warehouse or other building (usu. elevated with oversized doors) at which trucks are received for loading and unloading. **3. English law.** In a criminal court, the enclosure in which the prisoner is placed during trial <it was through his own deliberate choice that Mr. Bourne found himself in the dock at the Old Bailey, charged with a felony>.

**dockage.** A charge for the use of a dock, esp. while a vessel is undergoing repairs.

**docket, n.** **1.** A formal record in which a judge or court clerk briefly notes all the proceedings and filings in a court case <review the docket to determine the filing date>. — Also termed *judicial record*.

**appearance docket.** A list of the parties and lawyers participating in an action, together with a brief abstract of the successive steps in the action.

**judgment docket.** A book that a court clerk keeps for the entry or recordation of judgments, giving official notice of existing judgment liens to interested parties. — Also termed *judgment book*; *judgment file*; *judgment record*; *judgment roll*.

**2.** A schedule of pending cases <the case is third on Monday's trial docket>. — Also termed *court calendar*; *cause list*; *trial calendar*.

**DWOP docket.** A list of cases that the court has set for possible dismissal for want of prosecution. — Also termed *doowop docket*. See *dismissal for want of prosecution* under DISMISSAL (1).

**preferred docket.** A list of cases set for trial, arranged in order of priority. • Criminal cases are, for example, generally given precedence over civil cases on the preferred docket because of the constitutional right to a speedy trial.

**3.** DOCKET CALL <the agreed judgment was signed at the court's uncontested docket call on May 24>. **4.** A written abstract that provides specific information (usu. about something attached); esp., a label <check the docket to determine the goods' destination and value>.

**docket, vb.** **1.** To make a brief entry in the docket of the proceedings and filings in a court case <to docket the filing date>. **2.** To abstract and enter in a book <to docket a judgment>.

**3.** To schedule (a case) for trial or some other event <the case was docketed for a May trial>. See DOCKET, *n.*

**docket call.** A court session in which attorneys (and sometimes parties) appear in court to report the status of their cases. ● For example, they may announce readiness for trial or report the suit's settlement.

**docket fee.** See FEE (1).

**docket number.** A number that the court clerk assigns to a case on the court's docket.

**dockmaster.** *English law.* An officer who directs the mooring and removal of ships to avoid the obstruction of commerce.

**dock receipt.** An interim certificate issued by a maritime shipping company for the delivery of goods at the dock. ● A dock receipt entitles the designated person to receive a bill of lading. — Also termed *dock warrant*. See DOCUMENT OF TITLE.

**dock sale.** See SALE.

**dock warrant.** See DOCK RECEIPT.

**doctor.** **1.** *Hist.* In Roman Catholic canon law, an honorary title for exceptional scholars. **2.** A title of a person who has acquired an advanced degree in academics, or has achieved an honorable distinction. **3.** A physician. — Abbr. Dr.

**Doctor of Juridical Science.** A graduate law degree, beyond the J.D. and the LL.M. — Abbr. S.J.D.; J.S.D. — Also termed *Doctor of Judicial Science*; *Doctor of the Science of Jurisprudence*; *Doctor of the Science of Law*.

**Doctor of Jurisprudence.** See JURIS DOCTOR.

**Doctor of Law.** See JURIS DOCTOR.

**Doctor of Laws.** An honorary degree bestowed on one who has achieved great distinction. Cf. JURIS DOCTOR; MASTER OF LAWS.

**Doctor of the Science of Jurisprudence.** See DOCTOR OF JURIDICAL SCIENCE.

**Doctor of the Science of Law.** See DOCTOR OF JURIDICAL SCIENCE.

**doctor-patient privilege.** See PRIVILEGE (3).

**doctrine.** **1.** A principle, esp. a legal principle, that is widely adhered to. **2.** *Archaic.* HOLDING (1).

**doctrine of adverse domination.** A rule allowing the statute of limitations to be tolled in an action against corporate officers and directors (esp. a corporation's action against its own officers and directors) until the alleged wrongdoers no longer control the corporation. — Also termed *adverse domination doctrine*.

**doctrine of approximation.** A doctrine that authorizes a court to vary the details of a trust's administration to preserve the trust and to carry out the donor's intentions. — Also termed *equitable doctrine of approximation*. Cf. CY PRES.

**doctrine of capture.** See RULE OF CAPTURE.

**doctrine of completeness.** See RULE OF OPTIONAL COMPLETENESS.

**doctrine of *contra non valentem*** (*kon-trə non və-len-təm*). The rule that a limitations or prescriptive period does not begin to run against a plaintiff who is unable to act, usu. because of the defendant's culpable act, such as concealing material information that would give rise to the plaintiff's claim. — Also termed *contra non valentem*.

**doctrine of *contra proferentem*.** See CONTRA PROFERENTEM.

**doctrine of curative admissibility.** A rule allowing a party to introduce otherwise inadmissible evidence to remove the prejudice caused by the improper admission of evidence that was offered by the opposing party. — Also termed *curative-admissibility doctrine*.

**doctrine of entireties** (*en-tī-ər-teez*). In customs law, the rule that when an entry consists of parts that assemble to form an article different from any of the parts, the proper classification will be of the whole article, rather than the individual components.

**doctrine of equivalents.** *Patents.* A judicially created theory for finding patent infringement when the accused process or product falls outside the literal scope of the patent claims. ● The doctrine evolved to prevent parties from evading liability for patent infringement by making trivial changes to avoid the literal language of the patent claims. *Graver Tank &*



*Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 70 S.Ct. 854 (1950). In determining whether infringement exists under the doctrine, the court must first determine whether “the accused product or process contain[s] an element identical or equivalent to each claimed element of the patented invention.” *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 117 S.Ct. 1040, 1054 (1997). Then, if a correspondence is found between the elements of the accused device and of at least one patent claim, infringement under the doctrine turns on (1) whether the accused device substitutes an element that performs the same function, in a substantially similar way, to accomplish substantially the same result as each claimed element, or (2) whether the substitute element plays a role substantially different from the claimed element. — Also termed *equivalents doctrine*; *doctrine of equivalence*; *doctrine of equivalency*; *doctrine of substantial equivalents*; *nonliteral infringement*. Cf. *literal infringement* under INFRINGEMENT.

**reverse doctrine of equivalents.** The doctrine preventing infringement liability when the invention is substantially described by the claims of another’s patent but performs the same or similar function in a substantially different way.

**doctrine of finality.** See FINALITY DOCTRINE.

**doctrine of general average.** A rule allowing a carrier to require cargo owners and the shipowner to contribute pro rata to the cost of protecting the ship and its cargo.

**doctrine of illusory coverage.** A rule requiring an insurance policy to be interpreted so that it is not merely a delusion to the insured.

**doctrine of incontrovertible physical facts.** See PHYSICAL-FACTS RULE.

**doctrine of necessities.** *Archaic.* The common-law rule holding a husband or father liable to one who sells goods to his wife or child if the goods are required for sustenance or support. See NECESSARIES.

**doctrine of notice.** See NOTICE DOCTRINE.

**doctrine of optional completeness.** See RULE OF OPTIONAL COMPLETENESS.

**doctrine of parens patriae.** See PARENS PATRIAE (2).

**doctrine of practical location.** The principle by which adjacent landowners resolve uncertainties over land boundaries by permanently fixing the boundaries by agreement. — Also termed *boundary by agreement*; *boundary by acquiescence*.

**doctrine of precedent.** 1. The rule that precedents not only have persuasive authority, but must be followed when similar circumstances arise. ● This rule developed in the 19th century and prevails today. See STARE DECISIS. 2. A rule that precedents are reported, may be cited, and will probably be followed by courts. ● This is the rule that prevailed in England until the 19th century.

**doctrine of preclusion of inconsistent positions.** See *judicial estoppel* under ESTOPPEL.

**doctrine of revestment.** A rule by which a court regains jurisdiction after the entry of final judgment when the former opposing parties have actively participated in proceedings inconsistent with the court’s judgment.

**doctrine of scrivener’s error.** A rule permitting a typographical error in a document to be reformed by parol evidence, if the evidence is precise, clear, and convincing. See *clerical error* under ERROR (2).

**doctrine of specialty.** *Int’l law.* The principle, included as a provision in most extradition treaties, under which a person who is extradited to a country to stand trial for certain criminal offenses may be tried only for those offenses and not for any other pre-extradition offenses. — Also termed *specialty doctrine*. See EXTRADITION.

**doctrine of substantial equivalents.** See DOCTRINE OF EQUIVALENTS.

**doctrine of superior equities.** *Insurance.* A rule by which an insurer is unable to recover from anyone whose equities are equal or superior to the insured’s; esp., a rule that a right of subrogation may be invoked against another party only if that party’s guilty conduct renders the party’s equity inferior to that of the insured.

**doctrine of the conclusiveness of the judgment.** See *judicial estoppel* under ESTOPPEL.

**doctrine of the last antecedent.** See RULE OF THE LAST ANTECEDENT.

**doctrine of the last preceding antecedent.**

RULE OF THE LAST ANTECEDENT.

**doctrine of worthier title.** See WORTHIER-TITLE DOCTRINE.

**document, n.** **1.** Something tangible on which words, symbols, or marks are recorded. **2.** (*pl.*) The deeds, agreements, title papers, letters, receipts, and other written instruments used to prove a fact.

**ancient document.** *Evidence.* A document that is presumed to be authentic because its physical condition strongly suggests authenticity, it has existed for 20 or more years, and it has been maintained in proper custody (as by coming from a place where it is reasonably expected to be found). Fed. R. Evid. 901(b)(8). — Also termed *ancient writing*.

**foreign document.** A document that originated in, or was prepared or executed in, a foreign state or country.

**hot document.** A document that directly supports a litigant's allegation.

**public document.** A document of public interest issued or published by a political body or otherwise connected with public business. Cf. *public record* under RECORD.

**3. Evidence.** Under the best-evidence rule, a physical embodiment of information or ideas, such as a letter, contract, receipt, account book, blueprint, or X-ray plate; esp., the original of such an embodiment.

**document, vb.** **1.** To support with records, instruments, or other evidentiary authorities <document the chain of custody>. **2.** To record; to create a written record of <document a file>.

**documentary credit.** **1.** Credit extended on a document of title or any other legal document. **2.** A financing arrangement in which a financial institution authorizes or makes a payment to a third party (*usu.* an exporter) at a customer's request. • This financing method facilitates international transactions by providing the importer with necessary credit and the exporter with an expedited cash payment.

**documentary draft.** See DRAFT.

**documentary evidence.** See EVIDENCE.

**documentary instruction.** A written agreement between an importer and exporter cover-

ing the relegation of various documents relating to the shipment and disposition of goods.

**documentary letter of credit.** See LETTER OF CREDIT.

**documentary-originals rule.** See BEST-EVIDENCE RULE.

**documentary sale.** See SALE.

**documentary stamp.** A stamp required to be affixed to a deed or other instrument before it is recorded.

**documentary stamp tax.** See *stamp tax* under TAX.

**document of title.** A written description, identification, or declaration of goods authorizing the holder (*usu.* a bailee) to receive, hold, and dispose of the document and the goods it covers. • Documents of title, such as bills of lading, warehouse receipts, and delivery orders, are generally governed by Article 7 of the UCC. See BAILMENT.

**negotiable document of title.** A document of title that actually stands for the goods it covers, so that any transfer of the goods requires a surrender of the document. UCC § 7-104(1).

**nonnegotiable document of title.** A document of title that merely serves as evidence of the goods it covers. UCC § 7-104(2).

**documentum** (dok-yə-men-təm). [Latin] *Roman law.* **1.** Proof. **2.** A document. • This term appeared in postclassical imperial constitutions.

**DOD.** *abbr.* Department of Defense. See DEFENSE DEPARTMENT.

**do, dico, addico** (doh, dī-koh, ə-dī-koh or dik-oh, ə-dik-oh). [Latin] I give, I say, I adjudge. • These formal words were spoken by the Roman praetor in the exercise of his jurisdiction on certain days, such as *dies fasti*. They could not be officially spoken on *dies nefasti*. *Do* refers to the granting of actions, exceptions, and the appointment of judges; *dico* refers to the pronouncement of judgments; and *addico* refers to the adjudication of controverted property.

**DOE.** *abbr.* DEPARTMENT OF ENERGY.

**Doe, Jane.** See JANE DOE.

**Doe, John.** See JOHN DOE.

**D'Oench Duhme doctrine** (dench **doom**). The rule that estops a borrower from asserting a claim or defense against a federal successor to a failed financial institution — if the claim or defense is based on a side or secret agreement or representation — unless the agreement or representation has been (1) put into writing, (2) executed by the financial institution and borrower when the loan was issued, (3) approved by the financial institution's board of directors or loan committee, and (4) made a permanent part of the financial institution's records. *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447, 62 S.Ct. 676 (1942) (now partially codified at 12 USCA § 1823(e), and otherwise of questionable standing in light of *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 114 S.Ct. 2048 (1994)).

**d'office** (daw-**fees**). [Law French] Of office; officially. • This is similar to the Latin phrase *ex officio*.

**dog.** *Slang.* **1.** Something undesirable, esp. a lawsuit <the cases assigned to the new lawyer were all dogs>. **2.** *Securities.* A stock or other investment that suffers public disdain and repeated price declines or poor performance.

**dog-draw.** *Hist.* The apprehension of someone chasing a deer in a forest with a dog.

"Dog-draw is an apparent deprehension of an offender against venison in the forest. There are four kinds of them observed by Manwood, part. 2, cap. 18, num. 9, of his Forest Laws, that is, dog-draw, stable-stand, back-bear, and bloody-hand. Dog-draw is, when one is found drawing after a deer by the scent of a hound led in his hand." *Termes de la Ley* 181 (1st Am. ed. 1812).

**dogma** (dawg-mə or dahg-), *n.* A philosophy, opinion, or tenet that is strongly held, is believed to be authoritative, and is followed steadfastly, usu. to the exclusion of other approaches to the same subject matter; a formally stated and proclaimed doctrine of faith. Pl. **dogmas**, **dogmata** (-mə-tə).

**DOHSA** (doh-sə). *abbr.* DEATH ON THE HIGH SEAS ACT.

**doing business.** The act of engaging in business activities; esp., a nonresident's participation in sufficient business activities in a foreign state to allow the state's courts to exercise personal jurisdiction over the nonresident. See DOING-BUSINESS STATUTE; LONG-ARM STATUTE; MINIMUM CONTACTS.

