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T. Hist. **1.** A letter branded on the base of the thumb of a person who claimed the benefit of clergy to prevent the person from claiming it again. • This practice was formally abolished by the Criminal Statutes (England) Repeal Act of 1827. **2.** In Pennsylvania, a letter sewn onto the left sleeve of a convicted thief. • This letter — required by a 1698 statute — had to be at least four inches high and of a different color from the rest of the garment.

TAB. *abbr.* TAX-ANTICIPATION BILL.

table, vb. To postpone consideration of (a pending bill or proposal) with no commitment to resume consideration unless the motion to table specifies a later date or time.

tableau of distribution. *Civil law.* A list of creditors of an insolvent estate, stating what each is entitled to.

table of authorities. See INDEX OF AUTHORITIES.

table of cases. An alphabetical list of cases cited, referred to, or digested in a legal textbook, volume of reports, or digest, with references to the section, page, or paragraph where each case appears.

tabula rasa (**tab-yə-lə rah-zə**). [Latin “scraped tablet”] A blank tablet ready for writing; a clean slate. Pl. **tabulae rasae** (**tab-yə-lee-rah-s-ī**).

tabulis exhibendis. See DE TABULIS EXHIBENDIS.

T-account. An accounting form shaped like the letter *T*, with the account’s name above the horizontal line, debits to the left of the vertical line, and credits to the right.

tacit (**tas-it**), *adj.* **1.** Implied but not actually expressed; implied by silence or silent acquiescence <a tacit understanding> <a tacit admission>. **2.** *Civil law.* Arising by operation of law; constructive <a tacit mortgage> <tacit relocation>. — **tacitly**, *adv.*

tacit acceptance. *Civil law.* An acceptance of an inheritance, indicated by the heir’s doing some act that shows an intent to accept it and that the heir would have no right to do except in that capacity.

tacit admission. See *implied admission* under ADMISSION.

tacit contract. See CONTRACT.

tacit dedication. See DEDICATION.

tacit hypothecation. See HYPOTHECATION.

tacit law. See LAW.

tacit mortgage. See *legal mortgage* under MORTGAGE.

tacit relocation. *Civil law.* The implied or constructive renewal of a lease, usu. on a year-to-year basis, when the landlord and tenant have failed to indicate their intention to have the lease terminated at the end of the original term.

tacit-relocation doctrine. The principle under which a lease is presumed to continue (usu. for a one-year period) beyond its expiration date because of the parties’ failure to indicate that the agreement should terminate at the stipulated date.

tacit remission. See REMISSION.

tack, vb. **1.** To add (one’s own period of land possession) to a prior possessor’s period to establish continuous adverse possession for the statutory period. **2.** To annex (a junior lien) to a first lien to acquire priority over an intermediate lien.

tacking. 1. The joining of consecutive periods of possession by different persons to treat the periods as one continuous period; esp., the adding of one’s own period of land possession to that of a prior possessor to establish continuous adverse possession for the statutory period. See

ADVERSE POSSESSION. **2.** The joining of a junior lien with the first lien in order to acquire priority over an intermediate lien.

Taft-Hartley Act. See LABOR-MANAGEMENT RELATIONS ACT.

Taft-Hartley fund. See *joint-welfare fund* under FUND (1).

tail, n. The limitation of an estate so that it can be inherited only by the fee owner's issue or class of issue. See FEE TAIL; ENTAIL.

tail female. A limitation to female heirs.

tail general. A tail limited to the issue of a particular person, but not to that of a particular couple. — Also termed *general tail*.

tail male. A limitation to male heirs.

tail special. A tail limited to specified heirs of the donee's body. — Also termed *special tail*.

"Estates-tail are either *general*, or *special* Tenant in tail-special is where the gift is restrained to certain heirs . . . and does not go to all of them in general. And this may happen in several ways. I shall instance in only one: as where lands and tenements are given to a man and the *heirs of his body, on Mary his now wife to be begotten*; here no issue can inherit, but such special issue as is engendered, between them two; not such as the husband may have by another wife: and therefore it is called special tail." 2 William Blackstone, *Commentaries on the Laws of England* 113-14 (1766).

taint, n. 1. A conviction of felony. **2.** A person so convicted. See ATTAINDER.

taint, vb. 1. To imbue with a noxious quality or principle. **2.** To contaminate or corrupt. **3.** To tinge or affect slightly for the worse. — **taint, n.**

tainted evidence. See EVIDENCE.

tainted stock. See STOCK.

take, vb. 1. To obtain possession or control, whether legally or illegally <it's a felony to take that property without the owner's consent>. **2.** To seize with authority; to confiscate or apprehend <take the suspect into custody>. **3.** (Of a federal or state government) to acquire (property) for public use; condemn <the state took the land under its eminent-domain powers>. **4.** To acquire possession by virtue of a grant of title, the use of eminent domain, or other legal means; esp., to receive property by will or intestate succession <the probate code indicates the proportions according to which

each heir will take>. See TAKING. **5.** To claim one's rights under <she took the Fifth Amendment>.

take away, vb. Hist. To entice or persuade (a female under the age of 18) to leave her family for purposes of marriage, prostitution, or illicit sex. See ABDUCTION (2).

take back, vb. To revoke; to retract.

take by stealth. To steal (personal property); to pilfer or filch.

take care of. 1. To support or look after (a person). **2.** To pay (a debt). **3.** To attend to (some matter).

take delivery. To receive something purchased or ordered; esp., to receive a commodity under a futures contract or spot-market contract, or to receive securities recently purchased.

take effect, vb. 1. To become operative or executed. **2.** To be in force; to go into operation.

take-home pay. Gross wages or salary reduced by deductions such as income taxes, social-security taxes, voluntary contributions, and union dues; the net amount of a paycheck.

take-it-or-leave-it contract. See *adhesion contract* under CONTRACT.

take-nothing judgment. See JUDGMENT.

take-or-pay contract. See CONTRACT.

takeover. The acquisition of ownership or control of a corporation. • A takeover is typically accomplished by a purchase of shares or assets, a tender offer, or a merger.

friendly takeover. A takeover that is approved by the target corporation's board of directors.

hostile takeover. A takeover that is resisted by the target corporation's board of directors.

takeover bid. An attempt by outsiders to wrest control from the incumbent management of a target corporation.

takeover defense. See SHARK REPELLENT.

takeover offer. See TENDER OFFER.

taker, *n.* A person who acquires; esp., one who receives property by will, by power of appointment, or by intestate succession.

first taker. A person who receives an estate that is subject to a remainder or executory devise.

taker in default. A person designated by a donor to receive property under a power of appointment if the donee fails to exercise that power.

take the witness. You may now question the witness. • This phrase is a lawyer's courtroom announcement that ends one side's questioning and prompts the other side to begin its questioning. Synonymous phrases are *your witness* and *pass the witness*.

take up, *vb.* **1.** To pay or discharge (a note). **2.** To retire (a negotiable instrument); to discharge one's liability on (a negotiable instrument), esp. the liability of an indorser or acceptor. **3.** To purchase (a note).

taking, *n.* **1.** *Criminal & tort law.* The act of seizing an article, with or without removing it, but with an implicit transfer of possession or control.

constructive taking. An act that does not equal an actual appropriation of an article but that does show an intention to convert it, as when a person entrusted with the possession of goods starts using them contrary to the owner's instructions.

2. *Constitutional law.* The government's actual or effective acquisition of private property either by ousting the owner and claiming title or by destroying the property or severely impairing its utility. • There is a taking of property when government action directly interferes with or substantially disturbs the owner's use and enjoyment of the property. — Also termed *constitutional taking*. See CONDEMNATION (2); EMINENT DOMAIN.

actual taking. A physical appropriation of an owner's property by an entity clothed with eminent-domain authority.

de facto taking (*di fak-toh*). A taking in which an entity clothed with eminent-domain power substantially interferes with an owner's use, possession, or enjoyment of property.

taking a case from the jury. See *directed verdict* under VERDICT.

Takings Clause. The Fifth Amendment provision that prohibits the government from taking

private property for public use without fairly compensating the owner. See EMINENT DOMAIN.

taking the Fifth. See PLEADING THE FIFTH.

tales (*tay-leez or taylz*). [Latin, pl. of *talis* "such," in the phrase *tales de circumstantibus* "such of the bystanders"] **1.** A supply of additional jurors, usu. drawn from the bystanders at the courthouse, summoned to fill a panel that has become deficient in number because of juror challenges or exemptions. **2.** A writ or order summoning these jurors.

tales-juror. See TALESMAN.

talesman (*taylz-mən or tay-leez-mən*). *Archaic.*

1. A person selected from among the bystanders in court to serve as a juror when the original jury panel has become deficient in number. **2.** VENIREMEMBER. — Also termed *tales-juror*.

talisman (*tal-is-mən*), *n.* A charm, amulet, or other physical thing supposedly capable of working wonders <private property is not some sacred talisman that can never be touched by the state — it can be taken for public use as long as the owner is justly compensated>. — **talismanic** (*tal-is-man-ik*), *adj.*

tally. **1.** *Hist.* A stick cut into two parts and marked with notches to show what was due between a debtor and creditor.

"The tally, used as a receipt for money or chattels, was a narrow wooden stick with notches of varying dimensions to represent the amount received. After the notches had been cut, the stick was split lengthwise into two unequal pieces. The longer, which contained a stump or handle and was called the 'stock,' was given to the person making the payment, and the shorter, a flat strip called the 'foil,' to the other party. If the sum involved was disputed, the two pieces could be fitted one to the other to see if they would 'tally.'" C.H.S. Fifoot, *History and Sources of the Common Law: Tort and Contract* 223 (1949).

"A thousand pounds was marked by cutting out the thickness of the palm of the hand, a hundred by the breadth of the thumb, a score by the breadth of the little finger, one pound by that of a swelling barley-corn The terminology has left a permanent imprint on our language. If you lent money to the Bank of England, tallies were cut for the amount: the Bank kept the foil and you received the stock; you thus held 'Bank Stock' of the amount recorded upon it. When the form of cheque was adopted, it was not indeed called a foil, but the part retained by the payer is still the counterfoil; and the word 'cheque' itself goes back ultimately to the same root as 'exchequer.'" Reginald L. Poole, *The Exchequer in the Twelfth Century* 86–93 (1912).

"From early times tallies were used in the Exchequer and this lasted until 1826. The burning of a large quantity of old tallies led to the burning down of the old Houses of Parliament." David M. Walker, *The Oxford Companion to Law* 1207 (1980).

2. Anything used to record an account. **3.** An account; a score.

Talmud (*tahl*-muud or *tal*-mød), *n.* A work embodying the civil and canonical law of the Jewish people. — **Talmudic** (*tahl*-moo-dik or *tal*-), *adj.*

TAM. *abbr.* TECHNICAL ADVICE MEMORANDUM.

tame, *adj.* (Of an animal) domesticated; accustomed to humans.

tamper, *vb.* **1.** To meddle so as to alter (a thing); esp., to make changes that are illegal, corrupting, or perverting. **2.** To interfere improperly; to meddle.

tampering, *n.* The act or an instance of engaging in improper or underhanded dealings, esp. in an attempt to influence. • Tampering with a witness or jury is a criminal offense. See OBSTRUCTION OF JUSTICE; EMBRACERY.

TAN. See *tax-anticipation note* under NOTE (1).

tangible, *adj.* **1.** Having or possessing physical form. **2.** Capable of being touched and seen; perceptible to the touch; capable of being possessed or realized. **3.** Capable of being understood by the mind.

tangible asset. See ASSET.

tangible chattel paper. See CHATTEL PAPER.

tangible cost. See COST (1).

tangible evidence. See *demonstrative evidence* under EVIDENCE.

tangible personal property. See PROPERTY.

tangible property. See PROPERTY.

tapper, *n.* **1.** A person who approaches another for money; a beggar. **2.** By extension, a thief.

tapping, *n.* See WIRETAPPING.

tare (*tair*), *n.* **1.** A deficiency in the weight or quantity of merchandise resulting from includ-

ing its container's weight in the total. **2.** An allowance or abatement of a certain weight or quantity that a seller makes to the buyer because of the container's weight. Cf. TRET.

target benefit plan. See EMPLOYEE BENEFIT PLAN.

target corporation. See CORPORATION.

target offense. See *object offense* under OFFENSE.

target price. See PRICE.

target witness. See WITNESS.

tariff, *n.* **1.** A schedule or system of duties imposed by a government on imported or exported goods. • In the United States, tariffs are imposed on imported goods only. **2.** A duty imposed on imported or exported goods under such a system. See DUTY (4).

antidumping tariff. A tariff equaling the difference between the price at which the product is sold in the exporting country and the price at which the importer will sell the product in the importing country. • These tariffs are designed to prevent foreign businesses from artificially lowering their prices and gaining unfair advantages outside their home market. See ANTIDUMPING LAW.

autonomous tariff. A tariff set by legislation rather than by commercial treaty.

discriminatory tariff. A tariff containing duties that are applied unequally to different countries or manufacturers.

preferential tariff. A tariff that favors the products of one country over those of another. Cf. MOST-FAVORED-NATION CLAUSE.

protective tariff. A tariff designed primarily to give domestic manufacturers economic protection against price competition from abroad, rather than to generate revenue.

retaliatory tariff. A tariff imposed to pressure another country into removing its own tariffs or making trade concessions.

revenue tariff. A tariff enacted solely or primarily to raise revenue.

3. A fee that a public utility or telecommunications company may assess for its services. • The tariffs that a provider may charge are limited by statute. **4.** A schedule listing the rates charged for services provided by a public utility, the U.S. Postal Service, or a business

(esp. one that must by law file its rates with a public agency). — **tariff**, *vb*.

joint tariff. A rate schedule established by two or more carriers covering shipments between places requiring the use of facilities owned by those carriers.

tax, *n*. A monetary charge imposed by the government on persons, entities, or property to yield public revenue. • Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money. — **tax**, *vb*.

“Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs. This definition of taxes, often referred to as ‘Cooley’s definition,’ has been quoted and indorsed, or approved, expressly or otherwise, by many different courts. While this definition of taxes characterizes them as ‘contributions,’ other definitions refer to them as ‘imposts,’ ‘duty or impost,’ ‘charges,’ ‘burdens,’ or ‘exactions’; but these variations in phraseology are of no practical importance.” 1 Thomas M. Cooley, *The Law of Taxation* § 1, at 61-63 (Clark A. Nichols ed., 4th ed. 1924).

accrued tax. A tax that has been incurred but not yet paid or payable.

accumulated-earnings tax. A penalty tax imposed on a corporation that has retained its earnings in an effort to avoid the income-tax liability arising once the earnings are distributed to shareholders as dividends. — Also termed *excess-profits tax*; *undistributed-earnings tax*.

admission tax. A tax imposed as part of the price of being admitted to a particular event.

ad valorem tax. A tax imposed proportionally on the value of something (esp. real property), rather than on its quantity or some other measure.

“[A]n ad valorem tax is a tax of a fixed proportion of the value of the property with respect to which the tax is assessed, and requires the intervention of assessors or appraisers to estimate the value of such property before the amount due from each taxpayer can be determined.” 71 Am. Jur. 2d *State and Local Taxation* § 20, at 355 (1973).

alternative minimum tax. A flat tax potentially imposed on corporations and higher-income individuals to ensure that those taxpayers do not avoid all income-tax liability by using exclusions, deductions, and credits. — Abbr. AMT. — Also termed *minimum tax*.

amusement tax. A tax on a ticket to a concert, sporting event, or the like. • The tax

is usu. expressed as a percentage of the ticket price.

capital-gains tax. A tax on income derived from the sale of a capital asset. • The federal income tax on capital gains typically has a more favorable tax rate — now 28% for an individual and 34% for a corporation — than the maximum tax rate on ordinary income. See CAPITAL GAIN.

capital-stock tax. **1.** A tax on capital stock in the hands of a stockholder. **2.** A state tax for conducting business in the corporate form, usu. imposed on out-of-state corporations for the privilege of doing business in the state. • The tax is usu. assessed as a percentage of the par or assigned value of a corporation’s capital stock.

capitation tax. See *poll tax*.

classified tax. A tax system in which different rates are assessed against different types of taxed property.

collateral-inheritance tax. A tax levied on the transfer of property by will or intestate succession to a person other than the spouse, a parent, or a descendant of the decedent.

consumption tax. A tax imposed on sale of goods to be consumed and services.

death tax. An estate tax or inheritance tax.

delinquent tax. A tax not paid when due.

direct tax. A tax that is imposed on property, as distinguished from a tax on a right or privilege. • Ad valorem and property taxes are direct taxes.

documentary stamp tax. See *stamp tax*.

erroneous tax. **1.** A tax levied without statutory authority. **2.** A tax on property not subject to taxation. **3.** A tax levied by an officer who lacks authority to levy the tax. — Also termed *illegal tax*.

estate tax. A tax imposed on property transferred by will or by intestate succession. Cf. *inheritance tax*.

estimated tax. A tax paid quarterly by a taxpayer not subject to withholding (such as a self-employed person) based on either the previous year’s tax liability or an estimate of the current year’s tax liability.

excess-profits tax. **1.** A tax levied on profits that are beyond a business’s normal profits. • This type of tax is usu. imposed only in times of national emergency (such as war) to discourage profiteering. **2.** See *accumulated-earnings tax*.

excise lieu property tax. A tax on the gross premiums received and collected by designated classes of insurance companies.

excise tax. See EXCISE.

export tax. A tax levied on merchandise and goods shipped or to be shipped out of a country.

flat tax. A tax whose rate remains fixed regardless of the amount of the tax base. ● Most sales taxes are flat taxes. — Also termed *proportional tax*. Cf. *progressive tax*; *regressive tax*.

floor tax. A tax imposed on distilled spirits stored in a warehouse.

franchise tax. A tax imposed on the privilege of carrying on a business (esp. as a corporation), usu. measured by the business's income. See FRANCHISE.

general tax. 1. A tax that returns no special benefit to the taxpayer other than the support of governmental programs that benefit all. **2.** A property tax or an ad valorem tax that is imposed for no special purpose except to produce public revenue. Cf. *special assessment* under ASSESSMENT.

generation-skipping tax. A tax on a property transfer that skips a generation. ● The tax limits the use of generation-skipping techniques as a means of avoiding estate taxes.

generation-skipping transfer tax. A gift or estate tax imposed on a generation-skipping transfer or a generation-skipping trust. — Also termed *generation-skipping tax*; *transfer tax*. IRC (26 USCA) §§ 2601–2663. See DIRECT SKIP; GENERATION-SKIPPING TRANSFER; *generation-skipping trust* under TRUST; TAXABLE DISTRIBUTION; TAXABLE TERMINATION.

gift tax. A tax imposed when property is voluntarily and gratuitously transferred. ● Under federal law, the gift tax is imposed on the donor, but some states tax the donee.

graduated tax. See *progressive tax*.

gross-income tax. A tax on gross receipts rather than on net profits; an income tax without allowance for expenses or deductions. — Also termed *gross-receipts tax*.

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

hidden tax. A tax that is paid, often unknowingly, by someone other than the person or entity on whom it is levied; esp., a tax imposed on a manufacturer or seller (such as a gasoline producer) who passes it on to consumers in the form of higher sales prices.

highway tax. A tax raised to pay for the construction, repair, and maintenance of highways.

holding-company tax. A federal tax imposed on undistributed personal-holding-company income after allowing deductions for such things as dividends paid. IRC (26 USCA) § 545. — Also termed *personal-holding-company tax*.

illegal tax. See *erroneous tax*.

income tax. A tax on an individual's or entity's net income. ● The federal income tax — governed by the Internal Revenue Code — is the federal government's primary source of revenue, and many states have income taxes as well. Cf. *property tax*; EXCISE.

indirect tax. A tax on a right or privilege, such as an occupation tax or franchise tax.

inheritance tax. 1. A tax imposed on a person who inherits property from another (unlike an estate tax, which is imposed on the decedent's estate). ● There is no federal inheritance tax, but some states provide for one (though it is deductible under the federal estate tax). — Also termed *succession tax*. Cf. *estate tax*. **2.** Loosely, an estate tax.

intangible tax. A state tax imposed on the privilege of owning, transferring, devising, or otherwise dealing with intangible property.

interest-equalization tax. A tax imposed on a U.S. citizen's acquisition of stock issued by a foreign issuer or a debt obligation of a foreign obligor, but only if the obligation did not mature within a year. ● This tax was repealed in the mid-1970s. IRC (26 USCA) § 4911.

kiddie tax. A federal tax imposed on a child's unearned income at the parents' tax rate if the parents' rate is higher and if the child is under 14 years of age.

land tax. See *property tax*.

legacy tax. A tax on the privilege of inheriting property by will or by succession.

lieu tax. A tax imposed as a substitute for another.

luxury tax. An excise tax imposed on high-priced items that are not deemed necessities (such as cars costing more than a specified amount). Cf. *sin tax*.

minimum tax. See *alternative minimum tax*.

nanny tax. A federal social-security tax imposed on the employer of a domestic employee if the employer pays that employee more than a specified amount in total wages in a year. ● The term, which is not a technical legal

phrase, was popularized in the mid-1990s, when several of President Clinton's nominees were found not to have paid the social-security tax for their nannies.

occupation tax. An excise tax imposed for the privilege of carrying on a business, trade, or profession. • For example, many states require lawyers to pay an occupation tax. — Also termed *occupational tax*.

payroll tax. **1.** A tax payable by an employer based on its payroll (such as a social-security tax or an unemployment tax). **2.** A tax collected by an employer from its employees' gross pay (such as an income tax or a social-security tax). See *withholding tax*.

per capita tax. See *poll tax*.

personal-holding-company tax. See *holding-company tax*.

personal-property tax. A tax on personal property (such as jewelry or household furniture) levied by a state or local government.

poll tax. A fixed tax levied on each person within a jurisdiction. • The 24th Amendment prohibits the federal and state governments from imposing poll taxes as a condition for voting. — Also termed *per capita tax*; *capitation tax*; *capitation*; *head tax*.

premium tax. A state tax paid by an insurer on payments made by the insurer on behalf of an insured.

privilege tax. A tax on the privilege of carrying on a business or occupation for which a license or franchise is required.

progressive tax. A tax structured so that the tax rate increases as the tax base increases. • Most income taxes are progressive, meaning that higher income is taxed at a higher rate. — Also termed *graduated tax*. Cf. *regressive tax*; *flat tax*.

property tax. A tax levied on the owner of property (esp. real property), usu. based on the property's value. • Local governments often impose property taxes to finance school districts, municipal projects, and the like. — Also termed (specif.) *land tax*. Cf. *income tax*; **EXCISE**.

proportional tax. See *flat tax*.

regressive tax. A tax structured so that the tax rate decreases as the tax base increases. • A flat tax (such as the typical sales tax) is usu. considered regressive — despite its constant rate — because it is more burdensome for low-income taxpayers than high-income taxpayers. Cf. *progressive tax*; *flat tax*.

repressive tax. See *sin tax*.

sales tax. A tax imposed on the sale of goods and services, usu. measured as a percentage of their price. — Also termed *retail sales tax*. See *flat tax*.

