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**GA.** See *general average* under AVERAGE.

**GAAP** (gap). *abbr.* GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

**GAAS** (gas). *abbr.* GENERALLY ACCEPTED AUDITING STANDARDS.

**gabel** (gə-bel). *Hist.* **1.** A tax or duty on movables. **2.** GAVEL (1). — Also spelled *gabelle*. See LAND-GAVEL.

**gabella** (gə-bel-ə). *Hist.* **1.** A tax or duty on merchandise. **2.** A peasant villager, esp. one who pays rent or tribute. See GAVEL (1). — Also spelled *gavella*.

**gage** (gayj), *n.* A pledge, pawn, or other thing deposited as security for performance. ● An archaic use of this word corresponded to the way *wage* was formerly used in legal contexts: a *gager del ley*, for example, was an earlier form of *wager of law*, while *gager de deliverance* had the same meaning as *wager of deliverance*. Cf. WAGE (2).

“A single root has sent out many branches which overshadow large fields of law. Gage, engagement, wage, wages, wager, wed, wedding, the Scottish wadset, all spring from one root. In particular we must notice that the word ‘gage,’ in Latin *vadium*, is applied indiscriminately to movables and immovables, to transactions in which a gage is given and to those in which a gage is taken. When a lord has seized his tenant’s goods in distress they are in his hands a gage for the payment of the rent that is in arrear, and the sheriff is always taking gages from those who have no mind to give them. The notion expressed by the word seems to be that expressed by our ‘security’ . . .” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 117–18 (2d ed. 1899).

**gage**, *vb.* To pawn or pledge; to give as security for. ● *Gage* is an older form of *wage*, and often appeared as a phrase, *gager deliverance*.

“Though the word *Gage* be retained, as it is a Substantive, yet as it is a verb, use hath turned the *Gage* into *Wage* so as it is oftener written *Wage*; as to *Wage Deliverance*, to give security, that a thing shall be delivered: For, if he that distrained, being sued, have not delivered the Cattle that were distrained, then he shall not onely avow the Distress, but *Gager Deliverance*, put

in surety, that he will deliver them.” Thomas Blount, *Nomo Lexicon: A Law-Dictionary* (1670).

**gager del ley.** See WAGER OF LAW.

**gag order.** **1.** A judge’s order directing parties, attorneys, witnesses, or journalists to refrain from publicly discussing the facts of a case. ● When directed to the press, such an order is generally unconstitutional under the First Amendment. **2.** A judge’s order that an unruly defendant be bound and gagged during trial to prevent further interruptions.

**gain**, *n.* **1.** An increase in amount, degree, or value.

**pecuniary gain.** **1.** A gain of money or of something having monetary value. **2.** *Criminal law.* Any monetary or economic gain that serves as an impetus for the commission of an offense. ● In most states, an offense and its punishment are aggravated if the offense was committed for pecuniary gain. Murder, for example, is often aggravated to capital murder if the murderer is paid to commit the crime. See SOLICITATION (2).

**2.** Excess of receipts over expenditures or of sale price over cost. See PROFIT. **3.** *Tax.* The excess of the amount realized from a sale or other disposition of property over the property’s adjusted value. IRC (26 USCA) § 1001. — Also termed *realized gain*.

**capital gain.** See CAPITAL GAIN.

**extraordinary gain.** A gain that is both unusual and infrequent, such as the gain realized from selling a large segment of a business.

**ordinary gain.** A gain from the sale or exchange of a noncapital asset. Cf. CAPITAL GAIN.

**recognized gain.** The portion of a gain that is subject to income taxation. IRC (26 USCA) § 1001(c). See BOOT (1).

**4.** (*pl.*) *Civil law.* A type of community property that reflects the increase in property value brought about by the spouses’ common skill or labor. See COMMUNITY PROPERTY. Cf. ACQUETS.

**gainful employment.** See EMPLOYMENT.

**gainor.** See SOCMAN.

**gains, n.** See GAIN.

**gale** (gayl). *Hist.* **1.** A periodic payment of rent. See GAVEL (2). **2.** Rent paid by a free miner (the *galee*) for the right to mine a plot of land. **3.** A license to mine a plot of land. • A gale could be conveyed or devised.

**Gallagher agreement.** A contract that gives one codefendant the right to settle with the plaintiff for a fixed sum at any time during trial and that guarantees payment of the sum regardless of the trial's outcome. *City of Tucson v. Gallagher*, 493 P.2d 1197 (Ariz. 1972). Cf. MARY CARTER AGREEMENT.

**gallows.** A wooden frame consisting of two upright posts and a crossbeam, from which condemned criminals are hanged by a rope.

**gamalis** (gə-may-lis). [Law Latin] *Hist.* **1.** A child born in lawful wedlock. **2.** A child born to betrothed but unmarried parents.

**gambling, n.** The act of risking something of value, esp. money, for a chance to win a prize. • Gambling is regulated by state and federal law. 18 USCA §§ 1081 et seq. — Also termed *gaming*.

**gambling contract.** See CONTRACT.

**gambling device.** Any thing, such as cards, dice, or an electronic or mechanical contrivance, that allows a person to play a game of chance in which money may be won or lost. • Gambling devices are regulated by law, and the use or possession of a gambling device can be illegal. — Also termed *gaming device*.

**gambling place.** Any location where gambling occurs. 18 USCA § 1081. — Also termed *gaming house*; *gaming room*.

**gambling policy.** See *wager policy* under INSURANCE POLICY.

**gambling verdict.** See *chance verdict* under VERDICT.

**game, n.** Wild animals and birds considered as objects of pursuit, for food or sport; esp., animals for which one must have a license to hunt.

**game, vb.** To gamble; to play for a stake.

**game law.** A federal or state law that regulates the hunting of game, esp. one that forbids the capturing or killing of specified game either entirely or seasonally, describes the means for killing or capturing game in season, or restricts the number and type of game that may be killed or captured in season. 16 USCA §§ 661–667; 18 USCA §§ 41–47.

**game of chance.** A game whose outcome is determined by luck rather than skill. Cf. GAMBLING DEVICE.

**gaming.** See GAMBLING.

**gaming contract.** See *gambling contract* under CONTRACT.

**gaming device.** See GAMBLING DEVICE.

**gaming house.** See GAMBLING PLACE.

**gaming room.** See GAMBLING PLACE.

**ganancial** (gə-nan-shəl), *adj.* Of, relating to, or consisting of community property <a spouse's ganancial rights>. See COMMUNITY PROPERTY.

"The Spanish [more correctly, the Castilian] form of community property, called the 'ganancial' system, is found today in the nine states of the United States, the Spanish-American republics of Central and South America, the Commonwealth of Puerto Rico and the Philippine Republic." Robert L. Menell & Thomas M. Boykoff, *Community Property in a Nutshell* 10 (2d ed. 1988).

**G & A.** See *general administrative expense* under EXPENSE.

**gang.** A group of persons who go about together or act in concert, esp. for antisocial or criminal purposes. • Many gangs (esp. those made up of adolescents) have common identifying signs and symbols, such as hand signals and distinctive colors. — Also termed *street gang*.

**gangland.** The world of criminal gangs and organized crime.

**gangster.** A member of a criminal gang or an organized-crime syndicate.

**Ganser's syndrome** (gahn-zər or gan-sər). An abnormality characterized by the giving of irrelevant and nonsensical answers to questions. • Prisoners sometimes feign this syndrome in an attempt to obtain leniency.

**gantlet** (gawnt-lit). [fr. Swedish *gata* "lane" + *lopp* "course"] **1.** *Hist.* A former military punishment in which the offender was stripped to the waist and forced to run between two rows of soldiers who gave him lashes as he passed. **2.** A series of severe troubles or difficulties; an ordeal. — Also spelled *gauntlet*; (archaically) *gantlope*.

**GAO.** *abbr.* GENERAL ACCOUNTING OFFICE.

**gaol.** See JAIL.

**gaol delivery.** See JAIL DELIVERY.

**gaoler.** See JAILER.

**gaol liberties.** See JAIL LIBERTIES.

**gap creditor.** See CREDITOR.

**gap-filler.** A rule that supplies a contractual term that the parties failed to include in the contract. • For example, if the contract does not contain a sales price, UCC § 2-305(1) establishes the price as being a reasonable one at the time of delivery.

"Contracts often have gaps in them, intentional or inadvertent. Gaps arise, too, out of the 'battle of the forms' under sections 2-204 and 2-207. Some gaps are more or less complete, others only partial. Article 2 of the Code includes numerous gap filler provisions which taken together constitute a kind of standardized statutory contract." 1 James J. White & Robert S. Summers, *Uniform Commercial Code* § 3-4 (4th ed. 1995).

**gap financing.** See FINANCING.

**gap period.** *Bankruptcy.* The duration of time between the filing of an involuntary bankruptcy petition and the entry of the order for relief. — Often shortened to *gap*.

**gap report.** In the making of federal court rules, a report that explains any changes made by an advisory committee in the language of a proposed amendment to a procedural rule after its publication for comment. • Before advisory committees began issuing gap reports in the early 1980s, there were complaints that the public record did not show why changes were made after the public-comment period. The five advisory committees — for appellate, bankruptcy, civil, criminal, and evidence rules — therefore began filing the reports to fill in the "gaps" in the record. Although the phrase is sometimes written in capital letters (*GAP report*), it is not an acronym.

**gap theory.** *Insurance.* The principle that a tortfeasor will be considered underinsured if his or her liability-insurance coverage — although legally adequate — is less than the injured party's underinsured-motorist coverage. • This principle allows an injured party to invoke underinsured-motorist coverage. Cf. EXCESS THEORY.

**garandia** (gə-ran-dee-ə). [Law Latin] *Hist.* A warranty. — Also spelled *garantia* (gə-ran-shee-ə).

**garauntor** (gar-ən-tər). [Law French] *Hist.* A warrantor of land. • A *garauntor* was obligated to defend the title and seisin of the alienee. If the alienee was evicted, the *garauntor* had to provide the alienee with other land of equal value.

**Garcia hearing** (gahr-see-ə). *Criminal procedure.* A hearing held to ensure that a defendant who is one of two or more defendants represented by the same attorney understands (1) the risk of a conflict of interest inherent in this type of representation, and (2) that he or she is entitled to the services of an attorney who does not represent anyone else in the defendant's case. *United States v. Garcia*, 517 F.2d 272 (5th Cir. 1975). See CONFLICT OF INTEREST (2).

**gard** (gahr). [Law French] *Hist.* **1.** Wardship or custody (of a person). **2.** A precinct (or *ward*) of a city. — Also spelled *garde*; *gardia*.

**garde** (gahr). [French] *Civil law.* A relationship that gives rise to liability for a person when an injury is caused by a thing (such as a consumer product) that is considered by law to be that person's responsibility or to be in that person's custody.

**gardein** (gahr-deen). [Law French] *Hist.* A guardian or keeper. — Also spelled *gardian*; *gardien*; *gardeyn*.

**gardia** (gahr-dee-ə). [Law French] *Hist.* Wardship, care, or custody of someone.

**gardianus** (gahr-dee-ay-nəs). [Law Latin] *Hist.* A guardian, defender, or protector; a warden. — Also spelled *guardianus*.

**gardianus ecclesiae** (gahr-dee-ay-nəs e-klēe-z[h]ee-ee). A churchwarden.

**garene** (gə-reen). [Law French] See WARREN.

**Garmon doctrine.** See *Garmon preemption* under PREEMPTION.

**Garmon preemption.** See PREEMPTION.

**Garner doctrine.** The rule that allows shareholder plaintiffs in a corporate derivative action to discover confidential communications between a corporate officer and the corporation's attorney. • The *Garner* doctrine does not apply to attorney work product, and the movant must show good cause. *Garner v. Wolfinbarger*, 430 F.2d 1093 (5th Cir. 1970). See DERIVATIVE ACTION (1).

**garnish, n.** *Hist.* Money exacted from a new prisoner by other prisoners or as a jailer's fee. • This practice was banned in England in 1815.

**garnish, vb.** [Old French *garnir* "to warn" "to prepare"] **1.** *Hist.* To serve an heir with notice (i.e., to *warn*) of certain debts that must be paid before the person is entitled to receive property as an heir. **2.** To subject (property) to garnishment; to attach (property held by a third party) in order to satisfy a debt. — Also termed *garnishee*. — **garnishable, adj.**

**garnishee** (gahr-ni-shee), *n.* A person or institution (such as a bank) that is indebted to or is bailee for another whose property has been subjected to garnishment. — Also termed *garnishee-defendant* (as opposed to the "principal defendant," i.e., the primary debtor).

**garnishee** (gahr-ni-shee), *vb.* See GARNISH.

**garnisher.** A creditor who initiates a garnishment action to reach the debtor's property that is thought to be held or owed by a third party (the *garnishee*). — Also spelled *garnishor*.

**garnishment, n.** **1.** A judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party. • A plaintiff initiates a garnishment action as a means of either prejudgment seizure or postjudgment collection.

"Garnishment is a[n] . . . inquisitorial proceeding, affording a harsh and extraordinary remedy. It is an anomaly, a statutory invention sui generis, with no affinity to any action known to the common law. . . . It is a method of seizure; but it is not a 'levy' in the usual acceptation of that term. It is a proceeding by which a diligent creditor may legally obtain preference over other creditors; and it is in the nature of a creditor's bill, or a

sequestration of the effects of a debtor in the hands of his debtor." 38 C.J.S. *Garnishment* § 3, at 248-50 (1996).

**wrongful garnishment.** **1.** An improper or tortious garnishment. **2.** A cause of action against a garnisher for improperly or tortiously filing a garnishment proceeding.

**2.** The judicial order by which such a turnover is effected. Cf. ATTACHMENT (1); SEQUESTRATION (1).

**garnishment lien.** See LIEN.

**garnishor.** See GARNISHER.

**Garrity statement** (gar-ə-tee). A public employee's oral or written report (as of an incident) obtained under a threat of termination of employment. • A public employee usu. makes a *Garrity* statement in the course of an internal investigation (as by a police department). Because a *Garrity* statement is coerced, the statement and any evidence obtained as a result of it cannot be used in a later criminal prosecution against the public employee. The statement and evidence may be used only to evaluate the employee's performance. *Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616 (1967).

**gas-balancing agreement.** *Oil & gas.* A contract between owners of a producing gas well setting forth how production will be apportioned among them if one owner sells more gas than the other owners.

"Gas balancing agreements address the problem of imbalances in production from a gas well or field. Co-owners frequently sell their share of production to different purchasers. . . . Even when co-owners sell to the same purchaser, their contracts are likely to be signed at different times and to have different price and take provisions. Thus, imbalances are inevitable." John S. Lowe, *Oil and Gas Law in a Nutshell* 385 (3d ed. 1995).

**gas chamber.** A small, sealed room in which capital punishments are carried out by strapping the prisoner into a chair and releasing poisonous fumes.

**gas sold.** *Oil & gas.* Natural gas that is actually sold but not necessarily all that a well produces. • The term is used in natural-gas leases.

**gas used.** *Oil & gas.* Natural gas that is consumed while a well is in operation but that is not necessarily sold.

**GATT** (gat). *abbr.* GENERAL AGREEMENT ON TARIFFS AND TRADE.



**gauger** (gay-jər). A surveying officer who examines containers of liquids to give them a mark of allowance, as containing the lawful measure.

**gavel** (gav-əl). **1.** *Hist.* A tribute, toll, or custom paid to a superior. **2.** *Hist.* An annual payment of rent or revenue, esp. payment in kind, such as gavel-corn, gavel-malt, or oat-gavel. — Sometimes spelled *gabel*. **3.** A mallet used by a presiding officer, often a judge, to bring a meeting or court to order.

**gavelbred** (gav-əl-bred). *Hist.* Rent payable in bread, corn, or some other provision; rent payable in kind.

**gavelet** (gav-əl-it). *Hist.* A writ used in Kent and London to recover rent from land held in gavelkind. See CESSAVIT.

**gavelgeld** (gav-əl-geld). *Hist.* **1.** Property that yields a profit or a toll. **2.** The tribute or toll itself.

**gavelherte** (gav-əl-hært). *Hist.* A service of plowing performed by a customary tenant.

**gaveling man** (gav-əl-ing man or mən). *Hist.* See GAVELMAN.

**gavelkind** (gav-əl-kind). *Hist.* **1.** A species of socage tenure arising in land that has descended equally to the decedent's sons. • It was widespread before 1066, when it was mainly superseded by primogeniture. This property-division technique was then largely limited to Kent. The person holding land in this manner enjoyed several advantages not available under the common law: the land could be disposed of by will, did not escheat for felony other than treason or for want of heirs, and was alienable by an heir at age 15. Gavelkind was abolished in 1925. **2.** Land that yields gavel service.

"Archbishop Hubert Walter, who presided in the king's court . . . obtained from King John a charter empowering him and his successors to convert into military fees the tenements that were holden of their church in gavelkind. The archbishop's main object may have been to get money in the form of rents and scutages, instead of provender and boonworks, 'gavel-corn' and 'gavel-swine,' 'gavel-erth' and 'gavel-rip' . . ." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 273 (2d ed. 1899).

**gavelman** (gav-əl-mən). *Hist.* A tenant who is liable for money rent in addition to a customary service to the lord. • A gavelman was formerly a villein who had been released from

villeinage in consideration of money rent. — Also termed *gaveling man*.

**gavelmed** (gav-əl-meed). *Hist.* A tenant's customary service of mowing the lord's meadowland or grass for hay. — Also spelled *gavelmead*.

**gavelrep** (gav-əl-reep). *Hist.* A tenant's duty to reap the lord's fields at the lord's command; bederepe. — Also spelled *gavelrip*.

**gavelwerk** (gav-əl-wærk). *Hist.* Customary service, either by the tenant's own hands or with the aid of the tenant's carts or carriages.

**Gazette** (gə-zet). An official newspaper of the British government in which acts of State, Crown appointments, notices of bankruptcy, and other legal matters are reported. • Although the *London Gazette* is the most famous, there are also publications called the *Edinburgh Gazette* and the *Belfast Gazette* with similar purposes.

**gazumping** (gə-zəmp-ing). *Slang.* The improper sale of a house, usu. by raising the price after accepting an offer. • Gazumping can take different forms, the usu. one being when a seller raises the price after accepting the buyer's offer. But it may also occur when a competing buyer makes a higher bid than the one already accepted, thus encouraging the seller to back out of the earlier contract.

"[R]apidly rising house prices led sellers to believe that they have sometimes agreed to sell their property at too low a figure; they may therefore breach their agreement with the first buyer and make a second agreement to sell at a higher price, or they may inform the first buyer that they are not prepared to proceed unless he agrees to raise his price. This process (known for some obscure reason as 'gazumping') can cause some irritation and disappointment to buyers. It may also sometimes cause financial loss, because a buyer may spend money on a survey, or an application for a mortgage which then becomes so much money thrown away if the sale does not proceed." P.S. Atiyah, *An Introduction to the Law of Contract* 137 (3d ed. 1981).

**g.b.h.** See *grievous bodily harm* under HARM.

**GBMI.** *abbr.* GUILTY BUT MENTALLY ILL.

**gdn.** *abbr.* GUARDIAN.

**geld**, *n.* *Hist.* A tax paid to the Crown under Anglo-Saxon and Norman kings.

**geldable** (*geld-ə-bəl*), *adj. Hist.* (Of property) subject to tax or tribute. — Also spelled *gildable*.

**GEM.** See *growing-equity mortgage* under MORTGAGE.

**gender discrimination.** See *sex discrimination* under DISCRIMINATION.

**General Accounting Office.** The federal agency that provides legal and accounting assistance to Congress, audits and investigates federal programs, and settles certain contract claims against the United States. — Abbr. GAO.

**general administration.** See ADMINISTRATION.

**general administrative expense.** See EXPENSE.

**general administrator.** See ADMINISTRATOR (1).

**general agency.** See AGENCY (1).

**general agent.** See AGENT; INSURANCE AGENT.

**General Agreement on Tariffs and Trade.** A multiparty international agreement — signed originally in 1948 — that promotes international trade by lowering import duties and providing equal access to markets. • More than 130 nations are parties to the agreement. — Abbr. GATT.

**general appearance.** See APPEARANCE.

**general assembly.** **1.** The name of the legislative body in many states. **2.** (*cap.*) The deliberative body of the United Nations.

**general assignment.** See ASSIGNMENT (2).

**general assumpsit.** See ASSUMPSIT.

**general authority.** See AUTHORITY (1).

**general average.** See AVERAGE.

**general-average bond.** See BOND (2).

**general-average contribution.** See *general average* under AVERAGE.

**general average loss.** See LOSS (3).

**general-average statement.** *Maritime law.* A statement containing an exact calculation of the general average and each party's contributory share. See AVERAGE (3).

**general benefit.** See BENEFIT.

**general bequest.** See BEQUEST.

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

**general compromis.** See COMPROMIS.

**general contractor.** See CONTRACTOR.

**general counsel.** See COUNSEL.

**General Counsel's Memorandum.** *Tax law.* **1.** A written discussion, issued by the office of the Chief Counsel of the IRS, on the merits of a legal issue involving tax law. **2.** A written explanation, issued by the office of the Chief Counsel of the IRS, explaining the IRS's positions in revenue rulings and technical advice memorandums.

**general count.** See COUNT.

**General Court.** The name of the legislatures of Massachusetts and New Hampshire. • "General Court" was a common colonial-era term for a body that exercised judicial and legislative functions. Cf. COURT OF ASSISTANTS.

**general court-martial.** See COURT-MARTIAL.

**general covenant against encumbrances.** See *covenant against encumbrances* under COVENANT (4).

**general creditor.** See *unsecured creditor* under CREDITOR.

**general custom.** See CUSTOM.

**general damages.** See DAMAGES.

**general debt.** See DEBT.

**general demurrer.** See *general exception* under EXCEPTION.

**general denial.** See DENIAL.

**general deposit.** See DEPOSIT (2).

**general deputy.** See DEPUTY.

**general deterrence.** See DETERRENCE.

**general devise.** See DEVISE.

**general disability insurance.** See INSURANCE.

**general discharge.** See DISCHARGE (8).

**general election.** See ELECTION.

**general employer.** See EMPLOYER.

**general exception.** See EXCEPTION (1).

**general execution.** See EXECUTION (4).

**general executor.** See EXECUTOR.

**general expense.** See *general administrative expense* under EXPENSE.

**general fee conditional.** See *fee simple conditional* under FEE SIMPLE.

**general finding.** See FINDING OF FACT.

**general franchise.** See FRANCHISE (2).

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

**general guaranty.** See GUARANTY.

**general guardian.** See GUARDIAN.

**generalia specialibus non derogant** (jen-ə-ray-lee-ə spesh-ee-ay-lə-bəs non der-ə-gənt). [Latin “general things do not derogate from specific things”] The doctrine holding that general words in a later statute do not repeal an earlier statutory provision dealing with a special subject. • This principle illustrates the cautious approach that some courts have adopted in interpreting broad provisions, but there are many exceptions.

**general imparlance.** See IMPARLANCE.

**general improvement.** See IMPROVEMENT.

**general indorsement.** See *blank indorsement* under INDORSEMENT.

**general intangible.** See INTANGIBLE.

**general intent.** See INTENT (1).

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

**general jail delivery.** See JAIL DELIVERY.

**general jurisdiction.** See JURISDICTION.

**general jurisprudence.** See JURISPRUDENCE.

**General Land Office.** A former U.S. Interior Department division that exercised executive power relating to the public lands, including their survey, patenting, and sale or other disposition. • The General Land Office and the U.S. Grazing Service were consolidated into the Bureau of Land Management in 1946. See BUREAU OF LAND MANAGEMENT.

**general law.** See LAW.

**general ledger.** See LEDGER (1).

**general legacy.** See LEGACY.

**general legal principle.** See GENERAL PRINCIPLE OF LAW.

**general legislation.** See LEGISLATION.

**general letter of credit.** See LETTER OF CREDIT.

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

**general lien.** See LIEN.

**general listing.** See *open listing* under LISTING (1).

**generally accepted accounting principles.** The conventions, rules, and procedures that define approved accounting practices at a particular time. • These principles are issued by the Financial Accounting Standards Board for use by accountants in preparing financial statements. The principles include not only broad guidelines of general application but also detailed practices and procedures. — Abbr. GAAP. — Also termed *generally accepted accountancy principles*.

**generally accepted auditing standards.** The guidelines issued by the American Institute of Certified Public Accountants establishing an auditor’s professional qualities and the criteria

for the auditor's examination and required reports. — Abbr. GAAS.

**general manager.** See MANAGER.

**general mortgage.** See MORTGAGE.

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

**general-obligation bond.** See BOND (3).

**general occupant.** See OCCUPANT.

**general officer.** See OFFICER (2).

**general owner.** See OWNER.

**general pardon.** See AMNESTY.

**general partner.** See PARTNER.

**general partnership.** See PARTNERSHIP.

**general plea.** See *general denial* under DENIAL.

**general plea in bar.** See PLEA IN BAR.

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

**general power of appointment.** See POWER OF APPOINTMENT.

**general power of attorney.** See POWER OF ATTORNEY.

**general prayer.** See PRAYER FOR RELIEF.

**general principle of law.** 1. A principle widely recognized by peoples whose legal order has attained a certain level of sophistication. 2. *Int'l law.* A principle that gives rise to international legal obligations.

"[T]he adjective 'general' does not refer to several or many orders [i.e., legal systems] as do the general principles of national law, but indicates principles which are applied generally in all cases of the same kind which arise in international law (e.g. the principle of nonintervention)." Hermann Mosler, "General Principles of Law," in 2 *Encyclopedia of Public International Law* 512, 512 (1995).

3. A principle recognized in all kinds of legal relations, regardless of the legal system to which it belongs (state law, federal law, international law, etc.). — Also termed *general legal principle*.

**general property.** See PROPERTY.

**general publication.** See PUBLICATION.

**general reference.** See REFERENCE.

**general replication.** See REPLICATION.

**general reprisal.** See REPRISAL.

**general retainer.** See RETAINER.

**general revenue.** See REVENUE.

**general revenue fund.** See FUND (1).

**general rule.** See RULE.

**general sentence.** See SENTENCE.

**General Services Administration.** The independent federal agency that manages the federal government's property and records. • The General Services Administration supervises the construction and operation of buildings, procures and distributes supplies, disposes of surplus property, operates traffic and communications facilities, stores strategic and critical materials, manages automatic data processing systems, and supervises government document- and information-security programs. — Abbr. GSA.

**general ship.** See SHIP.

**general special imparlance.** See IMPARLANCE.

**general statute.** See STATUTE.

**general strike.** See STRIKE.

**general synod.** See SYNOD.

**general tail.** See *tail general* under TAIL.

**general tax.** See TAX.

**general tenancy.** See TENANCY.

**general term.** See TERM (5).

**general traverse.** See TRAVERSE.

**general usage.** See USAGE.

**general verdict.** See VERDICT.

**general-verdict rule.** The principle that when a general verdict is returned on multiple causes of action (or theories of recovery), it is presumed on appeal that the jury found in the prevailing party's favor on each cause of action.

**general verdict subject to a special case.** See VERDICT.

**general verdict with interrogatories.** See VERDICT.

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

**general warranty.** See WARRANTY (1).

**general warranty deed.** See *warranty deed* under DEED.

**general welfare.** See WELFARE.

**General Welfare Clause.** U.S. Const. art. I, § 8, cl. 1, which empowers Congress to levy taxes and pay debts in order to provide for the country's general welfare. • The Supreme Court has broadly interpreted this clause to allow Congress to create, for example, the social-security system. — Also termed *Welfare Clause*.

**general words.** Language used in deeds to convey not only the specific property described in the conveyance but also all easements, privileges, and appurtenances that may belong to the property.

**generation.** 1. A single degree or stage in the succession of persons in natural descent. 2. The average time span between the birth of parents and the birth of their children.

**generation-skipping tax.** See TAX.

**generation-skipping transfer.** A conveyance of assets to a person more than one generation removed from the transferor, that is, a skip person. • For example, a conveyance either directly or in trust from a grandparent to a grandchild is a generation-skipping transfer subject to a generation-skipping transfer tax. IRC (26 USCA) §§ 2601–2663. See *generation-skipping transfer tax* under TAX; *generation-skipping trust* under TRUST; SKIP PERSON.

**generation-skipping transfer tax.** See TAX.

**generation-skipping trust.** See TRUST.

**generic, adj.** 1. Common or descriptive, and thus not eligible for trademark protection; non-proprietary <a generic name>. 2. Not having a trademark or brand name <generic drugs>.