**doing-business statute.** A state law defining the acts that constitute undertaking business there, usu. for the purpose of establishing the circumstances under which the state's courts may exercise personal jurisdiction over a nonresident. See MINIMUM CONTACTS; LONG-ARM STATUTE.

**DOJ.** *abbr.* DEPARTMENT OF JUSTICE.

**dol** (dohl or dol), *n.* [French "deceit; fraud"] *Civil law.* Fraud committed in inducing another to enter into a contract. See *fraud in the inducement* under FRAUD. Cf. FRAUDE.

**do, lego** (doh, lee-goh). [Latin] *Hist.* I give and bequeath. • In Roman law, this was the phrase used to make a bequest.

**doli capax** (doh-li kay-paks), *adj.* [Latin "capable of wrong"] *Roman law.* Capable of committing a crime or tort; esp., old enough to determine right from wrong. — Also termed *capax doli*. Cf. DOLI INCAPAX.

"In criminal cases, an infant of the age of *fourteen* years may be capitally punished for any capital offence: but under the age of *seven* he cannot. The period between *seven* and *fourteen* is subject to much uncertainty: for the infant shall, generally speaking, be judged *prima facie* innocent; yet if he was *doli capax*, and could discern between good and evil at the time of the offence committed, he may be convicted and undergo judgment and execution of death, though he hath not attained to years of puberty or discretion." 1 William Blackstone, *Commentaries on the Laws of England* 452–53 (1765).

**doli incapax** (doh-li in-kay-paks), *adj.* [Latin "incapable of wrong"] *Roman law.* Incapable of committing a crime or tort. — Also termed *incapax doli*. Cf. DOLI CAPAX.

**dollar-cost averaging,** *n.* The investment practice of purchasing a fixed dollar amount of a type of security at regular intervals.

**dolo** (doh-loh), *n.* [Spanish] *Spanish law.* Bad or mischievous design, as in *dolo malo pactum se non servaturum* ("an agreement induced by fraud cannot stand").

**dolus** (doh-ləs). [Latin "device; artifice"] *Roman & civil law.* **1.** Fraud or deceit; conduct intended to deceive someone. • Although there may be *dolus* without fraud, fraud always includes *dolus*. Cf. CASUS; CULPA. **2.** Intentional aggression; willful injury, esp. to another's property. — Also termed *dolus malus*; *fraus*.

"In the twelfth century the resuscitated Roman law introduced some new ideas. Men began to contrast, as

Glanvill does, civil with criminal causes, to speak of *dolus* and *culpa* and *casus*, and to lay stress on the psychological element in crime." 2 Frederick Pollock & Frederick W. Maitland, *History of English Law Before the Time of Edward I* 477 (2d ed. 1899).

"Although the word *malitia* is not unknown to the Roman lawyers, the usual and technical name for wrongful intent is *dolus*, or more specifically *dolus malus*. *Dolus* and *culpa* are two forms of *mens rea*. In a narrower sense, however, *dolus* includes merely that particular variety of wrongful intent which we term fraud — that is to say, the intent to deceive. From this limited sense it was extended to cover all forms of wilful wrongdoing. The English term fraud has never received an equally wide extension." John Salmond, *Jurisprudence* 385 (Glanville L. Williams ed., 10th ed. 1947).

**dolus bonus** (doh-ləs boh-nəs). [Latin "good deceit"] Shrewdness or justifiable deceit, as when a person lies to an attacker to prevent an assault. • *Dolus bonus* does not produce any legal consequences.

**dolus dans locum contractui** (doh-ləs danz loh-kəm kən-trak-choo-i). [Latin] Fraud (or deceit) giving rise to the contract; specif., a fraudulent misrepresentation that, having been made by one of the parties to the contract and relied on by the other, was actually instrumental in inducing the latter to enter into the contract.

**dolus malus** (doh-ləs mal-əs). [Latin "bad or evil deceit"] Evil or fraudulent design or intent; an unjustifiable deceit.

**domain** (doh-mayn), *n.* 1. The territory over which sovereignty is exercised <the 19th-century domains of the British Empire>. 2. An estate in land <the family domain is more than 6,000 acres>. 3. The complete and absolute ownership of land <his domain over this land has now been settled>. See EMINENT DOMAIN; PUBLIC DOMAIN.

**domain-name infringement.** See INFRINGEMENT.

**domboc.** See DOME BOOK.

**Dombrowski doctrine.** The rule entitling a person to a federal-court injunction to prevent prosecution under a broad or vague state statute that affects rights guaranteed by the First Amendment. *Dombrowski v. Pfister*, 380 U.S. 479, 85 S.Ct. 1116 (1965).

**dome book** (doom buuk), *n.* [fr. Saxon *dombec*] *Hist.* A code, compiled under Alfred, containing maxims of common law, judicial forms, and criminal penalties. • The code existed until the reign of Edward IV when it was lost. — Also

termed *doombook*; *domboc*; *liber judicialis of Alfred*.

**Domesday Book** (doomz-day). The census or survey, ordered by William the Conqueror and substantially completed in 1086, of England's landholdings, buildings, people, and livestock. — Abbr. D.B. — Also spelled *Doomsday Book*.

**domestic**, *adj.* 1. Of or relating to one's own country <domestic affairs>. 2. Of or relating to one's own jurisdiction <in Alaska, a domestic corporation is an Alaskan one>. 3. Of or relating to the family or the household <a domestic dispute>.

**domestic authority.** A defense allowing a person responsible for another (such as a parent responsible for a child) to use nondeadly force when reasonably necessary to protect the person being cared for.

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

**domestic corporation.** See CORPORATION.

**domestic court.** See COURT.

**domestic creditor.** See CREDITOR.

**domestic dispute.** A disturbance, usu. at a residence and usu. within a family, involving violence and often resulting in a call to a law-enforcement agency. — Also termed *domestic disturbance*; *family disturbance*. See *domestic violence* under VIOLENCE.

**domestic export.** See EXPORT (1).

**domestic guardian.** See GUARDIAN.

**Domestic International Sales Corporation.** A U.S. corporation, esp. a subsidiary whose income is primarily attributable to exports. • Income tax on part of a DISC's income is usu. deferred, resulting in a lower overall corporate tax for the parent than it would otherwise incur. IRC (26 USCA) §§ 991-997. — Abbr. DISC.

**domestic judgment.** See JUDGMENT.

**domestic relations.** See FAMILY LAW.

**domestic-relations court.** See *family court* under COURT.

**domestic-relations law.** See FAMILY LAW.

**domestic servant.** A household servant. — Often shortened to *domestic*.

**domesticus** (də-mēs-ti-kəs), *n.* [Latin] *Hist.* Steward; judge's assistant; assessor.

**domestic violence.** See VIOLENCE.

**domicellus** (dom-ə-sel-əs), *n.* [Law Latin] *Hist.* 1. A king's natural son in France. 2. A young lord.

"*Domicellus*, Is an old obsolete . . . Word, anciently given as an Appellation or Addition to the King's natural Sons in France, and sometimes to the eldest Sons of Noblemen there; from whence we borrowed these Additions: As several natural Children of *John of Gaunt*, Duke of Lancaster, are stiled *Domicelli* by the Charter of Legitimation . . . But according to *Thorn*, the *Domicelli* were only the better Sort of Servants in Monasteries." Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

**domicile** (dom-ə-sil), *n.* 1. The place at which a person is physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere. — Also termed *permanent abode*.

"By domicile we mean home, the permanent home; and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it." *Whicker v. Hume* (1858) 7 H.L.C. 124, 160 (per Lord Cranworth).

"It is difficult to give a definition of domicil that will cover at once domicil by operation of law and domicil by choice. The idea of domicil certainly includes the idea of place and the idea of settled connection with the place. Domicil of choice is so closely connected with the idea of home that it seems desirable to include that idea in any definition, and yet the idea is not applicable to many kinds of domicil by operation of law. It has therefore seemed best to state this element in the alternative. If a home is in the place, that is sufficient. If there is no home, or if the party is not *sui juris*, then the place is assigned by law without his will." 1 Joseph H. Beale, *A Treatise on the Conflict of Laws* § 9.1, at 89-90 (1935).

"Though the idea of permanent home is the central practical feature of domicile, Lord Cranworth's definition has a deceptive simplicity; for domicile . . . is a conception of law employed for the purpose of establishing a connection for certain legal purposes between an individual and the legal system of the territory with which he either has the closest connection in fact or is considered by law so to have because of his dependence on some other person." R.H. Graveson, *Conflict of Laws* 185 (7th ed. 1974).

2. The residence of a person or corporation for legal purposes. — Also termed (in sense 2)

*legal residence.* Cf. RESIDENCE; PLACE OF BUSINESS.

**after-acquired domicile.** A domicile established after the facts relevant to an issue arose. • An after-acquired domicile cannot be used to establish jurisdiction or choice of law.

**commercial domicile.** 1. A domicile acquired by a nonresident corporation conducting enough activities to permit taxation of the corporation's property or activities located outside the bounds of the taxing state. 2. A domicile acquired by a person or company freely residing or carrying on business in enemy territory or enemy-occupied territory. — Also termed *quasi-domicile*.

**corporate domicile.** The place considered by law as the center of corporate affairs, where the corporation's functions are discharged; the legal home of a corporation, usually its state of incorporation or the state in which it maintains its principal place of business. • For purposes of determining whether diversity jurisdiction exists in federal court, a corporation is considered a citizen of both its state of incorporation and the state of its principal place of business. See DIVERSITY OF CITIZENSHIP.

**domicile of choice.** 1. A domicile established by physical presence within a state or territory, coupled with the intention to make it home. 2. The domicile that a person chooses after reaching majority or being emancipated.

**domicile of origin.** The domicile of a person at birth, derived from the custodial parent or imposed by law. — Also termed *natural domicile*.

**domicile of succession.** The domicile that determines the succession of a person's estate.

**domicile of trustee.** The domicile where a trustee is appointed.

**elected domicile.** A contractually agreed domicile between parties for purposes of the contract.

**foreign domicile.** A domicile established by a citizen or subject of one sovereignty within the territory of another.

**matrimonial domicile.** A domicile that a husband and wife, as a married couple, have established as their home. — Also termed *matrimonial home*.

**municipal domicile.** A person's residence in a county or municipality, as distinguished from the person's state or national domicile.

**national domicile.** A domicile considered in terms of a particular nation rather than a locality or subdivision of a nation.

**natural domicile.** See *domicile of origin*.

**necessary domicile.** A domicile legally fixed and independent of choice, as in the domicile of origin. See *domicile of origin*.

**quasi-domicile.** See *commercial domicile*.

**quasi-national domicile.** A person's state of residence, as distinguished from the person's national or local domicile.

**domiciliary** (dom-ə-sil-ee-er-ee), *adj.* Of or relating to domicile <domiciliary jurisdiction>.

**domiciliary** (dom-ə-sil-ee-er-ee), *n.* A person who resides in a particular place with the intention of making it a principal place of abode; one who is domiciled in a particular jurisdiction. Cf. RESIDENT; CITIZEN.

**domiciliary administration.** See ADMINISTRATION.

**domiciliate** (dom-ə-sil-ee-ayt), *vb.* To establish a domicile; to fix a place of residence.

**domicilium** (dom-ə-sil-ee-əm), *n.* [Law Latin] *Roman law.* DOMICILE.

**domigerium** (dom-ə-jeer-ee-əm), *n.* [Law Latin] *Hist.* 1. Power over someone. 2. Danger.

**domina** (dom-ə-nə), *n.* [Law Latin] 1. A lady. 2. A peeress. Cf. DAME (1), (2).

**dominant estate.** See ESTATE.

**dominant-jurisdiction principle.** The rule that the court in which a case is first filed maintains the suit, to the exclusion of all other courts that would also have jurisdiction.

**dominant property.** See *dominant estate* under ESTATE.

**dominant tenant.** See TENANT.

**dominant tenement.** See *dominant estate* under ESTATE (4).

**dominate**, *vb.* 1. To master (someone or something); to control (someone or something). 2. Predominate.

**dominatio** (dom-ə-nay-shee-oh), *n.* [Latin] *Hist.* Lordship; rule.

**dominical** (də-min-ə-kəl), *adj.* Of or relating to a Sunday; of or relating to the Lord's day.

**dominicide** (də-min-ə-sid), *n.* [fr. Latin *dominus* "master" + *caedo* "to kill"] *Hist.* 1. The crime of killing one's master. 2. A person who kills his or her master.

**dominicum** (də-min-ə-kəm), *n.* [Latin "domain"] 1. *Hist.* Domain; lordship. 2. *Hist.* Land ownership, esp. that retained by a lord for his own possession, as distinguished from the rights given to a tenant. 3. *Eccles. law.* A church or other religious building.

**dominicum antiquum** (də-min-ə-kəm an-ti-kwəm), *n.* [Law Latin] *Hist.* Ancient domain.

**dominion.** 1. Control; possession <dominion over the car>. 2. Sovereignty <dominion over the nation>. 3. FOREIGN DOMINION.

**dominium** (də-min-ee-əm), *n.* [fr. Latin *dominus* "lord"] 1. *Roman law.* Absolute ownership including the right to possession and use. • This term gradually came to also mean merely ownership of property, as distinguished from the right to possession or use.

"*Dominium* is the Roman term for the rights of an owner against all the world: and the contrast of *dominium* and *obligatio* is the nearest approach that can be made, in classical Roman language, to the distinction marked by the modern terms *in rem* and *in personam*." Frederick Pollock, *A First Book of Jurisprudence* 83 (1896).

"The one word *dominium* has to assume so many shades of meaning. The tenant *qui tenet terram in dominico*, is *dominus rei* and has *dominium rei*; but then he has above him one who is his *dominus*, and for the rights of this lord over him and over his land there is no other name than *dominium*." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 4 (2d ed. 1899).

**dominium directum** (də-min-ee-əm di-rek-təm), *n.* [Law Latin] *Civil law.* Legal, not equitable, ownership.

**dominium directum et utile** (də-min-ee-əm di-rek-təm et yoo-tə-lee), *n.* [Law Latin] *Civil law.* Complete ownership of property, including both title and exclusive use.

**dominium eminens** (də-min-ee-əm em-ə-nenz), *n.* [Law Latin] *Civil law.* Eminent domain. See EMINENT DOMAIN.

**dominium plenum** (də-min-ee-əm plee-nəm), *n.* [Law Latin] *Civil law.* Full owner-

ship combining *dominium directum* and *dominium utile*. — Also termed *plenum dominium*.

