

E

ea intentione (ee-ə in-ten-shee-oh-nee). [Latin]
With that intent.

EAJA. *abbr.* EQUAL ACCESS TO JUSTICE ACT.

E & O insurance. See *errors-and-omissions insurance* under INSURANCE.

earl. A title of nobility, formerly the highest in England but now the third highest, ranking between a marquis and a viscount. ● This title corresponds with the French *comte* and the German *graf*. Originating with the Saxons, this title is the most ancient of the English peerage. William the Conqueror first made the title hereditary, giving it in fee to his nobles. No territorial, private, or judicial rights now accompany the title; it merely confers nobility and a hereditary seat in the House of Lords.

earldom. The dignity or jurisdiction of an earl. ● Only the dignity remains now, the jurisdiction having been given over to the sheriff. See DIGNITY.

earles-penny. *Hist.* Money given in part payment; EARNEST. — Also termed *earl's penny*.

Earl Marshal of England. A great officer of state, who historically had jurisdiction over several courts, including the court of chivalry and the court of honor. ● Under this office is the herald's office, or college of arms. The Earl Marshal was also a judge of the Marshalsea court, now abolished. This office is quite ancient. Since 1672, it has been hereditary in the family of Howards, Dukes of Norfolk. — Often shortened to *Earl Marshal*.

earl's penny. See EARLES-PENNY.

earmark, n. 1. Originally, a mark upon the ear — a mode of marking sheep and other animals. 2. A mark put on something (such as a coin) to distinguish it from another.

earmark, vb. 1. To mark with an earmark. 2. To set aside for a specific purpose or recipient.

earmarking doctrine. *Bankruptcy.* An equitable principle that when a new lender makes a loan to enable a debtor to pay off a specified creditor, the funds are specifically set aside for that creditor so that, if the debtor lacks control over the disposition of the funds, they do not become part of the debtor's estate and thus subject to a preference.

earn, vb. 1. To acquire by labor, service, or performance. 2. To do something that entitles one to a reward or result, whether it is received or not.

earned income. See INCOME.

earned-income credit. See TAX CREDIT.

earned premium. See PREMIUM (1).

earned surplus. See *retained earnings* under EARNINGS.

earned time. *Criminal procedure.* A credit toward a sentence reduction awarded to a prisoner who takes part in activities designed to lessen the chances that the prisoner will commit a crime after release from prison. ● Earned time, which is usu. awarded for taking educational or vocational courses, working, or participating in certain other productive activities, is distinct from good time, which is awarded simply for refraining from misconduct. Cf. GOOD TIME.

earner. 1. One who produces income through personal efforts or property or both. 2. Property or an asset that produces income for its owner.

earnest, n. 1. A nominal payment or token act that serves as a pledge or a sign of good faith, esp. as the partial purchase price of property. ● Though not legally necessary, an earnest may help the parties come to an agreement. 2. EARNEST MONEY.

earnest money. A deposit paid (usu. in escrow) by a prospective buyer (esp. of real estate) to show a good-faith intention to complete the

transaction, and ordinarily forfeited if the buyer defaults. • Although earnest money has traditionally been a nominal sum (such as a nickel or a dollar) used in the sale of goods, it is not a mere token in the real-estate context: it may amount to many thousands of dollars. — Also termed *earnest*; *bargain money*; *caution money*; *hand money*. Cf. BINDER (2); *down payment* under PAYMENT.

“The amount of earnest money deposited rarely exceeds 10 percent of the purchase price, and its primary purpose is to serve as a source of payment of damages should the buyer default. Earnest money is *not* essential to make a purchase agreement binding if the buyer’s and seller’s exchange of mutual promises of performance (that is, the buyer’s promise to purchase and the seller’s promise to sell at a specified price and terms) constitutes the consideration for the contract.” John W. Reilly, *The Language of Real Estate* 131 (4th ed. 1993).

earning asset. See ASSET.

earning capacity. A person’s ability or power to earn money, given the person’s talent, skills, training, and experience. • Earning capacity is one element considered when measuring the damages recoverable in a personal-injury lawsuit. And in family law, earning capacity is considered when awarding child support and spousal maintenance (or alimony) and in dividing property between spouses upon divorce. — Also termed *earning power*. See LOST EARNING CAPACITY.

earnings. Revenue gained from labor or services, from the investment of capital, or from assets. See INCOME. Cf. PROFIT.

appropriated retained earnings. Retained earnings that a company’s board designates for a distinct use, and that are therefore unavailable to pay dividends or for other uses. — Also termed *appropriated surplus*; *surplus revenue*; *suspense reserve*.

future earnings. See *lost earnings*.

gross earnings. See *gross income* under INCOME.

lost earnings. Wages, salary, or other income that a person could have earned if he or she had not lost a job, suffered a disabling injury, or died. • Lost earnings are typically awarded as damages in personal-injury and wrongful-termination cases. There can be past lost earnings and future lost earnings. Both are subsets of this category, though legal writers sometimes loosely use *future earnings* as a synonym for *lost earnings*. Cf. LOST EARNING CAPACITY.

net earnings. See *net income* under INCOME.

pretax earnings. Net earnings before income taxes.

real earnings. Earnings that are adjusted for inflation so that they reflect actual purchasing power.

retained earnings. A corporation’s accumulated income after dividends have been distributed. — Also termed *earned surplus*; *undistributed profit*.

surplus earnings. The excess of corporate assets over liabilities within a given period, usu. a year.

earnings and profits. *Corporations.* In corporate taxation, the measure of a corporation’s economic capacity to make a shareholder distribution that is not a return of capital. • The distribution will be dividend income to the shareholders to the extent of the corporation’s current and accumulated earnings and profits. Cf. *accumulated-earnings tax* under TAX; *accumulated taxable income* under INCOME.

earnings per share. *Corporations.* A measure of corporate value by which the corporation’s net income is divided by the number of outstanding shares of common stock. • Investors benefit from calculating a corporation’s earnings per share, because it helps the investor determine the fair market value of the corporation’s stock. — Abbr. EPS.

fully diluted earnings per share. A corporation’s net income — assuming that all convertible securities had been transferred to common equity and all stock options had been exercised — divided by the number of shares of the corporation’s outstanding common stock.

earnings-price ratio. See *earnings yield* under YIELD.

earnings report. See INCOME STATEMENT.

earnings yield. See YIELD.

earnout agreement. An agreement for the sale of a business whereby the buyer first pays an agreed amount up front, leaving the final purchase price to be determined by the business’s future profits. • Usu. the seller helps manage the business for a period after the sale. — Sometimes shortened to *earnout*.

earwitness. A witness who testifies about something that he or she heard but did not see. Cf. EYEWITNESS.

easement (eez-mənt). An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). ● The land benefiting from an easement is called the *dominant estate*; the land burdened by an easement is called the *servient estate*. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are (1) a right-of-way, (2) a right of entry for any purpose relating to the dominant estate, (3) a right to the support of land and buildings, (4) a right of light and air, (5) a right to water, (6) a right to do some act that would otherwise amount to a nuisance, and (7) a right to place or keep something on the servient estate. See *SERVITUDE*. Cf. *PROFIT À PRENDRE*.

access easement. An easement allowing one or more persons to travel across another's land to get to a nearby location, such as a road. ● The access easement is a common type of easement by necessity. — Also termed *easement of access*.

adverse easement. See *prescriptive easement*.

affirmative easement. An easement that forces the servient-estate owner to permit certain actions by the easement holder, such as discharging water onto the servient estate. — Also termed *positive easement*. Cf. *negative easement*.

“Positive easements give rights of entry upon the land of another, not amounting to profits, to enable something to be done on that land. Some are commonplace, examples being rights of way across the land of another and rights to discharge water on to the land of another. Others are more rare, such as the right to occupy a pew in a church, the right to use a kitchen situated on the land of another for the purpose of washing and drying clothes, and the right to use a toilet situated on the land of another.” Peter Butt, *Land Law* 305 (2d ed. 1988).

apparent easement. A visually evident easement, such as a paved trail or a sidewalk.

appendant easement. See *easement appurtenant*.

appurtenant easement. See *easement appurtenant*.

avigational easement. An easement permitting unimpeded aircraft flights over the servient estate. — Also termed *avigation easement*; *aviation easement*; *flight easement*; *navigation easement*.

common easement. An easement allowing the servient landowner to share in the benefit

of the easement. — Also termed *nonexclusive easement*.

continuous easement. An easement that may be enjoyed without an interfering act by the party claiming it, such as an easement for drains, sewer pipes, lateral support of a wall, or light and air. Cf. *discontinuous easement*.

determinable easement. An easement that terminates on the happening of a specific event.

discontinuous easement. An easement that can be enjoyed only if the party claiming it interferes in some way with the servient estate. ● An example is a right-of-way. — Also termed *discontinuing easement*; *noncontinuous easement*; *nonapparent easement*. Cf. *continuous easement*.

easement appurtenant. An easement created to benefit another tract of land, the use of the easement being incident to the ownership of that other tract. — Also termed *appurtenant easement*; *appendant easement*; *pure easement*; *easement proper*. Cf. *easement in gross*.

easement by estoppel. A court-ordered easement created from a voluntary servitude after a person, mistakenly believing the servitude to be permanent, acted in reasonable reliance on the mistaken belief.

easement by implication. See *implied easement*.

easement by necessity. An easement created by operation of law because the easement is indispensable to the reasonable use of nearby property, such as an easement connecting a parcel of land to a road. — Also termed *easement of necessity*; *necessary way*.

easement by prescription. See *prescriptive easement*.

easement in gross. An easement benefiting a particular person and not a particular piece of land. ● The beneficiary need not, and usu. does not, own any land adjoining the servient estate. Cf. *easement appurtenant*.

easement of access. See *access easement*.

easement of convenience. An easement that increases the facility, comfort, or convenience of enjoying the dominant estate or some right connected with it.

easement of natural support. See *lateral support* under *SUPPORT*.

easement of necessity. See *easement by necessity*.

easement proper. See *easement appurtenant*.

equitable easement. 1. An implied easement created by equity when adjacent lands have been created out of a larger tract. • Such an easement is usu. created to allow implied privileges to continue. 2. See *restrictive covenant* (1) under COVENANT (4).

exclusive easement. An easement that the holder has the sole right to use. Cf. *common easement*.

flight easement. See *avigational easement*.

floating easement. An easement that, when created, is not limited to any specific part of the servient estate.

flowage easement. A common-law easement that gives the dominant-estate owner the right to flood a servient estate, as when land near a dam is flooded to maintain the dam or to control the water level in a reservoir.

implied easement. An easement created by law after an owner of two parcels of land uses one parcel to benefit the other to such a degree that, upon the sale of the benefited parcel, the purchaser could reasonably expect the use to be included in the sale. — Also termed *easement by implication*.

intermittent easement. An easement that is usable or used only from time to time, not regularly or continuously.

light-and-air easement. A negative easement preventing an adjoining landowner from constructing a building that would prevent light or air from reaching the dominant estate. See *negative easement*. Cf. *solar easement*.

mineral easement. An easement that permits the holder to enter the property to remove minerals from it.

navigation easement. 1. An easement giving the federal government the right to regulate navigable waters, even when the regulation interferes with private water rights. 2. See *avigational easement*.

negative easement. An easement that prohibits the servient-estate owner from doing something, such as building an obstruction. Cf. *affirmative easement*.

“Negative easements . . . confer no right of entry, but consist essentially of the right to prevent something being done; examples are the right to the flow of air through defined aperture, the right to receive light for a building, the right to the support of a building, and (possibly) the right to require a neighbouring landowner to repair fences.” Peter Butt, *Land Law* 305 (2d ed. 1988).

nonapparent easement. See *discontinuous easement*.

noncontinuous easement. See *discontinuous easement*.

nonexclusive easement. See *common easement*.

positive easement. See *affirmative easement*.

prescriptive easement. An easement created from an open, adverse, and continuous use over a statutory period. — Also termed *easement by prescription*; *adverse easement*.

private easement. An easement whose enjoyment is restricted to one specific person or a few specific people.

public easement. An easement for the benefit of an entire community, such as the right to travel down a street or a sidewalk.

pure easement. See *easement appurtenant*.

quasi-easement. 1. An easement-like right occurring when both tracts of land are owned by the same person. • A quasi-easement may become a true easement if the landowner sells one of the tracts. 2. An obligation or license that relates to land but that is not a true easement — for example, a landowner’s obligation to maintain the fence between the landowner’s tract and someone else’s tract.

reciprocal negative easement. An easement created when a landowner sells part of the land and restricts the buyer’s use of that part, and, in turn, that same restriction is placed on the part kept by the landowner. • Such an easement usu. arises when the original landowner creates a common scheme of development for smaller tracts that are carved out of the original tract.

reserved easement. An easement created by the grantor of real property to benefit the grantor’s retained property and to burden the granted property.

secondary easement. An easement that is appurtenant to the primary or actual easement; the right to do things that are necessary to fully enjoy the easement itself.

solar easement. An easement created to protect the dominant estate’s exposure to the direct rays of the sun. • A solar easement is often created to prevent the servient-estate owner from constructing any building that would cause shadows on the dominant estate, thus interfering with the use of a solar-energy system. Cf. *light-and-air easement*.

“Solar easements . . . remain difficult to describe because of the relationship of the sun to the earth. Shadow variables include land slope, terrain, solar orientation, latitude, time of day, and height of potential obstructions. Lawyers, engineers, land planners, title companies and others have expressed concern over the complexity

required to write a solar easement containing highly detailed, technical information often included in these easements." Sandy F. Kraemer, *Solar Law* 42 (1978).

timber easement. An easement that permits the holder to cut and remove timber from another's property.

easement appurtenant. See EASEMENT.

easement by estoppel. See EASEMENT.

easement by necessity. See EASEMENT.

easement in gross. See EASEMENT.

easement of convenience. See EASEMENT.

easement of natural support. See *lateral support* under SUPPORT.

Easter-offerings. *Eccles. law.* Small sums of money paid as personal tithes to the parochial clergy by the parishioners at Easter. • Under the Recovery of Small Tithes Act (1695), Easter-offerings were recoverable before justices of the peace. St. 7 & 8 Will. 3, ch. 6. — Also termed *Easter-dues*.

Easter sittings. *English law.* A term of court beginning on April 15 of each year and usu. ending on May 8, but sometimes extended to May 13. • This was known until 1875 as *Easter term*. Cf. HILARY SITTINGS; MICHAELMAS SITTING.

East Greenwich (east **gren-ich**). *Hist.* The name of a royal manor in the county of Kent, England. • Historically, this manor was mentioned in royal grants or patents as descriptive of the tenure of free socage.

East India Company. *Hist.* The company that was originally established to pursue exclusive trade between England and India, and that later became more active in political affairs than in commerce. • In 1858, by the Government of India Act, the government of the company's territories was transferred to the Crown. The company was dissolved in 1874. St. 21 & 22 Vict., ch. 106.

EAT. *abbr.* Earnings after taxes.

eat inde sine die (ee-ət in-dee si-nee di-ee) [Latin] Let him go thence without day. • These words were used on a defendant's acquittal, or when a prisoner was to be discharged, to signify that the matter be dismissed without any

further judicial proceedings. See GO HENCE WITHOUT DAY.

eaves-drip. **1.** The dripping of water from the eaves of a house onto adjacent land. **2.** An easement permitting the holder to allow water to drip onto the servient estate. See DRIP RIGHTS; STILLICIDIUM.

eavesdropping. The act of secretly listening to the private conversation of others without their consent. Cf. BUGGING; WIRETAPPING.

ebba et fluctus (eb-ə et flək-təs), *n.* [Latin "ebb and flow"] *Hist.* The ebb and flow of tide; ebb and flood. • The time of one ebb and flood, plus an additional 40 days, was anciently granted to a person who was excused from court for being beyond seas. See EBB AND FLOW; ESSOIN; BEYOND SEAS.

ebb and flow. The coming in and going out of tide. • This expression was formerly used to denote the limits of admiralty jurisdiction.

ebdomadarius (eb-dom-ə-dair-ee-əs), *n.* [Latin "weekly"] *Eccles. law.* An officer in a cathedral church who supervises the regular performance of divine service and prescribes the duties of choir members.

EBIT. *abbr.* Earnings before interest and taxes.

EC. *abbr.* **1.** ETHICAL CONSIDERATION. **2.** European Community. See EUROPEAN UNION.

ecclesia (i-klee-z[h]ee-ə), *n.* [Latin "assembly"] **1.** A place of religious worship. **2.** A Christian assembly; a church.

ecclesiarch (i-klee-zee-ahrk), *n.* The ruler of a church.

ecclesiastic (i-klee-zee-as-tik), *n.* A clergyman; a priest; one consecrated to the service of the church.

ecclesiastical (i-klee-zee-as-ti-kəl), *adj.* Of or relating to the church, esp. as an institution. — Also termed *ecclesiastic*.

ecclesiastical authorities. The church's hierarchy, answerable to the Crown, but set apart from the rest of the citizens, responsible for superintending public worship and other religious ceremonies and for administering spiritual counsel and instruction. • In England, the several orders of the clergy are (1) archbishops

and bishops, (2) deans and chapters, (3) archdeacons, (4) rural deans, (5) parsons (under whom are included appropriators) and vicars, and (6) curates. Church-wardens, sidesmen, parish clerks, and sextons are also considered types of ecclesiastical authorities because their duties are connected with the church. Cf. *ecclesiastical courts* under COURTS.

ecclesiastical commissioners. *Hist. English law.* A group of people empowered to suggest measures to improve the established church's efficiency, to be ratified by orders in council. • This body of commissioners, established by the Ecclesiastical Commissioners Act (1836), has been dissolved. Its functions, rights, and property are now vested in church commissioners. St. 6 & 7 Will. 4, ch. 77.

ecclesiastical corporation. See CORPORATION.

ecclesiastical court. See COURT.

ecclesiastical jurisdiction. Jurisdiction over ecclesiastical cases and controversies, such as that exercised by ecclesiastical courts.

ecclesiastical law. **1.** The body of law derived largely from canon and civil law and administered by the ecclesiastical courts. **2.** The law governing the doctrine and discipline of a particular church; esp., Anglican canon law. — Also termed *jus ecclesiasticum*; *law spiritual*. Cf. CANON LAW.

ecclesiastical matter. A matter that concerns church doctrine, creed, or form of worship, or the adoption and enforcement, within a religious association, of laws and regulations to govern the membership, including the power to exclude from such an association those deemed unworthy of membership.

ecclesiastical sentence. The judgment in an ecclesiastical case.

ecclesiastical things. Property (such as buildings and cemeteries) given to a church to support the poor or for any other pious use.

ecclicus (ek-də-kəs), *n.* [Greek *ekdikos* "legal representative"] *Hist.* The attorney, proctor, or advocate of an organization. • A church's attorney, for example, was known as an *episcoporum ecclicus*.

echevin (esh-ə-van), *n.* *French law.* A municipal officer corresponding with the position of alder-

man or burgess, and sometimes having civil jurisdiction to hear and determine certain minor cases.

echouement (ay-shoo-mawn), *n.* In French marine law, stranding. See STRANDING.

ECJ. *abbr.* European Court of Justice.

e-commerce. The practice of buying and selling goods and services through online consumer services on the Internet. • The *e*, a shortened form of *electronic*, has become a popular prefix for other terms associated with electronic transactions. See ELECTRONIC TRANSACTION.

econometrics (ee-kon-ə-me-triks). The branch of economics that expresses economic theory in mathematical terms and that seeks to verify theory through statistical methods.

economic coercion. See COERCION (2).

economic discrimination. Any form of discrimination within the field of commerce, such as boycotting a particular product or price-fixing. See BOYCOTT; PRICE DISCRIMINATION; PRICE-FIXING.

economic duress. See DURESS.

economic frustration. See *commercial frustration* under FRUSTRATION.

economic-harm rule. See ECONOMIC-LOSS RULE.

economic indicator. A statistical measure (such as housing starts) used to describe the state of the economy or to predict its direction. See INDICATOR.

lagging economic indicator. An economic indicator (such as new-home sales) that tends to respond to the direction of the economy. — Often shortened to *lagging indicator*.

leading economic indicator. An economic indicator (such as interest rates) that tends to predict the future direction of the economy. — Often shortened to *leading indicator*.

economic life. The duration of an asset's profitability, usu. shorter than its physical life.

economic loss. A monetary loss such as lost wages or lost profits. • The term is usu. used to refer to the damages recoverable in a lawsuit. For example, in a products-liability suit, economic loss includes the cost of repair or re-

placement of defective property, as well as commercial loss for the property's inadequate value and consequent loss of profits or use.

consequential economic loss. Economic loss that proximately results from a defective product and that is beyond direct economic loss. • Examples include lost profits and loss of goodwill or business reputation.

direct economic loss. Economic loss flowing directly from insufficient product quality. • The most common type is loss-of-bargain damages — the difference between the actual value of goods accepted and the value they would have had if they had been delivered as promised or warranted.

economic-loss rule. *Torts.* The principle that a plaintiff cannot sue in tort to recover for purely monetary loss — as opposed to physical injury or property damage — caused by the defendant. • Many states recognize an exception to this rule when the defendant commits fraud or negligent misrepresentation, or when a special relationship exists between the parties (such as an attorney-client relationship). — Also termed *economic-harm rule*; *economic-loss doctrine*.

“One way the courts have attempted to draw a line between tort and warranty is to bar recovery for ‘economic loss’ in tort. In some states this common law doctrine has achieved the status of the ‘economic loss doctrine,’ meaning that once loss is defined as ‘economic’ it cannot be recovered at least in negligence or strict tort and perhaps not in fraud or misrepresentation.” 1 James J. White & Robert S. Summers, *Uniform Commercial Code* § 10-5, at 581 (4th ed. 1995).

economic obsolescence. See OBSOLESCENCE.

economic-realities test. A method by which a court determines the true nature of a business transaction or situation by examining the totality of the commercial circumstances. • Courts often use this test to determine whether a person is an employee or an independent contractor. Factors include whether the alleged employer controls the details of the work and whether taxes are withheld from payments made to the worker.

economic rent. **1.** The return gained from an economic resource (such as a worker or land) above the minimum cost of keeping the resource in service. **2.** Rent that yields a fair return on capital and expenses.

economics. The social science dealing with the production, distribution, and consumption of goods and services.

economic strike. See STRIKE.

economic substantive due process. See DUE PROCESS.

economic warfare. See WARFARE.

economic waste. Overproduction or excessive drilling of oil or gas.

economist. A professional who studies economics and the economy; a specialist in economics.

economy. **1.** The management or administration of the wealth and resources of a community (such as a city, state, or country). **2.** The sociopolitical organization of a community's wealth and resources. **3.** Restrained, thrifty, or sparing use of resources; efficiency.

balanced economy. An economy in which the monetary values of imports and exports are equal.

judicial economy. See JUDICIAL ECONOMY.

overheated economy. An economy that, although it has a high level of economic activity, has the capacity to cause interest rates and inflation to rise.

political economy. A social science dealing with the economic problems of government and the relationship between political policies and economic processes.

economy of scale. (*usu. pl.*) A decline in a product's per-unit production cost resulting from increased output, *usu. due to increased production facilities*; savings resulting from the greater efficiency of large-scale processes.

e contra (ee *kon-trə*). [Latin] On the contrary.

e converso (ee *kən-vər-soh*). [Latin] Conversely; on the other hand; on the contrary.

ECU. *abbr.* EUROPEAN CURRENCY UNIT.

ecumenical (ek-yə-men-ə-kəl), *adj.* **1.** General; universal. **2.** Interreligious; interdenominational.

E.D. *abbr.* Eastern District, in reference to U.S. judicial districts.

edge lease. See LEASE.

EDI agreement. *abbr.* Electronic Data Interchange agreement; an agreement that governs

the transfer or exchange of data, such as purchase orders, between parties by computer. ● Electronic data transmitted under an EDI agreement is usu. formatted according to an agreed standard, such as the American National Standards Institute ANSI X12 standard or the U.N. EDIFACT standard.

edict (ee-dikt), *n.* A formal decree, demand, or proclamation issued by the sovereign of a country. ● An edict has legal force equivalent to that of a statute. — **edictal** (ee-dik-təl), *adj.*

perpetual edict. *Roman law.* The praetor's edict republished into legislation and intended to exist in perpetuity or until abrogated by a later enactment. ● This term originally had the narrower sense of the praetors' general edicts as opposed to edicts issued in specific cases.

praetorian edict (pri-tor-ee-ən). *Roman law.* One of the yearly proclamations by which the new praetors made known the legal rules that they would apply in the administration of justice.

edictal interdict. See INTERDICT (1).

Edicts of Justinian. *Roman law.* The 13 constitutions or laws of Justinian, appended to the Greek collection of the Novels. ● The Edicts were confined to police matters in the provinces of the Roman Empire.

edictum (ə-dik-təm), *n.* [Latin] *Roman law.* An edict or mandate; an ordinance or law enacted by the emperor without the senate, belonging to the class of *constitutiones principis*. ● An edict was a constitution of the emperor acting on his own initiative, differing from a rescript in not being returned in the way of answer; from a decree in not being given in judgment; and from both in not being founded upon solicitation.

edictum annuum (an-yoo-əm). The annual edict or system of rules promulgated by a Roman praetor immediately upon assuming office, setting forth the principles by which the praetor would be guided in determining cases and administering justice while in office.

edictum perpetuum (pər-pech-oo-əm). The permanent part of the urban praetor's edict, edited in its final form by Julian in A.D. 131.

edictum provinciale (prə-vin-shee-ay-lee). An edict or system of rules for the administration of justice, similar to the edict of the praetor, set forth by the proconsuls and pro-

praetors in the provinces of the Roman Empire.

Edictum Theodorici (thee-ə-də-ri-sī). A collection of Roman laws applicable to both Romans and Goths, promulgated by Theodoric, king of the Ostrogoths, at Rome about A.D. 500, or perhaps in the time of Theodoric III of the Visigoths in Gaul about A.D. 460.

edictum tralatitium (tral-ə-tish-ee-əm). A praetor's edict that retained all or a principal part of the predecessor's edict, with only such additions as appeared necessary to adapt it to changing social conditions or juristic ideas.

edile (ee-dil). See AEDILE.

editorial privilege. See *journalist's privilege* (2) under PRIVILEGE (3).

editus (ed-ə-təs), *adj. Hist.* 1. (Of a statute or rule) enacted; promulgated. 2. (Of a child) born; brought forth.

Edmunds-Tucker Act. An 1882 federal law enacted to punish polygamy. 48 USCA § 1480a. — Sometimes shortened to *Edmunds Act*.

educational expense. See EXPENSE.

educational institution. 1. A school, seminary, college, university, or other educational facility, though not necessarily a chartered institution. 2. As used in a zoning ordinance, all buildings and grounds necessary to accomplish the full scope of educational instruction, including those things essential to mental, moral, and physical development.

educational trust. See TRUST.

EEC. *abbr.* European Economic Community. See EUROPEAN UNION.

EEOC. *abbr.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

effect, *n.* 1. That which is produced by an agent or cause; a result, outcome, or consequence. 2. The result that an instrument between parties will produce on their relative rights, or that a statute will produce on existing law, as discovered from the language used, the forms employed, or other materials for construing it.

effect, *vb.* To bring about; to make happen <the improper notice did not effect a timely appeal>.

effective assignment. See ASSIGNMENT (2).

effective assistance of counsel. See ASSISTANCE OF COUNSEL.

effective cause. See *immediate cause* under CAUSE (1).

effective date. The date on which a statute, contract, insurance policy, or other such instrument becomes enforceable or otherwise takes effect, which sometimes differs from the date on which it was enacted or signed.

effective possession. See *constructive possession* under POSSESSION.

effective rate. See INTEREST RATE.

effects, *n. pl.* Movable property; goods <personal effects>.

effects doctrine. See AFFECTS DOCTRINE.

effets (e-fe or e-fets), *n. pl.* [French] 1. Bills of exchange. 2. Goods; movables; chattels.

effets mobiliers (moh-beel-yay or moh-bæ-leerz). Funds; stocks.

efficient adequate cause. See *proximate cause* under CAUSE (1).

efficient breach. See BREACH OF CONTRACT.

efficient-breach theory. *Contracts.* The view that a party should be allowed to breach a contract and pay damages, if doing so would be more economically efficient than performing under the contract. • This relatively modern theory stems from the law-and-economics movement. See BREACH OF CONTRACT.

efficient cause. See *proximate cause* under CAUSE (1).

efficient intervening cause. See *intervening cause* under CAUSE (1).

efficient proximate cause. See *proximate cause* under CAUSE (1).

effigy (ef-ə-jee), *n.* A figure, image, or other representation; esp., a crude representation of

someone who is disliked. • Effigies are sometimes hanged, burned, or otherwise abused to express public disapproval or ridicule.

effluent (ef-loo-ant), *n.* Liquid waste that is discharged into a river, lake, or other body of water.

effluxion of time (i-fluk-shən). The expiration of a lease term resulting from the passage of time rather than from a specific action or event. — Also termed *efflux of time*.

efforcialiter (e-for-shee-ay-lə-tər), *adv.* [Latin] *Hist.* Forcibly. • This adverb referred primarily to military force.

effraction (ə-frak-shən). A breach made by the use of force.

effractor (ə-frak-tər). One who breaks through; one who commits a burglary.

effusio sanguinis (e-fyoo-zhee-oh sang-gwinnis). [Latin] *Hist.* 1. The shedding of blood. 2. The fine or penalty imposed for the shedding of blood. • The Crown granted to many lords of manors the power to collect this fine. — Also termed *bloodwite*; *bloodwit*. Cf. WERGILD.

EFT. *abbr.* Electronic funds transfer. See FUNDS TRANSFER.

e.g. *abbr.* [Latin *exempli gratia*] For example <an intentional tort, e.g., battery or false imprisonment>. Cf. I.E.

eggshell-skull rule. *Torts.* The principle that a defendant is liable for a plaintiff's unforeseeable and uncommon reactions to the defendant's negligent or intentional act. • Under this rule, for example, if one person negligently scrapes another who turns out to be a hemophiliac, the negligent defendant is liable for the full extent of the plaintiff's injuries even though the harm to another plaintiff would have been minor. — Also termed *eggshell-plaintiff rule*; *thin-skull rule*; *special-sensitivity rule*; *old-soldier's rule*.

ego, talis (ee-goh, tay-lis). [Latin] I, such a one. • This phrase was used in describing the forms of old deeds.

egrediens et exeuns (e-gree-dee-enz et ek-see-enz). [Latin "stepping out and exiting"] *Common-law pleading.* Going forth and issuing out of (land).

egregious (i-gree-jəs), *adj.* Extremely or remarkably bad; flagrant <the defendant's egregious behavior>.

egress (ee-gres). **1.** The act of going out or leaving. **2.** The right or ability to leave; a way of exit. Cf. INGRESS.

eight-corners rule. *Insurance.* The principle that a liability insurer's duty to defend its insured — generally triggered if the plaintiff's claims against the insured are within the policy's coverage — is assessed by reviewing the claims asserted in the plaintiff's complaint, without reference to matters outside the four corners of the complaint plus the four corners of the policy. — Also termed *allegations-of-the-complaint rule*. Cf. FOUR-CORNERS RULE.

Eighteenth Amendment. The constitutional amendment — ratified in 1919 and repealed by the 21st Amendment in 1933 — that prohibited the manufacture, sale, transportation, and possession of alcoholic beverages in the United States. See PROHIBITION (3).

Eighth Amendment. The constitutional amendment, ratified as part of the Bill of Rights in 1791, prohibiting excessive bail, excessive fines, and cruel and unusual punishment.

eight-hour law. A law (such as the federal Fair Labor Standards Act) that establishes the standard working day for certain types of employment at eight hours and that usu. requires overtime pay (such as time-and-a-half compensation) for hours worked beyond this period. See WAGE-AND-HOUR LAW.

8-K. An SEC form that a registered corporation must file if a material event affecting its financial condition occurs between the due dates for regular SEC filings. — Also termed *Form 8-K*. Cf. 10-K.

eigne (ayn), *n.* [Law French] The eldest or first-born. — Also spelled *eygne*; *aisne*. — Also termed (in Law Latin) *einetus*.

eignesse (ay-nes), *n.* [French] See ESNECY.

einecia (i-nee-shee-ə), *n.* [Law Latin fr. French *einé* "being born before"] Eldership. See ESNECY.

einetia. See EISNETIA.

einetus (i-nee-shee-əs), *n.* See EIGNE.

EIR. *abbr.* Environmental-impact report. See ENVIRONMENTAL-IMPACT STATEMENT.

aire (air), *n.* *Hist.* A journey; route; circuit. See EYRE.

airenarcha (i-rə-nahr-kə), *n.* [Latin "peace ruler"] *Roman law.* A justice of the peace; a person charged with maintaining order. — Also spelled (in Justinian's Digest) *irenarcha*.

EIS. *abbr.* ENVIRONMENTAL-IMPACT STATEMENT.

eisne (ayn), *adj.* [Law French] *Hist.* Eldest; first-born. — Also spelled *eigne*, *einsne*, *aisne*, *eign*.

bastard eisne. *Hist.* An illegitimate son whose parents afterward marry and have a second son (*mulier puisne*) for lawful issue.

eisnetia (iz-nee-shee-ə), *n.* [Law Latin] The share of the oldest son; the portion of an estate acquired by primogeniture. — Also spelled *eineta*.

either-or order. See *alternative order* under ORDER (4).

eiusdem generis. See EJUSDEM GENERIS.

eject, *vb.* **1.** To cast or throw out. **2.** To oust or dispossess; to put or turn out of possession. **3.** To expel or thrust out forcibly (e.g., disorderly patrons). — **ejector**, *vb.*

ejection, *n.* An expulsion by action of law or by actual or threatened physical force. See OUSTER.

ejectione custodiae. See DE EJECTIONE CUSTODIAE.

ejectione firmae. See DE EJECTIONE FIRMAE.

ejectment. **1.** The ejection of an owner or occupier from property. **2.** A legal action by which a person wrongfully ejected from property seeks to recover possession and damages. • The essential allegations in an action for ejectment are that (1) the plaintiff has title to the land, (2) the plaintiff has been wrongfully dispossessed or ousted, and (3) the plaintiff has suffered damages. — Also termed *action for the recovery of land*. See FORCIBLE ENTRY AND DETAINER. Cf. EVICTION; OUSTER.

"The evolution of the action of ejectment from its primitive form as a mere action of trespass, enabling a lessee of lands to recover damages when ousted of his possession, through a series of most ingenious fictions, which were afterwards added to enable him to recover possession as well, until its final establishment as the proper method of trying all disputed titles to real property, presents to the student of legal science one of the most interesting studies that the history of the law affords. Few remedies have passed through so many changes of form, both in pleading and practice, and yet retained the same distinctive character that marked their origin." George W. Warvelle, *A Treatise on the Principles and Practice of the Action of Ejectment* § 4, at 4-5 (1905).

"Any person wrongfully dispossessed of land may sue for the specific restitution of it in an action of ejectment. Originally this action was a special variety of trespass and available only to leaseholders. But in time and by the aid of the most elaborate fictions it came to be used by freeholders also. All these fictions have now been swept away; in theory even the term ejectment has been replaced by the term action for the recovery of land. The older term is, however, replaced in practice." R.F.V. Heuston, *Salmond on the Law of Torts* 41 (17th ed. 1977).

equitable ejectment. A proceeding brought to enforce specific performance of a contract for the sale of land and for other purposes. • Though in the form of an ejectment action, this proceeding is in reality a substitute for a bill in equity.

justice ejectment. A statutory proceeding to evict a tenant who has held over after termination of the lease or breach of its conditions.

ejectment bill. *Equity practice.* A bill in equity brought to recover real property and an accounting of rents and profits, without setting out a distinct ground of equity jurisdiction (and thus demurrable).

ejectmente de garde. See DE EJECTIONE CUSTODIAE.

ejector. One who ejects, puts out, or dispossesses another.

casual ejector. The nominal defendant in an ejectment action who, under a legal fiction, is supposed to come casually or by accident upon the premises and to eject the lawful possessor.

ejectum (i-jek-təm), *n.* Something that is cast out, esp. by the sea. See FLOTSAM. Cf. JETSAM; LAGAN.

ejectus (ee-jek-təs), *n.* [Latin] *Hist.* A whore-monger; a pimp.

ejectoria (ay-hair-see-tor-ee-ə), *n.* [Spanish] In Spain, the name of an action lying against a ship's owner upon the contracts or obligations made by the master for repairs or supplies. • This action corresponds to the *actio ejectoria* of Roman law.

ejidos (e-hee-thohs), *n.* [Spanish] In Spain, lands used in common by inhabitants of a city, pueblo, or town for such things as pasture, wood, and threshing-ground; commons. — Also termed *exidos*; *exedos*.

ejuration (ej-ə-ray-shən). The renouncing or resigning of one's place.

ejusdem generis (ee-jəs-dəm jen-ə-ris *also* ee-joos- or ee-yoos-). [Latin "of the same kind or class"] A canon of construction that when a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed. • For example, in the phrase *horses, cattle, sheep, pigs, goats, or any other barnyard animal*, the general language *or any other barnyard animal* — despite its seeming breadth — would probably be held to include only four-legged, hoofed mammals (and thus would exclude chickens). — Also spelled *eiusdem generis*. — Also termed *ejusdem generis rule*; *Lord Tenterden's rule*. Cf. EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS; NOSCITUR A SOCIIS; RULE OF RANK.

elaborare (i-lab-ə-rair-ee), *vb.* [Latin] *Hist.* To gain, acquire, or purchase, as by labor and industry.

elaboratus (i-lab-ə-ray-təs), *n.* [Latin] Property acquired by labor.