“While the term ‘sales tax’ encompasses a large variety of levies, the term often refers to the ‘retail sales tax,’ where the tax is separately stated and collected on a transaction-by-transaction basis from the consumer; although the economic burden of the sales tax falls upon the consumer, the seller has the statutory duty to collect the tax for the taxing jurisdiction.” 68 Am. Jur. 2d *Sales and Use Tax* § 1, at 11 (1993).

self-employment tax. The social-security tax imposed on the net earnings of a self-employed person.

service-occupation tax. A tax imposed on persons who sell services, usu. computed as a percentage of net cost of the tangible personal property transferred as an incident to the sale.

severance tax. A tax imposed on the value of oil, gas, timber, or other natural resources extracted from the earth.

sinking-fund tax. A tax to be applied to the repayment of a public loan.

sin tax. An excise tax imposed on goods or activities that are considered harmful or immoral (such as cigarettes, liquor, or gambling). — Also termed *repressive tax*. Cf. *luxury tax*.

special tax. **1.** A tax levied for a unique purpose. **2.** A tax (such as an inheritance tax) that is levied in addition to a general tax.

specific tax. A tax imposed as a fixed sum on each article or item of property of a given class or kind without regard to its value.

stamp tax. A tax imposed by requiring the purchase of a revenue stamp that must be affixed to a legal document (such as a deed or note) before the document can be recorded. — Also termed *documentary-stamp tax*.

state tax. **1.** A tax — usu. in the form of a sales or income tax — earmarked for state, rather than federal or municipal, purposes. **2.** A tax levied under a state law.

stock-transfer tax. A tax levied by the federal government and by some states on the transfer or sale of shares of stock. — Often shortened to *transfer tax*.

“Some state statutes impose special taxes, usually in the form of a stamp tax, upon sales and agreements for sale and other transfers of stock in corporations. Such a tax is in the nature of an excise tax on the transfer. Taxes on the issuance and transfer of corporate stock, commonly known as ‘stock transfer taxes’ and payable by means of stamps, are constitutional, as within the power of state

governments." 71 Am. Jur. 2d *State and Local Taxation* § 643, at 896 (1973).

succession tax. See *inheritance tax*.

surtax. An additional tax imposed on something being taxed or on the primary tax itself.

tonnage tax. See TONNAGE DUTY.

transfer tax. 1. A tax imposed on the transfer of property, esp. by will, inheritance, or gift. ● The federal estate-and-gift tax is sometimes referred to as the *unified transfer tax* (or the *unified estate-and-gift tax*) because lifetime gifts and death gifts are treated equally under the same tax laws. **2.** See *stock-transfer tax*.

undistributed-earnings tax. See *accumulated-earnings tax*.

unemployment tax. A tax imposed on an employer by state or federal law to cover the cost of unemployment insurance. ● The Federal Unemployment Tax Act (FUTA) provides for a tax based on a percentage of employee earnings but allows a credit for amounts paid in state unemployment taxes.

unitary tax. A tax of income earned locally by a business that transacts business through an affiliated company outside the state. See UNITARY BUSINESS.

unrelated-business-income tax. A tax levied on a not-for-profit organization's taxable income, such as advertising revenue from a publication.

use tax. A tax imposed on the use of certain goods that are bought outside the taxing authority's jurisdiction. ● Use taxes are designed to discourage the purchase of products that are not subject to the sales tax.

value-added tax. A tax assessed at each step in the production of a commodity, based on the value added at each step by the difference between the commodity's production cost and its selling price. ● A value-added tax — which is popular in several European countries — effectively acts as a sales tax on the ultimate consumer. — Abbr. VAT.

windfall-profits tax. A tax imposed on a business or industry as a result of a sudden increase in profits. ● An example is the tax imposed on oil companies in 1980 for profits resulting from the Arab oil embargo of the 1970s.

window tax. *Hist. English law.* A tax imposed on a house containing a certain number of windows (usu. more than six). ● It was established under the Taxation Act of 1695 and replaced with a tax on inhabited houses

established under the House Tax of 1851. See HOUSE-DUTY.

withholding tax. A portion of income tax that is deducted from salary, wages, dividends, or other income before the earner receives payment. ● The most common example is the income tax and social-security tax withheld by an employer from an employee's pay.

taxable, adj. 1. Subject to taxation <interest earned on a checking account is taxable income>. **2.** (Of legal costs or fees) assessable <expert-witness fees are not taxable court costs>.

taxable distribution. A generation-skipping transfer from a trust to the beneficiary (i.e., the *skip person*) that is neither a direct skip nor a taxable termination. See GENERATION-SKIPPING TRANSFER; *generation-skipping transfer tax* under TAX; *generation-skipping trust* under TRUST; SKIP PERSON.

taxable estate. See ESTATE.

taxable gift. See GIFT.

taxable income. See INCOME.

taxable termination. A taxable event that occurs when (1) an interest in a generation-skipping trust property terminates (as on the death of a skip person's parent who possessed the interest), (2) no interest in the trust is held by a nonskip person, and (3) a distribution may be made to a skip person. ● Before the creation of taxable terminations in 1976, a taxpayer could create a trust that paid income to a child for life, then to that child's child for life, and so on without incurring an estate or gift tax liability. See GENERATION-SKIPPING TRANSFER; *generation-skipping transfer tax* under TAX; *generation-skipping trust* under TRUST; SKIP PERSON.

taxable year. See TAX YEAR.

tax accounting. The accounting rules and methods used in determining a taxpayer's liability.

tax-anticipation bill. A short-term obligation issued by the U.S. Treasury to meet the cash-flow needs of the government. ● Corporations can tender these bills at par value to make quarterly tax payments. — Abbr. TAB.

tax-anticipation note. See NOTE (1).

tax-anticipation warrant. See WARRANT (2).

tax assessment. See ASSESSMENT (3).

tax assessor. See ASSESSOR (1).

taxation. The imposition or assessment of a tax; the means by which the state obtains the revenue required for its activities.

double taxation. 1. The imposition of two taxes on the same property during the same period and for the same taxing purpose. 2. The imposition of two taxes on one corporate profit; esp., the structure of taxation employed by Subchapter C of the Internal Revenue Code, under which corporate profits are taxed twice, once to the corporation when earned and once to the shareholders when the earnings are distributed as dividends. 3. *Int'l law.* The imposition of comparable taxes in two or more states on the same taxpayer for the same subject matter or identical goods.

equal and uniform taxation. A tax system in which no person or class of persons in the taxing district — whether it be a state, city, or county — is taxed at a different rate from others in the same district on the same value or thing.

pass-through taxation. The taxation of an entity's owners for the entity's income without taxing the entity itself. • Partnerships and S corporations are taxed under this method. — Also termed *conduit taxation*.

tax audit. See AUDIT.

tax avoidance. The act of taking advantage of legally available tax-planning opportunities in order to minimize one's tax liability. Cf. TAX EVASION.

tax base. The total property, income, or wealth subject to taxation in a given jurisdiction; the aggregate value of the property being taxed by a particular tax. Cf. BASIS (2).

tax basis. See BASIS (2).

tax-benefit rule. The principle that if a taxpayer recovers a loss or expense that was deducted in a previous year, the recovery must be included in the current year's gross income to the extent that it was previously deducted. — Also termed *tax-benefit doctrine*.

tax bracket. A categorized level of income subject to a particular tax rate under federal or state law <28% tax bracket>.

tax certificate. An instrument issued to the buyer of property at a tax sale, certifying the sale and entitling the buyer to a tax deed and possession of the property upon the expiration of the redemption period. • If the property is redeemed, the tax certificate is voided. See REDEMPTION PERIOD; *tax sale* under SALE. Cf. *tax deed* under DEED.

tax court. 1. TAX COURT, U.S. 2. In some states, a court that hears appeals in nonfederal tax cases and can modify or change any valuation, assessment, classification, tax, or final order appealed from.

Tax Court, U.S. A federal court that hears appeals by taxpayers from adverse IRS decisions about tax deficiencies. • The Tax Court was created in 1942, replacing the Board of Tax Appeals. — Abbr. T.C.

tax credit. An amount subtracted directly from one's total tax liability, dollar for dollar, as opposed to a deduction from gross income. — Often shortened to *credit*. Cf. DEDUCTION (2).

child- and dependent-care tax credit. A tax credit available to a person who is employed full-time and who maintains a household for a dependent child or a disabled spouse or dependent.

earned-income credit. A refundable federal tax credit on the earned income of a low-income worker with dependent children. • The credit is paid to the taxpayer even if it exceeds the total tax liability.

foreign tax credit. A tax credit against U.S. income taxes for a taxpayer who earns income overseas and has paid foreign taxes on that income. See FOREIGN-EARNED-INCOME EXCLUSION.

investment tax credit. A tax credit intended to stimulate business investment in capital goods by allowing a percentage of the purchase price as a credit against the taxpayer's income taxes. • The Tax Reform Act of 1986 generally repealed this credit retroactively for most property placed in service after January 1, 1986.

unified credit. A tax credit applied against the federal unified transfer tax. • The 1999 credit is \$211,300, meaning that an estate worth up to \$650,000 passes to the heirs free of any federal estate tax. The credit will gradually increase so that, after 2005, it will be

\$345,800, meaning that no federal estate tax will be due on an estate worth up to \$1 million. — Also termed *unified estate-and-gift tax credit*.

tax deduction. See DEDUCTION (2).

tax deed. See DEED.

tax-deferred, *adj.* Not taxable until a future date or event <a tax-deferred retirement plan>.

tax-deferred annuity. See 403(b) plan under EMPLOYEE BENEFIT PLAN.

tax deficiency. See DEFICIENCY.

tax-deficiency notice. See NINETY-DAY LETTER.

tax evasion. The willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability. • Tax evasion is punishable by both civil and criminal penalties. — Also termed *tax fraud*. Cf. TAX AVOIDANCE.

tax-exempt, *adj.* **1.** Not legally subject to taxation <a tax-exempt charity>. **2.** Bearing interest that is free from income tax <tax-exempt municipal bonds>. — Also termed *tax-free*.

tax-exempt bond. See BOND (3).

tax ferret. A private person engaged in the business of searching for taxable property that has somehow not been taxed.

tax foreclosure. See FORECLOSURE.

tax fraud. See TAX EVASION.

tax-free, *adj.* See TAX-EXEMPT.

tax-free exchange. A transfer of property that the tax law specifically exempts from income-tax consequences. • For example, a transfer of property to a controlled corporation under IRC (26 USCA) § 351(a) and a like-kind exchange under IRC (26 USCA) § 1031(a).

tax haven. A country that imposes little or no tax on the profits from transactions carried on in that country.

tax home. A taxpayer's principal business location, post, or station. • Travel expenses are tax-

deductible only if the taxpayer is traveling away from home.

tax incentive. A governmental enticement, through a tax benefit, to engage in a particular activity, such as the mortgage financing of real-estate sales.

tax-increment financing. A technique used by a municipality to finance commercial developments usu. involving issuing bonds to finance land acquisition and other up-front costs, and then using the additional property taxes generated from the new development to service the debt. — Abbr. TIF.

taxing district. A district — constituting the whole state, a county, a city, or other smaller unit — throughout which a particular tax or assessment is ratably apportioned and levied on the district's inhabitants.

taxing power. See POWER.

tax injunction act. A federal law prohibiting a federal court from interfering with the assessment or collection of any state tax where the state affords a plain, speedy, and efficient remedy in its own courts. 28 USCA § 1341.

tax law. **1.** INTERNAL REVENUE CODE. **2.** The area of legal study dealing with taxation.

tax lease. See LEASE.

tax levy. See LEVY (1).

tax liability. The amount that a taxpayer legally owes after calculating the applicable tax; the amount of unpaid taxes.

tax lien. See LIEN.

tax loophole. See LOOPHOLE.

tax-loss carryback. See CARRYBACK.

tax-loss carryforward. See CARRYOVER.

tax-loss carryover. See CARRYOVER.

tax negligence. See NEGLIGENCE.

tax-option corporation. See *S corporation* under CORPORATION.

taxpayer. One who pays or is subject to a tax.

taxpayers' bill of rights. Federal legislation granting taxpayers specific rights when dealing with the Internal Revenue Service, such as the right to have representation and the right to receive written notice of a levy 30 days before enforcement.

taxpayers' lists. Written exhibits required of taxpayers in some taxing districts, listing all property owned by them and subject to taxation, used as a basis for assessment and valuation. Cf. ROLL (2).

taxpayer-standing doctrine. *Constitutional law.* The principle that a taxpayer has no standing to sue the government for allegedly mispending the public's tax money unless the taxpayer can demonstrate a personal stake and show some direct injury.

tax-preference items. Certain items that, even though deducted in arriving at taxable income for regular tax purposes, must be considered in calculating a taxpayer's alternative minimum tax. See *alternative minimum tax* under TAX.

tax rate. A mathematical figure for calculating a tax, usu. expressed as a percentage.

average tax rate. A taxpayer's tax liability divided by the amount of taxable income.

marginal tax rate. In a progressive-tax scheme, the rate applicable to the last dollar of income earned by the taxpayer. • This concept is useful in calculating the tax effect of receiving additional income or claiming additional deductions. See TAX BRACKET.

tax-rate schedule. A schedule used to determine the tax on a given level of taxable income and based on a taxpayer's status (for example, married filing a joint income-tax return). — Also termed *tax table*.

tax rebate. See TAX REFUND.

tax redemption. See REDEMPTION.

tax refund. Money that a taxpayer overpaid and is thus returned by the taxing authority. — Also termed *tax rebate*.

tax return. An income-tax form on which a person or entity reports income, deductions, and exemptions, and on which tax liability is calculated. — Often shortened to *return*. — Also termed *income-tax return*.

amended return. A return filed after the original return, usu. to correct an error in the original.

consolidated return. A return that reflects combined financial information for a group of affiliated corporations.

false return. See FALSE RETURN (2).

information return. A return, such as a W-2, filed by an entity to report some economic information other than tax liability.

joint return. A return filed together by spouses. • A joint return can be filed even if only one spouse had income, but each spouse is usu. individually liable for the tax payment.

separate return. A return filed by each spouse separately, showing income and liability. • Unlike with a joint return, each spouse is individually liable only for taxes due on the separate return.

tax roll. See ROLL (2).

tax sale. See SALE.

tax shelter, n. A financial operation or investment strategy (such as a partnership or real-estate investment trust) that is created primarily for the purpose of reducing or deferring income-tax payments. • The Tax Reform Act of 1986 — by restricting the deductibility of passive losses — sharply limited the effectiveness of tax shelters. — Often shortened to *shelter*. — **tax-sheltered, adj.**

tax-sheltered annuity. See 403(b) plan under EMPLOYEE BENEFIT PLAN.

tax situs (sī-tās). A state or jurisdiction that has a substantial connection with assets that are subject to taxation.

tax-straddle rule. The rule that a taxpayer may not defer a tax liability by investing a short-term capital gain in a commodities future or option (i.e., investment vehicles whose values formerly did not have to be reported at the end of the year) to create the appearance of a loss in the current tax year. • This practice has been greatly restricted by the requirement that gains and losses on commodities transactions must be reported based on their value at year end. IRC (26 USCA) § 165(c)(2).

tax table. See TAX-RATE SCHEDULE.

tax title. See TITLE (2).

tax warrant. See WARRANT (1).

tax write-off. A deduction of depreciation, loss, or expense.

tax year. The period used for computing federal or state income-tax liability, usu. either the calendar year or a fiscal year of 12 months ending on the last day of a month other than December. — Also termed *taxable year*.

TBC. *abbr.* Trial before the court. See *bench trial* under TRIAL.

T-bill. *abbr.* TREASURY BILL.

T-bond. *abbr.* TREASURY BOND.

T.C. *abbr.* TAX COURT.

T.C. memo. *abbr.* A memorandum decision of the U.S. Tax Court.

teamwork. Work done by a team; esp., work by a team of animals as a substantial part of one's business, such as farming, express carrying, freight hauling, or transporting material. ● In some jurisdictions, animals (such as horses) that work in teams are exempt from execution on a civil judgment.

tear-me-open license. See *shrink-wrap license* under LICENSE.

TECA (*tee-kə*). *abbr.* TEMPORARY EMERGENCY COURT OF APPEALS.

technical adjustment. A brief change in the general upward or downward trend of stock-market prices, such as a short rally during a bull market.

Technical Advice Memorandum. A publication issued by the national office of the IRS, usu. at a taxpayer's request, to explain some complex or novel tax-law issue. — *Abbr.* TAM.

technical error. See *harmless error* under ERROR.

technical mortgage. See MORTGAGE.

telecopier. See FAX (2).

teleological interpretation. See *purposive construction* under CONSTRUCTION.

teller. **1.** A bank clerk who deals directly with customers by receiving and paying out money. **2.** A vote-counter at an election.

Teller in Parliament. One of the members of the British House of Commons — two from government and two from the opposition — appointed by the Speaker to count votes.

teller's check. See CHECK.

temperance. **1.** Habitual moderation regarding the indulgence of the natural appetites and passions; restrained or moderate indulgence (esp. of alcoholic beverages). **2.** Abstinence.

temporality. **1.** Civil or political power, as distinguished from ecclesiastical power. **2.** (*usu. pl.*) The secular properties or revenues of an ecclesiastic.

temporal lord. See LORD.

temporary, *adj.* Lasting for a time only; existing or continuing for a limited (*usu.* short) time; transitory.

temporary administration. See ADMINISTRATION.

temporary alimony. See ALIMONY.

temporary allegiance. See ALLEGIANCE.

temporary damages. See DAMAGES.

temporary detention. See *pretrial detention* under DETENTION.

temporary disability. See DISABILITY (1).

Temporary Emergency Court of Appeals. A special U.S. court created in 1971 with exclusive jurisdiction over appeals from federal district courts concerning price and other economic controls begun in the 1950s and 1960s. ● The court consists of eight district and circuit judges appointed by the Chief Justice. Although called "temporary," the court was still active through the end of the 20th century. — *Abbr.* TECA.

temporary fiduciary. See FIDUCIARY.

temporary frustration. See FRUSTRATION.

temporary injunction. See *preliminary injunction* under INJUNCTION.

temporary insanity. See INSANITY.

temporary insider. See INSIDER.

temporary judge. See *visiting judge* under JUDGE.

temporary nuisance. See NUISANCE.

temporary perfection. See PERFECTION.

temporary restraining order. A court order preserving the status quo until a litigant's application for a preliminary or permanent injunction can be heard. • A temporary restraining order may sometimes be granted without notifying the opposing party in advance. — Abbr. TRO. — Often shortened to *restraining order*. Cf. INJUNCTION.

temporary statute. See STATUTE.

temporary total disability. See DISABILITY (1).

temporary ward. See WARD.

tenancy. 1. The possession or occupancy of land by right or title, esp. under a lease; a leasehold interest in real estate. 2. The period of such possession or occupancy. See ESTATE.

at-will tenancy. See *tenancy at will*.

common tenancy. See *tenancy in common*.

cotenancy. A tenancy with two or more coowners who have unity of possession. • Examples are a joint tenancy and a tenancy in common.

entire tenancy. A tenancy possessed by one person, as opposed to a joint or common tenancy. See *tenancy by the entirety*.

general tenancy. A tenancy that is not of fixed duration under the parties' agreement.

holdover tenancy. See *tenancy at sufferance*.

joint tenancy. A tenancy with two or more coowners who take identical interests simultaneously by the same instrument and with the same right of possession. • A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share (in some states, this right must be clearly expressed in the conveyance — otherwise, the tenancy will be presumed to be a tenancy in common). See UNITY

(2); RIGHT OF SURVIVORSHIP. Cf. *tenancy in common*.