**dominium utile** (də-min-ee-əm yoo-tə-lee), *n.* [Law Latin] *Civil law*. Equitable ownership; a beneficial right to use property; the right of a tenant to use the soil and its profits.

“The special characteristic of Feudal land was that ownership in it was split into two kinds, the *dominium directum* of the superior (lord) and the *dominium utile* of the vassal. The feudists correctly insisted that this was not a form of joint ownership, not yet of ownership burdened with an easement or a ‘usufruct,’ but that two kinds of ownership were present, and that each of these persons, the lord and the vassal, was properly called ‘owner’ or *dominus*. The lord’s *dominium directum* gave him a reversion in the case of forfeiture of failure of issue and the enjoyment of whatever the *naturalia* and *accidentalia* were. The vassal’s *dominium utile* gave him the immediate enjoyment of the land itself.” Max Radin, *Handbook of Anglo-American Legal History* 148 (1936).

**plenum dominium.** See *dominium plenum*.

## 2. *Hist.* Lordship; sovereignty.

“The Latin word for ownership, *dominium*, is particularly confusing, since in medieval times it is also the word for lordship.” J.H. Baker, *An Introduction to English Legal History* 255 (3d ed. 1990).

**domino volente** (dom-ə-noh və-len-tee). [Law Latin “the owner being willing”] With the owner’s consent.

**dominus** (dom-ə-nəs), *n.* [Latin “lord”] **1. Roman law.** An owner of a thing or inheritance. **2. Roman law.** The title of the emperor in the later empire. **3. *Hist.*** A lord; a feudal superior, as in *dominus rex* (“the lord of the king”), *dominus capitalis* (“a chief lord”), *dominus medius* (“an intermediate lord”), and *dominus ligius* (“a liege lord”). **4. *Hist. Eccles. law.*** Lord; sir. • This is a title of distinction usu. given to a knight, a clergyman, a lord of a manor, or another gentleman of quality. **5. *Civil law.*** Someone who possesses something by right. Pl. *domini*.

**dominus litis** (dom-ə-nəs li-tis), *n.* [Latin] **1. *Civil law.*** The party who makes the decisions in a lawsuit, usu. as distinguished from the attorney. **2. *Maritime law.*** A third person who represents an absent party in a case. — Also termed *litis dominium*.

**dominus navis** (dom-ə-nəs nay-vis), *n.* [Latin] *Civil law.* The absolute owner of a shipping vessel.

**domitae naturae** (dom-ə-tee nə-tyoor-ee). [Latin] *Hist.* Of a tame nature; not wild. • This term usu. refers to long-domesticated animals, such as sheep or cattle, in which a person has absolute property rights. But it can also refer to naturally wild animals that have been tamed.

**dommage survenu** (daw-mazh suur-və-noo). [French] Damage sustained. • This is from article 17 of the Warsaw Convention providing for compensatory damages, rather than awards for loss of society or punitive damages, for bodily injury that a passenger suffers while on board an aircraft, or while boarding or disembarking.

**domo reparanda** (doh-moh rep-ə-ran-də), *n.* [Latin “to repair a house”] *Hist.* A writ available to a person to force a neighbor who owns a decrepit house to repair it because the person is worried that the neighbor’s house will fall and cause injury.

**Dom. Proc. abbr.** DOMUS PROCERUM.

**domus** (doh-məs), *n.* [Latin] A house; an abode.

**domus conversorum** (doh-məs kon-vər-sor-əm), *n.* [Law Latin “house of the converts”] *Hist.* An institution, established by Henry III for converted Jews, that continued until Edward III expelled Jews from the kingdom and converted the institution to a chancery record office.

**domus Dei** (doh-məs dee-I), *n.* [Law Latin] House of God. • This term was applied to various hospitals and religious houses, such as the Hospital of St. Julian in Southampton.

**Domus Procerum** (doh-məs pros-ə-rəm), *n.* [Latin “house of nobles”] The House of Lords. — Abbr. *Dom. Proc.*; *D.P.*

**donatarius** (doh-nə-tair-ee-əs), *n.* [Latin] A donee; a gift recipient.

**donate, vb.** To give (property or money) without receiving consideration for the transfer. — **donation, n.** — **donative** (doh-nə-tiv), *adj.*

**donated stock.** See STOCK.

**donated surplus.** See SURPLUS.

**donatio** (doh-nay-shee-oh). [Latin] A gift.

**donatio causa mortis** (doh-nay-shee-oh kaw-zə mor-tis), *n.* See *gift causa mortis* under GIFT. Pl. *donationes causa mortis*.

**donatio inofficiosa** (doh-nay-shee-oh in-ə-fish-ee-oh-sə). [Latin "inofficious gift"] A gift so large that it diminishes an heir's birthright portion of the donor's property.

**donatio inter vivos** (doh-nay-shee-oh in-tər vi-vohs). See *inter vivos gift* under GIFT.

**donatio mortis causa**, *n.* See *gift causa mortis* under GIFT. Pl. *donationes mortis causa*.

**donation**. **1.** A gift. **2.** *Eccles. law.* A method of acquiring a benefice by deed of gift alone, without presentation, institution, or induction.

**donation land.** See LAND.

**donatio propter nuptias** (doh-nay-shee-oh prahp-tər nəp-shee-əs). [Latin "a gift on account of marriage"] *Roman law.* A gift from a husband to his wife equivalent to her dowry and subject to similar conditions. • It was formerly called *donatio ante nuptias* ("gift before marriage") because it was not allowed after the marriage celebration. Justinian later changed the law and the name. See DOS.

**donative** (don-ə-tiv or doh-nə-tiv), *adj.* **1.** Of, relating to, or characterized by a donation <a donative transfer>. **2.** Subject to a donation <an advowson donative>.

**donative advowson.** See ADVOWSON.

**donative trust.** See TRUST.

**donator** (doh-nay-tər or doh-nay-tər also -tor), *n.* [Latin] A donor; a person who makes a gift.

**donatory** (don-ə-tor-ee or doh-nə-tor-ee), *n.* *Scots law.* A recipient of a gift; specif., a donee of the Crown.

"A donatory is the donee or receiver of a gift or donation. In practice, the term is applied exclusively to the person to whom the Crown makes a gift, as of escheat, *ultimus haeres*, or the like." William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 299 (George Watson ed., 1882).

**donec** (doh-nek). [Latin] *Hist.* As long as; while; until; within a certain time. • This term was used in old conveyances.

**donec probetur in contrarium** (doh-nek proh-bee-tər in kən-trair-ee-əm). [Latin] Until proof is given to the contrary.

**donee** (doh-nee). One to whom a gift is made.

**donee beneficiary.** See BENEFICIARY.

**donee of power.** The recipient of a power of appointment.

**donor**. **1.** One who gives something without receiving consideration for the transfer. **2.** SETTLOR (1).

**donum** (doh-nəm), *n.* [Latin "a gift"] *Roman law.* A gift.

**donum gratuitum.** See *gratuitous gift* under GIFT.

**doombook.** See DOME BOOK.

**Doomsday book.** See DOMESDAY BOOK.

**door-closing statute.** A state law closing or denying access to local courts unless a plaintiff meets specified conditions; esp., a statute requiring a foreign corporation to "qualify" before doing business in the state, including registering with the secretary of state, paying a fee or tax, and appointing an agent to receive service of process.

**doowop docket.** *Slang.* See *DWOP docket* under DOCKET (2).

**dope**. **1.** A thick liquid used esp. for medicinal purposes. **2.** *Slang.* A drug, esp. a narcotic.

**dormant** (dor-mənt), *adj.* Inactive; suspended; latent <a dormant judgment>. — **dormancy**, *n.*

**dormant claim.** A claim that is in abeyance.

**Dormant Commerce Clause.** See COMMERCE CLAUSE.

**dormant corporation.** See CORPORATION.

**dormant execution.** See EXECUTION.

**dormant judgment.** See JUDGMENT.

**dormant legislative intent.** See LEGISLATIVE INTENT.



**dormant partner.** See *silent partner* under PARTNER.

**dormant title.** See TITLE (2).

**dorsum** (dor-səm). [Latin] *Hist.* The back. • This term usu. appeared as part of the phrase *in dorso* to indicate that an instrument had been signed on the back. *In dorso recordi*, for example, meant "on the back of the record."

"In the first place then the payee, or person to whom or whose *order* such bill of exchange or promissory note is payable, may by endorsement, or writing his name in *dorso* or on the back of it, assign over his whole property to the bearer, or else to another person by name. . . ." 2 William Blackstone, *Commentaries on the Laws of England* 468 (1766).

**dos** (dos or dohs), *n.* [Latin] **1.** Roman law. Dowry. **2.** *Hist.* Dower.

"Dos was a gift made to the husband on the part of the wife as her contribution towards the expenses of the joint establishment. It was made by the wife or by another person on her behalf, usually before marriage and conditionally on the marriage taking place; but it might also be made or increased after marriage." R.W. Lee, *The Elements of Roman Law* 150 (4th ed. 1956).

**dos rationabilis** (dohs rash-[ee]-ə-nay-bə-lis), *n.* [Latin] See *dower by the common law* under DOWER.

**dossier** (dos-ee-ay), *n.* [French] A file or brief; a bundle of papers pertaining to a particular matter.

**DOT.** *abbr.* DEPARTMENT OF TRANSPORTATION.

**dot** (dot or dawt), *n.* [French fr. Latin *dos*] *Civil law.* Dowry; the property that a woman brings to the marriage to help with marriage expenses. • The income is usu. controlled by the husband, while the principal remains the wife's separate property.

**dotage** (doh-tij). **1.** Senility; feebleness of a person's mind in old age. **2.** Foolish affection; excessive fondness.

**dotal** (doh-təl), *adj.* Of or relating to dowry. See DOWRY.

**dotalitium** (doh-tə-lish-ee-əm), *n.* [Law Latin] *Hist.* Dower.

"[S]ome have ascribed the introduction of dower to the Normans, as a branch of *their* local tenures; though we cannot expect any feudal reason for its invention, since it was not a part of the pure, primitive, simple law of feuds, but was first of all introduced into that system (wherein

it was called . . . *dotalitium*) by the emperor Frederick the second; who was contemporary with our king Henry III. It is possible therefore that it might be with us the relic of a Danish custom: since, according to the historians of that country, dower was introduced into Denmark by Swein, the father of our Canute the great, out of gratitude to the Danish ladies, who sold all their jewels to ransom him when taken prisoner by the Vandals." 2 William Blackstone, *Commentaries on the Laws of England* 129-30 (1766).

**dotal property.** *Civil law.* Separate property that the wife brings to the marriage to assist the husband with the marriage expenses.

**dotation** (doh-tay-shən), *n.* **1.** The act of giving a dowry. **2.** An endowment, esp. of funds for a charitable institution such as a hospital.

**dote** (doht), *vb.* **1.** To be silly due to old age. **2.** To bestow excessive fondness.

**dote assignanda** (doh-tee as-ig-nan-də). See DE DOTE ASSIGNANDA.

**dote unde nil habet** (doh-tee ən-dee nil hay-bet). See DE DOTE UNDE NIL HABET.

**dotis administratio** (doh-tis ad-min-ə-stray-shee-oh). See DE ADMENSURATIONE DOTIS.

**dotissa** (doh-tis-ə), *n.* [Law Latin] A dowager.

**double adultery.** See ADULTERY.

**double assessment.** The act of requiring that tax be paid twice for the same property. See *double taxation* under TAXATION.

**double-bill**, *vb.* To charge two different clients or customers the same charge; to charge two different customers for services rendered to each customer at the same time.

**double-breasted operation.** An arrangement in which a business owner operates both a union business and a similar nonunion business, to compete for both types of business contracts. — Also termed *open-shop-closed-shop operation*.

**double commission.** See COMMISSION (5).

**double complaint.** See DUPLEX QUERELA.

**double creditor.** See CREDITOR.

**double damages.** See DAMAGES.

**double-declining depreciation method.** See DEPRECIATION METHOD.

**double-dipping, n.** An act of seeking or accepting essentially the same benefit twice, either from the same source or from two different sources, as in simultaneously accepting retirement and unemployment benefits. — **double-dipper, n.**

**double-entry bookkeeping.** See BOOKKEEPING.

**double forgery.** See FORGERY.

**double gibbet.** See GIBBET.

**double hearsay.** See HEARSAY.

**double indemnity.** See INDEMNITY.

**double insurance.** See INSURANCE.

**double jeopardy.** The fact of being prosecuted twice for substantially the same offense. • Double jeopardy is prohibited by the Fifth Amendment. Cf. FORMER JEOPARDY.

**Double Jeopardy Clause.** The Fifth Amendment provision stating, “nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” • The amendment was ratified in 1791.

**double patenting. 1.** The issuance of two patents covering the same invention. • An inventor is not allowed to receive more than one patent on one invention. — Also termed *same-invention double patenting. 2.* The issuance of a second patent claiming an invention that differs from an already patented invention only in some unpatentable particular. — Also termed *obviousness double patenting.*

**double plea.** See PLEA (3).

**double pleading.** See DUPLICITY (2).

**double proof.** See PROOF.

**double quarrel.** See DUPLEX QUERELA.

**double recovery.** See RECOVERY.

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

**double standard.** A set of principles permitting greater opportunity or greater lenience for one

class of people than for another, usu. based on differences such as gender or race. See DISCRIMINATION.

**double taxation.** See TAXATION.

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

**double value.** Twice the value of something; specif., a penalty payable by a tenant to a landlord of twice the yearly value of lands held by the tenant, who refused to leave when the landlord provided written notice of intent to possess the property. • The penalty was provided under the Landlord and Tenant Act (1730). St. 4 Geo. 2. ch. 28, s. 1.

**double voucher.** In a common-recovery suit, a voucher first by the fictitious tenant to the real tenant, and then by the real tenant to the common vouchee. See COMMON RECOVERY.

“The recovery, here described, is with a *single* voucher only; but sometimes it is with *double* . . . or farther voucher, as the exigency of the case may require. And indeed it is now usual always to have a recovery with double voucher at the least; by first conveying an estate of freehold to any indifferent person, against whom the *praecipe* is brought; and then he vouches the tenant in tail, who vouches over the common vouchee. For, if a recovery be had immediately against tenant in tail, it bars only such estate in the premises of which he is then actually seised; whereas if the recovery be had against another person, and the tenant in tail be vouched, it bars every latent right and interest which he may have in the lands recovered.” 2 William Blackstone, *Commentaries on the Laws of England* 359 (1766).