Elastic Clause. See NECESSARY AND PROPER CLAUSE.

elder abuse. See ABUSE.

elder brethren. A distinguished body of men elected as masters of Trinity House, an institution incorporated in the reign of Henry VIII and charged with many duties in marine affairs, such as superintending lighthouses. • The full title of the corporation is Elder Brethren of the Holy and Undivided Trinity.

elder law. The field of law dealing with the elderly, including such issues as estate planning, retirement benefits, social security, age discrimination, and healthcare.

elder title. A title of earlier date but one that becomes operative simultaneously with, and prevails over, a title of newer origin.

elected domicile. See DOMICILE.

electee. 1. A person chosen or elected. 2. A person to whom the law gives a choice about status.

election, n. 1. The exercise of a choice; esp., the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies <the taxpayers' election to file jointly instead of separately>. See ELECTION OF REMEDIES. 2. The doctrine by which a person is compelled to choose between accepting a benefit under a legal instrument or retaining some property right to which the person is already entitled; an obligation imposed on a party to choose between alternative rights or claims, so that the party is entitled to enjoy only one <the prevailing plaintiff was put to an election between out-of-pocket damages and lost profits>. — Also termed *equitable election*. See RIGHT OF ELECTION. 3. The process of selecting a person to occupy a position or office, usu. a public office <the 1994 congressional election>. — **elect, vb.** — **elective, adj.**

by-election. An election specially held to fill a vacant post. — Also spelled *bye-election*. Cf. *general election*.

election at large. An election in which a public official is selected from a major election district rather than from a subdivision of the larger unit. — Also termed *at-large election*.

free election. An election in which the political system and processes guarantee that each voter will be allowed to vote according to conscience.

general election. 1. An election that occurs at a regular interval of time. — Also termed *regular election*. 2. An election for all seats, as contrasted with a by-election. Cf. *by-election*.

municipal election. The election of municipal officers.

off-year election. An election conducted at a time other than the presidential election year.

popular election. An election by people as a whole, rather than by a select group.

primary election. A preliminary election in which a political party's registered voters nominate the candidate who will run in the general election. — Often shortened to *primary*.

recall election. An election in which voters have the opportunity to remove a public official from office.

regular election. See *general election*.

representation election. An election held by the National Labor Relations Board to decide whether a certain union will represent employees in a specific bargaining unit. See BARGAINING UNIT.

runoff election. An election held after a general election, in which the two candidates who received the most votes — neither of whom received a majority — run against each other so that the winner can be determined.

special election. An election that occurs in an interim between general elections, usu. to fill a sudden vacancy in office.

election, doctrine of. A doctrine holding that when a person has contracted with an agent without knowing of the agency and later learns of the principal's identity, the person may enforce the contract against either the agent or the principal, but not both. See ELECTION (1).

election, estoppel by. See *estoppel by election* under ESTOPPEL.

election board. 1. A board of inspectors or commissioners appointed in each election precinct to determine voter qualification, to supervise the polling, and often to ascertain and report the results. 2. A local agency charged with the conduct of elections.

election by spouse. See RIGHT OF ELECTION.

election contest. A challenge by an election's loser against the winner, calling for an analysis of the election returns, which may include reviewing voter qualifications or re-counting the ballots.

election district. A subdivision of a state, county, or city that is established to facilitate an election or to elect governmental representatives for that subdivision.

election dower. A name sometimes given to a law specifying a widow's statutory share of her deceased husband's estate if she chooses to reject her share under a will. See RIGHT OF ELECTION.

election fraud. Illegal conduct committed in an election, usu. in the form of fraudulent voting (such as a person's voting twice, voting under

another person's name (usu. a deceased person), or voting while ineligible).

election judge. **1.** A person appointed to supervise an election at the precinct level; a local representative of an election board. **2.** *English law.* One of two puisne judges of the Queen's Bench Division of the High Court selected to try election petitions.

election of remedies. **1.** A claimant's act of choosing between two or more concurrent but inconsistent remedies based on a single set of facts. **2.** The affirmative defense barring a litigant from pursuing a remedy inconsistent with another remedy already pursued, when that other remedy has given the litigant an advantage over, or has damaged, the opposing party. • This doctrine has largely fallen into disrepute and is now rarely applied. **3.** The affirmative defense that a claimant cannot simultaneously recover damages based on two different liability findings if the injury is the same for both claims, thus creating a double recovery. Cf. *alternative relief* under RELIEF (3).

election petition. *English law.* A petition for inquiry into the validity of a Parliament member's election, when the member's return is allegedly invalid for bribery or other reason.

election returns. The report made to the board of canvassers or the election board, by those charged with tallying votes, of the number of votes cast for a particular candidate or proposition.

elective franchise. See FRANCHISE (1).

elective office. An office that is filled by popular election rather than by appointment.

elective share. *Wills & estates.* The percentage of a deceased spouse's estate, set by statute, that a surviving spouse (or sometimes a child) may choose to receive instead of taking under a will or in the event of being unjustifiably disinherited. — Also termed *forced share*; *statutory share*; *statutory forced share*. See RIGHT OF ELECTION.

"In many states today, common-law dower and curtesy have been wholly replaced by statutes that make the surviving spouse an 'heir' of the deceased spouse and fix a *minimum* percentage of the decedent's estate (real and personal) to which the survivor will be entitled regardless of efforts of the deceased spouse to prevent it *by will*. This statutory minimum — called the *statutory forced share* — is typically an estate in fee simple, not merely a life estate. A serious disadvantage to the surviving spouse under many of these statutes, however, is that

the minimum percentage applies only to property owned by the decedent *at death*. Both husbands and wives can, under such statutes, defeat their spouses' forced shares by *inter vivos* transfer." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 37-38 (2d ed. 1984).

elector. **1.** A member of the electoral college chosen to elect the President and Vice President. — Also termed *presidential elector*. **2.** One who is qualified to vote; a voter. **3.** A person who chooses between alternative rights or claims. **4.** *Hist.* The title of certain German princes who had a voice in electing the Holy Roman Emperors. • This office sometimes became hereditary and was connected with territorial possessions.

electoral college. (*often cap.*) The body of electors chosen from each state to formally elect the U.S. President and Vice President by casting votes based on the popular vote.

electoral process. **1.** A method by which a person is elected to public office. **2.** The taking and counting of votes.

electric chair. A chair that is wired so that electrodes can be fastened to a condemned person's head and one leg and a lethal charge passed through the body. • The electric chair was first used in 1890 at the Auburn State Prison in New York.

electronic chattel paper. See CHATTEL PAPER.

Electronic Data Interchange agreement. See EDI AGREEMENT.

electronic funds transfer. See FUNDS TRANSFER.

electronic surveillance. See EAVESDROPPING; WIRETAPPING.

electronic transaction. A transaction formed by electronic messages in which the messages of one or both parties will not be reviewed by an individual as an expected step in forming a contract. UCC § 2A-102(a)(16).

eleemosynae (el-ə-mos-ə-nee), *n. pl. Eccles. law.* Possessions belonging to the church.

eleemosynaria (el-ə-mos-ə-nair-ee-ə), *n. Hist.* **1.** The place in a religious house where the common alms were deposited, to be distributed to the poor by the almoner. **2.** The office of almoner.

eleemosynarius (el-ə-mos-ə-nair-ee-əs), *n.* *Hist.* [Law Latin] **1.** An almoner, or chief officer, who received the eleemosynary rents and gifts and distributed them to pious and charitable uses. **2.** The name of an officer (lord almoner) of the English kings, in former times, who distributed the royal alms or bounty.

eleemosynary (el-ə-mos-ə-ner-ee), *adj.* Of, relating to, or assisted by charity; not-for-profit <an eleemosynary institution>.

eleemosynary corporation. See *charitable corporation* under CORPORATION.

eleemosynary defense. See *charitable immunity* under IMMUNITY (2).

elegant (el-ə-gan-tər), *adv.* *Civil law.* Accurately; with discrimination; neatly.

elegit (ə-lee-jit). [Latin "he has chosen"] *Hist.* A writ of execution (first given by 13 Edw., ch. 18) either upon a judgment for a debt or damages or upon the forfeiture of a recognizance taken in the king's court. • Under it, the defendant's goods and chattels were appraised and, except for plow beasts, delivered to the plaintiff to satisfy the debt. If the goods were not sufficient to pay the debt, then the moiety of the defendant's freehold lands held at the time of judgment was also delivered to the plaintiff, to hold until the debt was satisfied out of rents and profits or until the defendant's interest expired. During this period the plaintiff was called *tenant by elegit*, and the estate an *estate by elegit*. The writ was abolished in 1956.

element. **1.** A constituent part of a claim that must be proved for the claim to succeed <Burke failed to prove the element of proximate cause in prosecuting his negligence claim>. **2. Patents.** A discretely claimed component of a patent claim. • To recover for patent infringement, the plaintiff must prove that the accused product infringes every element of at least one claim, either literally or under the doctrine of equivalents. — Also termed (in sense 2) *limitation*. See DOCTRINE OF EQUIVALENTS.

elemental fact. See *ultimate fact* under FACT.

elements of crime. The constituent parts of a crime — usu. consisting of the actus reus, mens rea, and — that the prosecution must prove to sustain a conviction. • The term is more broadly defined by the Model Penal Code in § 1.13(9) to refer to each component of the actus reus,

causation, the mens rea, any grading factors, and the negative of any defense.

Eleventh Amendment. The constitutional amendment, ratified in 1795, prohibiting a federal court from hearing an action between a state and a person who is not a citizen of that state. See *sovereign immunity* under IMMUNITY (1).

eligible, *adj.* Fit and proper to be selected or to receive a benefit; legally qualified for an office, privilege, or status. — **eligibility**, *n.*

elimination. *Hist.* The act of banishing or turning out of doors; rejection.

elinguation (ee-ling-gway-shən). *Hist.* The punishment of cutting out a person's tongue. — **elinguate**, *vb.*

elisor (i-lī-zər). A person appointed by a court to assemble a jury, serve a writ, or perform other duties of the sheriff or coroner if either is disqualified. — Also spelled *eslisor*.

Elkins Act. A 1903 federal law that strengthened the Interstate Commerce Act by prohibiting rebates and other forms of preferential treatment to large carriers. 49 USCA §§ 41-43 (superseded).

ell (el). *Hist.* A measure of length corresponding to the modern yard.

Ellenborough's Act (el-ən-brəz). An English law (the Malicious Shooting and Stabbing Act) of 1803 punishing offenses against the person. St. 43 Geo. 3, ch. 58.

elogium (i-loh-jee-əm), *n.* *Civil law.* A will or testament.

eloign (i-loyn), *vb.* **1.** To remove (a person or property) from a court's or sheriff's jurisdiction. **2.** To remove to a distance; conceal. — Also spelled *eloin*. — **eloigner**, *n.*

eloignment (i-loyn-mənt), *n.* The getting of a thing or person out of the way, or removing it to a distance, so as to be out of reach.

elongata (ee-lawng-gay-tə). [Latin] **1. adj.** Elongated; carried away to a distance. **2. ELONGATUS.**

elongatus (ee-lawng-gay-təs). [Latin "el-oi-gned"] A return made by a sheriff to a writ

de homine replegiando, stating that the party to be replevied has been eloigned, or conveyed out of the sheriff's jurisdiction. — Also termed *elongata*.

elongavit (ee-lawng-gay-vit). [Latin "he has eloigned"] In a proceeding by foreign attachment, the serjeant-at-mace's return that the garnishee has eloigned the goods, so that they cannot be appraised. • Upon such a return, judgment was given for the plaintiff that an inquiry be made into the eloigned goods. The inquiry was then set for trial and an assessment made by a jury.

elope, *vb.* **1.** *Archaic.* To run away; escape. **2.** *Archaic.* To abandon one's husband and run away with a lover. **3.** To run away secretly for the purpose of getting married, often without parental consent. — **elopement**, *n.*

elsewhere, *adv.* In another place. • In shipping articles, this term, following the designation of the port of destination, must be construed either as void for uncertainty or as subordinate to the principal voyage stated in the preceding words.

eluviation (i-loo-vee-ay-shən). Movement of soil caused by excessive water in the soil.

e-mail. A communication exchanged between people by computer, either through a local area network or the Internet.

emanation. **1.** The act of coming or flowing forth from something. **2.** That which flows or comes forth from something; an effluence.

emancipate, *vb.* **1.** To set free from legal, social, or political restraint; esp., to free from slavery or bondage. **2.** To release (a child) from the control, support, and responsibility of a parent or guardian. — **emancipative**, **emancipatory**, *adj.* — **emancipator**, *n.*

emancipated minor. See **MINOR**.

emancipation. **1.** The act by which one who was under another's power and control is freed. **2.** A surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of a child; the act by which a parent (historically a father) frees a child and gives the child the right to his or her own earnings. • This act also frees the parent from all legal obligations of support. Emancipation may take place by agreement between the parent and child, by operation of law (as when the

parent abandons or fails to support the child), or when the child gets legally married. A "partial emancipation" frees a child for only a part of the period of minority, or from only a part of the parent's rights, or for only some purposes. **3.** *Roman law.* The enfranchisement of a son by his father, accomplished through the formality of an imaginary sale. • Justinian substituted the simpler proceeding of a manumission before a magistrate. Cf. **MANCIPATION**.

emancipation proclamation. (*usu. cap.*) An executive proclamation, issued by President Abraham Lincoln on January 1, 1863, declaring that all persons held in slavery in certain designated states and districts were freed.

embargo, *n.* **1.** A government's wartime or peacetime detention of an offending nation's private ships found in the ports of the aggrieved nation <the President called off the embargo of Iraq's ships after the war ended>. — Also termed *hostile embargo*. **2.** A nation's detention of its own ships in its own ports to promote safety and to preclude transportation to an offending nation <the embargo of all U.S. ships traveling to Iraq remained in effect until hostilities subsided>. **3.** The unilateral or collective restrictions on the import or export of goods, materials, capital, or services into or from a specific country or group of countries for political or security reasons <for a time, the industrialized nations placed an embargo on all goods from Libya>. — Also termed *trade embargo*. **4.** The conscription of private property for governmental use, such as to transport troops <the Army's embargo of the company jet to fly General White to Washington>. **5.** A temporary prohibition on disclosure <the embargo on the press release expired at 11:59 p.m.>. — **embargo**, *vb.*

ambassador. See **AMBASSADOR**.

embassy. **1.** The building in which a diplomatic body is located; esp., the residence of the ambassador. **2.** A body of diplomatic representatives headed by an ambassador; a diplomatic mission on the ambassadorial level. **3.** The mission, business, and function of an ambassador. Cf. **LEGATION**.

Ember Days. *Eccles. law.* The days — which the ancient church fathers called *quatuor tempora jejunii* — that are observed on the Wednesday, Friday, and Saturday following (1) Quadragesima Sunday (the first Sunday in Lent), (2) Whitsuntide, or Holyrood Day, in September, and (3) St. Lucy's Day, about the middle of Decem-

ber. • Almanacs refer to the weeks in which these days fall as *Ember Weeks*; they are now chiefly noticed because, by tradition, the Sundays following Ember Days are used to ordain priests and deacons, although the canon allows bishops to ordain on any Sunday or holiday.

embezzlement, *n.* The fraudulent taking of personal property with which one has been entrusted, esp. as a fiduciary. • The criminal intent for embezzlement — unlike larceny and false pretenses — arises after taking possession (not before or during the taking). — Also termed *defalcation*; *peculation*. — **embezzle**, *vb.* See LARCENY; FALSE PRETENSES.

“Embezzlement is not a common-law crime. It is the result of legislative efforts to make provision for an unreasonable gap which appeared in the law of larceny as it developed. Under the early English statute embezzlement was made a misdemeanor, but under most modern American statutes it is either a felony or a misdemeanor depending upon the value of the property converted.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 351 (3d ed. 1982).

“Embezzlement can be defined as the fraudulent conversion of the property of another by one who has lawful possession of the property and whose fraudulent conversion has been made punishable by the statute.” Arnold H. Loewy, *Criminal Law in a Nutshell* 94 (2d ed. 1987).

emblem. **1.** A flag, armorial bearing, or other symbol of a country, organization, or movement. **2.** Loosely, something that is used to symbolize something else.

emblemata Triboniani (em-blee-mə-tə trə-boh-nee-ay-nī). [Latin] *Roman law*. Alterations, modifications, and additions to the writings of the older jurists, combined to form the Pandects. • Justinian appointed a commission over which Tribonian presided to harmonize contradictions, delete obsolete matter, and bring the law up to date.

emblems (em-blə-mənts). **1.** The growing crop annually produced by labor, as opposed to a crop occurring naturally. • Emblems are considered personal property that the executor or administrator of a deceased tenant may harvest and take regardless of who may have since occupied the land. — Also termed *fructus industriales*. **2.** The tenant's right to harvest and take away such crops after the tenancy has ended.

“At common law those products of the earth which are annual, and are raised by yearly manurance and labor, and essentially owe their annual existence to the cultivation by man, [are] termed ‘emblems’ and sometimes ‘fructus industriales.’” *Sparrow v. Pond*, 52 N.W. 36 (Minn. 1892).

“The law of emblems has its origin and matrix, in the privilege, recognized at least as early as the fifteenth century, of the tenant for an uncertain term, to harvest and remove, even after the tenancy had terminated, the annual crop, which he had planted and nurtured.” Ray Andrews Brown, *The Law of Personal Property* § 159, at 806 (2d ed. 1955).

emblers de gentz (em-blərz də jents). [Law French] A theft from the people. • The phrase occurs in the old English rolls of Parliament — for example, “Whereas divers murders, *emblers de gentz*, and robberies are committed . . .”

embossed seal. See NOTARY SEAL.

embracee (em-bray-see). The bribe-taker in the offense of embracery.

embracer (im-brays-ər). The bribe-giver in the offense of embracery. — Also spelled *embrac-eor*.

embracery (im-brays-ə-ree), *n.* The attempt to corrupt or instruct a jury to reach a particular conclusion by means other than presenting evidence or argument in court, as by bribing or threatening jurors; a corrupt or wrongful attempt to influence a juror's vote on a verdict. — Also termed *jury-tampering*; *laboring a jury*. Cf. JURY-FIXING; JURY-PACKING.

“The word ‘embracery’ . . . has tended to disappear. It is included in some of the codes but the tendency has been to divide this common-law offense into two parts, placing that which is appropriate thereto in sections on bribery and the remainder in provisions dealing with obstruction of justice.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 552 (3d ed. 1982).

embryo (em-bree-oh). A developing but unborn or unhatched animal; esp., an unborn human from conception until the development of organs (i.e., until about the eighth week of pregnancy).

embryo formatus (for-may-təs). *Eccles. law*. A human embryo organized into human shape and endowed with a soul. • Though rejected in the early doctrine of the Christian church, the distinction between the embryo *formatus* and *informatus* was accepted by Gratian (regarded as the founder of canon law) in his *Decretum* (ca. 1140), in which he said that abortion is not murder if the fetus has not yet been infused with a soul. Though he did not specify the time of formation or animation, by the 16th century canonists accepted that the time of formation and animation was the 40th day after conception for the male fetus and the 80th day for the female. — Also termed *embryo animatus*.

embryo informatus (in-for-may-təs). *Eccles. law.* A human embryo before it has been endowed with a soul. — Also termed *embryo inanimatus*.

emend (i-mend), *vb.* To correct or revise; esp., to edit or change (a text).

emenda (ee-men-də), *n. pl.* [Latin “amends”] Things given in reparation for a trespass.

emendatio (ee-men-day-shee-oh), *n.* [Latin] *Hist.* The power of amending and correcting abuses, according to certain rules and measures.

emendatio panis et cerevisiae (ee-men-day-shee-oh pan-is et ser-ə-vizh-ee-ee). [Latin “the correction of bread and ale”] The power of supervising and correcting (assizing) the weights and measures of bread and ale.

emendation (ee-men-day-shən). **1.** Correction or revision, esp. of a text. **2.** *Hist.* The correction of an error or wrongdoing; atonement for a criminal offense. • As criminal law developed over time, emendation by payment of *wer* or *wite* gradually faded away and was replaced by harsher punishments.

e mera gratia (ee meer-ə gray-shee-ə). [Latin] Out of mere grace or favor.

Emergency Court of Appeals. A temporary court, established during World War II, whose purpose is to review wage- and price-control matters.

emergency doctrine. **1.** A legal principle exempting a person from the ordinary standard of reasonable care if that person acted instinctively to meet a sudden and urgent need for aid. — Also termed *imminent-peril doctrine*; *sudden-emergency doctrine*; *sudden-peril doctrine*. **2.** A legal principle by which consent to medical treatment in a dire situation is inferred when neither the patient nor a responsible party can consent but a reasonable person would do so. — Also termed (in sense 2) *emergency-treatment doctrine*. Cf. GOOD SAMARITAN DOCTRINE; RESCUE DOCTRINE.

emergency-employment doctrine. The principle that an employee may enlist another’s help in dealing with an emergency that falls within the scope of the employee’s duties and that could not be overcome without the assistance of the other person.

emergency-treatment doctrine. See EMERGENCY DOCTRINE (2).

emigrant (em-ə-grənt), *n.* One who leaves his or her country for any reason with the intent to establish a permanent residence elsewhere. Cf. IMMIGRANT.

emigrant agent. See AGENT.

emigration (em-ə-gray-shən), *n.* The act of leaving a country with the intent to not return and to maintain a residence elsewhere. — **emigrate**, *vb.* Cf. IMMIGRATION.

“Emigration is usually defined as the voluntary removal of an individual from his home State with the intention of residing abroad. However, not all emigration is voluntary; there sometimes exists forced emigration, even mass emigration. Emigration may also be due to flight for political reasons or expulsion. One then speaks of refugees or exiles.” Paul Weis, “Emigration,” in 2 *Encyclopedia of Public International Law* 76 (1995).

émigré (em-ə-gray or em-ə-gray), *n.* [French] One who is forced to leave his or her country for political reasons. — Also spelled *émigré*.

eminence (em-ə-nənts). (*usu. cap.*) *Eccles. law.* An honorary title given to cardinals of the Catholic Church. • Until the pontificate of Urban VIII, cardinals were called *illustrissimi* and *reverendissimi*.

eminent domain. The inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking. See CONDEMNATION (2); EXPROPRIATION; TAKING (2).

“The term ‘eminent domain’ is said to have originated with Grotius, the seventeenth century legal scholar. Grotius believed that the state possessed the power to take or destroy property for the benefit of the social unit, but he believed that when the state so acted, it was obligated to compensate the injured property owner for his losses. Blackstone, too, believed that society had no general power to take the private property of landowners, except on the payment of a reasonable price. The just compensation clause of the fifth amendment to the Constitution was built upon this concept of a moral obligation to pay for governmental interference with private property. . . . No provision for the power of eminent domain appears in the federal Constitution. The Supreme Court, however, has said that the power of eminent domain is an incident of federal sovereignty and an ‘offspring of political necessity.’ The Court has also noted that the fifth amendment’s limitation on taking private property is a tacit recognition that the power to take private property exists.” John E. Nowak & Ronald D. Rotunda, *Constitutional Law* § 11.11, at 424–25 (4th ed. 1991) (quoting

Bauman v. Ross, 167 U.S. 548, 574, 17 S.Ct. 966, 976 (1897).

Eminent Domain Clause. The Fifth Amendment provision providing that private property cannot be taken for public use without just compensation.

emissary. One sent on a special mission as another's agent or representative, esp. to promote a cause or to gain information.

emit, *vb.* **1.** To give off or discharge into the air <emit light>. **2.** To issue with authority <emit a new series of currency>. — **emission**, *n.*

emolument (i-mol-yə-mənt), *n.* (*usu. pl.*) Any advantage, profit, or gain received as a result of one's employment or one's holding of office.

Emolument Clause. The clause of the U.S. Constitution prohibiting titles of nobility and the acceptance of a gift, title, or other benefit from a foreign power. U.S. Const. art. I, § 9, cl. 8.

emotional distress. A highly unpleasant mental reaction (such as anguish, grief, fright, humiliation, or fury) that results from another person's conduct; emotional pain and suffering. ● Emotional distress, when severe enough, can form a basis for the recovery of tort damages. — Also termed *emotional harm*; *mental anguish*; *mental distress*; *mental suffering*. See INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS.

"Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock, or the like. It includes all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only where it is extreme that the liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining its severity. Severe distress must be proved; but in many cases the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress has existed." Restatement (Second) of Torts § 46 cmt. j (1965).

emotional insanity. See INSANITY.

empanel, *vb.* To swear in (a jury) to try an issue or case. — Also spelled *impanel*. — **empanelment**, **empaneling**, *n.*

emparnours (em-pahr-nørz), *n. pl.* [French] *Hist.* Persons who undertook lawsuits on behalf of others.

emperor. **1.** The title of the sovereign ruler of an empire. **2.** The chief of a confederation of states of which kings are members. ● The rulers of the Roman world adopted the designation *emperor* after the fall of the republic. The title was later assumed by those — including Napoleon — who claimed to be their successors in the Holy Roman Empire. The sovereigns of Japan and Morocco are often called *emperors*, as were, in Western speech, the former sovereigns of Turkey and China. The title denotes a power and dignity superior to that of a king. It appears to be the appropriate style of the executive head of a federal government constructed on the monarchical principle and comprising several distinct kingdoms or other quasi-sovereign states, as with the German empire from 1871 to 1918.

emphasis added. A citation signal indicating that the writer quoting another's words has italicized or otherwise emphasized some of them. — Also termed *emphasis supplied*.

emphyteusis (em-fi-t[y]oo-sis), *n.* [Greek "implanting"] *Roman & civil law.* A hereditary leasehold; a nonowner's right to use land in perpetuity, subject to forfeiture for nonpayment of a fixed rent or for certain other contingencies.

emphyteuta (em-fi-t[y]oo-tə), *n.* [Latin] *Roman & civil law.* The person to whom an *emphyteusis* is granted; the lessee or tenant under a contract of *emphyteusis*. See FEE FARM.

emphyteutic (em-fi-t[y]oo-tik), *adj.* [Latin] *Civil law.* Founded on, growing out of, or having the character of an *emphyteusis*; held under an *emphyteusis*.

empire. The dominion or jurisdiction of an emperor; the region over which an emperor's dominion extends.

empirical (em-pir-i-kəl), *adj.* Of, relating to, or based on experience, experiment, or observation <the expert's theory was not supported by empirical data>. — Also termed *empiric*.

emplazamiento (em-plah-sah-myen-toh), *n.* [Spanish] *Spanish law.* A summons or citation, issued by authority of a judge, requiring the addressee to appear before the tribunal at a designated time.

emploi (om-plwah), *n.* [French] *French law.* Equitable conversion. • When property covered by the *régime dotal* is sold, the purchaser must ensure that the sale proceeds are reinvested for the wife's benefit. See *régime dotal* under RE-GIME.

employ, *vb.* **1.** To make use of. **2.** To hire. **3.** To use as an agent or substitute in transacting business. **4.** To commission and entrust with the performance of certain acts or functions or with the management of one's affairs.

employee. A person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance. — Also spelled *em-ployee*. Cf. AGENT; INDEPENDENT CONTRACTOR.

borrowed employee. An employee whose services are, with the employee's consent, lent to another employer who temporarily assumes control over the employee's work. • Under the doctrine of respondeat superior, the borrowing employer is vicariously liable for the employee's acts. But the employer may also be entitled to assert immunity under workers'-compensation laws. — Also termed *borrowed servant*; *loaned employee*; *loaned servant*; *employee pro hac vice*; *special employee*. See RESPONDEAT SUPERIOR.

statutory employee. *Workers' compensation.* An employee who is covered, or required to be covered, by the employer's workers'-compensation insurance and who therefore has no independent tort claim against the employer for unintentional injuries suffered on the job. See *statutory employee* under EMPLOYER.

employee benefit plan. A written stock-purchase, savings, option, bonus, stock-appreciation, profit-sharing, thrift, incentive, pension, or similar plan solely for employees, officers, and advisers of a company. • The term includes an employee-welfare benefit plan, an employee-pension benefit plan, or a combination of those two. But the term excludes any plan, fund, or program (other than an apprenticeship or training program) in which no employees are plan participants. — Often shortened to *plan*. Cf. PENSION PLAN.

defined-benefit plan. A plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usu. for life, after retirement. • Retirement benefits under a defined-benefit plan are measured by and based on various factors such as years of service rendered and compensation earned. The amount of benefits and the employer's contributions do not depend on the employer's profits. The employer has the entire investment risk, and must cover any funding shortfall. Any plan that is not a defined-contribution plan is a defined-benefit plan. 29 USCA § 1002(35). Cf. *defined-contribution plan*.

defined-contribution plan. Under ERISA, an employee retirement plan in which each employee has a separate account — funded by the employee's contributions and the employer's contributions (usu. in a preset amount), the employee being entitled to receive the benefit generated by the individual account. 29 USCA § 1002(34). — Also termed *individual account plan*. Cf. *defined-benefit plan*.

disability retirement plan. **1.** A plan that is invoked when a covered person is disabled from working to normal retirement age. **2.** A plan that provides increased benefits if a person retires because of a disability.

employee-stock-ownership plan. A profit-sharing plan designed primarily to give an employee retirement benefits and a stake in the company, but also used to allow employees to purchase their employer company if it is closing. IRC (26 USCA) § 4975(e)(7)(A). — Abbr. ESOP.

excess benefit plan. An employee benefit plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the statutory limitations on contributions and benefits.

401(k) plan. A retirement and savings plan that allows an employee to invest pretax contributions from a certain portion of gross wages. • Many employers match the employee's contributions. The contributions and their earnings are accumulated tax-free until they are withdrawn. The contributions are invested, usu. in investments that the employees choose from a list of options. The employer's contributions and the growth on those contributions are usu. not fully vested in the employee unless the employee has achieved a certain duration of service with the employer. IRC (26 USCA) § 401(k).

403(b) plan. A tax-deferred retirement plan for employees of public educational systems and certain tax-exempt organizations, funded primarily with employee contributions (through deferred compensation) and the employer's matching contributions. • The contributions accumulate earnings on a tax-deferred basis, so that neither the contributions nor the earnings are taxed until they are distributed to the employee. IRC (26 USCA) § 403(b). — Also termed *tax-sheltered annuity*; *tax-deferred annuity*.

governmental plan. An employee benefit plan established and maintained by the government for its employees at any level, including plans established or maintained in accordance with collective-bargaining agreements between governmental entities and labor unions if those plans are funded by, and cover only employees of, governmental entities. — Also termed *governmental employee benefit plan*; *government plan*.

individual account plan. See *defined-contribution plan*.

Keogh plan. See *KEOGH PLAN*.

money-purchase plan. An employee benefit plan that provides a benefit based on the total amount of employer contributions in a participant's account. • A money-purchase plan can be a qualified plan if the contributions are fixed and not geared to profits.

nonqualified deferred-compensation plan. A compensation arrangement (such as providing stock options), frequently offered to executives, that defers the recognition of taxable income to a later date.

"Generally, a nonqualified deferred compensation plan is an agreement or promise by an employer to certain individuals to pay compensation to those individuals at some future date. A nonqualified plan may also be a series of deferred compensation agreements between an employer and certain individuals that are considered to be a plan of benefits. These types of plans do not qualify for the special tax treatment afforded to plans that meet the qualification requirements of Section 401(a) of the Internal Revenue Code . . ." Bruce J. McNeil, *Nonqualified Deferred Compensation Plans* 1 (1994).

retirement plan. An employee benefit plan — such as a pension plan or Keogh plan — provided by an employer (or a self-employed person) for an employee's retirement.

simplified employee pension plan. An individual retirement account or annuity established for an employee and funded by employee contributions and by discretionary contributions from the employer. • A simplified employee pension plan operates much

like a 401(k) plan, in that the employee contributions can be made by deferred compensation and the employer can contribute. But the plan is attractive to small employers because it is much easier to administer than a 401(k) plan and gives the employer complete discretion on whether to make an annual contribution. IRC (26 USCA) § 408(k). — Abbr. SEP.

split-funded plan. A retirement plan combining elements of both life insurance and investment plans.

target benefit plan. A money-purchase plan that sets a "targeted" benefit to be met by actuarially determined contributions.

employee givebacks. See *CONCESSION BARGAINING*.

employee-liability exclusion. See *EXCLUSION (3)*.

employee pro hac vice. See *borrowed employee* under *EMPLOYEE*.

Employee Retirement Income Security Act. A federal statute that regulates private pension plans and employee benefit plans and that established the Pension Benefit Guaranty Corporation. 29 USCA §§ 1001 et seq. — Abbr. ERISA.

employee stock option. See *STOCK OPTION (2)*.

employee-stock-ownership plan. See *EMPLOYEE BENEFIT PLAN*.

Employee's Withholding Allowance Certificate. See *W-4 FORM*.

employer. A person who controls and directs a worker under an express or implied contract of hire and who pays the worker's salary or wages. Cf. *PRINCIPAL (1)*.

equal-opportunity employer. An employer who agrees not to discriminate against any job applicant or employee on the basis of race, color, religion, sex, natural origin, age, or disability. — Abbr. EOE.

general employer. An employer who transfers an employee to another employer for a limited period. See *borrowed employee* under *EMPLOYEE*.

special employer. An employer who has borrowed an employee for a limited period and has temporary responsibility and control over the employee's work.

statutory employer. *Workers' compensation.* One who employs a statutory employee. See *statutory employee* under EMPLOYEE.

employers' liability. See WORKERS' COMPENSATION.

employers'-liability insurance. See INSURANCE.

employment. 1. The act of employing; the state of being employed. 2. Work for which one has been hired and is being paid by an employer.

casual employment. Work that is occasional, irregular, or for a limited, temporary purpose.

employment at will. Employment that is usu. undertaken without a contract and that may be terminated at any time, by either the employer or the employee, without cause. — Also termed *at-will employment*; *hiring at will*.

"Surprisingly, the employment at will doctrine is not an ancient one. On the contrary, it dates only from the period in the mid-nineteenth century that saw the transformation of the employment relation from one of status to one of contract. The relentless logic of the contract approach dictated the rule that the employee had only such rights as were expressly agreed to in his contract of employment — no more and no less. This meant that there was no implication that an indefinite hiring would last for a year or any other presumed period, since if the parties had wanted a particular term they would have expressly agreed to it." 1 Lex K. Larson, *Unjust Dismissal* § 1.01, at 1-3 (1992).