**genericness.** See GENERICNESS.

**generic drug.** See DRUG.

**generic-drug law.** A statute that allows pharmacists to substitute a generic drug for a brand-name drug under specified conditions. • Most states have enacted generic-drug laws to ensure that less-expensive generic drugs are available to consumers.

**genericide** (jə-ner-ə-sid). *Trademarks.* The loss or cancellation of a trademark that no longer distinguishes the owner's product from others' products. • Genericide occurs when a trademark becomes such a household name that the consuming public begins to think of the mark not as a brand name but as a synonym for the product itself. Examples of trademarks that have been "killed" by genericide include *aspirin* and *escalator*.

**genericism** (jə-ner-ə-siz-əm). See GENERICNESS.

**generic name.** *Trademarks.* A term that describes something generally without designating the thing's source or creator, such as the word "car" or "sink." • Generic names cannot be protected as trademarks. — Also termed *generic term*; *generic mark*; *common descriptive name*.

**genericness, n.** The state or condition of being generic <an affirmative defense of genericness in a trademark suit>. — Also termed *genericness*; *genericism*.

**generic term.** See GENERIC NAME.

**genetic fingerprinting.** See DNA IDENTIFICATION.

**Geneva Convention** (jə-nee-və). An international agreement establishing the proper treatment of prisoners of war and of persons injured or killed in battle. • Drafted in 1864, the Convention has since been adopted in revised form by most nations.

**genocide** (jen-ə-sid). *Int'l law.* An act committed with the intent to destroy, in whole or part, a national, ethnic, racial, or religious group. • Under the terms of the Geneva Convention of

1948, genocide is a crime (whether committed during war or peace) subject to prosecution either in the nation where the act was committed or by an international tribunal having jurisdiction elsewhere.

"The draft Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly on December 9, 1948 and unanimously recommended for adherence to the members of the United Nations. It came into force in October, 1950 between twenty-four states. The term 'genocide' was first proposed by Dr. Lemkin in the course of the war and incorporated on his suggestion into the Indictment of the Major German War Criminals. The Assembly Resolution on Genocide of December 11, 1946, and the Convention of 1948, are also the result of a remarkable one-man campaign." Georg Schwarzenberger, *Power Politics: A Study of International Society* 634 (2d ed. 1951).

**Genoese lottery** (jen-oh-eez or -ees). See LOTTERY.

**gens** (jenz), *n.* [Latin] *Roman law*. A clan or group of families who share the same name and (supposedly) a common ancestor; EXTENDED FAMILY. • Members of a *gens* are freeborn and possess full civic rights. Pl. **gentes**. See JUS GENTIUM.

"A wider group still is the *gens*, of great importance in early law though its importance was gone in classical times. This consisted of all who bore the same *nomen*, the gentile name." W.W. Buckland, *A Manual of Roman Private Law* 61 (2d ed. 1953).

**gentes** (jen-teez). [Latin] *Roman law*. The peoples or nations of the world.

**gentile** (jen-til). [Latin] *Roman law*. A member of a *gens*. See GENS.

**gentleman**. *Hist.* 1. A man of noble or gentle birth or rank; a man above the rank of yeoman. 2. A man belonging to the landed gentry. • Today the term has no precise legal meaning.

**gentleman's agreement**. See GENTLEMEN'S AGREEMENT.

**Gentleman Usher of the Black Rod**. An officer of the House of Lords who has various ceremonial duties, including the summoning of the members of the House of Commons to the House of Lords when a bill is to receive royal approval. • The office dates from the 14th century.

**gentlemen's agreement**. An unwritten agreement that, while not legally enforceable, is secured by the good faith and honor of the parties. — Also spelled *gentleman's agreement*.

**gentrification**, *n.* The restoration and upgrading of a deteriorated or aging urban neighborhood by middle-class or affluent persons, resulting in increased property values and often in displacement of lower-income residents. — **gentrify**, *vb.*

**genuine**, *adj.* 1. (Of a thing) authentic or real; something that has the quality of what it is purported to be or to have <the plaintiff failed to question whether the exhibits were genuine>. 2. (Of an instrument) free of forgery or counterfeiting <the bank teller could not determine whether the signature on the check was genuine>. UCC § 1-201(18).

**genuine issue of material fact**. *Civil procedure*. In the law of summary judgments, a triable, substantial, or real question of fact supported by substantial evidence. • An issue of this kind precludes entry of summary judgment.

**genus** (jee-nəs). A general class comprising several species or divisions. • For example, patent law is a species within the genus of intellectual property; burglary is a species within the genus of crime. In the law of sales, *genus* referred to fungibles, while *species* referred to specific, individual items.

**geodetic-survey system** (jee-ə-det-ik). A federally created land-description method consisting of nationwide marks (or *benches*) made at longitude and latitude points. • The geodetic-survey system integrates most of the real property in the United States into one unified form of measurement.

**geographically descriptive trademark**. See TRADEMARK.

**geographic market**. See MARKET.

**german** (jər-mən), *adj.* Having the same parents or grandparents; closely related.

**brother-german**. A full brother; a child of both of one's own parents.

**cousin-german**. A first cousin; a child of a full sibling of one's mother or father.

**germane** (jər-mayn), *adj.* Relevant; pertinent <the caselaw cited in the brief was not germane to the legal issue pending before the court>.

**germanus** (jər-may-nəs). [Latin] *Roman law*. 1. *adj.* Having the same father and mother. 2. *n.*

A whole brother; a child of both of one's own parents.

**gerrymandering** (jer-ee-man-dər-ing or ger-ee-), *n.* **1.** The practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party an unfair advantage by diluting the opposition's voting strength. — Also termed *political gerrymandering*. **2.** The practice of dividing any geographical or jurisdictional area into political units (such as school districts) to give some group a special advantage. — Also termed *jurisdictional gerrymandering*. — **gerrymander**, *vb.* Cf. REAPPORTIONMENT.

**gersum** (gər-səm). *Hist.* **1.** Money paid for a thing; specif., compensation paid by a tenant to a superior on entering a holding. **2.** A penalty or amercement paid for an offense. — Also spelled *garsumme*; *gersuma*; *gersume*.

**gersumarius** (jər-s[y]ə-mair-ee-əs). *Hist.* Fiable; liable to be fined at the discretion of a feudal superior. • A villein who gave his daughter in marriage was *gersumarius* — he was liable to pay a fine to the lord.

**gestio** (jes-chee-oh). [Latin] *Roman law.* **1.** Behavior or conduct. See GESTIO PRO HAEREDE. **2.** The management of a thing, esp. a transaction.

**negotiorum gestio** (ni-goh-shee-or-əm jes-chee-oh). See NEGOTIORUM GESTIO.

**gestio pro haerede** (jes-chee-oh proh her-ə-dee). [Latin "behavior as heir"] *Roman & Hist. Scots law.* An appointed heir's conduct (such as selling or leasing the decedent's property) that indicates the heir's intent to receive the inheritance and thereby take on the estate's debts.

**gestor** (jes-tor). [Latin] *Roman law.* **1.** One who carries on a business. **2.** NEGOTIORUM GESTOR.

**gestu et fama** (jes-t[y]oo et fay-mə). [Latin "demeanor and reputation"] *Hist.* A writ used by a person who had been imprisoned because of a poor reputation in the community to gain release from jail pending the arrival of justices with commissions of gaol delivery. See COMMISSION OF GAOL DELIVERY.

**gestum** (jes-təm). [Latin] *Roman law.* A deed or an act; a thing done. • *Gestum* is synonymous with *factum*. See FACTUM (2).

**gesture.** A motion of the body calculated to express a thought or emphasize a certain point

<the prosecutor was known for her dramatic gestures during closing argument>.

**gibbet** (jib-it), *n.* *Hist.* A post with one arm extending from the top, from which criminals are either executed by hanging or suspended after death as a warning to other potential offenders; a type of gallows.

**double gibbet.** A gibbet with two arms extending from its top so that it resembles a capital "T."

**gibbet law.** See HALIFAX LAW.

**GIC.** See *guaranteed investment contract* under INVESTMENT CONTRACT.

**gift, n.** **1.** The act of voluntarily transferring property to another without compensation. **2.** A thing so transferred. — **gift, vb.**

**absolute gift.** See *inter vivos gift*.

**anatomical gift.** A testamentary donation of a bodily organ or organs, esp. for transplant or for medical research.

**antenuptial gift.** See *prenuptial gift*.

**class gift.** A gift to a group of persons, uncertain in number at the time of the gift but to be ascertained at a future time, who are all to take in definite proportions, the share of each being dependent on the ultimate number in the group.

"The typical class gift is to 'children,' 'issue,' 'heirs,' 'brothers and sisters,' 'nieces and nephews,' 'grandchildren.' A class gift is one in which the donor intends to benefit a group or a class of persons, as distinguished from specific individuals; the class gift donor is said to be 'group-minded.' The class gift is one in which the donor intends that the number of donees, from the time of the delivery of the instrument of gift in the case of the *inter vivos* gift, or from the time of the execution of the will in the case of the testamentary gift, is subject to fluctuation by way of increase or decrease, or by way of increase only, or by way of decrease only, depending on the circumstances of the gift." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 136 (2d ed. 1984).

**completed gift.** A gift that is no longer in the donor's possession and control. • Only a completed gift is taxable under the gift tax.

**gift causa mortis** (kaw-zə mor-tis). A gift made in contemplation of the donor's imminent death. • The three essentials are that (1) the gift must be made with a view to the donor's present illness or peril, (2) the donor must actually die from that illness or peril, without ever recovering, and (3) there must be a delivery. Even though *causa mortis* is the more usual word order in modern law,

the correct Latin phrasing is *mortis causa* — hence *gift mortis causa*. — Also termed *donatio causa mortis*; *donatio mortis causa*; *gift in contemplation of death*; *transfer in contemplation of death*.

“A ‘gift causa mortis’ ... is testamentary, and it is similar to testamentary disposition in the respect that there remains with the donor the power to revoke the gift until his death. In some respects, a gift causa mortis may be said to resemble a contract, for mutual consent and the concurrent will of both parties are necessary to the validity of the transfer.” 38A C.J.S. *Gifts* § 85, at 276-77 (1996).

**gift inter vivos.** See *inter vivos gift*.

**gift in trust.** A gift of legal title to property that is to be used to benefit the cestui que trust (i.e., the beneficiary).

**gift over.** A property gift (esp. by will) that takes effect after the expiration of a preceding estate in the property (such as a life estate or fee simple determinable) <to Sarah for life, with gift over to Don in fee>.

**gift splitting.** See *split gift*.

**gratuitous gift.** A gift made without consideration, as most gifts are. • Strictly speaking, the term looks redundant, but it answers to the *donum gratuitum* of Roman law.

**inter vivos gift** (in-tər vi-vohs or -vee-vohs). A gift made during the donor’s lifetime and delivered with the intention of irrevocably surrendering control over the property. — Also termed *gift inter vivos*; *lifetime gift*; *absolute gift*.

**manual gift.** *Civil law.* A gift of movable, tangible property, made by delivery without any formalities.

**onerous gift** (ohn-ə-rəs or on-ə-rəs). A gift made subject to certain conditions imposed on the recipient.

**prenuptial gift** (pree-nəp-shəl). A gift of property from one spouse to another before marriage. • In community-property states, prenuptial gifts are often made to preserve the property’s classification as separate property. — Also termed *antenuptial gift*.

**split gift.** *Tax.* A gift that is made by one spouse to a third person and that, for gift-tax purposes, both spouses treat as being made one-half by each spouse; a gift in which the spouses combine their annual gift-tax exclusions. • A split gift, for example, is eligible for two annual exclusions of \$10,000 each, or a total of \$20,000 for one gift. See *annual exclusion* under EXCLUSION (1). — Also termed *gift splitting*; *gift-splitting election*.

**substitute gift.** A testamentary gift to one person in place of another who is unable to take under the will for some reason. — Also termed *substitutional gift*.

**taxable gift.** A gift that, after adjusting for the annual exclusion and applicable deductions, is subject to the federal unified transfer tax. IRC (26 USCA) § 2503.

**testamentary gift** (tes-tə-men-tə-ree or -trɛ). A gift made in a will.

**vested gift.** An absolute gift, being neither conditional nor contingent, though its use or enjoyment might not occur until sometime in the future.

**gift deed.** See DEED.

**gift enterprise.** 1. A scheme for the distribution of items by chance among those who have purchased shares in the scheme. 2. A merchant’s scheme to induce sales for market value by giving buyers tickets that carry a chance to win a prize. • Gift enterprises are regulated by state law. See LOTTERY.

**gift in contemplation of death.** See *gift causa mortis* under GIFT.

**gift inter vivos.** See *inter vivos gift* under GIFT.

**gift in trust.** See GIFT.

**gift over.** See GIFT.

**gift splitting.** See *split gift* under GIFT.

**gift-splitting election.** See *split gift* under GIFT.

**Gifts to Minors Act.** See UNIFORM TRANSFERS TO MINORS ACT.

**gift tax.** See TAX.

**gilda mercatoria** (gil-də mər-kə-tor-ee-ə). [Law Latin] *Hist.* A merchant guild; an incorporated society of merchants having exclusive trading rights within a town.

**gilour** (gɪ-lər). [Law French] *Hist.* A guiler; a person who cheats or deceives. • *Gilour* referred to a person who sold false goods, such as a person who sold pewter as silver.

**gilt-edged, adj.** (Of a security) having the highest rating for safety of investment; exceptionally safe as an investment.



**Ginnie Mae (jin-ee may).** See GOVERNMENT NATIONAL MORTGAGE ASSOCIATION.

**girth** (gərth). [Old English] **1.** A measure of length, equal to a yard. • This term, which was used in Saxon and early English law, was taken from the circumference of a man's body. **2.** The area surrounding a church. **3.** A place of sanctuary. **4.** A band or strap that encircles the body of an animal to fasten something (usu. a saddle) to its back.

**gisement (jis- or jiz-mənt).** [Law French] *Archaic.* See AGISTMENT.

**giser (ji-sər), vb.** [Law French] *Hist.* (Of an action) to lie; to be capable of being brought as a suit in court. • This verb, in its inflected form *gist*, appeared in such phrases as *ou assise ne gist point* ("when an assise does not lie"), *le action bien gist* ("the action well lies"), and *gist en le bouche* ("it lies in the mouth"), and *cest action gist* ("this action lies").

**gisetaker (jis- or jiz-tay-kər).** *Archaic.* See AGISTER.

**gist** (jist). **1.** The ground or essence (of a legal action) <the gist of the crime>. **2.** The main point <she skimmed the brief to get the gist of it>. • This noun derives from the Law French verb *giser* "to lie." See GISER.

**give, vb.** **1.** To voluntarily transfer (property) to another without compensation <Jack gave his daughter a car on her birthday>. **2.** To confer by a formal act <the First Amendment gives all citizens the right to free speech>. **3.** To present for another to consider <the witness gave compelling testimony before the jury>. **4.** (Of a jury) to impose or award by verdict <the jury gave the defendant the death penalty> <the jury gave the plaintiff \$1,000 in damages>.

**give bail, vb.** To post security for one's appearance in court <the court ordered the accused to give bail in the amount of \$10,000>. — Also termed *post bail*.

**give color, vb.** *Hist.* To admit, either expressly or impliedly by silence, an apparent right in an opponent's allegations. • In common-law pleading, a defendant's plea of confession and avoidance had to give color to the plaintiff's allegations in the complaint or the plea would be fatally defective. See COLOR (2).

**give, devise, and bequeath, vb.** To transfer property by will <I give, devise, and bequeath

all the rest, residue, and remainder of my estate to my beloved daughter Sarah>. See BEQUEST.

**give way, vb.** *Maritime law.* (Of a vessel) to deviate from a course, or slow down, in accordance with navigation rules, to allow a second vessel to pass without altering its course.

**giving in payment.** *Civil law.* The act of discharging a debt by giving something to the creditor (with the creditor's consent) other than what was originally called for. • The phrase is a translation of the French *dation en paiement* and derives from the Roman *datio in solutum*. See DATATION EN PAIEMENT. Cf. ACCORD AND SATISFACTION.

**gladius** (glay-dee-əs). [Latin "sword"] *Roman law.* The emblem of the emperor's power, esp. the power to punish criminals. See JUS GLADII.

**glave** (glayv). *Hist.* A sword, lance, or horseman's staff. • The glave was one of the weapons allowed in a trial by combat.

**glamour stock.** See STOCK.

**glass ceiling.** An actual or supposed upper limit of professional advancement, esp. for women, as a result of discriminatory practices.

**Glass-Steagall Act.** A federal statute that protects bank depositors by restricting the securities-related business of commercial banks, specif. by prohibiting banks from owning brokerage firms or engaging in the brokerage business. 12 USCA § 378. — Also termed *Banking Act of 1933*.

**glebae ascriptitii.** See ADSCRIPTI GLEBAE.

**glebe** (gleeb). [Latin "clod of earth"] **1.** *Roman law.* The soil of an inheritance; an agrarian estate. • *Servi addicti glebae* ("slaves bound to the land") were serfs attached to and passing with the estate. **2.** *Eccles. law.* Land possessed as part of the endowment or revenue of a church or ecclesiastical benefice.

**Globe election.** *Labor law.* The procedure by which a group of employees is given the opportunity to decide whether to be represented as a distinct group or to be represented as a part of a larger, existing unit. *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937). — Also termed *self-determination election*.

**gloss**, *n.* 1. A note inserted between the lines or in the margin of a text to explain a difficult or obscure word in the text <this edition of Shakespeare's works is bolstered by its many glosses on Elizabethan English>. 2. A collection of explanations; a glossary <the hornbook's copious gloss>. 3. Pronouncements considered collectively, usu. by courts; interpretation <the statute and its judicial gloss>.

**glossators** (glah-say-tərz). (*usu. cap.*) A group of Italian juriconsults who, from the 11th to the 13th centuries, were primarily responsible for the revival of the study of Roman law. ● They originally worked by glossing (that is, explaining in the margin) difficult or unclear passages, and gradually their writings blossomed into full-blown commentaries and discussions. See POSTGLOSSATORS.

**Gloucester, Statute of** (glos-tər). *Hist.* A statute that allowed a successful plaintiff to recover costs in addition to damages. ● The statute was enacted in Gloucester. 6 Edw. I, ch. 1 (1278).

**glove silver**. *Hist.* Money given as an incentive or reward to a court officer, esp. money given by a sheriff to an assize official when no prisoners were left by the assize for execution. ● The name derives from the practice of giving money to servants, ostensibly to buy gloves with.

**GMI**. *abbr.* GUILTY BUT MENTALLY ILL.

**GNMA**. *abbr.* GOVERNMENT NATIONAL MORTGAGE ASSOCIATION.

**GNP**. *abbr.* GROSS NATIONAL PRODUCT.

**go bail**, *vb.* *Archaic.* To act as a surety on a bail bond.

**God-bote**. See BOTE (2).

**God-gild**. *Hist.* Money paid or something offered for the service of God; esp., a payment of money or a gift (for example, land) to a church. See FRANKALMOIN.

**God's penny**. *Hist.* Earnest money; a small sum paid on the striking of a bargain. — Also termed *denarius Dei*; *godpenny*.

"It is among the merchants that the giving of earnest first ... becomes a form which binds both buyer and seller in a contract of sale. To all appearances this change was not accomplished without the intermediation of a religious idea. All over western Europe the earnest becomes known as the God's penny or Holy Ghost's penny (*denarius Dei*) ... ." 2 Frederick Pollock & Fred-

eric W. Maitland, *The History of English Law Before the Time of Edward I* 208 (2d ed. 1899).

**go forward**, *vb.* To commence or carry on with the presentation of a case in court <after the lunch recess, the judge instructed the plaintiff to go forward with its case>.

**go hence without day**. (Of a defendant to a lawsuit) to be finished with legal proceedings without any further settings on the court's calendar. ● Thus, a defendant who "goes hence without day" succeeds in getting a case finally resolved, usu. by dismissal. The phrase derives from the Law French phrase *aller sans jour*, and over time defendants came to use it to request that the case against them be dismissed without the necessity of a day in court. — Sometimes shortened to *go without day*; *without day*. See SINE DIE.

**going-and-coming rule**. 1. The principle that torts committed by an employee while commuting to or from work are generally outside the scope of employment. 2. The principle that denies workers'-compensation benefits to an employee injured while commuting to or from work.

**going concern**. A commercial enterprise actively engaging in business with the expectation of indefinite continuance.

**going-concern value**. See VALUE.

**going price**, *n.* The prevailing or current market value of something. See *fair market value* under VALUE.

**going private**. The process of changing a public corporation into a close corporation by terminating the corporation's status with the SEC as a publicly held corporation and by having its outstanding publicly held shares acquired by a single shareholder or a small group.

**going public**. The process of a company's selling stock to the investing public for the first time (after filing a registration statement under applicable securities laws), thereby becoming a public corporation.

**going through the bar**. *Hist.* A daily process in which the court would ask all barristers present whether they had motions to present. ● This practice, which ended in 1873, was conducted according to seniority, except for the last day of a term, when the junior barristers were asked first.

**going to the country.** *Hist.* The act of requesting a jury trial. • A defendant was said to be “going to the country” by concluding a pleading with the phrase “and of this he puts himself upon the country.” Similarly, a plaintiff would conclude a pleading with the phrase “and this the plaintiff prays may be enquired of by the country.” — Also termed *go to the country*. Cf. CONCLUSION TO THE COUNTRY.

**going value.** See *going-concern value* under VALUE.

**going witness.** See WITNESS.

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

**gold clause.** A provision calling for payment in gold. • Gold clauses, which are now void, were once used in contracts, bonds, and mortgages.

**golden handcuffs.** Remuneration set at such a high level that the employee earning it cannot leave the firm or company and receive commensurate pay elsewhere. • As a result, the employee often stays in the position even if it is otherwise unrewarding or unpleasant.

**golden handshake.** An employee dismissal that includes generous compensation.

**golden parachute.** An employment-contract provision that grants an upper-level executive lucrative severance benefits — including long-term salary guarantees or bonuses — if control of the company changes hands (as by a merger). Cf. TIN PARACHUTE.

“Key executives may be provided with significant employment contract clauses that are triggered only by a change in the firm’s control through a sale, merger, acquisition, or takeover. These contract clauses are commonly termed *golden parachutes*, and they generally provide that if control over the employer’s business occurs and the new management terminates the executive, additional compensation will be received. . . . Golden parachutes are useful in providing long-term incentives for executives to enter industries in which takeover chances are above average. Generally, golden parachutes do not violate public policy.” Kurt H. Decker & H. Thomas Felix II, *Drafting and Revising Employment Contracts* § 3.33, at 84 (1991).

**golden rule.** The principle that, in construing written instruments, a court should adhere to the grammatical and ordinary sense of the words unless that adherence would lead to some manifest absurdity; esp., in statutory construction, the principle that if a statute’s literal meaning would lead to an absurd or unjust result, or even to an inconsistency within the

statute itself, the statute should be interpreted in a way that avoids such a result or inconsistency. — Also termed *Baron Parke’s rule*. Cf. MISCHIEF RULE; PLAIN-MEANING RULE; EQUITY-OF-THE-STATUTE RULE.

“[T]he ‘golden’ rule . . . allows for a departure from the literal rule when the application of the statutory words in the ordinary sense would be repugnant to or inconsistent with some other provision in the statute or even when it would lead to what the court considers to be an absurdity. The usual consequence of applying the golden rule is that words which are in the statute are ignored or words which are not there are read in. The scope of the golden rule is debatable, particularly so far as the meaning of an ‘absurdity’ is concerned.” Rupert Cross, *Statutory Interpretation* 14 (1976).

**golden-rule argument.** A jury argument in which a lawyer asks the jurors to reach a verdict by imagining themselves or someone they care about in the place of the injured plaintiff or crime victim. • Because golden-rule arguments ask the jurors to become advocates for the plaintiff or victim and to ignore their obligation to exercise calm and reasonable judgment, these arguments are widely condemned and are considered improper in most states.

**goldsmiths’ notes.** *Hist.* Bankers’ cash notes; promissory notes given by bankers to customers as acknowledgments of the receipt of money. • This term derives from the London banking business, which originally was transacted by goldsmiths.

**gold standard.** A monetary system in which currency is convertible into its legal equivalent in gold or gold coin. • The United States adopted the gold standard in 1900 and abandoned it in 1934. Cf. PAPER STANDARD.

**good, adj.** 1. Sound or reliable <a good investment>. 2. Valid, effectual, and enforceable; sufficient under the law <good title>.

**good, n.** See GOODS.

**good and lawful fence.** See LAWFUL FENCE.

**good and merchantable abstract of title.** See ABSTRACT OF TITLE.

**good and valuable consideration.** See *valuable consideration* under CONSIDERATION.

**good and workmanlike.** (Of a product or service) characterized by quality craftsmanship; constructed or performed in a skillful way or

method <the house was built in a good and workmanlike manner>.

**good behavior.** 1. A standard by which judges are considered fit to continue their tenure. 2. Orderly conduct, which in the context of penal law allows a prisoner to reduce the time spent in prison. Cf. GOOD TIME.

**good cause.** See CAUSE (2).

**good cause shown.** See *good cause* under CAUSE (2).

**good consideration.** See CONSIDERATION.

**good delivery.** See DELIVERY.

**good faith, n.** A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage. — Also termed *bona fides*. — **good-faith, adj.** Cf. BAD FAITH.

"The phrase 'good faith' is used in a variety of contexts, and its meaning varies somewhat with the context. Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party; it excludes a variety of types of conduct characterized as involving 'bad faith' because they violate community standards of decency, fairness or reasonableness. The appropriate remedy for a breach of the duty of good faith also varies with the circumstances." Restatement (Second) of Contracts § 205 cmt. a (1981).

**good-faith bargaining.** *Labor law.* Negotiations between an employer and a representative of employees, usu. a union, in which both parties meet and confer at reasonable times with open minds and with a view to reaching an agreement. ● The National Labor Relations Act requires good-faith bargaining, and failure to bargain in good faith is considered an unfair labor practice. 29 USCA §§ 151-169. See UNFAIR LABOR PRACTICE.

**good-faith exception.** *Criminal procedure.* An exception to the exclusionary rule whereby evidence obtained under a warrant later found to be unsupported by probable cause is nonetheless admissible if the police reasonably relied on the notion that the warrant was valid. ● The good-faith exception was adopted by the Supreme Court in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405 (1984).

**good-faith margin.** See MARGIN.

**good-faith purchaser.** See *bona fide purchaser* under PURCHASER.

**good health.** *Insurance.* A state of reasonable healthiness; a state of health free from serious disease. ● Good health, a phrase often appearing in life-insurance policies, does not mean perfect health. — Also termed *sound health*.

"As used in policies of insurance, there is no material difference between the terms 'sound health' and 'good health,' and generally it appears that the two terms are considered to be synonymous. Such expressions are comparative terms, and the rule followed generally is that the term 'good health' or 'sound health,' when used in an insurance contract, means that the applicant has no grave, important, or serious disease, and is free from any ailment that seriously affects the general soundness or healthfulness of his system." 43 Am. Jur. 2d *Insurance* § 1061, at 1069 (1982).

**good jury.** See *special jury* under JURY.

**good moral character, n.** 1. A pattern of behavior that is consistent with the community's current ethical standards and that shows an absence of deceit or morally reprehensible conduct. ● An alien seeking to be naturalized must show good moral character in the five years preceding the petition for naturalization. 2. A pattern of behavior conforming to a profession's ethical standards and showing an absence of moral turpitude. ● Good moral character is usu. a requirement of persons applying to practice a profession such as law or medicine.

**good offices.** *Int'l law.* The involvement of one or more countries or an international organization in a dispute between other countries with the aim of contributing to its settlement or at least easing relations between the disputing countries.

**Goodright.** *Hist.* A name sometimes used as a fictitious plaintiff in an ejectment action. ● "John Doe" was used more frequently. — Also termed *Goodtitle*. Cf. JOHN DOE.

**goods.** 1. Tangible or movable personal property other than money; esp., articles of trade or items of merchandise <goods and services>. ● The sale of goods is governed by Article 2 of the UCC. 2. Things that have value, whether tangible or not <the importance of social goods varies from society to society>.

"'Goods' means all things, including specially manufactured goods, that are movable at the time of identification to a contract for sale and future goods. The term includes the unborn young of animals, growing crops,

and other identified things to be severed from real property . . . . The term does not include money in which the price is to be paid, the subject matter of foreign exchange transactions, documents, letters of credit, letter-of-credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, or general intangibles." UCC § 2-102(a)(24).

**capital goods.** Goods (such as equipment and machinery) used for the production of other goods or services. — Also termed *industrial goods*.

**consumer goods.** Goods bought or used primarily for personal, family, or household purposes, and not for resale or for producing other goods. UCC § 9-109(1).