**double waste.** See WASTE (1).

**double will.** See *mutual will* under WILL.

**doubt, reasonable.** See REASONABLE DOUBT.

**doubtful title.** See TITLE (2).

**doun** (doon or dohn), *n.* [Law French] A gift.

**do ut des** (doh at deez). [Latin “I give that you may give”] *Roman law.* An innominate contract in which a party gives something in exchange for something that the other party is to give. See *innominate contract* under CONTRACT.

**do ut facias** (doh at fay-shee-əs). [Latin “I give that you may do”] *Roman law.* An innominate contract in which a person gives something to another person who is to do or perform certain work. See *innominate contract* under CONTRACT.

**dovetail seniority.** The combination of seniority lists from merging companies into one list that allows employees to keep their prerogative seniority.

**Dow** (dow). See DOW JONES INDUSTRIAL AVERAGE.

**dowable** (dow-ə-bəl), *adj.* 1. Capable of being endowed <the widow received the dowable estate>. 2. Capable of receiving dower <the woman was dowable of the estate>.

**dowager** (dow-ə-jər). A widow holding property or title — esp. a life estate in real property — received from her deceased husband.

**dowager-queen.** The widow of the king of England. — Also termed *queen dowager*; *queen mother*.

“A queen *dowager* is the widow of the king, and as such enjoys most of the privileges belonging to her as queen consort. But it is not high treason to conspire her death; or to violate her chastity . . . because the succession to the crown is not thereby endangered. Yet still, . . . no man can marry a queen dowager without special licence from the king, on pain of forfeiting his lands and goods. . . . A queen dowager, when married again to a subject, doth not lose her regal dignity, as peeresses dowager do their peerage when they marry commoners.”  
1 William Blackstone, *Commentaries on the Laws of England* 217 (1765).

**dower** (dow-ər). At common law, the right of a wife, upon her husband's death, to a life estate in one-third of the land that he owned in fee. ● With few exceptions, the wife could not be deprived of dower by any transfer made by her husband during his lifetime. Although most states have abolished dower, many states retaining the concept have expanded the wife's share to a life estate in all the land that her husband owned in fee. — Also termed *dowment*. Cf. CURTESY.

**consummate dower** (kən-səm-it). A wife's interest in her deceased husband's estate until that interest is legally assigned to her.

**dower ad ostium ecclesiae** (ad əhs-tee-əm e-klee-z[h]ee-ee), *n.* [Law Latin “dower at the church door”] *Hist.* An endowment of dower made by a man to his wife at the church door or porch, usu. as part of the marriage ceremony.

“DOWER AD OSTIUM ECCLESIAE . . . This appears to have been the original English dower . . . It was formerly the most usual species of dower, and, though latterly fallen into disuse, was not abolished until the statute of 3 & 4 Will. IV. c. 105, s. 13 . . . The wife might be endowed of personalty or goods as well as of lands, and a trace of this ancient kind of dower is still distinctly preserved in the marriage ritual of the church

of England, in the expression ‘with all my worldly goods I thee endow.’” 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 520 (2d ed. 1867).

**dower by custom.** *Hist.* Dower that is determined by custom rather than the general law.

“Dower by . . . *custom*; as that the wife shall have half the husband's lands, or in some places the whole, and in some only a quarter.” 2 William Blackstone, *Commentaries on the Laws of England* 132 (1766).

**dower by the common law.** The regular dower, consisting of a life interest in one-third of the lands that the husband held in fee. — Also termed *dos rationabilis*.

**dower ex assensu patris** (eks ə-sen-s[y]oo pə-tris), *n.* [Law Latin “dower by the father's assent”] *Hist.* A type of dower *ad ostium ecclesiae* made while the husband's father is alive and consents to the endowment to his son's wife.

**inchoate dower** (in-koh-it). A wife's interest in her husband's estate while both are living.

**dowerness.** See DOWRESS.

**Dow Jones Industrial Average.** A stock-market-performance indicator that consists of the price movements in the stocks of 30 leading industrial companies in the United States. — Abbr. DJIA. — Often shortened to *Dow*. — Also termed *Dow Jones Average*.

**dowle stones** (dohl). Rocks used as land boundaries.

**dowment.** See DOWER.

**down market.** See *bear market* under MARKET.

**down payment.** See PAYMENT.

**down reversal.** *Securities.* A sudden market-price decline after a rising trend. ● The term applies to the early stage of the decline; if the decline continues for several months, it is termed a *bear market*. Also termed *correction*; *market correction*.

**downside.** *Securities.* A period of declining stock prices.

**downside risk.** *Securities.* A likely risk that stock prices will drop.

**downside trend.** *Securities.* The portion of the market cycle that shows declining stock prices. — Also termed *down trend*.

**downsizing.** Reducing the number of employees, usu. to decrease labor costs and to increase efficiency.

**downstream merger.** See MERGER.

**down trend.** See DOWNSIDE TREND.

**downward departure.** See DEPARTURE.

**dowress (dow-ris).** *Archaic.* **1.** A woman legally entitled to dower. **2.** A tenant in dower. — Also spelled *doweress*.

**dowry (dow-ree).** *Archaic.* The money, goods, or property that a woman brings to her husband in marriage. — Also termed *marriage portion*; *maritagium* (mar-ə-tay-jee-əm).

**dozen peers.** *Hist.* During the reign of Henry III, 12 peers assembled by the barons to be the King's advisers.

**D.P. abbr.** DOMUS PROCERUM.

**Dr. abbr.** **1.** DEBTOR. **2.** DOCTOR.

**DR. abbr.** DISCIPLINARY RULE.

**draconian** (dray- or drə-koh-nee-in), *adj.* (Of a law) harsh; severe. ● This term derives from *Draco*, the name of the ancient Athenian lawgiver. — Also termed *draconic*.

**draff** (draf). Refuse; dregs; sweepings of dust and dirt. ● In weighing commodities, it is not included as part of the waste allowance for goods sold by weight.

**draft, n.** **1.** An unconditional written order signed by one person (the *drawer*) directing another person (the *drawee* or *payor*) to pay a certain sum of money on demand or at a definite time to a third person (the *payee*) or to bearer. ● A check is the most common example of a draft. — Also termed *bill of exchange*; *letter of exchange*. Cf. NOTE (1).

**bank draft.** A draft drawn by one financial institution on another.

**clean draft.** A draft with no shipping documents attached.

**demand draft.** See *sight draft*.

**documentary draft.** A payment demand conditioned on the presentation of a document, such as a document of title, invoice, certificate, or notice of default.

**export draft.** A draft drawn by a domestic seller on a foreign buyer, directing the buyer to pay the trade amount to the seller or the seller's bank.

**foreign draft.** A draft drawn in one country or state but payable in another. — Also termed *foreign bill of exchange*; *international bill of exchange*.

**inland draft.** A draft drawn and payable in the same state or country.

**overdraft.** See OVERDRAFT.

**share draft.** A demand that a member draws against a credit-union share account, payable to a third party. ● A share draft is similar to a check that is written to draw funds out of a checking account at a bank.

**sight draft.** A draft that is payable on the bearer's demand or on proper presentment to the drawer. — Also termed *demand draft*.

**time draft.** A draft that contains a specified payment date. UCC § 3-108. — Also termed *time bill*.

**2.** The compulsory enlistment of persons into military service <his illness disqualified him from the draft>. — Also termed *conscription*.

**3.** An initial or preliminary version <the second draft of the contract>.

**draft, vb.** **1.** To write or compose <to draft a contract>. **2.** To recruit or select (someone) <to draft someone to run for political office> <to draft someone into the armed services>.

**draft board.** A civilian board that registers and selects persons for mandatory military service. See SELECTIVE SERVICE SYSTEM.

**drafter.** A person who draws or frames a legal document, such as a will, contract, or legislative bill. — Also termed *draftsman*.

**drafting.** The practice, technique, or skill involved in preparing legal documents — such as statutes, rules, regulations, contracts, and wills — that set forth the rights, duties, liabilities, and entitlements of persons and legal entities.

**draftsman.** See DRAFTER.

**dragnet clause.** **1.** See MOTHER HUBBARD CLAUSE (1). **2.** See CROSS-COLLATERAL CLAUSE.

**dragnet lien.** See LIEN.

**Drago doctrine.** The principle asserted by Luis Drago, Minister of Foreign Affairs of the Argentine Republic, in a December 29, 1902 letter to the Argentine Minister in Washington, in which Drago, in response to the forcible coercion of Venezuela's unpaid loans by Great Britain and others, argued that no public debt should be collected from a sovereign state by force or through the occupation of American territory by a foreign power. • The subject was presented at the Hague Conference of 1907, when a modified version of the Drago doctrine was adopted.

**drain, n.** 1. The act of drawing a liquid off gradually; the act of emptying. 2. The act of gradually exhausting. 3. A conduit for draining liquid, as a ditch or a pipe.

**drain, vb.** 1. To draw (a liquid) off gradually <the farmer drained water from the property>. 2. To exhaust gradually <the facility has drained the area's natural resources>. 3. To empty gradually <the water drained>.

**drainage district.** A political subdivision authorized to levy assessments for making drainage improvements within its area.

"In the United States there are numerous special districts that administer drainage projects. They are typically formed under state law after a local election or petition showing consent of a majority of affected landowners. The projects are usually publicly financed, and assessments are made against all property benefited, whether or not all individual landowners have consented. Such projects can increase the agricultural capacity of drained lands and provide 'new' land for buildings and other improvements. . . . Special statutes governing drainage districts generally exempt them from restraints. . . . But if private property rights are taken or if others are damaged, compensation must be paid." David H. Getches, *Water Law in a Nutshell* 301 (3d ed. 1997).

**drainage rights.** The interest that a property owner has in the natural drainage and flow of water on the land.

**dram (dram).** 1. An apothecary measurement of fluid equal to an eighth of an ounce. 2. A small amount of anything, esp. liquor.

**drama, n.** 1. A presentation of a story portrayed by words and actions or actions alone; a play. Cf. DRAMATIC COMPOSITION.

"The term [*drama*] is applied to compositions which imitate action by representing the personages introduced in them as real and as employed in the action itself. The varieties of the drama differ more or less widely, both as to the objects imitated and as to the means used in the

imitation. But they all agree as to the *method* or *manner* which is essential to the dramatic art, viz., *imitation in the way of action.*" 7 *Encyclopaedia Britannica* 338 (9th ed. 1907).

2. An event or series of events having conflicting and exciting elements that capture people's attention.

**dramatic composition.** *Copyright.* A literary work setting forth a story, incident, or scene intended to be performed by actors, often with a musical accompaniment. Cf. DRAMA (1).

**dram shop.** *Archaic.* A place where alcoholic beverages are sold; a bar or saloon. — Also spelled *dram-shop*; *dramshop*. — Also termed *grog-shop*; *drinking shop*.

**dram-shop act.** A statute allowing a plaintiff to recover damages from a commercial seller of alcoholic beverages for the plaintiff's injuries caused by a customer's intoxication. — Also termed *civil-liability act*.

"Largely at the behest of the temperance movement, statutes (called 'dram shop acts') were enacted in many states which imposed some form of civil liability on those engaged in the business of selling such beverages in favor of third persons injured thereby. . . . At one time, almost half the states had such laws; today, that number seems to be declining. . . . A growing minority of states have overthrown the common law rule and have created a common law dram shop action. In most of these jurisdictions, liability is predicated on statutes which regulate the liquor business and prohibit certain sales by liquor licensees (to minors, intoxicated persons, etc.) thus, where the sale is unlawful, it is negligence per se. . . ." Edward J. Kionka, *Torts in a Nutshell* 293-94 (2d ed. 1992).

**dram-shop liability.** Civil liability of a commercial seller of alcoholic beverages for personal injury caused by an intoxicated customer. • Claims based on a similar type of liability have been brought against private citizens for personal injury caused by an intoxicated social guest.

**draw, vb.** 1. To create and sign (a draft) <draw a check to purchase goods>. 2. To prepare or frame (a legal document) <draw up a will>. 3. To take out (money) from a bank, treasury, or depository <she then drew \$6,000 from her account>. 4. To select (a jury) <the lawyers then began voir dire and had soon drawn a jury>.

**drawback.** A government allowance or refund on import duties when the importer reexports imported products rather than selling them domestically. 19 USCA § 1313.

**drawee** (draw-ee). The person or entity that a draft is directed to and that is requested to pay the amount stated on it. • The drawee is usu. a bank that is directed to pay a sum of money on an instrument. — Also termed *payor*.

**drawee bank.** See *payor bank* under BANK.

**drawer.** One who directs a person or entity, usu. a bank, to pay a sum of money stated in an instrument — for example, a person who writes a check; the maker of a note or draft. See MAKER.

**drawing account.** See ACCOUNT.

**drawing lots.** An act of selection or decision-making based on pure chance, with the result depending on the particular lot drawn. • Jurors are usu. instructed by the court not to base their verdict on drawing lots or similar methods of chance.

**drawlatch.** *Hist.* A thief; a robber who waits until homes are empty, then draws the homes' door latches to steal what is inside.

**drayage.** A charge for transporting property.

**dread-disease insurance.** See INSURANCE.

**dreit dreit.** See DROIT-DROIT.

**D reorganization.** See REORGANIZATION (2).

**drift of the forest.** *Hist.* A periodic examination of forest cattle by officers who drive them to an enclosed place to determine their ownership or common status.

"Drift of the forest is nothing else but an exact view or examination taken once, twice, or oftener in a year as occasion shall require, what beasts there are in the forest, to the end that the common in the forest be not overcharged, that the beasts of foreigners that have no common there be not permitted, and that beasts not commonable may be put out." *Termes de la Ley* 185-87 (1st Am. ed. 1812).

**drift-stuff.** Any material floating at random in water without a discoverable source. • Drift-stuff is usu. the property of the riparian owner.

**drilling-delay rental clause.** *Oil & gas.* A clause in an oil-and-gas lease providing for periodic payments by the lessee to postpone exploration during the primary lease term. • This clause is usu. used to negate any requirement of drilling a test well.