"The doctrine of employment at will prescribed that an employee without a contract for a fixed term could be hired or fired for any reason or no reason at all. . . . [The] rule provided that employees categorized as 'at will' had no legal interest in continuing job security. Whereas early American masters had some responsibility to the public as well as to their servants when they turned dependent servants out on the world, under [this] formulation, masters could simply fire employees who had no contracts." Mark A. Rothstein et al., *Employment Law* § 1.4, at 9-10 (1994).

gainful employment. Work that a person can pursue and perform for money.

hazardous employment. High-risk work; work involving extra peril. • In the context of workers' compensation, hazardous employment often requires an employer to carry workers'-compensation coverage or its equivalent, regardless of the number of employees.

joint employment. A job in which the essential terms and conditions of the employee's work are controlled by two or more entities, as when a company hires a contractor to perform a task and retains control over the

contractor's employees in matters such as hiring, firing, discipline, conditions of employment, promulgation of work rules, assignment of day-to-day job duties, and issuance of operating instructions.

permanent employment. Work that, under a contract, is to continue indefinitely until either party wishes to terminate it for some legitimate reason.

seasonal employment. An occupation possible only during limited parts of the year, such as a summer-camp counselor, a baseball-park vendor, or a shopping-mall Santa.

employment agency. A business that procures, for a fee, employment for others and employees for employers. • Whether the employer or the employee pays the fee depends on the terms of the agreement. See FINDER (1).

employment at will. See EMPLOYMENT.

employment contract. See CONTRACT.

employment-practices-liability insurance. See INSURANCE.

employment-related-practices exclusion. See EXCLUSION (3).

emporium (em-por-ee-əm), *n.* A place for wholesale trade in commodities carried by sea. • The term is sometimes applied to a seaport town, but properly signifies only a particular place in such a town.

empresario (em-pri-sahr-ee-oh), *n.* [Spanish] 1. *Mexican law.* A businessperson; a person who invests in or manages a business. 2. *Hist.* A person receiving extensive land grants in consideration of bringing people into Mexico (esp. into what would become Texas) and settling them on the land with a view toward increasing the population and developing the country's resources.

emptio (emp-shee-oh), *n.* [Latin "purchase"] *Roman & civil law.* The act of buying; a purchase. — Also spelled *emtio*.

emptio bonorum (bə-nor-əm). [Latin "purchase of goods"] A type of forced assignment for the benefit of creditors, involving a public sale of an insolvent debtor's estate whereby the purchaser succeeded to all the debtor's property, rights, and claims, and became responsible for the debtor's debts and liabilities to an extent fixed before the transfer.

emptio et venditio (et ven-dish-ee-oh). [Latin "purchase and sale"] A contract of sale. — Also termed *emptio venditio*. See VENDITIO.

emptio rei speratae (ree-I spə-ray-tee). [Latin "purchase of a hoped-for thing"] The purchase of a thing not yet in existence or not yet in the seller's possession; e.g., a future crop. • The price of such a purchase typically depended on the actual yield and thus could fluctuate.

emptio spei (spee-I). [Latin "purchase of a hope"] An *emptio rei speratae* in which the price is fixed, regardless of actual gain.

emptio venditio. See *emptio et venditio*.

emptor (emp-tor or -tər), *n.* [Latin] *Civil law*. A buyer. — Also spelled *emtor*. See *caveat emptor* under CAVEAT.

emptor familiae. See FAMILIAE EMPTOR.

empty-chair defense. A trial tactic in a multi-party case, whereby one defendant attempts to put all the fault on a defendant who settled before trial or who was not named as a party.

empty-chair doctrine. See ADVERSE-INTEREST RULE.

emptio. See EMPITIO.

emtor. See EMPTOR.

emtrix (em[p]-træks), *n.* [Latin] *Civil law*. A female buyer.

enable, *vb.* To give power to do something; to make able.

enablement requirement. *Patents*. The rule that the specification of a patent application must describe the invention so that a person with ordinary skill in the art could make and use the invention without experimenting unduly. • A specification that meets this requirement is referred to as *enabling*. Cf. ENABLING SOURCE.

enabling act. See *enabling statute* under STATUTE.

enabling clause. The part of a statute or constitution that gives governmental officials the power and authority to put the law into effect and enforce it. See ENACTING CLAUSE.

enabling power. See POWER OF APPOINTMENT.

enabling source. *Patents*. A document that defeats the patentability of an invention because the information provided made it possible — before the patent application was filed — for a person skilled in the art to make the invention. Cf. ENABLEMENT REQUIREMENT.

enabling statute. **1.** See STATUTE. **2. Hist.** The Lease Act (1540), by which tenants in tail, husbands seised in right of their wives, and others were empowered to make leases for their lives or for 21 years. St. 32 Hen. 8, ch. 28.

enact, *vb.* **1.** To make into law by authoritative act; to pass <the statute was enacted shortly before the announced deadline>. **2.** (Of a statute) to provide <the statute of frauds enacts that no action may be brought on certain types of contracts unless the plaintiff has a signed writing to prove the agreement>. — **enactor**, *n.*

enacted law. See LAW.

enacting clause. The part of a statute stating the legislative authority by which it is made and when it takes effect. • In codifications of statutes, enacting clauses generally appear not in the text of the statutes but in historical or legislative notes.

enactment, *n.* **1.** The action or process of making into law <enactment of a legislative bill>. **2.** A statute <a recent enactment>.

enajenación (e-nah-hen-ah-syohn), *n.* [Spanish] In Spain and Mexico, alienation; conveyance of property.

en arere (en ə-reer). [Law French] In time past.

en autre droit (en oh-trə droyt or on noh-trə drwah). [French] In the right of another, as when an executor sues on behalf of the estate. — Also spelled *in autre droit*. See AUTRE DROIT.

en banc (en bangk or on bongk). [Law French "on the bench"] *adv.* & *adj.* With all judges present and participating; in full court <the court heard the case en banc> <an en banc rehearing>. — Also spelled *in banc*; *in bank*. — Also termed *in banco*.

en banc sitting. See SITTING.

enbanceworthy, *adj.* *Slang*. Worthy of being considered en banc <the Fifth Circuit conclud-

ed that two of the four issues are truly enbancworthy>. — **enbancworthiness**, *n.*

en bloc (en **blok**). [French] As a whole; as a unit.

enbrever (en-**bree**-vər), *vb.* [Law French] **1.** To abbreviate. **2.** To put into a schedule.

encheson (en-**chee**-zən), *n.* [Law French] The occasion, cause, or reason for which something is done. — Also spelled *encheason*.

enclave (en-klayv). *Int'l law.* An isolated part of a country's territory entirely surrounded by the territory of one foreign country, so that any communication with the main part of the country must pass through the territory of the foreign country. ● Although international enclaves were once common, they are now relatively rare; examples include Baarle-Hertog, a Belgian enclave in the Netherlands, and Büsingen, a German enclave in Switzerland. — Also termed *international enclave*.

quasi-enclave. An isolated part of a country's territory that, though not entirely surrounded by the territory of a foreign country, is inaccessible by way of the country's own territory because of topographical features such as impassable mountains.

enclose, *vb.* **1.** To surround or encompass; to fence or hem in on all sides. **2.** To place (something) in a parcel or envelope. — Also spelled *inclose*.

enclosed land. See LAND.

enclosed please find. See TRANSMITTAL LETTER.

enclosure. **1.** Something enclosed in a parcel or envelope. **2.** Land surrounded by some visible obstruction; CLOSE (1). **3.** An artificial fence around one's estate. — Also spelled *inclosure*.

encomienda (en-koh-mee-en-də), *n.* [Spanish] *Spanish law.* **1.** A royal grant to a private person of a certain portion of territory in the Spanish colonies, together with the concession of a certain number of the native inhabitants, on the feudal principle of commendation. **2.** A royal grant of privileges to the military orders of Spain.

encourage, *vb.* *Criminal law.* To instigate; to incite to action; to embolden; to help. See AID AND ABET.

encroach, *vb.* **1.** To enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude. **2.** To gain or intrude unlawfully upon another's lands, property, or authority. — Formerly also spelled *incroach*.

encroachment, *n.* An infringement of another's rights or intrusion on another's property <the court remedied the encroachment by ordering the defendant to cut down the tree limb hanging over the plaintiff's yard>. — Formerly also spelled *incroachment*. See TRESPASS.

encumbrance, *n.* A claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. ● An encumbrance cannot defeat the transfer of possession, but it remains after the property or right is transferred. — Also spelled *incumbrance*. — **encumber**, *vb.*

"Encumbrances are not confined to the law of property, but pertain to the law of obligations also. Choses in action may be mortgaged, settled in trust, or otherwise made the subject-matter of *jura in re aliena*, no less than land and chattels." John Salmond, *Jurisprudence* 435-36 n.(k) (Glanville L. Williams ed., 10th ed. 1947).

"'Encumbrance' means a right, other than an ownership interest, in real property. The term includes a mortgage or other lien on real property." UCC § 9-102(a)(23).

mesne encumbrance (meen). An intermediate encumbrance; an encumbrance that first occurred both earlier and later than other encumbrances.

encumbrancer. One having a legal claim, such as a lien or mortgage, against property.

end, *n.* **1.** An object, goal, or purpose. **2.** A result; a termination point.

endangered species. See SPECIES.

endangerment, *n.* The act or an instance of putting someone or something in danger; exposure to peril or harm. — **endanger**, *vb.* See CHILD ENDANGERMENT; RECKLESS ENDANGERMENT.

endeavor, *n.* A systematic or continuous effort to attain some goal.

endeavor, *vb.* To exert physical or intellectual strength toward the attainment of an object or goal.

en déclaration de simulation (on dek-lah-rah-syawn də sim-[y]ə-lah-syawn). [French "in or-

der to declare (something) a pretence"] *Civil law*. An action to void a contract; esp., one brought to remove a cloud from title and bring back, for any legal purpose, to the true owner's estate the thing sold.

en demeure (on də-myuur). [French "in default"] *Civil law*. Of a debtor who fails to pay on demand according to the terms of the obligation.

endenizen (en-den-ə-zən), *vb.* To recognize as a legal resident; to naturalize. — Also spelled *endenize*; *indenizen*; *indenize*.

endless-chain scheme. See PYRAMID SCHEME.

end lines. *Mining law*. A claim's lines, as platted or laid down on the ground, that mark its boundaries on the shorter dimension, where the claim crosses the vein, in contrast to side lines, which mark the longer dimension and follow the course of the vein. • With reference to the apex rule, if the claim as a whole crosses the vein instead of following its course, the end lines will become the side lines and vice versa. Cf. SIDE LINES; APEX RULE.

endnote. A note that, instead of appearing at the bottom of the page (as a footnote does), appears at the end of the book, chapter, or paper.

endorsed bond. See *guaranteed bond* under BOND (3).

endorsee. See INDORSEE.

endorsement, *n.* **1.** INDORSEMENT. **2.** An amendment to an insurance policy; a rider. — **endorse**, *vb.*

endorser. See INDORSER.

endow, *vb.* **1.** To give money or property to, esp. as a source of continuing or permanent income. **2. Hist.** To provide (a woman) with a dowry.

endowment. **1.** A gift of money or property to an institution (such as a university) for a specific purpose, esp. one in which the principal is kept intact indefinitely and only the interest income from that principal is used. **2. Hist.** The assigning or giving of a dowry to a woman.

endowment insurance. See INSURANCE.

endowment policy. See INSURANCE POLICY.

end position. One's legal and financial position on the signing of a contract, including the choices now available, such as renewal and renegotiation.

end user. See USER.

Enelow-Ettelson rule (en-ə-loh-et-əl-sən). The defunct doctrine that an order staying federal-court proceedings pending the determination of an equitable defense (such as arbitration) is an injunction appealable under 28 USCA § 1292(a)(1) if the proceeding stayed was an action that could have been maintained as an action at law before the merger of law and equity. *Enelow v. New York Life Ins. Co.*, 293 U.S. 379, 55 S.Ct. 310 (1935); *Ettelson v. Metropolitan Life Ins. Co.*, 317 U.S. 188, 63 S.Ct. 163 (1942).

enemy. **1.** One who opposes or inflicts injury on another; an antagonist. **2.** An opposing military force. **3.** A state with which another state is at war. — Also termed *public enemy*. **4.** A person possessing the nationality of the state with which one is at war. — Also termed *enemy subject*. **5.** A foreign state that is openly hostile to another whose position is being considered.

alien enemy. See ALIEN.

public enemy. **1.** A notorious criminal who is a menace to society; esp., one who seems more or less immune from successful prosecution. **2.** ENEMY (3). **3.** A social, health, or economic condition or problem that affects the public at large and is difficult to control <teenage smoking has been declared a public enemy in this country>.

enemy alien. See *alien enemy* under ALIEN.

enemy's property. *Int'l law*. Property used in illegal commerce or trading with a public enemy, whether that property belongs to an ally or a citizen. • This term is esp. common in prize courts. The illegal traffic makes the property hostile, and allows penal consequences to attach to the property itself.

enemy subject. See ENEMY (4).

Energy, Department of. See DEPARTMENT OF ENERGY.

en fait (on fay), *adv.* [French] In fact; actually.

enfeoff (en-fef or en-feef), *vb.* To put (a person) in legal possession of a freehold interest; to

transfer a fief to. — Formerly spelled *infeoff*. — Also termed *feoff*; *infeudate*.

enfeoffment (en-fef- or en-feef-mənt), *n.* **1.** At common law, the act or process of transferring possession and ownership of an estate in land. — Also termed *infeudation*. **2.** The property or estate so transferred. **3.** The instrument or deed by which one obtains such property or estate. — Also spelled *infeoffment*. — Also termed *feoffment*.

enforce, *vb.* **1.** To give force or effect to (a law, etc.); to compel obedience to. **2.** Loosely, to compel a person to pay damages for not complying with (a contract).

enforcement, *n.* The act or process of compelling compliance with a law, mandate, or command.

extrajudicial enforcement. See SELF-HELP.

law enforcement. See LAW ENFORCEMENT.

remedial enforcement. See *secondary right* under RIGHT.

sanctional enforcement. See *secondary right* under RIGHT.

secondary enforcement. See *secondary right* under RIGHT.

selective enforcement. See SELECTIVE ENFORCEMENT.

specific enforcement. See *primary right* under RIGHT.

Enforcement of Foreign Judgments Act. A uniform law, adopted by several states, that gives the holder of a foreign judgment essentially the same rights to levy and execute on the judgment as the holder of a domestic judgment. • The Act defines a *foreign judgment* as any judgment, decree, or order (of a court in the United States or of any other court) that is entitled to full faith and credit in the state. See FULL FAITH AND CREDIT.

enforcement power. The authority by which Congress may enforce a particular constitutional amendment's provisions by appropriate legislation. • Enforcement power is granted to Congress under the 13th, 14th, 15th, 19th, 23rd, 24th, and 26th Amendments.

enfranchise, *vb.* **1.** To grant voting rights or other rights of citizenship to (a person or class). **2.** To set free, as from slavery.

enfranchisement (en-fran-chiz-mənt or -chiz-mənt), *n.* **1.** The granting of voting rights or other rights of citizenship to a class of persons. **2.** The act of making free, as from slavery.

enfranchisement of copyhold. *Hist.* The conversion of copyhold into freehold tenure, by (1) a conveyance of the fee simple from the lord of the manor to the copyholder, (2) a release from the lord of all seigniorial rights, or (3) a release by the copyholder to the lord of the copyholder's interest in the estate. See COPYHOLD.

engage, *vb.* To employ or involve oneself; to take part in; to embark on.

engagement, *n.* **1.** A contract or agreement involving mutual promises. **2.** An agreement to marry; the period after which a couple has agreed to marry but before they do so.

engagement slip. A note sent by a lawyer to a court informing the court that the lawyer is professionally engaged in a second court on a given day and thus cannot appear before the first court on that day as scheduled. • The term is used in Pennsylvania.

engender, *vb.* To cause; to bring about; to occasion.

engineering, procurement, and construction contract. See CONTRACT.

England procedure. A procedure by which — after a federal court has referred a case back to state court under the *Pullman* abstention doctrine, and the state court has adjudicated the state-court issues — a litigant may return to federal court to have the federal claims adjudicated. *England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411, 84 S.Ct. 461 (1964). See *Pullman abstention* under ABSTENTION.

English rule. The requirement that a losing litigant must pay the winner's costs and attorney's fees. — Also termed *loser-pays rule*. Cf. AMERICAN RULE.

Englishry, presentment of. PRESENTMENT OF ENGLISHRY.

en gros (on groh). [French] In gross; total; by wholesale.

engross, *vb.* **1.** *Hist.* To handwrite a document, esp. a deed, in a style characterized by large letters. • This method of writing, which was

derived from ancient court hand, was also used in transcribing wills well into the 19th century. Cf. COURT HAND. **2.** To prepare a copy of (a legal document, such as a deed) for execution. **3.** To prepare a copy of (a bill or mandate) before a final legislative vote. **4.** To buy large quantities of (a stock or commodity) in an effort to corner the market and control the price. **5.** To absorb or fully occupy. — Formerly also spelled *in-gross*. Cf. ENROLL.

engrossed bill. See BILL (3).

engrosser, n. Hist. A person who engages in or is guilty of engrossing.

Engrosser of the Great Roll. See CLERK OF THE PIPE.

engrossing, n. Hist. The practice of buying large quantities of commodities or merchandise with the intent of gaining a monopoly and selling them at a very high price. • Engrossing was a misdemeanor in England until 1834. — Also termed *engrossment*. See CORNERING THE MARKET.

“Engrossing . . . is the getting into one’s possession, or buying up, of corn or other dead victuals, with intent to sell them again. This must of course be injurious to the public, by putting it in the power of one or two rich men to raise the price of provisions at their own discretion.” 4 William Blackstone, *Commentaries on the Laws of England* 158 (1769).

engrossment, n. 1. The preparation of a legal document (such as a deed) for execution. **2.** The drafting of a resolution or bill just before a final vote on the matter in the legislature. **3.** ENGROSSING.

enhanced, adj. Made greater; increased <because of his recidivism, Monte was subject to an enhanced sentence after his latest conviction>.

enhanced damages. See DAMAGES.

enhancement. The act of augmenting; the state of being enhanced <the use of a deadly weapon led to an enhancement of the sentence>.

inheritance (*on-nair-ee-tahns*), *n.* [Law French] See INHERITANCE.

enitia pars (*ə-nish-ee-ə pahrz*). [Latin] The share of the eldest. • In English law, this describes the lot or share chosen by the eldest of coparceners when they make a voluntary

partition. The first choice (*primer election*) belongs to the eldest.

enjoin, vb. 1. To legally prohibit or restrain by injunction <the company was enjoined from selling its stock>. **2.** To prescribe, mandate, or strongly encourage <the graduating class was enjoined to uphold the highest professional standards>. — **enjoinment** (for sense 1), *n.* — **enjoinder** (for sense 2), *n.*

enjoinable, adj. Capable of being prohibited by injunction <an enjoined nuisance>.

enjoy, vb. To have, possess, and use (something) with satisfaction; to occupy or have the benefit of (property).

enjoyment, n. 1. Possession and use, esp. of rights or property. **2.** The exercise of a right.

adverse enjoyment. The possession or use of land under a claim of right against the owner of the property from which the easement derives.

beneficial enjoyment. The possession and benefit of property, but without legal title.

present enjoyment. The immediate possession and use of an estate.

quiet enjoyment. The possession of real property with the assurance that the possession will not be disturbed by a superior title. See *covenant for quiet enjoyment* under COVENANT (4).

en juicio (en *hwee-syoh*), *adv.* [Spanish] Judicially; in a court of law; in a suit at law.

enlarge, vb. 1. To increase in size or extend in scope or duration <the court enlarged the time allotted for closing arguments>. **2.** To free from custody or imprisonment <at common law, an action for escape lay when a prisoner was wrongly enlarged>. — **enlargement, n.**

enlargement of time. A usu. court-ordered extension of the time allowed to perform an action, esp. a procedural one.

enlarger l'estate (en-lahr-jər lə-stayt). [Law French] A release that enlarges an estate and consists of a conveyance of the ulterior interest to the particular tenant. • If an estate is held by a tenant for life or years, with the remainder to another in fee, and if the one in remainder releases all rights to the particular tenant and his or her heirs (through an *enlarger l'estate*), the tenant then holds the estate in fee.

enlisted member. *Military law.* A person in an enlisted grade; a person in military service below the grade of officer or warrant officer.

enlistment, n. Voluntary entry into a branch of the armed services. — **enlist, vb.**

en masse (en **mas**). [French] In a mass; in a large group all at once; all together.

en mort mayne (en **mort** mayn). [French “in dead hand”] In mortmain. See MORTMAIN.

Enoch Arden law (ee-nək ahrd-ən). A statute that grants a divorce or an exemption from liability so that a person can remarry when his or her spouse has been absent without explanation for a specified number of years (usu. five or seven). • This type of law is named after a Tennyson poem, in which the eponymous hero, having been shipwrecked for years on a desert island, returns home to find that his wife has remarried. He selflessly conceals his identity from her so that she can remain with her new husband. — Also spelled *Enoc Arden law*. See *presumptive death* under DEATH; ABANDONMENT (2).

enormia (i-nor-mee-ə), *n.* [Latin] *Common-law pleading.* Unlawful or wrongful acts; wrongs. • This word, esp. as part of the phrase *et alia enormia* (“and other outrages”), appeared regularly in writs and declarations of trespass.

enormious (i-nor-mee-əs), *adj.* *Archaic.* Made without a rule or against law.

enormous, adj. Aggravated; excessively large <enormous crimes>.

en owl main (en ow-əl mayn). [Law French] In equal hand.

enpleet (en-pleet), *vb.* *Hist.* See IMPLEAD.

enquête (on-ket), *n.* [French] *Eccles. law.* An examination of witnesses (taken down in writing) by or before an authorized judge for the purpose of gathering testimony to be used on a trial. — Also termed *enquest* (on[g]-kwes[t]).

en recouvrement (on ray-koo-vrə-mon). [French “for purpose of recovery”] *French law.* An indorsement on a bill of exchange that does not transfer the property in the bill of exchange but merely gives the indorsee the authority to recover the amount of the bill.

enrégistrement (on-ray-zhees-trə-mon), *n.* [French] *French law.* Registration. • This is a formality that consists in inscribing, on a register kept by the government, a summary analysis of certain deeds and documents. When the analysis is so inscribed, the clerk places on the document a note indicating the date on which it was registered; alongside the memorandum the clerk makes an impression with a stamp.

enroll, vb. **1.** To register or transcribe (a legal document, as a deed) into an official record on execution. — Formerly also spelled *inroll*. **2.** To prepare (a bill passed by the legislature) for the executive’s signature. Cf. ENGROSS.

enrolled, adj. Registered; recorded.

enrolled agent. One who, though neither a certified public accountant nor an attorney, has been admitted to practice before the IRS, either by passing an examination or by working for the IRS in a technical area for at least five years. • The enrolled agent is one of four types of persons who are allowed to practice before the IRS, the other three being attorneys, certified public accountants, and persons who are admitted to represent either themselves or others in a particular case.

enrolled bill. See BILL (3).

enrolled-bill rule. The conclusive presumption that a statute, once formalized, appears precisely as the legislature intended, thereby preventing any challenge to the drafting of the bill.

enrollment, n. The act of recording or registering.

enrollment of vessels. *Maritime law.* The recording and certification of vessels used in coastal or inland navigation, as distinguished from the “registration” of vessels used in foreign commerce. • *Enrollment* and *registry* are used to distinguish certificates granted to two classes of vessels. Enrollment evidences the national character of a vessel engaged in coasting trade or home traffic; registry is used to declare the nationality of a vessel engaged in foreign trade. Cf. REGISTRY (2).

Enrollment Office. *Hist.* A department of the Court of Chancery responsible for storing enrolled deeds and judgments. • The Enrollment Office was abolished in 1879; its duties were transferred to the Central Office.

en route (en or on root). [French] On the way; in the course of transportation or travel.

enschedule, *vb.* *Archaic.* To insert in a list, account, or writing.

enseal, *vb.* *Archaic.* To seal (a document).

enserver (en-sər-vər), *vb.* [Law French] To make subject to a service or servitude.

ens legis (enz lee-jis). [Law Latin] A creature of the law; an artificial being as opposed to a natural person. • The term describes a corporation, which derives its existence entirely from the law.

entail, *n.* A fee abridged or limited to the owner's issue or class of issue rather than descending to all the heirs. See BARRING OF ENTAIL.

"Entail is fee entailed, viz; abridged, limited, and tied to certain conditions at the will of the donor; where lands are given to, or settled on others." *The Pocket Lawyer and Family Conveyancer* 97 (3d ed. 1833).

quasi-entail. An estate *pur autre vie* that is granted to a person and the heirs of the person's body. • The interest so granted is not properly an estate-tail (because it is not granted by inheritance), but it is similar enough that the interest will go to the heir of the body as special occupant during the life of the *cestui que vie*, in the same manner as an estate of inheritance would descend if limited to the grantee and the heirs of his body.

entail, *vb.* **1.** To make necessary; to involve <responding to this onerous discovery will entail countless hours of work>. **2.** To limit the inheritance of (an estate) to only the owner's issue or class of issue, so that none of the heirs can transfer the estate <the grantor entailed the property through a so-called "tail female">. See FEE TAIL.

entailed, *adj.* Settled or limited to specified heirs or in tail <entailed gifts>.

entailed estate. See FEE TAIL.

entailment, *n.* **1.** The act of entailing an estate. **2.** An estate so entailed.

entencion (en-ten-shən), *n.* [Law French] *Hist.* A plaintiff's count or declaration.

entendment. *Archaic.* See INTENDMENT.

entente (ahn-tahnt). [French "intent, understanding"] *Int'l law.* **1.** An understanding that two or more nations have for carrying out a common policy or course of action. • An *entente* is looser than an alliance but stronger than the nations' merely having good relations. **2.** The nations having such an understanding. Cf. ALLIANCE; DETENTE.

enter, *vb.* **1.** To come or go into; esp., to go onto (real property) by right of entry so as to take possession <the landlord entered the defaulting tenant's premises>. **2.** To put formally before a court or on the record <the defendant entered a plea of no contest>. **3.** To become a party to <they entered into an agreement>. See ENTRY.

enterceur (en-tər-sər), *n.* [Law French] A party claiming goods; one who has placed goods in the hands of a third party.

enterpleder. *Archaic.* See INTERPLEADER (1).

enterprise, *n.* **1.** An organization or venture, esp. for business purposes.

governmental enterprise. An enterprise undertaken by a governmental body, such as a parks department that creates a public park.

2. Under federal anti-racketeering law, an individual, partnership, corporation, association, union, other legal entity, or group of individuals associated in fact, although not a legal entity. • The enterprise must be ongoing and must exist as an entity separate from the allegedly illegal activity that it engages in. 18 USCA § 1961(4). See RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT. **3.** One or more persons or organizations that have related activities, unified operation or common control, and a common business purpose. • Under the Fair Labor Standards Act, an employee who is employed by an enterprise is entitled to minimum-wage and overtime benefits. 29 USCA §§ 201 et seq.

enterprise liability. See LIABILITY.

entertain, *vb.* **1.** To bear in mind or consider; esp., to give judicial consideration to <the court then entertained motions for continuance>. **2.** To amuse or please. **3.** To receive (a person) as a guest or provide hospitality to (a person).

entertainment expense. See EXPENSE.

entertainment law. The field of law dealing with the legal and business issues in the entertainment industry (such as film, music, and theater), and involving the representation of artists and producers, the negotiation of contracts, and the protection of intellectual-property rights.

entice, vb. To lure or induce; esp., to wrongfully solicit (a person) to do something.

enticement, n. 1. The act or an instance of wrongfully soliciting or luring a person to do something.

enticement of a child. *Criminal law.* The act or offense of inviting, persuading, or attempting to persuade a child to enter a vehicle, building, room, or secluded place with the intent of committing an unlawful sexual act against the child.

2. *Hist.* The tort of inducing a man's wife to leave him or to remain away from him against his will.

entire, adj. 1. Whole; complete in all its parts. 2. Not divisible into parts.

entire benefit. See *entire use* under USE (4).

entire blood. See FULL BLOOD.

entire-contract clause. 1. INTEGRATION CLAUSE. 2. A provision in an insurance contract stating that the entire agreement between the insured and insurer is contained in the contract, often including the application (if attached), declarations, insuring agreement, exclusions, conditions, and endorsements.

entire-controversy doctrine. The principle that a plaintiff or defendant who does not assert all claims or defenses related to the controversy in a legal proceeding is not entitled to assert those claims or defenses in a later proceeding. — Also termed *single-controversy doctrine*. Cf. *compulsory counterclaim* under COUNTERCLAIM; RES JUDICATA (2).

entire day. See DAY.

entire interest. See INTEREST (2).

entire-output contract. See *output contract* under CONTRACT.

entire tenancy. See TENANCY.

entirety (en-tī-ər-tee). 1. The whole, as opposed to a moiety or part. 2. Something (such as certain judgments and contracts) that the law considers incapable of being divided into parts.

entirety, tenancy by the. See *tenancy by the entirety* under TENANCY.

entire use. See USE (4).

entitle, vb. 1. To grant a legal right to or qualify for. 2. *Eccl. law.* To ordain as a minister. — Formerly also spelled *intitle*.

entitlement. An absolute right to a (usu. monetary) benefit, such as social security, granted immediately upon meeting a legal requirement.

entity. An organization (such as a business or a governmental unit) that has a legal identity apart from its members.

corporate entity. A corporation's status as an organization existing independently of its shareholders. ● As a separate entity, a corporation can, in its own name, sue and be sued, lend and borrow money, and buy, sell, lease, and mortgage its property.

public entity. A governmental entity, such as a state government or one of its political subdivisions.

entity assumption. The presumption that a business is a unit separate from its owners and from other firms.

entity theory of partnership. The theory that a partnership is an entity with a legal existence apart from the partners who make it up. Cf. AGGREGATE THEORY OF PARTNERSHIP.

entrapment, n. 1. A law-enforcement officer's or government agent's inducement of a person to commit a crime, by means of fraud or undue persuasion, in an attempt to later bring a criminal prosecution against that person. 2. The affirmative defense of having been so induced. ● To establish entrapment (in most states), the defendant must show that he or she would not have committed the crime but for the fraud or undue persuasion. — **entrap, vb.**

"Entrapment, so-called, is a relatively simple and very desirable concept which was unfortunately misnamed, with some resulting confusion. It is socially desirable for criminals to be apprehended and brought to justice. And there is nothing whatever wrong or out of place in setting traps for those bent on crime, provided the traps are not so arranged as likely to result in offenses by persons other than those who are ready to commit them.

What the State cannot tolerate is having crime instigated by its officers who are charged with the duty of enforcing the law.... Obviously 'entrapment' is not the appropriate word to express the idea of official investigation of crime, but it is so firmly entrenched that it seems wiser to accept it with due explanation than attempt to supplant it...." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1161 (3d ed. 1982).

derivative entrapment. Entrapment in which the government uses a private person, acting either as an agent of the government or as an unwitting participant, to induce the subject of the entrapment to commit a crime.

sentencing entrapment. Entrapment of a defendant who is predisposed to commit a lesser offense but who is unlawfully induced to commit a more serious offense that carries a more severe sentence. — Also termed *sentence-factor manipulation*.

entreat (on-trə-bə), *n.* [Law French] An intruder or interloper.

entrepôt (on-trə-poh), *n.* [French] *French law.* A building or place where goods from abroad may be deposited and from which those goods may then be exported to another country without paying a duty.

entrepreneur (on-trə-prə-nər), *n.* One who initiates and assumes the financial risks of a new enterprise and who usu. undertakes its management.

entrust, vb. To give (a person) the responsibility for something, usu. after establishing a confidential relationship. — **entrustment, n.** See NEGLIGENT ENTRUSTMENT.

entrusting, n. *Commercial law.* The transfer of possession of goods to a merchant who deals in goods of that type and who may in turn transfer the goods and all rights to them to a purchaser in the ordinary course of business. UCC § 2-403(2).

entry, n. 1. The act, right, or privilege of entering real property <they were given entry into the stadium>.

lawful entry. 1. The entry onto real property by a person not in possession, under a claim or color of right, and without force or fraud. **2.** The entry of premises under a search warrant. See EJECTION; EVICTION; *search warrant* under WARRANT.

open entry. A conspicuous entry onto real estate to take possession; an entry that is neither clandestine nor carried out by secret

artifice or stratagem and that (by law in some states) is accomplished in the presence of two witnesses.

reentry. See REENTRY.

2. An item written in a record; a notation <Forney made a false entry in the books on March 3>.

blind entry. An accounting entry that indicates only the debited and credited amounts without any explanation.

compound journal entry. A journal entry requiring more than one debit and credit (as when revenue is received partly in cash and partly in security).

journal entry. An entry in an accounting journal of equal debits and credits, with occasional explanations of the recorded transactions.

3. The placement of something before the court or on the record. **4. Copyright.** The deposit of a title of work with the Register of Copyrights to secure its protection. **5. Immigration.** Any entrance of an alien into the United States, whether voluntary or involuntary. **6. Criminal law.** The unlawful coming into a building to commit a crime.

entry, right of. See POWER OF TERMINATION.

entry, writ of. See WRIT OF ENTRY.

entry ad communem legem (ad kə-myoo-nəm lee-jəm). [Latin] *Hist. 1.* Entry at common law. **2.** AD COMMUNEM LEGEM.

entry ad terminum qui praeteriit (ad tər-mə-nəm kwī pri-ter-ee-it). See AD TERMINUM QUI PRAETERIIT.

entry for marriage in speech. See *causa matrimonii praelocuti* under CAUSA (1).

entry in casu consimili (en-tree in kay-s[y]oo kən-sim-ə-lī). [Latin] See CASU CONSIMILI.

entry of judgment. The ministerial recording of a court's final decision, usu. by noting it in a judgment book or civil docket. Cf. RENDITION OF JUDGMENT.

entry on the roll. Hist. 1. A clerk's notation on a parchment roll of the proceedings and issues in a particular case. • Before parties began submitting written pleadings, they would appear (in person or through counsel) in open court and state their respective contentions

orally until they settled on the issue or precise point in dispute. During the progress of these oral statements, an appointed officer of the court would make minutes of the various proceedings on a parchment roll that then became the official record of the suit. Even after the practice of oral pleadings had fallen into disuse, proceedings continued to be entered "on the roll." This practice was abolished early in the 19th century. H.T. 4 Will. 4. **2.** A future interest created in a transferor who conveys an estate on condition subsequent.

enumerate (i-n[y]oo-mə-rayt), *vb.* To count off or designate one by one; to list. — **enumeration**, *n.*

enumerated power. See POWER.

enumerator. A person appointed to collect census papers or schedules.

enunciate (i-nən-see-ayt), *vb.* **1.** To state publicly; to announce or proclaim <the court enunciated a new doctrine yesterday>. **2.** To articulate or pronounce <enunciate your syllables more clearly when you speak>. — **enunciation**, *n.* — **enunciabile**, *adj.* — **enunciator**, *n.*

enure. See INURE.

en ventre sa mere (on von-trə sa mair). [Law French "in utero"] (Of a fetus) in the mother's womb <child *en ventre sa mere*>. • This phrase refers to an unborn child, usu. in the context of a discussion of that child's rights. — Also spelled *in ventre sa mere*. See VENTER.

"An infant *in ventre sa mere*, or in the mother's womb, is supposed in law to be born for many purposes." 1 William Blackstone, *Commentaries on the Laws of England* 126 (1765).

en vie (on vee). [Law French "in life"] Alive.

environmental effect. *Environmental law.* A natural or artificial disturbance of the physical, chemical, or biological components that make up the environment.

environmental-impact statement. *Environmental law.* A document that the National Environmental Policy Act (42 USCA § 4332(2)(c)) requires a federal agency to produce for a major project or legislative proposal so that better decisions can be made about the positive and negative environmental effects of an undertaking. — Abbr. EIS. — Also termed *environmental-impact report* (EIR).

environmental law. The field of law dealing with the maintenance and protection of the environment, including preventive measures such as the requirements of environmental-impact statements, as well as measures to assign liability and provide cleanup for incidents that harm the environment. • Because most environmental litigation involves disputes with governmental agencies, environmental law is heavily intertwined with administrative law.

Environmental Protection Agency. A federal agency created in 1970 to coordinate governmental action to protect the environment. — Abbr. EPA.

envoy (en-voy). **1.** A high-ranking diplomat sent to a foreign country to execute a special mission or to serve as a permanent diplomatic representative. — Also termed *envoy extraordinary*. **2.** A messenger or representative.

envoy extraordinary. *Int'l law.* A person who heads a legation rather than an embassy. • In current usage, the term is honorific and has no special significance.

eo die (ee-oh di-ee). [Latin] On that day; on the same day.

EOE. *abbr.* **1.** See *equal-opportunity employer* under EMPLOYER. **2.** Errors and omissions excepted. • This phrase is sometimes appended to an account stated to allow for slight errors. See *errors-and-omissions insurance* under INSURANCE.

eo instante (ee-oh in-stan-tee). [Latin] At that very instant.

eo intuitu (ee-oh in-t[y]oo-ə-too). [Latin] With or in that view; with that intent or object.

eo ipso (ee-oh ip-soh). [Latin] By that very act.

eo loci (ee-oh loh-si). [Latin] *Civil law.* In that state; in that condition.

eo loco (ee-oh loh-koh). [Latin] In that place.

E.O.M. *abbr.* End of month. • This appears as a payment term in some sales contracts.

eo nomine (ee-oh nahm-ə-nee). [Latin] By or in that name <interest *eo nomine*>.

EPA. *abbr.* ENVIRONMENTAL PROTECTION AGENCY.

EPC contract. See *engineering, procurement, and construction contract* under CONTRACT.

e pili ana (ay pee-lee ah-nah). [Hawaiian] Adjoining. • This term usu. refers to land that adjoins a stream.

epimenia (ep-ə-mee-nee-ə), *n. pl.* [Latin] Expenses; gifts.

epiqueya (ep-ee-kay-ah), *n.* [Spanish] *Spanish law.* An equitable principle calling for the benign and prudent interpretation of the law according to the circumstances of the time, place, and person.

episcopacy (i-pis-kə-pə-see), *n.* *Eccles. law.* **1.** The office of a bishop. **2.** A form of church government by diocesan bishops. **3.** An office of overlooking or overseeing.

episcopalia (i-pis-kə-pay-lee-ə), *n. pl.* *Eccles. law.* Synodals, pentecostals, and other customary payments from the clergy to their diocesan bishop, collected by rural deans and forwarded to the bishop.

episcopate (i-pis-kə-pit), *n.* *Eccles. law.* **1.** A bishopric. **2.** The dignity or office of a bishop.

episcoporum ecdicus (i-pis-kə-por-əm ek-dik-əs). [Latin] *Eccles. law.* A bishop's proctor; a church lawyer.

episcopus (i-pis-kə-pəs), *n.* [Latin fr. Greek] **1.** *Roman law.* An overseer; an inspector, such as the municipal officer responsible for oversight of the bread and other provisions that served as the citizens' daily food. **2.** A bishop.

episcopus puerorum (i-pis-kə-pəs pyoo-ər-or-əm). [Latin "bishop of the boys"] *Hist Eccles. law.* A layperson who would, on certain feasts, braid his hair, dress like a bishop, and act ludicrous. • This custom lasted in England long after several laws were passed to abolish it.

epistola (i-pis-tə-lə), *n.* [Latin "letter"] A charter; a written instrument to convey lands or to assure contracts. See ASSURANCE.

epistolae (i-pis-tə-lee), *n. pl.* [Latin "letters"] *Roman law.* **1.** Rescripts; opinions given by the emperors in cases submitted to them for decision. **2.** Opinions of *juris consulti*, such as Neratius, on questions of law in the form of letters to those consulting them. — Also spelled *epistulae*.

EPL insurance. See *employment-practices-liability insurance* under INSURANCE.

e pluribus unum (ee ploor-ə-bəs [y]oo-nəm). [Latin] One out of many. • This is the motto on the official seal of the United States and on several U.S. coins.

epoch (ep-ək), *n.* **1.** A period of time marked by distinctive features or noteworthy events. **2.** A time when a new computation is begun; a time from which memorable dates are counted. — **epochal** (ep-ək-əl), *adj.*

EPS. *abbr.* EARNINGS PER SHARE.

equal-access rule. *Criminal law.* The doctrine that contraband found on a defendant's premises will not support a conviction if other persons have the same access to the premises as the defendant. • To invoke this defense successfully, the defendant must show that other persons did in fact have equal access to the premises; speculative evidence that trespassers might have come onto the premises will not bar a conviction.