**customers' goods.** *Insurance.* Goods belonging to the customers of a fire-insurance policyholder; goods held by a policyholder as a bailee.

**distressed goods.** Goods sold at unusually low prices or at a loss.

**durable goods.** Consumer goods that are designed to be used repeatedly over a long period, such as automobiles or personal computers. — Also termed *durables*; *hard goods*.

**fungible goods** (fən-jə-bəl). Goods that are interchangeable with one another; goods that, by nature or trade usage, are the equivalent of any other like unit, such as coffee or grain. UCC § 1-201(17).

**future goods.** Goods that will come into being, such as those yet to be manufactured; goods that are not both existing and identified. • A purported present sale of future goods or any interest in them operates as a contract to sell. UCC § 2-105(2).

**hard goods.** See *durable goods*.

**household goods.** Goods that are used in connection with a home. • This term arises when a warehouse claims a lien on what he or she asserts are "household" goods. According to the UCC, a warehouse may claim a lien on a depositor's furniture, furnishings, and personal effects that are used in a dwelling. UCC § 7-209(3)(b).

**industrial goods.** See *capital goods*.

**mobile goods.** Goods that are normally used in more than one jurisdiction (such as shipping containers and road-construction machinery) and that are held by the debtor as equipment or leased by the debtor to others. • Under the Uniform Commercial Code, the procedure for perfecting a security interest in mobile goods is generally defined by the law of the state where the debtor is located. UCC § 9-103(3).

**nonconforming goods.** Goods that fail to meet contractual specifications, allowing the buyer to reject the tender of the goods or to revoke their acceptance. UCC §§ 2-601, 2-608. See PERFECT-TENDER RULE.

**ordinary goods.** Goods that are anything other than mobile goods, minerals, or goods covered by a certificate of title. UCC § 9-103(1)(a).

**prize goods.** Goods captured at sea during wartime.

**soft goods.** Consumer goods (such as clothing) that are not durable goods.

### Good Samaritan doctrine (sə-mar-i-tən).

*Torts.* The principle that a person who is injured while attempting to aid another in imminent danger, and who then sues the one whose negligence created the danger, will not be charged with contributory negligence unless the rescue attempt is an unreasonable one or the rescuer acts unreasonably in performing the attempted rescue. Cf. EMERGENCY DOCTRINE; RESCUE DOCTRINE; LOST-CHANCE DOCTRINE.

**good-samaritan law.** A statute that exempts from liability a person (such as an off-duty physician) who voluntarily renders aid to another in imminent danger but negligently causes injury while rendering the aid. • Some form of good-samaritan legislation has been enacted in all 50 states and in the District of Columbia. — Also written *Good Samaritan law*. — Also termed *good-samaritan statute*. Cf. GOOD SAMARITAN DOCTRINE.

"The so-called 'Good Samaritan Statutes' . . . do not require aid to be given. They merely encourage doctors to stop and give aid to strangers in emergency situations by providing that no physician who *in good faith* renders such aid shall be liable in civil damages as a result of acts or omissions in rendering such aid. Some states have enacted statutes that require a person who is able to do so with no danger or peril to himself to come to the aid of another who is exposed to grave physical harm." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 661 (3d ed. 1982).

**goods and chattels** (chat-əlz), *n.* Loosely, personal property of any kind; occasionally, tangible personal property only.

**good time.** The credit awarded to a prisoner for good conduct, which can reduce the duration of the prisoner's sentence. Cf. GOOD BEHAVIOR; EARNED TIME.

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

**goodwill.** A business's reputation, patronage, and other intangible assets that are considered when appraising the business, esp. for purchase; the ability to earn income in excess of the income that would be expected from the business viewed as a mere collection of assets. — Also written *good will*. Cf. *going-concern value* under VALUE.

"Good will is to be distinguished from that element of value referred to variously as going-concern value, going value, or going business. Although some courts have stated that the difference is merely technical and that it is unimportant to attempt to separate these intangibles, it is generally held that going-concern value is that which inheres in a plant of an established business." 38 Am. Jur. 2d *Good Will* § 2, at 913 (1968).

**goose case.** See WHITEHORSE CASE.

**gore** (gor), *n.* **1. Hist.** A small, narrow slip of land. **2.** A small (often triangular) piece of land, such as may be left between surveys that do not close. **3.** In some New England states (such as Maine and Vermont), a county's subdivision that has little population and thus is not organized as a town.

**Gothland sea laws.** See LAWS OF WISBY.

**go to protest.** (Of commercial paper) to be dishonored by nonpayment or nonacceptance <the draft will go to protest>. See DISHONOR (1); PROTEST (2).

**go to the country.** See GOING TO THE COUNTRY.

**govern, vb.** (Of a precedent) to control a point in issue <the *Smith* case will govern the outcome of the appeal>.

**governing body.** **1.** GOVERNMENT (2). **2.** A group of (esp. corporate) officers or persons having ultimate control <the board of directors is the governing body of XYZ, Inc.>.

**government.** **1.** The structure of principles and rules determining how a state or organization is regulated. **2.** The sovereign power in a nation or state. **3.** An organization through which a body of people exercise political authority; the machinery by which sovereign power is expressed <the Canadian government>. • In this sense, the term refers collectively to the political organs of a country regardless of their function or level, and regardless of the subject matter they deal with. Cf. NATION; STATE.

**central government.** See *federal government* (1).

**de facto government** (di fak-toh). **1.** A government that has taken over the regular government and exercises sovereignty over a nation. **2.** An independent government established and exercised by a group of a country's inhabitants who have separated themselves from the parent state.

**federal government.** **1.** A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national political matters. — Also termed (in federal states) *central government*. **2.** The U.S. government. — Also termed *national government*.

**local government.** The government of a particular locality, such as a city or county; a governing body at a lower level than the state government. • The term includes a school district, fire district, transportation authority, and any other special-purpose district or authority. — Also termed *municipal government*.

**mixed government.** A government containing a blend of forms, as in democracy and monarchy.

**municipal government.** See *local government*.

**national government.** See NATIONAL GOVERNMENT, *federal government* (2).

**proprietary government.** *Hist.* A government granted by the Crown to an individual, in the nature of a feudatory principality, with powers of legislation formerly belonging to the owner of a county palatine. Cf. COUNTY PALATINE.

**provisional government.** A government temporarily established to govern until a permanent one is organized to replace it.

**state government.** The government of a state of the United States.

**4.** The executive branch of the U.S. government. **5.** The prosecutors in a given criminal case <the government has objected to the introduction of that evidence>. **6.** An academic course devoted to the study of government; political science <Bridges is enrolled in Government 101>.

**government agency.** See AGENCY (3).

**government-agency security.** See *government security* under SECURITY.

**government agent.** See AGENT.

**governmental act.** See GOVERNMENTAL FUNCTION.

**governmental activity.** See GOVERNMENTAL FUNCTION.

**governmental employee benefit plan.** See *governmental plan* under EMPLOYEE BENEFIT PLAN.

**governmental enterprise.** See ENTERPRISE.

**governmental function.** *Torts.* A government agency's conduct that is expressly or impliedly mandated or authorized by constitution, statute, or other law and that is carried out for the benefit of the general public. ● Generally, a governmental entity is immune from tort liability for governmental acts. — Also termed *governmental act*; *governmental activity*. See PUBLIC-FUNCTION DOCTRINE. Cf. PROPRIETARY FUNCTION.

"[A]ctivities of police or firefighters, though tortious, are usually considered governmental in the sense that they involve the kind of power expected of the government, even if its exercise in the specific case is wrongful. The city is immune as to such activities for this reason. On the other hand, if the city operates a local electric or water company for which fees are charged, this looks very much like private enterprise and is usually considered proprietary. . . . The difficult distinction between governmental and proprietary functions is even more troubling where the city's conduct combines both kinds of function at once. For example, operation of a sanitary sewer may be deemed governmental, but operation of a storm sewer may be deemed proprietary." *Prosser and Keeton on the Law of Torts* § 131, at 1053-54 (W. Page Keeton ed., 5th ed. 1984).

**governmental-function theory.** *Constitutional law.* A principle by which private conduct is characterized as state action, esp. for due-process and equal-protection purposes, when a private party is exercising a public function. ● Under this theory, for example, a political party (which is a private entity) cannot exclude voters from primary elections on the basis of race. — Also termed *public-function rationale*.

**governmental immunity.** See *sovereign immunity* under IMMUNITY (1).

**governmental instrumentality.** A constitutionally or legislatively created agency that is immune from certain kinds of liability, as for taxes or punitive damages.

**governmental-interest-analysis technique** under INTEREST-ANALYSIS TECHNIQUE.

**governmental plan.** See EMPLOYEE BENEFIT PLAN.

**governmental secret.** Information belonging to the government and of a military or diplomatic nature, the disclosure of which would be contrary to the public interest. ● Governmental secrets are privileged from disclosure. — Also termed *government secret*. See *executive privilege* under PRIVILEGE (3).

**governmental trust.** See TRUST.

**governmental unit.** A subdivision, agency, department, county, parish, municipality, or other unit of the government of a country or a state. ● The term includes an organization with a separate corporate existence only if the organization can legally issue debt obligations on which interest is exempt from income taxation under national law. UCC § 9-102(a)(31).

**government-annuity society.** *Hist.* One of several organizations formed in England to enable the working class to provide for themselves by purchasing, on advantageous terms, a government annuity for life or for a term of years.

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

**government contract.** See *procurement contract* under CONTRACT.

**government-contract defense.** A theory allowing a supplier of goods to the federal government to escape civil liability under state law when the supplier has conformed to reasonably precise specifications established or approved by the government, when two conditions are satisfied: (1) if the supplier has warned the government about any dangers from the goods about which the supplier has knowledge but the government does not, and (2) if the government itself is immune from liability under the *Feres* doctrine. See FERES DOCTRINE.

**government-controlled corporation.** See *quasi-governmental agency* under AGENCY (3).

**government corporation.** See *public corporation* (3) under CORPORATION.

**government enterprise.** See ENTERPRISE.

**government-in-exile.** An individual or group of individuals residing in a foreign country while (1) claiming supreme authority over a country, (2) being recognized by the hosting country as

the supreme authority over that other country, and (3) being organized to perform and actually performing some acts of state on behalf of the home country.

**government insurance.** See INSURANCE.

**Government National Mortgage Association.** A federally owned corporation that purchases, on the secondary market, residential mortgages originated by local lenders and that issues federally insured securities backed by these mortgages. — Abbr. GNMA. — Also termed *Ginnie Mae*.

**government of laws.** The doctrine that government must operate according to established, consistent legal principles and not according to the interests of those who happen to be in power at a given time; esp., the doctrine that judicial decisions must be based on the law, regardless of the character of the litigants or the personal predilections of the judge.

**government plan.** See *governmental plan* under PLAN.

**Government Printing Office.** A U.S. government office that prints and publishes federal laws, regulations, forms, and other federal-government documents. — Abbr. GPO.

**government secret.** See GOVERNMENTAL SECRET.

**government-securities interdealer broker.** See BROKER.

**government security.** See SECURITY.

**government survey.** See SURVEY.

**government-survey system.** A land-description method that divides the United States into checks or tracts of ground, which are further broken down into smaller descriptions, such as metes and bounds.

**government tort.** See TORT.

**governor.** The chief executive official of a U.S. state. • Governors are elected and usu. serve a two- or four-year term.

**GPARM.** See *graduated-payment adjustable-rate mortgage* under MORTGAGE.

**GPO.** *abbr.* GOVERNMENT PRINTING OFFICE.

**grab law.** The various means of debt collection involving remedies outside the scope of federal bankruptcy law, such as attachment and garnishment; aggressive collection practices.

**grace period.** A period of extra time allowed for taking some required action (such as making payment) without incurring the usual penalty for being late. • Insurance policies typically provide for a grace period of 30 days beyond the premium's due date, during which the premium may be paid without the policy being canceled. And Article 9 of the UCC provides for a 10-day grace period, after the collateral is received, during which a purchase-money security interest must be perfected to have priority over any conflicting security interests. — Also termed *days of grace*; *grace days*.

**gradatim** (grə-day-təm), *adv.* [Latin] *Roman law.* Gradually; by successive degrees. • *Gradatim* refers to the step-by-step admission of successors when there is no heir next in line. See GRADUS.

**grade, n.** *Criminal law.* An incremental step in the scale of punishments for offenses, based on a particular offense's seriousness <several grades of murder>. See DEGREE (2).

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

**graduated lease.** See LEASE.

**graduated-payment adjustable-rate mortgage.** See MORTGAGE.

**graduated-payment mortgage.** See MORTGAGE.

**graduated tax.** See *progressive tax* under TAX.

**gradus** (gray-dəs). [Latin "step"] **1.** *Roman law.* A step or degree in the familial relationship. • The term identified a position in the order of succession under a will. **2.** *Hist.* A degree, rank, or grade; specif., the rank of a master-in-chancery or a serjeant-at-law.

**graffer** (graf-ər). *Hist.* A notary or scrivener. — Also termed *graffarius*.

**graffium** (graf-ee-əm). *Hist.* A register or cartulary of deeds and other documents establishing title to property, esp. real property. — Also spelled *graffium*.



**grafio** (*gray-fee-oh*). [Law Latin] *Hist.* **1.** A baron; a viscount. • A grafio was inferior to a count. **2.** A fiscal judge, responsible for collecting taxes and fines. • The term was chiefly used among early European nations.

**graft**, *n.* **1.** The act of taking advantage of a position of trust to gain money or property dishonestly; esp., a public official's fraudulent acquisition of public funds. **2.** Money or property gained illegally or unfairly.

**grainage**. *Hist.* A duty consisting of one-twentieth of the salt imported by an alien into London.

**grammatical interpretation**. See INTERPRETATION.

**granatarius** (*gran-ə-tair-ee-əs*). [Law Latin] *Hist.* An officer in charge of a granary, esp. one in charge of a religious house's granary.

**grand**, *adj.* Of or relating to a crime involving the theft of money or property valued more than a statutorily established amount, and therefore considered more serious than those involving a lesser amount <grand theft>. See *grand larceny* under LARCENY. Cf. PETTY.

**grand assize**. See ASSIZE (5).

**grand bill of sale**. See BILL (7).

**grand cape**. See *cape magnum* under CAPE.

**grand coutumier de pays et duché de Normandie** (*gron koo-tiy|oo-myay də pay ay də-shay də nor-man-dee*). [French] *Hist.* A collection of the common or customary laws of the Duchy of Normandy. • The code was probably compiled in the 13th century, and it still remains the law of Jersey, except to the extent that it has been modified by later legislation and judicial decisions. See CLAMEUR DE HARO.

**Grand Day**. *English law.* **1. Hist.** One of four holy days on which the courts are not in session. • Each of the four court terms had a Grand Day. The four Grand Days were Candlemas Day (February 2), Ascension Day (March 25), St. John the Baptist Day (June 24), and All Saints' Day (November 1). The Inns of Court and of Chancery ceremoniously observed each Grand Day. **2.** A day in each term on which the Benchers of the Inns of Court host ceremonial dinners in their halls. See BENCHER. Cf. TERM (6).

**grand distress**. See DISTRESS.

**grandfather**, *vb.* To cover (a person) with the benefits of a grandfather clause <the statute sets the drinking age at 21 but grandfathers those who are 18 or older on the statute's effective date>.

**grandfather clause**. **1. Hist.** A clause in the constitutions of some Southern states exempting from suffrage restrictions the descendants of men who voted before the Civil War. **2.** A statutory or regulatory clause that exempts a class of persons or transactions because of circumstances existing before the new rule or regulation takes effect.

**grand inquest**. See INQUEST.

**grand juror**. See JUROR.

**grand jury**. A body of (often 23) people who are chosen to sit permanently for at least a month — and sometimes a year — and who, in ex parte proceedings, decide whether to issue indictments. • If the grand jury decides that evidence is strong enough to hold a suspect for trial, it returns a bill of indictment (a *true bill*) charging the suspect with a specific crime. — Also termed *accusing jury*; *presenting jury*; *jury of indictment*. Cf. *petit jury* under JURY.

**investigative grand jury**. A grand jury whose primary function is to examine possible crimes and develop evidence not currently available to the prosecution.

**screening grand jury**. A grand jury whose primary function is to decide whether to issue an indictment.

**special grand jury**. A grand jury specially summoned, usu. when the regular grand jury either has already been discharged or has not been drawn; a grand jury with limited authority. — Also termed *additional grand jury*; *extraordinary grand jury*.

**Grand Jury Clause**. The clause of the Fifth Amendment to the U.S. Constitution requiring an indictment by a grand jury before a person can be tried for serious offenses.

**grand-jury witness**. See WITNESS.

**grand larceny**. See LARCENY.

**Grand Remonstrance** (*ri-mon-strants*). *Hist.* A protest document issued by the House of Commons in 1641, setting forth numerous po-

litical grievances against Charles I. • The document demanded three primary remedial measures: (1) improvements in the administration of justice, (2) appointment of trustworthy ministers, and (3) enforcement of the laws against Roman Catholics. It was the first major split between the Royalist and Parliamentary parties, and it led Charles to seek the arrest of the five members who pushed the document through Commons.

**grand serjeanty.** See SERJEANTY.

**Grand Survey.** See *grand inquest* (2) under INQUEST.

**grange** (graynj). *Hist.* A farm furnished with all the necessities for husbandry, such as a barn, granary, and stables; esp., an outlying farm that belonged to a religious establishment or a feudal lord.

**Granger Cases** (grayn-jer). Six U.S. Supreme Court decisions that affirmed the government's right to regulate fees charged by common carriers, warehouses, and grain elevators. • The cases, decided in 1876, arose out of grangers' (i.e., farmers') frustration with the inflated prices they were paying to store and transport their agricultural products. Several state legislatures passed statutes regulating the rates. The affected businesses sued to have the statutes overturned on grounds that they violated the Commerce Clause and the Due Process Clause of the 14th Amendment. The Court rejected these claims, holding that the activities involved affected the public interest and were therefore subject to the government's regulatory authority.

**grant, n.** **1.** An agreement that creates a right of any description other than the one held by the grantor. • Examples include leases, easements, charges, patents, franchises, powers, and licenses. **2.** The formal transfer of real property. **3.** The document by which a transfer is effected; esp., DEED. **4.** The property or property right so transferred.

**office grant.** A grant made by a legal officer because the owner is either unwilling or unable to execute a deed to pass title, as in the case of a tax deed. See *tax deed* under DEED.

**grant, vb.** **1.** To give or confer (something), with or without compensation <the parents granted the car to their daughter on her 16th birthday>. **2.** To formally transfer (real property) by deed or other writing <the Lewisons granted the townhouse to the Bufords>. **3.** To permit

or agree to <the press secretary granted the reporter access to the Oval Office>. **4.** To approve, warrant, or order (a request, motion, etc.) <the court granted the continuance>.

**grantback, n.** A license-agreement provision requiring the licensee to assign or license back to the licensor any improvements that the licensee might make to a patent or other proprietary right.

**grant deed.** See DEED.

**grantee.** One to whom property is conveyed.

**grantee-grantor index.** See INDEX (1).

**grant-in-aid.** **1.** A sum of money given by a governmental agency to a person or institution for a specific purpose; esp., federal funding for a state public program. **2.** *Hist.* AID (1).

**granting clause.** The words that transfer an interest in a deed or other instrument, esp. an oil-and-gas lease. • In an oil-and-gas lease, the granting clause typically specifies the rights transferred, the uses permitted, and the substances covered by the lease.

**grantor.** **1.** One who conveys property to another. **2.** SETTLOR (1).

**grantor-grantee index.** See INDEX (1).

**grantor's lien.** See *vendor's lien* under LIEN.

**grantor trust.** See TRUST.

**grant to uses.** *Hist.* A conveyance of legal title to real property to one person for the benefit of another. • If, for example, A conveyed land to B and his heirs to the use of C and his heirs, B — the feoffee to uses — acquired seisin in and had possession of the land and was considered the legal owner. C — the cestui que use — was considered the equitable owner of the land and was entitled to the land's rents, profits, and benefits. Because the cestui que use did not have seisin in the land, he was not subject to feudal payments. From the 13th century forward, the grant to uses was an increasingly popular mode of conveyance. See CESTUI QUE USE; STATUTE OF USES; USE (4).

**grass hearth.** *Hist.* A tenant's customary service, consisting of the tenant's bringing his plow to the lord's land and plowing it for one day.

**gratia curiae** (gray-shee-ə kyoor-ee-ee or -i). [Latin] Favor of the court. Cf. RIGOR JURIS.

**gratification.** *Archaic.* A voluntarily given reward or recompense for a service or benefit; a gratuity.

**gratis** (grat-is or gray-tis), *adj.* Free; without compensation.

**gratis dictum.** See DICTUM.

**gratuitous** (grə-tyoo-ə-təs), *adj.* 1. Done or performed without obligation to do so; given without consideration <gratuitous promise>. Cf. ONEROUS (3). 2. Done unnecessarily <gratuitous obscenities>. — **gratuity**, *n.*

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

**gratuitous assignment.** See ASSIGNMENT (2).

**gratuitous bailment.** See BAILMENT.

**gratuitous consideration.** See CONSIDERATION.

**gratuitous contract.** See CONTRACT.

**gratuitous deed.** See *deed of gift* under DEED.

**gratuitous deposit.** See *gratuitous bailment* under BAILMENT.

**gratuitous gift.** See GIFT.

**gratuitous promise.** See PROMISE.

**gratuitous surety.** See SURETY.

**gravamen** (grə-vay-mən). The substantial point or essence of a claim, grievance, or complaint.

**gravatio** (grə-vay-shee-oh). [Law Latin] *Hist.* An accusation or impeachment.

**graymail.** A criminal defendant's threat to reveal classified information during the trial in the hope of forcing the government to drop the criminal charge. Cf. BLACKMAIL; GREENMAIL; FEEMAIL.

**gray market.** See MARKET.

**gray-market goods.** See PARALLEL IMPORTS.

**gray mule case.** See WHITEHORSE CASE.

**great bodily injury.** See *grievous bodily harm* under HARM.

**great care.** See CARE.

**great diligence.** See DILIGENCE.

**great fee.** See FEE (2).

**Great Inquest.** See *grand inquest* (2) under INQUEST.

**Great Lakes rule.** *Maritime law.* The principle that an admiralty litigant is entitled to a jury trial in a contract or tort action if the lawsuit arises on waters that span more than one state. See 28 USCA § 1873.

"The most important distinction between the law and admiralty 'sides' of federal court is that trial by jury is guaranteed for law claims through the Seventh Amendment, but where the case is maintained as an admiralty claim the litigant has neither constitutional nor statutory right to a jury trial. The one exception is the 'Great Lakes Rule' . . ." Frank L. Maraist, *Admiralty in a Nutshell* 338 (2d ed. 1988).

**Great Law, The.** *Hist.* The first code of laws established in Pennsylvania. • The Great Law was passed by an assembly in 1682.

**great pond.** In Maine and Massachusetts, a body of water larger than ten acres, and thus subject to public ownership. — Also termed *public pond*.

**Great Rolls of the Exchequer.** See PIPE ROLLS.

**great seal.** See SEAL.

**Great Survey.** See *grand inquest* (2) under INQUEST.

**great tithe.** See TITHE.

**Great Waters Program.** A scheme created by Congress in 1990 to make the Environmental Protection Agency more directly responsible for protecting large bodies of fresh water and coastal waters from environmental harm caused by air pollution. Clean Air Act Amendments of 1990, 42 USCA § 7412(m).

**Great Writ.** See HABEAS CORPUS.

**gree** (gree), *n.* [Law French] *Hist.* A satisfaction received by a party for an offense or injury against the party. See SATISFACTION (1).

"Gree comes of the French word *gree*, good liking; and it signifies in our law, contentment or satisfaction; as in the statute of 1 R. 2, c. 15, to make gree to the parties is to give them contentment or satisfaction for an offence done unto them." *Termes de la Ley* 247 (1st Am. ed. 1812).

**green card.** A registration card evidencing a resident alien's status as a permanent U.S. resident.

**green-card marriage.** See *sham marriage* under MARRIAGE (1).

**Green Cloth.** See BOARD OF GREEN CLOTH.

**greenmail.** **1.** The act of buying enough stock in a company to threaten a hostile takeover and then selling the stock back to the corporation at an inflated price. **2.** The money paid for stock in the corporation's buyback. Cf. BLACKMAIL; FEEMAIL; GRAYMAIL. **3.** A shareholder's act of filing or threatening to file a derivative action and then seeking a disproportionate settlement.

**Green River ordinance.** A local licensing law that protects residents from unwanted peddlers and salespersons, typically by prohibiting door-to-door solicitations without prior consent. • The ordinance takes its name from Green River, Wyoming, which enacted the first such law in the early 20th century before others came into vogue during the 1930s and 1940s throughout the United States.

**green wax.** (*pl.*) *Hist.* An Exchequer order (an *estreat*) directing a sheriff to collect the fines and amercements listed in the order. • The name derives from the color of the wax the Exchequer used on the *estreat* to certify its authenticity. See ESTREAT.

**greffier** (*gref-ee-ər* or *gref-yay*), *n.* [Law French] *Hist.* A registrar, esp. of a court; the court recordkeeper.

**Gregorian calendar.** See NEW STYLE.

**Gregorian Code.** See CODEX GREGORIANUS.

**gremio juris, in.** See IN GREMIO JURIS.

**gremio legis, in.** See IN GREMIO LEGIS.

**Grenville Act.** *Hist.* A statute that transferred jurisdiction of parliamentary election petitions from the whole House of Commons to select

committees. • The Act was passed in 1770 and repealed in 1828.

**Greorganization.** See REORGANIZATION (2).

**Gresham's law.** The principle that inferior products or practices tend to displace superior ones. • This economic principle is popularly attributed to Sir Thomas Gresham (1519–1579), even though earlier writers such as Oresme and Copernicus discussed it earlier.

**gressume** (*gres-əm*). *Hist.* A fine paid by a copyhold tenant upon the transfer of a copyhold estate, esp. upon the death of the lord. — Also spelled *grasson*; *grassum*; *grossome*; *ger-sum*.

**Gretna-Green marriage.** See MARRIAGE (1).

**grievance, n.** **1.** An injury, injustice, or wrong that gives ground for a complaint <a petition for a redress of grievances>. **2.** The complaint itself <the client filed a grievance with the state-bar committee>. **3. Labor law.** A complaint that is filed by an employee or the employee's union representative and that usu. concerns working conditions, esp. an alleged violation of a collective-bargaining agreement. See *grievance arbitration* under ARBITRATION; GRIEVANCE PROCEDURE.

**grievance arbitration.** See ARBITRATION.

**grievance procedure.** *Labor law.* A process, consisting of several steps, for the resolution of an employee's complaint. • The first step usu. occurs at the shop level and is handled by a supervisor. If the grievance is not resolved at the first step, the grievance is appealed in successive steps that vary among collective-bargaining agreements. The final step of the procedure is grievance arbitration. See *grievance arbitration* under ARBITRATION; GRIEVANCE (3).

**grievant, n.** *Labor law.* An employee who files a grievance and submits it to the grievance procedure outlined in a collective-bargaining agreement.

**grieve, vb.** To contest under a grievance procedure <the union urged the employee to grieve the suspension>. — **grievable, adj.**

**grievous bodily harm.** See HARM.

**GRM.** *abbr.* GROSS-RENT MULTIPLIER.

**grog-shop.** See DRAM SHOP.

**gross, easement in.** See *easement in gross* under EASEMENT.

**gross adventure.** See ADVENTURE.

**gross average.** See *general average* under AVERAGE.

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

**gross earnings.** See *gross income* under INCOME.

**gross estate.** See ESTATE.

**gross income.** See INCOME.

**gross-income multiplier.** See GROSS-RENT MULTIPLIER.

**gross-income tax.** See TAX.

**gross interest.** See INTEREST (3).

**gross lease.** See LEASE.

**gross misdemeanor.** See MISDEMEANOR.

**gross national product.** The market value of all goods and services produced in a country within a year, used to measure a country's economic development and wealth. — Abbr. GNP.

**gross neglect of duty.** See DESERTION.

**gross negligence.** See NEGLIGENCE.

**grossome.** *Hist.* See GRESSUME.

**gross premium.** See PREMIUM (1).

**gross profit.** See PROFIT.

**gross receipts.** *Tax.* The total amount of money or other consideration received by a business taxpayer for goods sold or services performed in a year, before deductions. IRC (26 USCA) § 448.

**gross-receipts tax.** See *gross-income tax* under TAX.

**gross-rent multiplier.** The ratio between the market value of rent-producing property and its annual gross rental income. ● The gross-rent multiplier is used as a method to estimate a property's market value. — Abbr. GRM. — Also termed *gross-income multiplier*.