"The purpose of the lease drilling-delay rental clause is to ensure that the lessee has no obligation to drill during the primary term by negating any implied obligation to test the premises. Before drilling-delay rental clauses became common in oil and gas leases, many courts held that lessees had an implied duty to drill a test well on the leased premises within a reasonable time after grant of the lease. The rationale for the implied covenant was that the major consideration for the grant of the lease by the lessor was the expectation that the property would be tested within a reasonable time. The courts' determination of what was a reasonable time ranged from a few months to several years, depending upon the circumstances. Lessees found that they could not rely upon a long stated term alone to preserve their rights." John S. Lowe, *Oil and Gas Law in a Nutshell* 195-96 (3d ed. 1995).

**drinking shop.** See DRAM SHOP.

**drip rights.** A servitude allowing water dripping off a person's roof to fall on a neighbor's land.

**driver.** 1. A person who steers and propels a vehicle. 2. A person who herds animals; a drover.

**driver's license.** The state-issued certificate authorizing a person to operate a motor vehicle.

**driving, n.** The act of directing the course of something, such as an automobile or a herd of animals.

**driving under the influence.** The offense of operating a motor vehicle in a physically or mentally impaired condition, esp. after consuming alcohol or drugs. • Generally, this is a lesser offense than driving while intoxicated. But in a few jurisdictions the two are synonymous. — Abbr. DUI. — Also termed (in N.Y.) *driving while ability-impaired* (DWAI); *driving under the influence of liquor* (DUIL); *driving while intoxicated* (DWI); *operating under the influence* (OUI); *operating while intoxicated* (OWI); *operating a motor vehicle while intoxicated* (OMVI); *operating a motor vehicle under the influence* (OMVUI). Cf. DRIVING WHILE INTOXICATED.

**driving while ability-impaired.** See DRIVING UNDER THE INFLUENCE.

**driving while intoxicated.** The offense of operating a motor vehicle in a physically or mentally impaired condition after consuming enough to raise one's blood alcohol content above the statutory limit (.08% in many states), or after consuming drugs. • Penalties vary widely; for example, the maximum penalty in Missouri and Louisiana is a \$500 fine and six

months in jail, while the penalties in New York range from \$500 to \$5,000 in fines and up to four years in jail. — Abbr. DWI. Cf. DRIVING UNDER THE INFLUENCE.

**DRM.** See *direct-reduction mortgage* under MORTGAGE.

**droit** (drwah or droyt). [French “right”] **1.** A legal right or claim. **2.** The whole body of law.

**droit-close** (droyt klohz), *n.* [Law French] *Hist.* A writ against a lord on behalf of a tenant in ancient demesne holding land by charter in fee simple, in fee-tail, for life, or in dower.

**droit common** (droyt kom-ən), *n.* [Law French] The common law. — Also termed *droit coutumier*. See COMMON LAW (2).

**droit coutumier.** See DROIT COMMON.

**droit d'accession** (drwah dak-ses-syawn), *n.* [French “right of accession”] *French law.* A property right acquired by making, from existing material, something new that cannot be reduced to the original material's shape. • This is the equivalent to the Roman *specificatio*. See ACCESSION (4).

“DROIT D'ACCESSION . . . The civil law rule is that if the thing can be reduced to the former matter it belongs to the owner of the matter, *e.g.* a statue made of gold; but if it cannot so be reduced it belongs to the person who made it, *e.g.* a statue made of marble.” 1 John Bouvier, *Bouvier's Law Dictionary* 941 (8th ed. 1914).

**droit d'accroissement** (drwah da-kraw-mawn), *n.* [French] *French law.* A right of survivorship by which an heir's interest is combined with the interest of a coheir who either has refused or is unable to accept the interest.

**droit d'aubaine** (drwah doh-ben), *n.* [Law French “right of alienage”] *Hist.* With certain exceptions, a sovereign's right to a deceased alien's property, regardless of whether the alien had a will. • This right was primarily exercised in France where it was revived in some form by Napoleon after its initial abolishment in 1790. It was ultimately abolished in 1819. — Also spelled *droit d'aubaigne*; *droit d'aubenage*. — Also termed *jus albanagii*; *jus albinatus*.

“Under the French rule of law, known as the *droit d'aubaine* . . . the whole property of an alien dying in France without leaving children born in that country escheated to the crown. The royal right was not universally exacted, and at a very early period special exceptions were introduced in favour of certain classes. Thus

Louis XI exempted merchants of Brabant, Flanders, Holland, and Zealand from the operation of the law, and a similar privilege was extended by Henri II to merchants of the Hanse towns, and from Scotland.” 1 R.H. Inglis Palgrave, *Palgrave's Dictionary of Political Economy* 68 (Henry Higgs ed., 2d ed. 1925).

“In France by the fourteenth century it was accepted that a stranger might acquire and possess but not inherit or transmit by will or on intestacy. In 1386 the French king assumed the seigniorial *droit d'aubaine* or right to inherit. In treaties in the seventeenth and eighteenth centuries the right was frequently renounced. Louis XVI in 1787 abolished the right as against subjects of Great Britain without reciprocity. The constituent Assembly abolished the right in 1790 and it was commonly abolished elsewhere in the early nineteenth century.” David M. Walker, *The Oxford Companion to Law* 378 (1980).

**droit de bris** (drwah də bree), *n.* [Law French “right of a wreck”] *Hist.* A right claimed by lords of the coasts of France to fragments of shipwrecks, including persons or property that had washed ashore. • The right was exercised primarily in Bretagne but was abrogated by Henry III as duke of Normandy, Aquitaine, and Guienne, in a charter granted in A.D. 1226. — Also termed *droit de bris sur le naufrages*. Cf. DROIT DE NAUFRAGE.

**droit de détraction** (drwah də day-trak-syawn), *n.* [French “the right of withdrawal”] *Int'l law.* A tax on property acquired by succession or by will and then removed to another state or country.

**droit de garde** (drwah də gahrd), *n.* [French “right of ward”] *Hist. French law.* A king's right to wardship of a noble vassal who has not reached majority.

**droit de gîte** (drwah də zheet), *n.* [French “right of lodging”] *Hist. French law.* A duty of a commoner holding land in the royal domain to provide lodging and food to a royal party traveling on royal business.

**droit de greffe** (drwah də gref), *n.* [French “a right concerning the clerk's office”] *Hist. French law.* The Crown's privilege to sell offices connected with the custody of judicial records or official acts.

**droit de maîtrise** (drwah də may-treeez), *n.* [French “a right of mastership”] *Hist. French law.* A required payment to the Crown by an apprentice who has become a master worker.

**droit de naufrage** (drwah də noh-frazh), *n.* [French] *Hist. French law.* The right of a sovereign or a lord owning a seashore to seize the

wreckage of a shipwreck and kill the crew or sell them as slaves. Cf. DROIT DE BRIS.

**droit de prise** (drwah də preez), *n.* [French “a right of prize”] *Hist. French law.* A commoner’s duty to supply articles on credit to the royal household for domestic consumption.

**droit de quint** (drwah də kant), *n.* [French “the right of a fifth”] *Hist. French law.* A required payment made by a noble vassal to the king each time ownership of the vassal’s fief changed.

**droit de suite** (drwah də sweet), *n.* [French “right to follow”] A creditor’s right to recover a debtor’s property after it passes to a third party.

**droit d’exécution** (drwah dek-say-kyoo-syawn), *n.* [French “right of execution”] *French law.* **1.** A stockbroker’s right to sell the stock bought for a client who later refuses it. **2.** A stockbroker’s right to sell deposited securities to secure the broker against a loss in buying for a client.

**droit-droit** (drwah-drwah), *n.* [Law French “double right”] *Hist.* The unification of the right of possession with the right of property. — Also termed *jus duplicatum*; *dreit dreit*.

“A complete title to lands, tenements, and hereditaments. For it is an ancient maxim of the law, that no title is completely good, unless the right of possession be joined with the right of property; which right is then denominated a double right, *jus duplicatum*, or *droit droit*. And when to this double right the actual possession is also united . . . then, and then only, is the title completely legal.” <sup>2</sup> William Blackstone, *Commentaries on the Laws of England* 199 (1766).

**droit du seigneur** (drwah də sen-yuur), [French “right of the lord”] *Hist.* **1.** A supposed customary right of a feudal lord to have sexual intercourse with a tenant’s bride on her wedding night. **2.** A supposed custom requiring sexual abstinence by a couple on their wedding night. — Also spelled *droit de seigneur*. — Also termed *jus primae noctis*.

**droit écrit** (drwaht ay-kree), *n.* [French “the written law”] *French law.* The civil law; the *corpus juris civilis*.

**droit international** (drwaht an-tair-nah-syohnahl), *n.* [French] International law.

**droit maritime** (drwah ma-ree-teem), [French] Maritime law.

**droit moral** (drwah maw-ral), [French] The doctrine of moral right, which entitles artists to prevent others from altering their works. • The basic rights protected by this doctrine are (1) the right to create, (2) the right to disclose or publish, (3) the right to withdraw from publication, (4) the right to be identified with the work, and (5) the right to ensure the integrity of the work, including the right to object to any mutilation or distortion of the work. These rights are sometimes called *moral rights*. See MORAL RIGHT.

**droit naturel** (drwah na-tuu-rel), *n.* [French] Natural law.

**droits civils** (drwah see-veel), *n.* [French] *French law.* Private rights not connected to a person’s civil status. • Foreigners had certain rights that could be enforced when there was reciprocity with the foreigner’s home country.

**droits of admiralty** (droyts), *n.* The Lord High Admiral’s rights in connection with the sea, such as the right to recover proceeds from shipwrecks, enemy goods confiscated at the beginning of hostilities, jetsam, flotsam, treasure, deodand, fines, forfeitures, sturgeons, whales, and other large fishes. • The droit proceeds are paid to the Exchequer’s office for the public’s use. See PRIZE (2).

“The crown had originally certain rights to property found upon the sea, or stranded upon the shore. The chief kinds of property to which the crown was thus entitled were, great fish (such as whales or porpoises), deodands, wreck of the sea, flotsam, jetsam, and lagan, ships or goods of the enemy found in English ports or captured by uncommissioned vessels, and goods taken or retaken from pirates . . . . After the rise of the court of Admiralty the Lord High Admiral became entitled to these droits by royal grant . . . . The right to droits carried with it a certain jurisdiction. Inquisitions were held into these droits at the ports, or the Vice-Admirals or droit gatherers reported them to the Admiral. The large terms of the Admiral’s Patents incited them, or their grantees, to frequent litigation with private persons or other grantees of the crown . . . . The Admiralty droits . . . are now transferred to the consolidated fund.” <sup>1</sup> William Holdsworth, *A History of English Law* 559–61 (7th ed. 1956).

**droitural** (droy-chə-rəl), *adj.* [fr. Old French *droiture* “right”] Of or relating to an interest in property, as distinguished from actual possession.

**dromones** (drə-moh-neeze), *n. pl. Hist.* **1.** Large ships. **2.** War vessels of recognized navies, usu. prepared for hostilities. — Also termed *dromos*; *dromunda*.



**drop.** *English law.* A rule *nisi* that is not adopted because the members of a court are equally divided on the issue. • The rule is dropped rather than discharged or made absolute.

**drop-down clause.** An insurance-policy provision requiring an excess insurer to provide coverage to the insured even though the underlying coverage has not been exhausted, usu. because the underlying insurers are insolvent.

**drop letter.** A letter addressed to someone in the delivery area of the post office where the letter was posted.

**drop-shipment delivery.** A manufacturer's shipment of goods directly to the consumer rather than initially to a wholesaler. • If the wholesaler takes the order, it may receive part of the profit from the sale.

**drop shipper.** A wholesaler who arranges to have goods shipped directly from a manufacturer to a consumer. See DROP-SHIPMENT DELIVERY.

**dropsy testimony.** See TESTIMONY.

**drove, n.** 1. A group of animals driven in a herd. 2. A large group of people in motion.

**drover's pass.** A free pass issued by a railroad company to the cattle's drover, who accompanies the cattle on the train.

**drug, n.** 1. A substance intended for use in the diagnosis, cure, treatment, or prevention of disease. 2. A natural or synthetic substance that alters one's perception or consciousness. — **drug, vb.** See CONTROLLED SUBSTANCE.

**addictive drug.** A drug (such as heroin or nicotine) that, usu. after repeated consumption, causes physical dependence and results in well-defined physiological symptoms upon withdrawal.

**adulterated drug.** A drug that does not have the strength, quality, or purity represented or expected.

**copycat drug.** See *generic drug*.

**dangerous drug.** A drug that has potential for abuse or injury, usu. requiring a label warning that it cannot be dispensed without a prescription.

**designer drug.** A chemical substance that is created to duplicate the pharmacological effects of controlled substances, often by using

the same chemicals contained in controlled substances, but manipulating their formulas.

**ethical drug.** A drug that can be dispensed only with a doctor's prescription. Cf. *proprietary drug*.

**generic drug.** A drug containing the active ingredient but not necessarily the same excipient substances (such as binders or capsules) as the pioneer drug marketed under a brand name. — Also termed *copycat drug*. See *pioneer drug*.

**new drug.** A drug that experts have not recognized as safe and effective for use under the conditions prescribed. 21 USCA § 321(p)(1). • The Food and Drug Administration must approve all new drugs before they can be marketed.

**orphan drug.** A prescription drug developed to treat diseases affecting fewer than 200,000 people in the United States (such as AIDS or rare cancers) or whose developmental costs are not reasonably expected to be recovered from the drug's sales. 21 USCA § 360bb.

**pioneer drug.** The first drug that contains a particular active ingredient that is approved by the FDA for a specified use.

**precompounded prescription drug.** A drug that is distributed from the manufacturer, to the pharmacist, and then to the consumer without a change in form.

**proprietary drug.** A drug that is prepared and packaged for the public's immediate use. • Proprietary drugs may be sold over the counter. Cf. *ethical drug*.

**drug abuse.** The detrimental state produced by the repeated consumption of a narcotic or other potentially dangerous drug, other than as prescribed by a doctor to treat an illness or other medical condition.

**drug addict.** See ADDICT.

**drug dependence.** Psychological or physiological need for a drug.

**drug-free zone.** An area in which the possession or distribution of a controlled substance results in an increased penalty. • Drug-free zones are often established, for example, around public schools.

**druggist.** A person who mixes, compounds, dispenses, or otherwise deals in drugs and medicines, usu. either as a proprietor of a drugstore or as a pharmacist.

**drug kingpin.** An organizer, leader, manager, financier, or supervisor of a drug conspiracy; a person who has more authority than others in running an illegal drug operation.

**drug paraphernalia.** Any thing used, intended for use, or designed for use with a controlled substance. • Possession of drug paraphernalia is a crime.