"The rules for creation of a joint tenancy are these: The joint tenants must get their interests at the same time. They must become entitled to possession at the same time. The interests must be physically undivided interests, and each undivided interest must be an equal fraction of the whole — e.g., a one-third undivided interest to each of three joint tenants. The joint tenants must get their interests by the same instrument — e.g., the same deed or will. The joint tenants must get the same kinds of estates — e.g., in fee simple, for life, and so on." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 55 (2d ed. 1984).

life tenancy. See *life estate* under ESTATE.

periodic tenancy. A tenancy that automatically continues for successive periods — usu. month to month or year to year — unless terminated at the end of a period by notice. • A typical example is a month-to-month apartment lease. This type of tenancy originated through court rulings that, when the lessor received a periodic rent, the lease could not be terminated without reasonable notice. — Also termed *tenancy from period to period*; *periodic estate*; *estate from period to period*; (more specif.) *month-to-month tenancy* (or *estate*); *year-to-year tenancy* (or *estate*).

several tenancy. A tenancy that is separate and not held jointly with another person.

tenancy at sufferance. A tenancy arising when a person who has been in lawful possession of property wrongfully remains as a holdover after his or her interest has expired. • A tenancy at sufferance takes the form of either a tenancy at will or a periodic tenancy. — Also termed *holdover tenancy*; *estate at sufferance*. See HOLDING OVER.

tenancy attendant on the inheritance. A tenancy for a term that is vested in a trustee in trust for the owner of the inheritance. — Also termed *tenancy attendant on an inheritance*.

tenancy at will. A tenancy in which the tenant holds possession with the landlord's consent but without fixed terms (as for duration or rent). • Such a tenancy may be terminated by either party upon fair notice. — Also termed *at-will tenancy*; *estate at will*.

tenancy by the entirety (en-ti-er-tee). A joint tenancy that arises between husband and wife when a single instrument conveys realty to both of them but nothing is said in the deed or will about the character of their ownership. • This type of tenancy exists in only a few states. — Also termed *tenancy by the entireties*; *estate by the entirety*; *estate by the entireties*.

"Where [tenancy by the entirety] is recognized, it may exist only between a husband and a wife. It resembles, in most respects, the joint tenancy. The only major difference is that a tenant by the entirety may not destroy the other spouse's right of survivorship by transferring his or her interest to another. Whether a tenant by the entirety may transfer *any* interest to a third party — for example, the right of present possession or the contingent right of survivorship — is a matter on which the states differ. Most take the view that no interest may be transferred. The husband and wife may, of course, together convey their estate to a third person. If they *both* wish to convert their tenancy into a tenancy in common or a joint tenancy, they may do so. Upon the death of a tenant by the entirety, no interest passes, in theory, to the surviving spouse. As was true of the joint tenancy, the survivor's ownership is thought simply to expand to absorb the relinquished ownership of the decedent." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 55 (2d ed. 1984).

"Tenancy by the entireties is a form of joint tenancy. It resembles joint tenancy in that upon the death of either husband or wife the survivor automatically acquires title to the share of the deceased spouse. Like a joint tenancy, also, it is necessary for the creation of a tenancy by the entireties that the husband and wife acquire title by the same deed or will." Robert Kratovil, *Real Estate Law* 198 (6th ed. 1974).

tenancy by the rod. See COPYHOLD.

tenancy by the verge. See COPYHOLD.

tenancy for a term. A tenancy whose duration is known in years, weeks, or days from the moment of its creation. — Also termed *tenancy for a period*; *tenancy for years*; *term for years*; *term of years*; *estate for a term*; *estate for years*; *lease for years*.

tenancy from period to period. See *periodic tenancy*.

tenancy in common. A tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship. — Also termed *common tenancy*; *estate in common*. Cf. *joint tenancy*.

"The central characteristic of a tenancy in common is simply that each tenant is deemed to own by himself, with most of the attributes of independent ownership, a physically undivided part of the entire parcel." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 54 (2d ed. 1984).

tenancy in coparcenary. See COPARCENARY.

tenancy in gross. A tenancy for a term that is outstanding — that is, one that is unattached to or disconnected from the estate or inheritance, such as one that is in the hands of some third party having no interest in the inheritance.

tenancy in tail. See FEE TAIL.

tenancy par la verge. See *tenancy by the rod*.

year-to-year tenancy. See *periodic tenancy*.

tenancy at sufferance. See TENANCY.

tenancy attendant on the inheritance. See TENANCY.

tenancy at will. See TENANCY.

tenancy by the entirety. See TENANCY.

tenancy by the rod. See COPYHOLD.

tenancy by the verge. See COPYHOLD.

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

tenancy for a term. See TENANCY.

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

tenancy in common. See TENANCY.

tenancy in coparcenary. See COPARCENARY.

tenancy in gross. See TENANCY.

tenancy in tail. See FEE TAIL.

tenancy par la verge (pahr læ vərj). See COPYHOLD.

tenant, n. 1. One who holds or possesses lands or tenements by any kind of right or title. See TENANCY.

customary tenant. A tenant holding by the custom of the manor. ● Over time, customary tenants became known as *copyhold tenants*. See COPYHOLD.

"The lord has a court; in that court the tenant in villeinage, even though he be personally unfree, appears as no mere tenant at will, but as holding permanently, often heritably, on fairly definite terms. He is a customary tenant, *customarius*, *consuetudinarius*; he holds according to the custom of the manor. . . . Then gradually . . . [d]ealings with villein tenements are set forth upon the rolls of the lord's court; the villein tenement is conceived to be holden 'by roll of court,' or even 'by copy of court roll,' and the mode of conveyance serves to mark off the most beneficial of villeinholds from the most onerous of freeholds. . . . In Henry III's time this process which secured for the tenant in villeinage a written, a registered title, and gave him the name of 'copyholder,' was but beginning. . . ." 2 Frederick Pollock & Frederic

W. Maitland, *The History of English Law Before the Time of Edward I* 361, 375 (2d ed. 1899).

dominant tenant. The person who holds a dominant estate and therefore benefits from an easement. Cf. *servient tenant*.

holdover tenant. A person who remains in possession of real property after a previous tenancy (esp. one under a lease) expires, thus giving rise to a tenancy at sufferance. — Sometimes shortened to *holdover*. See *tenancy at sufferance* under TENANCY.

illusory tenant. **1.** A fictitious person who, as the landlord's alter ego, subleases an apartment to permit the landlord to circumvent rent-law regulations. **2.** A tenant whose business is to sublease rent-controlled apartments.

life tenant. See LIFE TENANT.

particular tenant. A tenant of a limited estate taken out of a fee. See *particular estate* under ESTATE.

prime tenant. A commercial or professional tenant with an established reputation that leases substantial, and usu. the most preferred, space in a commercial development. • A prime tenant is important in securing construction financing and in attracting other desirable tenants.

quasi-tenant. A sublessee that the new tenant or reversioner allows to hold over.

servient tenant. The person who holds a servient estate and is therefore burdened by an easement. Cf. *dominant tenant*.

tenant by the verge. See COPYHOLDER.

tenant for life. See *life tenant*.

tenant in chief. *Hist.* A person who held land directly of the king. — Also termed *tenant in capite*. See IN CAPITE.

tenant in common. One of two or more tenants who hold the same land by unity of possession but by separate and distinct titles, with each person having an equal right to possess the whole property but no right of survivorship. See *tenancy in common* under TENANCY.

tenant in demesne (di-mayn or di-meen). A feudal tenant who holds land of, and owes services to, a tenant in service.

tenant in service. A feudal tenant who grants an estate to another (a *tenant in demesne*) and is therefore entitled to services from the latter.

2. One who pays rent for the temporary use and occupation of another's land under a lease

or similar arrangement. See LESSEE. **3. Archaic.** The defendant in a real action (the plaintiff being called a *demandant*). See *real action* under ACTION.

tenantable repair. A repair that will render premises fit for present habitation. See HABITABILITY.

tenant by the verge. See COPYHOLDER.

tenant for life. See LIFE TENANT.

tenant in capite. See *tenant in chief* under TENANT.

tenant in chief. See TENANT.

tenant in common. See TENANT.

tenant in demesne. See TENANT.

tenant in service. See TENANT.

tenantlike, adj. In accordance with the rights and obligations of a tenant, as in matters of repairs, waste, etc.

tenant par la verge. See COPYHOLDER.

tenant-right. *English law.* A tenant's right, upon termination of the tenancy, to payment for unexhausted improvements made on the holding. • This right is governed by the Agricultural Holdings Act of 1986.

tenantry. A body or group of tenants.

tenant's fixture. See FIXTURE.

tend, vb. **1.** To be disposed toward (something). **2.** To serve, contribute, or conduce in some degree or way; to have a more or less direct bearing or effect. **3.** To be directed or have a tendency to (an end, object, or purpose).

ten-day rule. The doctrine that one who sells goods on credit and then learns that the buyer is insolvent has ten days after the buyer receives the goods to demand their return. • The seller has even longer to demand return if the buyer has made a written representation of solvency to the seller within three months before delivery.

tender, n. **1.** An unconditional offer of money or performance to satisfy a debt or obligation <a

tender of delivery>. • The tender may save the tendering party from a penalty for nonpayment or nonperformance or may, if the other party unjustifiably refuses the tender, place the other party in default.

tender of delivery. A seller's putting and holding conforming goods at the buyer's disposition and giving the buyer any notification reasonably necessary to take delivery. • The manner, time, and place for tender are determined by the agreement and by Article 2 of the Uniform Commercial Code.

2. Something unconditionally offered to satisfy a debt or obligation. 3. *Contracts.* Attempted performance that is frustrated by the act of the party for whose benefit it is to take place. • The performance may take the form of either a tender of goods or a tender of payment. Although this sense is quite similar to sense 1, it differs in making the other party's refusal part of the definition itself.

perfect tender. A seller's tender that meets the contractual terms entered into with the buyer concerning the quality and specifications of the goods sold.

4. An offer or bid put forward for acceptance <a tender for the construction contract>. 5. Something that serves as a means of payment, such as coin, banknotes, or other circulating medium; money <legal tender>. — **tender**, *v.b.*

tender, plea of. See PLEA OF TENDER.

tender of delivery. See TENDER (1).

tender offer. A public offer to buy a minimum number of shares directly from a corporation's shareholders at a fixed price, usu. at a substantial premium over the market price, in an effort to take control of the corporation. — Also termed *takeover offer*; *takeover bid*. Cf. *public-exchange offer* under OFFER.

cash tender offer. A tender offer in which the bidder offers to pay cash for the target's shares, as opposed to offering other corporate shares in exchange. • Most tender offers involve cash.

creeping tender offer. The gradual purchase of a corporation's stock at varying prices in the open market. • This takeover method does not involve a formal tender offer, although the SEC may classify it as such for regulatory purposes.

tender of issue. *Common-law pleading.* A form attached to a traverse, by which the traversing

party refers the issue to the proper mode of trial.

"[I]t is the object of all pleadings to bring the parties, in the course of their mutual altercations, to an issue that is a single entire point, affirmed on the one side and denied on the other; and it is to effect this object that the above rule was established. There can be no arrival at this point until one or the other of the parties, by the conclusion of his pleading, offers an issue for the acceptance of his opponent, and this offer is called the 'tender of issue.'" Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 254, at 446 (Henry Winthrop Ballantine ed., 3d ed. 1923).

tender of performance. An offer to perform, usu. necessary to hold the defaulting party to a contract liable for breach.

tender-years doctrine. *Family law.* The doctrine holding that custody of very young children (usu. five years of age and younger) should generally be awarded to the mother in a divorce unless she is found to be unfit. • This doctrine has been rejected in most states and replaced by a presumption of joint custody.

tenement. 1. Property (esp. land) held by freehold; an estate or holding of land.

dominant tenement. See *dominant estate* under ESTATE.

servient tenement (sər-vee-ənt). See *servient estate* under ESTATE.

2. A house or other building used as a residence.

tenement house. A low-rent apartment building, usu. in poor condition and at best meeting only minimal safety and sanitary conditions.

tenendum (tə-nen-dəm). A clause in a deed designating the kind of tenure by which the things granted are to be held. — Also termed *tenendum clause*. Cf. HABENDUM CLAUSE (1).

10-K. A financial report filed annually with the SEC by a registered corporation. • The report typically includes an audited financial statement, a description of the corporation's business and financial condition, and summaries of other financial data. — Also termed *Form 10-K*. Cf. 8-K.

Tennessee Valley Authority. A government-owned corporation, created in 1933, that conducts a unified program of resource development to advance economic growth in the Tennessee Valley region. • The Authority's activities include flood control, navigation de-

velopment, electric-power production, fertilizer development, recreation improvement, and forestry-and-wildlife development. Though its power program is financially self-supporting, the Authority's other programs are financed primarily by congressional appropriations. — Abbr. TVA.

ten-percent bond. See BOND (2).

10-Q. An unaudited financial report filed quarterly with the SEC by a registered corporation. • The 10-Q is less detailed than the 10-K. — Also termed *Form 10-Q*.

tentative trust. See *Totten trust* under TRUST.

Tenth Amendment. The constitutional amendment, ratified as part of the Bill of Rights in 1791, providing that any powers not constitutionally delegated to the federal government, nor prohibited to the states, are reserved for the states or the people. — Also termed *Reserved Power Clause*.

1031 exchange (ten-thər-tee-wən). A like-kind exchange of property that is exempt from income-tax consequences under IRC (26 USCA) § 1031.

tenure (ten-yər), n. 1. A right, term, or mode of holding lands or tenements in subordination to a superior. • In feudal times, real property was held predominantly as part of a tenure system. **2.** A particular feudal mode of holding lands, such as socage, gavelkind, villeinage, and frankmoign.

base tenure. *Hist.* The holding of property in villeinage rather than by military service or free service. See VILLEINAGE (1).

copyhold tenure. See COPYHOLD.

lay tenure. *Hist.* Any tenure not held through religious service, such as a base tenure or a freehold tenure. Cf. *tenure by divine service*.

military tenure. A tenure that bears some relation to military service, such as knight service, grand serjeanty, and cornage.

spiritual tenure. A tenure that bears some relation to religious exercises, such as frankmoign and tenure by divine service.

tenure ad furcam et flagellum (ad fər-kəm et flə-jel-əm). [Latin] *Hist.* Tenure by gallows and whip. • This was the meanest of the servile tenures — the bondman was at the disposal of the lord for life and limb.

tenure by divine service. *Hist.* A tenure obligating the tenant to perform an expressly defined divine service, such as singing a certain number of masses or distributing a fixed sum of alms. Cf. *lay tenure*.

3. A status afforded to a teacher or professor as a protection against summary dismissal without sufficient cause. • This status has long been considered a cornerstone of academic freedom. **4.** More generally, the legal protection of a long-term relationship, such as employment. — **tenurial** (ten-yuur-ee-əl), *adj.*

tenured faculty. The members of a school's teaching staff who hold their positions for life or until retirement, and who may not be discharged except for cause.

tenure in capite. See IN CAPITE.

term, n. 1. A word or phrase; esp., an expression that has a fixed meaning in some field <term of art>. **2.** A contractual stipulation <the delivery term provided for shipment within 30 days>. See CONDITION (3).

fundamental term. 1. A contractual provision that must be included for a contract to exist; a contractual provision that specifies an essential purpose of the contract, so that a breach of the provision through inadequate performance makes the performance not only defective but essentially different from what had been promised. **2.** A contractual provision that must be included in the contract to satisfy the statute of frauds. — Also termed *essential term*; *vital term*.

"During the 1950s and 1960s there flourished another species of term called the fundamental term. A fundamental term was said to be a term which was so important and central to a contract that if it was broken, the innocent party always had some remedy, even if the contract contained an exemption clause protecting the guilty party from liability. This doctrine served a useful purpose in helping to protect consumers from unreasonably wide exemption clauses. It was first used most extensively in contracts of hire-purchase where vehicles were often let to consumers under contracts containing the widest possible exemptions from liability." P.S. Atiyah, *An Introduction to the Law of Contract* 151 (3d ed. 1981).

implied term. A provision not expressly agreed to by the parties but instead read into the contract by a court as being implicit. • An implied term should not, in theory, contradict the contract's express terms.

nonfundamental term. Any contractual provision that is not regarded as a fundamental term. — Also termed *nonessential term*; *nonvital term*.

3. (*pl.*) Provisions that define an agreement's scope; conditions or stipulations <terms of sale>. 4. A fixed period of time; esp., the period for which an estate is granted <term for years>.

attendant term. A long period (such as 1,000 years) specified as the duration of a mortgage, created to protect the mortgagor's heirs' interest in the land by not taking back title to the land once it is paid for, but rather by assigning title to a trustee who holds the title in trust for the mortgagor and the mortgagor's heirs. • This arrangement gives the heirs another title to the property in case the interest they inherited proves somehow defective. These types of terms have been largely abolished. See *tenancy attendant on the inheritance* under TENANCY.

satisfied term. A term of years in land that has satisfied the purpose for which it was created before the term's expiration.

term for deliberating. The time given a beneficiary to decide whether to accept or reject an inheritance or other succession.

term in gross. A term that is unattached to an estate or inheritance. See *tenancy in gross* under TENANCY.

unexpired term. The remainder of a period prescribed by law or provided for in a lease.

5. The period or session during which a court conducts judicial business <the most recent term was busy indeed>. — Also termed (in sense 5) *term of court*. See SESSION.

additional term. A distinct, added term to a previous term.

adjourned term. A continuance of a previous or regular term but not a separate term; the same term prolonged.

general term. A regular term of court — that is, the period during which a court ordinarily sits. — Also termed *stated term*.

regular term. A term of court begun at the time appointed by law and continued, in the court's discretion, until the court lawfully adjourns.

special term. A term of court scheduled outside the general term, usu. for conducting extraordinary business.

stated term. See *general term*.

term probatory. *Eccles. law.* The period given to the promoter of an ecclesiastical suit to produce witnesses and prove the case.

term to conclude. *Eccles. law.* A deadline imposed by the judge for all parties to renounce any further exhibits and allegations.

term to propound all things. *Eccles. law.* A deadline imposed by the judge for the parties to exhibit all evidence supporting their positions.

6. *Hist. English law.* One of the four periods in a year during which the courts are in session to conduct judicial business. • Terms came into use in the 13th century, and their dates varied. The four terms — Hilary, Easter, Trinity, and Michaelmas — were abolished by the Judicature Acts of 1873–1875, and the legal year was divided into sittings and vacations. Terms are still maintained by the Inns of Court to determine various time periods and dates, such as a call to the bar or observance of a Grand Day.

term bond. See BOND (3).

term fee. *English law.* A sum that a solicitor may charge a client, and that the client (if successful) may recover from the losing party, payable for each term in which any proceedings following the summons take place.

term for deliberating. See TERM (4).

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

terminable interest. An interest that may be terminated upon the lapse of time or upon the occurrence of some condition.

terminable property. Property (such as a leasehold) whose duration is not perpetual or indefinite but that is limited in time or liable to terminate on the happening of an event.

terminal disclaimer. See DISCLAIMER (4).

terminate, vb. 1. To put an end to; to bring to an end. 2. To end; to conclude.

termination, n. 1. The act of ending something <termination of the partnership by winding up its affairs>.

termination of conditional contract. The act of putting an end to all unperformed portions of a conditional contract.

termination of employment. The complete severance of an employer–employee relationship.

2. The end of something in time or existence; conclusion or discontinuance <the insurance policy's termination left the doctor without

liability coverage>. — **terminate**, *vb.* — **terminable**, *adj.*

termination hearing. *Family law.* A hearing to determine whether parental rights will be taken away from parents of a child who has become the court's ward, usu. because of parental neglect or abuse.

termination proceeding. An administrative action to end a person's or entity's status or relationship. • For example, the International Banking Act authorizes the International Banking Board to institute a termination proceeding when a foreign bank or its U.S. agency or branch is convicted of money-laundering. 12 USCA § 3105(e).

terminer. See OYER AND TERMINER.

term in gross. See TERM (4).

term life insurance. See INSURANCE.

term loan. See LOAN.

term of art. **1.** A word or phrase having a specific, precise meaning in a given specialty, apart from its general meaning in ordinary contexts. • Examples in law include *and his heirs* and *res ipsa loquitur*. **2.** Loosely, a jargonistic word or phrase. — Also termed *word of art*.

term-of-art canon. In statutory construction, the principle that if a term has acquired a technical or specialized meaning in a particular context, the term should be presumed to have that meaning if used in that context.

term of court. See TERM (5).

term of office. The period during which an elected officer or appointee may hold office, perform its functions, and enjoy its privileges and emoluments.