Equal Access to Justice Act. A federal statute enacted in 1980 to allow the prevailing party in certain actions against the government to recover attorney's or expert-witness fees. Pub. L. No. 96-481, title II, 94 Stat. 2325 (codified as amended in scattered sections of 5, 15, and 28 USCA). — *Abbr.* EAJA.

equal and uniform taxation. See TAXATION.

Equal Credit Opportunity Act. A federal statute prohibiting a creditor from discriminating against an applicant on the basis of race, color, religion, national origin, age, sex, or marital status with respect to any aspect of a credit transaction. 15 USCA §§ 1691 et seq.

equal degree. See DEGREE.

equal-dignities rule. *Agency.* The doctrine that an agent can perform all acts requiring a writing signed by the principal only if the agent's authority is set forth in a writing. • This rule is an adjunct to the statute of frauds and applies when one or more of the signatories to a contract acted through an agent.

Equal Employment Opportunity Commission. A federal agency created under the Civil Rights Act of 1964 to end discriminatory employment practices and to promote nondiscrim-

inatory employment programs. • The EEOC investigates alleged discriminatory employment practices and encourages mediation and other nonlitigious means of resolving employment disputes. A claimant is required to file a charge of discrimination with the EEOC before pursuing a claim under Title VII of the Civil Rights Act and certain other employment-related statutes. — Abbr. EEOC.

equal-footing doctrine. The principle that a state admitted to the Union after 1789 enters with the same rights, sovereignty, and jurisdiction within its borders as did the original 13 states.

equality. The quality or state of being equal; esp., likeness in power or political status. See EQUAL PROTECTION.

“We need not repeat the burning irony of Anatole France: ‘The law in its majesty draws no distinction but forbids rich and poor alike from begging in the streets or from sleeping in the public parks.’ Equality is meaningless under unequal conditions.” Morris R. Cohen, *Reason and Law* 101 (1961).

equality before the law. The status or condition of being treated fairly according to regularly established norms of justice; esp., in British constitutional law, the notion that all persons are subject to the ordinary law of the land administered by the ordinary law courts, that officials and others are not exempt from the general duty of obedience to the law, that discretionary governmental powers must not be abused, and that the task of superintending the operation of law rests with an impartial, independent judiciary.

“A number of distinct meanings are normally given to the provision that there should be equality before the law. One meaning is that equality before the law only connotes the equal subjection of all to a common system of law, whatever its content. . . . A second theory asserts that equality before the law is basically a procedural concept, pertaining to the application and enforcement of laws and the operation of the legal system. . . . A third meaning normally borne by declarations that all are equal before the law, perhaps no more than a variant of the second, is that State and individual before the law should be equal.” Polyviou G. Polyviou, *The Equal Protection of the Laws* 1–2 (1980).

equality of states. *Int'l law.* The doctrine that all fully independent nations are equal under international law. • This doctrine does not, of course, mean that all nations are equal in power or influence, but merely that, as nations, they all have the same legal rights.

equalization, n. 1. The raising or lowering of assessed values to achieve conformity. 2. *Tax.*

The adjustment of an assessment or tax to create a rate uniform with another. — Also termed *equalization of taxes; fair and proper legal assessment.*

equalization board. A local governmental agency responsible for adjusting the tax rates in different districts to ensure an equitable distribution of the tax burden. — Also termed *board of equalization.*

equalization of taxes. See EQUALIZATION (2).

equalize, vb. To make equal; to cause to correspond or be the same in amount or degree.

equally divided. 1. (Of property) apportioned per capita — not per stirpes — among heirs on the testator's death. • A provision in a will calling for property to be divided “share and share alike” has the same effect. 2. (Of a court, legislature, or other group) having the same number of votes on each side of an issue or dispute.

equal-opportunity employer. See EMPLOYER.

Equal Pay Act. A federal law mandating that all who perform substantially the same work must be paid equally. 29 USCA § 206.

equal protection. The constitutional guarantee under the 14th Amendment that the government must treat a person or class of persons the same as it treats other persons or classes in like circumstances. • In today's constitutional jurisprudence, equal protection means that legislation that discriminates must have a rational basis for doing so. And if the legislation affects a fundamental right (such as the right to vote) or involves a suspect classification (such as race), it is unconstitutional unless it can withstand strict scrutiny. — Also termed *equal protection of the laws; equal protection under the law.* See RATIONAL-BASIS TEST; STRICT SCRUTINY.

“Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made.” *Baxstrom v. Herold*, 383 U.S. 107, 111, 86 S.Ct. 760, 763 (1966).

“As in all equal protection cases, . . . the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment.” *Police Dep't v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 2290 (1972).

“[T]he equal protection principle is exclusively associated with written Constitutions and embodies guarantees of equal treatment normally applied not only to the procedural enforcement of laws but also to the substan-

tive content of their provisions. In other words, the equal protection of the laws is invariably treated as a substantive constitutional principle which demands that laws will only be legitimate if they can be described as just and equal." Polyvios G. Polyviou, *The Equal Protection of the Laws* 4 (1980).

Equal Protection Clause. The 14th Amendment provision requiring the states to give similarly situated persons or classes similar treatment under the law. Cf. DUE PROCESS CLAUSE.

equal protection of the laws. See EQUAL PROTECTION.

equal protection under the law. See EQUAL PROTECTION.

Equal Rights Amendment. A failed constitutional amendment that, had it been ratified, would have constitutionally prohibited entirely sex-based discrimination. • Congress passed the Amendment in 1972, but it failed in 1982, having been ratified by only 35 of the required 38 states. — Abbr. ERA.

equal-shares clause. *Insurance.* A clause requiring an insurer to pay its proportionate share of a claimed loss.

Equal Time Act. A federal law requiring that a broadcasting-facility licensee who permits a legally qualified candidate for public office to use the facility for broadcasting must afford an equal opportunity to all other candidates for the office. 47 USCA § 315.

equal-time doctrine. See FAIRNESS DOCTRINE.

equus (ee-kweez), *n.* [Latin] *Hist.* A knight.

equilocus (ee-kwə-loh-kəs), *n.* [Latin] An equal.

equinox (ee-kwə-noks or ek-wə-noks), *n.* One of the two periods of the year when the time from the sun's rising to its setting is equal to that from its setting to its rising. • The *vernal equinox* is about March 21, and the *autumnal equinox* is about September 22.

equip, *vb.* To furnish for service or against a need or exigency; to fit out; to supply with whatever is necessary for efficient action.

equipment, *n.* The articles or implements used for a specific purpose or activity (esp. a business operation). • Under the UCC, *equipment* includes goods if (1) the goods are used in or

bought for a business enterprise (including farming or a profession) or by a debtor that is a nonprofit organization or a governmental subdivision or agency, and (2) the goods are not inventory, farm products, or consumer goods. UCC § 9-109(2).

equipment trust. A financing device commonly used by railroads in which a trustee and the railroad together buy equipment from a manufacturer, with the trustee providing most of the purchase price, and the trustee then leases the equipment to the railroad, which pays a rental fee comprising interest, amortization for serial retirement, and the trustee's fee.

equipment trust bond. See BOND (3).

equipment trust certificate. A security, usu. issued by a railroad, to pay for new equipment. • Title to the equipment is held by a trustee until the note has been paid off. — Also termed *car trust certificate*; *trust certificate*.

equitable (ek-wi-tə-bəl), *adj.* **1.** Just; conformable to principles of justice and right. **2.** Existing in equity; available or sustainable by an action in equity, or under the rules and principles of equity.

equitable abstention. See ABSTENTION.

equitable action. See *action in equity* under ACTION.

equitable-adjustment theory. The doctrine that in settling a federal contract dispute, the contracting officer should make a fair adjustment within a reasonable time before the contractor has to settle with its subcontractors, suppliers, and other creditors.

equitable adoption. See *adoption by estoppel* under ADOPTION (1).

equitable asset. See ASSET.

equitable assignment. See ASSIGNMENT (2).

equitable-benefit doctrine. *Bankruptcy.* The principle that allows a bankruptcy court to grant preferred status to claims for service rendered by persons other than bankruptcy officers, to the extent that the service benefited the estate, when the person filing the claim acted primarily for the benefit of the estate as a whole.

equitable construction. See *liberal construction* under CONSTRUCTION.

equitable conversion. See CONVERSION (1).

equitable defense. See DEFENSE (1).

equitable distribution. *Family law.* The division of marital property by a court in a divorce proceeding, under statutory guidelines that provide for a fair, but not necessarily equal, allocation of the property between the spouses. ● The court can take into account a variety of factors, including the relative earning capacity of the spouses and (in a state that does not allow for no-fault divorce) the fault of either of the spouses. Equitable distribution is applied in 41 states (i.e., all the states that do not have a community-property system). — Also termed *equitable division*.

equitable doctrine of approximation. See DOCTRINE OF APPROXIMATION.

equitable easement. See EASEMENT.

equitable ejectment. See EJECTMENT.

equitable election. See ELECTION (2).

equitable estate. See ESTATE.

equitable estoppel. See ESTOPPEL.

equitable foreclosure. See FORECLOSURE.

equitable fraud. See *constructive fraud* under FRAUD.

equitable-fund doctrine. See COMMON-FUND DOCTRINE.

equitable interest. See INTEREST (2).

equitable lien. See LIEN.

equitable life estate. An interest in real or personal property that lasts for the life of the holder of the estate and that is equitable as opposed to legal in its creation. ● An example is a life estate held by a trust beneficiary.

equitable life tenant. See LIFE TENANT.

equitable mortgage. See MORTGAGE.

equitable owner. See *beneficial owner* under OWNER.

equitable recoupment. *Tax.* **1.** A doctrine allowing a taxpayer to offset previously overpaid taxes against current taxes due, even though the taxpayer is time-barred from claiming a refund on the previous taxes. **2.** A doctrine allowing the government to offset taxes previously uncollected from a taxpayer against the taxpayer's current claim for a refund, even though the government is time-barred from collecting the previous taxes. ● In both senses, this type of recoupment can be asserted only if the statute of limitations has created an inequitable result. See RECOUPMENT (2).

equitable-recoupment doctrine. A principle that diminishes a party's right to recover a debt to the extent that the party holds money or property of the debtor to which the party has no right. ● This doctrine is ordinarily a defensive remedy going only to mitigation of damages. The doctrine is sometimes applied so that a claim for a tax refund that is barred by limitations may nonetheless be recouped against a tax claim of the government.

equitable relief. See *equitable remedy* under REMEDY.

equitable remedy. See REMEDY.

equitable rescission. See RESCISSION.

equitable-restraint doctrine. See *Younger abstention* (1) under ABSTENTION.

equitable reversion. See REVERSION.

equitable right. See RIGHT.

equitable right to setoff. The right to cancel cross-demands, usu. used by a bank to take from a customer's deposit accounts the amount equal to the customer's debts that have matured and that are owed to that bank. See SET-OFF.

equitable seisin. See *seisin in law* under SEISIN.

equitable servitude. See *restrictive covenant* under COVENANT (4).

equitable subrogation. See *legal subrogation* under SUBROGATION.

equitable title. See TITLE (2).

equitable tolling. The doctrine that the statute of limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until after the limitations period had expired. • Equitable tolling does not require misconduct by the defendant.

equitable waste. See WASTE (1).

equity, n. 1. Fairness; impartiality; evenhanded dealing <the company's policies require managers to use equity in dealing with subordinate employees>. 2. The body of principles constituting what is fair and right; natural law <the concept of "inalienable rights" reflects the influence of equity on the Declaration of Independence>. 3. The recourse to principles of justice to correct or supplement the law as applied to particular circumstances <the judge decided the case by equity because the statute did not fully address the issue>. — Also termed *natural equity*. 4. The system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law (together called "law" in the narrower sense) when the two conflict <in appealing to the equity of the court, she was appealing to the "king's conscience">.

"Equity is that system of justice which was developed in and administered by the High Court of Chancery in England in the exercise of its extraordinary jurisdiction. This definition is rather suggestive than precise; and invites inquiry rather than answers it. This must necessarily be so. Equity, in its technical and scientific legal sense, means neither natural justice nor even all that portion of natural justice which is susceptible of being judicially enforced. It has, when employed in the language of English law, a precise, definite and limited signification, and is used to denote a system of justice which was administered in a particular court — the nature and extent of which system cannot be defined in a single sentence, but can be understood and explained only by studying the history of that court, and the principles upon which it acts. In order to begin to understand what equity is, it is necessary to understand what the English High Court of Chancery was, and how it came to exercise what is known as its extraordinary jurisdiction. Every true definition of equity must, therefore, be, to a greater or less extent, a history." George T. Bispham, *The Principles of Equity* 1-2 (Joseph D. McCoy ed., 11th ed. 1931).

"The term 'equity' is an illustration of Mr. Towkington's proposition that some words have a legal meaning very unlike their ordinary one. In ordinary language 'equity' means natural justice; but the beginner must get that idea out of his head when dealing with the system that the lawyers call equity. Originally, indeed, this system was inspired by ideas of natural justice, and that is why it acquired its name; but nowadays equity is no more (and no less) natural justice than the common law, and it

is in fact nothing else than a particular branch of the law of England. Equity, therefore, is law. The student should not allow himself to be confused by the lawyer's habit of contrasting 'law' and 'equity,' for in this context 'law' is simply an abbreviation for the common law. Equity is law in the sense that it is part of the law of England; it is not law only in the sense that it is not part of the common law." Glanville Williams, *Learning the Law* 25-26 (11th ed. 1982).

5. A right, interest, or remedy recognizable by a court of equity <there was no formal contract formation, so they sued for breach in equity>.

contravening equity (kon-trə-veen-ing). A right or interest that is inconsistent with or contrary to a right sought to be enforced.

countervailing equity (kown-tər-vayl-ing). A contrary and balancing equity, equally deserving of consideration.

latent equity (lay-tənt). An equitable claim or right known only by the parties for and against whom it exists, or that has been concealed from one who is interested in the subject matter. — Also termed *secret equity*.

perfect equity. An equitable title or right that, to be a legal title, lacks only the formal conveyance or other investiture that would make it cognizable at law; esp., the equity of a real-estate purchaser who has paid the full amount due but has not yet received a deed.

secret equity. See *latent equity*.

6. The right to decide matters in equity; equity jurisdiction <the court decided that the wrong was egregious enough to ignore the statute of limitations and decide the case in equity>. 7. The amount by which the value of or an interest in property exceeds secured claims or liens; the difference between the value of the property and all encumbrances upon it <thanks to the real-estate boom, the mortgaged house still had high equity>. — Also termed *cushion*. 8. An ownership interest in property, esp. in a business <the founders gave her equity in the business in return for all her help>. See OWNERS' EQUITY. 9. A share in a publicly traded company <he did not want to cash in his equity>.

equity, bill in. See BILL (2).

equity, court of. See COURT.

equity accounting method. See ACCOUNTING METHOD.

equity capital. See CAPITAL.

equity financing. See FINANCING.

equity insolvency. See INSOLVENCY.

equity jurisdiction. See JURISDICTION.

equity jurisprudence. See JURISPRUDENCE.

equity kicker. See EQUITY PARTICIPATION.

equity loan. See *home equity loan* under LOAN.

equity of exoneration (eg-zon-ə-ray-shən).

The right of a person who is secondarily liable on a debt to make the primarily liable party discharge the debt or reimburse any payment that the secondarily liable person has made. ● One example is the right of a surety to call on the principal for reimbursement after the surety has paid the debt. Unlike contribution, which exists when the parties are equally liable, the equity of exoneration exists when parties are successively liable. — Also termed *right of exoneration*. See EXONERATION.

equity of partners. The right of each partner to have the firm's property applied to the firm's debts.

equity of redemption. *Real estate.* The right of a mortgagor in default to recover property before a foreclosure sale by paying the principal, interest, and other costs that are due. ● A defaulting mortgagor with an equity of redemption has the right, until the foreclosure sale, to reimburse the mortgagee and cure the default. In many jurisdictions, the mortgagor also has a statutory right to redeem within six months after the foreclosure sale, and the mortgagor becomes entitled to any surplus from the sale proceeds above the amount of the outstanding mortgage. — Also termed *right of redemption*. See CLOG ON THE EQUITY OF REDEMPTION.

equity of subrogation. The right of a person who is secondarily liable on a debt, and who pays the debt, to personally enforce any right that the original creditor could have pursued against the debtor, including the right to foreclose on any security held by the creditor and any right that the creditor may have to contribution from others who are liable for the debt. — Also termed *right of subrogation*. See SUBROGATION.

equity-of-the-statute rule. In statutory construction, the principle that a statute should be interpreted according to the legislators' pur-

pose and intent, even if this interpretation goes beyond the literal meaning of the text. ● Under this little-used rule, for example, if a statute defines jury-tampering to include a party's "giving a juror food or drink," the giving of cigars to a juror would also fall within that definition. Cf. GOLDEN RULE; MISCHIEF RULE; PLAIN-MEANING RULE.

equity participation. The inclusion of a lender in the equity ownership of a project as a condition of the lender's granting a loan. — Also termed *equity kicker*.

equity ratio. **1.** The percentage relationship between a purchaser's equity value (esp. the amount of a down payment) and the property value. **2.** The measure of a shareholder's equity divided by total equity.

equity security. See SECURITY.

equity stock. See STOCK.

equity term. The period during which a court tries only equity cases.

equity to a settlement. A wife's equitable right, arising when her husband sues in equity for the reduction of her equitable estate to his own possession, to have all or part of that estate settled upon herself and her children. — Also termed *wife's equity*; *wife's settlement*.

equivalent, adj. **1.** Equal in value, force, amount, effect, or significance. **2.** Corresponding in effect or function; nearly equal; virtually identical.

equivalents doctrine. See DOCTRINE OF EQUIVALENTS.

equivocal (i-kwiv-ə-kəl), *adj.* **1.** Of doubtful character; questionable. **2.** Having more than one meaning or sense; ambiguous.

equivocality (i-kwiv-ə-kal-ə-tee). See RES IPSA LOQUITUR (2).

equivocation (i-kwiv-ə-kay-shən). See *latent ambiguity* under AMBIGUITY.

equuleus (i-kwoo-lee-əs), *n.* [Latin] *Roman law.* A rack in the shape of a horse, used for torture.

ERA. *abbr.* EQUAL RIGHTS AMENDMENT.

erase, *vb.* **1.** To rub or scrape out (something written); to obliterate. **2.** To obliterate (recorded material). **3.** To seal (criminal records) from disclosure. — **erasure**, *n.*

Erastian (i-ras-chən or i-ras-tee-ən). *Hist.* A follower of Thomas Erastus (1524–1583), who thought that offenses against religion and morality should be punished by the civil power and not by the censures of the church. • As a sect, Erastians had great influence in England, particularly among 17th-century common-law lawyers.

erasure of record. See EXPUNGEMENT OF RECORD.

erciscundus (er-sis-kən-dəs), *adj.* [Latin] *Civil law.* To be divided. • A suit *judicium familiae erciscundae* was one to partition an inheritance.

erect, *vb.* **1.** To construct. **2.** To establish. • In England, *erect* is one of the formal words of incorporation in a royal charter, being part of the phrase, “We do incorporate, erect, ordain, name, constitute, and establish.” See ERIGIMUS.

E reorganization. See REORGANIZATION (2).

ergo (ər-goh or air-goh). [Latin] Therefore; thus.

ergolabus (ər-goh-lay-bəs), *n.* [Latin] *Civil law.* A person who contracts to perform work by personally furnishing the materials and labor.

Erie-bound, *adj.* (Of a federal court) required to apply the *Erie* doctrine.

Erie doctrine (eer-ee). The principle that a federal court exercising diversity jurisdiction over a case that does not involve a federal question must apply the substantive law of the state where the court sits. *Erie R.R. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817 (1938).

Erie/Klaxon doctrine. See KLAXON DOCTRINE.

erigimus (i-rij-ə-məs). [Latin] *Hist.* We erect. • This was one of the words used in a corporation’s royal charter. See ERECT (2).

ERISA (ee- or ə-ris-ə). *abbr.* EMPLOYEE RETIREMENT INCOME SECURITY ACT.

eristic (e-ris-tik), *adj.* Of or relating to controversy or disputation. — Also termed *eristical*.

ermine (ər-min), *n.* The station of a judge; judgeship. • The term refers to the fur trimmings (made from the coats of white weasels called “ermine”) adorning official robes of English judges.

erosion. The wearing away of something by action of the elements; esp., the gradual eating away of soil by the operation of currents or tides. Cf. ACCRETION (1); DELICTION; AVULSION (2); ALLUVION.

err (ər), *vb.* To make an error; to be incorrect or mistaken <the court erred in denying the motion for summary judgment>.

errant (er-ənt), *adj.* **1.** Fallible; incorrect; straying from what is proper <an errant judicial holding>. **2.** Traveling <a knight errant>.

errata sheet. An attachment to a deposition transcript containing the deponent’s corrections upon reading the transcript and the reasons for those corrections. — Also termed *errata page*.

erratum (i-ray-təm or i-rah-təm), *n.* [Latin “error”] An error that needs correction. Pl. **errata.** See CORRIGENDUM.

erroneous (i-roh-nee-əs), *adj.* Involving error; deviating from the law.

erroneous assessment. See ASSESSMENT.

erroneous judgment. See JUDGMENT.

erroneous tax. See TAX.

erronice (i-roh-nə-see), *adv.* [Law Latin] Erroneously; through error or mistake.

error, *n.* **1.** A psychological state that does not conform to objective reality; a belief that what is false is true or that what is true is false; MISTAKE.

error in corpore (kor-pə-ree). A mistake involving the identity of a particular object, as when a party buys a horse believing it to be the one that the party had already examined and ridden, when in fact it is a different horse.

error in negotio (ni-goh-shee-oh). A mistake about the type of contract that the parties actually wanted to enter.

error in qualitate (kwah-lə-tay-tee). A mistake affecting the quality of the contractual object.

error in quantitate (kwahn-tə-tay-tee). A mistake affecting the amount of the contractual object.

2. A mistake of law or of fact in a court's judgment, opinion, or order.

clear error. A trial judge's decision or action that appears to a reviewing court to have been unquestionably erroneous. ● Even though a clear error occurred, it may not warrant reversal.

clerical error. An error resulting from a minor mistake or inadvertence, esp. in writing or copying something on the record, and not from judicial reasoning or determination. ● Among the boundless examples of clerical errors are omitting an appendix from a document; typing an incorrect number; mistranscribing a word; and failing to log a call. A court can correct a clerical error at any time, even after judgment has been entered. — Also termed *scrivener's error*; *vitium clerici*. See VITIUM SCRIPTORIS.

cross-error. An error brought by the party responding to a writ of error.

error apparent of record. See *plain error*.

fatal error. See *reversible error*.

fundamental error. See *plain error*.

harmless error. An error that does not affect a party's substantive rights or the case's outcome. ● A harmless error is not grounds for reversal. — Also termed *technical error*; *error in vacuo*.

invited error. An error that a party cannot complain of on appeal because the party, through conduct, encouraged or prompted the trial court to make the erroneous ruling.

manifest constitutional error. An error by the trial court that has an identifiably negative impact on the trial to such a degree that the constitutional rights of a party are compromised. ● A manifest constitutional error can be reviewed by a court of appeals even if the appellant did not object at trial.

manifest error. An error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record.

plain error. An error that is so obvious and prejudicial that an appellate court should address it despite the parties' failure to raise a proper objection. ● A plain error is often said to be so obvious and substantial that failure

to correct it would infringe a party's due-process rights and damage the integrity of the judicial process. — Also termed *fundamental error*; *error apparent of record*.

reversible error. An error that affects a party's substantive rights or the case's outcome, and thus is grounds for reversal if the party properly objected. — Also termed *harmful error*; *prejudicial error*; *fatal error*.

technical error. See *harmless error*.

3. An appeal <a proceeding in error>.

error, writ of. See WRIT OF ERROR.

error de persona (dee pār-soh-nə). [Latin "error of the person"] A mistake about a person's identity. Cf. ERROR NOMINIS.

error in corpore. See ERROR (1).

error in fact. See *mistake of fact* under MISTAKE.

error in law. See *mistake of law* under MISTAKE.

error in negotio. See ERROR (1).

error in qualitate. See ERROR (1).

error in quantitate. See ERROR (1).

error in vacuo (in vak-yoo-oh). [Latin "error in a void"] See *harmless error* under ERROR.

error nominis (nahm-ə-nis). [Latin "error of name"] A mistake of detail in a person's name. Cf. ERROR DE PERSONA.

error of fact. See *mistake of fact* under MISTAKE.

error-of-judgment rule. The doctrine that a professional is not liable to a client for advice or an opinion given in good faith and with an honest belief that the advice was in the client's best interests, but that was based on a mistake either in judgment or in analyzing an unsettled area of the professional's business. ● For example, an attorney who makes an error in trial tactics involving an unsettled area of the law may, under certain circumstances, defeat a malpractice claim arising from the tactical error. — Also termed *judgmental immunity*.

error of law. See *mistake of law* under MISTAKE.

errors, assignment of. See ASSIGNMENT OF ERRORS.

errors-and-omissions insurance. See INSURANCE.

escalator clause. A contractual provision that increases or decreases the contract price according to changing market conditions, such as higher or lower taxes or operating costs. — Also termed *escalation clause*; *fluctuating clause*.

escambium. See CAMBIUM.

escape, n. **1.** The act or an instance of breaking free from confinement, restraint, or an obligation. **2.** An unlawful departure from legal custody without the use of force. — Also termed *actual escape*. Cf. PRISON BREACH.

“In the technical sense an ‘escape’ is an unauthorized departure from legal custody; in a loose sense the word is used to indicate either such an unlawful departure or an avoidance of capture. And while the word is regularly used by the layman in the broader sense it usually is limited to the narrower meaning when used in the law, — although this is not always so.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 559 (3d ed. 1982).

constructive escape. A prisoner’s obtaining more liberty than the law allows, while not fully regaining freedom.

3. At common law, a criminal offense committed by a peace officer who allows a prisoner to depart unlawfully from legal custody. — Also termed *voluntary escape*. — **escape, vb.**

negligent escape. A prisoner’s departure from legal custody as a result of an officer’s negligence.

“Escapes are either voluntary, or negligent. Voluntary are such as are by the express consent of the keeper, after which he never can retake his prisoner again, (though the plaintiff may retake him at any time) but the sheriff must answer for the debt. Negligent escapes are where the prisoner escapes without his keeper’s knowledge or consent; and then upon fresh pursuit the defendant may be retaken, and the sheriff shall be excused, if he has him again before any action brought against himself for the escape.” 3 William Blackstone, *Commentaries on the Laws of England* 415–16 (1768).

escape clause. A contractual provision that allows a party to avoid performance under specified conditions; specif., an insurance-policy provision — usu. contained in the “other insurance” section of the policy — requiring the insurer to provide coverage only if there is no other coverage available. Cf. EXCESS CLAUSE; PRO RATA CLAUSE.

escapee. A prisoner or other inmate who has escaped from lawful custody.

“The word ‘escapee’ is employed at times by those who are not careful in the use of language. They probably think this word is comparable to ‘arrestee’ or ‘employee.’ But the arrestee did not do the arresting and the employee did not do the employing. The employee does the work but that makes him a worker, not a workee.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 560 (3d ed. 1982).

escape period. *Labor law.* A time agreed upon in some union contracts during which workers may withdraw from the union near the end of one term covered by the contract and before the start of the next.

escape warrant. See WARRANT (1).

escapium (e-skay-pee-əm), *n.* [Law Latin] That which comes by chance or accident. ● In medieval Latin, the term often referred to the escape of a prisoner or the straying of cattle.

escheat (es-cheet), *n.* **1. Hist.** The reversion of land ownership back to the lord when the immediate tenant dies without heirs. See WRIT OF ESCHEAT. **2.** Reversion of property (esp. real property) to the state upon the death of an owner who has neither a will nor any legal heirs. **3.** Property that has so reverted. — **escheat, vb.**

escheator (es-cheet-ər). *Hist.* A royal officer appointed to assess the value of property escheating to the Crown. ● Corrupt officers led many to associate the escheator with fraudulent conduct, giving rise to the word *cheat* as used in the modern sense. — Also termed *cheater*.

escheccum (es-chek-əm), *n.* [Latin] *Hist.* A jury or inquisition.

Escobedo rule (es-kə-bee-doh). *Criminal procedure.* The principle that a statement by an unindicted, targeted suspect in police custody is inadmissible at trial unless the police warn the suspect of the right to remain silent and provide an opportunity for the suspect to consult with retained or appointed counsel. ● This rule was a precursor to the *Miranda* rule. *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct. 1758 (1964). See MIRANDA RULE.

escot (e-skot), *n.* *Hist. English law.* A tax paid in boroughs and corporations to support the community.

escribano (es-kree-**bah**-noh), *n.* [Spanish] *Spanish law.* An officer — resembling a notary in French law — who has authority to set down in writing, and attest to, transactions and contracts between private persons, as well as judicial acts and proceedings.

escritura (es-kree-**toor**-ah), *n.* [Spanish] *Spanish law.* **1.** A written instrument. **2.** A deed prepared by an *escribano* or notary of a corporation or council (*concejo*), or that is sealed with the seal of the king or other authorized person.

escroquerie (es-**kroh**-kə-ree), *n.* [French] Fraud; swindling; cheating.

escrow (es-kroh), *n.* **1.** A legal document or property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the document or property to the promisee <the agent received the escrow two weeks before the closing date>. **2.** An account held in trust or as security <the earnest money is in escrow>. — Also termed *escrow account*; *impound account*; *reserve account*. See *escrow account* under ACCOUNT. **3.** The holder of such a document, property, or deposit <the attorney performed the function of escrow>. — Also termed *escrow agent*. **4.** The general arrangement under which a legal document or property is delivered to a third person until the occurrence of a condition <creating an escrow>. — **escrow**, *vb.*

“Like ‘scroll’ and ‘scrawl,’ the word ‘escrow’ is derived from the Norman-French word for a writing or a written instrument. It has come in practice to refer to a security device: one or both parties to a transaction deposit property or an instrument with a third party until some condition has occurred. The property or instrument may be referred to as ‘the escrow’; the delivery is said to be ‘in escrow.’” Restatement (Second) of Contracts § 103 cmt. a (1981).

escrow account. See ACCOUNT.

escrow agent. The third-party depository of an escrow; ESCROW (3). — Also termed *escrow holder*; *escrowee*.

escrow agreement. The instructions given to the third-party depository of an escrow.

escrow contract. See CONTRACT.

escrow deposit. See *escrow account* under ACCOUNT.

escrowee. See ESCROW AGENT.

escrow holder. See ESCROW AGENT.

escrowl (es-**krohl**), *n.* *Hist.* **1.** An escrow. **2.** A scroll.

escuage (es-kyoo-ij). [French, fr. Latin *escuagium*] See SCUTAGE.

esketores (es-kə-**tor**-eez), *n. pl.* *Hist.* Robbers; destroyers of others' lands or fortunes.

eskipper (ə-**skip**-ər), *vb.* To ship. — Also termed *eskippare* (es-kə-**pair**-ee).

eskippeson (ə-**skip**-[ə]-sən), *n.* Shippage; passage by sea. — Also termed *skippeson*.

eslisor (es-**li**-zər). See ELISOR.

esne (ez-nee), *n.* *Hist.* A hireling of servile condition; a hired laborer or a slave.

esnecy (es-ni-see), *n.* Seniority; the condition or right of the eldest; the privilege of the eldest-born. ● The term esp. applied to the privilege of the eldest among coparceners to make a first choice of shares upon a voluntary partition. — Also termed *aesnecia*.

ESOP (ee-sop). *abbr.* See *employee-stock-ownership plan* under EMPLOYEE BENEFIT PLAN.

espera (es-pə-rə), *n.* A period fixed by law or by a court within which certain acts are to be performed (such as payment of a debt).

espionage (es-pee-ə-nahzh). The practice of using spies to collect information about what another government or company is doing or plans to do.

industrial espionage. One company's spying on another to steal the other company's trade secrets or other proprietary information.

Espionage Act. A federal law that criminalizes and punishes espionage, spying, and related crimes. 18 USCA §§ 793 et seq.

esplees (es-**pleez**), *n. pl.* *Archaic.* **1.** Products yielded from land. **2.** Rents or other payments derived from land. **3.** Land itself. — Also termed *explees*.

espousals (ə-spow-zəlz), *n.* A mutual promise between a man and a woman to marry one another.

esquire (es-kwīr or e-skwīr). (*usu. cap.*) A title of courtesy commonly appended after the name of a lawyer. — Abbr. Esq.

essence, of the. See OF THE ESSENCE.

essence test. *Labor law.* A test under which an arbitrator's interpretation of a collective-bargaining agreement must be upheld if it derives in any rational way from the agreement, viewed in light of the agreement's language, its context, and any other evidence of the parties' intention.

essendi quietum de tolonio (e-sen-dī kwī-ee-təm dee tə-loh-nee-oh). [Latin "a writ to be free of a toll"] *Hist.* A writ available to a citizen or a burgess of any city or town who, by charter or prescription, is exempt from a particular toll.

essential finding. See FINDING OF FACT.

essential mistake. See MISTAKE.

essential term. See *fundamental term* under TERM (2).

essoin (e-soyn), *n.* [fr. Old French *essoï(g)ne* "excuse"] *Hist.* **1.** An excuse for not appearing in court on an appointed day in obedience to a summons. **2.** The offering or presentation of such an excuse. — Also spelled *essoign*.

"The first return-day of every term, properly speaking, is the first day of that term; and on that day the court used formerly to sit . . . to hear the *essoigns*, or excuses, of such as did not appear according to the summons of the writ. This day therefore came to be called the *essoign*-day of the term." 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* liv (3d ed. 1787).

essoin, vb. [fr. Old French *essoï(g)nier* "to excuse"] *Hist.* To present an excuse for not appearing in court as ordered.

"Upon the summons, the defendant either appeared, or *essoigned*, or made default. If he did the former, the plaintiff declared against him, and the cause was proceeded in by the court; and if he did the latter, the plaintiff had liberty to take out further process against him. But if he *essoigned*, that is, sent an excuse to the court why he could not attend, he was to send it by the *return day of the writ* which if he did, a further process did not issue against him." 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the*

Courts of King's Bench and Common Pleas liv (3d ed. 1787).

essoin day. *Hist. English law.* The first general return day of the term, when the courts sat to receive essoins. • By the Law Terms Act (1830), essoins days were eliminated as a part of the term. St. 11 Geo. 4; 1 Will. 4, ch. 70, § 6.

essoin de malo villae (dee mal-oh vil-ee). *Hist.* A procedure by which a defendant, who was in court the first day but was then taken ill without pleading, would send two essoiners to state in court that the defendant was detained by sickness in a particular village and thus unable to attend. • This essoins would be accepted unless the plaintiff could show its falsity.

essoiner (e-soyn-ər), *n.* *Hist.* A person making an essoins. — Also termed *essoinator* (e-soyn-ee-ay-tər).

essoins roll. *Hist.* A roll upon which essoins were entered, together with the day to which they were adjourned.

establish, vb. **1.** To settle, make, or fix firmly; to enact permanently <one object of the Constitution was to establish justice>. **2.** To make or form; to bring about or into existence <Congress has the power to establish Article III courts>. **3.** To prove; to convince <the House managers tried to establish the President's guilt>.

establishment, n. **1.** The act of establishing; the state or condition of being established. **2.** An institution or place of business. **3.** A group of people who are in power or who control or exercise great influence over something.

Establishment Clause. The First Amendment provision that prohibits the government from creating or favoring a particular religion. U.S. Const. amend. I. Cf. FREE EXERCISE CLAUSE.

estadal (es-tah-dahl), *n.* [Spanish] *Hist.* In Spanish America, a measure of land of 16 square varas, or yards.

estadia (es-tah-thee-ah), *n.* [Spanish] *Spanish law.* **1.** A delay in a voyage, or in the delivery of cargo, caused by the charterer or consignee and for which demurrage is payable. **2.** The time for which the party who has chartered a vessel, or is bound to receive the cargo, has to pay demurrage because of a delay in executing the contract. — Also termed *sobrestadia* (soh-bray-stah-thee-ah).

estandard (ə-*stan*-dərd), *n.* [Law French] A standard of weights and measures.

est a scavoir (ay ah skah-*vwahr*). [Law French, prob. fr. Latin *est sciendum* "it is to be known"] It is to be understood or known; to wit. • This expression is common in Sir Thomas de Littleton's 15th-century *Treatise on Tenures*, written in Law French. See SCIENDUM EST.

estate. **1.** The amount, degree, nature, and quality of a person's interest in land or other property. **2.** All that a person or entity owns, including both real and personal property. **3.** The property that one leaves after death; the collective assets and liabilities of a dead person. **4.** A tract of land, esp. one affected by an easement.