**drummer. 1.** A commercial agent who travels around taking orders for goods to be shipped from wholesale merchants to retail dealers; a traveling sales representative. **2.** A traveling salesperson.

**drungarius** (drəŋg-gair-ee-əs), *n.* [Law Latin] *Hist. 1.* A commander of a band of soldiers. **2.** A naval commander.

**drungus** (drəŋg-gəs), *n.* [Law Latin] *Hist.* A band of soldiers.

**drunk, adj.** Intoxicated; (of a person) under the influence of intoxicating liquor to such a degree that the normal capacity for rational thought and conduct is impaired.

**drunkard.** A person who is habitually or often intoxicated.

**drunkenness. 1.** A state of intoxication; inebriation; the condition resulting from a person's ingestion of excessive amounts of intoxicating liquors sufficient to affect the person's normal capacity for rational thought and conduct. **2.** A habitual state of intoxication.

**excessive drunkenness.** A state of drunkenness in which a person is so far deprived of reason and understanding that the he or she is incapable of understanding the character and consequences of an act.

**drunkometer** (drəŋg-kom-ə-tər). See BREATHALYZER.

**dry, adj. 1.** Free from moisture; desiccated <dry land>. **2.** Unfruitful; destitute of profitable interest; nominal <a dry trust>. **3.** (Of a jurisdiction) prohibiting the sale or use of alcoholic beverages <a dry county>.

**dry check.** See *bad check* under CHECK.

**dry exchange.** Something that pretends to pass on both sides of a transaction, but passes on only one side.

"Dry exchange . . . seems to be a subtil term invented to disguise usury, in which something is pretended to pass on both sides, whereas in truth nothing passes on the one side." *Termes de la Ley* 185 (1st Am. ed. 1812).

"DRY EXCHANGE . . . A euphemism applied to the 'coverture' or 'colouring' of the stringent statutes passed during the tudor period against usury . . . Usury, which was condemned by religion and law alike during the middle ages, was from the middle of the 16th century no longer to be confounded with the legitimate employment of capital; but the sentiment which inspired the above enactments was that of governing classes associated with the landed interest." 1 R.H. Inglis Palgrave, *Palgrave's Dictionary of Political Economy* 643 (Henry Higgs ed., 2d ed. 1925).

**dry mortgage.** See MORTGAGE.

**dry receivership.** See RECEIVERSHIP.

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

**dry trust.** See TRUST.

**d.s.b. abbr.** DEBET SINE BREVE.

**DTC. abbr.** DEPOSITORY TRUST CORPORATION.

**dual agent.** See *co-agent* under AGENT (1).

**dual-capacity doctrine.** The principle that makes an employer — who is normally shielded from tort liability by workers' compensation laws — liable in tort to an employee if the employer and employee stand in a secondary relationship that confers independent obligations on the employer. Cf. DUAL-PURPOSE DOCTRINE.

**dual citizenship. 1.** A person's status as a citizen of two countries, as when the person is born in the United States to parents who are citizens of another country, or one country still recognizes a person as a citizen even though that person has acquired citizenship in another country. **2.** The status of a person who is a citizen of both the United States and the person's country of residence.

**dual contract.** See CONTRACT.

**dual-criminality principle.** A rule prohibiting the extradition of a fugitive unless the offense involves conduct that is criminal in both countries.

**dual distributor.** A firm that sells goods simultaneously to buyers on two different levels of the distribution chain; esp., a manufacturer

that sells directly to both wholesalers and retailers.

**dual distributorship.** See DISTRIBUTORSHIP.

**dual employment.** See MOONLIGHTING.

**dual fund.** See MUTUAL FUND.

**dual listing.** See LISTING (2).

**dual-persona doctrine** (d[y]oo-əl pər-soh-nə).

The principle that makes an employer (who is normally shielded from tort liability by workers'-compensation laws) liable in tort to an employee if the liability stems from a second persona unrelated to the employer's status as an employer.

**dual-priorities rule.** The principle that partnership creditors have priority for partnership assets and that individual creditors have priority for a partner's personal assets. • This rule has been abandoned by the bankruptcy laws and the Revised Uniform Partnership Act. The bankruptcy code now allows partnership creditors access to all assets of bankrupt partners, not just those remaining after payment to individual creditors. — Also termed *jingle rule*.

**dual-prosecution rule.** The principle that the federal and state governments may both prosecute a defendant for the same offense because both governments are separate and distinct entities. See DUAL-SOVEREIGNTY DOCTRINE.

**dual-purpose doctrine.** The principle that an employer is liable for an employee's injury that occurs during a business trip even though the trip also serves a personal purpose. Cf. DUAL-CAPACITY DOCTRINE.

**dual-purpose fund.** See *dual fund* under MUTUAL FUND.

**dual-sovereignty doctrine.** The rule that the federal and state governments may both prosecute someone for a crime, without violating the constitutional protection against double jeopardy, if the person's act violated both jurisdictions' laws. See DUAL-PROSECUTION RULE.

**duarchy** (d[y]oo-ahr-kee), *n.* [fr. Greek *duo* "two" + *archia* "rule"] See DYARCHY.

**dubitante** (d[y]oo-bi-tan-tee). [Latin] Doubting. • This term was usu. placed in a law report next to a judge's name, indicating the judge

doubted a legal point but was unwilling to state that it was wrong. — Also termed *dubitans*.

"[E]xpressing the epitome of the common law spirit, there is the opinion entered *dubitante* — the judge is unhappy about some aspect of the decision rendered, but cannot quite bring himself to record an open dissent." Lon L. Fuller, *Anatomy of the Law* 147 (1968).

**dubitatur** (d[y]oo-bi-tay-tər). [Latin] It is doubted. • This phrase indicates that a point of law is doubtful. — Also termed *dubitavit*.

**ducat** (dək-it). A gold coin used as currency, primarily in Europe and first appearing in Venice in the early 1100s, with the motto *sit tibi, Christe, dato, quem tu regis, iste Ducatus* ("let this duchy which thou rulest be dedicated to thee, O Christ"). • It survived into the 20th century in several countries, including Austria and the Netherlands.

**ducatus** (d[y]ə-kay-təs), *n.* [Law Latin] A duchy; a dukedom.

**duces tecum** (d[y]oo-səs tee-kəm also tay-kəm). [Latin] Bring with you. See *subpoena duces tecum* under SUBPOENA.

**duces tecum licet languidus** (d[y]oo-səs tee-kəm li-set lang-gwə-dəs), *n.* [Law Latin "bring with you, although sick"] *Hist.* A habeas corpus writ ordering a sheriff to bring someone into court despite a return by the sheriff noting that the person was too ill to come.

**Duchy Court of Lancaster** (dəch-ee kort əv lang-kə-stər). *Hist. English law.* A court with special equity jurisdiction, similar to the equity courts of chancery, in which the Duchy of Lancaster's chancellor or deputy presides over issues primarily relating to land held by the Crown in right of the Duchy.

**Duchy of Lancaster** (dəch-ee əv lang-kə-stər). Land, in the county of Lancaster, the Savoy in London, and around Westminster, that originally belonged to the Duke of Lancaster and later belonged to the Crown in right of the Duchy.

**ducking stool.** See CASTIGATORY.

**due**, *adj.* 1. Just, proper, regular, and reasonable <due care> <due notice>. 2. Immediately enforceable <payment is due on delivery>. 3. Owing or payable; constituting a debt <the tax refund is due from the IRS>.

**due-bill.** See IOU.

**due care.** See *reasonable care* under CARE.

**due compensation.** See *just compensation* under COMPENSATION.

**due consideration.** **1.** The degree of attention properly paid to something, as the circumstances merit. **2.** *Sufficient consideration* under CONSIDERATION.

**due course, payment in.** See PAYMENT IN DUE COURSE.

**due-course holder.** See HOLDER IN DUE COURSE.

**due course of law.** **1.** The regular and customary administration of law through the legal system. **2.** DUE PROCESS.

**due days.** See BOON DAY.

**due diligence.** See DILIGENCE.

**due-diligence information.** *Securities.* Information that a broker-dealer is required to have on file and make available to potential customers before submitting quotations for over-the-counter securities. • The informational requirements are set out in SEC Rule 15c2-11 (17 CFR § 240.15c2-11).

**due influence.** The sway that one person has over another, esp. as a result of persuasion, argument, or appeal to the person's affections. Cf. UNDUE INFLUENCE.

**duel.** **1.** TRIAL BY COMBAT. **2.** A single combat; specif., a prearranged combat with deadly weapons fought between two or more persons under prescribed rules, usu. in the presence of at least two witnesses, to resolve a previous quarrel or avenge a deed. • In England and the United States, death resulting from a duel is treated as murder, and seconds may be liable as accessories. — Also termed *monomachy*; *single combat*. Cf. MUTUAL COMBAT.

"Dueling is distinguished from other offenses in that it has none of the elements of sudden heat and passion, and is usually carried out with some formality. A duel has been distinguished from an 'affray' in that an affray occurs on a sudden quarrel while a duel is always the result of design." 28A C.J.S. *Dueling* § 2, at 154 (1996).

**dueling, n.** The common-law offense of fighting at an appointed time and place after an earlier disagreement. • If one of the participants is killed, the other is guilty of murder, and all

who are present, abetting the crime, are guilty as principals in the second degree.

"Dueling is prearranged fighting with deadly weapons, usually under certain agreed or prescribed rules. . . . It is a misdemeanor at common law to fight a duel, even though no death result, to challenge another to a duel, intentionally to provoke such a challenge, or knowingly to be the bearer of such a challenge." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 243 (3d ed. 1982).

**duellum** (d[y]oo-el-əm), *n.* [fr. Latin *duo* "two"] *Hist.* See TRIAL BY COMBAT.

**due negotiation.** See NEGOTIATION.

**due notice.** See NOTICE.

**due-on-encumbrance clause.** A mortgage provision giving the lender the option to accelerate the debt if the borrower further mortgages the real estate without the lender's consent.

**due-on-sale clause.** A mortgage provision that gives the lender the option to accelerate the debt if the borrower transfers or conveys any part of the mortgaged real estate without the lender's consent.

**due posting.** **1.** The stamping and placing of letters or packages in the U.S. mail. **2.** The proper entry of an item into a ledger. **3.** Proper publication; proper placement of an item (such as an announcement) in a particular place, as on a particular wall.

**due process.** The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case. — Also termed *due process of law*; *due course of law*.

"The words '*due process*' have a precise technical import, and are only applicable to the process and proceedings of the courts of justice; they can never be referred to an act of legislature." Alexander Hamilton, Remarks on an Act for Regulating Elections, New York Assembly, 6 Feb. 1787, in 4 *Papers of Alexander Hamilton* 34, 35 (Harold C. Syrett ed., 1962).

"The words, '*due process of law*,' were undoubtedly intended to convey the same meaning as the words, '*by the law of the land*,' in *Magna Charta*." *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 276 (1856) (Curtis, J.).

"Due process of law in each particular case means, such an exertion of the powers of government as the settled maxims of law sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question

belongs." Thomas M. Cooley, *A Treatise on the Constitutional Limitations* 356 (1868).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . . The notice must be of such nature as reasonably to convey the required information." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950) (Jackson, J.).

**economic substantive due process.** The doctrine that certain social policies, such as the freedom of contract or the right to enjoy property without interference by government regulation, exist in the Due Process Clause of the 14th Amendment, particularly in the words "liberty" and "property."

**procedural due process.** The minimal requirements of notice and a hearing guaranteed by the Due Process Clauses of the 5th and 14th Amendments, esp. if the deprivation of a significant life, liberty, or property interest may occur.

**substantive due process.** The doctrine that the Due Process Clauses of the 5th and 14th Amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective.

**Due Process Clause.** The constitutional provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty, or property. • There are two Due Process Clauses in the U.S. Constitution, one in the 5th Amendment applying to the federal government, and one in the 14th Amendment applying to the states (although the 5th Amendment's Due Process Clause also applies to the states under the incorporation doctrine). Cf. EQUAL PROTECTION CLAUSE.

**due process of law.** See DUE PROCESS.

**due-process rights.** The rights (as to life, liberty, and property) so fundamentally important as to require compliance with due-process standards of fairness and justice. See DUE PROCESS; DUE PROCESS CLAUSE.

**due proof.** Sufficient and properly submitted evidence to produce a result or support a conclusion, such as an entitlement to benefits supported by an insurance policy.

**DUI.** *abbr.* DRIVING UNDER THE INFLUENCE.

**DUIL.** *abbr.* Driving under the influence of liquor. See DRIVING UNDER THE INFLUENCE.

**duke.** 1. A sovereign prince; a ruler of a duchy. 2. The first order of nobility in Great Britain below the royal family.

"But after the Norman conquest, which changed the military policy of the nation, the kings themselves continuing for many generations *dukes* of Normandy, they would not honour any subjects with that title, till the time of Edward III; who, claiming to be the king of France, and thereby losing the ducal in the royal dignity, in the eleventh year of his reign created his son, Edward the black prince, duke of Cornwall: and many, of the royal family especially, were afterwards raised to the honour. However, in the reign of queen Elizabeth, A.D. 1572, the whole order became utterly extinct: but it was revived about fifty years afterwards by her successor, who was remarkably prodigal of honours, in the person of George Villiers duke of Buckingham." 1 William Blackstone, *Commentaries on the Laws of England* 385 (1765).

**Duke of Exeter's Daughter.** A torture rack in the Tower of London, named after the Duke of Exeter, Henry VI's minister who assisted in introducing it to England. — Also termed *brake*.

"The rack . . . to extort a confession from criminals, is a practice of a different nature . . . . And the trial by rack is utterly unknown to the law of England; though once when the dukes of Exeter and Suffolk . . . had laid a design to introduce the civil law into this kingdom as the rule of government, for a beginning thereof they erected a rack for torture; which was called in derision the duke of Exeter's daughter, and still remains in the tower of London: where it was occasionally used as an engine of state, not of law, more than once in the reign of queen Elizabeth." 4 William Blackstone, *Commentaries on the Laws of England* 320–21 (1769).

**Duke of York's Laws.** A body of laws compiled in 1665 by Governor Nicholls for the more orderly government of the New York colony. • The laws were gradually extended to the entire province.

**dulocracy** (d[y]oo-lok-rə-see), *n.* [fr. Greek *doulos* "servant" + *kratein* "to rule"] A government in which servants or slaves have so many privileges that they essentially rule. — Also spelled *doulocracy*.