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

termor (tər-mər). A person who holds lands or tenements for a term of years or for life.

term policy. See INSURANCE POLICY.

term probatory. See TERM (5).

terms. See YEAR BOOKS.

term sheet. *Securities.* A document setting forth all information that is material to investors about the offering but is not disclosed in the accompanying prospectus or the confirmation.

abbreviated term sheet. A term sheet that includes (1) the description of the securities as required by Item 202 of SEC Regulation S-K, or a good summary of that information; and (2) all material changes to the issuer's affairs required to be disclosed on SEC Form S-3 or F-3, as applicable.

termtime. The time of the year when a court is in session.

term to conclude. See TERM (5).

term to propound all things. See TERM (5).

terra nullius (tər-ə nəl-ee-əs), *n.* [Latin "the land of no one"] A territory not belonging to any particular country.

terre-tenant (tair-ten-ənt). **1.** One who has actual possession of land; the occupant of land. **2.** One who has an interest in a judgment debtor's land after the judgment creditor's lien has attached to the land (such as a subsequent purchaser). — Also spelled *tertenant* (tər-ten-ənt). — Also termed *land-tenant*.

territorial, *adj.* Having to do with a particular geographical area.

territorial court. See COURT.

territorialism. The traditional approach to choice of law, whereby the place of injury or of contract formation determines which state's law will be applied in a case. See CHOICE OF LAW.

territorial jurisdiction. See JURISDICTION.

territorial law. The law that applies to all persons within a given territory regardless of their citizenship or nationality. Cf. PERSONAL LAW.

territorial property. Land and water over which a state has jurisdiction and control, whether the legal title is held by the state or by a private individual or entity. • Lakes and waters wholly within a state are generally its property, as is the marginal sea within the

three-mile limit, but bays and gulfs are not always recognized as state property.

territorial sea. See *territorial waters* under WATER.

territorial waters. See WATER.

territory, n. **1.** A geographical area included within a particular government's jurisdiction; the portion of the earth's surface that is in a state's exclusive possession and control.

non-self-governing territory. *Int'l law.* A territory that is governed by another country.

• These types of territories are rarely allowed representation in the governing country's legislature.

trust territory. *Int'l law.* A territory governed under the United Nations' international trusteeship system; a territory administered by the United Nations or a member state for the political, economic, educational, and social advancement of its inhabitants.

2. A part of the United States not included within any state but organized with a separate legislature (such as Guam and the U.S. Virgin Islands). — **territorial, adj.** Cf. COMMONWEALTH; DEPENDENCY.

territory of a judge. The territorial jurisdiction of a particular court. See JURISDICTION (3).

terrorism, n. The use or threat of violence to intimidate or cause panic, esp. as a means of affecting political conduct. — **terrorist, adj. & n.**

terroristic threat. See THREAT.

Terry stop. See STOP AND FRISK.

tertenant. See TERRE-TENANT.

tertius gaudens (tər-shee-əs gaw-denz). [Latin "a rejoicing third"] A third party who profits when two others dispute.

testable, adj. **1.** Capable of being tested <a testable hypothesis>. **2.** Capable of making a will <an 18-year-old person is testable in this state>. **3.** Capable of being transferred by will <today virtually all property is considered testable>.

test action. See *test case* under CASE.

testacy (tes-tə-see), *n.* The fact or condition of leaving a valid will at one's death. Cf. INTESTACY.

testament (tes-tə-mənt). **1.** A will disposing of personal property. Cf. DEVISE (4). **2.** WILL (1).

inofficious testament. *Civil law.* A will that does not dispose of property to the testator's natural heirs; esp., a will that deprives the heirs of a portion of the estate to which they are entitled by law. — Also termed *inofficious will*; *unofficious will*.

mystic testament. See *mystic will* under WILL.

officious testament. *Civil law.* A will that disposes of property to the testator's family; a will that reserves the legitime for the testator's children and other natural heirs. — Also termed *officious will*. See LEGITIME.

testamentary (tes-tə-men-tə-ree or -tree), *adj.*

1. Of or relating to a will or testament <testamentary intent>. **2.** Provided for or appointed by a will <testamentary guardian>. **3.** Created by a will <testamentary gift>.

testamentary capacity. See CAPACITY (3).

testamentary class. See CLASS (3).

testamentary gift. See GIFT.

testamentary guardian. See GUARDIAN.

testamentary heir. See HEIR.

testamentary intent. See INTENT (1).

testamentary power of appointment. See POWER OF APPOINTMENT.

testamentary succession. See SUCCESSION.

testamentary trust. See TRUST.

testamentary trustee. See TRUSTEE (1).

testamenti factio (tes-tə-men-ti fak-shee-oh). [Latin "right to make a testament"] *Roman law.* **1.** Broadly, the capacity to take part in a will, as testator, heir, or witness. **2.** The capacity to make a will. • This term is sometimes known as "active" *testamenti factio* or *testamenti factio activa*, though the latter phrase was not known to the Roman law. **3.** The capacity to receive property by will. • This is also known as "passive" *testamenti factio* or *testamenti fac-*

tio passiva, though the latter phrase was (like *testamenti factio activa*) unknown to the Roman law. **4.** The capacity to witness a will.

testamentum holografum (tes-tə-men-təm hol-ə-graf-əm). [Latin] See *holographic will* under WILL.

testamentum in procinctu (tes-tə-men-təm in prə-singk-t[y]oo). [Latin] *Roman law*. A will made by a soldier while preparing for battle.

testamentum militum (tes-tə-men-təm mil-ə-təm). [Latin] See *soldier's will* under WILL.

testate (tes-tayt), *adj.* Having left a will at death <she died testate>. Cf. **INTESTATE**.

testate, n. See **TESTATOR**.

testate succession. The passing of rights or property by will. Cf. **INTESTATE SUCCESSION**.

testation (te-stay-shən). **1.** The disposal of property by will; the power to dispose of property by will. **2.** *Archaic.* Attestation; a witnessing.

testator (tes-tay-tər *also* te-stay-tər). A person who has made a will; esp., a person who dies leaving a will. • Because this term is usu. interpreted as applying to both sexes, *testatrix* has become archaic. — Also termed *testate*. Cf. **INTESTATE**.

testatrix (te-stay-triks *or* tes-tə-triks). *Archaic.* A female testator. • In modern usage, a person who leaves a will is called a testator, regardless of sex.

testatum (tes-tay-təm). [Latin “attested”] *Hist.* A writ issued in a county where a defendant or a defendant's property is located when venue lies in another county. • This writ, when issued after a ground writ, allowed the seizure of the defendant or the defendant's property in another county. — Also termed *testatum bill*; *testatum writ*; *latitat* (lat-ə-tat). Cf. *ground writ* under **WRIT**.

“But if the defendant had removed into another county, the next process the plaintiff might sue out against him was a *testatum bill*, directed to the sheriff thereof, which soon gained the name of a *latitat*, from that word being within it.” 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* xxxv (3d ed. 1787).

testatus (tes-tay-təs), *n.* [Latin] *Civil law*. See **TESTATOR**.

test case. See **CASE**.

teste (tes-tee). [Latin *teste meipso* “I myself being a witness”] In drafting, the clause that states the name of a witness and evidences the act of witnessing.

testifier. One who testifies; **WITNESS**. — Also termed (archaically) *testificator* (tes-tə-fi-kay-tər).

testify, vb. **1.** To give evidence as a witness <she testified that the Ford Bronco was at the defendant's home at the critical time>. **2.** (Of a person or thing) to bear witness <the incomplete log entries testified to his sloppiness>.

testifying expert. See **EXPERT**.

testimonial evidence. See **TESTIMONY**; **EVIDENCE**.

testimonial immunity. See **IMMUNITY** (3).

testimonial incapacity. See **INCAPACITY**.

testimonial privilege. See **PRIVILEGE** (1).

testimonial proof. See **PROOF**.

testimonium clause. A provision at the end of an instrument (esp. a will) reciting the date when the instrument was signed, by whom it was signed, and in what capacity. • This clause traditionally begins with the phrase “In witness whereof.” Cf. **ATTESTATION CLAUSE**.

testimony, n. Evidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition. — Also termed *personal evidence*. — **testimonial, adj.**

affirmative testimony. Testimony about whether something occurred or did not occur, based on what the witness saw or heard at the time and place in question. — Also termed *positive testimony*. See *direct evidence* under **EVIDENCE**.

cumulative testimony. Identical or similar testimony by more than one witness, and usu. by several, offered by a party usu. to impress the jury with the apparent weight of proof on that party's side. • The trial court typically limits cumulative testimony.

dropsy testimony. A police officer's false testimony that a fleeing suspect dropped an illegal substance that was then confiscated by the police and used as probable cause for

arresting the suspect. • Dropsy testimony may be given when an arrest has been made without probable cause, as when illegal substances have been found through an improper search.

expert testimony. See *expert evidence* under EVIDENCE.

false testimony. Testimony that is untrue. • This term is broader than *perjury*, which has a state-of-mind element. Unlike *perjury*, *false testimony* does not denote a crime. — Also termed *false evidence*.

interpreted testimony. Testimony translated because the witness cannot communicate in the language of the tribunal.

lay opinion testimony. Evidence given by a witness who is not qualified as an expert but who testifies to opinions or inferences. • In federal court, the admissibility of this testimony is limited to opinions or inferences that are rationally based on the witness's perception and that will be helpful to a clear understanding of the witness's testimony or the determination of a fact in issue. Fed. R. Evid. 701.

negative testimony. See *negative evidence* under EVIDENCE.

nonverbal testimony. A photograph, drawing, map, chart, or other depiction used to aid a witness in testifying. • The witness need not have made it, but it must accurately represent something that the witness saw. See *demonstrative evidence* under EVIDENCE.

opinion testimony. Testimony based on one's belief or idea rather than on direct knowledge of the facts at issue. • Opinion testimony from either a lay witness or an expert witness may be allowed in evidence under certain conditions. See *opinion evidence* under EVIDENCE.

positive testimony. See *direct evidence* (1) under EVIDENCE.

testimony de bene esse (dee bee-nee es-ee also day ben-ay es-ay). Testimony taken because it is in danger of being lost before it can be given at a trial or hearing, usu. because of the impending death or departure of the witness. • Such testimony is taken in aid of a pending lawsuit, while testimony taken under a bill to perpetuate testimony is taken in anticipation of future litigation. See *deposition de bene esse* under DEPOSITION.

written testimony. 1. Testimony given out of court by deposition. • The recorded writing, signed by the witness, is considered testimony. 2. In some administrative agencies and

courts, direct narrative testimony that is reduced to writing, to which the witness swears at a hearing or trial before cross-examination takes place in the traditional way.

testing clause. *Scots law.* The clause in a formal written instrument or deed by which it is authenticated according to the forms of law. • Traditionally, the clause states the name and address of the writer, the number of pages in the instrument, the names and addresses of the witnesses, the name and address of the person who penned the instrument, and the date and place of signing.

test oath. See *oath of allegiance* under OATH.

test-paper. In Pennsylvania, a paper or instrument shown to the jury as evidence.

textbook digest. A legal text whose aim is to set forth the law of a subject in condensed form, with little or no criticism or discussion of the authorities cited, and no serious attempt to explain or reconcile apparently conflicting decisions.

textualism. See STRICT CONSTRUCTIONISM.

thalweg (tahl-vayk or -veg). 1. A line following the lowest part of a (usu. submerged) valley. 2. The middle of the primary navigable channel of a waterway, constituting the boundary between states. — Also termed *midway*.

live thalweg. The part of a river channel that is most followed, usu. at the middle of the principal channel. *Louisiana v. Mississippi*, 466 U.S. 96, 104 S.Ct. 1645 (1984).

Thayer presumption. A presumption that requires the party against whom the presumption operates to come forward with evidence to rebut the presumption, but that does not shift the burden of proof to that party. James B. Thayer, *A Preliminary Treatise on Evidence* 31-44 (1898). • Most presumptions that arise in civil trials in federal court are interpreted in this way. Fed. R. Evid. 301. Cf. MORGAN PRESUMPTION.

The Federalist. See FEDERALIST PAPERS.

theft, n. 1. The felonious taking and removing of another's personal property with the intent of depriving the true owner of it; larceny. 2. Broadly, any act or instance of stealing, including larceny, burglary, embezzlement, and false pretenses. • Many modern penal codes have

consolidated such property offenses under the name "theft." See LARCENY.

"[T]he distinctions between larceny, embezzlement and false pretenses serve no useful purpose in the criminal law but are useless handicaps from the standpoint of the administration of criminal justice. One solution has been to combine all three in one section of the code under the name of 'larceny.' This has one disadvantage, however, because it frequently becomes necessary to add a modifier to make clear whether the reference is to common-law larceny or to statutory larceny. To avoid this difficulty some states have employed another word to designate a statutory offense made up of a combination of larceny, embezzlement, and false pretenses. And the word used for this purpose is 'theft.' 'Theft' is not the name of any common-law offense. At times it has been employed as a synonym of 'larceny,' but for the most part has been regarded as broader in its general scope. Under such a statute it is not necessary for the indictment charging theft to specify whether the offense is larceny, embezzlement or false pretenses." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 389-90 (3d ed. 1982).

cybertheft. See CYBERTHEFT.

theft by deception. The use of deception to obtain another's property.

theft by false pretext. The use of a false pretext to obtain another's property.

theft of services. The act of obtaining services from another by deception, threat, coercion, stealth, mechanical tampering, or using a false token or device.

theft-bote (theft-boht). See BOTE (2).

theft by deception. See THEFT.

theft by false pretext. See THEFT.

theft of services. See THEFT.

theftuous (thef-choo-əs), adj. 1. (Of an act) characterized by theft. 2. (Of a person) given to stealing. — Also spelled *theftous*.

thence, adv. 1. From that place; from that time.

• In surveying, and in describing land by courses and distances, this word, preceding each course given, implies that the following course is continuous with the one before it <south 240 feet to an iron post, thence west 59 feet>. 2. On that account; therefore.

thence down the river. With the meanders of a river. • This phrase appears in the field notes of patent surveyors, indicating that the survey follows a meandering river unless evidence shows that the meander line as written was where the surveyor in fact ran it. See MEANDER LINE.

theocracy (thee-ok-rə-see). 1. Government of a state by those who are presumably acting under the immediate direction of God or some other divinity. 2. A state in which power is exercised by ecclesiastics.

Theodosian Code (thee-ə-doh-shən). See CODEX THEodosIANUS.

theolonio. See DE THEOLONIO.

theory of law. The legal premise or set of principles on which a case rests.

theory-of-pleading doctrine. The principle — now outmoded — that one must prove a case exactly as pleaded. • Various modern codes and rules of civil procedure have abolished this strict pleading-and-proof requirement. • For example, Fed. R. Civ. P. 15 allows amendment of pleadings to conform to the evidence.

theory of the case. A comprehensive and orderly mental arrangement of principles and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision-maker's mind a definite result or conclusion favored by the advocate. See CAUSE OF ACTION (1).

therapeutic abortion. See ABORTION.

therapeutic relief. See RELIEF.

thereabout, adv. Near that time or place <Schreuer was seen in Rudolf Place or thereabout>.

thereafter, adv. Afterward; later <Skurry was thereafter arrested>.

thereat, adv. 1. At that place or time; there. 2. Because of that; at that occurrence or event.

thereby, adv. By that means; in that way <Blofeld stepped into the embassy and thereby found protection>.

therefor, adv. For it or them; for that thing or action; for those things or actions <she lied to Congress but was never punished therefor>.

therefore, adv. 1. For that reason; on that ground or those grounds <a quorum was not

present; therefore, no vote was taken>. **2.** To that end <she wanted to become a tax lawyer, and she therefore applied for the university's renowned LL.M. program in tax>. — Also termed *thereupon*.

therefrom, *adv.* From that, it, or them <Hofer had several financial obligations to Ricks, who refused to release Hofer therefrom>.

therein, *adv.* **1.** In that place or time <the Dallas/Fort Worth metroplex has a population of about 3 million, and some 20,000 lawyers practice therein>. **2.** Inside or within that thing; inside or within those things <there were 3 school buses with 108 children therein>.

thereinafter, *adv.* Later in that thing (such as a speech or document) <the book's first reference was innocuous, but the five references thereafter were libelous per se>.

thereof, *adv.* Of that, it, or them <although the disease is spreading rapidly, the cause thereof is unknown>.

thereon, *adv.* On that or them <Michaels found the online reports of the cases and relied thereon instead of checking the printed books>. — Also termed *thereupon*.

thereto, *adv.* To that or them <the jury awarded \$750,000 in actual damages, and it added thereto another \$250,000 in punitive damages>. — Also termed *thereunto*.

theretofore, *adv.* Up to that time <theretofore, the highest award in such a case has been \$450,000>.

thereunder, *adv.* Under that or them <on the top shelf were three books, and situated thereunder was the missing banknote> <section 1988 was the relevant fee statute, and the plaintiffs were undeniably proceeding thereunder>.

thereunto, *adv.* See THERETO.

thereupon, *adv.* **1.** Immediately; without delay; promptly <the writ of execution issued from the court, and the sheriff thereupon sought to find the judgment debtor>. **2.** THEREON. **3.** THEREFORE.

Thibodaux abstention (*tib-ə-doh*). See ABSTENTION.

thief. One who steals, esp. without force or violence; one who commits theft or larceny. See THEFT.

common thief. A thief who has been convicted of theft or larceny more than once. — Also termed *common and notorious thief*.

thieve, *vb.* To steal; to commit theft or larceny. See THEFT.

thin capitalization. See CAPITALIZATION.

thin corporation. See CORPORATION.

thing. **1.** A material object regarded as the subject matter of a right, whether it is a material object or not; any subject matter of ownership within the sphere of proprietary or valuable rights. • Things are divided into three categories: (1) things real or immovable, such as land, tenements, and hereditaments, (2) things personal or movable, such as goods and chattels, and (3) things having both real and personal characteristics, such as a title deed and a tenancy for a term. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*).

corporeal thing. The subject matter of corporeal ownership; a material object. — Also termed *res corporalis*.

incorporeal thing. The subject matter of incorporeal ownership; any proprietary right apart from the right of full dominion over a material object. — Also termed *res incorporalis*.

thing in action. See *chose in action* under CHOSE.

thing in possession. See *chose in possession* under CHOSE.

2. Anything that is owned by someone as part of that person's estate or property. — Also termed *res*; *chose*.

thing in action. See *chose in action* under CHOSE.

thing in possession. See *chose in possession* under CHOSE.

things personal. See *personal property* (1) under PROPERTY.

things real. See REAL THINGS.

thin market. See MARKET.

thin-skull rule. See EGGSHELL-SKULL RULE.

Third Amendment. The constitutional amendment, ratified as part of the Bill of Rights in 1791, prohibiting the quartering of soldiers in private homes except during wartime.

third cousin. See COUSIN.

third degree, n. The process of extracting a confession or information from a suspect or prisoner by prolonged questioning, the use of threats, or physical torture <the police gave the suspect the third degree>.

third-degree instruction. See ALLEN CHARGE.

third party, n. One who is not a party to a lawsuit, agreement, or other transaction but who is somehow involved in the transaction; someone other than the principal parties. — Also termed *outside party*. — **third-party, adj.** See PARTY.

third-party, vb. To bring (a person or entity) into litigation as a third-party defendant <seeking indemnity, the defendant third-partied the surety>.

third-party action. See ACTION.

third-party beneficiary. See BENEFICIARY.

third-party-beneficiary contract. See CONTRACT.

third-party check. A check that the payee indorses to another party — for example, a customer check that the payee indorses to a supplier. • A person who takes a third-party check in good faith and without notice of a security interest can be a holder in due course.

third-party complaint. See COMPLAINT.

third-party defendant. A party brought into a lawsuit by the original defendant.

third-party equity lease. See *leveraged lease* under LEASE.

third-party insurance. See *liability insurance* under INSURANCE.

third-party plaintiff. A defendant who files a pleading in an effort to bring a third party into

the lawsuit. See *third-party complaint* under COMPLAINT.

third-party practice. See IMPLEADER.

third-party record-custodian summons. See *John Doe summons* under SUMMONS.

third-party standing. See STANDING.

third possessor. Civil law. A person who acquires mortgaged property but is not personally bound by the obligation secured by the mortgage.

Third World. The group of underdeveloped nations (esp. in Africa and Asia) not aligned with major powers, whether Western democracies (i.e., the *First* — or *Free* — *World*) or countries that were formerly part of the Soviet bloc (i.e., the *Second World*).

Third World country. See DEVELOPING COUNTRY.

Thirteenth Amendment. The constitutional amendment, ratified in 1865, that abolished slavery and involuntary servitude.