"The old definitions of this word [*estate*] generally confine it to lands or realty. Thus, according to Lord Coke, 'state or estate signifieth such inheritance, freehold, term for years, & c., as any man hath in lands or tenements.' *Co.Litt.* 345a. So Cowell defines it to be 'that title or interest which a man hath in lands or tenements,' and the same definition is given in the *Termes de la Ley*. And this limited sense of the word has been relied on, in argument, in some cases But, according to the settled modern doctrine, the term *estate* is of much more extensive import and application, being indeed *genus generalissimum*, and clearly comprehending things personal as well as real; person as well as real estate." 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 561 (2d ed. 1867).

absolute estate. A full and complete estate that cannot be defeated.

adjusted gross estate. **1.** The total value of a decedent's property after subtracting administration expenses, funeral expenses, creditors' claims, and casualty losses. • The value of the adjusted gross estate is used in computing the federal estate tax. Cf. *net estate*. **2.** See *gross estate* (1).

ancestral estate. An estate that is acquired by descent or by operation of law with no other consideration than that of blood.

augmented estate. A statutory forced share that is enlarged for the benefit of a surviving spouse to include any transfer made by the decedent during the marriage. Uniform Probate Code § 2-202. See FORCED SHARE.

bankruptcy estate. See BANKRUPTCY ESTATE.

base estate. *Hist.* An estate held at the will of the lord, as distinguished from a freehold.

concurrent estate. Ownership or possession of property by two or more persons at the same time. • In modern practice, there are three types of concurrent estates: tenancy in common, joint tenancy, and tenancy by the entirety. — Also termed *concurrent interest*.

"A concurrent estate is simply an estate — whether present or future, defeasible or non-defeasible, in fee simple, in tail, for life, or for years — that is owned by two or more persons at the same time. O transfers 'to A and B and their heirs.' A and B own a present concurrent estate in fee simple absolute." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 53 (2d ed. 1984).

contingent estate. An estate that vests only if a certain event does or does not happen. See *estate on condition*.

decedent's estate. The real and personal property that a person possesses at the time of death and that descends to the heirs subject to the payment of debts and claims.

defeasible estate. An estate that may come to an end before its maximum duration has run by reason of the operation of a special limitation, a condition subsequent, or an executory limitation. • If an estate is defeasible by operation of a special limitation, it is called a *determinable estate*.

derivative estate. A particular interest that has been carved out of another, larger estate. Cf. *original estate*.

determinable estate. An estate that is defeasible by operation of a special limitation.

dominant estate. An estate that benefits from an easement. — Also termed *dominant tenement*; *dominant property*; *upper estate*. Cf. *servient estate*.

equitable estate. An estate recognized in equity, such as a trust beneficiary's interest. See EQUITY.

estate ad remanentiam (ad rem-ə-nen-shee-əm). An estate in fee simple.

estate at sufferance. See *tenancy at sufferance* under TENANCY.

estate at will. See *tenancy at will* under TENANCY.

estate by curtesy. An estate owned by a wife, to which the husband is entitled upon her death. See CURTESY.

estate by elegit. An estate held by a judgment creditor, entitling the creditor to the rents and profits from land owned by the debtor until the debt is paid. See ELEGIT.

estate by purchase. An estate acquired in any manner other than by descent. See PURCHASE.

estate by statute staple. An estate in a defendant's land held by a creditor under the statute staple until the debt was paid. See STATUTE STAPLE.

estate by the entirety. See *tenancy by the entirety* under TENANCY.

estate for a term. See *tenancy for a term* under TENANCY.

estate for life. See *life estate*.

estate for years. See *tenancy for a term* under TENANCY.

estate in fee simple. See FEE SIMPLE.

estate in partnership. A joint estate that is vested in the members of a partnership when real estate is purchased with partnership funds and for partnership purposes.

estate in possession. An estate in which a present interest passes to the tenant without any contingency; an estate in which the tenant is entitled to receive the rents and other profits arising from the estate.

estate in reversion. See REVERSION.

estate in severalty (*sev-ə-rəl-tee*). An estate held by a tenant separately, without any other person being joined or connected in interest.

estate in vadio (in *vad-ee-oh*). An estate in gage or pledge. See MORTGAGE.

estate less than freehold. An estate for years, an estate at will, or an estate at sufferance.

estate of inheritance. An estate that may descend to heirs.

estate on condition. An estate that vests, is modified, or is defeated upon the occurrence or nonoccurrence of some specified event. ● While an estate on limitation can revert without any action by the grantor or the grantor's heirs, an estate on condition requires the entry of the grantor or the grantor's heirs to end the estate whenever the condition occurs. — Also termed *contingent estate*; *estate on conditional limitation*.

estate on conditional limitation. See *contingent estate*.

estate on condition expressed. A contingent estate in which the condition upon which the estate will fail is stated explicitly in the granting instrument.

estate on condition implied. A contingent estate having some condition that is so inseparable from the estate's essence that it need not be expressed in words.

estate on limitation. An estate that automatically reverts back to the grantor according to a provision, usu. regarding the passage of a determined time period, designated by words like "during," "while," and "as long

as." See *fee simple determinable* under FEE SIMPLE.

estate tail. See FEE TAIL.

estate tail quasi. An estate granted by a life tenant, who, despite using language of conveyance that is otherwise sufficient to create an estate tail, is unable to grant in perpetuity.

freehold estate. See FREEHOLD.

future estate. See FUTURE INTEREST.

gross estate. 1. The total value of a decedent's property without any deductions. 2. Loosely, adjusted gross estate.

heirless estate. The property of a person who dies intestate and without heirs. See ES-CHEAT.

joint estate. Any of the following five types of estates: (1) a joint tenancy, (2) a tenancy in common, (3) an estate in coparcenary, (4) a tenancy by the entirety, or (5) an estate in partnership.

landed estate. An interest in real property, esp. suburban or rural land, as distinguished from real estate situated in a city. — Also termed *landed property*.

leasehold estate. See LEASEHOLD.

legal estate. An interest enforced in law rather than in equity.

life estate. An estate held only for the duration of a specified person's life, usu. the possessor's. ● Most life estates — created, for example, by a grant "to Jane for life" — are beneficial interests under trusts, the corpus being personal property, not real property. — Also termed *estate for life*; *legal life estate*; *life tenancy*.

life estate pur autre vie (*pər oh-trə vee*). A life estate for which the measuring life — the life whose duration determines the duration of the estate — is someone other than the life tenant. — Also spelled *life estate per autre vie*.

lower estate. See *servient estate*.

minor's estate. A minor's property that must be administered by a court-appointed fiduciary.

net estate. The portion of an estate left after payment of state and federal estate taxes. Cf. *adjusted gross estate*.

next eventual estate. An estate taking effect upon an event that terminates the accumulation of undisposed rents and profits; an estate taking effect when the existing estate terminates.

nonancestral estate. An estate from any source other than the owner's ancestors.

nonfreehold estate. Any estate in real property without seisin, such as an estate for years, from period to period, at will, or at sufferance; any estate except the fee simple, fee tail, or life estate.

original estate. An estate that is the first of one or more derivative estates, bearing to each other the relation of a particular estate and a reversion.

particular estate. An estate of limited duration, such as a fee tail, a life estate, or an estate for years.

periodic estate. See *periodic tenancy* under TENANCY.

possessory estate. An estate giving the holder the right to possess the property, with or without an ownership interest in the property.

present estate. An estate in immediate possession; one vested at the present time, as distinguished from a future estate.

qualified estate. Any estate that is not absolute and unconditional; a limited or conditional estate.

real estate. See *real property* under PROPERTY.

residuary estate. The part of a decedent's estate remaining after all debts, expenses, taxes, and specific bequests and devises have been satisfied. — Also termed *residual estate*; *residue*; *residuary*; *residuum*.

separate estate. The individual property of one of two persons who stand in a marital or business relationship. See SEPARATE PROPERTY.

servient estate (sər-vee-ənt). An estate burdened by an easement. — Also termed *servient tenement*; *servient property*; *lower estate*. Cf. *dominant estate*.

settled estate. An estate created or limited under a settlement; an estate in which the powers of alienation, devising, and transmission according to the ordinary rules of descent are restrained by the settlement's terms.

stipendiary estate (stī-pen-dee-er-ee). *Hist.* An estate granted in return for services, usu. of a military kind.

taxable estate. A decedent's gross estate reduced by allowable deductions (such as administration costs and ESOP deductions). IRC (26 USCA) § 2051. • The taxable estate

is the amount that is subject to the federal unified transfer tax at death.

upper estate. See *dominant estate*.

vested estate. An estate with a present right of enjoyment or a present fixed right of future enjoyment.

estate ad remanentiam. See ESTATE.

estate at sufferance. See *tenancy at sufferance* under TENANCY.

estate at will. See *tenancy at will* under TENANCY.

estate by curtesy. See ESTATE.

estate by elegit. See ESTATE.

estate by purchase. See ESTATE.

estate by statute staple. See ESTATE.

estate by the entirety. See *tenancy by the entirety* under TENANCY.

estate duty. A duty imposed on the principal value of all property that passed on death. • In Britain, this duty was replaced by inheritance tax.

estate for a term. See *tenancy for a term* under TENANCY.

estate for life. See *life estate* under ESTATE.

estate for years. See *tenancy for a term* under TENANCY.

estate freeze. An estate-planning maneuver whereby an owner of a closely held business exchanges common stock for dividend-paying preferred stock and gives the common stock to his or her children, thus guaranteeing a pension and avoiding estate tax.

estate from period to period. See *periodic tenancy* under TENANCY.

estate in common. See *tenancy in common* under TENANCY.

estate in expectancy. See FUTURE INTEREST.

estate in fee simple. See FEE SIMPLE.

estate in lands. **1.** Property that one has in lands, tenements, or hereditaments. **2.** The conditions or circumstances under which a tenant stands in relation to the leased property.

estate in partnership. See ESTATE.

estate in possession. See ESTATE.

estate in reversion. See REVERSION.

estate in severalty. See ESTATE.

estate in vadio. See ESTATE.

estate less than freehold. See ESTATE.

estate of inheritance. See ESTATE.

estate on condition. See ESTATE.

estate on conditional limitation. See *estate on condition* under ESTATE.

estate on condition expressed. See ESTATE.

estate on condition implied. See ESTATE.

estate on limitation. See ESTATE.

estate planning. **1.** The preparation for the distribution and management of a person's estate at death through the use of wills, trusts, insurance policies, and other arrangements, esp. to reduce estate-tax liability. **2.** A branch of law that involves the arrangement of a person's estate, taking into account the laws of wills, taxes, insurance, property, and trusts.

estates of the realm. **1.** The lords spiritual, the lords temporal, and the commons of Great Britain. — Also termed *the three estates*. **2.** In feudal Europe, the clergy, nobles, and commons. • Because the lords spiritual had no separate assembly or negative in their political capacity, some authorities reduce the estates in Great Britain to two, the lords and commons. In England (until about the 14th century), the three estates of the realm were the clergy, barons, and knights. In legal practice, the lords spiritual and lords temporal are usu. collectively designated simply as *lords*.

estate tail. See FEE TAIL.

estate tail quasi. See ESTATE.

estate tax. See TAX.

estate trust. See TRUST.

ester in judgment (es-tər). [Law French] To appear before a tribunal, as either plaintiff or defendant.

estimated damages. See *liquidated damages* under DAMAGES.

estimated tax. See TAX.

estimated useful life. See USEFUL LIFE.

estop (e-stop), *vb.* To bar or prevent by estoppel.

estoppage (e-stop-ij), *n.* The state or condition of being estopped.

estoppel (e-stop-əl), *n.* **1.** A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true. **2.** A bar that prevents the relitigation of issues. **3.** An affirmative defense alleging good-faith reliance on a misleading representation and an injury or detrimental change in position resulting from that reliance. Cf. WAIVER (1).

“‘Estoppel,’ says Lord Coke, ‘cometh of the French word *estoupe*, from whence the English word stopped; and it is called an estoppel or conclusion, because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth.’ [Co. Litt. 352a.] Estoppel may also be defined to be a legal result or ‘conclusion’ arising from an admission which has either been actually made, or which the law presumes to have been made, and which is binding on all persons whom it affects.” Lancelot Feilding Everest, *Everest and Strode's Law of Estoppel* 1 (3d ed. 1923).

“In using the term ‘estoppel,’ one is of course aware of its kaleidoscopic varieties. One reads of estoppel by conduct, by deed, by laches, by misrepresentation, by negligence, by silence, and so on. There is also an estoppel by judgment and by verdict; these, however, obviously involve procedure. The first-named varieties have certain aspects in common. But these aspects are not always interpreted by the same rules in all courts. The institution seems to be flexible.” John H. Wigmore, “The Scientific Role of Consideration in Contract,” in *Legal Essays in Tribute to Orrin Kip McMurray* 641, 643 (1935).

administrative collateral estoppel. See COLLATERAL ESTOPPEL.

assignor estoppel. *Patents.* Estoppel barring someone who has assigned the rights to a patent from later attacking the patent's validity. *Westinghouse Elec. & Mfg. Co. v. Formica*

Insulation Co., 266 U.S. 342, 45 S.Ct. 117 (1924).

collateral estoppel. See COLLATERAL ESTOPPEL.

equitable estoppel. 1. A defensive doctrine preventing one party from taking unfair advantage of another when, through false language or conduct, the person to be estopped has induced another person to act in a certain way, with the result that the other person has been injured in some way. • This doctrine is founded on principles of fraud. The five essential elements for this type of estoppel are (1) that there was a false representation or concealment of material facts, (2) that the representation must have been known to be false by the party making it, or the party must have been negligent in not knowing its falsity, (3) that it was believed to be true by the person to whom it was made, (4) that the party making the representation must have intended that it be acted on, or the person acting on it must have been justified in assuming this intent, and (5) that the party asserting estoppel acted on the representation in a way that will result in substantial prejudice unless the claim of estoppel succeeds. — Also termed *estoppel by conduct*; *estoppel in pais*. 2. See *promissory estoppel*.

estoppel by conduct. See *equitable estoppel*.

estoppel by contract. A bar against a person' denying a term, fact, or performance arising from a contract that the person has entered into.

estoppel by deed. Estoppel that prevents a party to a deed from denying anything recited in that deed if the party has induced another that prevents a grantor of a warranty deed, who does not have title at the time of the conveyance but who later acquires title, from denying that he or she had title at the time of the transfer. See AFTER-ACQUIRED-TITLE DOCTRINE.

estoppel by election. The intentional exercise of a choice between inconsistent alternatives that bars the person making the choice from the benefits of the one not selected.

estoppel by inaction. See *estoppel by silence*.

estoppel by judgment. See COLLATERAL ESTOPPEL.

estoppel by laches. An equitable doctrine by which some courts deny relief to a claimant who has unreasonably delayed or been negligent in asserting a claim.

estoppel by negligence. An estoppel arising when a negligent person induces someone to believe certain facts, and then the other person reasonably and detrimentally relies on that belief.

estoppel by record. See COLLATERAL ESTOPPEL.

estoppel by representation. An estoppel that arises when one makes a statement or admission that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief; esp., *equitable estoppel*.

estoppel by silence. Estoppel that arises when a party is under a duty to speak but fails to do so. — Also termed *estoppel by standing by*; *estoppel by inaction*.

estoppel by verdict. See COLLATERAL ESTOPPEL.

estoppel in pais. See *equitable estoppel*.

file-wrapper estoppel. See PROSECUTION-HISTORY ESTOPPEL.

judicial estoppel. Estoppel that prevents a party from contradicting previous declarations made during the same or a later proceeding if the change in position would adversely affect the proceeding or constitute a fraud on the court. — Also termed *doctrine of preclusion of inconsistent positions*; *doctrine of the conclusiveness of the judgment*.

legal estoppel. Estoppel recognized in law, such as an estoppel resulting from a recital or other statement in a deed or official record, and precluding any denial or assertion concerning a fact, as distinguished from equitable estoppel or estoppel in pais.

marking estoppel. *Patents.* Estoppel that prevents a party from asserting that a product is not covered by a patent if that party has marked the product with a patent number. • This type of estoppel has been called into question in recent years, and has been sharply limited by some courts.

promissory estoppel. The principle that a promise made without consideration may nonetheless be enforced to prevent injustice if the promisor should have reasonably expected the promisee to rely on the promise and if the promisee did actually rely on the promise to his or her detriment. — Also termed (inaccurately) *equitable estoppel*.

"The doctrine of promissory estoppel is equitable in origin and nature and arose to provide a remedy through the enforcement of a gratuitous promise. Promissory is distinct from equitable estoppel in that the representation at issue is promissory rather than a representation of fact. 'Promissory estoppel and estoppel by conduct are

two entirely distinct theories. The latter does not require a promise." Ann Taylor Schwing, *California Affirmative Defenses* § 34:16, at 35 (2d ed. 1996) (quoting *Division of Labor Law Enforcement v. Transpacific Transp. Co.*, 88 Cal. App. 3d 823, 829 (Cal. Ct. App. 1979)).

prosecution-history estoppel. See PROSECUTION-HISTORY ESTOPPEL.

quasi-estoppel. An equitable doctrine preventing one from repudiating an act or assertion if it would harm another who reasonably relied on the act or assertion.

estoppel by conduct. See *equitable estoppel* (1) under ESTOPPEL.

estoppel by contract. See ESTOPPEL.

estoppel by deed. See ESTOPPEL.

estoppel by election. See ESTOPPEL.

estoppel by inaction. See *estoppel by silence* under ESTOPPEL.

estoppel by judgment. See COLLATERAL ESTOPPEL.

estoppel by laches. See ESTOPPEL.

estoppel by negligence. See ESTOPPEL.

estoppel by record. See COLLATERAL ESTOPPEL.

estoppel by representation. See ESTOPPEL.

estoppel by silence. See ESTOPPEL.

estoppel by standing by. See *estoppel by silence* under ESTOPPEL.

estoppel by verdict. See COLLATERAL ESTOPPEL.

estoppel certificate. 1. A signed statement by a party (such as a tenant or a mortgagee) certifying for another's benefit that certain facts are correct, as that a lease exists, that there are no defaults, and that rent is paid to a certain date. • A party's delivery of this statement estops that party from later claiming a different state of facts. 2. See WAIVER OF CLAIMS AND DEFENSES.

estoppel in pais (in **pays** or **pay**). See *equitable estoppel* (1) under ESTOPPEL.

estoppel per rem judicatam (pər rem joo-di-kay-təm). See COLLATERAL ESTOPPEL.

estover (e-stoh-vər). (*usu. pl.*) 1. Wood that a tenant is allowed to take for fuel, the manufacture or repair of agricultural instruments, and the erection and maintenance of fences and hedges; necessary supplies. See *common of estovers* under COMMON. 2. The tenant's right to obtain that wood. 3. ALIMONY.

estoveriis habendis (es-tə-veer-ee-is hə-ben-dis). [Latin] *Hist.* A writ for a wife who was judicially separated to recover her alimony or estovers.

estray (e-stray), *n.* 1. A valuable tame animal found wandering and ownerless; an animal that has escaped from its owner and wanders about. • At common law, an estray belonged to the Crown or to the lord of the manor, but today the general rule is that it passes to the state in trust for the true owner, who may regain it by proving ownership. An animal cannot be an estray when on the range where it was raised and where its owner permits it to run, and esp. when the owner is known to the party who takes the animal. 2. FLOTSAM.

estreat (e-street), *n.* A copy or duplicate of some original writing or record, esp. of a fine or amercement imposed by a court, extracted from the record, and certified to one who is authorized and required to collect it.

estreat, *vb.* To take out a forfeited recognizance from the recordings of a court and return it to the court to be prosecuted.

estrep (e-streep), *vb.* 1. To strip; to despoil; to commit waste upon an estate, as by cutting down trees or removing buildings. 2. To injure the value of a reversionary interest by stripping or spoiling the estate. See WASTE.

estrepement (e-streep-mənt), *n.* A species of aggravated waste, by stripping or devastating land to the injury of the reversioner, esp. pending a suit for possession. See DE ESTREPAMENTO.

et, *conj.* [Latin] *And.* • This conjunction was the introductory word of several Latin and Law French phrases that were once common.

et adjournatur (et əj-ər-nay-tər). [Latin] *Hist.* *And it is adjourned.* • This phrase was used in the old reports, when argument of a case was adjourned to another day, or where a second argument was had.

et al. (et **al** or **ahl**). *abbr.* **1.** [Latin *et alii* or *et alia*] And other persons <the office of Thomas Webb et al.>. **2.** [Latin *et alibi*] And elsewhere.

et alii e contra (et **ay**-lee-I ee **kon**-trə). [Latin “and others on the other side”] *Hist.* A phrase often used in the Year Books, describing a joinder in issue.

et alius (et **ay**-lee-əs). [Latin] And another.

et allocatur (et al-ə-**kay**-tər). [Latin] And it is allowed.

etc. *abbr.* ET CETERA.

et cetera (et **set**-ər-ə). [Latin “and others”] And other things. • The term usu. indicates additional, unspecified items in a series. — *Abbr.* etc.

et de ceo se mettent en le pays (ay də **say**-oh sə me-**tawn** on lə **pay**). [Law French] *Hist.* And of this they put themselves upon the country. See CONCLUSION TO THE COUNTRY; GOING TO THE COUNTRY.

et de hoc ponit se super patriam (et dee hok **poh**-nit see s[y]oo-pər **pay**-tree-əm). [Latin] *Hist.* And of this he puts himself upon the country. • This was the formal conclusion of a common-law plea in bar by way of traverse.

et ei legitur in haec verba (et ee-I lee-jə-tər in **heek** vər-bə). [Latin] *Hist.* And it is read to him in these words. • This phrase was formerly used in entering the prayer of oyer on the record.

eternal law. See NATURAL LAW.

et habeas ibi tunc hoc breve (et **hay**-bee-əs **ib**-I təŋk hok **bree**-vee). [Latin] *Hist.* And that you have then and there this writ. • These were the formal words directing the return of a writ. The literal translation was retained in the later form of a considerable number of writs.

et habuit (et **hab**-yoo-it). [Latin “and he had [it]”] *Hist.* A common phrase in the Year Books, indicating that a party’s application or demand was granted.

ethical, *adj.* **1.** Of or relating to moral obligations that one person owes another; esp., in law, of or relating to legal ethics <the ethical rules regarding confidences>. See LEGAL ETHICS. **2.** In conformity with moral norms or stan-

dards of professional conduct <the judge’s recusal was a perfectly ethical act>.

ethical absolutism. See MORAL ABSOLUTISM.

ethical consideration. (*often cap.*) An aspirational goal or principle intended to guide a lawyer’s professional conduct. • A lawyer’s violation of these considerations (which are contained in the Model Code of Professional Responsibility) does not necessarily subject the lawyer to discipline. — *Abbr.* EC. Cf. DISCIPLINARY RULE.

ethical drug. See DRUG.

ethical jurisprudence. See JURISPRUDENCE.

ethical relativism. See MORAL RELATIVISM.

ethical wall. A screening mechanism that protects client confidences by preventing one or more lawyers within an organization from participating in any matter involving that client. • This mechanism is designed to allow a lawyer to move to a new law firm without the fear of vicariously disqualifying that firm from representing certain clients. Creating an ethical wall generally entails (1) prohibiting certain lawyers and paralegals from having any connection with the matter; (2) banning discussions with or the transfer of documents to those individuals; (3) restricting access to files; and (4) educating all members of the firm, corporation, or entity about the separation of the lawyers and paralegals (both organizationally and physically) from the pending matter. — Also termed *Chinese wall*; *screening mechanism*.

ethics. See LEGAL ETHICS.

et hoc paratus est verificare (et hok pə-**ray**-təs est ver-ə-fi-**kair**-ee). [Latin “and this he is prepared to verify”] *Archaic.* A phrase that concluded a plea in confession and avoidance, or any pleading that contained new affirmative matter. • A pleading containing this phrase was technically said to “conclude with a verification,” as opposed to a simple denial.

et hoc petit quod inquiratur per patriam (et hok **pet**-it kwod in-kwə-**ray**-tər pər **pay**-tree-əm). [Latin “and this he prays may be inquired of by the country”] *Archaic.* The conclusion of a plaintiff’s pleading that tendered an issue to the country. See CONCLUSION TO THE COUNTRY.

et inde petit iudicium (et in-dee pet-it joo-dish-ee-əm). [Latin “and thereupon he prays judgment”] *Archaic*. A clause found at the end of a pleading, requesting judgment in that party’s favor.

etiquette of the profession. See LEGAL ETHICS (1).

et modo ad hunc diem (et moh-doh ad hængk dī-əm). [Latin “and now at this day”] *Archaic*. The formal beginning of an entry of appearance or of a continuance.

et non (et non). [Latin “and not”] *Archaic*. A phrase formerly used in pleading to introduce the negative averments of a special traverse. See ABSQUE HOC.

et seq. (et sek). *abbr.* [Latin *et sequentes*] And those (pages or sections) that follow <11 USCA §§ 101 et seq.>.

et sic (et sik). [Latin “and so”] *Archaic*. The introductory words of a special conclusion to a plea in bar, intending to render the plea positive and not argumentative.

et sic ad iudicium (et sik ad joo-dish-ee-əm). [Latin] *Archaic*. And so to judgment.

et sic ad patriam (et sik ad pay-tree-əm). [Latin] *Hist.* And so to the country. • This phrase was used in the Year Books to record an issue to the country.

et sic fecit (et sik fee-sit). [Latin] *Archaic*. And he did so.

et sic pendet (et sik pen-dit). [Latin] *Hist.* And so it hangs. • This phrase was used in the old reports to signify that a point was left undetermined.

et sic ulterius (et sik əl-teer-ee-əs). [Latin] *Archaic*. And so on; and so further; and so forth.

et uxor (et ək-sor). [Latin] *Archaic*. And wife. • This phrase was formerly common in case names and legal documents (esp. abstracts of title) involving a husband and wife jointly. It usu. appears in its abbreviated form, *et ux.* <conveyed the land to Donald Baird et ux.>.

et vir (et veer). [Latin] *Archaic*. And husband.

EU. *abbr.* EUROPEAN UNION.

Euclidean zoning. See ZONING.

eundo et redeundo (ee-ən-doh et red-ee-ən-doh). [Latin] *Hist.* Going and returning. • This phrase was once used to describe vessels in transit.

eundo, morando, et redeundo (ee-ən-doh, mə-ran-doh, et red-ee-ən-doh). [Latin] *Hist.* Going, remaining, and returning. • This phrase was once used to describe a person (for example, a witness or legislator) who is privileged from arrest while traveling to the place where assigned duties are to be performed, while remaining there, and while returning.

eunomy (yoo-nə-mee), *n.* A system of good laws that lead to civil order and justice. — Also termed *eunomia*. — **eunomic**, *adj.*

euro (yuur-oh). The official currency of 11 countries in the European Union. • On January 1, 1999, the euro became the single currency of the 11 participating countries — Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Portugal, and Spain. Euro notes and coins will be issued on January 1, 2002.

Eurobank. A bank that participates in the Eurocurrency market by accepting deposits and providing loans in foreign currencies.

Eurobond. An international bond issued in a country other than the one in whose currency the bond is denominated.

Eurodollar. A U.S. dollar deposited in a foreign bank and used in European money markets.

European Community. See EUROPEAN UNION.

European Court of Human Rights. The judicial body — established in 1950 and sitting at Strasbourg — of the Council of Europe. • The Convention on Human Rights of 1950, in force as of 1953, does not necessarily form part of the domestic law of member nations, nor is a member nation obliged to accept this court’s jurisdiction.

European Currency Unit. A monetary unit whose value is calculated as a weighted average of currencies from ten member-nations of the European Union. • The European Currency Unit was created in 1979 to promote currency stability. The unit was a hypothetical currency. — *Abbr.* ECU; ecu.

European Economic Community. See EUROPEAN UNION.

European law. **1.** The law of the European Union. **2.** More broadly, the law of the European Union, together with the conventions of the Council of Europe and the European Convention on Human Rights. **3.** More broadly still, all the law current in Europe, including the law of European organizations such as the Western European Union, the Benelux Economic Union, the Organization for Economic Cooperation and Development, the North Atlantic Treaty Organization, and all the bilateral and multilateral conventions in effect, as well as European customary law.

European Union. An association of European nations, with the purpose of achieving full economic unity (and eventual political union) by agreeing to eliminate barriers to the free movement of capital, goods, and labor among the member-nations. • The European Union was formed as the European Economic Community (EEC) by the Treaty of Rome in 1957, and later renamed the European Community (EC). The European Community became the European Union when the Maastricht Treaty on European Union took effect in November 1993. As of 1999, Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, and Sweden had full membership privileges. — Abbr. EU.

euthanasia (yoo-thə-nay-zhə), *n.* The act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, esp. a painful one, for reasons of mercy. • Euthanasia is sometimes regarded by the law as second-degree murder, manslaughter, or criminally negligent homicide. — Also termed *mercy killing*. — **euthanasic** (yoo-thə-nay-zik), *adj.* See LIVING WILL; ADVANCE DIRECTIVE. Cf. *assisted suicide* under SUICIDE.

active euthanasia. Euthanasia performed by a facilitator (usu. a physician) who not only provides the means of death but also carries out the final death-causing act.

involuntary euthanasia. Euthanasia of a competent, nonconsenting person.

nonvoluntary euthanasia. Euthanasia of an incompetent, and therefore nonconsenting, person.

passive euthanasia. The act of allowing a terminally ill person to die by either with-

holding or withdrawing life-sustaining support such as a respirator or feeding tube.

voluntary euthanasia. Euthanasia performed with the terminally ill person's consent.

euthanize (yoo-thə-nīz), *vb.* To put to death by euthanasia. • This term is used chiefly in reference to animals. — Also termed *euthanatize*.

evaluative fact. See FACT.

Evarts Act (ev-arts). An 1891 federal statute that established the circuit courts of appeals (now U.S. courts of appeals) and fixed the contemporary method of federal appellate review.

evasion. See TAX EVASION.

evasive, *adj.* Tending or seeking to evade; elusive; shifting. • If a pleading requiring a response is evasive, the responding party may move for a more definite statement. Fed. R. Civ. P. 12(e).

evasive answer. A response that neither directly admits nor denies a question. • In pleading, this is considered a failure to answer. Fed. R. Civ. P. 37(3).

even date. The same date. • This jargonistic phrase is sometimes used in one instrument to refer to another instrument with the same date, esp. when both relate to the same transaction (as a deed and a mortgage).

evenings. *Hist.* The delivery at evening or night to a customary tenant of a gratuity in the form of a portion of the grass, corn, or other crop that the tenant cuts, mows, or reaps for the lord.

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

evergreen contract. See CONTRACT.

evict, *vb.* **1.** To expel (a person, esp. a tenant), from real property, usu. by legal process. **2.** *Archaic.* To recover (property or title) from a person by legal process. — **evictor**, *n.*

eviction. The act or process of legally disposing a person of land or rental property. See FORCIBLE ENTRY AND DETAINER. Cf. EJECTMENT.

actual eviction. A physical expulsion of a person from land or rental property.

constructive eviction. 1. A landlord's act of making premises unfit for occupancy, often with the result that the tenant is compelled to leave. 2. The inability of a land purchaser to obtain possession because of paramount outstanding title. • Such an eviction usu. constitutes a breach of the covenants of warranty and quiet enjoyment.

partial eviction. An eviction, either constructive or actual, from a portion of a tenant's premises.

retaliatory eviction. An eviction — nearly always illegal — commenced in response to a tenant's complaints or involvement in activities with which the landlord does not agree.

summary eviction. An eviction accomplished through a simplified legal procedure, without the formalities of a full trial.

total eviction. An eviction that wholly deprives the tenant of any right in the premises.

evidence, n. 1. Something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact <the bloody glove is the key piece of evidence for the prosecution>. 2. See *fact in evidence* under FACT. 3. The collective mass of things, esp. testimony and exhibits, presented before a tribunal in a given dispute <the evidence will show that the defendant breached the contract>. 4. The body of law regulating the burden of proof, admissibility, relevance, and the weight and sufficiency of what should be admitted into the record of a legal proceeding <under the rules of evidence, the witness's statement is inadmissible hearsay that is not subject to any exception>. — **evidence, vb.**

"Evidence is any matter of fact which is furnished to a legal tribunal, otherwise than by reasoning or a reference to what is noticed without proof, as the basis of inference in ascertaining some other matter of fact." James B. Thayer, *Presumptions and the Law of Evidence*, 3 Harv. L. Rev. 141, 142 (1889).

"Evidence, broadly defined, is the means from which an inference may logically be drawn as to the existence of a fact; that which makes evident or plain. Evidence is the demonstration of a fact; it signifies that which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. In legal acceptation, the term 'evidence' includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 'Evidence' has also been defined to mean any species of proof legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, and the like." 31A C.J.S. *Evidence* § 3, at 67-68 (1996).

admissible evidence. Evidence that is relevant and is of such a character (e.g., not

unfairly prejudicial or based on hearsay) that the court should receive it. — Also termed *competent evidence*; *proper evidence*.

autoptic evidence. See *demonstrative evidence*.

best evidence. Evidence of the highest quality available, as measured by the nature of the case rather than the thing being offered as evidence. — Also termed *primary evidence*; *original evidence*. See BEST-EVIDENCE RULE. Cf. *secondary evidence*.

"In some circumstances, 'best evidence' may mean that evidence which is more specific and definite as opposed to that which is merely general and indefinite or descriptive. However, 'best evidence' or 'primary evidence' is variously defined as that particular means of proof which is indicated by the nature of the fact under investigation as the most natural and satisfactory, or as that kind of proof which under any possible circumstances affords the greatest certainty of the fact in question; or as evidence which carries on its face no indication that better remains behind." 32A C.J.S. *Evidence* § 1054, at 417 (1996).

character evidence. Evidence regarding someone's personality traits; evidence of a person's moral standing in a community, based on reputation or opinion. Fed. R. Evid. 404, 405, 608.

circumstantial evidence. 1. Evidence based on inference and not on personal knowledge or observation. — Also termed *indirect evidence*; *oblique evidence*. Cf. *direct evidence* (1). 2. All evidence that is not given by testimony.

"Indirect evidence (called by the civilians, *oblique*, and more commonly known as *circumstantial evidence*) is that which is applied to the principal fact, indirectly, or through the medium of other facts, by establishing certain circumstances or minor facts, already described as evidentiary, from which the principal fact is extracted and gathered by a process of special inference . . ." Alexander M. Burrill, *A Treatise on the Nature, Principles and Rules of Circumstantial Evidence* 4 (1868).

"Some circumstantial evidence is very strong, as when you find a trout in the milk." Henry David Thoreau, *Journal*, 11 Nov. 1850, in 2 *Journal of Henry D. Thoreau* 94 (Bradford Torrey & Francis H. Allen eds., 1962).

"Evidence of some collateral fact, from which the existence or non-existence of some fact in question may be inferred as a probable consequence, is termed circumstantial evidence." William P. Richardson, *The Law of Evidence* § 111, at 68 (3d ed. 1928).

"Testimonial evidence readily defines itself by its name; it is any assertion by a human being, offered to evidence the truth of the matter asserted. Circumstantial evidence is any and all other evidence. Scientifically the term 'circumstantial' is indefensible, for it does not correlate with 'testimonial'; a more correct equivalent would be 'nontestimonial.' But no one has yet invented an acceptable substitute for 'circumstantial.'" John H. Wigmore, *A Students' Textbook of the Law of Evidence* 38 (1935).

clear and convincing evidence. Evidence indicating that the thing to be proved is highly probable or reasonably certain. • This is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials. — Also termed *clear and convincing proof*. Cf. PREPONDERANCE OF THE EVIDENCE.

communicative evidence. See *testimonial evidence*.

competent evidence. 1. See *admissible evidence*. 2. See *relevant evidence*.

conclusive evidence. 1. Evidence so strong as to overbear any other evidence to the contrary. — Also termed *conclusive proof*. 2. Evidence that, though not irrebuttable, so preponderates as to oblige a fact-finder to come to a certain conclusion.

concomitant evidence. Evidence that, at the time of the act, the alleged doer of the act was present and actually did it.

conflicting evidence. Irreconcilable evidence that comes from different sources.

corroborating evidence. Evidence that differs from but strengthens or confirms other evidence (esp. that which needs support). — Also termed *corroborative evidence*. Cf. *cumulative evidence*.

credible evidence. Evidence that is worthy of belief; trustworthy evidence.

critical evidence. Evidence strong enough that its presence could tilt a juror's mind. • Under the Due Process Clause, an indigent criminal defendant is usu. entitled to an expert opinion of the merits of critical evidence.

cumulative evidence. Additional evidence of the same character as existing evidence and that supports a fact established by the existing evidence (esp. that which does not need further support). Cf. *corroborating evidence*.

demeanor evidence. The behavior of a witness on the witness stand, to be considered by the fact-finder on the issue of credibility.

demonstrative evidence (di-mon-strə-tiv). Physical evidence that one can see and inspect (such as a model or photograph) and that, while of probative value and usu. offered to clarify testimony, does not play a direct part in the incident in question. — Also termed *illustrative evidence*; *real evidence*; *tangible evidence*; *autoptic evidence*; *autoptic profference*. See *nonverbal testimony* under TESTIMONY. Cf. *testimonial evidence*.

"There remains a source of proof, distinct from either circumstantial or testimonial evidence, viz., what the

tribunal sees or hears by its own senses. Whether this should be termed 'evidence' or not is a question of words, open to difference of view. But it is universally conceded to be an available source of proof. Bentham's term for it, 'real evidence,' came into wide vogue, but is ambiguous. The term 'autoptic profference' (etymologically meaning 'showing to the tribunal's own vision') is preferable." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 39 (1935).

derivative evidence. Evidence that is discovered as a result of illegally obtained evidence and is therefore inadmissible because of the primary taint. See EXCLUSIONARY RULE; FRUIT-OF-THE-POISONOUS-TREE DOCTRINE.

direct evidence. 1. Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption. — Also termed *positive evidence*. Cf. *circumstantial evidence*; *negative evidence*. 2. See *original evidence* (1).