**gross sales.** See SALE.

**gross spread.** See SPREAD.

**gross up, vb.** *Slang. Tax.* To add back to a decedent's gross estate the gift taxes paid by the decedent or the decedent's estate on gifts made by the decedent or the decedent's spouse during the three-year period preceding the decedent's death. IRC (26 USCA) § 2035.

**gross weight.** See WEIGHT.

**ground, n.** The reason or point that something (as a legal claim or argument) relies on for validity <grounds for divorce> <several grounds for appeal>.

**ground, vb.** **1.** To provide a basis for (something, e.g., a legal claim or argument) <the decision was grounded on public policy>. **2.** To base (something, e.g., a legal principle or judicial decision) on <the court grounded the decision on common law> <strict liability is grounded on public policy>.

**groundage (grown-dij), n.** *Hist. Maritime law.* A tax or toll levied on a vessel lying in port; the tax or toll so paid.

**ground landlord.** *Hist.* The grantor of an estate on which ground rent is reserved. See *ground rent* under RENT (1).

**ground lease.** See LEASE.

**groundless, adj.** (Of a legal claim or argument) lacking reason or validity <groundless cause of action>. See FRIVOLOUS.

**ground of action.** See CAUSE OF ACTION.

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

**ground-rent lease.** See *ground lease* under LEASE.

**ground writ.** See WRIT.

**group annuity.** See ANNUITY.

**group boycott.** See BOYCOTT.

**grouping-of-contacts theory.** See CENTER-OF-GRAVITY DOCTRINE.

**group insurance.** See INSURANCE.

**group libel.** See LIBEL.

**group litigation.** A set of lawsuits on behalf of or against numerous persons recognized as one litigating entity, such as a civil-rights group.

**group policy.** See *master policy* under INSURANCE POLICY.

**growing crop.** See CROP.

**growing-equity mortgage.** See MORTGAGE.

**growth.** The gain, increase, or expansion in value of securities or of a business.

**growth company.** See COMPANY.

**growth fund.** See MUTUAL FUND.

**growth industry.** An industry or business segment that demonstrates steadily rising sales and earnings.

**growth management.** *Land-use planning.* The regulation of a community's rate of growth through ordinances that restrict the issuance of residential building permits. See ZONING.

**growth stock.** See STOCK.

**gruarii** (groo-air-ee-I), *n. pl. Hist.* The principal officers of a forest. See FOREST.

**grubstake contract.** See CONTRACT.

**grubstaking contract.** See *grubstake contract* under CONTRACT.

**grundnorm.** See *basic norm* under NORM.

**GSA.** *abbr.* GENERAL SERVICES ADMINISTRATION.

**guarantee, n.** **1.** The assurance that a contract or legal act will be duly carried out. **2.** GUARANTY (1). **3.** Something given or existing as security, such as to fulfill a future engagement or a condition subsequent. **4.** One to whom a guaranty is made. — Also spelled *guaranty*. — **guarantee, vb.**

**guarantee clause. 1.** A provision in a contract, deed, or mortgage by which one person promises to pay the obligation of another. **2.** (*cap.*) U.S. Const. art. IV, § 4, under which the federal government ensures for the states both a republican form of government and protection from invasion or domestic violence.

**guaranteed annual wage plan.** *Labor law.* A wage-payment method in which the employer agrees either to pay employees a predetermined minimum sum each year or to provide a minimum number of hours of employment each year. ● A wide variety of guaranteed annual wage plans are used. For example, an employer may agree to pay employees wages for each week in the year, even though work may not be available at certain times of the year. The purpose of such a plan is to provide a stable labor force year-round.

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

**guaranteed investment contract.** See INVESTMENT CONTRACT.

**guaranteed-purchase contract.** See *guaranteed-sale contract* under CONTRACT.

**guaranteed-sale contract.** See CONTRACT.

**guaranteed stock.** See STOCK.

**guarantee stock.** See STOCK.

**guarantor.** One who makes a guaranty or gives security for a debt. ● While a surety's liability begins with that of the principal, a guarantor's liability does not begin until the principal debtor is in default. Cf. SURETY.

**guarantor of collectibility.** One who guarantees a debtor's solvency and is under a duty to pay only if the creditor is unable to collect from the principal debtor after exhausting all legal remedies, including demand, suit, judgment, and any supplementary proceedings.

**guarantor of payment.** One who guarantees payment of a negotiable instrument when it is due without the holder first seeking payment from another party. ● A guarantor of payment is liable only if "payment guaranteed" or equivalent words are added to the guarantor's indorsement.

**guarantor trust.** See TRUST.

**guaranty** (*gar-ən-tee*), *n.* 1. A promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another who is liable in the first instance. ● The term is most common in finance and banking contexts. While a warranty relates to things (not persons), is not collateral, and need not be in writing, a guaranty is an undertaking that a person will pay or do some act, is collateral to the duty of the primary obligor, and must be in writing.

“Both guaranty and warranty are undertakings by one party to another to indemnify the party assured against some possible default or defect. But a guaranty relates to the future, as a collateral promise designed to protect the promisee from loss in case another fails to perform his duty. A warranty relates to the present or past, and is an independent promise designed to protect the promisee from loss in the event that the facts warranted are not as the promisor states them to be when the contract is made. A warranty is broken as soon as it is made if the facts are not as represented, and is enforceable though oral; whereas a guaranty is not breached until a future default occurs, and is unenforceable unless in writing.” Laurence P. Simpson, *Handbook on the Law of Suretyship* 23 (1950).

“A transaction of guaranty involves at least three parties: a promisor, a creditor (the person to whom the promise is made), and a debtor — although at the time the promise is made, the person denominated the ‘creditor’ need not have extended the credit to the person denominated as the ‘debtor.’ The usual guaranty situation arises when the promisor makes a promise to the creditor either as to the solvency of the debtor or as to the payment of the debt.” 38 Am. Jur. 2d *Guaranty* § 1, at 996 (1968).

**absolute guaranty.** An unqualified promise that the principal will pay or perform.

**conditional guaranty.** A guaranty that requires the performance of some condition by the creditor before the guarantor will become liable.

**contingent guaranty.** A guaranty in which the guarantor will not be liable unless a specified event occurs.

**continuing guaranty.** A guaranty that governs a course of dealing for an indefinite time or by a succession of credits. — Also termed *open guaranty*.

**general guaranty.** 1. A guaranty addressed to no specific person, so that anyone who acts on it can enforce it. 2. A guaranty for the principal’s default on obligations that the principal undertakes with anyone.

**guaranty of collection.** A guaranty that is conditioned on the creditor’s having first exhausted legal remedies against the principal debtor before suing the guarantor.

**guaranty of payment.** A guaranty that is not conditioned on the creditor’s exhausting legal remedies against the principal debtor before suing the guarantor.

**irrevocable guaranty** (*i-rev-ə-kə-bəl*). A guaranty that cannot be terminated unless the other parties consent.

**limited guaranty.** An agreement to answer for a debt arising from a single transaction. — Also termed *noncontinuing guaranty*.

**revocable guaranty.** A guaranty that the guarantor may terminate without any other party’s consent.

**special guaranty.** 1. A guaranty addressed to a particular person or group of persons, who are the only ones who can enforce it. 2. A guaranty that names a definite person as obligee and that can be accepted only by the person named.

**specific guaranty.** A guaranty of a single debt or obligation.

## 2. GUARANTEE (1).

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

**guaranty company.** See *surety company* under COMPANY.

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

**guaranty insurance.** See INSURANCE.

**guaranty letter of credit.** See *standby letter of credit* under LETTER OF CREDIT.

**guaranty of collection.** See GUARANTY.

**guaranty of payment.** See PAYMENT.

**guaranty stock.** See STOCK.

**guaranty treaty.** See TREATY.

**guardage.** *Hist.* 1. WARDSHIP. 2. GUARDIANSHIP.

**guardhouse lawyer.** See JAILHOUSE LAWYER.

**guardian**, *n.* 1. One who has the legal authority and duty to care for another’s person or property, esp. because of the other’s infancy, incapacity, or disability. ● A guardian may be appointed either for all purposes or for specific purposes. — Abbr. gdn. — Also termed *custodian*. — **guardianship**, *n.*

**chancery guardian** (*chan-sər-ee*). A guardian appointed by a court of chancery to manage both the person and the estate of the ward.

**domestic guardian.** A guardian appointed in the state in which the ward is domiciled.

**foreign guardian.** A guardian appointed by a court in a state other than the one in which the ward is domiciled. • A foreign guardian cares for the ward's property that is located in the state of appointment.

**general guardian.** A guardian who has general care and control of the ward's person and estate.

**guardian ad litem** (*ad li-təm*). A guardian, usu. a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party. — Also termed *special guardian*. Cf. NEXT FRIEND.

**guardian by election.** A guardian chosen by a child when he or she would otherwise be without one.

**guardian by estoppel.** See *quasi guardian*.

**guardian by nature.** *Hist.* The parental guardian of an heir apparent who has not yet reached the age of 21. • Although the common law made the father the guardian by nature and the mother only after the father's death, most states have given both parents equal rights of guardianship over their children (see, e.g., N.Y. Dom. Rel. Law § 81). — Also termed *natural guardian*.

**guardian by nurture.** *Hist.* The parental guardian of a child who is not the heir apparent, lasting until the child reaches the age of 14. — Also termed *guardian for nurture*.

"There are also guardians for nurture, which are, of course, the father or mother, till the infant attains the age of fourteen years and, in default of father or mother, the ordinary usually assigns some discreet persons to take care of the infant's personal estate, and to provide for his maintenance and education." 1 William Blackstone, *Commentaries on the Laws of England* 449 (1765).

**guardian by statute.** See *statutory guardian*.

**guardian de son tort.** See *quasi guardian*.

**guardian in chivalry.** *Hist.* A guardian who, by virtue of knight's service, had custody of the body and lands of a male heir under 21 or a female heir under 14. • This type of guardian had no accountability for profits.

**guardian in socage.** *Hist.* A guardian for a child under 14 who has acquired lands by descent. • Such a guardian is usu. a relative who could not possibly inherit from the child. This type of guardianship applied to both the

person and the property of the child and lasted only until the child was 14, when the child was allowed to select a guardian. See SO-CAGE.

**natural guardian.** 1. *Hist.* The eldest son's father, until the son turned 21. 2. In the absence of statute, the father of a legitimate child until the child reaches the age of 21. • A father of illegitimate children may be appointed as their guardian upon the mother's death. 3. Most commonly and by statute, either the father or the mother of a minor child — each bearing the title simultaneously. • If one parent dies, the other is the natural guardian.

**partial guardian.** A guardian whose rights, duties, and powers are strictly limited to those specified in a court order.

**quasi-guardian.** A guardian who assumes that role without any authority. • Such a person may be made to account as guardian. — Also termed *guardian by estoppel*; *guardian de son tort*.

**special guardian.** A guardian who has special or limited powers over the ward's person or estate. • Examples are guardians who have custody of the estate but not of the person, those who have custody of the person but not of the estate, and guardians ad litem.

**statutory guardian.** A guardian appointed by a court having special statutory jurisdiction. — Also termed *guardian by statute*.

**testamentary guardian.** A guardian appointed by a parent's will for the person and property of a child until the latter reaches the age of majority.

2. *Hist.* A mesne lord who was entitled to treat an infant heir's lands for all practical purposes as the lord's own, enjoying fully their use and whatever profits they yielded. • At the end of the guardianship, when the heir reached majority, no accounting was owed by the mesne lord.

**guardian of the poor.** *Hist.* A person in charge of the relief and maintenance of the poor in a parish. • Guardians of the poor administered poor-relief funds raised under the Poor Relief Act of 1601. • The function is now performed by local authorities.

**guardian of the spiritualities.** *Eccles. law.* A person who exercises the spiritual and ecclesiastical jurisdiction of a diocese during a vacancy in the see or the absence of the bishop.



**guardian of the temporalities.** *Eccles. law.*

The person to whom custody of the secular possessions of a vacant see or abbey is committed by the Crown. • Temporalities (secular possessions) are the land, revenue, and tenements that archbishops and bishops have had annexed to their sees.

**gubernator navis** (g[y]oo-bər-nay-tər nay-vis). [Latin "ship helmsman"] *Roman law.* The pilot or steersman of a ship. • The *gubernator navis* could be sued for damages if he negligently caused a collision.

**guerrilla warfare.** See WARFARE.

**guest.** **1.** A person who is entertained or to whom hospitality is extended. **2.** A person who pays for services at an establishment, esp. a hotel or restaurant. **3.** A nonpaying passenger in a motor vehicle.

**business guest.** *Torts.* See INVITEE.

**social guest.** *Torts.* See LICENSEE (2).

**guest statute.** A law that bars a nonpaying passenger in a noncommercial vehicle from suing the host-driver for damages resulting from the driver's ordinary negligence. • Though once common, guest statutes remain in force in only a few states. — Also termed *automobile guest statute*. Cf. FAMILY-PURPOSE RULE.

**guidage.** *Hist.* **1.** A toll or fee for guiding a traveler through strange or dangerous territory. **2.** The act of guiding a traveler through strange or dangerous territory.

**guild.** **1.** *Hist.* A voluntary society or fraternity of persons employed in the same trade or craft, formed for the mutual benefit and protection of its members, who pay a fee (a *geld* or *gild*) for its general expenses. **2.** *Hist.* A company or corporation. **3.** A group of persons sharing a common vocation who unite to regulate the affairs of their trade in order to protect and promote their common vocation.

**guildhall.** *Hist.* **1.** The meeting place of a guild. — Also spelled *gildhall*. **2.** The chief hall of a city, used for holding court and the meetings of the municipal corporation.

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

**guilt,** *n.* The fact or state of having committed a wrong, esp. a crime <the state's burden was to prove guilt beyond a reasonable doubt>. Cf. INNOCENCE.

**guiltless,** *adj.* **1.** Free from guilt; not having committed a wrong <guiltless of the crime>. **2.** Having the quality or appearance of innocence <even though she confessed, the defendant looked guiltless>.

**guilty,** *adj.* **1.** Having committed a crime; responsible for a crime <guilty of armed robbery>. **2.** Responsible for a civil wrong, such as a tort or breach of contract <guilty of fraudulent misrepresentation>. — **guiltily,** *adv.*

**guilty,** *n.* **1.** A plea of a criminal defendant who does not contest the charges. **2.** A jury verdict convicting the defendant of the crime charged.

**guilty but mentally ill.** A form of verdict in a criminal case whereby the jury rejects the defendant's insanity defense but still recommends psychiatric treatment because the defendant is mentally ill. — Abbr. GBMI; GMI. — Also termed *guilty but insane*; *guilty of the act, but so insane as not to be responsible*. See INSANITY DEFENSE.

**guilty mind.** See MENS REA.

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

**guilty verdict.** See VERDICT.

**gun-control law.** A statute or ordinance that regulates the sale, possession, or use of firearms. • Gun-control laws vary widely among the states, and many cities have gun-control ordinances. Federal law prohibits the illegal sale, possession, and use of firearms. 18 USCA §§ 921-930. See BRADY ACT.

**gun-jumping.** *Slang.* The act of unlawfully soliciting the public's purchase of securities before the SEC approves a registration statement; the making of offers after the filing of a registration statement, but before its effective date, when such offers violate the Securities Act. — Also termed *conditioning the market*. See REGISTRATION STATEMENT.

**gwalstow** (gwawl-stoh). [fr. Old English *gwal* "gallows" + *stow* "place"] *Hist.* A place where criminals were executed.

**gynecocracy** (gi-nə-kok-rə-see *also* jin-ə or ji-nə-). Government by women; a political state in which women are legally capable of the highest office. — Also spelled *gynaecocracy*.

**gyve** (jiv). (*usu. pl.*) *Hist.* A shackle for the leg.

# H

**H. abbr.** 1. HOUSE OF REPRESENTATIVES. 2. House report. 3. HOUSE BILL. 4. In the citation of English statutes, a king named Henry. 5. In the Year Books, the Hilary term. See YEAR BOOKS. 6. In tax assessments and other such official reports, a house.

**habe** (**hay-bee**). [Law Latin] A form of the salutatory expression *ave* ("hail"). — Also termed *have* (**hay-vee**).

**habeas corpora juratorum** (**hay-bee-əs kor-pər-ə juur-ə-tor-əm**). [Law Latin "that you have the bodies of the jurors"] *Hist.* A writ commanding the sheriff to bring in jurors and, if necessary, to take their lands and goods as security to ensure their attendance in court for a trial setting. • This writ issued from the Court of Common Pleas and served the same purpose as a *distringas juratores* in the King's Bench. The writ was abolished in 1852.

**habeas corpus** (**hay-bee-əs kor-pəs**). [Law Latin "that you have the body"] A writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal (*habeas corpus ad subjiciendum*). • In addition to being used to test the legality of an arrest or commitment, the writ may be used to obtain review of (1) the regularity of extradition process, (2) the right to or amount of bail, or (3) the jurisdiction of a court that has imposed a criminal sentence. — Abbr. H.C. — Sometimes shortened to *habeas*. — Also termed *writ of habeas corpus*; *Great Writ*.

"The writ of habeas corpus, by which the legal authority under which a person may be detained can be challenged, is of immemorial antiquity. After a checkered career in which it was involved in the struggles between the common-law courts and the Courts of Chancery and the Star Chamber, as well as in the conflicts between Parliament and the crown, the protection of the writ was firmly written into English law by the Habeas Corpus Act of 1679. Today it is said to be 'perhaps the most important writ known to the constitutional law of England . . .'" Charles Alan Wright, *The Law of Federal Courts* § 53, at 350 (5th ed. 1994) (quoting *Secretary of State for Home Affairs v. O'Brien*, [1923] A.C. 603, 609).

**habeas corpus ad deliberandum et recipiendum** (**hay-bee-əs kor-pəs ad di-lib-ə-ran-dəm et ri-sip-ee-en-dəm**). [Law Latin

"that you have the body to consider and receive"] *Hist.* A writ used to remove a person for trial from one county to the county where the person allegedly committed the offense. Cf. EXTRADITION.

**habeas corpus ad faciendum et recipiendum** (**hay-bee-əs kor-pəs ad fay-shee-en-dəm et ri-sip-ee-en-dəm**). [Law Latin "that you have the body to do and receive"] *Hist.* A writ used in civil cases to remove the case, and also the body of the defendant, from an inferior court to a superior court. — Also termed *habeas corpus cum causa*. See CERTIORARI.

**habeas corpus ad prosequendum** (**hay-bee-əs kor-pəs ad prahs-ə-kwen-dəm**). [Law Latin "that you have the body to prosecute"] *Hist.* A writ used in criminal cases to bring before a court a prisoner to be tried on charges other than those for which the prisoner is currently being confined.

**habeas corpus ad respondendum** (**hay-bee-əs kor-pəs ad ree-spon-den-dəm**). [Law Latin "that you have the body to respond"] *Hist.* A writ used in civil cases to remove a person from one court's custody into that of another court, in which the person may then be sued.

**habeas corpus ad satisfaciendum** (**hay-bee-əs kor-pəs ad sat-is-fay-shee-en-dəm**). [Law Latin "that you have the body to make amends"] In England, a writ used to bring a prisoner against whom a judgment has been entered to some superior court so that the plaintiff can proceed to execute that judgment.

**habeas corpus ad subjiciendum** (**hay-bee-əs kor-pəs ad səb-jish-ee-en-dəm**). [Law Latin "that you have the body to submit to"] A writ directed to someone detaining another person and commanding that the detainee be brought to court. — Usu. shortened to *habeas corpus*.

**habeas corpus ad testificandum** (**hay-bee-əs kor-pəs ad tes-ti-fi-kan-dəm**). [Law Latin "that you have the body to testify"] *Hist.* A writ used in civil and criminal cases to bring a prisoner to court to testify.

**habeas corpus cum causa**. See *habeas corpus ad faciendum et recipiendum*.

**Habeas Corpus Act.** 1. One of the four great charters of English liberty (31 Car. 2, 1679), securing to English subjects speedy relief from all unlawful imprisonments. • The other three great charters are Magna Carta, the Petition of Right (3 Car. 1, 1628), and the Bill of Rights (1 Wm. & M. 1689). The Habeas Corpus Act does not apply in Scotland. 2. A statute deriving ultimately from the English statute and enacted in the United States as a constitutional guarantee of personal liberty.

**habeas corpus cum causa.** See *habeas corpus ad faciendum et recipiendum* under HABEAS CORPUS.

**habendum clause** (hə-ben-dəm). 1. The part of a deed that defines the extent of the interest being granted and any conditions affecting the grant. • The introductory words to the clause are ordinarily *to have and to hold*. — Also termed *to-have-and-to-hold clause*. 2. An oil-and-gas lease provision that defines the lease's primary term and that usu. extends the lease for a secondary term of indefinite duration as long as oil, gas, or other minerals are being produced. • Most jurisdictions require production of paying quantities to keep the lease in effect.

**habendum et tenendum** (hə-ben-dəm et tən-en-dəm). [Law Latin] *Hist.* To have and to hold. • This formal phrase appeared in land deeds and defined the estate or interest being transferred. See HABENDUM CLAUSE; TO HAVE AND TO HOLD.

**habentes homines** (hə-ben-teez hom-ə-nee), *n.* [Law Latin “men who have”] *Hist.* Rich men. — Also termed *foesting-men*.

**habere** (hə-beer-ee), *vb.* [Latin “to have”] *Roman law.* To have (the right to) something. • This term was sometimes distinguished from *tenere* (to hold) and *possidere* (to possess), with *habere* referring to the right, *tenere* to the fact, and *possidere* to both.

“Habere’ has two meanings; for we say that the owner of a thing ‘has’ it and also that a nonowner who holds the thing ‘has’ it. Lastly, we use the word in relation to property deposited with us.” *Digest of Justinian* 45.1.38.9 (Ulpian, Ad Sabinum 49).

**habere facias possessionem** (hə-beer-ee fay-shee-əs pə-zes[h]-ee-oh-nəm), *n.* [Law Latin “that you cause to have possession”] *Hist.* A writ giving a successful ejectment-action plaintiff the possession of the recovered land. — Often shortened to *habere facias* or *hab. fa.*

**habere facias seisinam** (hə-beer-ee fay-shee-əs see-zi-nəm), *n.* [Law Latin “that you cause to have seisin”] *Hist.* A writ of execution commanding the sheriff to give the applicant seisin of the recovered land. • This writ was the proper process for giving seisin of a freehold, as distinguished from giving only a chattel interest in land. See SEISIN.

**habere facias visum** (hə-beer-ee fay-shee-əs vi-səm or -zəm), *n.* [Law Latin “that you cause to have a view”] *Hist.* A writ allowing a litigant to inspect the lands in controversy.

**habere licere** (hə-beer-ee li-seer-ee), *vb.* [Latin “to allow to have”] *Roman law.* To allow a purchaser to possess and enjoy property undisturbed. • The term denoted a seller's duty; if the duty was breached, the purchaser could maintain an *actio ex empto*.

**hab. fa. abbr.** HABERE FACIAS POSSESSIONEM.

**habitability.** The condition of a building in which inhabitants can live free of serious defects that might harm health and safety <lack of running water adversely affects the apartment's habitability>.

**habitability, implied warranty of.** See *implied warranty of habitability* under WARRANTY (2).

**habitancy** (hab-ə-tən-see). 1. DOMICILE. 2. RESIDENCE.

**habitant** (a-bee-ton), *n.* [French] 1. *Hist. French law.* A person holding land in feudal tenure from a seignior. 2. A native of Canada of French descent, esp. one from the farming class.

**habitatio** (hab-ə-tay-shee-oh), *n.* [Latin “dwelling”] *Roman law.* The right to dwell (in a place); the right of free residence in another's house. • This right was usu. given by will.

**habitation.** 1. The act of inhabiting; occupancy. 2. A dwelling place; a domicile. 3. *Civil law.* A right to dwell in the property of another. See RESIDENCE; DOMICILE. Cf. USUFRUCT.

**habit evidence.** See EVIDENCE.

**habitual criminal.** See RECIDIVIST.

**habitual offender.** See RECIDIVIST.

**hable** (ab-əl), *n.* [Law French] *Hist.* A port or harbor; a station for ships.

**hacienda particular** (ah-syen-dah [or hah-see-en-də] pahr-tee-koo-lahr), *n.* *Spanish law.* Private property.

**hacienda pública** (ah-syen-dah [or hah-see-en-də] poo-blee-kah), *n.* *Spanish law.* 1. Public revenue or assets. 2. A government treasury.

**hacienda social** (ah-syen-dah [or hah-see-en-də] soh-syahl), *n.* *Spanish law.* Property belonging to a corporation or partnership.

**had.** Commenced or begun, as used in a statute providing that no legal proceeding may be *had* (usu. followed by the words *or maintained*) <no action for foreclosure may be had or maintained until the debtor has been given at least 30 days' notice>.

**hadgonel** (had-gə-nel), *n.* *Hist.* A tax or mulct.

**Hadley v. Baxendale rule.** *Contracts.* The principle that consequential damages will be awarded for breach of contract only if, at the time of contracting, the parties contemplated that this type of damage would result from the breach. *Hadley v. Baxendale*, 9 Exch. 341 (1854). • *Hadley v. Baxendale* is best known for its impact on a nonbreaching party's ability to recover consequential damages, but the case also confirmed the principle that the nonbreaching party may recover damages that arise naturally from the breach. See DAMAGES.

"The rationale of the decision appears in Baron Alderson's noted statement of what came to be known as the two rules of *Hadley v. Baxendale*. The first rule was that the injured party may recover damages for loss that 'may fairly and reasonably be considered [as] arising naturally, i.e., according to the usual course of things. . . .' The second and more significant rule went to recovery of what have come to be known as 'consequential' damages. . . . By introducing this requirement of 'contemplation' for the recovery of consequential damages, the court imposed an important new limitation on the scope of recovery that juries could allow for breach of contract. The result was to impose a more severe limitation on the recovery of damages for breach of contract than that applicable to actions in tort or for breach of warranty, in which substantial or proximate cause is the test." E. Allan Farnsworth, *Contracts* § 12.14, at 874-75 (1982).

**had-not test.** See BUT-FOR TEST.

**haec est conventio** (heek est kən-ven-shee-oh). [Law Latin] *Hist.* This is the agreement. • These formal words commonly prefaced written agreements.

**haec est finalis concordia** (heek est fi-nay-lis kən-kor-dee-ə). [Law Latin] *Hist.* This is the final agreement. • The words that began a fine, a fictitious judicial proceeding formerly in use as a mode of conveying land. See FOOT OF THE FINE; FINE.

**haec verba.** See IN HAEC VERBA.

**haereditas.** See HEREDITAS.

**haeres.** See HERES.

**haeretico comburendo.** See DE HAERETICO COMBURENDO.

**hafne** (hay-vən), *n.* [Old English] A haven or port.

**hafne court.** *Hist.* Haven courts; one of several courts anciently held in certain ports in England.

**Hague Academy of International Law** (hayg). A center for advanced studies in international law, both public and private, aimed at facilitating the comprehensive and impartial examination of problems of international legal relations. • It was founded in 1923 on the initiative of the Carnegie Endowment for International Peace and the Institut de Droit International. — Also termed *Académie de Droit International de La Haye*.

**Hague Convention.** One of a number of international conventions that address different legal issues and attempt to standardize procedures between nations.

**Hague Convention on the Civil Aspects of International Child Abduction.** An international convention (established in 1980) that seeks to counteract child-snatching by noncustodial parents. • The Hague Convention is a private legal mechanism available to parents seeking the return of, or access to, their children. More than 46 countries are parties to the Convention, including the United States, which became a signatory on July 1, 1988.

**Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents.** An international convention, convened on November 15, 1965, that dictates the formal and usu. complicated procedures for effecting service of process in a foreign country. • More than 35 countries are parties to the convention,

including the United States, which became a signatory on February 10, 1969.

**Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.** An international convention, convened on October 26, 1968, that provides the formal procedures for obtaining evidence in a foreign country, such as taking a deposition abroad. • More than 27 countries are parties, including the United States, which became a signatory on October 7, 1972.

**Hague Tribunal.** *Int'l law.* A permanent court of arbitration established by the Hague Peace Conference of 1899 to facilitate immediate recourse to arbitration to settle international differences. • The court was given jurisdiction over all arbitration cases, unless the parties agreed to institute a special tribunal. An international bureau was likewise established to serve as a registry for the court and to issue communications about the court's meetings. The court is "permanent" only in the sense that there is a permanent list of members from whom arbitrators in a given case are selected. Apart from making minor changes in the court, the Second Hague Conference of 1907 provided that, of the two arbitrators appointed by each party, only one should be a national of the appointing state.