“The thirteenth amendment is fairly unique in two respects. First, it contains an absolute bar to the existence of slavery or involuntary servitude; there is no requirement of ‘state action.’ Thus it is applicable to individuals as well as states Secondly, like the fourteenth and fifteenth amendments, it contains an enforcement clause, enabling Congress to pass all necessary legislation.” John E. Nowak & Ronald D. Rotunda, *Constitutional Law* § 15.6, at 918 (4th ed. 1991).

30(b)(6) deposition. See DEPOSITION.

thirty-day letter. A letter that accompanies a revenue agent’s report issued as a result of an Internal Revenue Service audit or the rejection of a taxpayer’s claim for refund and that outlines the taxpayer’s appeal procedure before the Internal Revenue Service. • If the taxpayer does not request any such procedure within the 30-day period, the IRS will issue a statutory notice of deficiency. Cf. NINETY-DAY LETTER.

threat, n. 1. A communicated intent to inflict harm or loss on another or on another’s property, esp. one that might diminish a person’s freedom to act voluntarily or with lawful consent <the kidnapper’s threat was that if the magnate did not meet the demands, his son would never be seen again>.

terroristic threat. A threat to commit any crime of violence with the purpose of (1)

terrorizing another, (2) causing the evacuation of a building, place of assembly, or facility of public transportation, (3) causing serious public inconvenience, or (4) recklessly disregarding the risk of causing such terror or inconvenience.

2. An indication of an approaching menace <the threat of bankruptcy>. **3.** A person or thing that might well cause harm <Mrs. Harrington testified that she had never viewed her husband as a threat>. — **threaten**, *vb.* — **threatening**, *adj.*

threatened species. See SPECIES.

three estates, the. See ESTATES OF THE REALM.

341 meeting. See *creditors' meeting* under MEETING.

three-judge court. See COURT.

three-mile limit. The distance of one marine league or three miles offshore, usu. recognized as the limit of territorial jurisdiction.

three-strikes law. A statute prescribing an enhanced sentence, esp. life imprisonment, for a repeat offender's third felony conviction. ● About half the states have enacted a statute of this kind. — Also termed *three-strikes-and-you're-out law*.

three wicked sisters. *Slang.* The three doctrines — contributory negligence, the fellow-servant rule, and assumption of the risk — used by 19th-century courts to deny recovery to workers injured on the job.

"These three common law defenses, contributory negligence, fellow servant rule, and assumption of the risk, became known as the 'three wicked sisters,' because of their preclusive effect on the ability of injured workers to recover. . . . By precluding application of the traditional respondeat superior concept for acts of fellow servants and by presuming that workers assumed the risks associated with their employment, courts made it extremely difficult for employees to recover from their employers for the increasing number of work-related injuries. . . . By the late 1800s, courts began to recognize the harsh results generated by rote application of the fellow servant, assumption of the risk, and contributory negligence doctrines." Mark A. Rothstein et al., *Employment Law* § 7.2, at 404 (1994).

thrift institution. See SAVINGS-AND-LOAN ASSOCIATION.

through bill of lading. See BILL OF LADING.

through lot. A lot that abuts a street at each end.

through rate. The total shipping cost when two or more carriers are involved.

throwback rule. *Tax.* **1.** In the taxation of trusts, a rule requiring that an amount distributed in any tax year that exceeds the year's distributable net income must be treated as if it had been distributed in the preceding year. ● The beneficiary is taxed in the current year although the computation is made as if the excess had been distributed in the previous year. If the trust did not have undistributed accumulated income in the preceding year, the amount of the throwback is tested against each of the preceding years. IRC (26 USCA) §§ 665–668. **2.** A taxation rule requiring a sale that would otherwise be exempt from state income tax (because the state to which the sale would be assigned for apportionment purposes does not have an income tax, even though the seller's state does) to be attributed to the seller's state and thus subjected to a state-level tax. ● This rule applies only if the seller's state has adopted a throwback rule.

throw out, *vb.* To dismiss (a claim or lawsuit).

thumbprint. See FINGERPRINT.

ticket, *n.* **1.** A certificate indicating that the person to whom it is issued, or the holder, is entitled to some right or privilege <she bought a bus ticket for Miami>. **2.** CITATION (2) <he got a speeding ticket last week>. **3.** BALLOT (2) <they all voted a straight-party ticket>.

ticket of leave. *Archaic.* The English equivalent of parole.

ticket-of-leave man. A convict who has obtained a ticket of leave.

ticket speculator. A person who buys tickets and then resells them for more than their face value; a scalper.

tidal, *adj.* Affected by or having tides. ● For a river to be "tidal" at a given spot, the water need not necessarily be salt, but the spot must be one where the tide, in the ordinary and regular course of things, flows and reflows.

tide. The rising and falling of seawater that is produced by the attraction of the sun and moon, uninfluenced by special winds, seasons,

or other circumstances that create meteorological and atmospheric meteorological tides; the ebb and flow of the sea. • Tides are used to measure a shore's upland boundary.

mean high tide. The average of all high tides, esp. over a period of 18.6 years. — Also termed *ordinary high tide*.

mean lower low tide. The average of lower low tides over a fixed period.

mean low tide. The average of all low tides — both low and lower low — over a fixed period.

neap tide (neep). A tide, either high tide or low tide, that is lower than average because it occurs during the first or last quarter of the moon, when the sun's attraction partly counteracts the moon's.

ordinary high tide. See *mean high tide*.

spring tide. A tide, either high tide or low tide, that is higher than average because it occurs during the new moon and full moon.

tideland. Land between the lines of the ordinary high and low tides, covered and uncovered successively by the ebb and flow of those tides; land covered and uncovered by the ordinary tides.

tidesman. *English law.* A customhouse officer appointed to watch or attend upon ships until the customs are paid. • A tidesman boards a ship at its arrival in the mouth of the Thames and comes up with the tide. See CUSTOMHOUSE.

tidewater. Water that falls and rises with the ebb and flow of the tide. • The term is not usu. applied to the open sea, but to coves, bays, and rivers.

tideway. Land between high- and low-water marks.

tie, n. **1.** In connection with an election, an equal number of votes for each candidate. **2.** An equal number of votes cast for and against a particular measure by a legislative or deliberative body. • In the U.S. Senate, the Vice President has the deciding vote in the event of a tie. U.S. Const. art. I, § 3.

tied product. See TYING ARRANGEMENT (1).

tie-in arrangement. See TYING ARRANGEMENT.

tiered partnership. See PARTNERSHIP.

TIF. *abbr.* TAX-INCREMENT FINANCING.

tight, adj. *Slang.* (Of a note, bond, mortgage, lease, etc.) characterized by summary and stringent clauses providing the creditor's remedies in case of default.

TILA. *abbr.* Truth in Lending Act. See CONSUMER CREDIT PROTECTION ACT.

tillage (til-ij), *n.* A place tilled or cultivated; land under cultivation as opposed to land lying fallow or in pasture.

till-tapping. *Slang.* Theft of money from a cash register.

timber easement. See EASEMENT.

timber lease. See LEASE.

timber rights. See *timber easement* under EASEMENT.

time. 1. A measure of duration. **2.** A point in or period of duration at or during which something is alleged to have occurred. **3.** *Slang.* A convicted criminal's period of incarceration.

flat time. A prison term that is to be served without the benefit of time-reduction allowances for good behavior and the like.

time arbitrage. See ARBITRAGE.

time-bar, n. A bar to a legal claim arising from the lapse of a defined length of time, esp. one contained in a statute of limitations. — **time-barred, adj.**

time-bargain. See FUTURES CONTRACT.

time bill. See *time draft* under DRAFT.

time charter. See CHARTER (4).

time deposit. See DEPOSIT (2).

time draft. See DRAFT.

time immemorial. 1. A point in time so far back that no living person has knowledge or proof contradicting the right or custom alleged to have existed since then. • At common law, that time was fixed as the year 1189. — Also termed *time out of memory*; *time out of mind*. Cf. LEGAL MEMORY. **2.** A very long time.

time insurance. See INSURANCE.

time is of the essence. See OF THE ESSENCE.

time letter of credit. See LETTER OF CREDIT.

time loan. See *term loan* under LOAN.

time note. See NOTE (1).

time order. See ORDER (4).

time out of memory. See TIME IMMEMORIAL.

time out of mind. See TIME IMMEMORIAL.

time-place-or-manner restriction. *Constitutional law.* A government's limitation on when, where, or how a public speech or assembly may occur, but not on the content of that speech or assembly. ● As long as such restrictions are narrowly tailored to achieve a legitimate governmental interest, they do not violate the First Amendment. — Also written *time, place, or manner restriction*. — Also termed *time-place-and-manner restriction*. See PUBLIC FORUM.

time policy. See INSURANCE POLICY.

time-price differential. **1.** A figure representing the difference between the current cash price of an item and the total cost of purchasing it on credit. **2.** The difference between a seller's price for immediate cash payment and a different price when payment is made later or in installments.

time-sharing, n. Joint ownership or rental of property (such as a vacation condominium) by several persons who take turns occupying the property. — Also termed *time-share*. — **time-share, vb.**

timesheet. An attorney's daily record of billable and nonbillable hours, used to generate clients' bills. See BILLABLE HOUR.

time unity. See *unity of time* under UNITY.

time value. The price associated with the length of time that an investor must wait until an investment matures or the related income is earned. Cf. YIELD TO MATURITY.

timocracy (ti-mok-rə-see). **1.** An aristocracy of property; government by propertied, relatively

rich people. **2.** A government in which the rulers' primary motive is the love of honor.

tin parachute. An employment-contract provision that grants a corporate employee (esp. one below the executive level) severance benefits in the event of a takeover. ● These benefits are typically less lucrative than those provided under a golden parachute. — Also termed *silver parachute*. Cf. GOLDEN PARACHUTE.

tip, n. **1.** A piece of special information; esp., in securities law, advance or inside information passed from one person to another. See INSIDE INFORMATION; INSIDER TRADING. **2.** A gratuity for service given. ● Tip income is taxable. IRC (26 USCA) § 61(a).

tippee. *Securities.* A person who acquires material nonpublic information from someone in a fiduciary relationship with the company to which that information pertains.

tipper. *Securities.* A person who possesses material inside information and who selectively discloses that information for trading or other personal purposes <the tippee traded 5,000 shares after her conversation with the tipper>.

tippling house. See *public house* under HOUSE.

tipstaff. A court crier. Pl. **tipstaves, tipstaffs.** See CRIER.

tip-stave. See SERVITOR OF BILLS.

tithe (tith), *n.* **1.** A tenth of one's income, esp. in reference to a religious or charitable gift. **2.** *Hist.* A small tax or assessment, esp. in the amount of one-tenth. — **tithe, vb.**

great tithe. (*usu. pl.*) A tithe paid in kind and therefore considered more valuable than other tithes. ● The great tithes often consisted of corn, peas, beans, hay, and wood.

mixed tithes. Tithes consisting of natural products, such as milk or wool, obtained or cultivated by human effort.

"A second species of incorporeal hereditaments is that of tithes ... the first species being usually called *predial*, as of corn, grass, hops, and wood; the second *mixed*, as of wool, milk, pigs, etc., consisting of natural products, but nurtured and preserved in part by the care of man; and of these the tenth must be paid in gross: the third *personal*, as of manual occupations, trades, fisheries, and the like; and of these only the tenth part of the clear gains and profits is due." 2 William Blackstone, *Commentaries on the Laws of England* 24 (1766).

vicarial tithe (vi-kair-ee-əl). A small tith payable to a vicar.

tithe of agistment (ə-jist-mənt). *Hist.* A church-levied charge on grazing land. • The tith was paid by the occupier of the land rather than the person whose cattle grazed on the land. See AGISTMENT.

tithing. See DECENNARY.

title. 1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself <no one has title to that land>. 2. Legal evidence of a person's ownership rights in property; an instrument (such as a deed) that constitutes such evidence.

absolute title. An exclusive title to land; a title that excludes all others not compatible with it. See *fee simple absolute* under FEE SIMPLE.

adverse title. A title acquired by adverse possession. See ADVERSE POSSESSION.

after-acquired title. Title held by a person who bought property from a seller who acquired title only after purporting to sell the property to the buyer. See AFTER-ACQUIRED TITLE DOCTRINE.

bad title. 1. See *defective title*. 2. See *unmarketable title*.

clear title. 1. A title free from any encumbrances, burdens, or other limitations. 2. See *marketable title*. — Also termed *good title*.

defeasible title. A title voidable on the occurrence of a contingency, but not void on its face.

defective title. A title that cannot legally convey the property to which it applies, usu. because of some conflicting claim to that property. — Also termed *bad title*.

derivative title. 1. A title that results when an already existing right is transferred to a new owner. 2. The general principle that a transferee of property acquires only the rights held by the transferor and no more.

dormant title. A title in real property held in abeyance.

doubtful title. A title that exposes the party holding it to the risk of litigation with an adverse claimant. See *unmarketable title*.

equitable title. A title that indicates a beneficial interest in property and that gives the

holder the right to acquire formal legal title. Cf. *legal title*.

good title. 1. A title that is legally valid or effective. 2. See *clear title* (1). 3. See *marketable title*.

imperfect title. A title that requires a further exercise of the granting power to pass land in fee, or that does not convey full and absolute dominion.

Indian title. See INDIAN TITLE.

just title. In a case of prescription, a title that the possessor received from someone whom the possessor honestly believed to be the real owner, provided that the title was to transfer ownership of the property.

legal title. A title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest. Cf. *equitable title*.

lucrative title. *Civil law.* A title acquired without giving anything in exchange for the property; title by which a person acquires anything that comes as a clear gain, as by gift, descent, or devise. • Because lucrative title is usu. acquired by gift or inheritance, it is treated as the separate property of a married person. Cf. *onerous title*.

marketable title. A title that a reasonable buyer would accept because it appears to lack any defect and to cover the entire property that the seller has purported to sell. — Also termed *merchantable title*; *clear title*; *good title*.

nonmerchantable title. See *unmarketable title*.

onerous title (on-ər-əs). 1. *Civil law.* A title acquired by giving valuable consideration for the property, as by paying money or performing services. 2. A title to property that is acquired during marriage through a spouse's skill or labor and is therefore treated as community property. Cf. *lucrative title*.

original title. A title that creates a right for the first time.

“The catching of fish is an original title of the right of ownership, whereas the purchase of them is a derivative title. The right acquired by the fisherman is newly created; it did not formerly exist in any one.” John Salmond, *Jurisprudence* 345 (Glanville L. Williams ed., 10th ed. 1947).

paramount title. 1. *Archaic.* A title that is the source of the current title; original title. 2. A title that is superior to another title or claim on the same property.

particular title. *Civil law.* A title acquired from an ancestor by purchase, gift, or inheritance before or after the ancestor's death.

perfect title. **1.** FEE SIMPLE. **2.** A grant of land that requires no further act from the legal authority to constitute an absolute title to the land. **3.** A title that does not disclose a patent defect that may require a lawsuit to defend it. **4.** A title that is good both at law and in equity. **5.** A title that is good and valid beyond all reasonable doubt.

presumptive title. A title of the lowest order, arising out of the mere occupation or simple possession of property without any apparent right, or any pretense of right, to hold and continue that possession.

record title. A title as it appears in the public records after the deed is properly recorded. — Also termed *title of record*; *paper title*.

singular title. The title by which one acquires property as a singular successor.

tax title. A title to land purchased at a tax sale.

title by descent. A title that one acquires by law as an heir of the deceased owner.

title by devise. A title created by will.

title by prescription. A title acquired by prescription. See PRESCRIPTION (2).

title defective in form. A title for which some defect appears on the face of the deed. ● Title defective in form cannot be the basis of prescription.

title of entry. The right to enter upon lands.

title of record. See *record title*.

universal title. A title acquired by a conveyance causa mortis of a stated portion of all the conveyor's property interests so that on the conveyor's death the recipient stands as a universal successor.

unmarketable title. A title that a reasonable buyer would refuse to accept because of possible conflicting interests in or litigation over the property. — Also termed *bad title*; *unmerchantable title*; *nonmerchantable title*.

3. The heading of a statute or other legal document <the title of the contract was "Confidentiality Agreement">.

long title. The full, formal title of a statute, usu. containing a brief statement of legislative purpose.

short title. The abbreviated title of a statute by which it is popularly known; a statutory nickname.

4. A subdivision of a statute or code <Title IX>. **5.** An appellation of office, dignity, or distinction <after the election, he bore the title of mayor for the next four years>.

title, abstract of. See ABSTRACT OF TITLE.

title, action to quiet. See *action to quiet title* under ACTION.

title, chain of. See CHAIN OF TITLE.

title, cloud on. See CLOUD ON TITLE.

title, color of. See COLOR OF TITLE (1).

title, covenant for. See *covenant for title* under COVENANT (4).

title, document of. See DOCUMENT OF TITLE.

title, indicia of. See INDICIA OF TITLE.

title, muniment of. See MUNIMENT OF TITLE.

title, root of. See ROOT OF TITLE.

title, warranty of. See *warranty of title* under WARRANTY (2).

Title VII of the Civil Rights Act of 1964. A federal law that prohibits employment discrimination and harassment on the basis of race, sex, pregnancy, religion, and national origin, as well as prohibiting retaliation against an employee who opposes illegal harassment or discrimination in the workplace. ● This term is often referred to simply as Title VII. 42 USCA §§ 2000e et seq.

Title IX of the Educational Amendments of 1972. A federal statute generally prohibiting sex discrimination and harassment by educational facilities that receive federal funds. ● This term is often referred to simply as Title IX. 20 USCA §§ 1681 et seq.

title by descent. See TITLE (2).

title by devise. See TITLE (2).

title by prescription. See TITLE (2).

title company. See COMPANY.

title deed. See DEED.

title defective in form. See TITLE (2).

title-guaranty company. See *title company* under COMPANY.

title insurance. See INSURANCE.

title jurisdiction. See TITLE THEORY.

title member. See *name partner* under PARTNER.

title of entry. See TITLE (2).

title of record. See *record title* under TITLE (2).

title of right. A court-issued decree creating, transferring, or extinguishing rights. ● Examples include a decree of divorce or judicial separation, an adjudication of bankruptcy, a discharge in bankruptcy, a decree of foreclosure against a mortgagor, an order appointing or removing a trustee, and a grant of letters of administration. In all the examples listed, the judgment operates not as a remedy but as a title of right.

title opinion. See OPINION (2).

title registration. A system of registering title to land with a public registry, such as a county clerk's office. See TORRENS SYSTEM.

title retention. A form of lien, in the nature of a chattel mortgage, to secure payment of a loan given to purchase the secured item.

title search. An examination of the public records to determine whether any defects or encumbrances exist in a given property's chain of title. ● A title search is typically conducted by a title company or a real-estate lawyer at a prospective buyer's or mortgagee's request.

title standards. Criteria by which a real-estate title can be evaluated to determine whether it is defective or marketable. ● Many states, through associations of conveyancers and real-estate attorneys, have adopted title standards.

title state. See TITLE THEORY.

title theory. *Property law.* The idea that a mortgage transfers legal title of the property to the mortgagee, who retains it until the mortgage has been satisfied or foreclosed. ● Only a few American states — known as *title states*, *title*

jurisdictions, or *title-theory jurisdictions* — have adopted this theory. Cf. LIEN THEORY.

title transaction. A transaction that affects title to an interest in land.

title unity. See *unity of title* under UNITY.

T-note. *abbr.* TREASURY NOTE.

to-have-and-to-hold clause. See HABENDUM CLAUSE.

token, n. **1.** A sign or mark; a tangible evidence of the existence of a fact. **2.** A sign or indication of an intention to do something, as when a buyer places a small order with a vendor to show good faith with a view toward later placing a larger order.

toll, n. **1.** A sum of money paid for the use of something; esp., the consideration paid to use a public road, highway, or bridge. **2.** A charge for a long-distance telephone call.

toll, vb. **1.** To annul or take away <toll a right of entry>. **2.** (Of a time period, esp. a statutory one) to stop the running of; to abate <toll the limitations period>.

tollage (toh-lij). **1.** Payment of a toll. **2.** Money charged or paid as a toll. **3.** The liberty or franchise of charging a toll.

tolling agreement. An agreement between a potential plaintiff and a potential defendant by which the defendant agrees to extend the statutory limitations period on the plaintiff's claim, usu. so that both parties will have more time to resolve their dispute without litigation.

tolling statute. A law that interrupts the running of a statute of limitations in certain situations, as when the defendant cannot be served with process in the forum jurisdiction.

tolt (toht). *Hist.* A writ for removing a case pending in a court baron to a county court. — Also termed *writ of tolt*.