"A little reflection shows that no disputed case will ordinarily be proved solely by circumstantial or solely by testimonial evidence. Ordinarily there is evidence of *both kinds*. The matter has been obscured by the use of the term 'direct evidence,' — a term sometimes used to mean testimonial evidence in general, but sometimes also limited to apply only to testimony directly asserting the fact-in-issue. . . . The term 'direct' evidence has no utility." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 40 (1935).

documentary evidence. Evidence supplied by a writing or other document, which must be authenticated before the evidence is admissible.

evidence aliunde. See *extrinsic evidence*.

evidence-in-chief. Evidence used by a party in making its case-in-chief.

exclusive evidence. The only facts that have any probative force at all on a particular matter in issue.

"[T]here is an important class of rules declaring certain facts to be exclusive evidence, none other being admissible. The execution of a document which requires attestation can be proved in no other way than by the testimony of an attesting witness, unless owing to the death or some other circumstance his testimony is unavailable. A written contract can generally be proved in no other way than by the production of the writing itself, whenever its production is possible." John Salmond, *Jurisprudence* 485 (Glanville L. Williams ed., 10th ed. 1947).

exculpatory evidence (ik-skəl-pə-tor-ee). Evidence tending to establish a criminal defendant's innocence. • The prosecution has a duty to disclose exculpatory evidence in its possession or control when the evidence may be material to the outcome of the case.

expert evidence. Evidence about a scientific, technical, or professional issue given by a person qualified to testify because of familiar-

ity with the subject or special training in the field. — Also termed *expert testimony*. Fed. R. Evid. 702–705. See DAUBERT TEST.

extrajudicial evidence. Evidence that does not come directly under judicial cognizance but nevertheless constitutes an intermediate link between judicial evidence and the fact requiring proof. • It includes all facts that are known to the tribunal only by way of inference from some form of judicial evidence. See JUDICIAL NOTICE.

extrinsic evidence. 1. Evidence relating to a contract but not appearing on the face of the contract because it comes from other sources, such as statements between the parties or the circumstances surrounding the agreement. • Extrinsic evidence is usu. not admissible to contradict or add to the terms of an unambiguous document. — Also termed *extraneous evidence*; *parol evidence*; *evidence aliunde*. 2. Evidence that is not legitimately before the court. Cf. *intrinsic evidence*.

fabricated evidence. False or deceitful evidence that is unlawfully created, usu. after the relevant event, in an attempt to avoid liability or conviction. — Also termed *fabricated fact*.

forensic evidence. Evidence used in court; esp., evidence arrived at by scientific means, such as ballistic or medical evidence.

habit evidence. Evidence of one's regular response to a repeated specific situation. Fed. R. Evid. 406.

hearsay evidence. See HEARSAY.

illegally obtained evidence. Evidence obtained by violating a statute or a person's Fourth Amendment guarantee against unreasonable searches or Fifth Amendment right to remain silent.

illustrative evidence. See *demonstrative evidence*.

immaterial evidence. 1. Evidence lacking in probative value. 2. Evidence offered to prove a matter that is not in issue.

impeachment evidence. Evidence used to undermine a witness's credibility. Fed. R. Evid. 607–610.

incompetent evidence. Evidence that is for any reason inadmissible.

incriminating evidence. Evidence tending to establish guilt or from which a fact-trier can infer guilt.

inculpatory evidence (in-kəl-pə-tor-ee). Evidence showing or tending to show one's involvement in a crime.

indirect evidence. See *circumstantial evidence*.

indispensable evidence. Evidence without which a particular fact cannot be proved.

insufficient evidence. Evidence that is inadequate to prove something, so that no presumption — even a conditional one — is raised.

intrinsic evidence. 1. Evidence brought out by the examination of the witness testifying. 2. Evidence existing within a writing. Cf. *extrinsic evidence*.

judicial evidence. Evidence produced in court, consisting of all facts brought to the attention of or admitted into evidence before the tribunal.

legal evidence. All admissible evidence, both oral and documentary, of such a character that it reasonably and substantially proves the point rather than merely raising suspicion or conjecture.

material evidence. Evidence having some logical connection with the consequential facts or the issues. Cf. *relevant evidence*.

mathematical evidence. Loosely, evidence that establishes its conclusions with absolute certainty.

mediate evidence. See *secondary evidence*.

medical evidence. Evidence furnished by a doctor, nurse, or other qualified medical person testifying in a professional capacity as an expert, or by a standard treatise on medicine or surgery.

moral evidence. Loosely, evidence that depends on a belief, rather than complete and absolute proof. • Generally, such evidence is testimonial.

multiple evidence. Evidence with probative value on more than one issue but usu. admitted into evidence for one specific purpose.

negative evidence. Evidence suggesting that an alleged fact does not exist, such as a witness's testifying that he or she did not see an event occur. • Negative evidence is generally regarded to be weaker than positive evidence, because a positive assertion that a witness saw an event is a stronger statement than an assertion that a witness did not see it. But a negative assertion will sometimes be considered positive evidence, depending on the witness's opportunity to see the event. For instance, testimony that the witness watched the entire game and saw no riot in the stands is stronger than testimony stating only that the witness did not see a riot. —

Also termed *negative testimony*. Cf. *direct evidence* (1).

newly discovered evidence. Evidence existing at the time of a motion or trial but then unknown to a party, who, upon later discovering it, may assert it as grounds for reconsideration or a new trial.

no evidence. See NO EVIDENCE.

oblique evidence. See *circumstantial evidence*.

opinion evidence. A witness's belief, thought, or inference about a disputed fact. Fed. R. Evid. 701–705. See OPINION (3); OPINION RULE.

“In a sense all testimony to matter of fact is opinion evidence; i.e. it is a conclusion formed from phenomena and mental impressions.” James B. Thayer, *A Preliminary Treatise on Evidence at the Common Law* 524 (1898).

original evidence. 1. A witness's statement that he or she perceived a fact in issue by one of the five senses, or that the witness was in a particular physical or mental state. — Also termed *direct evidence*. Cf. HEARSAY. 2. See *best evidence*.

parol evidence (pə-rohl or par-əl). 1. Evidence given orally. 2. See *extrinsic evidence* (1). See PAROL-EVIDENCE RULE.

partial evidence. Evidence that establishes one of a series of facts.

personal evidence. See TESTIMONY.

positive evidence. See *direct evidence* (1).

preappointed evidence. Evidence prescribed in advance (as by statute) for the proof of certain facts.

preliminary evidence. Evidence that is necessary to begin a hearing or trial and that may be received conditionally in anticipation of other evidence linking it to issues in the case. Fed. R. Evid. 104.

presumptive evidence. 1. Evidence deemed true and sufficient unless discredited by other evidence. 2. *Archaic.* Circumstantial evidence as distinct from testimonial evidence. — Also termed *probable evidence*.

prima facie evidence (pri-mə fay-shə). Evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.

“The legislative branch may create an evidential presumption, or a rule of ‘prima facie’ evidence, i.e., a rule which does not shut out evidence, but merely declares that certain conduct shall suffice as evidence until the opponent produces contrary evidence.” John H. Wigmore, *A Students’ Textbook of the Law of Evidence* 237 (1935).

primary evidence. See *best evidence*.

privileged evidence. Evidence that is exempt from production to an opposing party (with certain, limited exceptions) because it is covered by one or more statutory and common-law protections, such as the attorney-client privilege. See *privileged communication* under COMMUNICATION.

probable evidence. See *presumptive evidence*.

probative evidence (proh-bə-tiv). Evidence that tends to prove or disprove a point in issue.

proffered evidence (prof-ərd). 1. Evidence that is offered to the court to obtain a ruling on its admissibility. 2. Evidence whose admissibility depends on the existence or nonexistence of a preliminary fact.

proper evidence. See *admissible evidence*.

prospectant evidence (prə-spek-tənt). Evidence that, before someone does an act, suggests that the person might or might not do the act. • This evidence typically falls into any of five categories: (1) moral character or disposition, (2) physical and mental capacity, (3) habit or custom, (4) emotion or motive, and (5) plan, design, or intention.

Queen’s evidence. *English law.* Testimony provided by one criminal defendant, usu. under a promise of pardon, against another criminal defendant. — Also termed (when a king reigns) *King’s evidence*. See *state’s evidence*.

real evidence. 1. Physical evidence (such as a knife wound) that itself plays a direct part in the incident in question. 2. See *demonstrative evidence*.

“Anything which is believed for any other reason than that someone has said so, is believed on real evidence.” John Salmond, *Jurisprudence* 480 (Glanville L. Williams ed., 10th ed. 1947).

rebuttal evidence. Evidence offered to disprove or contradict the evidence presented by an opposing party.

relevant evidence. Evidence tending to prove or disprove a matter in issue. • Relevant evidence is both probative and material and is admissible unless excluded by a specific statute or rule. Fed. R. Evid. 401–403. — Also termed *competent evidence*. Cf. *material evidence*.

reputation evidence. Evidence of what one is thought by others to be. • Reputation evidence may be introduced as proof of character when character is in issue or is used circum-

stantially. Fed. R. Evid. 405(a). — Also termed *reputational evidence*.

retrospectant evidence (re-trə-spek-tənt). Evidence that, although it occurs after an act has been done, suggests that the alleged doer of the act actually did it <when goods have been stolen, and the thief is sought, a person's later possession of those goods amounts to retrospectant evidence that this person took them>. — Also termed *traces*.

satisfactory evidence. Evidence that is sufficient to satisfy an unprejudiced mind seeking the truth. — Also termed *sufficient evidence*; *satisfactory proof*.

scientific evidence. Testimony or opinion evidence that draws on technical or specialized knowledge and relies on scientific method for its evidentiary value. See DAUBERT TEST.

secondary evidence. Evidence that is inferior to the primary or best evidence and that becomes admissible when the primary or best evidence is lost or inaccessible. • Examples include a copy of a lost instrument or testimony regarding the contents of a lost document. — Also termed *mediate evidence*; *mediate testimony*; *substitutionary evidence*. Cf. *best evidence*.

secondhand evidence. See HEARSAY.

signature evidence. Evidence of a person's prior bad acts that, while ordinarily inadmissible, will be admitted if it shows, for example, that two crimes were committed through the same planning, design, scheme, or modus operandi, and in such a way that the prior act and the current act are uniquely identifiable as those of the defendant.

slight evidence. Inconsiderable evidence; a trifling quantity of evidence; esp., the small amount sufficient for a rational fact-finder to conclude that the state failed to disprove an affirmative defense beyond a reasonable doubt.

state's evidence. Testimony provided by one criminal defendant — under a promise of immunity or reduced sentence — against another criminal defendant. See TURN STATE'S EVIDENCE.

substantial evidence. Evidence that a reasonable mind would accept as adequate to support a conclusion; evidence beyond a scintilla. See SUBSTANTIAL-EVIDENCE RULE.

substantive evidence (səb-stən-tiv). Evidence offered to support a fact in issue, as opposed to impeachment or corroborating evidence.

substitutionary evidence. See *secondary evidence*.

sufficient evidence. See *satisfactory evidence*.

tainted evidence. Evidence that is inadmissible because it was directly or indirectly obtained by illegal means. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE.

tangible evidence. See *demonstrative evidence*.

testimonial evidence. A person's testimony offered to prove the truth of the matter asserted; esp., evidence elicited from a witness. — Also termed *communicative evidence*. Cf. *demonstrative evidence*.

"An assertion is testimonial evidence whether made out of court or in court, if it is offered with a view to persuading the tribunal of the matter asserted." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 120 (1935).

traditionary evidence. Evidence derived from a deceased person's former statements or reputation. • Traditionary evidence is admissible to prove ancestry, ancient boundaries, or similar facts, usu. when no living witnesses are available to testify.

unwritten evidence. Evidence given orally, in court or by deposition.

evidence by inspection. See *demonstrative evidence* under EVIDENCE.

evidence code. A codified set of statutory provisions governing the admissibility of evidence and the burden of proof at hearings and trials.

evidence-in-chief. See EVIDENCE.

evidence of debt. 1. BOND. 2. DEBENTURE.

evidence of insurability. Information — such as medical records or a medical examination — that an insurer may require to establish a potential insured's qualification for a particular insurance policy.

evidence of title. The means by which the ownership of land is satisfactorily demonstrated within a given jurisdiction. See DEED.

"There are four kinds of evidence of title: *abstract and opinion*, *certificate of title*, *title insurance* and *Torrens certificate*. The certificate of title is used extensively in the Eastern states, and some Southern states. In urban centers in a great many sections of the country, title insurance occupies a dominant position in real estate transactions. In farm areas the abstract and opinion method is common. To a great extent, the acceptability

of a particular kind of evidence of title depends on the local custom." Robert Kratovil, *Real Estate Law* 170 (6th ed. 1974).

evidence rules. See EVIDENCE (4).

evidentia (ev-i-den-shee-ə), *n.* [Law Latin] Evidence.

evidential, adj. Of, relating to, relying on, or constituting evidence; EVIDENTIARY (1).

evidential fact. See *evidentiary fact* (2) under FACT.

evidentiary (ev-i-den-shə-ree), *adj.* **1.** Having the quality of evidence; constituting evidence; evidencing. **2.** Pertaining to the rules of evidence or the evidence in a particular case.

evidentiary fact. See FACT.

evidentiary hearing. See HEARING.

evince, vb. To show, indicate, or reveal <in abstaining from the vote, Hariden evinced misgivings about the nomination>.

evocation (ev-ə-kay-shən). *French law.* The act of withdrawing a case from an inferior court and bringing it before a superior court.

evolution statute. *Hist.* Legislation that forbids the teaching of the theory of evolution in schools. • Such statutes were held unconstitutional as violative of the Establishment Clause in *Epperson v. Arkansas*, 393 U.S. 97, 89 S.Ct. 266 (1968).

ewage (yoo-ij), *n.* [Law French] *Hist.* A toll paid for water passage.

ex. **1.** Former <ex-wife>. **2.** Without <ex rights>. **3.** From <ex cathedra>. **4.** (*usu. cap.*) *abbr.* Exhibit <Ex. 4>. **5.** *abbr.* Example <this is but one ex. of several that might be cited>. **6.** *abbr.* EXCHEQUER.

ex abundantia (eks ab-ən-dan-ti). [Latin "out of abundance"] *Archaic.* Abundantly; superfluously.

ex abundantia cautela (eks ab-ən-dan-ti kaw-tee-lə). [Latin] *Archaic.* Out of abundant caution; to be on the safe side.

exacta diligentia (eg-zak-tə dil-ə-jen-shee-ə). [Latin] *Roman law.* Great care.

exaction, n. **1.** The act of demanding more money than is due; extortion. **2.** A fee, reward, or other compensation arbitrarily or wrongfully demanded. — **exact, vb.**

exactor. **1.** *Civil law.* A tax collector; a gatherer or receiver of money. **2.** *Hist.* A collector of public funds; a tax collector.

ex adverso (eks ad-vər-soh). [Latin] On the other side. • This term is sometimes applied to opposing counsel.

ex aequitate (eks ee-kwə-tay-tee). [Latin] According to equity; in equity.

ex aequo et bono (eks ee-kwoh et boh-noh). [Latin] According to what is equitable and good. • A decision-maker (esp. in international law) who is authorized to decide *ex aequo et bono* is not bound by legal rules and may instead follow equitable principles.

ex altera parte (eks al-tər-ə [or awl-] pah-tee). [Latin] Of the other part.

examen (eg-zay-mən), *n.* [Law Latin] A trial; investigation.

examen computi (eg-zay-mən kəm-pyoo-ti). [Latin] The balance of an account.

examination. **1.** The questioning of a witness under oath. See DIRECT EXAMINATION; CROSS-EXAMINATION. **2.** *Bankruptcy.* The questioning of a bankrupt, esp. at the first meeting of creditors, concerning such matters as the bankrupt's debts and assets. **3.** *Patents.* An inquiry made at the Patent and Trademark Office, upon application for a patent, into the alleged invention's novelty and utility, and whether it interferes with any other patented invention. **4.** PRELIMINARY HEARING. **5.** A test, such as a bar examination.

examination-in-chief. See DIRECT EXAMINATION.

examination on the voir dire. See VOIR DIRE.

examination pro interesse suo (proh in-tər-es-ee s[y]oo-oh). [Latin "according to his interest"] A judicial inquiry into the merits of a person's claim to sequestered property.

"In practice, an examination pro interesse suo is an inquiry described as follows: When any person claims to be entitled to an estate or other property sequestered, whether by mortgage or judgment, lease or otherwise, or

has a title paramount to the sequestration, he should apply to the court to direct an inquiry whether the applicant has any and what interest in the property sequestered." 79A C.J.S. *Sequestration* § 31, at 589 (1995).

examined copy. See COPY.

examiner. 1. One authorized to conduct an examination; esp., a person appointed by the court to administer an oath and take testimony. See MASTER (2). **2.** A patent officer responsible for determining the patentability of an invention submitted to the patent office. **3.** MEDICAL EXAMINER.

examining authority. See AUTHORITY (3).

examining board. An appointed group of public officials responsible for conducting the tests required by those applying for occupational and professional licenses. — Also termed *board of examiners*.

examining court. See COURT.

examining trial. See PRELIMINARY HEARING.

exannual roll (eks-an-yoo-əl). *Hist.* In England, a roll into which illeivable fines and desperate debts were transcribed and that was annually read to the sheriff upon his accounting to see what might be gotten.

ex ante (eks an-tee), *adj. & adv.* [Latin "from before"] Based on assumption and prediction; subjective; prospective <from an *ex ante* perspective>. Cf. EX POST.

ex arbitrio judicis (eks ahr-bi-tree-oh joo-di-sis). [Latin] *Civil law.* At, from, or upon the discretion of the judge.

ex assensu curiae (eks ə-sen-s[y]oo kyoor-ee-ee or -I). [Latin] By or with the consent of the court.

ex assensu patris (eks ə-sen-s[y]oo pay-tris). [Latin "by or with the consent of the father"] *Hist.* A species of dower *ad ostium ecclesiae*, under which a husband, by his father's express consent, would endow his wife with a parcel of the father's lands. • This type of dower was abolished in England by the Dower Act (1833). St. 3 & 4 Will. 4, ch. 105, § 13.

ex assensu suo (eks ə-sen-s[y]oo s[y]oo-oh). [Latin "with his assent"] Formal words in a default judgment for damages.

ex bonis (eks boh-nis). [Latin] *Civil law.* Of or relating to goods or property.

excambiator (eks-kam-bee-ay-tər), *n.* [Latin] *Hist.* An exchanger of lands; a broker.

excambium (eks-kam-bee-əm), *n.* [Latin] **1.** An exchange; a place where merchants meet to transact their business. — Also termed (in Scots law) *excambion*. **2.** An equivalent in recompense; a recompense in lieu of dower *ad ostium ecclesiae*.

ex capite (eks kap-i-tee). [Latin] On the ground of; by reason of.

ex cathedra (eks kə-thee-drə or kath-ə-drə), *adv. & adj.* [Latin "from the chair"] By virtue of one's high office or position; with authority <ex cathedra pronouncements>.

ex causa (eks kaw-zə). [Latin] By title.

excellency. (*usu. cap.*) A title of honor given to certain high officials or dignitaries, such as governors, ambassadors, and Roman Catholic bishops or archbishops.

exceptio (ek-sep-shee-oh), *n.* [Latin] *Hist.* **1.** An exception, plea, or objection. **2.** *Roman & civil law.* A defendant's plea admitting the claim in principle, but alleging facts or legal provisions that negate it in this instance. **3.** A defense to a claim that is justly brought but that unjustly accuses the particular defendant named.

exceptio dilatoria (dil-ə-tor-ee-ə). A dilatory exception; an exception that defeated the action for a time and creates a delay, such as an agreement not to sue within a certain time.

exceptio doli mali (doh-lī mal-I). An exception or plea of fraud.

exceptio dominii (də-min-ee-I). A claim of ownership by the defendant in an action to recover property not in the plaintiff's possession.

exceptio dotis cautae non numeratae (doh-tis kaw-tee non n[y]oo-mə-ray-tee). A defense to an action for the restitution of dowry, asserting that, although promised, dowry was never paid.

exceptio in factum (in fak-təm). An exception on the fact; an exception or plea founded on the peculiar circumstances of a case.

exceptio in personam (in pər-soh-nəm). A plea or defense of a personal nature that only

the person to whom it is granted by law may assert.

exceptio in rem (in **rem**). A plea or defense that is not of a personal nature but is connected with the legal circumstances on which the suit is founded, and that may therefore be alleged by any party in interest, such as an heir or surety of the proper or original debtor.

exceptio jurisjurandi (**juor-is-juu-ran-di**). An exception of oath; an exception or plea that the matter had been sworn to. • This kind of exception was allowed if a debtor, at a creditor's instance, had sworn that nothing was due the creditor, but the creditor sued anyway.

exceptio metus (**met-əs**). An exception or plea of fear or compulsion.

exceptio non adimpleti contractus (non ad-im-**plee**-tī kən-trak-təs). An exception in a contract action involving mutual duties or obligations, to the effect that the plaintiff may not sue if the plaintiff's own obligations have not been performed.

exceptio non solutae pecuniae (non sə-loo-tee pi-**kyoo**-nee-ee). A plea that the debt at issue in the suit was not discharged by payment (as the adverse party alleged), notwithstanding the existence of a receipt or acquittance reflecting payment.

exceptio pacti conventi (**pak-ti-kən-ven-ti**). An exception of compact; an exception or plea that the plaintiff had agreed not to sue.

exceptio pecuniae non numeratae (pi-**kyoo**-nee-ee non n[y]oo-mə-**ray**-tee). An exception or plea of money not paid; a defense by a party who was sued on a promise to repay money that was never received.

exceptio peremptoria (pər-emp-**tor**-ee-ə). A peremptory exception that forever destroyed the subject matter or ground of the action, such as the *exceptio doli mali* and the *exceptio metus*. — Also termed *exceptio perpetua*.

exceptio plurium concubentium (**ploor**-ee-əm kon-kyoo-**ben**-shee-əm). The plea or defense in a paternity action that the plaintiff had several lovers.

exceptio rei judicatae (**ree-I** joo-də-**kay**-tee). An exception or plea of matter adjudged; a plea that the subject matter of the action had been determined in a previous action.

exceptio rei venditae et traditae (**ree-I ven**-də-tee et **trad**-ə-tee). An exception or plea of the sale and delivery [of a thing]. • This exception presumes a valid sale but, because no one can transfer a right greater

than what is possessed, no valid transfer of property occurred, yet the real owner is nonetheless estopped from contesting the sale.

exceptio senatusconsulti Macedoniani (sə-**nay**-təs-kən-səl-tī mas-ə-doh-nee-**ay**-nī). A defense to an action for the recovery of money loaned, on the ground that the loan was made to a minor or a person under another person's paternal power. • This defense is so named from the decree of the senate that forbade the recovery of such loans.

exceptio senatusconsulti Velleiani (sə-**nay**-təs-kən-səl-tī vel-ee-**ay**-nī). A defense to an action on a contract of suretyship, on the ground that the surety was a woman and thus incapable of becoming bound for another. • This defense is so named from the decree of the senate forbidding such sureties.

exceptio temporis (**tem**-pə-ris). An exception or plea that the time prescribed by law for bringing a particular action has expired.

exception, *n.* 1. A formal objection to a court's ruling by a party who wants to preserve the objection for appeal <the prosecutor stated her exception to the court's ruling disallowing the witness's testimony>. • In federal courts and most state courts, the term *exception* has been superseded by *objection*.

The following quotation reflects former practice: "The exception must be distinguished from the objection. Many counsel are heard carelessly saying 'I except' when the thing they are doing is 'I object.' The exception serves an entirely distinct purpose from the objection, — a double purpose, in fact. It warns the judge and the other party that the excepter is not satisfied with the ruling and takes issue with a view to appeal; and it sums up and preserves the precise terms of the ruling. The proponent of the evidence is the excepter if the ruling excludes the evidence; but if it admits the evidence, the opponent of the evidence is the excepter. Thus the excepter and the objector are not necessarily the same parties." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 421 (1935).

dilatory exception (**dil**-ə-**tor**-ee). An exception intended to delay but not dismiss an action.

general exception. 1. An objection pointing out a substantive defect in an opponent's pleading, such as the insufficiency of the claim or the court's lack of subject-matter jurisdiction; an objection to a pleading for want of substance. — Also termed *general demurrer*. Cf. SPECIAL EXCEPTION (1). 2. An objection in which the excepting party does not specify the grounds of the objection.

peremptory exception. A defensive pleading asserting that no legal remedy exists for the

plaintiff's alleged injury, that *res judicata* or prescription bars the claim, or that an indispensable party has not been included in the litigation.

special exception. See SPECIAL EXCEPTION.

2. Something that is excluded from a rule's operation <employers with fewer than five employees are an exception to the rule>.

statutory exception. A provision in a statute exempting certain persons or conduct from the statute's operation.

3. The retention of an existing right or interest, by and for the grantor, in real property being granted to another. Cf. RESERVATION (1). — **except, vb.**

exceptis excipiendis (ek-sep-tis ek-sip-ee-en-dis). [Latin] With all necessary exceptions.

exceptor, n. One who takes exception; an objector. — Also spelled *excepter*.

excerpta (ek-sərp-tə), *n. pl.* [Latin] Extracts.

ex certa scientia (eks sə-r-tə si-en-shee-ə). [Latin] Of certain or sure knowledge. • This phrase was anciently used in patents, and imported full knowledge of the subject matter on the part of the sovereign.

excès de pouvoir (ek-say də poo-vwahr). [French "excess of power"] 1. *Int'l law.* Beyond the powers (of a tribunal). 2. *Administrative law.* Beyond the powers of an official.

excess benefit plan. See EMPLOYEE BENEFIT PLAN.

excess clause. An insurance-policy provision — usu. contained in the "other insurance" section of the policy — that limits the insurer's liability to the amount exceeding other available coverage. • This clause essentially requires other insurers to pay first. Cf. ESCAPE CLAUSE; PRO RATA CLAUSE.

excess condemnation. See CONDEMNATION.

excess damages. See DAMAGES.

excess insurance. See INSURANCE.

excessive assessment. See ASSESSMENT.

excessive bail. See BAIL (1).

excessive damages. See DAMAGES.

excessive drunkenness. See DRUNKENNESS.

excessive fine. See FINE (5).

Excessive Fines Clause. The clause of the Eighth Amendment to the U.S. Constitution prohibiting the imposition of excessive fines.

excessive force. See FORCE.

excessive punishment. See PUNISHMENT.

excessive verdict. See VERDICT.

excess judgment. See JUDGMENT.

excess jurisdiction. See EXCESS OF JURISDICTION (1).

excess-liability damages. See *excess damages* under DAMAGES.

excess limits. Insurance coverage against losses in excess of a specified limit.

excess-lines insurance. See *surplus-lines insurance* under INSURANCE.

excess of jurisdiction. 1. A court's acting beyond the limits of its power, usu. in one of three ways: (1) when the court has no power to deal with the kind of matter at issue, (2) when the court has no power to deal with the particular person concerned, or (3) when the judgment or order issued is of a kind that the court has no power to issue. 2. A court's departure from recognized and established requirements of law, despite apparent adherence to procedural form, the effect of which is a deprivation of one's constitutional right. — Also termed *excess jurisdiction*.

excess of privilege. 1. An excessive publication of a privileged statement — that is, beyond the limits of the privilege. 2. The improper and malicious use of the privilege to publish a statement.

excess policy. See *excess insurance* under INSURANCE.

excess-profits tax. See TAX.

excess reinsurance. See REINSURANCE.

excess theory. *Insurance.* The principle that a tortfeasor will be considered underinsured if the injured party's damages exceed the tortfeasor's liability-insurance coverage. • This principle allows an injured party to invoke underinsured-motorist coverage. Cf. GAP THEORY.

excess water. See WATER.

exchange, n. **1.** The act of transferring interests, each in consideration for the other. **2.** The payment of a debt using a bill of exchange or credit rather than money. **3.** An organization that brings together buyers and sellers of securities, commodities, and the like to promote uniformity in the customs and usages of merchants, to facilitate the speedy adjustment of business disputes, to gather and disseminate valuable commercial and economic information, and to secure to its members the benefits of cooperation in the furtherance of their legitimate pursuits. • The best-known exchanges are stock, produce, livestock, cotton, and grain exchanges. **4.** The building or hall where members of an exchange meet every business day to buy and sell for themselves, or as brokers for their customers, for present and future delivery. See SECURITIES EXCHANGE. — **exchange, vb.**

Exchange Act. See SECURITIES EXCHANGE ACT OF 1934.

exchange broker. One who negotiates money or merchandise transactions for others.

exchange rate. The ratio for converting one country's money into another country's money. See FOREIGN EXCHANGE.

exchange ratio. The number of shares that an acquiring company must give for each share of an acquired company.

Exchequer (eks-**chek**-ər or eks-**chek**-ər). **1.** *English law.* The government department charged with collecting the national revenue; the treasury department. • The name is said to have derived from the checkered cloth, resembling a chessboard, that anciently covered the table on which certain of the king's accounts were tallied, the sums being marked and scored with counters. **2.** COURT OF EXCHEQUER. — Abbr. Ex.

Exchequer bill. A bill of credit issued in England by the authority of Parliament; an instrument issued at the Exchequer, usu. under the authority of an act of Parliament passed for that specific purpose, containing an engage-

ment on the part of the government to repay, with interest, the principal sums advanced.

Exchequer Chamber. An English court of intermediate appeal from the common-law courts, namely, the Court of King's Bench, the Court of Common Pleas, and the Court of Exchequer. • It was established in 1822.

Exchequer Division. *Hist.* A division of the English high court of justice, to which the business of the Court of Exchequer was specially assigned by section 34 of the Judicature Act of 1873, and later merged into the Queen's Bench Division in 1881.

excise, n. A tax imposed on the manufacture, sale, or use of goods (such as a cigarette tax), or on an occupation or activity (such as a license tax or an attorney occupation fee). — Also termed *excise tax*. Cf. *income tax* and *property tax* under TAX.

excise lieu property tax. See TAX.

excise tax. See EXCISE.

excited utterance. A statement about a startling event made under the stress and excitement of the event. • An excited utterance may be admissible as a hearsay exception. Fed. R. Evid. 803(2). Cf. PRESENT SENSE IMPRESSION.

excludable, adj. (Of evidence) subject to exclusion <excludable hearsay>.

exclusion, n. 1. *Tax.* An item of income excluded from gross income. — Also termed *income exclusion*.

annual exclusion. The amount (such as \$10,000) allowed as nontaxable gift income during the calendar year. • The purpose of the annual exclusion is both to serve as an estate-planning mechanism (so that gifts made during the donor's lifetime remain nontestamentary and nontaxable) and to eliminate the administrative inconvenience of taxing relatively small gifts. For an individual, the first \$10,000 in gifts can be excluded; for married persons, the exclusion is \$20,000 per donee for joint gifts, regardless of which spouse supplied the donated property. IRC (26 USCA) § 2503. — Also termed *annual gift-tax exclusion*.

2. Evidence. A trial judge's determination that an item offered as evidence may not be presented to the trier of fact (esp. the jury). **3. Insurance.** An insurance-policy provision that

excepts certain events or conditions from coverage. — **exclude**, *vb.* — **exclusionary**, *adj.*

automobile exclusion. A provision in some commercial general liability policies, excluding coverage for damages arising from the use (including loading and unloading) of an automobile, aircraft, or other motor vehicle owned, operated, rented, or borrowed by the insured.

business-risk exclusion. An exclusion in some commercial general liability policies, excluding coverage for common risks of doing business, including harm to the insured's product or work, damages arising from a product recall, damages arising from the insured's failure to perform under a contract, or damages arising from a failure of the insured's product to perform as intended.

design-defect exclusion. A provision in some umbrella policies and some older commercial general liability policies, excluding coverage for bodily injury arising from the failure of the insured's product to perform its intended function because of a defect or deficiency in its design, formula, specifications, instructions, or advertising materials.

employee-liability exclusion. A provision in some commercial general liability policies, excluding coverage for injury to an employee (or a member of the employee's family), arising from and in the course of employment with the insured. • This exclusion is generally intended to exclude from coverage all injuries covered by the workers'-compensation laws.

employment-related-practices exclusion. A provision in some commercial general liability policies, excluding coverage for damages arising from an insured's employment practices, including any policy, action, or omission — such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination — that is directed at the person injured.

expected/intended exclusion. A provision in some commercial general liability policies, excluding coverage for property damage or bodily injury that is expected or intended by the insured, except any harm arising from the use of reasonable force to protect a person or property. • This exclusion is sometimes referred to as "exclusion a" because it is the first exclusion listed on most policies. — Also termed *exclusion a*; *intentional-injury exclusion*.

failure-to-perform exclusion. A provision in some commercial general liability policies, excluding coverage for (1) the loss of use of undamaged property resulting from the in-

sured's delay or failure in performing an obligation, or (2) a design defect or failure in the insured's product. — Also termed *loss-of-use exclusion*.

knowledge-of-falsity exclusion. A provision in some commercial general liability policies, excluding coverage for damages arising from an oral or written communication made by the insured with knowledge that it is false.

named-insured exclusion. An exclusion limiting liability-insurance coverage to a named insured whose injuries were caused by another named insured under the same insurance policy.

owned-property exclusion. A provision in some commercial general liability policies, excluding coverage for damage to any of the following: (1) property owned, rented, occupied, sold, given away, or abandoned by the insured, (2) personal property in the care, custody, or control of the insured, or (3) property located where the insured and its employees work.

own-product exclusion. A provision in some commercial general liability policies, excluding coverage for property damage to a product that is manufactured, sold, handled, distributed, or disposed of by the insured.

own-work exclusion. A provision in some commercial general liability policies, excluding coverage for damage to the work or services performed by the insured.

pollution exclusion. A provision in some commercial general liability policies, excluding coverage for bodily injury or property damages arising from the discharge, dispersal, release, or escape of chemicals, waste, acid, and other pollutants. • Pollution-exclusion clauses may take one of two forms: (1) sudden and accidental, and (2) absolute. The sudden-and-accidental clause, usu. limited to policies issued before 1985, contains an exception under which the damages are covered (i.e., exempted from the exclusion) if the discharge or other release was sudden and accidental. The absolute pollution exclusion, in most policies issued since 1985, does not contain this exception.

sistership exclusion. A provision in some commercial general liability policies, excluding coverage for damages arising from the withdrawal, inspection, repair, replacement, or loss of use of the insured's product or work, to the extent that the product or work is withdrawn or recalled from the market because of a known or suspected defect or deficiency. — Also termed *recall exclusion*.

exclusion a. See *expected/intended exclusion* under EXCLUSION (3).

exclusionary hearing. See HEARING.

exclusionary rule. 1. *Evidence.* Any rule that excludes or suppresses evidence that does not satisfy a minimum standard of probative value <despite many exceptions, hearsay has long been inadmissible under an exclusionary rule>. 2. *Criminal procedure.* A rule that excludes or suppresses evidence obtained in violation of an accused person's constitutional rights <in accordance with the exclusionary rule, the court did not admit the drugs into evidence because they had been obtained during a warrantless search of the defendant's home>. See FRUIT-OF-THE-POISONOUS-TREE DOCTRINE; GOOD-FAITH EXCEPTION.

"The deterrence of unreasonable searches and seizures is a major purpose of the exclusionary rule.... But the rule serves other purposes as well. There is, for example, ... 'the imperative of judicial integrity,' namely, that the courts do not become 'accomplices in willful disobedience of a Constitution they are sworn to uphold.' ... A third purpose of the exclusionary rule ... is that of 'assuring the people — all potential victims of unlawful government conduct — that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in the government.'" Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* § 3.1, at 107 (2d ed. 1992) (quoting *Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437 (1960); *United States v. Calandra*, 414 U.S. 338, 94 S.Ct. 613 (1974) (dissent)).