**haircut.** *Securities.* The discount required by the National Association of Securities Dealers on the value of stock that a brokerage firm holds in its own account at the time of filing a monthly report about the firm's net capital condition.

**haircut reorganization.** See REORGANIZATION (1).

**half, n.** One of two equal parts into which a thing can be divided; MOIETY.

**half blood.** See BLOOD.

**half brother.** A male sibling with whom one shares the same father or the same mother, but not both; a brother by one parent only.

**halfendeal** (*hahv-ən-deel*), *n.* [fr. Law Latin *halfendeale*] *Archaic.* Half a thing; a moiety. — Also spelled *half enddeal*; *half-enddeal*.

**half nephew.** The son of one's half brother or half sister.

**half niece.** The daughter of one's half brother or half sister.

**half orphan.** See ORPHAN (2).

**half-pilotage.** See PILOTAGE.

**half-proof.** *Civil law.* **1.** Proof established by one witness, or by a private instrument. See UNUS NULLUS RULE. **2.** Prima facie proof that is nonetheless insufficient to support a sentence or decree.

**half-seal.** *Hist.* A seal used in the Court of Chancery to seal commissions to the Court of Delegates on the appeal of an ecclesiastical or maritime case. • The use of the seal ended when the Court of Delegates was abolished in 1832. See COURT OF DELEGATES.

**half section.** See SECTION.

**half sister.** A female sibling with whom one shares the same father or the same mother, but not both; a sister by one parent only.

**half-timer.** *Hist.* In England, a child excused from full-time attendance at school under the Factory and Workshop Act of 1908 so that the child could work part-time in a factory or workshop. • The Factory and Workshop Acts from 1901 to 1911 were repealed by the Factory and Workshop (Cotton Cloth Factories) Act of 1929 and the Factories Act of 1937.

**half-tongue.** *Hist.* In England, a jury empaneled to try an alien, and composed half of one nationality and half of another. • The use of this type of jury ended in 1914 with the passage of the Status of Aliens Act.

**halfway house.** A transitional housing facility designed to rehabilitate people who have recently left a prison or medical-care facility, or who otherwise need help in adjusting to a normal life. — Also termed *residential community treatment center*.

**half-year.** See YEAR.

**Halifax law.** **1.** LYNCH LAW; more broadly, an irrevocable punishment carried out after a summary trial. **2.** The summary and unauthorized trial and execution (usu. by decapitation) of a person accused of a crime. • This term comes from the parish of Halifax, in England, where — according to custom in the forest of Hardwick — this form of private justice was

anciently practiced by the free burghers against people accused of stealing. Thieves could be condemned to death by beheading on market day. The last such case is said to have occurred in 1650. — Also termed *gibbet law*; *Halifax inquest*.

**haligemot.** See HALLMOOT.

**hall.** **1.** A building or room of considerable size, used for meetings of bodies such as public assemblies, conventions, and courts. **2.** *Hist.* A manor house or chief mansion house. • It was called a *hall* because the magistrate's court was typically held there.

**hallage** (*hawl-ij*), *n.* *Hist.* A fee or toll due for goods or merchandise sold in a hall used as a market; a toll payable to the lord of a fair or market for commodities sold in the common hall.

**hallazgo** (*ah-yahs-goh*), *n.* [Spanish] *Spanish law.* **1.** The finding and taking possession of ownerless property. **2.** The first occupant recognized by law.

**halle-gemot** (*hawl-gə-moht*), *n.* See HALLMOOT.

**hallmark.** **1.** An official stamp affixed by goldsmiths and silversmiths on articles made of gold or silver to show genuineness. **2.** A mark of genuineness.

**hallmoot** (*hawl-moot*), *n.* *Hist.* **1.** A court baron; esp., a court held to settle differences between feudal tenants. • Wealthy abbeys commonly held hallmoot courts for lesser tenants, and a central court (the *libera curia*) for greater freehold tenants. **2.** A convention of citizens in their public hall. — Also spelled *hallmote*; *halle-gemot*; *haligemot*; (in sense 2 only) *folk-mote*. See COURT BARON.

**halymote** (*hal-ə-moht*), *n.* *Hist.* An ecclesiastical court said to have been anciently held on the Sunday before St. Thomas's Day. • Although this definition is standard, the *Oxford English Dictionary* calls it erroneous. In fact, the term appears to be a variant spelling of *hallmoot*. — Also spelled (prob. through false etymology) *holymote*.

**ham** (*ham or am*). **1.** A place of dwelling; a village. • This word now usu. appears in compound form at the end of place names, such as *Buckingham*. **2.** A small (esp. enclosed) pasture; a piece of land. — Also spelled *hamm*. Cf. HAMLET.

**hamel.** See HAMLET.

**hameleta.** See HAMLET.

**hamesucken** (*haym-sək-ən*), *n.* *Hist.* The crime of housebreaking or burglary accompanied by violence. — Also spelled *hamesecken*; *hamesoken*.

“Burglary, or nocturnal housebreaking, *burgi latrocinium*, which by our ancient law was called *hamesecken*, as it is in Scotland to this day, has always been looked upon as a very heinous offence. . . .” 4 William Blackstone, *Commentaries on the Laws of England* 223 (1769).

**hamlet.** A small village; a part or member of a vill. • A hamlet in a rural community might consist of no more than a store, a church, and a few residences. — Also termed *hamel*; *hameleta*; *hamleta*. See VILL. Cf. HAM.

**hamleta.** See HAMLET.

**hammer**, *n.* *Slang.* A forced sale; a sale at public auction <her jewelry was brought to the hammer>. See *forced sale* under SALE.

**Hammurabi, Code of.** See CODE OF HAMMURABI.

**hanaper** (*han-ə-pər*), *n.* [Law Latin *hanaperium* “hamper”] *Hist.* **1.** A basket or hamper used by the Chancery to store writs and returns. **2.** The treasury of the Chancery, funded from the fees charged for writs. Cf. FISCUS.

**Hanaper Office.** *Hist.* An office formerly belonging to the common-law jurisdiction of the Chancery Court. • The term derives from the storage of writs in a hamper (*in hanaperio*). Crown writs, on the other hand, were stored in the Petty Bag Office. The Hanaper Office was abolished in 1842. See BAGA.

**hand**, *n.* **1.** A person's handwriting <a holographic will must be in the testator's hand>. **2.** An instrumental part <he had a hand in the crime>. **3.** One who performs some work or labor <Hickory was one of the Gales' hired hands>. **4.** (*usu. pl.*) Possession <the cocaine was now in the hands of the police>. **5.** Assistance <the carpenter lent a hand to the project>. **6.** A measure of length equal to four inches, used in measuring the height of horses <the pony stood ten hands tall>. **7.** *Hist.* An oath <he gave his hand on the matter>. **8.** One or two sides or aspects of an issue or argument <on the one hand we can argue for imprisonment, on the other for leniency>.

**hand**, *vb.* To give; to deliver <he handed over the documents>.

**handbill**. A written or printed notice displayed, handed out, or posted, usu. to inform interested people of an event or of something to be done. ● Posting and distribution of handbills is regulated by ordinance or statute in most localities.

**hand down**, *vb.* To announce or file an opinion in a case. ● The term was originally used in connection with an appellate-court opinion sent to the court below; it was later expanded to include any decision by a court on a case or point under consideration.

**hand-fasting**. *Hist.* A betrothal; marrying by clasping another's hand and agreeing to live together as husband and wife.

**Hand formula**. A balancing test for determining whether conduct has created an unreasonable risk of harm, first formulated by Judge Learned Hand in *United States v. Carroll Towing Co.*, 159 F.2d 169 (2d Cir. 1947). ● Under this test, an actor is negligent if the burden of taking adequate precautions against the harm is outweighed by the probable gravity of the harm multiplied by the probability that the harm will occur.

"The legal standard applicable to most unintentional tort cases is that of negligence, defined by Judge Learned Hand as follows: the defendant is guilty of negligence if the loss caused by the accident, multiplied by the probability of the accident's occurring, exceeds the burden of the precautions that the defendant might have taken to avert it. This is an economic test. . . . Although the Hand formula is of relatively recent origin, the method that it capsulizes has been the basic one used to determine negligence ever since negligence was first adopted as the standard to govern accident cases." Richard A. Posner, *Economic Analysis of Law* § 6.2, at 122-23 (2d ed. 1977).

**handhabend** (**hand-hab-ənd**), *adj. Hist.* (Of a thief) caught in possession of a stolen item.

**handhabend**, *n.* [fr. Old English *aet haebbendre handa* "at or with a having hand"] *Hist.* 1. The bearing of stolen goods in hand or about the person. Cf. BACKBEREND. 2. A thief or another person caught carrying stolen goods. 3. Jurisdiction to try a person caught carrying stolen goods. — Also spelled *hand-habende*.

**hand money**. Money paid in hand to bind a bargain; earnest money paid in cash. See EARNEST MONEY.

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

**handsale**. *Hist.* A sale memorialized by shaking hands. ● Over time, *handsale* also came to refer to the earnest money given immediately after the handshake. In some northern European countries, shaking hands was necessary to bind a bargain. This custom sometimes persists for oral contracts. The Latin phrase for *handsale* was *venditio per mutuum manuum complexionem* ("a sale by the mutual joining of hands"). — Also spelled *handsel*.

**hands-off agreement**. A noncompete contractual provision between an employer and a former employee prohibiting the employee from using information learned during his or her employment to divert or to steal customers from the former employer.

**hand up**, *vb.* (Of a grand jury) to deliver an indictment to a criminal court.

**handwriting**. *Evidence.* 1. A person's chirography; the cast or form of writing peculiar to a person, including the size, shape, and style of letters, and whatever gives individuality to one's writing. 2. Something written by hand; a writing specimen. ● Nonexpert opinion about the genuineness of handwriting, based on familiarity not acquired for litigation purposes, can authenticate a document. Fed. R. Evid. 901(b)(2).

**hang**, *vb.* (Of a jury) to be unable to reach a verdict <the jury was hung after 12 hours of continuous deliberation>. See *hung jury* under JURY.

**hanged, drawn, and quartered**. *Hist.* An ancient sentence for high treason, consisting of the prisoner's being drawn on a hurdle to the place of execution, hanged by the neck (but not until dead), disemboweled, and beheaded, and the body then divided into four pieces for the king's disposal. ● The sentence was abolished in England in 1870. See TREASON.

**hanging**, *n.* The act of carrying out an execution by suspending the person above the ground by a rope around the person's neck. ● Death is caused by asphyxiation (by being hoisted from the ground) or by a sudden breaking of the cervical vertebrae (by being dropped from a height).

**hanging in chains**. *Hist.* In England, in atrocious cases, the practice of suspending an executed murderer's body by chains near where the crime was committed. ● Hanging in chains was abolished in 1834.

**hanging judge.** See JUDGE.

**hangman.** An executioner, esp. one who executes condemned criminals by hanging.

**Hansard** (*han-sərd*). The official reports of debates in the British Parliament. • The name derives from Luke Hansard, printer of the *Journal of the House of Commons* from 1774 to 1828. The name has varied at different times. In 1892 it became the *Authorised Edition*; in 1909 the title was changed to the *Official Report*; and since 1943 the name *Hansard* has been added to *Official Report*. — Also termed *Hansard Official Report*; *Hansard's Debates*.

**hanse** (*hans*), *n.* [*German*] *Hist.* **1.** A merchant guild, esp. one engaging in trade abroad. **2.** A fee for entrance to the guild; an impost levied on merchants not belonging to the guild.

**hanseatic** (*han-see-at-ik*), *adj.* *Hist.* **1.** Of or relating to the union of the Hanse Towns, usu. referred to as the *Hanseatic League*. **2.** Of or relating to a hanse or commercial alliance.

**Hanse Towns** (*hans*). *Hist.* The collective name of certain German cities — including Lübeck, Hamburg, and Bremen — that allied in the 12th century to protect and further their mutual commercial interests. • This alliance was usu. called the *Hanseatic League*. The League framed and promulgated a code of maritime law known as the *Laws of the Hanse Towns*, or *Jus Hanseaticum Maritimum*. The League's power peaked in the 14th century, then gradually declined until 1669, when the last general assembly was held.

**Hanse Towns, laws of the.** *Hist.* The laws of the Hanseatic towns, esp. that of Lübeck, published in German at Lübeck in 1597 and revised and enlarged in 1614.

**happiness, right to pursue.** The constitutional right to pursue any lawful business or activity — in any manner not inconsistent with the equal rights of others — that might yield the highest enjoyment, increase one's prosperity, or allow the development of one's faculties.

**harassment** (*har-əs-mənt* or *hə-ras-mənt*). Words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose. • Harassment is actionable in some circumstances, as when a creditor uses

threatening or abusive tactics to collect a debt. — **harass** (*har-əs* or *hə-ras*), *vb.*

**same-sex harassment.** Sexual harassment by a supervisor of an employee of the same sex.

**sexual harassment.** See SEXUAL HARASSMENT.

**harbinger** (*hahr-bin-jər*), *n.* **1.** *Hist.* In England, a royal officer who went ahead and was responsible for securing lodging for troops or for a traveling royal entourage. **2.** A person or thing that predicts what is to come <a harbinger of bad news>.

**harbor, safe.** See SAFE HARBOR.

**harboring**, *n.* The act of affording lodging, shelter, or refuge to a person, esp. a criminal or illegal alien.

**harbor line.** A line marking the boundary of a certain part of public water that is reserved for a harbor; esp., the line beyond which wharves and other structures may not extend.

**hard case.** A lawsuit involving equities that tempt a judge to stretch or even disregard a principle of law at issue — hence the expression, "Hard cases make bad law."

**hard currency.** See CURRENCY.

**hard dollars.** **1.** Cash proceeds given to a seller. **2.** The part of an equity investment that is not deductible in the first year. Cf. SOFT DOLLARS.

**hard goods.** See *durable goods* under GOODS.

**hard labor.** Work imposed on prisoners as additional punishment, usu. for misconduct while in prison. • Several states (such as Louisiana, Maine, and New Jersey) impose hard labor as a sentence for a variety of crimes. Hard labor is also imposed in military sentencing.

**hard-look doctrine.** *Administrative law.* The principle that a court should carefully review an administrative-agency decision to ensure that the decision did not result from expediency, pressure, or whim.

**hard money.** See MONEY.

**hard sell.** A sales practice characterized by slogans, aggression, intimidation, and urgent decision-making. Cf. SOFT SELL.



**hardship. 1.** Privation; suffering or adversity. **2. Zoning.** A ground for a variance under some zoning statutes if the zoning ordinance as applied to a particular property is unduly oppressive, arbitrary, or confiscatory. **3.** The severity with which a proposed construction of law would bear on a particular case, sometimes forming a basis (also known as an argument *ab inconvenienti*) against the construction. See AB INCONVENIENT; HARD CASE.

**harm, n.** Injury, loss, or detriment.

**bodily harm.** Physical pain, illness, or impairment of the body.

**grievous bodily harm.** *Criminal and tort law.* Serious physical impairment of the human body. • Typically, the fact-finder must decide in any given case whether the injury meets this general standard. — Abbr. g.b.h. — Also termed *great bodily injury*.

**physical harm.** Any physical impairment of land, chattels, or the human body.

**social harm.** An adverse effect on any social interest that is protected by the criminal law.

“If the phrase ‘social harm’ is used to include every invasion of any social interest which has been placed under the protection of a criminal sanction (whether by common law or by statute), every crime may be said to involve, in addition to other requirements, (1) the happening of social harm and (2) the fact that the act of some person was the cause of this harm.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 830 (3d ed. 1982).

**harmful error.** See *reversible error* under ERROR.

**harmless error.** See ERROR (2).

**harmonic plane.** An arbitrarily selected zero chosen by the U.S. Coast and Geodetic Survey to serve as the base for its tidal tables, charts, and maps.

**harmony.** Agreement or accord; conformity <the decision in *Jones* is in harmony with earlier Supreme Court precedent>. — **harmonize, vb.**

**harrow (har-oh or hæ-roh), n.** [fr. Old French *haro*] *Hist.* In Norman and early English law, an outcry (or hue and cry) after felons and malefactors. — Also termed *haro*. See HUE AND CRY. Cf. CLAMEUR DE HARO.

**Harter Act.** *Maritime law.* An 1893 federal statute that allocates the risks of damage to cargo at sea by relieving a carrier of liability for

certain events (such as negligent navigation) provided that the carrier has exercised due diligence in sending the ship out in a seaworthy condition. 46 USCA app. §§ 190–196. See CARRIAGE OF GOODS BY SEA ACT.

“During the eighteenth century, common carriers began limiting this liability by inserting clauses in bills of lading relieving them from some of the risks of the voyage. Because of their superior bargaining power, the carriers, through such clauses, eventually were able to exculpate themselves from all liability to the shipper or his consignee, even that for damages caused by the negligence of the master and crew during the voyage. American courts refused to honor these exculpatory clauses, holding them invalid because of the inequality of bargaining power between shippers and common carriers. However, courts of other maritime nations upheld such clauses. As a result, American merchant vessels were at a disadvantage in the world market. To lessen this disadvantage, Congress passed the Harter Act. . . .” Frank L. Maraist, *Admiralty in a Nutshell* 58–59 (2d ed. 1988).

### Hart-Scott-Rodino Antitrust Improvement

**Act.** A federal statute, enacted in 1976, that generally strengthens the Justice Department’s antitrust enforcement powers, esp. by requiring firms to give notice to the Federal Trade Commission and the Justice Department of an intent to merge if one of the firms has annual revenues or assets exceeding \$100 million, and the acquisition price or value of the acquired firm exceeds \$15 million.

**haspa (has-pə), n.** [Law Latin] *Hist.* The hasp of a door. • Livery of seisin was often made in the doorway of a structure located on the property being transferred.

**hasta (has-tə), n.** [Latin “spear”] **1. Roman law.** A sale by auction, indicated by a spear placed into the ground. • The phrase *hasta subicere* (“to put under the spear”) meant to put up for sale at auction. **2. Hist.** A symbol used to invest a fief.

**Hatch Act.** A federal statute, enacted in 1939, that restricts political-campaign activities by federal employees and limits contributions by individuals to political campaigns. 5 USCA §§ 1501–1508. • Senator Carl Hatch sponsored the Act following disclosures that Works Progress Administration officials were using their positions to campaign for the Democratic Party.

**hate crime.** See CRIME.

**hate speech.** See SPEECH.

**hat money.** *Maritime law.* A small gratuity traditionally paid to the master (and sometimes the crew) of a ship for the care of the cargo; PRIMAGE. — Also termed *pocket money*.

**hauber** ([h]aw-bər), *n.* [Old French] *Hist.* A high lord; a great baron.

**haulage royalty.** See ROYALTY (2).

**haustus** (haws-təs), *n.* [Latin “a drawing”] *Roman law.* A species of servitude consisting in the right to draw water from a well or spring on another’s property — the term being common esp. in the form *aquaehaustus*. • A right-of-way (*iter*) to the well was implied in the easement.

**have.** See HABE.

**have and hold.** See TO HAVE AND TO HOLD.

**hawker.** An itinerant or traveling salesperson who sells goods in a public street, esp. one who, in a loud voice, cries out the benefits of the items offered for sale; a peddler. • A hawker is usu. required to have a license.

**hawking.** The act of offering, by outcry, goods for sale from door to door or on a public street.

**haybote** (hay-boht), *n.* [fr. French *haye* “a hedge” + Saxon *bote* “an allowance”] *Hist.* The right or privilege of a tenant for life or years to have material to repair the hedges or fences, or to make farming implements. — Also termed *hedgebote*. See BOTE.

**hayward.** *Hist.* 1. An officer of a town or manor responsible for maintaining fences and hedges, esp. to prevent cattle from breaking through to an enclosed pasture. 2. A cattle herdsman.

**Hazantown agreement** (hay-zən-town). A type of collective-bargaining agreement used in the garment industry, governing the relationship between a jobber and the contractors that produce the jobber’s garments. • The agreement does not govern the relationship between the jobber and its own employees. It governs the relationship between the jobber and the contractors that manufacture the garments that the jobber sells, including agreements that the jobber will use only unionized contractors, will ensure that salaries and bonuses are appropriately paid, and will contribute to employee-benefit funds maintained on behalf of the contractor’s employees. This term gets its name

from Hazantown, Inc., the jobber involved in *Danielson v. Joint Bd. of Coat, Suit & Allied Garment Workers’ Union*, 494 F.2d 1230 (2d Cir. 1974). — Also termed *jobber’s agreement*.

**hazard**, *n.* 1. Danger; peril.

**extraordinary hazard.** *Workers’ compensation.* An unusual occupational danger that is increased by the acts of employees other than the injured worker.

**imminent hazard.** An immediate danger; esp., in environmental law, a situation in which the continued use of a pesticide will probably result in unreasonable adverse effects on the environment or will involve an unreasonable danger to the survival of an endangered species. 7 USCA § 136(1).

2. The risk or probability of loss or injury, esp. a loss or injury covered by an insurance policy.

**moral hazard.** 1. The risk that an insured will destroy property or allow it to be destroyed (usu. by burning) in order to collect the insurance proceeds. 2. The insured’s potential interest, if any, in the burning of the property.

3. *Hist.* An unlawful dice game in which the chances of winning are complicated by arbitrary rules.

**hazarder** (haz-ər-dər), *n.* *Hist.* A player in an unlawful game of dice. — Also spelled *hazardor*.

**hazardous contract.** See *aleatory contract* under CONTRACT.

**hazardous employment.** See EMPLOYMENT.

**hazardous negligence.** See NEGLIGENCE.

**hazardous substance.** 1. A toxic pollutant; an imminently dangerous chemical or mixture. 2. See *hazardous waste* under WASTE (2).

**hazardous waste.** See WASTE (2).

**hazard pay.** Special compensation for work done under unpleasant or unsafe conditions.

**H.B.** See *house bill* under BILL (3).

**H.C. abbr.** 1. HOUSE OF COMMONS. 2. HABEAS CORPUS.

**HDC. abbr.** HOLDER IN DUE COURSE.

**he.** A pronoun of the masculine gender, traditionally used and construed in statutes to include both sexes, as well as corporations. • It may also be read as *they*. Because of the trend toward nonsexist language, careful drafters avoid using the generic pronouns *he*, *him*, and *his* unless the reference is only to a male person.

**headborough.** See BORSHOLDER.

**headlease.** A primary lease under which a sublease has been granted. — Also spelled *head lease*. — Also termed *primary lease*; *chief lease*.

**headlessor.** A lessor on a lease of property that has been subleased.

**head money.** **1.** A tax on people who fit within a designated class; a poll tax. See *capitation tax* and *poll tax* under TAX. **2.** A bounty offered by a government for a prisoner taken at sea during a naval engagement. • This bounty is divided among the officers and crew in the same manner as prize money. See PRIZE MONEY. **3.** A tax or duty on shipowners, imposed by an 1882 federal statute, for every immigrant brought into the United States. — Also termed *head tax*. **4. Hist.** A bounty or reward paid to a person who killed a bandit or outlaw and produced the head as evidence. See BOUNTY; REWARD.

**headnote.** A case summary that appears before the printed judicial opinion in a law report, addresses a point of law, and usu. includes the relevant facts bearing on that point of law. — Also termed *syllabus*; *synopsis*; *reporter's syllabus*.

"The syllabus or headnote is a brief statement of the propositions of law decided in the case, being in the nature of a table of contents of the case. The modern method is to number each proposition in the syllabus, and to indicate, by corresponding figures, the exact place in the decision where the point mentioned in the syllabus can be found. Sometimes, especially in the older reports, the syllabus is inaccurate or misleading, and it is not safe to rely on it without first verifying it from the decision." Frank Hall Childs, *Where and How to Find the Law* 22 (1922).

**headnote lawyer.** See LAWYER.

**head of household.** **1.** The primary income-provider within a family. **2.** For income-tax purposes, an unmarried or separated person (other than a surviving spouse) who provides a home for dependents for more than one-half of the taxable year. • A head of a household is

taxed at a lower rate than a single person who is not head of a household. Cf. HOUSEHOLDER.

**headright.** In American Indian law, a tribesmember's right to a pro rata portion of income from a tribal trust fund set up under the Allotment Act of 1906. • This type of trust fund is funded largely by mineral royalties arising from land held or once held by the tribesmember's tribe.

**headright certificate.** *Hist.* A certificate issued under authority of a Republic of Texas law of 1839 providing that a person was entitled to a grant of 640 acres if the person (1) had immigrated to the Republic between 1 October 1837 and 1 January 1840, (2) was a head of household, and (3) actually resided within the Republic with his or her family. • The grant was to be held under the certificate for three years and then conveyed by absolute deed to the settler.

**head shop.** A retail establishment that sells items intended for use with illegal drugs.

**head-silver.** See *common fine* under FINE (4).

**head-start injunction.** An injunction prohibiting the defendant from using a trade secret for a period equal to the time between the date of the secret's theft and the date when the secret became public, since that period equals the "head start" that the defendant unfairly obtained over the rest of the industry.

**headstream.** The source of a river.

**head tax.** **1.** See *poll tax* under TAX. **2.** HEAD MONEY (3).

**headwater.** **1.** (*usu. pl.*) The part of a river or stream that is closest to its source. **2.** HEADSTREAM.

**health.** **1.** The state of being sound or whole in body, mind, or soul. **2.** Freedom from pain or sickness.

**public health.** **1.** The health of the community at large. **2.** The healthful or sanitary condition of the general body of people or the community en masse; esp., the methods of maintaining the health of the community, as by preventive medicine and organized care for the sick. • Many cities have a "public health department" or other agency responsible for maintaining the public health; federal laws dealing with health are administered by the Department of Health and Human Services.

**sound health.** *Insurance.* A policy applicant's good condition; a state of health characterized by a lack of grave impairment or disease, or of any ailment that seriously affects the applicant's health.

**healthcare-insurance receivable.** An interest in or claim under an insurance policy, being a right to payment of a monetary obligation for healthcare goods or services provided. UCC § 9-104(c).

**health insurance.** See INSURANCE.

**health law.** A statute, ordinance, or code that prescribes sanitary standards and regulations for the purpose of promoting and preserving the community's health.

**health-maintenance organization.** A group of participating healthcare providers that furnish medical services to enrolled members of a group health-insurance plan. — Abbr. HMO. Cf. PREFERRED-PROVIDER ORGANIZATION.

**health officer.** A government official charged with executing and enforcing health laws. ● The powers of a health officer (such as the Surgeon General) are regulated by law.

**hearing.** **1.** A judicial session, usu. open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying <the court held a hearing on the admissibility of DNA evidence in the murder case>. **2.** *Administrative law.* Any setting in which an affected person presents arguments to an agency decision-maker <a hearing on zoning variations>. **3.** In legislative practice, any proceeding in which legislators or their designees receive testimony about legislation that might be enacted <the shooting victim spoke at the Senate's hearing on gun control>. See PRELIMINARY HEARING. **4.** *Equity practice.* A trial.

**adjudicatory hearing** (ə-joo-di-kə-tor-ee).

**1.** A hearing held by a juvenile court to determine whether a juvenile has engaged in delinquent conduct; a trial of a youth accused of a delinquency. See JUVENILE DELINQUENCY. Cf. *detention hearing*; *disposition hearing*. **2.** *Administrative law.* An agency proceeding in which the rights and duties of a particular person are decided after notice and an opportunity to be heard. — Also termed *adjudicatory proceeding*.

**conformity hearing.** See CONFORMITY HEARING.

**Daubert hearing.** See DAUBERT HEARING.

**detention hearing.** A hearing held by a juvenile court to determine whether a juvenile accused of delinquent conduct should be detained, continued in confinement, or released pending an adjudicatory hearing. Cf. *adjudicatory hearing*; *disposition hearing*.

**discharge hearing.** See DISCHARGE HEARING.

**disposition hearing.** A hearing held to determine the most appropriate form of custody or treatment for a juvenile who has been found at an adjudicatory hearing to be a juvenile delinquent or a status offender. Cf. *adjudicatory hearing*; *detention hearing*.

**evidentiary hearing.** **1.** A hearing at which evidence is presented, as opposed to a hearing at which only legal argument is presented. **2.** See ADMINISTRATIVE PROCEEDING.

**exclusionary hearing.** A pretrial hearing conducted to review and determine the admissibility of alleged illegally obtained evidence.

**fair hearing.** A judicial or administrative hearing conducted in accordance with due process.

**Fatico hearing.** See FATICO HEARING.

**Franks hearing.** See FRANKS HEARING.

**full hearing.** **1.** A hearing at which the parties are allowed notice of each other's claims and are given ample opportunity to present their positions with evidence and argument. **2.** See ADMINISTRATIVE PROCEEDING.