“Where the disputed interest in the land was not a fee held of the king in chief but a fee held of a ‘mesne lord’ the writ was directed to him bidding him do full right between the parties in the matter of the land in question under pain of the case being removed from his court to the sheriff's court if he failed to do justice. This removal was effected (if necessary) by the process known as ‘tolt’ under which a sheriff on a complaint to him in his county court of a failure of the lord to do justice ordered his bailiff to attend the lord's court and take away the

plaint into the county court." Geoffrey Radcliffe & Geoffrey Cross, *The English Legal System* 38 (G.J. Hand & D.J. Bentley eds., 6th ed. 1977).

tombstone. *Securities.* An advertisement (esp. in a newspaper) for a public securities offering, describing the security and identifying the sellers. • The term gets its name from the ad's traditional black border and plain print. — Also termed *tombstone advertisement*; *tombstone ad.* Cf. PROSPECTUS.

ton. A measure of weight fixed at either 2,000 pounds avoirdupois or 20 hundredweights, each hundredweight being 112 pounds avoirdupois.

long ton. Twenty long hundredweight (2,240 pounds), or 1.016 metric tons.

short ton. Twenty short hundredweight (2,000 pounds), or 0.907 metric tons.

ton mile. In transportation, a measure equal to the transportation of one ton of freight one mile.

tonnage (tən-ij). **1.** The capacity of a vessel for carrying freight or other loads, calculated in tons. **2.** The total shipping tonnage of a country or port. **3.** TONNAGE DUTY.

tonnage duty. A charge or impost for bringing a ship into port, usu. assessed on the basis of the ship's weight. • U.S. Const. art. I, § 10, cl. 3 prohibits the states from levying tonnage duties. — Also termed *tonnage tax*; *tonnage.* See DUTY (4).

tonnage-rent. A rent reserved by a mining lease or similar transaction, consisting of a royalty on every ton of minerals extracted from the mine.

tonnage tax. See TONNAGE DUTY.

tonsure. *Hist.* The shaving of a person's (usu. a cleric's) head. • Serjeants-at-law supposedly wore coifs to conceal their shaved heads.

tontine (ton-teen or ton-teen), *n.* **1.** A financial arrangement in which a group of participants share in the arrangement's advantages until all but one has died or defaulted, at which time the whole goes to that survivor. **2.** A financial arrangement in which an entire sum goes to the contributing participants still alive and not in default at the end of a specified period.

tontine policy. See INSURANCE POLICY.

top-hat plan. See PENSION PLAN.

top lease. See LEASE.

top management. See MANAGEMENT.

topographical survey. See SURVEY.

torpedo doctrine. See ATTRACTIVE-NUISANCE DOCTRINE.

Torrens system (tor-ənz or tahr-ənz). A system for establishing title to real estate in which a claimant first acquires an abstract of title and then applies to a court for the issuance of a title certificate, which serves as conclusive evidence of ownership. • This system — named after Sir Robert Torrens, a 19th-century reformer of Australian land laws — has been adopted in the United States by several counties with large metropolitan areas. — Also termed *Torrens title system.*

tort (tort). **1.** A civil wrong for which a remedy may be obtained, usu. in the form of damages; a breach of a duty that the law imposes on everyone in the same relation to one another as those involved in a given transaction. **2.** (*pl.*) The branch of law dealing with such wrongs.

"To ask concerning any occurrence 'Is this a crime or is it a tort?' is — to borrow Sir James Stephen's apt illustration — no wiser than it would be to ask concerning a man 'Is he a father or a son?' For he may well be both." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 543 (16th ed. 1952).

"We may . . . define a tort as a civil wrong for which the remedy is a common-law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation." R.F.V. Heuston, *Salmond on the Law of Torts* 13 (17th ed. 1977).

"It might be possible to define a tort by enumerating the things that it is not. It is not crime, it is not breach of contract, it is not necessarily concerned with property rights or problems of government, but is the occupant of a large residuary field remaining if these are taken out of the law. But this again is illusory, and the conception of a sort of legal garbage-can to hold what can be put nowhere else is of no help. In the first place, tort is a field which pervades the entire law, and is so interlocked at every point with property, contract and other accepted classifications that, as the student of law soon discovers, the categories are quite arbitrary. In the second, there is a central theme, or basis or idea, running through the cases of what are called torts, which, although difficult to put into words, does distinguish them in greater or less degree from other types of cases." W. Page Keeton et al., *The Law of Torts* § 1, at 2-3 (5th ed. 1984).

constitutional tort. A violation of one's constitutional rights by a government officer, redressable by a civil action filed directly

against the officer. • A constitutional tort committed under color of state law (such as a civil-rights violation) is actionable under 42 USCA § 1983.

dignatory tort (dig-nə-tor-ee). A tort involving injury to one's reputation or honor. • In the few jurisdictions in which courts use the phrase *dignatory tort* (such as Maine), defamation is commonly cited as an example.

government tort. A tort committed by the government through an employee, agent, or instrumentality under its control. • The tort may or may not be actionable, depending on whether the government is entitled to sovereign immunity. A tort action against the U.S. government is regulated by the Federal Tort Claims Act, while a state action is governed by the state's tort claims act. See FEDERAL TORT CLAIMS ACT; *sovereign immunity* under IMMUNITY (1).

intentional tort. A tort committed by someone acting with general or specific intent. • Examples include battery, false imprisonment, and trespass to land. — Also termed *willful tort*. Cf. NEGLIGENCE.

maritime tort. A tort committed on navigable waters. See JONES ACT.

mass tort. A civil wrong that injures many people. • Examples include toxic emissions from a factory, the crash of a commercial airliner, and contamination from an industrial-waste-disposal site. Cf. *toxic tort*.

negligent tort. A tort committed by failure to observe the standard of care required by law under the circumstances. See NEGLIGENCE.

personal tort. A tort involving or consisting in an injury to one's person, reputation, or feelings, as distinguished from an injury or damage to real or personal property.

prenatal tort. 1. A tort committed against a fetus. • If born alive, a child can sue for injuries resulting from tortious conduct predating the child's birth. 2. Loosely, any of several torts relating to reproduction, such as those giving rise to wrongful-birth actions, wrongful-life actions, and wrongful-pregnancy actions.

prima facie tort (pri-mə fay-shee-ee or -shee or -shə). An unjustified, intentional infliction of harm on another person, resulting in damages, by one or more acts that would otherwise be lawful. • Some jurisdictions have established this tort to provide a remedy for malicious deeds — esp. in business and trade contexts — that are not actionable under traditional tort law.

property tort. A tort involving damage to property.

public tort. A minor breach of the law (such as a parking violation) that, although it carries a criminal punishment, is considered a civil offense rather than a criminal one because it is merely a prohibited act (*malum prohibitum*) and not inherently reprehensible conduct (*malum in se*). — Also termed *civil offense*. Cf. *civil wrong* under WRONG; *public delict* under DELICT.

quasi-tort. A wrong for which a nonperpetrator is held responsible; a tort for which one who did not directly commit it can nonetheless be found liable, as when a master is held liable for a tort committed by a servant. — Also spelled *quasi tort*. See *vicarious liability* under LIABILITY; RESPONDEAT SUPERIOR.

sanctions tort. See SANCTIONS TORT.

toxic tort. A civil wrong arising from exposure to a toxic substance, such as asbestos, radiation, or hazardous waste. • A toxic tort can be remedied by a civil lawsuit (usu. a class action) or by administrative action. Cf. *mass tort*.

willful tort. See *intentional tort*.

tortfeasor (tort-fee-zər). One who commits a tort; a wrongdoer.

concurrent tortfeasors. Two or more tortfeasors whose simultaneous actions cause injury to a third party. • Such tortfeasors are jointly and severally liable.

consecutive tortfeasors. Two or more tortfeasors whose actions, while occurring at different times, combine to cause a single injury to a third party. • Such tortfeasors are jointly and severally liable.

joint tortfeasors. Two or more tortfeasors who contributed to the claimant's injury and who may be joined as defendants in the same lawsuit. See *joint and several liability* under LIABILITY.

successive tortfeasors. Two or more tortfeasors whose negligence occurs at different times and causes different injuries to the same third party.

tortious (tor-shəs), *adj.* 1. Constituting a tort; wrongful <tortious conduct>. 2. In the nature of a tort <tortious cause of action>.

tortious battery. See BATTERY (2).

tortious interference with contractual relations. A third party's intentional inducement of a contracting party to break a contract, causing damage to the relationship between the contracting parties. — Also termed *unlawful interference with contractual relations; interference with a contractual relationship; inducement of breach of contract; procurement of breach of contract.*

tortious interference with prospective advantage. An intentional, damaging intrusion on another's potential business relationship, such as the opportunity of obtaining customers or employment. — Also termed *interference with a business relationship.*

tort reform. A movement to reduce the amount of tort litigation, usu. involving legislation that restricts tort remedies or that caps damages awards (esp. for punitive damages). • Advocates of tort reform argue that it lowers insurance and healthcare costs and prevents windfalls, while opponents contend that it denies plaintiffs the recovery they deserve for their injuries.

torture, n. The infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure. — **torture, vb.**

total, adj. **1.** Whole; not divided; full; complete. **2.** Utter; absolute.

total assignment. See ASSIGNMENT (2).

total breach. See BREACH OF CONTRACT.

total disability. See DISABILITY (1).

total-disability insurance. See *general-disability insurance* under INSURANCE.

total eviction. See EVICTION.

total failure of consideration. See FAILURE OF CONSIDERATION.

total incorporation. See INCORPORATION.

totality-of-the-circumstances test. *Criminal procedure.* A standard for determining whether hearsay (such as an informant's tip) is sufficiently reliable to establish probable cause for an arrest or search warrant. • Under this test — which replaced *Aguilar-Spinelli's* two-pronged approach — the reliability of the hear-

say is weighed by focusing on the entire situation as described in the probable-cause affidavit, and not on any one specific factor. *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983). Cf. AGUILAR-SPINELLI TEST.

total loss. See LOSS.

total repudiation. See REPUDIATION.

Totten trust. See TRUST.

touch, vb. *Marine insurance.* To stop at a port, usu. for a brief period.

touch and stay. *Marine insurance.* An insurer's giving to the insured the right to stop and remain at certain designated points in the course of the voyage. • A vessel that has the power to touch and stay at a place must confine itself strictly to the terms of the permission given, and any deviation during a stay — for example, by shipping or landing goods — will discharge the underwriters, unless the vessel has permission to trade as well as to touch and stay.

tout court (too koor), adv. [French “simply, without qualification”] Very briefly; without explanation.

towage (toh-ij), n. **1.** The act or service of towing ships and vessels, usu. by means of a small vessel called a *tug*. **2.** The charge for such a service.

toward, adj. **1.** In the direction of; on a course or line leading to (some place or something). **2.** Coming soon; not long before.

to wit (too wit), adv. *Archaic.* That is to say; namely <the district attorney amended the complaint to include embezzlement, to wit, “stealing money that the company had entrusted to the accused”>. — Sometimes spelled *to-wit; towit.*

town. 1. A center of population that is larger and more fully developed than a village, but that (traditionally speaking) is not incorporated as a city. **2.** The territory within which this population lives. **3.** Collectively, the people who live within this territory. Cf. CITY.

“A town is a precinct anciently containing ten families, whereupon in some countries they are called tithings, within one of which tithings every man must be dwelling, and find sureties for his good behaviour, else he that taketh him into his house is to be amerced in the leet.” Sir Henry Finch, *Law, or a Discourse Thereof* 80 (1759).

- town-bonding act.** A law authorizing a town, county, or other municipal corporation to issue its corporate bonds for the purpose of aiding in construction, often of railroads. — Also termed *town-bonding law*.
- town clerk.** An officer who keeps the records, issues calls for town meetings, and performs the duties of a secretary to the town's political organization.
- town collector.** A town officer charged with collecting the taxes assessed by a town.
- town commissioner.** A member of the board of administrative officers charged with managing the town's business.
- town crier.** *Hist.* A town officer responsible for making proclamations related to town business.
- town hall.** A building that houses the offices of a town's government.
- townhouse.** A dwelling unit having usu. two or three stories and often connected to a similar structure by a common wall and (particularly in a planned-unit development) sharing and owning in common the surrounding grounds. — Also termed *townhome*.
- town meeting.** **1.** A legal meeting of a town's qualified voters for the administration of local government or the enactment of legislation. ● Town meetings of this type are common in some New England states. **2.** More generally, any assembly of a town's citizens for the purpose of discussing political, economic, or social issues. **3.** Modernly, a televised event in which one or more politicians meet and talk with representative citizens about current issues.
- town order.** An official written direction by the auditing officers of a town, directing the treasurer to pay a sum of money. — Also termed *town warrant*.
- town purpose.** A municipal project or expenditure that concerns the welfare and advantage of the town as a whole.
- township.** **1.** In a government survey, a square tract six miles on each side, containing thirty-six square miles of land. **2.** In some states, a civil and political subdivision of a county.
- township trustee.** One of a board of officers to whom, in some states, a township's affairs are entrusted.
- townsite.** A portion of the public domain segregated by proper authority and procedure as the site for a town.
- town treasurer.** An officer responsible for maintaining and disbursing town funds.
- town warrant.** See TOWN ORDER.
- toxic, adj.** Having the character or producing the effects of a poison; produced by or resulting from a poison; poisonous. — Also termed *toxic*.
- toxicant (tok-si-kənt), n.** A poison; a toxic agent; any substance capable of producing toxication or poisoning.
- toxicate, vb. Archaic.** To poison. See INTOXICATION.
- toxicology (tok-si-kol-ə-je).** The branch of medicine that concerns poisons, their effects, their recognition, their antidotes, and generally the diagnosis and therapeutics of poisoning; the science of poisons. — **toxicological (tok-si-kə-loj-i-kəl), adj.**
- toxic tort.** See TORT.
- toxic waste.** See WASTE (2).
- toxin, n. 1.** Broadly, any poison or toxicant. **2.** As used in pathology and medical jurisprudence, any diffusible alkaloidal substance — such as the ptomaines, abrin, brucin, or serpent venoms — and esp. the poisonous products of disease-producing bacteria.
- traces.** See *retrospectant evidence* under EVIDENCE.
- tracing, n. 1.** The process of tracking property's ownership or characteristics from the time of its origin to the present. **2.** SKIPTRACING. **3.** A mechanical copy or facsimile of an original, produced by following its lines with a pen or pencil through a transparent medium. — **trace, vb.**
- tract.** A specified parcel of land <a 40-acre tract>.
- tract index.** See INDEX (1).

trade, *n.* **1.** The business of buying and selling or bartering goods or services; COMMERCE.

inland trade. Trade wholly carried on within a country, as distinguished from foreign commerce.

precarious trade. *Int'l law.* Trade by a neutral country between two belligerent powers, allowed to exist at the latter's sufferance.

2. A transaction or swap. **3.** A business or industry occupation; a craft or profession. — **trade**, *vb.*

trade acceptance. See ACCEPTANCE (4).

trade agreement. **1.** An agreement — such as the North American Free Trade Agreement — between two or more nations concerning the buying and selling of each nation's goods. **2.** See COLLECTIVE-BARGAINING AGREEMENT.

trade and commerce. Every business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.

trade association. See ASSOCIATION.

trade deficit. See DEFICIT.

trade discount. See DISCOUNT.

trade dispute. **1.** A dispute between two countries arising from tariff rates or other matters related to international commerce. **2.** A dispute between an employer and employees over pay, working conditions, or other employment-related matters. • An employee who leaves during a trade dispute is not entitled to benefits under the Unemployment Insurance Act.

trade dress. The overall appearance and image in the marketplace of a product or a commercial enterprise. • For a product, trade dress typically comprises packaging and labeling. For an enterprise, it typically comprises design and decor. If a trade dress is distinctive and non-functional, it may be protected under trademark law.

trade embargo. See EMBARGO (3).

trade fixture. See FIXTURE.

trade gap. See *trade deficit* under DEFICIT.

trade libel. A false statement that disparages the quality or reputation of another's product or business. See DISPARAGEMENT.

trademark, *n.* **1.** A word, phrase, logo, or other graphic symbol used by a manufacturer or seller to distinguish its product or products from those of others. • The main purpose of a trademark is to guarantee a product's genuineness. In effect, the trademark is the commercial substitute for one's signature. To receive federal protection, a trademark must be (1) distinctive rather than merely descriptive, (2) affixed to a product that is actually sold in the marketplace, and (3) registered with the U.S. Patent and Trademark Office. In its broadest sense, the term *trademark* includes a servicemark. — Often shortened to *mark*. Cf. SERVICEMARK. **2.** The body of law dealing with how businesses distinctively identify their products. See LANHAM ACT.

“The protection of trade-marks is the law's recognition of the psychological function of symbols. If it is true that we live by symbols, it is no less true that we purchase goods by them. A trade-mark is a merchandising shortcut which induces a purchaser to select what he wants, or what he has been led to believe he wants. The owner of a mark exploits this human propensity by making every effort to impregnate the atmosphere of the market with the drawing power of a congenial symbol. Whatever the means employed, the aim is the same — to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears. Once this is attained, the trade-mark owner has something of value. If another poaches upon the commercial magnetism of the symbol he has created, the owner can obtain legal redress.” *Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co.*, 316 U.S. 203, 205, 62 S.Ct. 1022, 1024 (1942) (Frankfurter, J.).

“A trademark functions on three different levels: as an indication of origin or ownership, as a guarantee of constancy of the quality or other characteristics of a product or service, and as a medium of advertisement. Thus, a trademark guarantees, identifies, and sells the product or service to which it refers. These three facets of a trademark — of differing importance at different times, in different lines of business and for different products or services — are somewhat correlative. The classical function, that of identification, has been primarily responsible for molding the development of trademark law. The significance of the guarantee function has been somewhat exaggerated, while the implications of the advertisement function still await full recognition in the law.” 3 Rudolf Callmann, *The Law of Unfair Competition, Trademarks and Monopolies* § 17.01, at 2 (4th ed. 1998).

arbitrary trademark. A trademark containing common words that do not describe or suggest any characteristic of the product to which the trademark is assigned. — Also termed *arbitrary mark*.

certification trademark. See CERTIFICATION TRADEMARK.

collective trademark. See COLLECTIVE MARK.

descriptive trademark. See DESCRIPTIVE MARK.

fanciful trademark. A trademark consisting of a made-up or coined word; a distinctive trademark or tradename having no independent meaning. • This type of mark is considered inherently distinctive and thus protected at common law, and is eligible for trademark registration from the time of its first use. — Also termed *fanciful mark*; *fanciful term*; *coined term*.

“Arbitrary or fanciful marks convey nothing about the nature of the product except through knowledge of the market. For instance, Kodak conveys nothing about photographic equipment except to those knowledgeable about that trade.” Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 168 (2d ed. 1990).

geographically descriptive trademark. A trademark that uses a geographic name to indicate where the goods are grown or manufactured. • This type of mark is protected at common law, and can be registered only on proof that it has acquired distinctiveness over time. See SECONDARY MEANING.

registered trademark. A trademark that has been filed and recorded with the Patent and Trademark Office. • A federally registered trademark is usu. marked by the symbol “®” so that the trademark owner can collect treble damages or the defendant’s profits for an infringement. If the symbol is not used, the owner can still collect these damages or profits by proving that the defendant actually knew that the mark was registered.

strong trademark. An inherently distinctive trademark that is used — usu. by the owner only — in a fictitious, arbitrary, and fanciful manner, and is therefore given greater protection than a weak mark under the trademark laws.

suggestive trademark. A trademark that suggests rather than describes the particular characteristics of a product, thus requiring a consumer to use imagination to draw a conclusion about the nature of the product. • A suggestive trademark is entitled to protection without proof of secondary meaning. See SECONDARY MEANING.

weak trademark. A trademark that is a meaningful word in common usage or that merely describes or suggests a product. • This type of trademark is entitled to protection

only if it has acquired distinctiveness over time. See SECONDARY MEANING.

trademark infringement. See INFRINGEMENT.

trade meaning. See SECONDARY MEANING.

tradename. 1. A name, style, or symbol used to distinguish a company, partnership, or business (as opposed to a product or service); the name under which a business operates. • A tradename is a means of identifying a business — or its products or services — to establish goodwill. It symbolizes the business’s reputation. **2.** A trademark that was not originally susceptible to exclusive appropriation but has acquired a secondary meaning. — Also termed *commercial name*.

trade or business. Tax. Any business or professional activity conducted by a taxpayer with the objective of earning a profit. • If the taxpayer can show that the primary purpose and intention is to make a profit, the taxpayer may deduct certain expenses as trade-or-business expenses under the Internal Revenue Code.

trader. 1. A merchant; a retailer; one who buys goods to sell them at a profit. **2.** One who sells goods substantially in the form in which they are bought; one who has not converted them into another form of property by skill and labor. **3.** One who, as a member of a stock exchange, buys and sells securities on the exchange floor either for brokers or on his or her own account. **4.** One who buys and sells commodities and commodity futures for others or for his or her own account in anticipation of a speculative profit.

trade secret. 1. A formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors; information — including a formula, pattern, compilation, program, device, method, technique, or process — that (1) derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use, and (2) is the subject of reasonable efforts, under the circumstances, to maintain its secrecy. • This definition states the majority view, which is found in the Uniform Trade Secrets Act.

“The concept of protecting trade secrets is related to the principles of trademark and patent law. The scope of trade secret protection, however, goes well beyond that of patent law. Unlike patent law, protection under trade secret law is not tied to the information’s novelty; rath-

er, the essence of a trade secret is its relative secrecy. Additionally, unlike patent law, trade secret law draws less from property principles, and more from the equitable principles surrounding confidential relationships.” Mark A. Rothstein et al., *Employment Law* § 8.18, at 516 (1994).