**duly**, *adv.* In a proper manner; in accordance with legal requirements.

**dum** (dəm). [Latin] While; provided that.

**dumb bidding.** An auction bidding process in which the minimum acceptance price is placed under the object for sale — unbeknown to the bidders — and no bids are accepted until they meet that price. • Dumb bidding was initially intended to avoid the taxes imposed on auction

sales by the statute of 1779, 19 Geo. 3, ch. 56, §§ 5-6, but the courts determined that the practice was fraudulent.

**dum fervet opus** (dəm fər-vet oh-pəs). [Latin] While the action is fresh; in the heat of action.  
• This term usu. referred to matters of testimony.

**dum fuit infra aetatem** (dəm fyoo-it in-frə ee-tay-təm), *n.* [Law Latin “while he was within age”] *Hist.* A writ allowing a person of full age to recover lands feoffed while the person was an infant. • The remedy was also available to the person’s heirs. It was later replaced by the action of ejectment. See EJECTMENT.

**dum fuit in prisona** (dəm fyoo-it in priz-ə-nə), *n.* [Law Latin “while he was in prison”] *Hist.* A writ restoring a man to his estate after he transferred the estate under duress of imprisonment. See DURESS OF IMPRISONMENT.

**dummodo** (dəm-ə-doh). [Latin] So that. • This term was used as a limitation in conveyances, as in *dummodo solverit talem redditum* (dəm-ə-doh sol-və-rit tay-lem red-i-təm), meaning “provided he shall pay such a rent.”

**dummy**, *n.* **1.** A party who has no interest in a transaction, but participates to help achieve a legal goal. **2.** A party who purchases property and holds legal title for another.

**dummy**, *adj.* Sham; make-believe; pretend <dummy corporation>.

**dummy corporation.** See CORPORATION.

**dummy director.** See DIRECTOR.

**dummy shareholder.** See SHAREHOLDER.

**dum non fuit compos mentis** (dəm non fyoo-it kom-pəs men-tis), *n.* [Law Latin “while he was of unsound mind”] *Hist.* A writ allowing heirs to recover an estate transferred by someone of unsound mind.

**dump**, *vb.* **1.** To drop (something) down, esp. in a heap; to unload. **2.** To sell (products) at an extremely low price; specif., to sell (products) in a foreign market at a lower price than at home.

**dumping**. **1.** The act of selling a large quantity of goods at less than fair value. **2.** Selling goods abroad at less than the market price at home. See ANTIDUMPING LAW.

“Dumping involves selling abroad at a price that is less than the price used to sell the same goods at home (the ‘normal’ or ‘fair’ value). To be unlawful, dumping must threaten or cause material injury to an industry in the export market, the market where prices are lower. Dumping is recognized by most of the trading world as an unfair practice (akin to price discrimination as an antitrust offense).” Ralph H. Folsom & Michael W. Gordon, *International Business Transactions* § 6.1 (1995).

**3.** The disposal of waste matter into the environment.

**Dumping Act.** A federal antidumping law requiring the Secretary of the Treasury to notify the U.S. International Trade Commission (USITC) whenever the Secretary determines that goods are likely to be sold abroad at less than their fair value, so that the USITC can take appropriate action. 19 USCA § 1673.

**dum sola** (dəm soh-lə). [Latin] While single. • This phrase was used to limit conveyances, esp. to women, as in *dum sola fuerit* (“while she remains single”), *dum sola et casta vixerit* (“while she remains single and chaste”), and *dum sola et casta* (“while she is unmarried and lives chastely”).

**dun** (dən), *vb.* To demand payment from (a delinquent debtor) <his creditors are dunning him daily>. — **dun**, *n.*

**dungeon**. **1.** The bottom part of a fortress or tower, often used as a prison. — Also termed *dungeon-keep*. **2.** A dark underground prison.

**dunnage** (dən-ij). Anything, esp. pieces of wood, that are put underneath or between cargo on a vessel to prevent the cargo from bruising or getting wet from water leaking into the hold.

**duodecemvirale iudicium** (d[y]oo-oh-des-əm-və-ray-lee joo-dish-ee-əm). [Latin] A trial by 12 persons; a trial by jury.

**duodecima manus** (d[y]oo-oh-des-ə-mə man-əs). [Latin] Twelve men.

“The manner of waging and making law is this. He that has waged, or given security, to make his law, brings with him into court eleven of his neighbours: . . . for by the old Saxon constitution every man’s credit in courts of law depended upon the opinion which his neighbours had of his veracity. The defendant then, standing at the end of the bar, is admonished by the judges of the nature and danger of a false oath. . . . And thereupon his eleven neighbours or compurgators shall avow upon their oaths that they believe in their consciences that he saith the truth . . . It is held indeed by later authorities . . . that fewer than eleven compurgators will do: but Sir Edward Coke is positive that there must be this number . . . for

as wager of law is equivalent to a verdict in the defendant's favor, it ought to be established by the same or equal testimony, namely, by the oath of *twelve* men. And so indeed Glanvil expresses it, . . . 'jurabit duodecima manu' . . ." 3 William Blackstone, *Commentaries on the Laws of England* 343 (1768).

**duodena** (d[y]oo-ə-dee-nə). [Latin] **1.** A jury of twelve. **2.** A dozen of anything.

**duopoly** (d[y]oo-əhp-ə-lee). A market in which there are only two sellers of a product.

**duopsony** (d[y]oo-op-sə-nee). A market in which there are only two buyers of a product.

**duoviri** (d[y]oo-oh-və-rī or d[y]oo-oh vī-rī). See DUUMVIRI.

**duplex querela** (d[y]oo-pleks kwə-ree-lə). **1.** *Hist. Eccles. law.* An appeal by a clerk to the archbishop in response to the bishop's delaying or wrongfully refusing to do justice. • It is a double quarrel in that sometimes the archbishop orders a judge considering parallel proceedings not to take any action against the complainant during the pendency of the suit. **2.** *Eccles. law.* An appeal to a person's immediate superior, as when a bishop appeals to an archbishop. — Also termed *double quarrel*; *double complaint*.

**duplex valor maritaggi** (d[y]oo-pleks val-ər mar-ə-tay-jee-ī), *n.* [Law Latin "double the value of a marriage"] *Hist.* A ward's forfeiture of double the value of a marriage made without the guardian's consent. • In the quotation that follows, Blackstone uses the accusative form (*duplicem valorem maritaggi*) because the phrase follows the verb *forfeited*.

"For, while the infant was in ward, the guardian had the power of tendering him or her a suitable match, without *disparagement*, or inequality: which if the infants refused, they forfeited the value of the marriage . . . to their guardian; that is, so much as a jury would assess, or any one would *bona fide* give to the guardian for such an alliance: . . . and, if the infants married themselves without the guardian's consent, they forfeited double the value, *duplicem valorem maritaggi*. This seems to have been one of the greatest hardships of our ancient tenures." 2 William Blackstone, *Commentaries on the Laws of England* 70 (1766).

**duplicate** (d[y]oo-pli-kit), *n.* **1.** A reproduction of an original document having the same particulars and effect as the original. **2.** A new original, made to replace an instrument that is lost or destroyed. — Also termed (in sense 2) *duplicate original*. — **duplicate** (d[y]oo-pli-kit), *adj.*

"A 'duplicate' is defined for purposes of the best evidence rule as a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography including enlargements and miniatures, by mechanical or electronic recording, by chemical reproduction, or by other equivalent techniques which accurately reproduce the original; copies subsequently produced manually, either handwritten or typed, are not within this definition." 29A Am. Jur. 2d *Evidence* § 1085 (1994).

**duplicate** (d[y]oo-pli-kayt), *vb.* **1.** To copy exactly <he duplicated the original document>. **2.** To double; to repeat <she duplicated the performance>.

**duplicate will.** See WILL.

**duplicatio** (d[y]oo-pli-kay-shee-oh), *n.* [fr. Latin *duplicare* "to double"] **1.** *Roman & civil law.* A defendant's answer to the plaintiff's replication, similar to a rejoinder in common law. — Also termed (in Scots law) *duply*. See REPLICATION. **2.** The fourth in a series. **3.** A duplication of a transaction.

**duplicatum jus** (d[y]oo-pli-kay-təm jəs), *n.* [Law Latin "double right"] A double right, such as *droit droit* (both the "right of possession and right of property").

**duplicitous** (d[y]oo-plis-i-təs), *adj.* **1.** (Of a person) deceitful; double-dealing. **2.** (Of a pleading, esp. an indictment) alleging two or more matters in one plea; characterized by double pleading.

**duplicitous appeal.** See APPEAL.

**duplicitous indictment.** See INDICTMENT.

**duplicitous information.** See *duplicitous indictment* under INDICTMENT.

**duplicity** (d[y]oo-plis-i-tee), *n.* **1.** Deceitfulness; double-dealing. **2.** The pleading of two or more distinct grounds of complaint or defense for the same issue. • In criminal law, this takes the form of joining two or more offenses in the same count of an indictment. — Also termed *double pleading*. Cf. *alternative pleading* under PLEADING (2); *double plea* under PLEA (3).

**duplum** (d[y]oo-pləm). [Latin] *Civil law.* Double the price of something. Cf. SIMPLUM.

**duply.** See DUPLICATIO (1).

**durable goods.** See GOODS.

**durable lease.** See LEASE.

**durable power of attorney.** See POWER OF ATTORNEY.

**durables.** See *durable goods* under GOODS.

**durante** (d[y]ə-ran-tee). [Law Latin] While; during, as in *durante minore aetate* ("during minority"), *durante viduitate* ("during widowhood"), *durante virginitate* ("during virginity"), and *durante vita* ("during life"). • The term was often used in conveyancing.

**durante absentia** (d[y]ə-ran-tee ab-sen-shee-ə). [Law Latin] During absence. • This term referred to the administration of an estate while the executor was out of the county or otherwise absent. During the executor's absence, the administration sometimes continued because a delay until the executor's return would impair the estate settlement.

**durante bene placito** (d[y]ə-ran-tee bee-nee plas-ə-toh). [Law Latin] During good pleasure. • This phrase was used in the royal writ granting tenure *durante bene placito* to the king's judges.

**duration.** 1. The length of time something lasts <the duration of the lawsuit>.

**duration of interest.** The length of time a property interest lasts.

**duration of trust.** The length of time a trust exists.

2. A length of time; a continuance in time <an hour's duration>.

**durational-residency requirement.** The requirement that one be a state resident for a certain time, such as one year, as a precondition to the exercise of a specified right or privilege. • When applied to voting, this requirement has been held to be an unconstitutional denial of equal protection because it burdens voting rights and impairs the fundamental personal right of travel.

**Duren test.** *Constitutional law.* A test to determine whether a jury's composition violates the fair-cross-section requirement and a criminal defendant's Sixth Amendment right to an impartial jury. • Under the test, a constitutional violation occurs if (1) in the venire from which the jury was selected, a distinctive group is not fairly and reasonably represented in relation to the group's population in the community, (2)

the underrepresentation is the result of a systematic exclusion of the group from the jury-selection process, and (3) the government cannot reasonably justify the discrepancy. *Duren v. Missouri*, 439 U.S. 357, 99 S.Ct. 664 (1979). See FAIR-CROSS-SECTION REQUIREMENT; STATISTICAL-DECISION THEORY; ABSOLUTE DISPARITY; COMPARATIVE DISPARITY.

**duress** (d[y]uu-res). 1. Strictly, the physical confinement of a person or the detention of a contracting party's property. • In the field of torts, duress is considered a species of fraud in which compulsion takes the place of deceit in causing injury.

"Duress consists in actual or threatened violence or imprisonment; the subject of it must be the contracting party himself, or his wife, parent, or child; and it must be inflicted or threatened by the other party to the contract, or else by one acting with his knowledge and for his advantage." William R. Anson, *Principles of the Law of Contract* 261-62 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"Few areas of the law of contracts have undergone such radical changes in the nineteenth and twentieth centuries as has the law governing duress. In Blackstone's time relief from an agreement on grounds of duress was a possibility only if it was coerced by actual (not threatened) imprisonment or fear of loss of life or limb. 'A fear of battery . . . is no duress; neither is the fear of having one's house burned, or one's goods taken away or destroyed'; he wrote, 'because in these cases, should the threat be performed, a man may have satisfaction by recovering equivalent damages: but no suitable atonement can be made for the loss of life, or limb.' Today the general rule is that any wrongful act or threat which overcomes the free will of a party constitutes duress. This simple statement of the law conceals a number of questions, particularly as to the meaning of 'free will' and 'wrongful.'" John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 9-2, at 337 (3d ed. 1987).

2. Broadly, the threat of confinement or detention, or other threat of harm, used to compel a person to do something against his or her will or judgment. • Duress is a recognized defense to a crime, contractual breach, or tort. See COERCION; EXTORTION.

"[In most states,] the age-old rule of duress — that the doing of a prohibited act is not a crime if reasonably believed to be necessary to save from death or great bodily injury — together with the equally ancient exception in the form of the 'inexcusable choice,' are as firm today as ever except for the realization that they cover only part of the field." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1064 (3d ed. 1982).

**duress of circumstances.** See NECESSITY (1).

**duress of goods.** 1. The act of seizing personal property by force, or withholding it from an entitled party, and then extorting something as the condition for its release. 2. Demanding and taking personal property un-



der color of legal authority that either is void or for some other reason does not justify the demand.

**duress of imprisonment.** The wrongful confining of a person to force the person to do something.

**duress of the person.** Compulsion of a person by imprisonment, by threat, or by a show of force that cannot be resisted.

**duress per minas** (pər mī-nəs). [Law Latin] Duress by threat of loss of life, loss of limb, mayhem, or other harm to a person.

"Duress *per minas* is either for fear of loss of life, or else for fear of mayhem, or loss of limb. And this fear must be upon sufficient reason . . . . A fear of battery, or being beaten, though never so well grounded, is no duress; neither is the fear of having one's house burned, or one's goods taken away and destroyed; because in these cases, should the threat be performed, a man may have satisfaction by recovering equivalent damages: but no suitable atonement can be made for the loss of life, or limb." 1 William Blackstone, *Commentaries on the Laws of England* 127 (1765).

"Duress *per minas* is a very rare defence; so rare that Sir James Stephen, in his long forensic experience, never saw a case in which it was raised. It has, however, been thought that threats of the immediate infliction of death, or even of grievous bodily harm, will excuse some crimes that have been committed under the influence of such threats." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 58 (16th ed. 1952).