**hearing de novo** (dee or di noh-voh). **1.** A reviewing court's decision of a matter anew, giving no deference to a lower court's findings. **2.** A new hearing of a matter, conducted as if the original hearing had not taken place.

**Jackson-Denno hearing.** See JACKSON-DENNO HEARING.

**Mapp hearing.** See MAPP HEARING.

**omnibus hearing.** A hearing at which many items are discussed and considered.

**public hearing.** A hearing that, within reasonable limits, is open to anyone who wishes to observe. ● Such a hearing is often characterized by the right to appear and present evidence in a case before an impartial tribunal.

**reaffirmation hearing.** See REAFFIRMATION HEARING.

**revocation hearing.** *Criminal procedure.* A hearing held to determine whether a parolee should be returned to prison for violating the terms of parole.

**suppression hearing.** A pretrial hearing in which a criminal defendant seeks to prevent the introduction of evidence alleged to have been seized illegally.

**trial-type hearing.** See ADMINISTRATIVE PROCEEDING.

**unfair hearing.** A hearing that is not conducted in accordance with due process, as when the defendant is denied the opportunity to prepare or consult with counsel.

**Wade hearing.** See WADE HEARING.

**hearing examiner.** See ADMINISTRATIVE-LAW JUDGE.

**hearing officer.** See ADMINISTRATIVE-LAW JUDGE.

**hearsay. 1.** Traditionally, testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness. • Such testimony is generally inadmissible under the rules of evidence. **2.** In federal law, a statement (either a verbal assertion or nonverbal assertive conduct), other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Fed. R. Evid. 801(c). — Also termed *hearsay evidence*; *secondhand evidence*.

**double hearsay.** A hearsay statement that contains further hearsay statements within it, none of which is admissible unless exceptions to the rule against hearsay can be applied to each level <the double hearsay was the investigation's report stating that Amy admitted to running the red light>. Fed. R. Evid. 805. — Also termed *multiple hearsay*; *hearsay within hearsay*.

**hearsay rule.** The rule that no assertion offered as testimony can be received unless it is or has been open to test by cross-examination or an opportunity for cross-examination, except as provided otherwise by the rules of evidence, by court rules, or by statute. • The chief reasons for the rule are that out-of-court statements amounting to hearsay are not made under oath and are not subject to cross-examination. Fed. R. Evid. 802. Rule 803 provides 23 explicit exceptions to the hearsay rule, regardless of whether the out-of-court declarant is available to testify, and Rule 804 provides 5 more exceptions for situations in which the declarant is unavailable to testify.

"[T]he great hearsay rule . . . is a fundamental rule of safety, but one overenforced and abused, — the spoiled child of the family, — proudest scion of our jury-trial rules of evidence, but so petted and indulged that it has become a nuisance and an obstruction to speedy and efficient trials." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 238 (1935).

**hearsay within hearsay.** See *double hearsay* under HEARSAY.

**heartbalm statute.** A state law that abolishes the rights of action for alienation of affections, breach of promise to marry, criminal conversation, and seduction of a person over the legal age of consent.

**hearth money. Hist. 1.** A tax of two shillings levied on every fireplace in England (14 Car. 2, ch. 10). • This extremely unpopular tax was enacted in 1662 during the reign of Charles II and abolished in 1688. **2.** PETER-PENCE. — Also termed (in sense 1) *chimney money*.

**heat of passion.** Rage, terror, or furious hatred suddenly aroused by some immediate provocation, usu. another person's words or actions. • At common law, the heat of passion could serve, in a murder defense, as a mitigating circumstance that would reduce the charge to manslaughter. — Also termed *sudden heat of passion*; *sudden heat*; *sudden passion*; *hot blood*; *furor brevis*. Cf. COLD BLOOD; COOL BLOOD.

"To constitute the *heat of passion* included in this requirement it is not necessary for the passion to be so extreme that the slayer does not know what he is doing at the time; but it must be so extreme that for the moment his action is being directed by passion rather than by reason." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 99 (3d ed. 1982).

**heavy work.** See WORK.

**hebote.** See HEREBOTE.

**hedagium** (hə-day-jee-əm), *n.* [Law Latin] *Hist.* A toll or custom due at a wharf for landing goods. • The Crown exempted particular persons and societies from this toll.

**hedge, vb.** To make advance arrangements to safeguard oneself from loss on an investment, speculation, or bet, as when a buyer of commodities insures against unfavorable price changes by buying in advance at a fixed rate for later delivery. — **hedging, n.**

**hedgebote.** See HAYBOTE.

**hedge fund.** A specialized investment group — usu. organized as a limited partnership or offshore investment company — that offers the possibility of high returns through risky techniques such as selling short or buying derivatives. • Most hedge funds are not registered with the SEC and are therefore restricted in marketing their services to the public.

**hedonic damages.** See DAMAGES.

**hedonistic utilitarianism.** See UTILITARIANISM.

**heeding presumption.** See PRESUMPTION.

**heedlessness, n.** The quality of being thoughtless and inconsiderate; esp., conduct whereby the actor disregards the rights or safety of others. • Heedlessness is often construed to involve the same degree of fault as recklessness. — **heedless, adj.** See RECKLESSNESS.

**hegemonism** (hi-jem-ə-niz-əm). **1.** A philosophical position advocating hegemony. **2.** All forms of political extension by means of hegemony.

**hegemony** (hi-jem-ə-nee), *n.* **1.** Influence, authority, or supremacy over others <the hegemony of capitalism>. **2.** The striving for leadership or predominant authority of one state of a confederacy or union over the others; political domination <the former Soviet Union's hegemony over Eastern Europe>. — **hegemonic** (hej-ə-mon-ik), *adj.*

**heightened scrutiny.** See INTERMEDIATE SCRUTINY.

**heinous** (hay-nəs), *adj.* (Of a crime or its perpetrator) that is shockingly atrocious or odious. — **heinousness, n.**

**heir** (air). **1.** A person who, under the laws of intestacy, is entitled to receive an intestate decedent's property, esp. real property. — Also termed *legal heir*; *heir at law*; *lawful heir*; *heir general*.

"Laymen — and sometimes first-year law students taking exams — wrongly assume that one who receives real property by will is an heir. Technically, the word 'heir' is reserved for one who receives real property by action of the laws of intestacy, which operate today only in the absence of a valid will." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 14 n.32 (2d ed. 1984).

**2.** Loosely, a person who inherits real or personal property, whether by will or by intestate succession.

**after-born heir.** One born after the death of an intestate from whom the heir is entitled to inherit.

**and his heirs.** A term of art formerly required to create a fee simple absolute in transferring real property by will <A conveys Blackacre to B and his heirs>. • This phrasing originated in the translation of a Law French phrase used in medieval grants (*a lui et a ses heritiers pour toujours* "to him and his heirs forever"). See FEE SIMPLE.

"The development reached its culmination when the words 'and his heirs' in a transfer were thought to give full durational ownership to the immediate transferee and no ownership whatever to his heirs. This notion was expressed in the statement that the words 'and his heirs' are words of limitation and not words of purchase. They indicate the durational character of an estate, not its taker." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 93–94 (2d ed. 1984).

**apparent heir.** See *heir apparent*.

**beneficiary heir** (ben-ə-fish-ee-er-ee). *Civil law.* An heir who accepts an inheritance but files a benefit of inventory to limit his or her liability for estate debts to the value of the inheritance. — Also termed *heir beneficiary*. See BENEFIT OF INVENTORY. Cf. *unconditional heir*.

**collateral heir.** One who is neither a direct descendant nor an ancestor of the decedent, but whose kinship is through a collateral line, such as a brother, sister, uncle, aunt, nephew, niece, or cousin. Cf. *lineal heir*.

**expectant heir.** An heir who has a reversionary or remainder interest in property, or a chance of succeeding to it. — Also termed *heir expectant*. See REVERSION; REMAINDER. Cf. *prospective heir*.

"The reader should be aware that one never has an 'heir' until one is dead; one merely has an 'heir expectant' . . . . Thus, to say that an heir 'owns' anything is conceptually difficult. But . . . some unborn heirs may be entitled to the protection of the courts, and thus be said to have estates." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 26 n.13 (2d ed. 1984).

**forced heir.** A person whom the testator or donor cannot disinherit because the law reserves part of the estate for that person.

**heir apparent.** An heir who is certain to inherit unless he or she dies first or is excluded by a valid will. — Also termed *apparent heir*. Cf. *heir presumptive*.

"Heirs apparent are such, whose right of inheritance is indefeasible, provided they outlive the ancestor; as the eldest son or his issue, who must by the course of the common law be heirs to the father whenever he happens to die." 2 William Blackstone, *Commentaries on the Laws of England* 208 (1766).

**heir beneficiary.** See *beneficiary heir*.

**heir by adoption.** A person who has been adopted by (and thus has become an heir to) the deceased. • By statute in most jurisdictions, an adopted child has the same right of succession to intestate property as a biological child unless the deceased clearly expresses a contrary intention. Jurisdictions differ on whether an adopted child may in addition inherit from his or her natural parents or family.

**heir by custom.** *Hist.* In England, a person whose right of inheritance depends on a particular and local custom, such as gavelkind and borough English. See *GAVELKIND*; *BOROUGH ENGLISH*.

**heir by devise.** One to whom lands are given by will.

**heir conventional.** *Civil law.* One who takes a succession because of a contract or settlement entitling him or her to it.

**heir expectant.** See *expectant heir*.

**heir in tail.** See *heir special*.

**heir male.** *Hist.* The nearest male blood-relation of a decedent.

**heir of the blood.** An heir who succeeds to an estate because of consanguinity with the decedent, either in the ascending or descending line.

**heir of the body.** A lineal descendant of the decedent, excluding a surviving spouse, adopted children, and collateral relations. • The term of art *heirs of the body* was formerly used to create a fee tail <A conveys Blackacre to B and the heirs of his body>. — Also termed *bodily heir*.

**heir presumptive.** An heir who will inherit if the potential intestate dies immediately, but who may be excluded if another more closely related heir is born. — Also termed *presumptive heir*. Cf. *heir apparent*.

**heirs and assigns.** A term of art formerly required to create a fee simple <A conveys Blackacre to B and his heirs and assigns>.

**heir special.** *Hist.* An heir who receives property according to the nature of the estate held in fee tail. • Heirs special were said to receive property *per formam doni* (“by the form of the gift”). — Also termed *heir in tail*.

**joint heir.** 1. A coheir. 2. A person who is or will be an heir to both of two designated persons at the death of the survivor of them, the word *joint* being here applied to the ancestors rather than the heirs.

**known heir.** An heir who is present to claim an inheritance, the extent of which depends on there being no closer relative.

**laughing heir.** An heir distant enough to feel no grief when a relative dies and leaves a windfall to the heir.

**lineal heir.** A person who is either an ancestor or a descendant of the decedent, such as a parent or child. Cf. *collateral heir*.

**natural heir.** An heir by consanguinity as distinguished from a collateral heir, an heir by adoption, or a statutory heir (such as a person's spouse).

**presumptive heir.** See *heir presumptive*.

**pretermitted heir** (pree-tər-mit-id). A child or spouse who has been omitted from a will, as when a testator makes a will naming his or her two children and then, sometime later, has two more children who are not mentioned in the will. • Most states have so-called “pretermitted-heir statutes” under which an omitted child or spouse receives the same share of the estate as if the testator had died intestate, unless the omission was intentional. — Also termed (more specifically) *pretermitted child*; *pretermitted spouse*. See *PRETERMitted-HEIR STATUTE*.

**prospective heir.** An heir who may inherit but may be excluded; an heir apparent or an heir presumptive. Cf. *expectant heir*.

**right heir.** 1. *Hist.* The preferred heir to an estate tail, as distinguished from a general heir. • An estate tail would pass to a general heir only on the failure of the preferred heir and his line. 2. *HEIR* (1).

**testamentary heir** (tes-tə-men-tə-ree or -tree). *Civil law.* A person who is appointed heir in the decedent's will.

**unconditional heir.** *Civil law.* A person who chooses — expressly or tacitly — to inherit without any reservation or without making an inventory. Cf. *beneficiary heir*.

**heir apparent.** See *HEIR*.

**heir by adoption.** See *HEIR*.

**heir by custom.** See *HEIR*.

**heir by devise.** See *HEIR*.

**heir conventional.** See *HEIR*.

**heirdom.** The state of being an heir; succession by inheritance.

**heir expectant.** See *expectant heir* under HEIR.

**heir general.** See HEIR.

**heir-hunter.** A person whose business is to track down missing heirs.

**heir in tail.** See *heir special* under HEIR.

**heirless estate.** See ESTATE.

**heirloom.** 1. An item of personal property that by local custom, contrary to the usual legal rule, descends to the heir along with the inheritance, instead of passing to the executor or administrator of the last owner; traditional examples are an ancestor's coat of armor, family portraits, title deeds, and keys. • Blackstone gave a false etymology that many have copied: "The termination, *loom*, is of Saxon origin; in which language it signifies a limb or member; so that an heirloom is nothing else, but a limb or member of the inheritance." 2 William Blackstone, *Commentaries on the Law of England* 427 (1766). In fact, *loom* derives from Old English *geloma* "utensil," and *loom* meant "implement, tool." 2. Popularly, a valued possession of great sentimental value passed down through generations within a family.

"Heir-looms, strictly so called, are now very seldom to be met with. They may be defined to be such personal chattels as go, by force of a *special custom*, to the heir, along with the inheritance, and not to the executor or administrator of the last owner. The owner of an heirloom cannot by his will bequeath the heirloom, if he leave the land to descend to his heir; for in such a case the force of custom will prevail over the bequest, which, not coming into operation until after the decease of the owner, is too late to supersede the custom. . . . In popular language the term 'heir-loom' is generally applied to plate, pictures or articles of property which have been assigned by deed of settlement or bequeathed by will to trustees, in trust to permit the same to be used and enjoyed by the persons for the time being in possession, under the settlement or will, of the mansion-house in which the articles may be placed." Joshua Williams, *Principles of the Law of Personal Property* 13-14 (11th ed. 1881).

**heir male.** See HEIR.

**heir of the blood.** See HEIR.

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

**heir presumptive.** See HEIR.

**heirs and assigns.** See HEIR.

**heirship.** 1. The quality or condition of being an heir. 2. The relation between an ancestor and an heir.

**heir special.** See HEIR.

**hell-or-high-water clause.** A clause in a personal-property lease requiring the lessee to continue to make full rent payments to the lessor even if the thing leased is unsuitable, defective, or destroyed.

**hell-or-high-water rule.** 1. The principle that a personal-property lessee must pay the full rent due, regardless of any claim against the lessor, unless the lessee proves unequal bargaining power or unconscionability. 2. *Insurance.* The principle that an insured's automobile-liability policy will cover the insured while using a vehicle owned by another if the insured uses the vehicle in a manner within the scope of the permission granted.

**henceforth,** *adv.* From now on <the newly enacted rule will apply henceforth>.

**Henricus Vetus** (hen-ri-kəs vee-təs). [Law Latin] Henry the Old (or *Elder*). • This term was used in early English charters to distinguish King Henry I from later kings of the same name.

**heordpenny** (hərd-pen-ee), *n.* See PETER-PENCE.

**Hepburn Act.** A 1906 federal statute that amended the Interstate Commerce Act to (1) increase the (now defunct) Interstate Commerce Commission's jurisdiction to include pipelines, (2) prohibit free passes except to employees, (3) prohibit common carriers from transporting any products (except timber) in which they had an interest, and (4) require joint tariffs and a uniform system of accounts.

**heptarchy** (hep-tahr-kee). 1. A government by seven rulers. 2. A nation divided into seven governments, specif. the seven Anglo-Saxon kingdoms of Kent, Sussex, Essex, Wessex, East Anglia, Mercia, and Northumbria existing before the Norman Conquest.

**herald,** *n.* 1. In England and Scotland, one of several officers responsible for keeping genealogical lists and tables, adjusting armorial bearings, and regulating the ceremonies at royal coronations and funerals. • There are six in England and three in Scotland. 2. *Hist.* A messenger who announces royal or state proclamations, and who carries diplomatic messages



(esp. proclamations of war, peace, or truce) between kings or countries.

**Heralds' College.** A royal corporation responsible in England for granting and recording armorial insignia and genealogies, and for dealing with matters of precedence. • The College was founded by Richard III in 1484, is governed by the Earl Marshal, and consists of three kings of arms, six heralds, and four pursuivants. The heralds' books, based on family-lineage inquiries made throughout England, are considered good evidence of pedigrees. The heralds' office is still allowed to make grants of arms and to grant name changes. • Also termed *College of Arms*.

**herbage** (ər-bij). In England, an easement or liberty of pasturage on another's land.

**herdwerch** (hərd-wərk), *n.* *Hist.* Herdsmen's work, or customary labor, done by shepherds and inferior tenants at the lord's will. — Also spelled *heordwerch*.

**hereafter**, *adv.* **1.** From now on; henceforth <because of the highway construction, she will hereafter take the bus to work>. **2.** At some future time <the court will hereafter issue a ruling on the gun's admissibility>. **3.** HEREINAFTER <the exhibits hereafter referred to as Exhibit A and Exhibit B>.

**here and there.** See VALUE DATE.

**herbannum** (her-ə-ban-əm), *n.* [Law Latin fr. Old English *here* "army" + *bann* "proclamation"] *Hist.* **1.** A proclamation summoning the army into the field. **2.** A mulct or fine for not joining that army when summoned. **3.** A tax or tribute for the support of that army.

**herebote** (her-ə-boht), *n.* [fr. Old English *here* "army" + *bod* "command"] *Hist.* In England, a royal edict summoning the people to the battlefield; an edict commanding subjects into battle. — Also spelled *herebode*; *hebote*.

**hereby**, *adv.* By this document; by these very words <I hereby declare my intention to run for public office>.

**heredad** (e-re-dahth), *n.* *Spanish law.* **1.** A piece of land under cultivation; a cultivated farm. **2.** An inheritance or heirship.

**heredad yacente** (e-re-dath yah-sen-te). An inheritance not yet accepted. See *hereditas jacens* under HEREDITAS.

**heredero** (e-re-ther-oh), *n.* *Spanish law.* **1.** An owner of a cultivated farm. **2.** An heir.

**heredes.** See HERES.

**heredes proximi** (hə-ree-deez prok-sə-mi), *n.* [Latin] Nearest or next heirs.

**heredes remotiores** (hə-ree-deez ri-moh-sheeor-eez), *n.* [Latin] Heirs more remote; relatives other than children or descendants.

**heredipeta** (he-rə-dip-ə-tə), *n.* [Law Latin] *Hist.* A legacy-hunter; the seeker of an inheritance.

**heredis instituto** (hə-ree-dis in-sti-t[y]oo-toh), *n.* [Latin] *Roman law.* The designation in a will of a person as the testator's heir. • A testator's failure to appoint an heir could destroy the validity of the will.

**hereditament** (her-ə-dit-ə-mənt or hə-red-i-tə-mənt). **1.** Any property that can be inherited; anything that passes by intestacy. **2.** Real property; land.

**corporeal hereditament** (kor-por-ee-əl). A tangible item of property, such as land, a building, or a fixture.

**incorporeal hereditament** (in-kor-por-ee-əl). An intangible right in land, such as an easement. • The various types at common law were advowsons, annuities, commons, dignities, franchises, offices, pensions, rents, tithes, and ways.

**hereditary**, *adj.* Of or relating to inheritance; that descends from an ancestor to an heir.

**hereditary succession.** See SUCCESSION (2).

**hereditas** (hə-red-i-tas), *n.* [Latin] **1.** *Roman law.* An inheritance by universal succession to a decedent. • This succession applied whether the decedent died testate or intestate, and whether in trust (*ex fideicommisso*) for another or not. The comparable right under Praetorian law was *bonorum possessio*, possession of an inheritance that could be the basis of a right to succeed. **2.** *Hist.* An estate transmissible by descent; an inheritance. — Also spelled *haereditas*.

**hereditas damnosa** (hə-red-i-tas dam-noh-sə). A burdensome inheritance; an inheritance whose debts exceed its assets.

**hereditas jacens** (hə-red-i-tas jay-senz). [Latin *iaceo* "to lie"] **1.** Property belonging to an estate before an heir accepts it. • This

term had a similar meaning at common law. See ABEYANCE (2).

"Hereditas jacens is the term applied to an inheritance which has not yet vested, an inheritance, that is to say, which has been 'delata' to a heres extraneus (i.e. voluntarius), but has not yet been acquired by him." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 512 (James Crawford Ledlie trans., 3d ed. 1907).

**2. Hist.** A decedent's estate that has no heir or legatee to take it; an escheated estate. — Also termed *caduca*. See ESCHEAT. **3. Hist.** An inheritance without legal owner and thus open to the first occupant. — Also spelled *hereditas iacens*.

**hereditas legitima** (hə-red-i-tas lə-jit-i-mə). A succession or inheritance devolving by operation of law rather than by will. See INTES-TACY.

**hereditas luctuosa** (hə-red-i-tas lək-choo-oh-sə). A sad or mournful inheritance; one that disturbs the natural order of mortality (*turbato ordine mortalitatis*), as that of a parent inheriting a child's estate. ● This term is more literary than legal. — Also termed *tristis successio*.

**hereditas testamentaria** (hə-red-i-tas tes-tə-men-tair-ee-ə). Testamentary inheritance; succession to an estate under a decedent's will.

**heredity**. **1. Archaic.** Hereditary succession; an inheritance. **2.** The hereditary transmission of characteristics from a parent to a child; the biological law by which a living being tends to repeat itself in its descendants.

**herein, adv.** In this thing (such as a document, section, or matter) <the due-process arguments stated herein should convince the court to reverse the judgment>.

**hereinafter, adv.** Later in this document <the buyer agrees to purchase the property described hereinafter>. — Also loosely termed *hereafter*.

**herenach** (her-ə-nak), *n.* [fr. Old Irish *airchin-nich* "chief man"] An archdeacon. — Also spelled *erenach*.

**hereof, adv.** Of this thing (such as a provision or document) <the conditions hereof are stated in section 3>.

**heres** (heer-eez), *n.* [Latin] *Roman law*. A successor to the rights and liabilities of a deceased person; an heir. ● Because the *heres* succeeded

to both the rights and the debts of the decedent, the office was more similar to a modern executor than an heir at law. The institution of the *heres* was the essential characteristic of a testament; if this was not done, the instrument was called a *codicillus*. — Also spelled (in Law Latin) *haeres*. Pl. **heredes** (hə-ree-deez) or (for *haeres*) **haeredes**.

**heres astrarius** (as-trair-ee-əs). [Law Latin "heir of the hearth"] An heir who has received, by conveyance, an ancestor's estate during the ancestor's lifetime.

**heres de facto** (di fak-toh). [Law Latin "heir from fact"] **Hist. 1.** An heir whose status arises from the disseisin or other wrongful act of the heir's ancestor. See DISSEISIN. **2.** An heir in fact, as distinguished from an heir by law (*de jure*).

**heres ex asse** (as-ee). [Latin "sole heir"] *Roman law*. An heir to the whole estate.

**heres ex testamento.** See *heres factus*.

**heres extraneus** (ek-stray-nee-əs). [Latin "extraneous heir"] *Roman law*. An external heir; one not subject to the testator's power (*potestas*) and hence not bound to accept the inheritance.

**heres factus** (fak-təs). [Latin "made heir"] An heir appointed by will; a testamentary heir. — Also termed *heres ex testamento*; *heres institutus*. Cf. *heres natus*.

**heres fideicommissarius** (fi-dee-i-kom-ə-sair-ee-əs). [Latin] *Roman law*. The person for whose benefit an estate was given by will to a fiduciary heir. ● This office corresponds closely with the *cestui qui trust* of the common law. Cf. *heres fiduciarius*.

**heres fiduciarius** (fi-d[y]oo-shee-air-ee-əs). [Latin "fiduciary heir"] *Roman law*. A person made heir by will, in trust for the benefit of another; an heir subject to a trust. Cf. *heres fideicommissarius*.

**heres institutus.** See *heres factus*.

**heres legitimus** (lə-jit-i-məs). [Latin "lawful heir"] *Roman law*. An heir entitled to succeed (on intestacy) by statute.

**heres natus** (nay-təs). [Latin "heir by birth"] An heir by reason of birth; an heir at law or by intestacy. Cf. *heres factus*.

**heres necessarius** (nes-ə-sair-ee-əs). [Latin "necessary heir"] *Roman law*. A person compelled to serve as heir, usu. either a slave freed on the testator's death or a free person in the testator's power.

**heres rectus** (rek-təs). [Law Latin] **Hist.** A right or proper heir.

**heres suus** (s[y]oo-əs). [Latin "one's own heir"] **1.** A decedent's proper or natural heir; a lineal descendant of the deceased. **2. Roman law.** A free person who was subject to the testator's power (*potestas*) but who could exercise full legal rights upon the testator's death.

**heres suus et necessarius** (s[y]oo-əs et nes-ə-sair-ee-əs). [Latin "one's own and necessary heir"] A free person subject to the decedent's *potestas*. • These heirs were called *necessary* because they became heirs by law, not by the decedent's choice. But since this was also true of slaves, when named heirs in a will, the former class was designated *suus et necessarius* by way of distinction, the word *suus* denoting that the necessity arose from the relationship to the decedent.

**ultimas heres** (əl-ti-məs). The last or remote heir; the lord.

**heresy** (her-ə-see), *n.* **1.** Opinion or doctrine contrary to (usu. Catholic) church dogma. **2. Hist.** In England, an offense against religion, consisting not in totally denying Christianity, but in publicly denying some of its essential doctrines; an opinion on divine subjects devised solely by human reason, openly taught, and obstinately maintained. • This offense is now subject only to ecclesiastical correction and is no longer punishable by the secular law.

**hereto**, *adv.* To this document <the exhibits are attached hereto>.

**heretofore**, *adv.* Up to now; before this time <a question that has not heretofore been decided>.

**hereunder**, *adv.* **1.** Later in this document <review the provisions hereunder before signing the consent form>. **2.** In accordance with this document <notice hereunder must be provided within 30 days after the loss>.

**herewith**, *adv.* With or in this document <enclosed herewith are three copies>.

**heriot** (her-ee-ət), *n.* [fr. Old English *here* "army" + *geatwa* "trappings"] *Hist.* A customary tribute of goods and chattels, payable to the lord of the fee on the tenant's death. • *Heriot* derives from an earlier feudal service consisting of military equipment returned to the lord on the tenant's death; over time it came to refer only to the chattel payment due at the tenant's death.

"We are told that the ancient heriot (*heregeatu*, military apparel) had at one time consisted of the horses and arms lent by the lord to his man which on the man's death were returned to the lord. . . . Turning to manorial surveys, we find it among the commonest of customs that when a tenant in villeinage dies, the lord shall have the best beast; sometimes a similar due is taken from the goods of the dead freeholder, and it is to these customary dues that the name 'heriot' permanently attaches itself." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 312, 317 (2d ed. 1898).

**heriot custom.** A heriot due by custom. • This term is used primarily to distinguish a *heriot service* from an ordinary heriot.

**heriot service.** A tribute arising from special reservation in a grant or lease of lands, and thus amounting to little more than rent.

**herislit** (her-ə-sleet or hair-), *n.* [Old English] *Hist.* **1.** The act of surrendering; laying down of arms. **2.** The crime of deserting from an army.

**heritable** (her-i-tə-bəl), *adj.* INHERITABLE.

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

**heritable obligation.** See *inheritable obligation* under OBLIGATION.

**heritable security.** See SECURITY.

**heritage** (her-i-tij), *n.* *Scots law.* Land, together with all property connected to it (such as a house).

**Her Majesty's Stationery Office.** See STATIONERY OFFICE.

**hermeneutics** (hər-mə-n[y]oo-tiks), *n.* The art of interpreting texts, esp. as a technique used in critical legal studies. — **hermeneutical**, **hermeneutic**, *adj.*

**Hermogenian Code.** See CODEX HERMOGENIANUS.

**hesia** (hee-zhee-ə or hee-shee-ə), *n.* [Law Latin] An easement.

**hetaerarcha** (het-ər-ahr-kə), *n.* [Greek, then Latin] *Roman law.* The head of a society, corporation, or college.

**hetaeria** (hə-teer-ee-ə), *n.* [Latin] *Roman law.* A society, guild, or college; a fraternity. — Also termed *hetaery*.

**heuristic** (hyuu-ris-tik), *adj.* Of or relating to a method of learning or problem-solving by using trial-and-error and other experimental techniques <heuristic discovery methods>.