“The difficulty with defining ‘trade secrets’ in the abstract is that there are so many ways to go about it. In large part, this is a reflection of the fact that the law of trade secrets, unlike the law of patents or copyright, is a creature of the common law rather than of statute. In trying to impose a moral solution on cases of apparent breach of confidence, judges have juggled competing policy interests while trying to draw a line of protection that would lead to the result that they believed was right. . . . In other words, the development of trade secret law has been a bit chaotic. . . .” James Pooley, *Trade Secrets* § 1.01, at 1-1 to 1-3 (1998).

2. Information that (1) is not generally known or ascertainable, (2) provides a competitive advantage, (3) has been developed at the plaintiff’s expense and is used continuously in the plaintiff’s business, and (4) is the subject of the plaintiff’s intent to keep it confidential. • This definition states the minority view, which is found in the Restatement of Torts § 757 cmt. b (1939).

trade surplus. See SURPLUS.

trade union. See UNION.

trade usage. See USAGE.

trading. The business of buying and selling, esp. of commodities and securities.

day trading. The act or practice of buying and selling stock shares or other securities on the same day, esp. over the Internet, usu. for the purpose of making a quick profit on the difference between the buying price and the selling price.

secondary trading. The buying and selling of securities in the market between members of the public, involving neither the issuer nor the underwriter of the securities.

trading corporation. See CORPORATION.

trading partnership. See PARTNERSHIP.

trading voyage. See VOYAGE.

trading with the enemy. The federal offense of carrying on commerce with a nation or with a subject or ally of a nation with which the United States is at war.

traditio brevi manu (trə-dish-ee-oh bree-vi man-yoo). [Latin] *Roman law.* The surrender of the mediate possession of a thing to the person who is already in immediate possession of it. • This is a type of constructive delivery in which a delivery to the mediate possessor and redelivery to the immediate possessor are unnecessary. For the other two types of constructive delivery, see ATTORNMENT; CONSTITUTUM POSSESSORIUM.

“The first [type of constructive delivery] is that which the Roman lawyers termed *traditio brevi manu*, but which has no recognised name in the language of English law. . . . If, for example, I lend a book to someone, and afterwards, while he still retains it, I agree with him to sell it to him, or to make him a present of it, I can effectually deliver it to him in fulfilment of this sale or gift, by telling him that he may keep it. It is not necessary for him to go through the form of handing it back to me and receiving it a second time from my hands.” John Salmond, *Jurisprudence* 306 (Glanville L. Williams ed., 10th ed. 1947).

tradition. **1.** Past customs and usages that influence or govern present acts or practices. **2.** The delivery of an item or an estate.

traditional public forum. See PUBLIC FORUM.

traditionary evidence. See EVIDENCE.

traduce (trə-d[y]oos), *vb.* To slander; calumniate. — **traducement**, *n.*

traffic, *n.* **1.** Commerce; trade; the sale or exchange of such things as merchandise, bills, and money. **2.** The passing or exchange of goods or commodities from one person to another for an equivalent in goods or money. **3.** People or things being transported along a route. **4.** The passing to and fro of people, animals, vehicles, and vessels along a transportation route.

traffic, *vb.* To trade or deal in (goods, esp. illicit drugs or other contraband) <trafficking in heroin>.

traffic balance. The balance of moneys collected in payment for transporting passengers and freight.

traffic regulation. A prescribed rule of conduct for traffic; a rule intended to promote the orderly and safe flow of traffic.

traitor, *n.* **1.** A person who commits treason against his or her country. **2.** One who betrays

a person, a cause, or an obligation. — **traitorous**, *adj.*

tramp, *n.* A person who roams about from place to place, begging or living without labor or visible means of support; a vagrant.

tramp corporation. See CORPORATION.

tramp steamer. A ship that is not scheduled to sail between prearranged ports of call but that stops at those ports for which it has cargo.

tranche (tranh), *n.* [French “slice”] *Securities.*
1. A bond issue derived from a pooling of similar debt obligations. • A tranche usu. differs from other issues by maturity date or rate of return. **2.** A block of bonds designated for sale in a foreign country. — Also spelled *tranch*; *trench*. See COLLATERALIZED MORTGAGE OBLIGATION.

transact, *vb.* **1.** To carry on or conduct (negotiations, business, etc.) to a conclusion <transact business>. **2.** *Civil law.* To settle (a dispute) by mutual concession. See TRANSACTION (4). **3.** To carry on or conduct negotiations or business <refuses to transact with the enemy>.

transaction, *n.* **1.** The act or an instance of conducting business or other dealings. **2.** Something performed or carried out; a business agreement or exchange. **3.** Any activity involving two or more persons. **4.** *Civil law.* An agreement that is intended by the parties to prevent or end a dispute and in which they make reciprocal concessions. — **transactional**, *adj.*

closed transaction. *Tax.* A transaction in which an amount realized on a sale can be established for the purpose of stating a gain or loss.

colorable transaction. A sham transaction having the appearance of authenticity; a pretended transaction <the court set aside the colorable transaction>.

transactional immunity. See IMMUNITY (3).

transactional lawyer. See LAWYER.

transaction causation. See CAUSATION.

transaction cost. See COST (1).

transaction-or-occurrence test. A test used to determine whether, under Fed. R. Civ. P. 13(a),

a particular claim is a compulsory counterclaim. • Four different tests have been suggested: (1) Are the legal and factual issues raised by the claim and counterclaim largely the same? (2) Would *res judicata* bar a later suit on the counterclaim in the absence of the compulsory-counterclaim rule? (3) Will substantially the same evidence support or refute both the plaintiff's claim and the counterclaim? (4) Are the claim and counterclaim logically related? See *compulsory counterclaim* under COUNTERCLAIM.

transaction slip. See CONFIRMATION SLIP.

transcribe, *vb.* To make a written or typed copy of (spoken material, esp. testimony).

transcript, *n.* A handwritten, printed, or typed copy of testimony given orally; esp., the official record of proceedings in a trial or hearing, as taken down by a court reporter. — Also termed *report of proceedings*; *reporter's record*.

transcription. **1.** The act or process of transcribing. **2.** Something transcribed; a transcript.

transcript of proceedings. A compilation of all documents relating to a bond issue, typically including the notices, affidavits of notices, a bond resolution (or bond ordinance), official statement, trust indenture and loan agreements, and minutes of meetings of all authorizing bodies.

transeunt cum universitate (tran-see-ənt kəm yoo-ni-vər-sə-tay-tee). [Latin] *Hist.* They are transferred with the whole estate.

transfer, *n.* **1.** Any mode of disposing of or parting with an asset or an interest in an asset, including the payment of money, release, lease, or creation of a lien or other encumbrance. • The term embraces every method — direct or indirect, absolute or conditional, voluntary or involuntary — of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption. **2.** Negotiation of an instrument according to the forms of law. • The four methods of transfer are by indorsement, by delivery, by assignment, and by operation of law. **3.** A conveyance of property or title from one person to another.

constructive transfer. A delivery of an item — esp. a controlled substance — by someone other than the owner but at the owner's direction.

incomplete transfer. *Tax.* A decedent's inter vivos transfer that is not completed for federal estate-tax purposes because the decedent retains significant powers over the property's possession or enjoyment. • Because the transfer is incomplete, some or all of the property's value will be included in the transferor's gross estate. IRC (26 USCA) §§ 2036–2038.

inter vivos transfer (in-tər vī-vohs or -vee-vohs). A transfer of property made during the transferor's lifetime.

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

transfer in fraud of creditors. A conveyance of property made in an attempt to prevent the transferor's creditors from making a claim to it.

transfer, vb. 1. To convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of. 2. To sell or give.

transferable (trans-fər-ə-bəl), *adj.* Capable of being transferred, together with all rights of the original holder.

transferable letter of credit. See LETTER OF CREDIT.

transfer agent. See AGENT.

transferee. One to whom a property interest is conveyed.

transferee liability. *Tax.* The liability of a transferee to pay taxes owed by the transferor. • This liability is limited to the value of the asset transferred. The Internal Revenue Service can, for example, force a donee to pay the gift tax when the donor who made the transfer cannot pay it. IRC (26 USCA) §§ 6901–6905.

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

transfer in fraud of creditors. See TRANSFER.

transfer of a case. The removal of a case from the jurisdiction of one court or judge to another by lawful authority. — Also termed *transfer of a cause*. See REMOVAL (2).

transfer of venue. See CHANGE OF VENUE.

transferor. One who conveys an interest in property.

transfer payment. (*usu. pl.*) A governmental payment to a person who has neither provided goods or services nor invested money in exchange for the payment. • Examples include unemployment compensation and welfare payments.

transfer price. See PRICE.

transferred intent. See INTENT (1).

transferred-intent doctrine. The rule that if one person intends to harm a second person but instead unintentionally harms a third, the first person's criminal or tortious intent toward the second applies to the third as well. • Thus, the offender may be prosecuted for an intent crime or sued by the third person for an intentional tort. See INTENT.

transferred malice. See MALICE.

Transfers to Minors Act. See UNIFORM TRANSFERS TO MINORS ACT.

transfer tax. See TAX.

transfer warranty. See WARRANTY (2).

transgression. *Archaic.* See MISDEMEANOR.

transgressione, ad audiendum et terminandum (trans-gres[h]-ee-oh-nee, ad aw-dee-en-dəm et tər-mə-nan-dəm). See DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM.

transgressive trust. See TRUST.

transient (tran-shənt), *adj.* Temporary; impermanent; passing away after a short time.

transient, n. A person or thing whose presence is temporary or fleeting.

transient foreigner. One who visits a country without the intent to remain.

transient jurisdiction. See JURISDICTION.

transient merchant. A trader who sells merchandise at a temporary location without intending to become a permanent merchant in that place.

transient person. One who has no legal residence within a jurisdiction for the purpose of a state venue statute.

transit, n. **1.** The transportation of goods or persons from one place to another. **2.** Passage; the act of passing.

transitive covenant. See COVENANT (1).

transitory (tran-sə-tor-ee or tran-zə-), adj. That passes from place to place; capable of passing or being changed from one place to another.

transitory action. See ACTION.

transitory wrong. See WRONG.

transit passage. Int'l law. The right of a vessel or airplane to exercise freedom of navigation and overflight solely for the purpose of continuous and expeditious transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. — Also termed *right of transit passage*. Cf. INNOCENT PASSAGE.

translation, n. **1.** The reproduction in one language of a book, document, or speech into another language. **2. Archaic.** The transfer of property. **3. Eccles. law.** The removal of a bishop from one diocese to another.

translative (trans- or tranz-lay-tiv), adj. Making or causing a transfer or conveyance.

translative fact. See FACT.

transmission. Civil law. The passing of an inheritance to an heir.

transmit, vb. **1.** To send or transfer (a thing) from one person or place to another. **2.** To communicate.

transmittal letter. A nonsubstantive letter that establishes a record of delivery, such as a letter to a court clerk advising that a particular pleading is enclosed for filing. • Lawyers have traditionally opened transmittal letters with the phrase "Enclosed please find," even though that phrasing has been widely condemned in business-writing handbooks since the late 19th century. A transmittal letter may properly begin with a range of openers as informal as "Here is" to the more formal "Enclosed is." — Also termed *cover letter*.

transnational law. 1. General principles of law recognized by civilized nations. Cf. INTERNATIONAL LAW. **2.** The amalgam of common principles of domestic and international law dealing esp. with problems arising from agreements made between sovereign states and foreign private parties. **3.** The problems to which such principles apply.

transport, vb. To carry or convey (a thing) from one place to another.

transportation, n. 1. The movement of goods or persons from one place to another by a carrier. **2. Criminal law.** A type of punishment that sends the criminal out of the country to another place (usu. a penal colony) for a specified period. Cf. DEPORTATION.

transshipment. Maritime law. The act of taking cargo out of one ship and loading it on another. — **transship, vb.**

trap, n. 1. A device for capturing animals, such as a pitfall, snare, or machine that shuts suddenly. **2.** Any device or contrivance by which one may be caught unawares; stratagem; snare. **3. Torts.** An ultrahazardous hidden peril of which the property owner or occupier, but not a licensee, has knowledge. • A trap can exist even if it was not designed or intended to catch or entrap anything.

trashing. DECONSTRUCTION.

travaux préparatoires (tra-voĥ pray-par-ə-twah[r]z). [French "preparatory works"] Materials used in preparing the ultimate form of an agreement or statute, and esp. of an international treaty; materials constituting a legislative history. See LEGISLATIVE HISTORY.

travel-accident insurance. See INSURANCE.

Travel Act. A federal law that prohibits travel in interstate or foreign commerce to further unlawful gambling, prostitution, extortion, bribery, or arson, as well as illegal transactions involving liquor or narcotics. 18 USCA § 1952.

traveled place. A place where the public has, in some manner, acquired the legal right to travel.

traveler, n. A person who passes from place to place, for any reason.

traveler's check. See CHECK.

traveler's letter of credit. See LETTER OF CREDIT.

travel expense. See EXPENSE.

traverse (**trav-ərs**), *n.* *Common-law pleading.* A formal denial of a factual allegation made in the opposing party's pleading <Smith filed a traverse to Allen's complaint, asserting that he did not knowingly provide false information>. — **traverse** (**trav-ərs** or **trə-vərs**), *vb.* See DENIAL.

"It is said that the technical term *traverse*, from *transverso*, to turn over, is applied to an issue taken upon an indictment for a misdemeanor, and means nothing more than turning over or putting off the trial to a following session or assize; and that thus it is that the officer of the court asks the party whether he is ready to try then, or will *traverse* to the next session; though some have referred its meaning originally to the denying or taking issue upon an indictment, without reference to the delay of trial, and which seems more correct." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 486 (2d ed. 1826).

common traverse. A traverse consisting of a tender of issue — that is, a denial accompanied by a formal offer for decision of the point denied — with a denial that expressly contradicts the terms of the allegation traversed. — Also termed *specific traverse*.

"The common or specific traverse is an express denial of a particular allegation in the opposing pleading in the terms of the allegation, accompanied by a tender of issue or formal offer of the point denied for trial." Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 168, at 303 (Henry Winthrop Ballantine ed., 3d ed. 1923).

cumulative traverse. A traverse that analyzes a proposition into its constituent parts and traverses them cumulatively. • It amounts to the same thing as traversing the one entire proposition, since the several parts traversed must all make up one entire proposition or point.

general traverse. A denial of all the facts in an opponent's pleading.

special traverse. A denial of one material fact in an opponent's pleading; a traverse that explains or qualifies the denial. • The essential parts of a special traverse are an inducement, a denial, and a verification.

specific traverse. See *common traverse*.

traverse jury. See *petit jury* under JURY.

traverser, *n.* One who traverses or denies a pleading.

treachery, *n.* A deliberate and willful betrayal of trust and confidence.

treason, *n.* The offense of attempting to overthrow the government of the state to which one owes allegiance, either by making war against the state or by materially supporting its enemies. — Also termed *high treason*; *alta prodition*. — **treasonable**, **treasonous**, *adj.* Cf. SEDITION.

"The judgment of *high treason* was, until very lately, an exception to the merciful tenor of our judgments. The least offensive form which is given in the books is, that the offender 'be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out and burned before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure.' Some of the precedents add other circumstances, of still more grossness and aggravation. But this horrible denunciation was very seldom executed in its more terrible niceties." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 702 (2d ed. 1826).

petty treason. *Archaic.* Murder of one's employer or husband. • Until 1828, this act was considered treason under English law. — Also spelled *petit treason*.

"The frequent reference to *high treason* is a carry-over from an ancient division of the offense that has long since disappeared. In the feudal stage of history the relation of lord to vassal was quite similar to the relation of king to subject. The relation of husband to wife came to be regarded in the same category, as also did the relation of master to servant, and that of prelate to clergyman. And just as it was *high treason* to kill the king, so a malicious homicide was *petit treason* if it involved a killing of (originally, lord by vassal, and later) husband by wife, master by mistress or servant, or prelate by clergyman. When the special brutality provided by the common law for the punishment of *petit treason* disappeared, this crime became merged with murder and only one crime of treason remained." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 498-99 (3d ed. 1982).

treasonable misdemeanor. *English law.* An act that is likely to endanger or alarm the monarch, or disturb the public peace in the presence of the monarch. Cf. TREASON FELONY.

treason felony. *English law.* An act that shows an intention of committing treason, unaccompanied by any further act to carry out that intention. • This offense usu. results in life imprisonment rather than the death penalty. Cf. TREASONABLE MISDEMEANOR.

Treas. Reg. abbr. TREASURY REGULATION.

treasurer. A corporate or governmental officer who receives, maintains custody of, invests, and disburses funds.

treasure trove. [Law French "treasure found"] Valuables (usu. gold or silver) found hidden in the ground or other private place, the owner of which is unknown. • At common law, the finder of a treasure trove was entitled to title against all except the true owner.

"Treasure hid in the earth, not upon the earth, nor in the sea, and coin though not hidden, being found is the king's; we call it treasure trove." Sir Henry Finch, *Law, or a Discourse Thereof* 177 (1759).

"Treasure trove consists essentially of articles of gold and silver, intentionally hidden for safety in the earth or in some secret place, the owner being unknown, although it is probable that the category might include articles made from the required metals buried in the ground for other purposes, for example in connection with an ancient sepulture. In the United States, the state has never claimed title to lost property by virtue of its character as treasure trove, and it has been stated that the law relating thereto is merged with that of lost goods generally, although there is authority for the proposition that while treasure trove in the United States belongs to the finder, found goods not of that character go to the owner of the *locus in quo*." Ray Andrews Brown, *The Law of Personal Property* § 13, at 27-28 (2d ed. 1955).

Treasuries. Debt obligations of the federal government backed by the full faith and credit of the government. See TREASURY BILL; TREASURY BOND; TREASURY CERTIFICATE; TREASURY NOTE.

treasury. 1. A place or building in which stores of wealth are kept; esp., a place where public revenues are deposited and kept and from which money is disbursed to defray government expenses. **2.** (*cap.*) TREASURY DEPARTMENT.

Treasury, First Lord. See FIRST LORD OF THE TREASURY.

Treasury Bench. In the British House of Commons, the first row of seats on the right hand of the speaker. • The Treasury Bench is occupied by the First Lord of the Treasury or principal minister of the Crown.

Treasury bill. A short-term debt security issued by the federal government, with a maturity of 13, 26, or 52 weeks. • These bills — auctioned weekly or quarterly — pay interest in the form of the difference between their discounted purchase price and their par value at maturity. — Abbr. T-bill.

Treasury bond. A long-term debt security issued by the federal government, with a maturi-

ty of 10 to 30 years. • These bonds are considered risk-free, but they usu. pay relatively little interest. — Abbr. T-bond.

treasury certificate. An obligation of the federal government maturing in one year and on which interest is paid on a coupon basis.

Treasury Department. A federal department — created by Congress in 1789 — whose duties include formulating and recommending financial, tax, and fiscal policies, serving as the federal government's financial agent, and manufacturing coins and currency.

Treasury note. An intermediate-term debt security issued by the federal government, with a maturity of two to ten years. • These notes are considered risk-free, but they usu. pay relatively little interest. — Abbr. T-note.

Treasury Regulation. A regulation promulgated by the U.S. Treasury Department to explain or interpret a section of the Internal Revenue Code. • Treasury Regulations are binding on all taxpayers. — Abbr. Treas. Reg.

treasury security. See *treasury stock* under STOCK.

treasury share. See *treasury stock* under STOCK.

treasury stock. See STOCK.

treasury warrant. See WARRANT (2).

treating-physician rule. The principle that a treating physician's diagnoses and findings about the degree of a social-security claimant's impairment are binding on an administrative-law judge in the absence of substantial contrary evidence.

treaty. 1. A formally signed and ratified agreement between two nations or sovereigns; an international agreement concluded between two or more states in written form and governed by international law. • A treaty is not only the law in each state but also a contract between the signatories. — Also termed *accord*; *convention*; *covenant*; *declaration*; *pact*. Cf. EXECUTIVE AGREEMENT.

commercial treaty. A bilateral or multilateral treaty concerning trade or other mercantile activities. • Such a treaty may be general in nature, as by supplying the framework of long-term commercial relations. Or it may be specific, as by detailing the conditions of par-

ticular branches of trade or other commercial transactions. Sometimes a treaty of this kind deals with an individual project, such as a guaranty agreement.

dispositive treaty (dis-poz-ə-tiv). A treaty by which a country takes over territory by impressing a special character on it, creating something analogous to a servitude or easement in private law.

guaranty treaty. An agreement between countries directly or indirectly establishing a unilateral or reciprocal guarantee. — Also termed *quasi-guarantee treaty*; *pseudo-guarantee treaty*.