**economic duress.** An unlawful coercion to perform by threatening financial injury at a time when one cannot exercise free will. — Also termed *business compulsion*.

"Courts have shown a willingness to recognize the concept of 'economic duress.' For instance it has been held that a defence on these grounds may be available to the purchaser of a ship from a shipbuilder, if the latter extracts a promise of extra payment as a condition of delivery of the ship." P.S. Atiyah, *An Introduction to the Law of Contract* 230 (3d ed. 1981).

**moral duress.** An unlawful coercion to perform by unduly influencing or taking advantage of the weak financial position of another. ● Moral duress focuses on the inequities of a situation while economic duress focuses on the lack of will or capacity of the person being influenced.

**duressor** (d[y]ə-res-ər). A person who coerces another person to do something against his or her will or judgment.

**Durham** (dər-əm). One of the three remaining county palatines in England, the others being Chester and Lancaster. ● Its jurisdiction was vested in the Bishop of Durham until the statute 6 & 7 Will. 4, ch. 19 vested it as a separate

franchise and royalty in the Crown. The jurisdiction of the Durham Court of Pleas was transferred to the Supreme Court of Judicature by the Judicature Act of 1873, but Durham continued to maintain a Chancery Court according to the Palatine Court of Durham Act of 1889. See COUNTY PALATINE.

**Durham rule.** *Criminal law.* A test for the insanity defense, holding that a defendant is not criminally responsible for an act that was the product of mental disease or defect (*Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954)). ● Formerly used in New Hampshire and the District of Columbia, the *Durham* rule has been criticized as being too broad and is no longer accepted in any American jurisdiction. — Also termed *product test*. See INSANITY DEFENSE.

**Durrett rule.** *Bankruptcy.* The principle that a transfer of property in exchange for less than 70% of the property's value should be invalidated as a preferential transfer. *Durrett v. Washington Nat'l Ins. Co.*, 621 F.2d 201 (5th Cir. 1980); 11 USCA § 548. ● This rule has been applied most frequently to foreclosure sales. But it has essentially been overruled by the U.S. Supreme Court, which has held that, at least for mortgage foreclosure sales, the price received at a regularly conducted, noncollusive sale represents a reasonably equivalent value of the property, and the transfer is presumed valid. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 114 S.Ct. 1757 (1994).

**Dutch auction.** See AUCTION.

**Dutch-auction tender method.** See *Dutch auction* (2) under AUCTION.

**Dutch lottery.** See LOTTERY.

**dutiable** (d[y]oo-tee-ə-bəl), *adj.* Subject to a duty <dutiable goods>.

**duty. 1.** A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.

"There is a duty if the court says there is a duty; the law, like the Constitution, is what we make it. Duty is only a word with which we state our conclusion that there is or is not to be liability; it necessarily begs the essential question. . . . [M]any factors interplay: the hand of history, our ideas of morals and justice, the convenience of administration of the rule, and our social ideas as to where loss should fall." William L. Prosser, *Palsgraf Revisited*, 52 Mich. L. Rev. 1, 15 (1953).

"A classic English definition [of *duty*] from the late nineteenth century holds that, when circumstances place one individual in such a position with regard to another that thinking persons of ordinary sense would recognize the danger of injury to the other if ordinary skill and care were not used, a duty arises to use ordinary skill and care to avoid the injury. A much quoted American judicial definition of duty emphasizes its relational aspects, with a focus on the foreseeability of risk to those 'within the range of apprehension.' At about the same time, one of the most creative of American law teachers defined duty as a complex of factors, including administrative, economic, and moral ones, to be applied by judges in their analyses of the legal strength of personal injury cases." Marshall S. Shapo, *The Duty to Act* xi-xii (1977).

"While courts frequently say that establishing 'duty' is the first prerequisite in an individual tort case, courts commonly go on to say that there is a 'general duty' to 'exercise reasonable care,' to avoid subjecting others to 'an unreasonable risk of harm,' or to comply with the 'legal standard of reasonable conduct.' Though cast in the language of duty, these formulations merely give the expression to the point that negligence is the standard of liability." Restatement (Third) of Torts § 6 cmt. a (Discussion Draft 1999).

**absolute duty.** A duty to which no corresponding right attaches. • According to John Austin's legal philosophy, there are four kinds of absolute duties: (1) duties not regarding persons (such as those owed to God and to lower animals), (2) duties owed to persons indefinitely (i.e., to the community as a whole), (3) self-regarding duties (such as the duty not to commit suicide), and (4) duties owed to the sovereign. 1 John Austin, *The Providence of Jurisprudence Determined* 400 (Sarah Austin ed., 2d ed. 1861).

**active duty.** See *positive duty*.

**affirmative duty.** A duty to take a positive step to do something.

**contractual duty.** 1. A duty arising under a particular contract. 2. A duty imposed by the law of contracts.

**delegable duty.** A duty that may be transferred to another to perform. See ASSIGNMENT.

**duty to act.** A duty to take some action to prevent harm to another, and for the failure of which one may be liable depending on the relationship of the parties and the circumstances.

**duty to speak.** A duty to say something to correct another's false impression. • For example, a duty to speak may arise when a person has, during the course of negotiations, said something that was true at the time but that has ceased to be true before the contract is signed.

**imperfect duty.** 1. A duty that, though recognized by law, is not enforceable against the person who owes it. 2. A duty that is not fit for enforcement but should be left to the discretion and conscience of the person whose duty it is.

**implied duty of cooperation.** A duty existing in every contract, obligating each party to cooperate with, or at least not to wrongfully hinder, the other party's performance. • Breach of this implied duty excuses performance.

**legal duty.** A duty arising by contract or by operation of law; an obligation the breach of which would be a legal wrong <the legal duty of parents to support their children>.

**moral duty.** A duty the breach of which would be a moral wrong. — Also termed *natural duty*.

**negative duty.** A duty that forbids someone to do something; a duty that requires someone to abstain from something. — Also termed *passive duty*.

**noncontractual duty.** A duty that arises independently of any contract.

**nondelegable duty** (non-del-ə-gə-bəl). 1. *Contracts.* A duty that cannot be delegated by a contracting party to a third party. • If the duty is transferred, the other contracting party can rightfully refuse to accept performance by the third party. 2. *Torts.* A duty that may be delegated to an independent contractor by a principal, who retains primary (as opposed to vicarious) responsibility if the duty is not properly performed. • For example, a landlord's duty to maintain common areas, though delegated to a service contractor, remains the landlord's responsibility if someone is injured by improper maintenance.

**perfect duty.** A duty that is not merely recognized by the law but is actually enforceable.

**positive duty.** A duty that requires a person either to do some definite action or to engage in a continued course of action. — Also termed *active duty*.

**preexisting duty.** A duty that one is already legally bound to perform. See PREEXISTING-DUTY RULE.

2. Any action, performance, task, or observance owed by a person in an official or fiduciary capacity.

**duty of candor** (kan-dər). A duty to disclose material facts; esp., a duty of a director seeking shareholder approval of a transaction to disclose to the shareholders all known material facts about the transaction.

**duty of fair representation.** A labor union's duty to represent its member employees fairly, honestly, and in good faith.

**duty of good faith and fair dealing.** A duty that is implied in some contractual relationships, requiring the parties to deal with each other fairly, so that neither prohibits the other from realizing the agreement's benefits. ● This duty is most commonly implied in insurance contracts, and usu. against the insurer, regarding matters such as the insurer's obligation to settle reasonable demands that are within the policy's coverage limits. See GOOD FAITH; BAD FAITH.

**duty of loyalty.** A person's duty not to engage in self-dealing or otherwise use his or her position to further personal interests rather than those of the beneficiary. ● For example, directors have a duty not to engage in self-dealing to further their own personal interests rather than the interests of the corporation.

**fiduciary duty** (fi-d[y]oo-shee-er-ee). A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such as a lawyer's client or a shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person (such as the duty that one partner owes to another). See FIDUCIARY; FIDUCIARY RELATIONSHIP.

**strictly ministerial duty.** A duty that is absolute and imperative, requiring neither the exercise of official discretion nor judgment.

**3. Torts.** A legal relationship arising from a standard of care, the violation of which subjects the actor to liability. — Also termed *duty of care*. **4.** A tax imposed on a commodity or transaction, esp. on imports; IMPOST. ● A duty in this sense is imposed on things, not persons.

**countervailing duty.** A duty that protects domestic industry by offsetting subsidies given by foreign governments to manufacturers of imported goods.

**customs duty.** A duty levied on an imported or exported commodity; esp., the federal tax levied on goods shipped into the United States.

**duty of detraction.** A tax on property acquired by succession or will and then removed from one state to another.

**import duty.** **1.** A duty on the importation of a product. **2.** A duty on the imported product. — Also termed *duty on import*.

**probate duty.** A duty assessed by the government either on every will admitted to probate or on the gross value of the decedent's personal property.

**unascertained duty.** A preliminary, estimated payment to a customs collector of the duty that will be due on final accounting. ● An importer pays this duty to receive permission to land and sale the goods.

**duty-bound, adj.** Required by legal or moral obligation to do something <Jones is duty-bound to deliver the goods by Friday>.

**duty-free, adj.** Of or relating to products of foreign origin that are not subject to import or export taxes.

**duty of candor.** See DUTY (2).

**duty of care.** See DUTY (3).

**duty of detraction.** See DUTY (4).

**duty of fair representation.** See DUTY (2).

**duty of loyalty.** See DUTY (2).

**duty of the flag. Hist.** A maritime ceremony by which a foreign vessel struck her flag and lowered her topsail upon meeting the British flag. ● The ceremony was an acknowledgment of British sovereignty over the British seas.

**duty of tonnage (tən-ij).** A charge imposed on a commercial vessel for entering, remaining in, or leaving a port.

**duty of water.** The amount of water necessary to irrigate a given tract.

**duty on import.** See *import duty* under DUTY (4).

**duty to act.** See DUTY (1).

**duty-to-defend clause.** A liability-insurance provision obligating the insurer to take over the defense of any lawsuit brought by a third party against the insured on a claim that falls within the policy's coverage.

**duty to mitigate (mit-i-gayt).** *Contracts.* A non-breaching party's duty to make reasonable efforts to limit losses resulting from the other party's breach. ● Not doing so precludes the party from collecting damages that might have

been avoided. See MITIGATION-OF-DAMAGES DOCTRINE.

**duty to speak.** See DUTY (1).

**duumviri** (d[y]oo-əm-və-rī), *n.* [fr. Latin *due* “two” + *virī* “men”] **1.** *Roman law.* Magistrates elected or appointed in pairs to hold an office or perform a function.

**duumviri municipales** (d[y]oo-əm-və-rī myoo-nis-ə-pay-leez), *n.* [Latin] Two judicial magistrates annually elected in towns and colonies.

**duumviri navales** (d[y]oo-əm-və-rī nə-vay-leez), *n.* [Latin] Two officers appointed to man, equip, and refit the navy.

**2.** Two peers in authority. — Also termed *duoviri*.

**dux** (dəks), *n.* [fr. Latin *ducere* “to lead”] **1.** *Roman law.* An army commander. **2.** *Roman law.* A military governor of a province. • This term was eventually used also as a title of distinction. **3.** *Hist.* Duke; a title of nobility. See DUKE.

**DWAI.** *abbr.* Driving while ability-impaired. See DRIVING UNDER THE INFLUENCE.

**dwell, vb.** **1.** To remain; to linger <the case dwelled in her memory>. **2.** To reside in a place permanently or for some period <he dwelled in California for nine years>.

**dwelling defense.** See CASTLE DOCTRINE.

**dwelling-house.** **1.** The house or other structure in which a person lives; a residence or abode. **2.** *Real estate.* The house and all buildings attached to or connected with the house. **3.** *Criminal law.* A building, a part of a building, a tent, a mobile home, or another enclosed space that is used or intended for use as a human habitation. • The term has referred to connected buildings in the same curtilage but now typically includes only the structures connected either directly with the house or by an enclosed passageway. — Often shortened to *dwelling*. — Also termed (archaically) *mansion house*.

“A ‘dwelling house’ or ‘dwelling’ has been defined in connection with the crime of arson as any house intended to be occupied as a residence, or an enclosed space, permanent or temporary, in which human beings usually stay, lodge, or reside. If a building is not used exclusively as a dwelling, it is characterized as a dwelling if there is internal communication between the two parts of the building. Dwellings include mobile homes and a boat, if

the person resides on it.” 5 Am. Jur. 2d *Arson and Related Offenses* § 13, at 789 (1995).

**DWI.** *abbr.* DRIVING WHILE INTOXICATED.

**DWOP** (dee-wop). See *dismissal for want of prosecution* under DISMISSAL (1).

**DWOP docket.** See DOCKET (2).

**dyarchy** (dī-ahr-kee), *n.* [fr. Greek *dy* “two” + *archein* “rule”] A government jointly ruled by two people, such as William and Mary of England. — Also termed *diarchy*.

“Dyarchy. A term applied by Mommsen to the Roman principate . . . a period in which he held that sovereignty was shared between the princes and the senate. The term has also been given to a system of government, promoted as a constitutional reform in India by Montagu and Chelmsford and introduced by the Government of India Act, 1919. It marked the introduction of democracy into the executive of the British administration of India by dividing the provincial executives into authoritarian and popularly responsible sections composed respectively of councillors appointed by the Crown and ministers appointed by the governor and responsible to the provincial legislative councils . . . The system ended when full provincial autonomy was granted in 1935.” David M. Walker, *The Oxford Companion to Law* 386 (1980).

**Dyer Act.** A federal law, originally enacted in 1919, making it unlawful either (1) to transport a stolen motor vehicle across state lines, knowing it to be stolen, or (2) to receive, conceal, or sell such a vehicle, knowing it to be stolen. 18 USCA §§ 2311–2313. — Also termed *National Motor Vehicle Theft Act*.

**dyet.** See DIET.

**dying declaration.** See DECLARATION (6).

**dying without issue.** See FAILURE OF ISSUE.

**dynamite charge.** See ALLEN CHARGE.

**dynamite instruction.** See ALLEN CHARGE.

**dynasty.** **1.** A powerful family line that continues for a long time <an Egyptian dynasty>. **2.** A powerful group of individuals who control a particular industry or field and who control their successors <a literary dynasty> <a banking dynasty>.

**dysnomy** (dis-nə-mee), *n.* [fr. Greek *dys* “bad” + *nomos* “law”] Bad laws; the enactment of bad legislation.