**HEW.** *abbr.* The Department of Health, Education, and Welfare, a former agency of the U.S. government created in 1953. • When the Department of Education was created in 1979, the name HEW was changed to the Department of Health and Human Services (HHS).

**Heydon's case, rule in.** See MISCHIEF RULE.

**HGN test.** *abbr.* HORIZONTAL-GAZE NYSTAGMUS TEST.

**HHS.** *abbr.* The Department of Health and Human Services, a federal agency that administers health, welfare, and income-security policies and programs, the largest of which is social security.

**hidage** (hid-ij), *n. Hist.* A tax, payable to the Crown, based on every hide of land. — Also spelled *hydage*. See HIDE.

"Of the same nature with scutages upon knights'-fees were the assessments of hidage upon all other lands, and of talliage upon cities and burghs. But they all gradually fell into disuse, upon the introduction of subsidies, about the time of king Richard II and king Henry IV." 1 William Blackstone, *Commentaries on the Laws of England* 300 (1765).

**hidalgo** (hi-dal-goh or ee-thahl-goh), *n.* [fr. Spanish *hijo* "son" + *algo* "property"] In Spain, a man belonging to the lower nobility; a gentleman of property.

**hidalguia** (ee-thahl-gee-yə), *n.* [Spanish] In Spain, nobility by descent or lineage.

**HIDC.** *abbr.* HOLDER IN DUE COURSE.

**hidden asset.** See ASSET.

**hidden defect.** See DEFECT.

**hidden tax.** See TAX.

**hide**, *n. Hist.* 1. In England, a measure of land consisting in as much as could be worked with one plow, variously estimated at from 30 to 120 acres but probably determined by local usage. • A hide was anciently employed as a unit of taxation. Cf. CARUCATE. 2. As much land as would support one family or the dwellers in a mansion-house. 3. A house; a dwelling-house.

**hidegild** (hid-gild), *n.* [Old English] *Hist.* A sum of money paid by a villein or servant to avoid a whipping. — Also spelled *hidgild*; *hydegeld*; *hudegeld*.

**hidel** (hid-əl or hid-əl), *n.* [Old English] *Hist.* A hiding-place; a place of protection or sanctuary.

**high bailiff.** See BAILIFF.

**High Commission Court.** See COURT OF HIGH COMMISSION.

**High Court.** See HIGH COURT OF JUSTICE.

**High Court of Admiralty.** In England, a court exercising jurisdiction in matters relating to shipping, collision, and salvage cases. • The court dates from the 14th century, and much of its early history concerns prize and piracy cases. Its jurisdiction varied through the centuries, sometimes extending into criminal matters and other areas of law not related directly to maritime issues. The Judicature Acts of 1873–1875 merged the Court into the High Court as part of the Probate, Divorce, and Admiralty Division. The Administration of Justice Act of 1970 established a new Admiralty Court as part of the Queen's Bench Division of the High Court. It is regulated by the Supreme Court Act of 1981. — Also termed *Court of the Lord High Admiral*; *Court of Admiralty*. Cf. ADMIRALTY (1).

"To the office of the Lord High Admiral (originally a naval official concerned with the command of the fleet and the suppression of piracy and wrecking) there was annexed a court which acquired a jurisdiction over civil cases of a maritime nature. Just how and when this happened is too cloudy and controversial for simple or even accurate summary, but by the time of Richard II (1377–1400) the admiral and vice-admiral were transacting enough judicial business to move Parliament to limit their jurisdiction by statute to 'a thing done upon the sea,' and in Tudor times the court was well established as a court of record, doing a large civil business. It slowly but surely took away most of their business from the local maritime courts in the port towns, and attracted the easily aroused jealousy of the common law courts, as well as the dislike of those who feared it as a prerogative court. . . . These factors resulted in the rather anticlimactic eclipse of the court for almost two centuries." Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* § 1–4, at 9–10 (2d ed. 1975).

**High Court of Chivalry.** *Hist.* A court of honor having jurisdiction over matters relating to deeds of arms and war, armorial insignia, and precedence. — Also termed *Court of Chivalry*; *Court of Earl Marshal*. See COURT OF HONOR.

"This *Curia Marescalli*, or High Court of Chivalry, was revived by James I as a court of honour, which not only

tried the right to distinctions of honour and coat armour but also redressed affronts to honour such as slander. The slander jurisdiction was later denied, leaving it with a jurisdiction probably confined to disputes over armorial bearings, which are determined according to the law of arms. The court, which has only sat once since 1737, is the last English court to use the procedure of the civil law." J.H. Baker, *An Introduction to English Legal History* 142 (3d ed. 1990).

**High Court of Delegates.** See COURT OF DELEGATES.

**High Court of Errors and Appeals.** See COURT OF ERRORS AND APPEALS.

**High Court of Justice.** The superior civil court of England and Wales. — Often shortened to *High Court*.

**High Court of Justiciary** (jə-stish-ee-er-ee). The superior criminal court of Scotland, acting both as a trial court and as a court of criminal appeal.

**high crime.** See CRIME.

**high diligence.** See *great diligence* under DILIGENCE.

**higher court.** See *court above* under COURT.

**higher scale.** See SCALE.

**highest and best use.** See USE (1).

**highest court.** The court of last resort in a particular jurisdiction; a court whose decision is final and cannot be appealed because no higher court exists to consider the matter. ● The U.S. Supreme Court, for example, is the highest federal court.

**highest degree of care.** See DEGREE OF CARE.

**highest proved value.** See VALUE.

**high flier.** *Slang.* A security that has strongly attracted public interest so that investors pay an unusually high price.

**highgrade, vb.** **1.** To steal rich ore, as from a mine by a miner. **2.** To mine only esp. valuable ore (such as gold).

**high-grade security.** See SECURITY.

**high justice.** See JUSTICE (3).

**high-low agreement.** A settlement in which a defendant agrees to pay the plaintiff a minimum recovery in return for the plaintiff's agreement to accept a maximum amount regardless of the outcome of the trial. — Also termed *hilo settlement*.

**high-managerial agent.** See AGENT.

**high-probability rule.** *Marine insurance.* The principle that an insured may abandon a vessel if it appears extremely likely that a total loss is imminent.

**high seas.** See SEA.

**high-test marriage.** See *covenant marriage* under MARRIAGE (1).

**high treason.** See TREASON.

**high-water line.** See *high-water mark* under WATER MARK.

**high-water mark.** See WATER MARK.

**highway. 1.** Broadly, any main route on land, on water, or in the air. **2.** A free and public roadway or street that every person may use. **3.** The main public road connecting towns or cities. **4.** The entire width between boundaries of every publicly maintained way when part is open to public use for purposes of vehicular traffic.

**common highway.** A highway for use by the public for any purpose of transit or traffic.

**public highway.** A highway controlled and maintained by governmental authorities for general use.

**highway act.** (*usu. pl.*) One of a body of statutes governing the laying out, construction, repair, and use of highways. — Also termed *highway law*.

**highwayman.** A highway robber; a person who robs on a public road.

**highway rate.** *Hist.* In England, a tax for the maintenance and repair of highways.

**highway robbery.** See ROBBERY.

**highway tax.** See TAX.

**higuera** (ee-gay-lah), *n.* *Spanish law.* A receipt given by a decedent's heir, setting forth what property the heir has received from the estate.

**hijack**, *vb.* **1.** To commandeer (a vehicle or airplane), esp. at gunpoint. **2.** To steal or rob from (a vehicle or airplane in transit).

**Hilary Rules.** *Hist.* A collection of English pleading rules designed to ease the strict pleading requirements of the special-pleading system, esp. by limiting the scope of the general issue in the formed actions and by forcing the defendant to set up affirmatively all matters other than a denial of the breach of duty or of the wrongful act. • Promulgated in England in the 1834 Hilary Term, these rules followed an 1828 initiative to examine procedural laws and other subjects and to report to Parliament changes that might be enacted. The rules had the unintended effect of extending the reach of strict-pleading requirements into new areas of law. Widespread dissatisfaction with the Hilary Rules led to the liberalization of the pleading system under the 1873-1875 Judicature Acts. — Formerly also termed *New Rules*.

"The failure of the Hilary Rules . . . lay in their insistence on special pleading as it was understood late in the eighteenth century. That parties should plead precisely, and clarify as far as possible the issue between them, is one thing; that their endeavours to do so should be judged by the extremely artificial standards of the old system, was quite another." Theodore F.T. Plucknett, *A Concise History of the Common Law* 416 (5th ed. 1956).

**Hilary sittings.** In England, a term of court beginning on January 11 of each year and ending on the Wednesday before Easter. • The Hilary sittings were known as *Hilary term* until 1875. Cf. EASTER SITTINGS; MICHAELMAS SITTING.

**hilo settlement.** See HIGH-LOW AGREEMENT.

**Hilton doctrine.** *Civil procedure.* The rule that in a dispute between parties to an oil-and-gas lease, royalty owners who would lose their rights if the defendant's lease were terminated are regarded as indispensable parties to a proceeding challenging the lease. *Hilton v. Atlantic Refining Co.*, 327 F.2d 217 (5th Cir. 1964).

**Himalaya clause.** *Maritime law.* A provision in a bill of lading extending the carrier's liability limitations under the Carriage of Goods by Sea Act to the carrier's agents and independent contractors. • This type of clause is usu. strictly construed. See CARRIAGE OF GOODS BY SEA ACT.

"An exculpatory or other beneficial clause which seeks to extend to noncarriers, partial immunity or other protections afforded to the carrier by the bill of lading is popularly known to the admiralty bar as a Himalaya clause. This misnomer derives from an earlier British case involving the vessel *Himalaya*, *Adler v. Dickson* . . ." Nicholas J. Healy, *Carriage of Goods by Sea: Application of the "Himalaya Clause" to Subdeleagees of the Carrier*, 2 Mar. Law. 91, 111 (1977).

**hine** (hɪn), *n.* *Hist.* In England, a husbandry servant. — Also spelled *hind*.

**hinefare** (hɪn-fair), *n.* *Hist.* In England, the loss or departure of a servant from the master.

**hinegeld** (hɪn-geld), *n.* *Hist.* A ransom for an offense committed by a servant.

**hipoteca** (ee-poh-tek-ah), *n.* *Spanish law.* A mortgage of real property. See HYPOTHECATION.

**hire**, *vb.* **1.** To engage the labor or services of another for wages or other payment. **2.** To procure the temporary use of property, usu. at a set price. **3.** To grant the temporary use of services <hire themselves out>.

**hired gun.** *Slang.* **1.** An expert witness who testifies favorably for the party paying his or her fee, often because of that financial relationship rather than because of the facts. **2.** A lawyer who stops at nothing to accomplish the client's goals, regardless of moral consequences.

**hireling**, *n.* a person who is hired or serves for wages, esp. one who works only for the sake of payments.

**hire-purchase agreement.** See LEASE-PURCHASE AGREEMENT.

**hiring.** See LOCATIO.

**hiring at will.** See *employment at will* under EMPLOYMENT.

**his.** Properly a possessive pronoun of the masculine gender, but traditionally used and construed to include both sexes. • Because of the trend toward nonsexist language, careful drafters now generally avoid using *his* (and the personal pronouns *he* and *him*) unless the reference is only to a male person.

**His Honor; Her Honor.** **1.** A title customarily given to a judge. **2.** A title customarily given to the mayor of a city. **3.** A title given by the Massachusetts Constitution to the lieutenant

governor of the commonwealth. Cf. YOUR HONOR.

**his testibus** (his tes-tə-bəs). [Law Latin] *Hist.* These being witnesses. • The concluding clause of deeds and charters typically opened with these words, which stated the names of the witnesses to the instrument. This clause appeared in deeds and charters until the 16th century. — Also spelled *hijis testibus*; *hiis testibus*.

**historical cost.** See *acquisition cost* under COST (1).

**historical jurisprudence.** See JURISPRUDENCE.

**historic bay.** See BAY.

**historic-preservation law.** An ordinance prohibiting the demolition or exterior alteration of certain historic buildings or of all buildings in a historic district.

**historic site.** A building, structure, area, or property that is significant in the history, architecture, archeology, or culture of a country, state, or city, and has been so designated by statute. • A historic site usu. cannot be altered without the permission of the appropriate authorities.

**hit-and-run statute.** A law requiring a motorist involved in an accident to remain at the scene and to give certain information to the police and others involved.

**hitherto, adv.** Until now; heretofore.

**H.L. abbr.** HOUSE OF LORDS.

**HLA test. abbr.** A human-leukocyte-antigen test that uses a tissue-typing process to determine the probability of fatherhood. See PATERNITY TEST. Cf. DNA IDENTIFICATION.

**HMO. abbr.** HEALTH-MAINTENANCE ORGANIZATION.

**hoard, vb.** To acquire and hold (goods) beyond one's reasonable needs, usu. because of an actual or anticipated shortage or price increase <hoarding food and medical supplies during wartime>.

**hobblor. Hist.** In England, a light horseman or bowman; a tenant bound by his tenure to maintain a small light horse for military service.

**Hobbs Act.** A federal anti-racketeering act making it a crime to interfere with interstate commerce by extortion, robbery, or physical violence. 18 USCA § 1951. See RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

**hobby loss.** See LOSS.

**hodgepodge. 1.** HOTCHPOT (1). **2.** An unorganized mixture.

**hodgepodge act.** A statute that deals with incongruous subjects.

*"Hodge-Podge Act . . . Such acts, besides being evident proofs of the ignorance of the makers of them, or of their want of good faith, are calculated to create a confusion which is highly prejudicial to the interests of justice. . . . In many states bills, except general appropriation bills, can contain but one subject, which must be expressed in the title."* 1 John Bouvier, *Bouvier's Law Dictionary* 1444 (8th ed. 1914).

**hold, n. Archaic.** In England, tenure. • This word occurs most often in conjunction with others — for example, *freehold*, *leasehold* — and rarely in its separate form. See HOLDING (4).

**hold, vb. 1.** To possess by a lawful title <Sarah holds the account as her separate property>. **2.** (Of a court) to adjudge or decide <this court thus holds the statute to be unconstitutional>. **3.** To direct and bring about officially; to conduct according to law <we must hold an election every two years>. **4.** To keep in custody or under an obligation <I will ask the judge to hold you accountable>. **5.** To take or have an estate from another; to have an estate on condition of paying rent or performing service <James holds Hungerstream Manor under lease>. **6.** To conduct or preside at; to convoke, open, and direct the operations of <Judge Brown holds court four days a week>. **7.** To possess or occupy; to be in possession and administration of <Wendy holds the office of treasurer>.

**holder. 1.** A person who has legal possession of a negotiable instrument and is entitled to receive payment on it. **2.** A person with legal possession of a document of title or an investment security. **3.** A person who possesses or uses property.

**holder for value.** A person who has given value in exchange for a negotiable instrument. • Under the UCC, examples of "giving value" include acquiring a security interest in the instrument or accepting the instrument in payment of an antecedent claim. UCC

§ 3-303(a). — Also termed *bona fide holder for value*.

**holder in due course.** A person who in good faith has given value for a negotiable instrument that is complete and regular on its face, is not overdue, and, to the possessor's knowledge, has not been dishonored. • Under UCC § 3-305, a holder in due course takes the instrument free of all claims and personal defenses, but subject to real defenses. — Abbr. HDC; HIRC. — Also termed *due-course holder*.

**holder in good faith.** One who takes property or an instrument without knowledge of any defect in its title.

**holder of record.** See STOCKHOLDER OF RECORD.

**hold harmless, vb.** To absolve (another party) from any responsibility for damage or other liability arising from the transaction; INDEMNIFY. — Also termed *save harmless*.

**hold-harmless agreement.** A contract in which one party agrees to indemnify the other. — Also termed *save-harmless agreement*. See INDEMNITY.

**hold-harmless clause.** See INDEMNITY CLAUSE.

**holding, n.** 1. A court's determination of a matter of law pivotal to its decision; a principle drawn from such a decision. Cf. OBITER DICTUM. 2. A ruling on evidence or other questions presented at trial. 3. (*usu. pl.*) Legally owned property, esp. land or securities. 4. *Hist.* In feudal law, tenure.

**holding cell.** See JAIL.

**holding charge.** A criminal charge of some minor offense filed to keep the accused in custody while prosecutors take time to build a bigger case and prepare more serious charges.

**holding company.** See COMPANYY.

**holding-company tax.** See TAX.

**holding over.** A tenant's action in continuing to occupy the leased premises after the lease term has expired. • Holding over creates a tenancy at sufferance, with the tenant being referred to as a *holdover*. See *tenancy at sufferance* under TENANCY.

**holding period. Tax.** The time during which a capital asset must be held to determine whether gain or loss from its sale or exchange is long-term or short-term.

**holding zone.** See ZONE.

**hold order.** A notation in a prisoner's file stating that another jurisdiction has charges pending against the prisoner and instructing prison officials to alert authorities in that other jurisdiction instead of releasing the prisoner.

**hold out, vb.** 1. To represent (oneself or another) as having a certain legal status, as by claiming to be an agent or partner with authority to enter into transactions <even though he was only a promoter, Schwartz held himself out as the principal>. 2. To refuse to yield or submit; to stand firm <Womack held out for a higher salary and better benefits>.

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

**holdover tenant.** See TENANT.

**holdup.** See STICKUP.

**holograph (hol-ə-graf), n.** A document (such as a will or deed) that is entirely handwritten by its author. — Also termed *olograph*. Cf. ONOMASTIC; SYMBOLIC. — **holographic, adj.**

**holographic will.** See WILL.

**homage (hom-ij).** In feudal times, a ceremony that a new tenant performed for the lord to acknowledge the tenure. • This was the most honorable service that a free tenant might do for a lord. In the ceremony, kneeling before the lord, the tenant placed his hands between the lord's hands while saying, "I become your man from this day forward, of life and limb and earthly honor, and to you will be faithful and loyal, and bear you faith, for the tenements that I claim to hold of you, saving the faith that I owe unto our sovereign lord the king, so help me God."

"Homage is an oath of fidelity, acknowledging himself to be the lord's man: wherein the tenant must be ungirt, uncovered, kneel upon both knees, and hold both his hands together between the lord's hands sitting before him. This is to be done only to the lord himself." Sir Henry Finch, *Law, or a Discourse Thereof* 143 (1759).

**homage ancestral (hom-ij an-ses-trəl).** [Law French] A type of homage in which a tenant and the tenant's ancestors have held



immemorially of another by the service of homage. • This long-standing relationship bound the lord to warrant the title and to hold the tenant clear of all services to superior lords. — Also spelled *homage auncstral* (aw-**mahzh** on-se-**stral**).

**homage liege** (hom-ij leej). Homage due the sovereign alone as supreme lord, done without any saving or exception of the rights of other lords. — Also termed *homagium ligium* (hə-**may**-jee-əm li-jee-əm).

**homage jury.** See JURY.

**homagio respectuando** (hə-**may**-jee-oh ri-spek-choo-**an**-doh), *n.* [Law Latin “homage to the respected”] *Hist.* A writ to the escheator commanding the delivery of seisin of lands to the heir of the king’s tenant, even though the heir had not performed homage.

**homagium** (hə-**may**-jee-əm), *n.* [Law Latin] See HOMAGE.

**homagium ligium.** See *homage liege* under HOMAGAE.

**homagium planum** (play-nəm), *n.* [Law Latin “plain homage”] *Hist.* A type of homage binding the homager to nothing more than fidelity, without obligation either of military service or of attendance in the superior’s courts.

**homagium reddere** (red-ə-ree), *n.* [Law Latin “to renounce homage”] *Hist.* The process, prescribed in feudal law by a set form and method, by which a vassal disowns and defies the lord.

**homagium simplex** (sim-pleks), *n.* [Law Latin “simple homage”] *Hist.* A type of homage that acknowledges tenure, while reserving the rights of other lords.

**hombre bueno** (awm-bray bway-noh), *n.* *Spanish law.* 1. A judge. 2. An arbitrator chosen by the parties to a suit. 3. A man in good standing; one who is competent to testify in a suit.

**home equity loan.** See LOAN.

**home office.** 1. A corporation’s principal office or headquarters. 2. (*cap.*) In England, the Department of State, responsible for overseeing the internal affairs of the country.

**homeowners’ association.** See ASSOCIATION.

**homeowner’s equity loan.** See LOAN.

**homeowner’s insurance.** See INSURANCE.

**homeowner’s policy.** See INSURANCE POLICY.

**Home Owners Warranty.** A warranty and insurance program that, among other coverage, insures a new home for ten years against major structural defects. • The program was developed by the Home Owners Warranty Corporation, a subsidiary of the National Association of Home Builders. Builders often provide this type of coverage, and many states provide similar warranty protection by statute. — Abbr. HOW. — Also spelled *Home Owners’ Warranty*.

**home port.** See PORT.

**home-port doctrine.** *Maritime law.* The rule mandating that a vessel engaged in interstate and foreign commerce is taxable only at its home port, usu. where the vessel is registered.

**home rule.** A state legislative provision or action allocating a measure of autonomy to a local government, conditional on its acceptance of certain terms. Cf. LOCAL OPTION.

“Home rule in the United States was sometimes envisioned in its early days as giving the cities to whom such rule was granted full-fledged sovereignty over local affairs, thus bringing about dual state and local sovereignty along the national plan of federal and state governments. But such local sovereignty has never developed, nor have any clear-cut distinctions between state and local power.” Osborne M. Reynolds, Jr., *Handbook of Local Government Law* § 35, at 96 (1982).

**home-rule charter.** See CHARTER (3).

**homestead.** The house, outbuildings, and adjoining land owned and occupied by a person or family as a residence. • As long as the homestead does not exceed in area or value the limits fixed by law, in most states it is exempt from forced sale for collection of a debt. — Also termed *homestead estate*.

**business homestead.** The premises on which a family’s business is located. • In some states, business homesteads are exempt from execution or judicial sale for most kinds of debt.

**constitutional homestead.** A homestead, along with its exemption from forced sale, conferred on the head of a household by a state constitution.

**homesteader.** One who acquires or occupies a homestead.

**homestead law.** A statute exempting a homestead from execution or judicial sale for debt, unless all owners, usu. a husband and wife, have jointly mortgaged the property or otherwise subjected it to creditors' claims.

"Almost all states also have legislative provisions, commonly referred to as homestead laws, designed to protect the family home from the reach of certain classes of creditors. . . . The protection afforded by an exemption statute is not absolute. A federal tax claim may be satisfied from 'exempt property.' A number of states make similar exceptions for state taxes, claims for alimony and child support, materialmen and mechanics' liens. By statute in most states, case law in others, purchase money mortgages and security interests are generally not affected by an exemption statute." David G. Epstein & Steve H. Nickles, *Consumer Law in a Nutshell* 384-85 (2d ed. 1981).

**homicide** (hom-ə-sīd), *n.* The killing of one person by another. — **homicidal**, *adj.*

"The legal term for killing a man, whether lawfully or unlawfully, is 'homicide.' There is no *crime* of 'homicide.' Unlawful homicide at common law comprises the two crimes of murder and manslaughter. Other forms of unlawful homicide have been created by statute: certain new forms of manslaughter (homicide with diminished responsibility, and suicide pacts), infanticide, and causing death by dangerous driving." Glanville Williams, *Textbook of Criminal Law* 204 (1978).

**criminal homicide.** 1. Homicide prohibited and punishable by law, such as murder or manslaughter. 2. The act of purposely, knowingly, recklessly, or negligently causing the death of another human being. Model Penal Code § 210.1.

**criminally negligent homicide.** See *negligent homicide*.

**excusable homicide.** 1. Homicide resulting from a person's lawful act, committed without intention to harm another. 2. See *justifiable homicide* (1).

**felonious homicide.** Homicide committed unlawfully, without legal justification or excuse. • This is the category into which murder and manslaughter fall.

**homicide by misadventure.** See ACCIDENTAL KILLING.

**homicide per infortunium** (pər in-fort[ɪ]oo-nee-əm). [Latin "homicide by misfortune"] The unintentional killing of another while engaged in a lawful act; ACCIDENTAL KILLING. See PER INFORTUNUM.

**innocent homicide.** Homicide that does not involve criminal guilt.

**justifiable homicide.** 1. The killing of another in self-defense when faced with the danger of death or serious bodily injury. —

Also termed *excusable homicide*. See SELF-DEFENSE. 2. A killing mandated or permitted by the law, such as execution for a capital crime or killing to prevent a crime or a criminal's escape.

"It should be noted that a justifiable homicide is not criminal, since it is a killing which the law has either commanded or permitted: the *actus* in such a case is not legally punishable, and therefore we may perhaps say that it is an *actus* of killing which is not *reus*. As we shall see in most cases of justifiable homicide the killing is intentional, and therefore the mental element of criminal responsibility is clearly present: but there is no crime committed since there is no *actus reus*." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 109 (16th ed. 1952).

"English lawyers once distinguished between 'excusable' homicide (e.g. accidental non-negligent killing) and 'justifiable' homicide (e.g. killing in self-defence or in the arrest of a felon) and different legal consequences once attached to these two forms of homicide. To the modern lawyer this distinction has no longer any legal importance: he would simply consider both kinds of homicide to be cases where some element, negative or positive, required in the full definition of criminal homicide (murder or manslaughter) was lacking. But the distinction between these two different ways in which actions may fail to constitute a criminal offence is still of great moral importance. Killing in self-defence is an exception to a general rule making killing punishable; it is admitted because the policy or aims which in general justify the punishment of killing (e.g. protection of human life) do not include cases such as this. In the case of 'justification' what is done is regarded as something which the law does not condemn, or even welcomes." H.L.A. Hart, "Prolegomenon to the Principles of Punishment," in *Punishment and Responsibility* 1, 13 (1968).

**negligent homicide.** Homicide resulting from the careless performance of a legal or illegal act in which the danger of death is apparent; the killing of a human being by criminal negligence. — Also termed *criminally negligent homicide*. See *criminal negligence* under NEGLIGENCE.

"There is no common-law offense known as 'negligent homicide.' As a matter of the common law of crimes any killing below the grade of manslaughter is innocent homicide. Some of the new penal codes have a classification scheme which (omitting degrees or other variations) divides criminal homicide into murder, manslaughter and criminally negligent homicide — or simply negligent homicide. For the most part, however, this has been achieved by removing from manslaughter the offense of homicide by criminal negligence and using this to constitute the newly named offense. Thus, though there are a few exceptions, most states will have no homicide offense which would be below common-law manslaughter." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 116-17 (3d ed. 1982).

**reckless homicide.** The unlawful killing of another person with conscious indifference toward that person's life. Cf. MANSLAUGHTER.

**vehicular homicide.** The killing of another person by one's unlawful or negligent operation of a motor vehicle.

**homicidium** (hom-ə-sī-dee-əm), *n.* [Latin] Homicide.

**homicidium ex casu** (eks kay-s[y]oo). Homicide by accident. See ACCIDENTAL KILLING.

**homicidium ex justitia** (eks jəs-tish-ee-ə). Homicide in the administration of justice, or in the carrying out of a legal sentence. See *justifiable homicide* (2) under HOMICIDE.

**homicidium ex necessitate** (eks nə-ses-i-tay-tee). Homicide from inevitable necessity, such as for the protection of one's person or property. See *justifiable homicide* (1) under HOMICIDE.

**homicidium ex voluntate** (eks vol-ən-tay-tee). Voluntary or willful homicide. See *criminal homicide* under HOMICIDE.

**hominatio** (hom-ə-nay-shee-oh), *n.* [Law Latin] *Hist.* Homage; the act of performing homage.

**homine capto in withernamium** (hom-ə-nee kap-toh in with-ər-nay-mee-əm). [Law Latin "for taking a man in withernam"] *Hist.* A writ for the arrest of a person who had taken a bondman out of the country to prevent a replevy. See WITHERNAM.

**homine replegiando** (hom-ə-nee ri-plee-jee-an-doh). [Law Latin "for replevying a man"] *Hist.* A writ to replevy a man out of prison, or out of the custody of a private person.

**homines** (hom-ə-nee), *n.* [Latin "men"] *Hist.* Feudal tenants entitled to have their causes and other matters tried only in their lord's court. See HOMO.

**homines ligii** (li-jee-i). [Latin] *Hist.* Liege men; feudal tenants or vassals, esp. those who held immediately of the sovereign.

**homiplagium** (hom-ə-play-jee-əm), *n.* [Law Latin] *Hist.* The act of maiming a man.

**hommes de fief** (awm də feef), *n.* [French "men of the fief"] *Hist.* Feudal tenants; peers in the lords' courts. — Also termed *hommes feudaux*.

**homo** (hoh-moh), *n.* [Latin] *Hist.* 1. A male human. 2. A member of humankind; a human being of either sex. 3. A slave. 4. A vassal; a feudal tenant. 5. A retainer, dependent, or servant. Pl. **homines**. See HOMINES.