"In the simplest of exclusionary rule cases, the challenged evidence is quite clearly 'direct' or 'primary' in its relationship to the prior arrest, search, interrogation, lineup or other identification procedure. Such is the case when that evidence is an identification occurring at the confrontation between suspect and victim or witness, a confession or admission made in response to questioning, or physical evidence obtained by search or arrest. Not infrequently, however, challenged evidence is 'secondary' or 'derivative' in character. This occurs when, for example, a confession is obtained after an illegal arrest, physical evidence is located after an illegally obtained confession, or an in-court identification is made following an illegally conducted pretrial identification. In these situations, it is necessary to determine whether the derivative evidence is 'tainted' by the prior constitutional or other violation." Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* § 9.3, at 471 (2d ed. 1992).

exclusionary zoning. See ZONING.

exclusive agency. See AGENCY (1).

exclusive-agency listing. See LISTING (1).

exclusive authorization-to-sell listing. See *exclusive-agency listing* under LISTING (1).

exclusive contract. See EXCLUSIVE-DEALING ARRANGEMENT.

exclusive control. Under the doctrine of *res ipsa loquitur*, a defendant's sole management of and responsibility for the instrumentality causing harm. • Exclusive control is a prerequisite to the doctrine's applicability. See *RES IPSA LOQUITUR*.

exclusive-dealing arrangement. An agreement requiring a buyer to purchase all needed goods from one seller. — Also termed *exclusive dealing*. See *requirements contract* under CONTRACT.

exclusive easement. See EASEMENT.

exclusive economic zone. *Int'l law.* An area just beyond the territorial sea, extending up to 200 nautical miles from the baseline of the territorial sea, in which the coastal country enjoys special authority for economic purposes.

exclusive evidence. See EVIDENCE.

exclusive franchise. See *exclusive agency* under AGENCY (1).

exclusive jurisdiction. See JURISDICTION.

exclusive license. See LICENSE.

exclusive listing. See LISTING (1).

exclusive ownership. See FEE SIMPLE.

exclusive possession. See POSSESSION.

exclusive sale. See SALE.

exclusive use. See USE (1).

ex colore (eks kə-lor-ee). [Latin] By color; under color of; under pretense, show, or protection of.

ex comitate (eks kom-ə-tay-tee). [Latin] Out of comity or courtesy.

excommungement (eks-kə-menj-mənt), *n.* See EXCOMMUNICATION.

ex commodato (eks kom-ə-day-toh). [Latin] "out of loan" *Hist.* (Of a right of action) arising out of a loan.

excommunicant (eks-kə-myoo-ni-kənt), *n.* *Eccles. law.* **1.** An excommunicated person. **2.** *Rare.* An excommunicator.

excommunication, *n.* *Eccles. law.* A sentence of censure pronounced by a spiritual court for an offense falling under ecclesiastical cognizance; expulsion from religious society or community. • In England, an excommunicated person was formerly subject to various civil disabilities, such as an inability to be a juror, to be a witness in any court, or to sue to recover lands or money due. These penalties were abolished by the Ecclesiastical Courts Act (1813). St. 53 Geo. 3, ch. 127. — **excommunicate**, *vb.*

excommunicato capiendo (eks-kə-myoo-ni-kay-toh kap-ee-en-doh). [Latin] *Hist. Eccles. law.* A writ that, being founded on a bishop's certificate of excommunication, required the sheriff to arrest and imprison the defendant. • The writ issued out of chancery and was returnable to the King's Bench. Cf. DE CONTUMACE CAPIENDO.

excommunicator. A person who excommunicates.

excommunicato recipiendo (eks-kə-myoo-ni-kay-toh ri-kap-ee-en-doh). [Latin] *Hist. Eccles. law.* A writ commanding that an excommunicant — who had been committed to prison for obstinacy but who was unlawfully freed before agreeing to obey the church's authority — should be found, retaken, and imprisoned again.

ex comparatione scriptorum (eks kom-pə-ray-shee-oh-nee skrip-tor-əm). [Latin] By a comparison of writings or handwritings. • This term was formerly used in the law of evidence.

ex concessis (eks kən-ses-is). [Latin] From the premises granted; according to what has already been allowed.

ex consulto (eks kən-səl-toh). [Latin] With consultation or deliberation.

ex continenti (eks kon-tə-nen-ti). [Latin] *Civil law.* Immediately; without any interval or delay.

ex contractu (eks kən-trak-t[y]oo). [Latin] "from a contract" Arising from a contract <action *ex contractu*>. Cf. EX DELICTO.

exculpate (ek-skəl-payt or ek-skəl-payt), *vb.* To free from blame or accusation. — **exculpation** (ek-skəl-pay-shən), *n.* — **exculpatory** (ek-skəl-pə-tor-ee), *adj.* Cf. EXONERATE (1).

exculpatory clause. A contractual provision relieving a party from any liability resulting from a negligent or wrongful act. See EXEMPTION CLAUSE.

exculpatory evidence. See EVIDENCE.

exculpatory-no doctrine. *Criminal law.* The principle that a person cannot be charged with making a false statement for falsely denying guilt in response to an investigator's question. • This principle is based on the Fifth Amendment's privilege against self-incrimination.

ex curia (eks kyoor-ee-ə). [Latin] Out of court; away from the court.

excusable, *adj.* (Of an illegal act or omission) not punishable under the specific circumstances <excusable neglect>.

excusable assault. See ASSAULT.

excusable homicide. See HOMICIDE.

excusable neglect. See NEGLECT.

excusatio (ek-skyoo-zay-shee-oh), *n.* [Latin] *Roman & civil law.* An excuse or reason that exempts someone from some duty or obligation.

excusator (ek-skyoo-zay-tər), *n.* **1.** *Hist.* An excuser. **2.** In old German law, a defendant; one who wholly denies the plaintiff's claim.

excuse (eks-kyoos), *n.* **1.** A reason that justifies an act or omission or that relieves a person of a duty. **2.** *Criminal law.* A defense that arises because the defendant is not blameworthy for having acted in a way that would otherwise be criminal. • The following defenses are the traditional excuses: duress, entrapment, infancy, insanity, and involuntary intoxication. — Also termed *legal excuse*. Cf. JUSTIFICATION (2). — **excuse** (ek-skyooz), *vb.* — **excusatory** (ek-skyooz-ə-tor-ee), *adj.*

excuss (ek-skəs), *vb.* To seize and detain by law.

excussio (ek-skə-s[h]ee-oh), *n.* [Latin] *Roman & civil law.* A diligent prosecution of a remedy against a debtor; the exhausting of a remedy

against a principal debtor before resorting to a surety.

ex-date. See EX-DIVIDEND DATE.

ex debito justitiae (eks deb-i-toh jās-tish-ee-ee). [Latin] From or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right.

ex defectu sanguinis (eks di-fek-t[y]oo sang-gwə-nis). [Latin] From failure of blood; for want of issue.

ex delicto (eks də-lik-toh). [Latin “from a tort”] Arising from a tort <action *ex delicto*>. Cf. IN DELICTO; EX CONTRACTU.

ex delicto trust. See TRUST.

ex demissione (eks də-mish-ee-oh-nee). [Latin “upon the demise”] *Hist.* A phrase forming part of the title of the old action of ejectment. — Abbr. *ex dem.*

ex directo (eks di-rek-toh). [Latin] Directly; immediately.

ex distribution. Without distribution. • Shares are traded *ex distribution* when they no longer carry the right to receive a distribution to be made to holders. — Abbr. X; XDIS.

ex dividend. Without dividend. • Shares are traded *ex dividend* when the seller, not the purchaser, is entitled to the next dividend payment because it will be made before the stock transfer is completed. The first day on which shares are traded *ex dividend*, the stock price will drop by an amount *usu.* approximating the amount of the dividend. — Abbr. XD.; X. Cf. CUM DIVIDEND.

ex-dividend date. The date on or after which the buyer of a security does not acquire the right to receive a recently declared dividend. — Also termed *ex-date*. Cf. DIVIDEND DATE.

ex dolo malo (eks doh-loh mal-oh). [Latin] Out of fraud; out of deceitful or tortious conduct.

exeat (ek-see-ət), *n.* **1.** Generally, permission to go outside (a place). **2.** Permission that a bishop grants to a priest to go out of his diocese. Cf. NE EXEAT REPUBLICA.

execute, vb. **1.** To perform or complete (a contract or duty) <once the contract was fully

executed, the parties owed no further contractual duties to each other>. **2.** To change (as a legal interest) from one form to another <the shifting use was executed into a valid legal estate>. **3.** To make (a legal document) valid by signing; to bring (a legal document) into its final, legally enforceable form <each party executed the contract without a signature witness>. **4.** To put to death, esp. by legal sentence <Johnson was executed shortly after midnight>. **5.** To enforce and collect on (a money judgment) <Williams asked the sheriff to execute on the judgment>.

executed, adj. **1.** (Of a document) that has been signed <an executed will>. **2.** That has been done, given, or performed <executed consideration>.

“[T]he term ‘executed’ is a slippery word. Its use is to be avoided except when accompanied by explanation. *Executed* consideration is also used to mean *past* consideration as opposed to *present* or *future*. A contract is frequently said to be *executed* when the document has been signed, or has been signed, sealed, and delivered. Further, by *executed* contract is frequently meant one that has been fully performed by both parties.” William R. Anson, *Principles of the Law of Contract* 26 n.* (Arthur L. Corbin ed., 3d Am. ed. 1919).

executed consideration. See CONSIDERATION.

executed contract. See CONTRACT.

executed covenant. See COVENANT (1).

executed fine. See FINE (1).

executed note. See NOTE (1).

executed remainder. See *vested remainder* under REMAINDER.

executed trust. See TRUST.

executed use. See USE (4).

executio (ek-sə-kyoo-shee-oh), *n.* [Latin] **1.** The performance or completion of a thing; the act of following through on a commitment. **2.** The doing of something thoroughly. **3.** Management or administration. **4.** *Hist.* Execution; the final process in an action.

executio bonorum (bə-nor-əm). [Latin] *Hist.* The management or administration of goods.

execution, n. **1.** The act of carrying out or putting into effect (as a court order) <execution of the court’s decree>. **2.** Validation of a

written instrument, such as a contract or will, by fulfilling the necessary legal requirements <delivery of the goods completed the contract's execution>. **3.** Judicial enforcement of a money judgment, usu. by seizing and selling the judgment debtor's property <even if the plaintiff receives a judgment against the foreign debtor, execution is unlikely>. **4.** A court order directing a sheriff or other officer to enforce a judgment, usu. by seizing and selling the judgment debtor's property <the court issued the execution authorizing seizure of the car>. — Also termed *writ of execution*; *judgment execution*; *general execution*.

"A writ of execution is an authorization to an executive officer, issued from a court in which a final judgment has been rendered, for the purpose of carrying such judgment into force and effect. It is founded upon the judgment, must generally be conformed to it in every respect, and the plaintiff is always entitled to it to obtain a satisfaction of his claim, unless his right has been suspended by proceedings in the nature of an appeal or by his own agreement." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 26, at 50 (Henry Winthrop Ballantine ed., 3d ed. 1923).

alias execution. A second execution issued to enforce a judgment not fully satisfied by the original writ. Cf. *alias writ* under WRIT.

body execution. A court order requiring an officer to take a named person into custody, usu. to bring the person before the court to pay a debt; CAPIAS.

close-jail execution. A body execution stating that the person to be arrested should be confined in jail without the privilege of movement about the jailyard.

dormant execution. An execution authorizing an officer to seize and hold property rather than sell it, until further notice.

junior execution. An execution that is subordinate to another execution issued from an earlier judgment against the same debtor.

malicious execution. An abuse of process by which a person, maliciously and without reasonable cause, issues an execution against the property of a judgment debtor.

special execution. An execution authorizing a judgment to be satisfied from specified property.

speedy execution. An execution issuing quickly (esp. by judges at nisi prius) after a trial.

5. Criminal law. The carrying out of a death sentence <the Supreme Court stayed the execution>. — **execute**, *vb.*

execution clause. The part of a deed containing the date, seal (if required), and signatures of the grantor, grantor's spouse, and witnesses.

execution creditor. See CREDITOR.

executione facienda in withernamium (ek-sə-kyoo-shee-oh-nee fay-shee-en-də in with-ər-nay-mee-əm). [Latin] *Hist.* A writ that lay for taking cattle of a person who had taken someone else's cattle out of the county so that the sheriff could not replevy them.

executione iudicii (ek-sə-kyoo-shee-oh-nee joo-dish-ee-i). [Latin] *Hist.* A writ directed to a judge of an inferior court to issue execution upon a judgment in that court, or to return some reasonable cause why the judge has delayed execution.

executioner. A person who puts another person to death to carry out a death sentence; a person who carries out capital punishment on the state's behalf.

execution lien. See LIEN.

exécution parée (eg-zay-koo-syawn pa-ray). [French] *French law.* A right founded on an act approved and verified before a notary, by which a creditor may immediately — without citation or summons — seize and cause to be sold the debtor's property and keep the proceeds of the sale (to the extent of the indebtedness).

execution-proof. See JUDGMENT-PROOF.

execution sale. See SALE.

executive, n. 1. The branch of government responsible for effecting and enforcing laws; the person or persons who constitute this branch. ● The executive branch is sometimes said to be the residue of all government after subtracting the judicial and legislative branches. Cf. LEGISLATURE; JUDICIARY (1).

chief executive. The head of the executive branch of a government, such as the President of the United States.

2. A corporate officer at the upper levels of management. — **executive**, *adj.*

executive administration. Collectively, high public officials who administer the chief departments of the government.

executive agency. An executive-branch department whose activities are subject to statute and whose contracts are subject to judicial review. • One example is the Army and Air Force Exchange Service.

executive agreement. *Int'l law.* An international agreement entered into by the President, without the need for approval by the Senate, and usu. involving routine diplomatic matters. Cf. TREATY.

executive branch. The branch of government charged with administering and carrying out the law; EXECUTIVE (1). Cf. JUDICIAL BRANCH; LEGISLATIVE BRANCH.

executive clemency. See CLEMENCY.

executive committee. The group of principal officers and directors who directly manage business operations between meetings of the board of directors.

executive department. See EXECUTIVE (1).

executive employee. An employee whose duties include some form of managerial authority and active participation in the control, supervision, and management of the business. — Often shortened to *executive*.

executive immunity. See IMMUNITY (1).

executive officer. See EXECUTIVE.

executive order. An order issued by or on behalf of the President, usu. intended to direct or instruct the actions of executive agencies or government officials, or to set policies for the executive branch to follow. — Abbr. ex. ord.

executive pardon. See PARDON.

executive power. *Constitutional law.* The power to see that the laws are duly executed and enforced. • Under federal law, this power is vested in the President; in the states, it is vested in the governors. The President's enumerated powers are found in the U.S. Constitution, art. II, § 2; governors' executive powers are provided for in state constitutions. The other two great powers of government are the legislative power and the judicial power.

executive privilege. See PRIVILEGE (3).

executive session. A session of a board or governmental body that is closed to the public and that only invited persons may attend.

"Virtually all open meeting statutes expressly authorize the use of executive sessions, typically specifying the particular circumstances in which executive sessions are permitted. When the specific circumstances are specified, generally no other exceptions are permitted . . . Use of the executive session to discuss matters not properly hidden from the public is a clear violation of the open meeting law. Many states expressly or implicitly forbid use of the executive session as a subterfuge to defeat the purposes of the open meeting law." Ann Taylor Schwing, *Open Meeting Laws* § 7.1 (2d ed. 1999).

executor, n. 1. (ek-sə-kyoo-tər) One who performs or carries out some act. **2.** (eg-zek-yə-tər) A person named by a testator to carry out the provisions in the testator's will. Cf. ADMINISTRATOR (1).

acting executor. One who assumes the role of executor — usu. temporarily — but is not the legally appointed executor or the executor-in-fact.

coexecutor. See *joint executor*.

executor ab episcopo constitutus (ab ə-pis-kə-poh kon-sti-t[y]oo-təs). [Law Latin] *Eccles. law.* An executor appointed by a bishop; an administrator to an intestate. — Also termed *executor dativus*.

executor a lege constitutus (ay [or ah] lee-jee kon-sti-t[y]oo-təs). [Law Latin] *Eccles. law.* One authorized by law to be an executor; the ordinary of the diocese.

executor a testatore constitutus (ay [or ah] tes-tə-tor-ee kon-sti-t[y]oo-təs). [Law Latin] *Eccles. law.* An executor appointed by a testator. — Also termed *executor testamentarius*.

executor dativus. See DATIVE (1).

executor dativus. See *executor ab episcopo constitutus*.

executor de son tort (də sawn [or son] tor[t]). [Law French "executor of his own wrong"] A person who, without legal authority, takes on the responsibility to act as an executor or administrator of a decedent's property, usu. to the detriment of the estate's beneficiaries or creditors.

"*Executor de son tort* — or, executor of his own wrong. Is he that takes upon him the office of an executor by intrusion, not being so constituted by the testator." *The Pocket Lawyer and Family Conveyancer* 98 (3d ed. 1833).

executor lucratus (loo-kray-təs). An executor who has assets of the testator, the latter having become liable by wrongfully interfering with another's property.

executor testamentarius. See *executor a testatore constitutus*.

executor to the tenor. *Eccles. law.* A person who is not named executor in the will but who performs duties similar to an executor.

general executor. An executor who has the power to administer a decedent's entire estate until its final settlement.

independent executor. An executor who, unlike an ordinary executor, can administer the estate with very little supervision by the probate court. • Only a few states — mostly in the West and Southwest — allow testators to designate independent executors. — Also termed *nonintervention executor*.

joint executor. One of two or more persons named in a will as executor of an estate. — Also termed *coexecutor*.

limited executor. An executor whose appointment is restricted in some way, such as time, place, or subject matter.

nonintervention executor. See *independent executor*.

special executor. An executor whose power is limited to a portion of the decedent's estate.

substituted executor. An executor appointed to act in the place of an executor who cannot or will not perform the required duties.

3. (eg-zek-yə-tər) *Patents.* One who represents a legally incapacitated inventor. — **executorial**, *adj.* — **executorship**, *n.*

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

executor's bond. See **BOND** (2).

executor testamentarius. See *executor a testatore constitutus* under **EXECUTOR**.

executory (eg-zek-yə-tor-ee), *adj.* **1.** Taking full effect at a future time <executory judgment>. **2.** To be performed at a future time; yet to be completed <executory contract>.

executory accord. See **ACCORD** (2).

executory bequest. See **BEQUEST**.

executory consideration. See **CONSIDERATION**.

executory contract. See **CONTRACT**.

executory covenant. See **COVENANT** (1).

executory devise. See **DEVISE**.

executory interest. A future interest, held by a third person, that either cuts off another's interest or begins after the natural termination of a preceding estate. Cf. **REMAINDER**.

“What is an executory interest? Here is a pretty good definition: *An executory interest is any future interest created in a person other than the transferor that is not a remainder.* Here are five classic examples of executory interest: (1) O transfers ‘to A for life; then, one day after A's death, to the heirs of A.’ The transfer creates a springing executory interest in those who will be A's heirs. (2) O transfers ‘to A for 200 years if he shall so long live, then to the heirs of A.’ This transfer also creates a springing executory interest in A's prospective heirs. (3) O transfers ‘to A and his heirs five years from the date of this deed.’ A owns a springing executory interest. (4) O, when B is fifteen, transfers ‘to A for life; then no sooner than one day after A's death, to B and his heirs if B ever reaches 21.’ B owns a springing executory interest. (5) O transfers ‘to A and his heirs; but if A marries X, to B and his heirs.’ B owns a shifting executory interest.” Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 80 (2d ed. 1984).

executory judgment. See **JUDGMENT**.

executory limitation. See **LIMITATION**.

executory process. *Civil law.* **1.** A process that can be resorted to either (1) when the right of a creditor arises from an act importing a confession of judgment, and that contains a privilege or mortgage in the creditor's favor, or (2) when the creditor demands the execution of a judgment that has been rendered by a different tribunal. **2.** An accelerated procedure, summary in nature, by which the holder of a mortgage or privilege evidenced by a confession of judgment seeks to effect an ex parte seizure and sale of the subject property.

executory remainder. See *contingent remainder* under **REMAINDER**.

executory sale. See **SALE**.

executory trust. See **TRUST**.

executory unilateral accord. An offer to enter a contract; **OFFER** (2).

executory use. See *springing use* under **USE** (4).

executory warranty. See **WARRANTY** (3).

executress. See **EXECUTRIX**.

executrix (eg-zek-yə-triks), *n.* *Archaic.* A female executor. — Abbr. *exrx.* — Also termed *executress*. Pl. **executrices** (eg-zek-yə-trik-səz), **executrices** (eg-zek-yə-tri-seez). See EXECUTOR.

exedos (e-he-thohs), *n.* See EJIDOS.

exemplar (eg-zem-plər or -plahr), *n.* An ideal or typical example; a standard specimen <hand-writing exemplars>.

exemplary, *adj.* **1.** Serving as an ideal example; commendable <exemplary behavior>. **2.** Serving as a warning or deterrent; admonitory <exemplary damages>.

exemplary damages. See *punitive damages* under DAMAGES.

exemplary substitution. See SUBSTITUTION (4).

exemplification, *n.* An official transcript of a public record, authenticated as a true copy for use as evidence. — **exemplify**, *vb.*

exemplificatione (eg-zem-plə-fə-kay-shee-oh-nee). [Latin] A writ granted for the exemplification or transcript of an original record.

exemplified copy. See *certified copy* under COPY.

exempli gratia (eg-zem-pli gray-shee-ə or ek-sem-plee grah-tee-ə). [Latin] For example; for instance. — Abbr. *e.g.* or (rarely) *ex. gr.*

exemplum (eg-zem-pləm), *n.* [Latin] *Civil law.* A copy; a written authorized copy.

exempt, *adj.* Free or released from a duty or liability to which others are held <persons exempt from military service> <property exempt from sequestration>. — **exempt**, *vb.* — **exemptive**, *adj.*

exempt income. See INCOME.

exemption. **1.** Freedom from a duty, liability, or other requirement. See IMMUNITY. **2.** A privilege given to a judgment debtor by law, allowing the debtor to retain certain property without liability. **3. Tax.** An amount allowed as a deduction from adjusted gross income, used to determine taxable income. Cf. DEDUCTION (2).

dependency exemption. An exemption granted to an individual taxpayer for each dependent whose gross income is less than

the exemption amount and for each child who is younger than 19 or, if a student, younger than 24.

personal exemption. An amount allowed as a deduction from an individual taxpayer's adjusted gross income.

exemption clause. A contractual provision providing that a party will not be liable for damages for which that party would otherwise have ordinarily been liable. Cf. INDEMNITY CLAUSE.

"An exemption clause may take many forms, but all such clauses have one thing in common in that they exempt a party from a liability which he would have borne had it not been for the clause. In some cases an exemption clause merely relieves a party from certain purely contractual obligations, for example, the duties of a seller in a contract of sale regarding the quality and fitness of the goods. In other cases exemption clauses go further and protect the party not merely from contractual liability but even from liability which would otherwise have arisen in tort. For example, a shipping company's ticket may exempt the company from liability to the passenger for any injuries, however caused. Now if the passenger is injured as a result of the negligence of the company's employees, that would, in the normal way, give rise to an action in tort for negligence, quite apart from the contract." P.S. Atiyah, *An Introduction to the Law of Contract* 167 (3d ed. 1981).

exemption equivalent. The maximum value of assets that one can transfer to another before incurring a federal gift and estate tax.

exemption law. A law describing what property of a debtor cannot be attached by a judgment creditor or trustee in bankruptcy to satisfy a debt. See EXEMPT PROPERTY (1).

exempto (eks emp-toh). [Latin] *Roman & civil law.* Out of purchase; founded on purchase.

exempt organization. An organization that is either partially or completely exempt from federal income taxation. See CHARITABLE ORGANIZATION.

exempt property. **1.** A debtor's holdings and possessions that, by law, a creditor cannot attach to satisfy a debt. • All the property that creditors may lawfully reach is known as *non-exempt property*. Many states provide a homestead exemption that excludes a person's house and household items, up to a certain amount, from the liens of most creditors. The purpose of the exemption is to prevent debtors from becoming destitute. See HOMESTEAD. **2.** Personal property that a surviving spouse is automatically entitled to receive from the decedent's estate.

exempt security. See SECURITY.

exempt transaction. A securities sale that falls outside the scope of the Securities Act of 1933 and the Securities Exchange Act of 1934.

exennium (eg-zen-ee-am), *n.* [Latin] *Hist.* A gift, esp. one given at the new year.

exequatur (ek-sə-kway-tər). [Latin “let it be executed”] A written official recognition and authorization of a consular officer, issued by the government to which the officer is accredited.

exercise, *vb.* **1.** To make use of; to put into action <exercise the right to vote>. **2.** To implement the terms of; to execute <exercise the option to buy the commodities>. — **exercise, *n.***

Exercise Clause. See FREE EXERCISE CLAUSE.

exercise of judgment. The use of sound discretion — that is, discretion exercised with regard to what is right and equitable rather than arbitrarily or willfully.

exercise price. See *strike price* under PRICE.

exercise value. The value to an optionholder of using the option.

exercitalis (eg-zər-si-tay-lis), *n.* [Latin] A soldier; a vassal.

exercitor (eg-zər-si-tor), *n.* [Latin “an exercisor”] *Civil law.* The person to whom the profits of a ship temporarily belong, whether that person is the owner, charterer, or mortgagee. — Also termed *exercitor maris*; *exercitor navis*. Cf. SHIP’S HUSBAND.

exercitoria actio. See *actio exercitoria* under ACTIO.

exercitorial power (eg-zər-si-tor-ee-əl). The trust given to a shipmaster.

exercitor maris (eg-zər-si-tər mar-is). See EXERCITOR.

exercitor navis (eg-zər-si-tər nay-vis). See EXERCITOR.

exercituale (eg-zər-sich-oo-ay-lee), *n.* [Law Latin, fr. Latin *exercitus* “an army”] *Hist.* A heriot

paid only in arms, horses, or military accouterments. See HERIOT.

exercitus (eg-zər-si-təs), *n.* [Latin “an army”] *Hist.* An army; an armed force. ● Of indefinite number, the term was applied on various occasions to a gathering of 42 armed men, of 35, or even of 4.

ex facie (eks fay-shə or -shee). [Latin “from the face”] Apparently; evidently; facially.

ex facto (eks fak-toh). [Latin “from a fact”] From or in consequence of a fact or action; actually; DE FACTO.

exfestucare (eks-fes-tə-kair-ee), *vb.* [Latin] *Hist.* To abdicate or resign; to surrender (an estate, office, or dignity) by the symbolic delivery of a staff or rod (*festuca*) to the transferee.

ex fictione juris (eks fik-shee-oh-nee joor-is). [Latin] By a fiction of law.

exfrediare (eks-free-dee-air-ee), *vb.* [Latin] To break the peace; to commit open violence.

ex. gr. abbr. EXEMPLI GRATIA.

ex gratia (eks gray-shee-ə or grah-tee-ə). [Latin “by favor”] As a favor; not legally necessary. — Also termed a *gratia*.

ex gratia payment. A payment not legally required; esp., an insurance payment not required to be made under an insurance policy.

ex gravi querela (eks gray-vī kwə-ree-lə). [Latin “from or on the grievous complaint”] *Hist.* A writ that lay for a person to whom any lands or tenements in fee were devised by will (within any city, town, or borough in which lands were devisable by custom), against an heir of the devisor who entered and detained them from the devisee. ● The writ was abolished by the Real Property Limitation Act (1833). St. 3 & 4 Will. 4, ch. 27, § 36.

exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. ● The doctrine’s purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which judicial relief is unnecessary. — Also termed *exhaustion of administrative remedies*.

"The traditional rule can . . . be fairly simply stated. A litigant must normally exhaust state 'legislative' or 'administrative' remedies before challenging the state action in federal court. He or she need not normally exhaust state 'judicial' remedies. The rationale for this distinction is that until the administrative process is complete, it cannot be certain that the party will need judicial relief, but when the case becomes appropriate for judicial determination, he or she may choose whether to resort to a state or federal court for that relief. The word 'normally' is required in both branches of the rule." Charles Alan Wright, *The Law of Federal Courts* § 49, at 313 (5th ed. 1994).

exhaustion of state remedies. The doctrine that an available state remedy must be exhausted in certain types of cases before a party can gain access to a federal court. • For example, a state prisoner must exhaust all state remedies before a federal court will hear a petition for habeas corpus.

exhibere (ek-sə-beer-ee), *vb.* [Latin] **1.** To present (a tangible thing) so that it may be handled. **2.** To appear personally to defend against an action at law.

exhibit, *n.* **1.** A document, record, or other tangible object formally introduced as evidence in court. **2.** A document attached to and made part of a pleading, motion, contract, or other instrument.

exhibitio billae (ek-sə-bish-ee-oh bil-ee). [Latin] *Hist.* The commencement of a suit by presenting or exhibiting a bill to the court.

exhibitionism, *n.* The indecent display of one's body. — **exhibitionist**, *adj.* & *n.*

exhibition value. In the motion-picture industry, the minimum receipts that distributors expect to realize from showing a particular film. — Also termed *minimum sale*; *price expectancy*.

exhibit list. A pretrial filing that identifies by number and description the exhibits a party intends to offer into evidence at trial. • Courts often require the exchange of exhibit lists before trial so that evidentiary disputes can be resolved with minimal disruption in the course of a jury trial.

exhibitory interdict. See INTERDICT (1).

exhumation (eks-hyoo-may-shən or eg-zyoo-), *n.* The removal from the earth of something buried, esp. a human corpse; disinterment.

ex hypothesi (eks hi-poth-ə-sī). [Latin] Hypothetically; by hypothesis; on the assumption <conviction for a felony is *ex hypothesi* impossible in the case of suicide>.

exidos (e-hee-thohs), *n.* See EJIDOS.

exigency (ek-sə-jən-see), *n.* A demand for immediate action or performance arising from a circumstance or condition <exigency of a bond> <exigency of a writ>. — **exigent**, *adj.*

exigendary (ek-sə-jen-də-ree), *n.* See EXIGENTER.

exigent, *adj.* Requiring immediate action or aid; urgent <exigent circumstances>.

exigent (ek-sə-jənt), *n.* *Hist.* A judicial writ employed in the process of outlawry, commanding the sheriff to demand the defendant's appearance, from county court to county court, until he was outlawed — or, if the defendant appeared, to take him before the court to answer the plaintiff's action. See EXIGI FACIAS.

exigent circumstances. See CIRCUMSTANCE.

exigenter (ek-sə-jen-tər), *n.* *Hist.* An officer of the court of common pleas responsible for preparing exigents and proclamations in the process of outlawry. • This office was abolished in 1837 by the Superior Courts (Officers) Act, St. 7 Will. 4, and 1 Vict., ch. 30. — Also termed *exigendary*.

exigent list. A list of cases set down for hearing upon various incidental and ancillary motions and rules.

exigent search. See SEARCH.

exigible debt. See DEBT.

exigi facias (ek-sə-jī fay-shee-əs). [Latin] That you cause to be demanded. • These were the emphatic words of the Latin form of the writ of exigent; the phrase was sometimes used as the name of the writ. See EXIGENT.

exile, *n.* **1.** Expulsion from a country, esp. from the country of one's origin or longtime residence; banishment. **2.** A person who has been banished. — **exile**, *vb.*

forced exile. Compelled removal or banishment from one's native country.

exilium (eg-zil-ee-əm), *n.* [Latin “exile”] *Hist.*

1. Exile; the act of driving away or despoiling.
2. A type of waste consisting in the driving away of an estate’s bondservants and tenants by demolishing their homes or by enfranchising the bondservants and then turning them out of their homes.

Ex-Im Bank. See EXPORT-IMPORT BANK.

ex industria (eks in-dəs-tree-ə). [Latin] With contrivance or deliberation; designedly; on purpose.

ex integro (eks in-tə-groh). [Latin] Anew; afresh.

existent corner. See CORNER.

existimatio (eg-zis-tə-may-shee-oh), *n.* [Latin] *Roman law.* 1. The civil reputation belonging to a Roman citizen of unimpeached dignity or character; the highest standing of a Roman citizen. 2. *Hist.* The decision or award of an arbiter.

exit, *n.* 1. A way out. See EGRESS. 2. In a docket entry, an issuance of something (as a writ or process). • For example, *exit attachment* denotes that a writ of attachment has been issued in the case. — **exit**, *v**b***.

exitus (ek-si-təs), *n.* [Latin] *Hist.* 1. Children; offspring. 2. The rents, issues, and profits of lands and tenements. 3. An export duty. 4. The conclusion of a pleading.

ex jure (eks juur-ee). [Latin] Of or by legal right.

ex justa causa (eks jəs-tə kaw-zə). [Latin] From a just or lawful cause; by a just or legal title.

ex justitia (eks jəs-tish-ee-ə). [Latin] From justice; as a matter of justice.

exlegalitas (eks-lə-gay-lə-tas), *n.* [Law Latin] *Hist.* 1. Outlawry; outside the law’s protection. 2. A person who is prosecuted as an outlaw.

exlegare (eks-lə-gair-ee), *v**b***. [Law Latin] *Hist.* To outlaw; to deprive of the benefit and protection of the law.

ex lege (eks lee-jee or lay-gay). [Latin] By virtue of law; as a matter of law <property forfeited *ex lege*>.

“Antecedent rights ‘in personam’ . . . either arise or do not arise out of a contract. . . . In the latter case, since they arise from facts of various kinds to which it pleases the Law to affix similar results, we shall describe them as rights ‘ex lege’; and it will be convenient to consider the rights which arise thus variously before treating of those which arise solely from contract. . . . The rights which we describe as arising ‘ex lege’ were described by the Roman lawyers as arising ‘quasi ex contractu,’ and more simply, ‘ex variis causarum figuris.’” Thomas E. Holland, *The Elements of Jurisprudence* 246–47 (13th ed. 1924).

ex legibus (eks lee-jə-bəs). [Latin “according to the laws”] *Roman law.* According to both the letter and the spirit of the law.

exlex (eks-leks), *n.* [Law Latin] *Hist.* An outlaw; one who is outside the law’s protection.

ex licentia regis (eks li-sen-shee-ə ree-jis). [Latin] By the king’s license.

ex locato (eks loh-kay-toh). [Latin] From lease; out of letting. • In Roman law, this term referred to an action or right of action arising out of a contract of hiring, bailment for reward, or employment.

ex maleficio (eks mal-ə-fish-ee-oh), *adv.* [Latin] By malfeasance.

ex maleficio, *adj.* [Latin] Tortious.

ex malitia (eks mə-lish-ee-ə). [Latin] From malice; maliciously. • In the law of defamation, the term refers to a publication that is false and without legal excuse.

ex mero motu (eks meer-oh moh-tyoo). [Latin “on his mere motion”] Voluntarily; without suggestion or influence from another person. • The phrase was formerly sometimes used in reference to a court, as an equivalent of *sua sponte* or *on its own motion*. See SUA SPONTE.

ex mora (eks mor-ə). [Latin] *Civil law.* From or in consequence of delay. • Interest is allowed *ex mora* — that is, if there has been delay in repaying borrowed money.

ex more (eks mor-ee). [Latin] According to custom.

ex mutuo (eks myoo-choo-oh). [Latin] From or out of loan. • In old English law, a debt was said to arise *ex mutuo* when one lent another anything that consisted in number, weight, or measure.

ex necessitate (eks nə-ses-i-tay-tee). [Latin] Of or from necessity.

ex necessitate legis (eks nə-ses-i-tay-tee lee-jis). From or by necessity of law.

ex necessitate rei (eks nə-ses-i-tay-tee ree-i). From the necessity or urgency of the thing or case.

ex nihilo (eks ni-hi-loh). [Latin] From nothing.

ex nobili officio (eks nob-i-li ə-fish-ee-oh). [Latin "by virtue of its noble office"] *Scots law*. (Of a judicial act) done as a matter of equity.

ex officio (eks ə-fish-ee-oh), *adv.* & *adj.* [Latin] By virtue or because of an office; by virtue of the authority implied by office.

ex officio information. *English law.* A criminal information filed by the attorney general ex officio on behalf of the Crown, in the Court of King's Bench, for offenses more immediately affecting the government, as distinguished from informations in which the Crown is the nominal prosecutor.

ex officio justice. A judge who serves on a commission or board only because the law requires the presence of a judge rather than because the judge was selected for the position.

ex officio service. A service that the law imposes on an official by virtue of the office held, such as a local sheriff's duty to perform marriage ceremonies.

exoine (e-soyn), *n.* [French "excuse"] *French law.* An act or instrument in writing containing the reasons why a party in a civil suit, or a person accused, has not appeared after being summoned. See ESSOIN.

exonerate (eg-zon-ə-rayt), *vb.* **1.** To free from responsibility <exonerate from the payment of the debt>. Cf. EXCULPATE. **2.** To free from encumbrances <exonerate the property from the mortgage lien>. — **exonerative** (eg-zon-ə-ray-tiv or -ə-tiv), *adj.*

exoneration. **1.** The removal of a burden, charge, responsibility, or duty. **2.** The right to be reimbursed by reason of having paid money that another person should have paid. **3.** The equitable right of a surety — confirmed by statute in many states — to proceed to compel the principal debtor to satisfy the obligation when, even though the surety would have a right of reimbursement, it would be inequitable

for the surety to be compelled to perform if the principal debtor can satisfy the obligation. See EQUITY OF EXONERATION; QUIA TIMET.

exoneration, suit for. See SUIT FOR EXONERATION.

exoneratione sectae (eg-zon-ə-ray-shee-oh-nee sek-tee). [Latin] *Hist.* A writ that lay for the Crown's ward, to be free from all suit during wardship.

exoneratione sectae ad curiam baron (eg-zon-ə-ray-shee-oh-nee sek-tee ad kyoor-ee-əm bar-ən). [Latin "by exoneration of the suit to the lord's court"] *Hist.* A writ issued by the guardian of the Crown's ward, forbidding the sheriff or steward of a particular court from distraining or taking other action against the ward.

exonerative fact. See FACT.

exoneretur (eg-zon-ə-ree-tər). *Hist.* [Latin "let him be relieved or discharged"] An entry made on a bailpiece whereby a surety is relieved or discharged from further obligation when the condition is fulfilled.

ex. ord. (*often cap.*) *abbr.* EXECUTIVE ORDER.

exordium (eg-zor-dee-əm). [Latin] See INTRODUCTORY CLAUSE.

ex parte (eks pahr-tee), *adv.* [Latin "from the part"] On or from one party only, usu. without notice to or argument from the adverse party <the judge conducted the hearing ex parte>.

ex parte, adj. Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested <an ex parte hearing> <an ex parte injunction>.

ex parte communication. A generally prohibited communication between counsel and the court when opposing counsel is not present.

ex parte divorce. See DIVORCE.

ex parte hearing. See *ex parte proceeding* under PROCEEDING.

ex parte injunction. See INJUNCTION.

ex parte materna (eks pahr-tee mə-tər-nə). [Latin] On the mother's side; of the maternal line.

ex parte motion. See MOTION.

ex parte order. See ORDER (2).

ex parte paterna (eks pahr-tee pə-tər-nə). [Latin] On the father's side; of the paternal line.

ex parte proceeding. See PROCEEDING.

expatriate (eks-pay-tree-it), *n.* An expatriated person; esp., a person who lives permanently in a foreign country.

expatriate (eks-pay-tree-ayt), *vb.* **1.** To withdraw (oneself) from residence in or allegiance to one's native country; to leave one's home country to live elsewhere. **2.** To banish or exile (a person). — **expatriation**, *n.*

expectancy, *n.* **1. Property.** An estate with a reversion, a remainder, or an executory interest. **2. Wills & estates.** The possibility that an heir apparent, an heir presumptive, or a presumptive next-of-kin will acquire property by devolution on intestacy, or the possibility that a presumptive legatee or devisee will acquire property by will. **3. Insurance.** The probable number of years in one's life. See LIFE EXPECTANCY.

expectancy damages. See *expectation damages* under DAMAGES.

expectancy table. See ACTUARIAL TABLE.

expectant, *adj.* Having a relation to, or being dependent on, a contingency; CONTINGENT.

expectant estate. See ESTATE.

expectant heir. See HEIR.

expectant right. See RIGHT.

expectation, *n.* **1.** The act of looking forward; anticipation. **2.** A basis on which something is expected to happen; esp., the prospect of receiving wealth, honors, or the like.