**homo alieni juris** (ay-lee- or al-ee-ee-ni joor-is). See FILIUSFAMILIAS.

**homo chartularius** (kahr-chə-lair-ee-əs). A slave manumitted by charter.

**homo commendatus** (kom-ən-day-təs). A man who commends himself into another's power for protection or support.

**homo ecclesiasticus** (e-klee-z[h]ee-as-ti-kəs). A church vassal; one bound to serve a church, esp. in an agricultural capacity.

**homo exercitatus** (eg-zər-shə-tay-lis). A man of the army; a soldier.

**homo feodalis** (fyoo-day-lis). A fee man; a vassal or tenant who holds a fee.

**homo fiscalis** (fis-kay-lis). A servant or vassal belonging to the treasury (*fiscus*). — Also termed *homo fiscalinus*.

**homo francus** (frangk-əs). 1. *Hist.* In England, a freeman. 2. A Frenchman.

**homo ingenuus** (in-jen-yoo-əs). A free and lawful man; a yeoman.

**homo liber** (li-bər). 1. A free man. 2. A freeman lawfully competent to be a juror. 3. An allodial proprietor, as distinguished from a feudal tenant. See ALLODIAL.

**homo ligius** (li-jee-əs). A liege man, esp. the vassal of a king.

**homo novus** (noh-vəs). 1. A new tenant or vassal; one invested with a new fee. 2. A tenant pardoned after being convicted of a crime.

**homo pertinens** (pər-tə-nenz). A feudal bondman or vassal; one belonging to the soil.

**homo regius** (ree-jee-əs). A king's vassal.

**homo Romanus** (rə-may-nəs). A Roman. • A term used in Germanic law codes to describe the Roman inhabitants of Gaul and other former Roman provinces.

**homo sui juris** (s[y]oo-i joor-is). See PATERFAMILIAS.

**homo trium litterarum** (tri-əm lit-ə-rair-əm). ["a man of three letters"] A thief. • The "three letters" refers to *f*, *u*, and *r*, for the Latin word *fur* ("thief").

**homologación.** See HOMOLOGATION.

**homologare** (hom-ə-lə-gair-ee), *vb.* [Law Latin] *Civil law.* 1. To confirm or approve; to consent or assent. 2. To confess.

**homologate** (hə-mol-ə-gayt), *vb.* *Civil law.* To approve or confirm officially <the court homologated the sale>.

**homologation** (hə-mol-ə-gay-shən). *Civil law.*

1. Confirmation, esp. of a court granting its approval to some action. 2. The consent inferred by law from parties' failure, for a ten-day period, to complain of an arbitrator's sentence, of an appointment of a syndic (or assignee) of an insolvent, or of a settlement of successions. 3. The approval given by a judge of certain acts and agreements, to render them more binding and executory. — Also termed (in Spanish law) *homologación* ([h]oh-moh-loh-gas-yohn). See *judgment homologating the tableau* under JUDGMENT.

**Hon.** *abbr.* HONORABLE.

**honeste vivere** ([h]ə-nes-tee vi-və-ree). [Latin] *Roman law.* To live honestly. • This was one of the three general precepts in which Justinian expressed the requirements of the law. Cf. ALTERUM NON LAEDERE; SUUM CUIQUE TRIBUERE.

**honesty clause.** See FULL-REPORTING CLAUSE (1).

**honor, n.** 1. In the United States, a courtesy title given to judges and certain other public officials. 2. (*usu. pl.*) In England, those dignities or privileges, degrees of nobility, knighthood, and other titles that flow from the Crown. 3. *Hist.* In England, a seigniorship of several manors held under one baron or lord paramount.

**honor, vb.** 1. To accept or pay (a negotiable instrument) when presented. 2. To recognize, salute, or praise.

**Honorable.** A title of respect given to judges, members of the U.S. Congress, ambassadors, and the like <The Honorable Ruth Bader Ginsburg>. — *Abbr.* Hon.

**honorable discharge.** See DISCHARGE (8).

**honorable-engagement clause.** *Reinsurance.* An arbitration provision in a reinsurance contract allowing the arbitrators to view the reinsurance arrangement reasonably — in line with the agreement's general purposes — rather than strictly according to the rules of law or an overly technical interpretation of contract language.

**honorarium** (on-ə-rair-ee-əm), *n.* 1. A payment of money or anything of value made to a person for services rendered for which fees cannot legally be or are not traditionally paid. • Federal law restricts the payment of honoraria to members of Congress. 2. A voluntary reward

for that for which no remuneration could be collected by law; a voluntary donation in consideration of services that admit of no compensation in money. 3. *Roman law.* A gratuitous payment, esp. for professional services, as distinguished from compensation for physical labor. Pl. **honoraria.** Cf. MERCES.

**honorary canon.** See CANON (5).

**honorary feud.** *Hist.* In England, a title of nobility descending to the eldest son only. See FEUD.

**honorary services.** *Hist.* Special services rendered to the king by a person holding tenure of grand serjeanty. • The services usu. consisted of carrying the royal banner or sword, or serving at the king's coronation as a butler, as a champion, or in some other capacity.

**honorary trust.** See TRUST.

**horae juridicae** (hor-ee juu-rid-i-see), *n. pl.* [Latin] *Hist.* Juridical hours. • The time during which judges sat in court to attend to judicial business. — Also termed *horae iudicii* (hor-ee joo-dish-ee-ee).

**horca** (or-kah), *n.* *Spanish law.* 1. A gallows. 2. A stick for administering corporal punishment. 3. A designated place for administering corporal punishment.

**hordera** (hor-deer-ə), *n.* [Law Latin] *Hist.* In England, a treasurer. — Also termed *hordarius* (hor-dair-ee-əs).

**horderium** (hor-deer-ee-əm), *n.* [Law Latin] *Hist.* In England, a hoard, treasury, or repository.

**horizontal agreement.** See *horizontal restraint* under RESTRAINT OF TRADE.

**horizontal competition.** See COMPETITION.

**horizontal-gaze nystagmus test.** *Criminal law.* A test for intoxication, commonly performed on persons suspected of driving under the influence of alcohol, in which the suspect's eyes are observed to detect involuntary jerking movements as they follow horizontal motion. — *Abbr.* HGN test. See NYSTAGMUS.

**horizontal integration.** See *horizontal merger* under MERGER.

**horizontal merger.** See MERGER.

**horizontal nonprivity.** See NONPRIVITY.

**horizontal price-fixing.** See PRICE-FIXING.

**horizontal privity.** See PRIVITY.

**horizontal-property act.** A statute dealing with cooperatives and condominiums.

**horizontal restraint.** See RESTRAINT OF TRADE.

**horizontal union.** See *craft union* under UNION.

**hornbook. 1.** A book explaining the basics of a given subject. **2.** A textbook containing the rudimentary principles of an area of law. Cf. CASEBOOK.

"*Hornbook* ... The first book of children, covered with horn to keep it unsoiled." Samuel Johnson, *A Dictionary of the English Language* (1755).

**hornbook law.** See BLACKLETTER LAW.

**hornbook method.** A method of legal instruction characterized by a straightforward presentation of legal doctrine, occasionally interspersed with questions. • The hornbook method predominates in civil-law countries, and in certain fields of law, such as procedure and evidence. — Also termed *lecture method*. Cf. CASEBOOK METHOD; SOCRATIC METHOD.

**horn tenure.** See CORNAGE.

**hors** (or). [French] **1.** Out or out of. **2.** Outside or outside of.

**hors de son fee** (or *də son fee*), *n.* [French "out of his fee"] *Hist.* A defensive plea in an action for rent or services by which the defendant alleged that the land in question was outside the plaintiff's fee.

**horse case.** See WHITEHORSE CASE.

**horseshedding, n.** The instruction of a witness favorable to one's case (esp. a client) about the proper method of responding to questions while giving testimony. — Also termed *woodshedding*. — **horseshed**, *vb.* Cf. SANDPAPERING.

**hospitalaria.** See HOSTILARIA.

**Hospitallers** (*hos-pi-təl-ərz*). A military and religious order founded by the Catholic Church in

the 12th century and so called because it built a hospital at Jerusalem to care for pilgrims. • The Crown seized all its lands and goods in England under the Grantees of Reversions Act (1540). The Hospitallers still functions in several countries as a humanitarian society.

**hospitator** (*hos-pə-tay-tər*), *n.* [Law Latin] A host or entertainer.

**hospitator communis** (*kə-myoo-nis*). A common innkeeper.

**hospitator magnus** (*mag-nəs*). The marshal of a camp.

**hospitia** (*hah-spish-ee-ə*), *n.* [Latin] Inns.

**hospitia cancellariae** (*kan-sə-lair-ee-i*). Inns of chancery.

**hospitia communia** (*kə-myoo-nee-ə*). Common inns.

**hospitia curiae** (*kyoor-ee-i*). Inns of court.

**hospiticide** (*hah-spit-ə-sid*), *n.* A host who murders a guest.

**hospitium** (*hah-spish-ee-əm*), *n.* [Latin] An inn; a household.

**hostage. 1.** An innocent person held captive by another who threatens to kill or harm that person if one or more demands are not met. • Hostage-taking is a federal crime. 18 USCA § 1203. Cf. KIDNAPPING. **2.** *Int'l law.* A person who is given into an enemy's possession, in time of war, with his or her freedom or life to stand as security for the performance of some agreement made to the enemy by the belligerent power giving the hostage.

**hostelagium** (*hos-tə-lay-jee-əm*), *n.* [Law Latin] *Hist.* A right to receive lodging and entertainment, anciently reserved by lords in their tenants' houses.

**hosteler** (*hos-tə-lər*). **1.** A person who stays in a youth hostel. **2.** A stableman. **3.** *Archaic.* A person who receives and entertains guests, esp. at a monastery. **4.** *Archaic.* An innkeeper. See HOSTLER.

**hostes** (*hos-teez*), *n. pl.* [Latin] Enemies. Sing. **hostis** (*hos-tis*).

**hostes humani generis** (*hyoo-may-ni jen-ə-ris*). Enemies of the human race; specif., pirates.

**homicide** (**hos-tə-sid**), *n.* **1.** A person who kills an enemy. **2.** The killing of an enemy.

**hostilaria** (**hos-tə-lair-ee-ə**), *n.* [Latin] A place or room in a religious house used to receive guests and strangers. — Also termed *hospitalaria* (**hos-pə-tə-ler-[ee-]ə**).

**hostile amendment.** See AMENDMENT (1).

**hostile bidder.** See CORPORATE RAIDER.

**hostile embargo.** See EMBARGO (1).

**hostile-environment sexual harassment.** See SEXUAL HARASSMENT.

**hostile possession.** See POSSESSION.

**hostile takeover.** See TAKEOVER.

**hostile witness.** See WITNESS.

**hostility.** **1.** A state of enmity between individuals or nations. **2.** An act or series of acts displaying antagonism. **3.** *Usu. pl.* Acts of war.

**hostler** ([h]os-lər). [fr. *hosteler*] *Archaic.* **1.** A stableman; an ostler. **2.** An innkeeper. ● By the 16th century, this term had lost its “innkeeper” sense, and referred exclusively to a stableman.

**hot blood.** See HEAT OF PASSION.

**hot cargo.** *Labor law.* Goods produced or handled by an employer with whom a union has a dispute.

**hot-cargo agreement.** *Labor law.* A voluntary agreement between a union and a neutral employer by which the latter agrees to exert pressure on another employer with whom the union has a dispute, as by ceasing or refraining from handling, using, selling, transporting, or otherwise dealing in any of the products of an employer that the union has labeled as unfair. ● Most agreements of this type were prohibited by the Landrum-Griffin Act of 1959. See LANDRUM-GRIFFIN ACT.

**hot check.** See *bad check* under CHECK.

**hotchpot** (**hoch-pot**), *n.* **1.** The blending of items of property to secure equality of division, esp. as practiced in cases in which advancements of an intestate's property must be made

up to the estate by a contribution or by an accounting. — Also termed *hotchpotch*; *hodge-podge*. **2.** In community-property states, the property that falls within the community estate.

**hot court.** See COURT.

**hot document.** See DOCUMENT.

**hotel divorce.** See DIVORCE.

**hotelkeeper's lien.** See LIEN.

**hot issue.** See ISSUE (2).

**hot pursuit.** **1.** FRESH PURSUIT. **2.** *Int'l law.* The legitimate chase of a foreign vessel on the high seas just after that vessel has violated the law of the pursuing state while within that state's jurisdiction.

**hot stock.** See *hot issue* under ISSUE (2).

**hot-water ordeal.** See ORDEAL.

**house.** **1.** A home, dwelling, or residence.

**ancient house.** *Hist.* In England, a house that has stood long enough to acquire an easement of support against the adjoining land or building.

**bawdy house.** See DISORDERLY HOUSE.

**house of correction.** **1.** A reformatory. **2.** A place for the confinement of juvenile offenders or those who have committed crimes of lesser magnitude. — Also termed *house of refuge*.

**house of prostitution.** See DISORDERLY HOUSE.

**house of refuge.** See *house of correction*.

**house of worship.** A building or place set apart for and devoted to the holding of religious services or exercises or public worship; a church or chapel, or a place similarly used.

**public house.** **1.** *Archaic.* An inn. **2.** A tavern where alcoholic beverages may be bought and consumed on the premises. ● The British term *pub* is an abbreviation of *public house*. — Also termed (in sense 2) *tippling house*.

**2.** A branch of a legislature or a quorum of such a branch; esp., the lower chamber of a bicameral legislature. **3.** HOUSE OF REPRESENTATIVES.

**houseage** (**howz**-ij). A fee paid for housing goods, as by a carrier or at a wharf.

**house arrest.** The confinement of a person who is accused or convicted of a crime to his or her home usu. by attaching an electronically monitored bracelet to the criminal offender. ● Most house-arrest programs require the offender to work and permit leaving the home only for reasons such as work, medical needs, or community-service obligations.

**house bill.** See BILL (3).

**house-bote.** See BOTE (1).

**housebreaking.** The crime of breaking into a dwelling or other secured building, with the intent to commit a felony inside; BURGLARY. ● *Burglary* is now used more than *housebreaking*. In England, for example, *housebreaking* was replaced in 1968 with statutory burglary, though the term is still used in Scots law.

“The oldest term for this purpose [i.e., of distinguishing between common-law burglary and its statutory enlargements], still encountered at times, is ‘housebreaking’; a more recent suggestion is ‘breaking and entering,’ and peace officers sometimes speak of a ‘breakin.’” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 270 (3d ed. 1982).

**houseburning.** The common-law misdemeanor of intentionally burning one’s own house that is within city limits or that is close enough to other houses that they might be in danger of catching fire (although no actual damage to them results). — Also termed *combustio domorum*. Cf. ARSON.

**house counsel.** See *in-house counsel* under COUNSEL.

**house-duty.** *Hist. English law.* A tax first imposed in 1851 on inhabited houses. 14 & 15 Vict., ch. 36 (repealed 1924). ● This tax replaced the window tax, which levied a duty on houses with more than six windows. See *window tax* under TAX.

**household, adj.** Belonging to the house and family; domestic.

**household, n.** 1. A family living together. 2. A group of people who dwell under the same roof. Cf. FAMILY.

**householder.** 1. A person who keeps house with his or her family; the head or master of a

family. 2. A person who has a household. 3. An occupier of a house. Cf. HEAD OF HOUSEHOLD.

**household goods.** See GOODS.

**house law.** *Hist.* A regulatory code promulgated by the head of a royal or noble family, or of a prominent private family, governing intrafamily relationships and acts concerning events such as marriage, disposition of property, and inheritance. ● Such a code had no legal authority but was enforced within the family by personal and economic sanctions.

**House of Commons.** The lower chamber of the British and Canadian parliaments. — Abbr. H.C.

**house of correction.** See HOUSE.

**House of Delegates.** 1. The body vested with the control and administration of the American Bar Association. 2. The lower chamber of the state legislature in Maryland, Virginia, and West Virginia.

**house of ill fame.** See DISORDERLY HOUSE.

**House of Lords.** The upper chamber of the British Parliament, of which the 11-member judicial committee provides judges who serve as the final court of appeal in most civil cases. ● In practice, the Lords sit as committees, usu. of five but occasionally of seven. Two committees may sit simultaneously. — Abbr. H.L. — Also termed *Lords*.

“‘House of Lords’ is an ambiguous expression. It refers (1) to all the peers who choose to sit as the Upper House of the legislature (Parliament), and also (2) to a court consisting of the highest level of the judiciary.” Glanville Williams, *Learning the Law* 8 (11th ed. 1982).

**house of prostitution.** See DISORDERLY HOUSE.

**house of refuge.** See *house of correction* under HOUSE.

**House of Representatives.** 1. The lower chamber of the U.S. Congress, composed of 435 members — apportioned among the states on the basis of population — who are elected to two-year terms. 2. The lower house of a state legislature. — Abbr. H.R. — Often shortened to *House*.

**house of worship.** See HOUSE.

**housing codes.** See BUILDING CODES.

**housing court.** See COURT.

**hovering act.** *Int'l law.* A statute applying to a coastal country's criminal jurisdiction over ships, and persons aboard those ships, when the ships are outside the country's territory.

"The notion of hovering acts evolved long before that of a belt of uniform width in the form of territorial waters. Great Britain's first anti-smuggling legislation to operate at a stated distance seaward was in 1719, applying to the master of any ship 'found at anchor or hovering within two leagues from the shore.' Later enactments extended this limit to three, then four, then eight leagues. A statute of 1794 gave power to seize and confiscate customable goods in vessels 'found at anchor, or hovering' inside specific straight lines drawn between lines on the British coasts, thus resembling the 'King's Chambers' of the Stuart era. In 1805 the British Parliament extended the seizure limit to 100 leagues (300 miles) from the coasts of Great Britain and Ireland in respect of vessels 'belonging wholly or in part to His Majesty's subjects, or whereof one-half of the persons on board shall be subjects of His Majesty.' Foreign-flag vessels could have fallen within this category. In the case of *Le Louis* (1817) 165 E.R. 1464, the British Admiralty judge Lord Stowell described these statutes as being permitted by 'the common courtesy of nations for their convenience.'" Geoffrey Marston, "Hovering Acts," in 2 *Encyclopedia of Public International Law* 884-85 (1995).

**HOW.** *abbr.* HOME OWNERS WARRANTY.

**howsoever,** *adv.* In whatever way; however.

**H.R.** *abbr.* HOUSE OF REPRESENTATIVES.

**H.R. 10 plan.** See KEOGH PLAN.

**hub-and-spoke conspiracy.** See *wheel conspiracy* under CONSPIRACY.

**huc usque** (hək əs-kwee), *adv.* [Latin] *Hist.* Hitherto. • This term commonly appeared in pleadings. — Also spelled *hucusque*.

**HUD.** *abbr.* The Department of Housing and Urban Development, a federal agency responsible for programs and policies that address the country's housing needs and that develop and improve neighborhoods.

**hudegeld.** See HYDEGELD.

**hue and cry.** *Hist.* 1. The public uproar that, at common law, a citizen was expected to initiate after discovering a crime. — Also termed *vociferatio*.

"Hue and Cry is the old Common Law mode of pursuing, 'with horn and voice,' persons suspected of felony, or having inflicted a wound from which death is likely to

ensue." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 26 (2d ed. 1826).

"All were obliged to pursue the criminal when the hue and cry was raised. Neglect of these duties entailed an amercement of the individual, the township or the hundred. The sheriffs and the constables were under special obligations, as conservatores pacis, to fulfil these duties."

1 William Holdsworth, *A History of English Law* 294 (7th ed. 1956).

2. The pursuit of a felon accompanying such an uproar. 3. A written proclamation for the capture of a felon.

**hui** (hoo-ee), *n.* Under Hawaiian law, an association of persons who own land together, usu. as tenants in common.

**huissier** (wee-syay), *n.* [French fr. *huis* "door"]

1. *French law.* An usher of a court; an officer (such as a marshal) who serves process. 2. *Hist.* In England, a ministerial officer attached to a court, responsible for service of process, issuing executions, and maintaining order during court sessions.

**hulk,** *n.* *Hist.* In England, a dismantled ship used as a prison. • Living conditions in hulks were notoriously poor, and their use as prisons ended as part of the broad prison-reform movements of the mid-19th century.

**humanitarian doctrine.** See LAST-CLEAR-CHANCE DOCTRINE.

**humanitarian law.** *Int'l law.* Law dealing with such matters as the use of weapons and other means of warfare, the treatment of war victims by the enemy, and generally the direct impact of war on human life and liberty.

**human rights.** The freedoms, immunities, and benefits that, according to modern values (esp. at an international level), all human beings should be able to claim as a matter of right in the society in which they live. See UNIVERSAL DECLARATION OF HUMAN RIGHTS.

**hundred.** *Hist.* 1. A county subdivision, formerly having its own local court.

"The hundred was a group of adjoining townships. It may have consisted of an area taxed at one hundred hides. Other explanations of the term 'hundred' are that the unit may have consisted of one hundred households, or the area had to supply one hundred fighting men for the national defence." L.B. Curzon, *English Legal History* 7 (2d ed. 1979).

2. The populace of such a subdivision. 3. See *hundred court* under COURT. 4. In the United States, a political division derived from the



English county division. • Hundreds existed in colonial Delaware, Maryland, Pennsylvania, and Virginia. Today, they exist only in Delaware. — **hundredal** (*hun-dri-dəl*), *adj.*

**hundredarius** (*hən-dri-dair-ee-əs*), *n.* [Law Latin] *Hist.* **1.** HUNDREDARY. **2.** HUNDREDOR (1).

**hundredary** (*hən-dri-der-ee*), *n.* [Law Latin] *Hist.* The chief or presiding officer of a hundred. — Also termed *hundredarius*.

**hundred court.** See COURT.

**hundredes earldor** (*hən-dridz ərl-dər*), *n.* [Latinized Old English] *Hist.* The presiding officer in a hundred court. — Also termed *hundredes man*.

**hundred moot.** See *hundred court* under COURT.

**hundredor** (*hən-dri-dər*), *n.* *Hist.* **1.** A freeholder of a hundred who can sue in, or act as judge of, a hundred court. **2.** A person who has been empaneled (or is fit to be empaneled) on a hundred-court jury, and who dwells within the hundred where the cause of action arose. **3.** An officer who has jurisdiction of a hundred and who holds the hundred court. **4.** The bailiff of a hundred.

**hundred penny.** *Hist.* In England, a tax collected from the hundred by the sheriff or lord of the hundred.

**hundred rolls.** *Hist.* Records that list the various feudal tenancies and feudal obligations existing among English lords and tenants. • The *hundred rolls* were compiled in 1274–75 by royal commissioners from inquiries put to hundred-court juries in order to alert the Crown to the existence of feudal relationships that infringed on royal prerogatives (and thereby royal revenue).

**hung jury.** See JURY.

**hurto** (*oor-toh*), *n.* *Spanish law.* Theft.

**husband.** A married man; a man who has a lawful wife living. • Etymologically, the word signified the *house bond*, the man who, according to Saxon ideas and institutions, held around him the family, for which he was legally responsible.

**husbandman.** *Archaic.* A farmer.

**husbandria** (*həz-bən-dree-ə*), *n.* [Law Latin] *Hist.* HUSBANDRY.

**husbandry.** **1.** Agriculture or farming; cultivation of the soil for food. • In some states, tools and equipment used in farming are exempt from forced sale for collection of a debt. **2.** Generally, care of a household; careful management of resources.

**husband-wife immunity.** See IMMUNITY (2).

**husband-wife privilege.** See *marital privilege* under PRIVILEGE (3).

**huscarle** (*hoos-kahl*), *n.* [Old English] *Hist.* **1.** A house servant or domestic; a man of the household. **2.** A king's vassal, thane, or baron; an earl's man or vassal.

**husfastne** (*hoos-fas[t]-ən*), *n.* [Old English] *Hist.* A person who holds house and land; a man bound to a frankpledge.

**husgablum** (*hoos-gab-ləm*), *n.* [Old English] *Hist.* A tax or tribute levied upon a house; house rent.

**hush money.** *Slang.* A bribe to suppress the dissemination of certain information; a payment to secure silence.

**husting.** (*usu. pl.*) [Old English] **1.** *Hist.* A deliberative assembly, esp. one called by the king or other leader. **2.** *Hist.* COURT OF HUSTINGS. **3.** *Hist.* The raised platform used by officials of the Court of Hustings. **4.** *Hist.* The raised platform used to nominate candidates for Parliament. • This practice ended after passage of the Ballot Act in 1872. **5.** Any place where political campaign speeches are made.

**hutesium et clamor** (*h[y]oo-tee-z[h]ee-əm et klam-ər*). [Law Latin] HUE AND CRY.

**hybrid action.** *Labor law.* A lawsuit in which a union member asserts claims against the employer for breach of a collective bargaining agreement, and against the union for breach of the duty of fair representation.

**hybrid class action.** See CLASS ACTION.

**hybrid security.** See SECURITY.

**hydegeld** (*hid-geld*), *n.* *Hist.* **1.** In England, a discharge for an assault on a trespassing servant. **2.** HIDEGLD. — Also spelled *hudegeld*.

**Hydraflow test.** A principle for deciding when an inadvertent disclosure of a privileged document is a waiver of the attorney-client privilege, whereby the court considers the reasonableness of the precautions taken to prevent the inadvertent disclosure, the number of disclosures involved, the extent of the disclosure, the promptness of any efforts to remedy the disclosure, and whether justice would be best served by permitting the disclosing party to retrieve the document. *Hydraflow, Inc. v. Enidine, Inc.*, 145 F.R.D. 626 (W.D.N.Y. 1993). — Also termed *middle-of-the-road test*. Cf. *lenient test*; *strict test*.

**hypobolium** (hi-pob-ə-ləm), *n.* [Latin fr. Greek] *Civil law.* A legacy given to a wife, in addition to her dowry, on the death of her husband.

**hypothec** (hi-poth-ek or hi-). *Civil law.* A mortgage given to a creditor on property to secure a debt; HYPOTHECA.

**hypotheca** (hi-pə-thee-kə or hip-ə-), *n.* [Latin] *Roman law.* A mortgage of property in which the debtor was allowed to keep, but not alienate, the property.

“Yet another mode of creating a security is possible, by which not merely the ownership of a thing but its possession also remains with the debtor. This is called by the Roman lawyers and their modern followers ‘hypotheca.’ Hypothecs may arise by the direct application of a rule of law, by judicial decision, or by agreement.” Thomas E. Holland, *The Elements of Jurisprudence* 235 (13th ed. 1924).

**hypothecaria actio** (hi-poth-ə-kair-ee-ə ak-shee-oh), *n.* [Latin] *Roman law.* A hypothecary action; an action to enforce a mortgage or to obtain the surrender of the thing mortgaged.

**hypothecarii creditores** (hi-poth-ə-kair-ee-i kred-ə-tor-eez), *n.* [Latin] *Roman law.* Hypothecary creditors; those who lent money on the security of a hypotheca.

**hypothecary** (hi-poth-ə-ker-ee), *adj.* Of, relating to, or involving a hypothec or hypothecation.

**hypothecary action.** *Civil law.* A lawsuit to enforce a creditor’s claims under a hypothec or hypothecation.

**hypothecary debt.** See DEBT.

**hypothecate** (hi-poth-ə-kayt), *vb.* To pledge (property) as security or collateral for a debt, without delivery of title or possession.

**hypothecation** (hi-poth-ə-kay-shən), *n.* The pledging of something as security without delivery of title or possession. — **hypothecator** (hi-poth-ə-kay-tər), *n.*

**tacit hypothecation.** 1. *Civil law.* A type of lien or mortgage that is created by operation of law and without the parties’ express agreement. — Also termed *tacit mortgage*. 2. See *maritime lien* under LIEN.

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

**hypothèque** (ee-poh-tek), *n.* *French law.* Hypothecation; the right vested in a creditor by the assignment to the creditor of real estate as security for a debt, whether or not accompanied by possession. • *Hypothèque* may be *légale*, as the charge that the state has over the lands of its accountants, or that a married woman has over the lands of her husband; *judiciaire*, when it is the result of a judgment of a court of justice; or *conventionnelle*, when it is the result of the parties’ agreement.

**hypothetical creditor.** See CREDITOR.

**hypothetical lien creditor.** See *hypothetical creditor* under CREDITOR.

**hypothetical question.** A trial device that solicits an expert witness’s opinion based on assumptions treated as facts established by evidence. — Also termed *abstract question*.

**hypothetical tenant.** *Hist.* A fictional person used for assessing property taxes, which are based on what the person would pay to lease the property.