"[E]xpectation does not in itself amount to intention. An operating surgeon may know very well that his patient will probably die of the operation; yet he does not intend the fatal consequence which he expects. He intends the recovery which he hopes for but does not expect." John

Salmond, *Jurisprudence* 379-80 (Glanville L. Williams ed., 10th ed. 1947).

expectation damages. See DAMAGES.

expectation interest. See INTEREST (2).

expectation of life. See LIFE EXPECTANCY.

expectation of privacy. A belief in the existence of the right to be free of governmental intrusion in regard to a particular place or thing. • To suppress a search on privacy grounds, a defendant must show the existence of the expectation and that the expectation was reasonable.

expected/intended exclusion. See EXCLUSION (3).

expediente (ek-spe-thee-en-tē), *n.* [Spanish] **1.** A historical record of proceedings relating to a grant of land by the sovereign. **2. Mexican law.** The papers or documents constituting a grant or title to land from the government.

expediment (ek-sped-ə-mənt), *n.* The whole of one's goods and chattels.

expedited proceeding. See SHOW-CAUSE PROCEEDING.

expeditio brevis (ek-spə-dish-ee-oh bree-vəs). [Latin] *Archaic.* The service of a writ.

expel, *vb.* To drive out or away; to eject, esp. with force. See EJECT; EVICT.

expeditor (ek-spen-də-tər). One who expends or disburses certain taxes; a paymaster.

expenditure. **1.** The act or process of paying out; disbursement. **2.** A sum paid out.

expensae litis (ek-spen-see li-tis). [Latin] Costs or expenses of a lawsuit, for which a successful party is usu. reimbursed.

expense, *n.* An expenditure of money, time, labor, or resources to accomplish a result; esp., a business expenditure chargeable against revenue for a specific period. — **expense**, *vb.* Cf. COST (1).

accrued expense. An expense incurred but not yet paid.

administrative expense. See *general administrative expense*.

business expense. An expense incurred to operate and promote a business; esp., an expenditure made to further the business in the taxable year in which the expense is incurred.

• Most business expenses — unlike personal expenses — are tax-deductible.

capital expense. An expense made by a business to provide a long-term benefit; a capital expenditure. • A capital expense is not deductible, but it can be used for depreciation or amortization.

capitalized expense. An amortized expense.

current expense. See *operating expense*.

deferred expense. A cost incurred by a business when the business expects to benefit from that cost over a period beyond the current year. • An example is a prepaid subscription to a business periodical the cost of which will be recognized as an expense over a multi-year subscription period.

educational expense. A deductible expense incurred either to maintain or improve an existing job skill or to meet a legally imposed job requirement.

entertainment expense. An expense incurred while providing entertainment relating directly to or associated with a business purpose. • Entertainment expenses are partially tax-deductible.

extraordinary expense. An unusual or infrequent expense, such as a write-off of goodwill or a large judgment. • As used in a constitutional provision authorizing a state to incur extraordinary expenses, the term denotes an expense for the general welfare compelled by an unforeseen condition such as a natural disaster or war.

fixed expense. See *fixed cost* under COST.

funeral expense. (*usu. pl.*) An expense necessarily and reasonably incurred in procuring the burial, cremation, or other disposition of a corpse, including the funeral or other ceremonial rite, a coffin and vault, a monument or tombstone, a burial plot and its care, and a wake.

general administrative expense. (*usu. pl.*) An expense incurred in running a business, as distinguished from an expense incurred in manufacturing or selling; overhead. • Examples include executive and clerical salaries, rent, utilities, and legal and accounting services. — Also termed *administrative expense*; *general expense*.

medical expense. 1. An expense for medical treatment or healthcare, such as drug costs and health-insurance premiums. • Medical

expenses are tax-deductible to the extent that the amounts (less insurance reimbursements) exceed a certain percentage of adjusted gross income. 2. (*usu. pl.*) In civil litigation, any one of many possible medical costs that the plaintiff has sustained because of the defendant's allegedly wrongful act, including charges for visits to physicians' offices, medical procedures, hospital bills, medicine, and recuperative therapy. — Often shortened (in *pl.*) to *medical*s.

moving expense. An expense incurred in changing one's residence. • If incurred for business reasons (as when one's job requires relocation), most moving expenses are tax-deductible.

operating expense. An expense incurred in running a business and producing output. — Also termed *current expense*.

ordinary and necessary expense. An expense that is normal or usual and helpful or appropriate for the operation of a particular trade or business and that is paid or incurred during the taxable year. • Ordinary and necessary expenses are tax-deductible. — Also termed *ordinary and necessary business expense*.

organizational expense. An expense incurred while setting up a corporation or other entity.

out-of-pocket expense. An expense paid from one's own funds.

prepaid expense. An expense (such as rent, interest, or insurance) that is paid before the due date or before a service is rendered.

travel expense. An expense (such as for meals, lodging, and transportation) incurred while away from home in the pursuit of a trade or business. See TAX HOME.

expense loading. See LOADING.

expense ratio. *Accounting.* The proportion or ratio of expenses to income.

expenses of administration. Expenses incurred by a decedent's representatives in administering the estate.

expenses of receivership. Expenses incurred by a receiver in conducting the business, including rent and fees incurred by the receiver's counsel and by any master, appraiser, and auditor.

expense stop. A lease provision establishing the maximum expenses to be paid by the landlord,

beyond which the tenant must bear all remaining expenses.

expensis militum non levandis (ek-spen-sis mi-lit-əm non lə-van-dis). [Latin] *Hist.* A writ to prohibit the sheriff from levying any allowance for knights of the shire on persons who held lands in ancient demesne. See *ancient demesne* under DEMESNE.

experience rating. *Insurance.* A method of determining the amount of the premium by analyzing the insured's loss record over time to assess (1) the risk that covered events will occur, and (2) the amount of probable damages if they do.

experimental use. See USE (1).

expert, n. A person who, through education or experience, has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder. Fed. R. Evid. 702. See DAUBERT TEST. — **expertise** (ek-spər-teez), *n.*

consulting expert. An expert who, though retained by a party, is not expected to be called as a witness at trial. • A consulting expert's opinions are generally exempt from the scope of discovery. — Also termed *nontestifying expert*. Fed. R. Civ. P. 26(b)(4)(B).

impartial expert. An expert who is appointed by the court to present an unbiased opinion. — Also termed *court-appointed expert*. Fed. R. Evid. 706.

testifying expert. An expert who is identified by a party as a potential witness at trial. • As a part of initial disclosures in federal court, a party must provide to all other parties a wide range of information about a testifying expert's qualifications and opinion, including all information that the witness considered in forming the opinion. Fed. R. Civ. P. 26(a)(2)(b).

expert evidence. See EVIDENCE.

expert testimony. See *expert evidence* under EVIDENCE.

expert witness. See WITNESS.

expert-witness fee. See FEE (1).

expilare (eks-pə-lair-ee), *vb.* [Latin] *Roman law.* In the law of inheritance, to spoil; to rob; to plunder.

expilatio (eks-pə-lay-shee-oh), *n.* [Latin] *Roman law.* The offense of unlawfully appropriating goods belonging to a succession. • This offense was not technically theft (*furtum*) because the property belonged to neither the decedent nor an heir, since the latter had not yet taken possession.

expilator (eks-pə-lay-tər), *n.* [Latin] *Roman law.* A robber; a spoiler or plunderer.

expiration, n. A coming to an end; esp., a formal termination on a closing date <expiration of the insurance policy>. — **expire, vb.**

expiration date. The date on which an offer, option, or the like ceases to exist.

explecia (ek-splee-shee-ə). [Law Latin] See EXPLETA.

explees (eks-pleez). See ESPLEES.

expleta (ek-splee-tə), *n. pl.* [Law Latin] *Hist.* The rents and profits of an estate. — Also termed *expletia*; *explecia*.

explicatio (eks-plə-kay-shee-oh), *n.* [Law Latin] *Civil law.* The fourth pleading in an action, consisting of the plaintiff's response to the defendant's rejoinder. • This is the civil-law equivalent of the common-law *surrejoinder*.

exploitation, n. The act of taking advantage of something; esp., the act of taking unjust advantage of another for one's own benefit. — **exploit, vb.** — **exploitative, adj.**

exploration manager. See LAND MANAGER.

export, n. 1. A product or service created in one country and transported to another.

domestic export. A product originally grown or manufactured in the United States, as distinguished from a product originally imported into the United States and then exported.

2. The process of transporting products or services to another country.

export, vb. 1. To send or carry abroad. **2.** To send, take, or carry (a good or commodity) out of the country; to transport (merchandise) from one country to another in the course of trade. **3.** To carry out or convey (goods) by sea.

exportation. The act of sending or carrying goods and merchandise from one country to another.

Export Clause. See IMPORT-EXPORT CLAUSE.

export declaration. A document — required by federal law — containing details of an export shipment.

export draft. See DRAFT.

Export-Import Bank. A federal agency, established in 1934, that encourages trade with foreign countries by financing exports and imports with funds borrowed from the U.S. Treasury. — Abbr. Ex-Im Bank.

export letter of credit. See LETTER OF CREDIT.

export quota. See QUOTA.

export tax. See TAX.

exposé (ek-spoh-zay), *n.* [French] **1.** A statement or account; an explanation. • In diplomatic language, the term describes a written explanation of the reasons for a certain act or course of conduct. **2.** Exposure of discreditable matter.

expositio (eks-pə-zish-ee-oh), *n.* [Latin] An explanation or interpretation; an exposition.

exposition de part (eks-poh-zee-syawn də pah). [French] *French law.* The abandonment, in either a public or a private place, of a child that is unable to take care of itself.

expository jurisprudence. See JURISPRUDENCE.

expository statute. See STATUTE.

ex post, adj. [Latin “from after”] Based on knowledge and fact; objective; retrospective. Cf. EX ANTE.

ex post facto (eks pohst fak-toh), *adv.* [Latin “from a thing done afterward”] After the fact; retroactively.

ex post facto, adj. Done or made after the fact; having retroactive force or effect.

Ex Post Facto Clause. One of two clauses in the U.S. Constitution forbidding the enactment of ex post facto laws. U.S. Const. art. I, § 9; art. I, § 10.

ex post facto law. A law that applies retroactively, esp. in a way that negatively affects a person's rights, as by criminalizing an action that was legal when it was committed. • Ex post facto criminal laws are prohibited by the U.S. Constitution.

exposure. The amount of liability or other risk to which a person is subject <the client wanted to know its exposure before it made a settlement offer>.

exposure of person. See INDECENT EXPOSURE.

exposure theory. *Insurance.* A theory of coverage providing that an insurer must cover a loss if the insurance was in effect when the claimant was exposed to the product that caused the injury. Cf. MANIFESTATION THEORY; ACTUAL-INJURY TRIGGER; TRIPLE TRIGGER.

express, adj. Clearly and unmistakably communicated; directly stated. — **expressly, adv.** Cf. IMPLIED.

express abrogation. The repeal of a law or provision by a later one that refers directly to it; abrogation by express provision or enactment.

express acceptance. See ACCEPTANCE (4).

express active trust. See TRUST.

express actual knowledge. See *actual knowledge* under KNOWLEDGE.

express agency. See AGENCY (1).

express amnesty. See AMNESTY.

express assent. See ASSENT.

express assumpsit. See *special assumpsit* under ASSUMPSIT.

express authority. See AUTHORITY (1).

express color. See COLOR.

express condition. See CONDITION (2).

express consent. See CONSENT.

express consideration. See CONSIDERATION.

express contract. See CONTRACT.

express covenant

express covenant. See COVENANT (1).

express dedication. See DEDICATION.

express dissatisfaction. *Wills & estates.* A beneficiary's contesting of a will or objecting to any provision of the will in a probate proceeding.

expressed, adj. Declared in direct terms; stated in words; not left to inference or implication.

expression, freedom of. See FREEDOM OF EXPRESSION.

expressio unius est exclusio alterius (ek-spres[h]-ee-oh yoo-ni-əs est eks-kloo-zhee-oh al-tə-ri-əs). [Law Latin] A canon of construction holding that to express or include one thing implies the exclusion of the other, or of the alternative. • For example, the rule that "each citizen is entitled to vote" implies that noncitizens are not entitled to vote. — Also termed *inclusio unius est exclusio alterius*; *expressum facit cessare tacitum*. Cf. EJUSDEM GENERIS; NOSCITUR A SOCIIS; RULE OF RANK.

"Several Latin maxims masquerade as rules of interpretation while doing nothing more than describing results reached by other means. The best example is probably *expressio unius est exclusio alterius*, which is a rather elaborate, mysterious sounding, and anachronistic way of describing the negative implication. Far from being a rule, it is not even lexicographically accurate, because it is simply not true, generally, that the mere express conferral of a right or privilege in one kind of situation implies the denial of the equivalent right or privilege in other kinds. Sometimes it does and sometimes it does not, and whether it does or does not depends on the particular circumstances of context. Without contextual support, therefore, there is not even a mild presumption here. Accordingly, the maxim is at best a description, after the fact, of what the court has discovered from context." Reed Dickerson, *The Interpretation and Application of Statutes* 234–35 (1975).

"The canon *expressio unius est exclusio alterius* is . . . based on the assumption of legislative omniscience, because it would make sense only if all omissions in legislative drafting were deliberate. Although this canon seemed dead for a while, it has been resurrected by the Supreme Court to provide a basis for refusing to create private remedies for certain statutory violations. Its recent disparagement by a unanimous Court [in *Herman & MacLean v. Huddleston*, 459 U.S. 375, 386 n.23, 103 S.Ct. 683, 690 n. 23 (1983)] puts its future in some doubt but more likely confirms that judicial use of canons of construction is opportunistic." Richard A. Posner, *The Federal Courts: Crisis and Reform* 282 (1985).

express malice. See MALICE.

express notice. See NOTICE.

express power. See *enumerated power* under POWER.

express private passive trust. See TRUST.

express repeal. See REPEAL.

express republication. A testator's repeating of the acts essential to a will's valid execution, with the avowed intent of republishing the will. See REPUBLICATION (2).

express trust. See TRUST.

expressum facit cessare tacitum. See EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS.

express waiver. See WAIVER (1).

express warranty. See WARRANTY (2).

expromissio (eks-prə-mis[h]-ee-oh), *n.* *Roman law.* A type of novation by which a creditor accepts a new debtor in place of a former one, who is then released.

expromissor (eks-prə-mis-ər), *n.* *Roman law.* One who assumes another's debt and becomes solely liable for it, by a stipulation with the creditor.

expromittere (eks-prə-mit-ə-ree), *vb.* *Roman law.* To undertake for another with the view of becoming liable in his place.

expropriation, *n.* **1.** A governmental taking or modification of an individual's property rights, esp. by eminent domain; CONDEMNATION (2). Cf. APPROPRIATION. **2.** A voluntary surrender of rights or claims; the act of renouncing or divesting oneself of something previously claimed as one's own. — **expropriate, *vb.*** — **expropriator, *n.***

ex proprio motu (eks proh-pree-oh moh-tyoo). [Latin] Of one's own accord.

ex proprio vigore (eks proh-pree-oh vi-gor-ee). [Latin] By their or its own force.

ex provisione hominis (eks prə-vizh-ee-oh-nee hom-ə-nis). [Latin] By the provision of man; by the limitation of the party, as distinguished from the disposition of the law.

ex provisione mariti (eks prə-vizh-ee-oh-nee mə-rī-tī or mar-ə-tī). [Latin] From the provision of the husband.

expulsion, *n.* An ejection or banishment, either through depriving a person of a benefit or by forcibly evicting a person. — **expulsive**, *adj.*

expunction of record. See EXPUNGEMENT OF RECORD.

expunge (ek-spənj), *vb.* To erase or destroy <the trustee wrongfully expunged the creditor's claim against the debtor>. — **expungement** (ek-spənj-mənt), **expunction** (ek-spəŋk-shən), *n.*

expungement of record. The removal of a conviction (esp. for a first offense) from a person's criminal record. — Also termed *expunction of record*; *erasure of record*.

expurgation (ek-spər-gay-shən), *n.* The act or practice of purging or cleansing, as by publishing a book without its obscene passages. — **expurgate** (eks-pər-gayt), *vb.* — **expurgator** (eks-pər-gay-tər), *n.*

ex quasi contractu (eks kwai-zī kən-trak-t[yl]oo). [Latin] From quasi-contract.

ex rel. *abbr.* [Latin *ex relatione* "by or on the relation of"] On the relation or information of. • A suit *ex rel.* is typically brought by the government upon the application of a private party (called a *relator*) who is interested in the matter. See RELATOR (1).

ex re nata (eks ree nay-tə). [Latin] According to a case that has arisen.

ex rights, *adv.* Without rights. • Shares are traded *ex rights* when the value of the subscription privilege has been deducted, giving the purchaser no right to buy shares of a new stock issue. — *Abbr.* X; XR. — Also termed *rights off*.

ex-rights date. The date on which a share of common stock no longer offers privilege subscription rights.

ex rigore juris (eks ri-gor-ee joor-is). [Latin] According to the rigor or strictness of the law; in strictness of law.

exrogare (eks-rə-gair-ee), *vb.* [Latin] *Roman law.* To remove something from an old law by a new law.

exrx. *abbr.* EXECUTRIX.

ex scriptis olim visis (eks skrip-tis oh-ləm vi-zis or -sis). [Latin "from writings formerly seen"] A method of handwriting proof available when a witness has seen other documents purporting to be in the party's handwriting and either has had further correspondence with the party about the documents' subject matter or has had some other type of communication with the party that would lead to a reasonable presumption that the documents were in the party's handwriting.

ex ship. Of or referring to a shipment of goods for which the liability or risk of loss passes to the buyer once the goods leave the ship.

ex statuto (eks stə-tyoo-toh). [Latin] According to the statute.

ex stipulatu actio (eks stip-yə-lay-t[yl]oo ak-shee-oh). [Latin] *Roman & civil law.* An action on a stipulation; an action given to recover marriage portions.

ex tempore (eks tem-pə-ree), *adv.* [Latin "out of time"] 1. By lapse of time. 2. Without any preparation; extemporaneously.

extended-coverage clause. *Insurance.* A policy provision that insures against hazards beyond those covered (or excluded) in the basic policy.

extended family. See FAMILY.

extended first mortgage. See *wraparound mortgage* under MORTGAGE.

extended insurance. See INSURANCE.

extended policy. See INSURANCE POLICY.

extended service contract. See *extended warranty* under WARRANTY (2).

extended service warranty. See *extended warranty* under WARRANTY (2).

extended-term insurance. See INSURANCE.

extended warranty. See WARRANTY (2).

extendi facias (ek-sten-di fay-shee-əs). [Latin "you are to cause to be executed"] See EXTENT (3).

extension, *n.* **1.** The continuation of the same contract for a specified period. Cf. RENEWAL. **2.** *Patents.* A continuation of the life of a patent for an additional statutorily allowed period. **3.** *Tax.* A period of additional time to file an income-tax return beyond its due date. **4.** A period of additional time to take an action, make a decision, accept an offer, or complete a task. — **extend**, *vb.*

extension agreement. An agreement providing additional time for the basic agreement to be performed.

extensive interpretation. See INTERPRETATION.

extensores (ek-sten-sor-eez), *n. pl. Hist.* Officers appointed to appraise and divide or apportion land; extenders or appraisers.

extent. *Hist.* **1.** A seizure of property in execution of a writ. **2.** A writ issued by the Exchequer to recover a debt owed to the Crown, under which the debtor's lands, goods, or body could all be seized to secure payment. — Also termed *writ of extent*; *extent in chief*. **3.** A writ giving a creditor temporary possession of the debtor's property (esp. land). — Also termed *extendi facias*.

extenta manerii (ek-sten-tə mə-neer-ee-ī). [Latin "the extent of a manor"] An English statute (4 Edw., St. 1) directing the making of a survey of a manor and all its appendages.

extent in aid. *Hist.* A writ that a Crown debtor could obtain against a person indebted to the Crown debtor so that the Crown debtor could satisfy the debt to the Crown. • This writ, having been much abused because of some peculiar privileges that Crown debtors enjoyed, was abolished in 1947 by the Crown Proceedings Act.

extent in chief. See EXTENT (2).

extenuate (ek-sten-yoo-ayt), *vb.* To make less severe; to mitigate.

extenuating circumstance. See *mitigating circumstance* under CIRCUMSTANCE.

extenuation (ek-sten-yoo-ay-shən), *n.* The act or fact of making the commission of a crime or tort less severe.

extern. See CLERK (4).

external act. See ACT (2).

externality. (*usu. pl.*) A social or monetary consequence or side effect of one's economic activity, causing another to benefit without paying or to suffer without compensation. — Also termed *spillover*; *neighborhood effect*.

negative externality. An externality that is detrimental to another, such as water pollution created by a nearby factory.

positive externality. An externality that benefits another, such as the advantage received by a neighborhood when a homeowner attractively landscapes the property.

external sovereignty. See SOVEREIGNTY.

extritorial. See EXTRATERRITORIAL.

extritoriality. See EXTRATERRITORIALITY.

exterus (ek-stər-əs), *n.* [Latin] A foreigner or alien; one born abroad.

ex testamento (eks tes-tə-men-toh), *adv.* [Latin] By, from, or under a will or testament <succession *ex testamento* is the mode of devolution that the property of deceased persons ought primarily to follow>. Cf. AB INTESTATO.

extinct, *adj.* **1.** No longer in existence or use. **2.** (Of a debt) lacking a claimant.

extinctive fact. See FACT.

extinctive prescription. See PRESCRIPTION (3).

extinguish, *vb.* **1.** To bring to an end; to put an end to. **2.** To terminate or cancel. **3.** To put out or stifle.

extinguishment, *n.* The cessation or cancellation of some right or interest. • For example, the extinguishment of a legacy occurs when the item bequeathed no longer exists or no longer belongs to the testator's estate.

extinguishment of copyhold. The destruction of copyhold by a uniting of freehold and copyhold interests in the same person and in the same right. • In England, under the 1922 Law

of Property Act, copyholds were enfranchised and became either leasehold or, more often, freehold. See COPYHOLD.

extinguishment of legacy. See ADEPTION.

extinguishment of lien. A lien's discharge by operation of law.

extirpation (ek-stər-pay-shən), *n.* **1.** The act of completely removing or destroying something. **2.** Damage to land intentionally done by a person who has lost the right to the land.

extirpatione (ek-stər-pay-shee-oh-nee), *n.* [Latin] *Hist.* A writ issued either before or after judgment to restrain a person from maliciously damaging any house or extirpating any trees on land that the person had lost the right to possess.

extort, *vb.* **1.** To compel or coerce (a confession, etc.) by means that overcome one's power to resist. **2.** To gain by wrongful methods; to obtain in an unlawful manner; to exact wrongfully by threat or intimidation. — **extortive**, *adj.*

extortion, *n.* **1.** The offense committed by a public official who illegally obtains property under the color of office; esp., an official's collection of an unlawful fee. — Also termed *common-law extortion*.

"The dividing line between bribery and *extortion* is shadowy. If one other than the officer corruptly takes the initiative and offers what he knows is not an authorized fee, it is bribery and not extortion. On the other hand, if the officer corruptly makes an unlawful demand which is paid by one who does not realize it is not the fee authorized for the service rendered, it is extortion and not bribery. In theory it would seem possible for an officer to extort a bribe under such circumstances that he would be guilty of either offense whereas the outraged citizen would be excused." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 538 (3d ed. 1982).

2. The act or practice of obtaining something or compelling some action by illegal means, as by force or coercion. — Also termed *statutory extortion*. — **extortionate**, *adj.*

extortionate credit transaction. See LOAN-SHARKING.

extra (ek-strə), *prep.* [Latin] Beyond; except; without; out of; additional.

extra allowance. In New York practice, a sum in addition to costs that may, in the court's

discretion, be awarded to the successful party in an unusually difficult case.

extra commercium (eks-trə kə-mər-shee-əm). [Latin] Outside commerce. • This phrase was used in Roman and civil law to describe property dedicated to public use and not subject to private ownership.

extract (ek-strakt), *n.* A portion or segment, as of a writing.

extract (ek-strakt), *vb.* To draw out or forth; to pull out from a fixed position.

extracta curiae (ek-strak-tə kyoor-ee-ee). *Hist.* The issues or profits of holding a court, arising from customary dues, fees, and amercements.

extradite (ek-strə-dit), *vb.* **1.** To surrender or deliver (a fugitive) to another jurisdiction. **2.** To obtain the surrender of (a fugitive) from another jurisdiction.

extradition (ek-strə-dish-ən). The official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged; the return of a fugitive from justice, regardless of consent, by the authorities where the fugitive resides. Cf. RENDITION (2).

international extradition. Extradition in response to a demand made by the executive of one nation on the executive of another nation. • This procedure is regulated by treaties.

interstate extradition. Extradition in response to a demand made by the governor of one state on the governor of another state. • This procedure is provided for by the U.S. Constitution, by federal statute, and by state statutes.

Extradition Clause. The clause of the U.S. Constitution providing that any accused person who flees to another state must, on request of the executive authority of the state where the crime was committed, be returned to that state. U.S. Const. art. IV, § 2, cl. 2.

extradition treaty. A treaty governing the preconditions for, and exceptions to, the surrender of a fugitive from justice by the fugitive's country of residence to another country claiming criminal jurisdiction over the fugitive.

extradition warrant. See WARRANT (1).

extra dividend. See *extraordinary dividend* under DIVIDEND.

extradotal property (eks-trə-doh-təl). *Civil law.* Property that forms no part of a woman's dowry. — Also termed *paraphernal property*.

extra feodum (eks-trə fee-ə-dəm). [Latin] Out of his fee; out of the seigniorship.

extrahazardous, adj. Especially or unusually dangerous. • This term is often applied to exceptionally dangerous railroad crossings.

extrahura (ek-strə-hyoor-ə), *n.* [Law Latin] *Hist.* An animal that wanders about or strays without its owner; ESTRAY.

extrajudicial, adj. Outside court; outside the functioning of the court system <extrajudicial confessions>. — Also termed *out-of-court*.

extrajudicial admission. See ADMISSION (1).

extrajudicial confession. See CONFESSION.

extrajudicial enforcement. See SELF-HELP.

extrajudicial evidence. See EVIDENCE.

extrajudicial oath. See OATH.

extrajudicial remedy. See REMEDY.

extrajudicial statement. Any utterance made outside of court. • It is usu. treated as hearsay under the rules of evidence.

extra iudicium (ek-strə joo-dish-ee-əm). [Latin] Extrajudicial; out of court; beyond the jurisdiction.

extra jus (ek-strə jəs). [Latin] Beyond the law; more than the law requires.

extralateral right. See APEX RULE.

extralegal, adj. Beyond the province of law.

extra legem (ek-strə lee-jəm). [Latin] Out of the law; out of the protection of the law.

extramural powers (ek-strə-myuur-əl). Powers exercised by a municipality outside its corporate limits.

extranational, adj. Beyond the territorial and governing limits of a country.

extraneous evidence. See *extrinsic evidence* (1) under EVIDENCE.

extraneous offense. See OFFENSE (1).

extraneous question. A question that is beyond or beside the point to be decided.

extraneous (ek-stray-nee-əs), *n.* [Latin "outside"] **1. Hist.** A person who is foreign-born; a foreigner. **2. Roman law.** An heir not born in the family of the testator; a citizen of a foreign state.

extraordinary average. See AVERAGE.

extraordinary care. See *highest degree of care* under DEGREE OF CARE.

extraordinary circumstances. See CIRCUMSTANCE.

extraordinary danger. See HAZARD (1).

extraordinary diligence. See DILIGENCE.

extraordinary dividend. See DIVIDEND.

extraordinary expense. See EXPENSE.

extraordinary flood. A flood whose occurrence is not predictable and whose magnitude and destructiveness could not have been anticipated or provided against by the exercise of ordinary foresight; a flood so unusual that a person of ordinary prudence and experience could not have foreseen it. See ACT OF GOD.

extraordinary gain. See GAIN (3).

extraordinary grand jury. See *special grand jury* under GRAND JURY.

extraordinary hazard. See HAZARD (1).

extraordinary majority. See *supermajority* under MAJORITY.

extraordinary remedy. See REMEDY.

extraordinary repair. As used in a lease, a repair that is made necessary by some unusual or unforeseen occurrence that does not destroy the building but merely renders it less suited to

its intended use; a repair that is beyond the usual, customary, or regular kind.

extraordinary risk. See *extraordinary hazard* under HAZARD (1).

extraordinary session. See *special session* under SESSION.

extraordinary writ. See WRIT.

extraparochial (ek-strə-pə-roh-kee-əl), *adj.*
Out of a parish; not within the bounds or limits of any parish.

extrapolate (ek-strap-ə-layt), *vb.* **1.** To estimate an unknown value or quantity on the basis of the known range, esp. by statistical methods. **2.** To deduce an unknown legal principle from a known case. **3.** To speculate about possible results, based on known facts. — **extrapolative** (-lay-tiv or -lə-tiv), **extrapolatory** (-lə-tor-ee), *adj.* — **extrapolator** (-lay-tər), *n.*

extrapolation (ek-strap-ə-lay-shən), *n.* **1.** The process of estimating an unknown value or quantity on the basis of the known range of variables. **2.** The process by which a court deduces a legal principle from another case. **3.** The process of speculating about possible results, based on known facts.

extra praesentiam mariti (eks-trə pri-zen-shee-əm mə-ri-ti or mar-ə-ti). [Latin] Out of her husband's presence.

extra quatuor maria (eks-trə kwah-too-ər mar-ee-ə). [Latin] **1.** Beyond the four seas. **2.** Out of the kingdom of England.

extra regnum (eks-trə reg-nəm). [Latin] Out of the realm.

extra session. See *special session* under SESSION.

extraterritorial, adj. Beyond the geographic limits of a particular jurisdiction. — Also termed *exterritorial*.

extraterritoriality. The freedom of diplomats, foreign ministers, and royalty from the jurisdiction of the country in which they temporarily reside. — Also termed *exterritoriality*. See *diplomatic immunity* under IMMUNITY (1).

extraterritorial jurisdiction. See JURISDICTION.

extra territorium (eks-trə ter-ə-tor-ee-əm). [Latin] Beyond or outside the territory.

Extravagantes (ek-strav-ə-gan-teez), *n. pl.*
[Law Latin "wandering"] *Eccles. law.* Papal constitutions and decretal epistles of Pope John XXII and his successors. • These epistles were so called because they were not digested or arranged with the other papal constitutions, but appeared detached from canon law; the term remained even after the epistles were later included in the body of canon law.

extra viam (eks-trə vi-əm). [Latin "out of the way"] A plaintiff's responsive pleading in a trespass action, asserting that the defendant's claim of a right-of-way across the plaintiff's land is not a defense to the action because the defendant strayed from the supposed right-of-way.

extra vires (eks-trə vi-reez or veer-eez). See ULTRA VIRES.

extra work. See WORK.

extreme cruelty. See CRUELTY.

extreme force. See *deadly force* under FORCE.

extrinsic, adj. From outside sources.

extrinsic ambiguity. See *latent ambiguity* under AMBIGUITY.

extrinsic evidence. See EVIDENCE.

extrinsic fraud. See FRAUD.

ex turpi causa (eks tər-pi kaw-zə). [Latin] From an immoral consideration. • This phrase, a shortened form of the maxim *ex turpi causa non oritur actio* ("from an immoral consideration an action does not arise"), expresses the principle that a party does not have a right to enforce performance of an agreement founded on a consideration that is contrary to the public interest.

"The doctrine *ex turpi causa* has made its way into the law as an extension of a moral principle. If it is misused, the principle suffers. Moreover, its misuse is a symptom of a disease of thought that debilitates the law and morals. This is the failure to recognize that there is a fundamental difference between the law that expresses a moral principle and the law that is only a social regulation. If only in the growth of English law that distinction had been maintained, much of the arbitrariness and the absurdities in the cases I have cited would have been avoided. There is a dictum of Lord Wright's which may

some day be used as a foundation for a change of heart. Speaking of the maxim *ex turpi causa*, he said: 'In these days there are many statutory offences which are the subject of the criminal law and in that sense are crimes, but which would, it seems, afford no moral justification for a court to apply the maxim'. *Beresford v. Royal Insurance* (1937), 2 KB. at 220." Patrick Devlin, *The Enforcement of Morals* 60 (1968).

exuere patriam (eg-z[y]oo-ə-ree pay-tree-əm), *vb.* [Latin] To renounce one's country or native allegiance; to expatriate oneself.

exulare (eks-[y]ə-lair-ee), *vb.* [Latin] *Hist.* To exile or banish.

ex una parte (eks [y]oo-nə pah-tee). [Latin] Of one part or side; on one side.

exuperare (eg-z[y]oo-pə-rair-ee), *vb.* [Latin] To overcome; to apprehend or take.

ex utraque parte (eks yoo-tray-kwee pah-tee). [Latin] On both sides.

ex utriusque parentibus conjuncti (eks yoo-tree-əs-kwee pə-ren-ti-bəs kən-jəŋk-ti). [Latin] Related on the side of both parents; of the whole blood.

ex visceribus (eks vi-ser-ə-bəs). [Latin "from the bowels"] From the vital part; from the very essence of (a thing).

ex visceribus verborum (eks vi-ser-ə-bəs vər-bor-əm). [Latin] From the mere words (and nothing else); from the words themselves.

ex visitatione Dei (eks viz-ə-tay-shee-oh-nee dee-i). [Latin] **1.** By the dispensation of God; by reason of physical incapacity. • Anciently, when a prisoner who was being arraigned stood silently instead of pleading, a jury was impaneled to inquire whether the prisoner obstinately stood mute or was dumb *ex visitatione Dei*. **2.** By natural causes as opposed to violent ones. • This phrase sometimes appears in a coroner's report when death results from a disease or another natural cause.

ex visu scriptio (eks vi-s[y]oo [or -z[y]oo] skrip-shee-oh-nis). [Latin] From the sight of the writing; from having seen a person write. • This phrase describes a method of proving handwriting.

ex vi termini (eks vi tər-mə-ni). [Law Latin] From or by the force of the term; from the very meaning of the expression used.

ex voluntate (eks vol-ən-tay-tee). [Latin] Voluntarily; from free will or choice.

EXW. abbr. EX WORKS.

ex warrants, adv. Without warrants. • Shares are traded *ex warrants* when they no longer carry the right to receive declared warrants that have been distributed to holders. — *Abbr.* X; XW.

ex works. From the factory. • This trade term defines the obligations of a buyer and a seller of goods with respect to delivery, payment, and risk of loss. — *Abbr.* EXW.

ex-works price. See *ex-works price* under PRICE.

eyde (ayd), *n.* [Law French] Aid; assistance; relief; subsidy.

eye for an eye. See LEX TALIONIS.

eye of the law. The law as a personified thinker; legal contemplation <dead people are no longer persons in the eye of the law>.

eyewitness. One who personally observes an event. Cf. EARWITNESS.

eyewitness identification. A naming or description by which one who has seen an event testifies from memory about the person or persons involved.

eygne (ayn), *n.* See EIGNE.

eyre (air). [Old French *aire* "journey, march"] *Hist.* A system of royal courts sent out into the counties by the Crown to investigate allegations of wrongdoing, to try cases, and to raise revenue for the Crown through the levy of fines. • The eyre system was abolished in the 13th century. See ARTICLES OF THE EYRE; JUSTICE IN EYRE.

"In 1176 the itinerant justices were organised into six circuits. . . . The justices assigned to these circuits, who numbered as many as twenty or thirty at a time in the 1180s, were known as *justiciae errantes* (later *justiciarii in itinere*, justices in eyre); and the French word 'eyre' became the name of one of the most prominent forms of royal justice until the time of Edward III. Every so often a 'general eyre' would visit a county, bringing the king's government with it. . . . The general eyres were not merely law courts; they were a way of supervising local government through itinerant central government." J.H. Baker, *An Introduction to English Legal History* 19 (3d ed. 1990).

eyrer (air-ər), *vb.* [Law French] *Hist.* To travel or journey; to go about.