“In many instances where the term ‘guarantee’ is used in international treaties, the contracting parties merely intend to underline their willingness to comply with the obligation they have entered into. Obligations of this kind do not fall within the concept of guarantee in the proper sense of the term. In this particular respect, the expression ‘pseudo-guarantees’ or ‘quasi-guarantee treaties’ is used.” George Ress, “Guarantee Treaties,” in 2 *Encyclopedia of Public International Law* 634 (1995).

nonproliferation treaty. A treaty forbidding the transfer of nuclear weapons from a country with a nuclear arsenal to one that does not have nuclear-weapons capability. ● The first such treaty was reached in 1968, and now more than 100 nations have agreed to its terms. — Also termed *nuclear-nonproliferation treaty*.

peace treaty. A treaty signed by heads of state to end a war. — Also termed *treaty of peace*.

pseudo-guarantee treaty. See *guaranty treaty*.

quasi-guarantee treaty. See *guaranty treaty*.

2. A contract or agreement between insurers providing for treaty reinsurance. See *treaty reinsurance* under REINSURANCE.

Treaty Clause. The constitutional provision giving the President the power to make treaties, with the advice and consent of the Senate. U.S. Const. art. II, § 2.

treaty-created law. See CONVENTIONAL LAW.

treaty-made law. See CONVENTIONAL LAW.

treaty of peace. See *peace treaty* under TREATY.

treaty of reinsurance. See REINSURANCE TREATY.

treaty power. The President’s constitutional authority to make treaties, with the advice and consent of the Senate. See TREATY CLAUSE.

treaty reinsurance. See REINSURANCE.

treble damages. See DAMAGES.

trebucket (tree-bək-it). See CASTIGATORY.

trend. A long-term price pattern in the stock market generally or in a particular stock.

major trend. A long-term trend of the stock market; a general increase or decrease of stock prices over an extended period. — Also termed *fundamental trend*.

market trend. The direction of stock-market prices over a several-month period.

trespass (tres-pəs or tres-pas), *n.* **1.** An unlawful act committed against the person or property of another; esp., wrongful entry on another’s real property. **2.** At common law, a legal action for injuries resulting from an unlawful act of this kind. **3.** *Archaic.* MISDEMEANOR. — **trespass, vb.** — **trespassory** (tres-pə-sor-ee), *adj.*

“The term trespass has been used by lawyers and laymen in three senses of varying degrees of generality. (1) In its widest and original signification it includes any wrongful act — any infringement or transgression of the rule of right. This use is common in the Authorized Version of the Bible, and was presumably familiar when that version was first published. But it never obtained recognition in the technical language of the law, and is now archaic even in popular speech. (2) In a second and narrower signification — its true legal sense — the term means any legal wrong for which the appropriate remedy was a writ of trespass — *viz.* any direct and forcible injury to person, land, or chattels. (3) The third and narrowest meaning of the term is that in which, in accordance with popular speech, it is limited to one particular kind of trespass in the second sense — *viz.* the tort of trespass to land (*trespass quare clausum fregit*).” R.F.V. Heuston, *Salmond on the Law of Torts* 4 (17th ed. 1977).

“Before the word ‘misdemeanor’ became well established the old writers tended to use the word ‘trespass’ to indicate an offense below the grade of felony. And it was used at times by Blackstone for this purpose, as in the phrase ‘treason, felony, or trespass.’” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 405 (3d ed. 1982).

continuing trespass. A trespass in the nature of a permanent invasion on another’s rights, such as a sign that overhangs another’s property.

criminal trespass. 1. A trespass on property that is clearly marked against trespass by signs or fences. **2.** A trespass in which the trespasser remains on the property after be-

ing ordered off by a person authorized to do so.

innocent trespass. A trespass committed either unintentionally or in good faith.

joint trespass. A trespass that two or more persons have united in committing, or that some have actually committed while others commanded, encouraged, or directed it.

permanent trespass. A trespass consisting of a series of acts, done on consecutive days, that are of the same nature and that are renewed or continued from day to day, so that the acts in the aggregate form one indivisible harm.

trespass ab initio (ab i-nish-ee-oh). An entry on land that, though begun innocently or with a privilege, is deemed a trespass from the beginning because of conduct that abuses the privilege.

trespass by relation. A trespass committed when the plaintiff had a right to immediate possession of land but had not yet exercised that right. • When the plaintiff takes possession, a legal fiction treats the plaintiff as having had possession ever since the accrual of the right of entry. This is known as *trespass by relation* because the plaintiff's possession relates back to the time when the plaintiff first acquired a right to possession.

trespass de bonis asportatis (dee boh-nis as-per-tay-tis). [Latin "trespass for carrying goods away"] 1. A wrongful taking of chattels. • This type of trespassory taking was also an element of common-law larceny. 2. At common law, an action to recover damages for the wrongful taking of chattels. — Often shortened to *trespass de bonis*. — Also termed *trespass to personal property*.

trespass on the case. At common law, an action to recover damages that are not the immediate result of a wrongful act but rather a later consequence. • This action was the precursor to a variety of modern-day tort claims, including negligence, nuisance, and business torts. — Often shortened to *case*. — Also termed *action on the case*; *breve de transgressionem super casum*.

"The most important of the writs framed under the authority of the statute of Westminster 2 is that of 'trespass on the case,' to meet cases analogous to trespass in delict, but lacking the element of direct or immediate force or violence. This writ gave a form of action in which the court was enabled to render judgment of damages in cases of fraud, deceit, negligence, want of skill, defamation oral or written, and all other injurious acts or omissions resulting in harm to person or property, but wanting the *vi et armis*, the element of direct force and violence, to constitute trespass." Edwin

E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 7 (2d ed. 1899).

"Common law recognizes a distinction between the actions of trespass *vi et armis* (or simply trespass) and trespass on the case. This distinction has been expressed by stating that a tort committed by the direct application of force is remediable by an action for trespass, while a tort accomplished indirectly is a matter for trespass on the case. Other authority makes the distinction on the basis of the defendant's intent, stating that trespass involves a willful and deliberate act while trespass on the case contemplates an act or omission resulting from negligence." 1 Am. Jur. 2d *Actions* § 23, at 738 (1994).

trespass quare clausum fregit (kwair-ee-klaw-zəm-free-jit). [Latin "why he broke the close"] 1. A person's unlawful entry on another's land that is visibly enclosed. • This tort consists of doing any of the following without lawful justification: (1) entering upon land in the possession of another, (2) remaining on the land, or (3) placing or projecting any object upon it. 2. At common law, an action to recover damages resulting from another's unlawful entry on one's land that is visibly enclosed. — Also termed *trespass to real property*; *trespass to land*; *quare clausum querentis fregit*. See *trespass vi et armis*.

"Every unwarrantable entry on another's soil the law entitles a trespass by *breaking his close*; the words of the writ of trespass commanding the defendant to shew cause, *quare clausum querentis fregit*. For every man's land is in the eye of the law enclosed and set apart from his neighbour's: and that either by a visible and material fence, as one field is divided from another by a hedge; or, by an ideal invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field. And every such entry or breach of a man's close carries necessarily along with it some damage or other: for, if no other special loss can be assigned, yet still the words of the writ itself specify one general damage, viz. the treading down and bruising his herbage." 3 William Blackstone, *Commentaries on the Laws of England* 209–10 (1768).

trespass to chattels. The act of committing, without lawful justification, any act of direct physical interference with a chattel possessed by another. • The act must amount to a direct forcible injury.

trespass to land. See *trespass quare clausum fregit* (2).

trespass to personal property. See *trespass de bonis asportatis*.

trespass to real property. See *trespass quare clausum fregit* (2).

trespass to try title. 1. In some states, an action for the recovery of property unlawfully withheld from an owner who has the immediate right to possession. 2. A procedure under which a claim to title may be adjudicated.

trespass vi et armis (vi et ahr-mis). [Latin "with force and arms"] **1.** At common law, an action for damages resulting from an intentional injury to person or property, esp. if by violent means; trespass to the plaintiff's person, as in illegal assault, battery, wounding, or imprisonment, when not under color of legal process, or when the battery, wounding, or imprisonment was in the first instance lawful, but unnecessary violence was used or the imprisonment continued after the process had ceased to be lawful. • This action also lay for injury to relative rights, such as menacing tenants or servants, beating and wounding a spouse, criminal conversation with or seducing a wife, or debauching a daughter or servant. **2.** See *trespass quare clausum fregit*. • In this sense, the "force" is implied by the "breaking" of the close (that is, an enclosed area), even if no real force is used.

trespass ab initio. See TRESPASS.

trespass by relation. See TRESPASS.

trespass de bonis asportatis. See TRESPASS.

trespasser. One who commits a trespass; one who intentionally and without consent or privilege enters another's property. • In tort law, a landholder owes no duty to unforeseeable trespassers. Cf. INVITEE; LICENSEE (2).

"The word 'trespasser' has an ugly sound, but it covers the wicked and the innocent. The burglar and the arrogant squatter are trespassers, but so are all sorts of comparatively innocent and respectable persons such as a walker in the countryside who unhindered strolls across an open field. Perhaps much of the trouble in this area has arisen from 'the simplistic stereotype' of the definition. The courts are therefore beginning to recognise that the duty of the occupier may vary according to the nature of the trespasser." R.F.V. Heuston, *Salmond on the Law of Torts* 278 (17th ed. 1977).

innocent trespasser. One who enters another's land unlawfully, but either inadvertently or believing in a right to do so.

trespass for mesne profits. *Hist.* An action — supplementing an action for ejectment — brought against a tenant in possession to recover the profits wrongfully received during the tenant's occupation.

trespass on the case. See TRESPASS.

trespass quare clausum fregit. See TRESPASS.

trespass to chattels. See TRESPASS.

trespass to land. See *trespass quare clausum fregit* under TRESPASS.

trespass to personal property. See *trespass de bonis asportatis* under TRESPASS.

trespass to real property. See *trespass quare clausum fregit* under TRESPASS.

trespass to try title. See TRESPASS.

trespass vi et armis. See TRESPASS.

tret (tret), *n.* An allowance or abatement of a certain weight or quantity that a seller makes to a buyer because of water or dust that may be mixed with a commodity. Cf. TARE.

triable, adj. Subject or liable to judicial examination and trial <a triable offense>.

triable either way. *English law.* (Of an offense) prosecutable either in the Crown Court or in a magistrates' court.

"The criminal courts in England and Wales are the magistrates' courts and the Crown Court. Those offences considered least serious are summary offences, triable only in the magistrates' courts. Those offences considered most serious are triable only on indictment, in the Crown Court. A large number of offences, such as theft and most burglaries, are 'triable either way,' in a magistrates' court or the Crown Court. For these offences the defendant can elect to be tried at the Crown Court, where there is a judge and jury. If the defendant does not wish a Crown Court trial, the magistrates may decide (having heard representations from the prosecutor) that the case is so serious that it should be committed to the Crown Court for trial." Andrew Ashworth, *Principles of Criminal Law* 16 (1991).

trial. A formal judicial examination of evidence and determination of legal claims in an adversary proceeding.

bench trial. A trial before a judge without a jury. • The judge decides questions of fact as well as questions of law. — Also termed *trial to the bench*; *nonjury trial*; *trial before the court* (abbr. TBC); *judge trial*.

bifurcated trial. A trial that is divided into two stages, such as for guilt and punishment or for liability and damages. — Also termed *two-stage trial*. Cf. SEVERANCE (2).

fair trial. See FAIR TRIAL.

joint trial. A trial involving two or more parties; esp., a criminal trial of two or more persons for the same or similar offenses.

judge trial. See *bench trial*.

jury trial. A trial in which the factual issues are determined by a jury, not by the judge. — Also termed *trial by jury*.

mock trial. See MOCK TRIAL.

nonjury trial. See *bench trial*.

political trial. A trial (esp. a criminal prosecution) in which either the prosecution or the defendant (or both) uses the proceedings as a platform to espouse a particular political belief; a trial of a person for a political crime. See SHOW TRIAL.

separate trial. 1. *Criminal procedure.* The individual trial of each of several persons jointly accused of a crime. Fed. R. Crim. P. 14. 2. *Civil procedure.* Within a single action, a distinct trial of a separate claim or issue — or of a group of claims or issues — ordered by the trial judge, usu. to conserve resources or avoid prejudice. Fed. R. Civ. P. 42(b). Cf. SEVERANCE.

show trial. See SHOW TRIAL.

speedy trial. See SPEEDY TRIAL.

state trial. A trial for a political offense.

summary jury trial. A settlement technique in which the parties argue before a mock jury, which then reaches a nonbinding verdict that will assist the parties in evaluating their positions.

trial at bar. *Hist.* A trial before all the judges of the court in which the proceedings take place. — Also termed *trial at the bar*.

trial at nisi prius (ni-si pri-əs). *Hist.* A trial before the justices of assize and nisi prius in the county where the facts are alleged to have occurred, and from which county the jurors have been summoned.

trial before the court. See *bench trial*.

trial by battle. See TRIAL BY COMBAT.

trial by certificate. *Hist.* A trial in which the issue is decided on evidence in the form of witnesses' certificates of what they individually know.

trial by combat. See TRIAL BY COMBAT.

trial by inspection. *Hist.* A trial in which the judge decided the dispute by individual observation and investigation, without the benefit of a jury.

trial by jury. See *jury trial*.

trial by ordeal. See ORDEAL.

trial by record. *Hist.* A trial in which, a record having been pleaded by one party and denied by the other, the record is inspected in

order to decide the dispute, no other evidence being admissible. See NUL TIEL RECORD.

trial by the country. See *trial per pais*.

trial per pais (pər pay or pays). [Law French "trial by the country"] Trial by jury. — Also termed *trial by the country*. Cf. CONCLUSION TO THE COUNTRY; GOING TO THE COUNTRY; PATRIA (3).

trial to the bench. See *bench trial*.

trifurcated trial. A trial that is divided into three stages, such as for liability, general damages, and special damages.

two-stage trial. See *bifurcated trial*.

trial at bar. See TRIAL.

trial at nisi prius. See TRIAL.

trial before the court. See *bench trial* under TRIAL.

trial brief. Counsel's written submission, usu. just before trial, outlining the legal issues before the court and arguing one side's position.

trial by certificate. See TRIAL.

trial by combat. *Hist.* A trial that is decided by personal battle between the disputants, common in Europe and England during the Middle Ages; specif., a trial in which the person accused fought with the accuser, the idea being that God would give victory to the person in the right. • This method was introduced into England by the Normans after 1066, but it was a widely detested innovation and was little used. It became obsolete several centuries before being formally abolished in 1818, having been replaced in practice by the grand assize and indictment. — Also termed *trial by battle*; *trial by wager of battle*; *judicial combat*; *duel*; *duellum*; *wager of battle*; *ornest*; *vadiatio duelli*; *wehading*. See JUDICIUM DEI.

trial by inspection. See TRIAL.

trial by jury. See *jury trial* under TRIAL.

trial by oath. See COMPURGATION.

trial by ordeal. See ORDEAL.

trial by record. See TRIAL.

trial by the country. See *trial per pais* under TRIAL.

trial by the record. A trial in which one party insists that a record exists to support its claim and the opposing party denies the existence of such a record. • If the record can be produced, the court will consider it in reaching a verdict — otherwise, it will rule for the opponent.

trial by wager of battle. *Hist.* See TRIAL BY COMBAT.

trial calendar. See DOCKET (2).

trial counsel. See COUNSEL.

trial court. See COURT.

trial de novo (dee or di noh-voh). A new trial on the entire case — that is, on both questions of fact and issues of law — conducted as if there had been no trial in the first instance.

trial examiner. See ADMINISTRATIVE-LAW JUDGE.

trial franchise. See FRANCHISE (4).

trial judge. See JUDGE.

trial jury. See *petit jury* under JURY.

trial on the merits. A trial on the substantive issues of a case, as opposed to a motion hearing or interlocutory matter.

trial per pais. See TRIAL.

trial-setting preference. See *special setting* under SETTING.

trial to the bench. See *bench trial* under TRIAL.

trial-type hearing. See ADMINISTRATIVE PROCEEDING.

triangular merger. See MERGER.

tribal land. A part of an Indian reservation that is not allotted to or occupied by individual Indians but is held as the common land of the tribe. Cf. INDIAN LAND.

tribunal (tri-byoo-nəl). **1.** A court or other adjudicatory body. **2.** The seat, bench, or place where a judge sits.

tributary (trib-yə-ter-ee), *n.* A stream flowing directly or indirectly into a river.

tribute (trib-yoot), *n.* **1.** An acknowledgment of gratitude or respect. **2.** A contribution that a sovereign raises from its subjects to defray the expenses of state. **3.** Money paid by an inferior sovereign or state to a superior one to secure the latter's friendship and protection.

tributum (tri-byoo-təm). [Latin] *Roman law.* Originally, a war tax; later, a regular tax on land or persons.

trier of fact. See FACT-FINDER.

trifurcated trial. See TRIAL.

trigamy (trig-ə-mee), *n.* The act of marrying a person while legally married to someone else and bigamously married to yet another.

“Trigamy, literally three marriages, is often used for a special situation. ‘Trigamy,’ in the sense of the special problem of the third wife, stems from the premise that invalidity of the alleged prior marriage is a good defense to a charge of bigamy. Thus in a bigamy prosecution a so-called common-law marriage can be relied upon to establish either the first or second marriage, if it is recognized in the jurisdiction as giving rise to the marital status, but cannot be relied upon where it is not so recognized. A logical result is that a charge of bigamy may be defeated by showing that the alleged prior marriage, relied upon to support the charge, was itself void because of an even earlier marriage existing at the time — as was held about 1648 in *Lady Madison's Case*. For example, **D** marries **A**, and afterward while **A** is alive marries **B**, and still later when **A** is dead but **B** alive, marries **C**. The marriage to **C** is not bigamy because the marriage to **B** was bigamous and void.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 458 (3d ed. 1982).

tripartite (tri-pahr-tīt), *adj.* Involving, composed of, or divided into three parts or elements <a tripartite agreement>.

triple damages. See *treble damages* under DAMAGES.

triple net lease. See *net-net-net lease* under LEASE.

triple trigger. *Insurance.* A theory of coverage providing that all insurers on a risk from the day a claimant is first exposed to an injury-producing product (such as asbestos) — beyond the last exposure — to the date of diagnosis or death, whichever occurs first, must cover the loss. — Also termed *continuous trigger*. Cf. ACTUAL-INJURY TRIGGER; EXPOSURE THEORY; MANIFESTATION THEORY.

tristis successio (tris-tis sək-ses[h]-ee-oh). See *hereditas luctuosa* under HEREDITAS.

trivertial days (tri-vər-bee-əl). See *dies fasti* under DIES.

trivial, *adj.* Trifling; inconsiderable; of small worth or importance.

TRO (tee-ahr-oh). *abbr.* TEMPORARY RESTRAINING ORDER.

trover (troh-vər). A common-law action for the recovery of damages for the conversion of personal property, the damages generally being measured by the value of the property. — Also termed *trover and conversion*. Cf. DETINUE; REPLEVIN.

“Trover may be maintained for all kinds of personal property, including legal documents, but not where articles are severed from land by an adverse possessor, at least until recovery of possession of the land. It lies for the misappropriation of specific money, but not for breach of an obligation to pay where there is no duty to return specific money.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 43, at 99 (Henry Winthrop Ballantine ed., 3d ed. 1923).

truancy (troo-ən-see), *n.* The act or state of shirking responsibility; esp., willful and unjustified failure to attend school by one who is required to attend. — **truant**, *adj. & n.*

truancy officer. An official responsible for enforcing laws mandating school attendance for minors of specified ages (usu. 16 and under). — Also termed *truant officer*; *attendance officer*.

truce. *Int'l law.* A suspension or temporary cessation of hostilities by agreement between belligerent powers. — Also termed *armistice*; *ceasefire*; *suspension of arms*.

true admission. See *judicial admission* under ADMISSION.

true and correct. Authentic; accurate; unaltered <we have forwarded a true and correct copy of the expert's report>. — Also termed *true and exact*.

true bill, *n.* A grand jury's notation that a criminal charge should go before a petty jury for trial <the grand jury returned a true bill, and the state prepared to prosecute>. — Also termed *billa vera*. Cf. NO BILL.

true-bill, *vb.* To make or deliver a true bill on <the grand jury true-billed the indictment>.

true copy. See COPY.

true residue. See CLEAR RESIDUE.

true value. See *fair market value* under VALUE.

true-value rule. The rule requiring that one who subscribes for and receives corporate stock must pay par value for it, in either money or its equivalent, so that a corporation's real assets square with its books. ● If true value is less than par value, the stock is deemed unpaid for to the full extent of the difference, and the affected shareholder is liable to creditors for the difference, notwithstanding the directors' good faith.

true verdict. See VERDICT.

trust, *n.* **1.** The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the *trustee*) at the request of another (the *settlor*) for the benefit of a third party (the *beneficiary*). ● For a trust to be valid, it must involve specific property, reflect the settlor's intent, and be created for a lawful purpose. **2.** A fiduciary relationship regarding property and subjecting the person with title to the property to equitable duties to deal with it for another's benefit; the confidence placed in a trustee, together with the trustee's obligations toward the property and the beneficiary. ● A trust arises as a result of a manifestation of an intention to create it. See FIDUCIARY RELATIONSHIP. **3.** The property so held; TRUST FUND. **4.** A business combination that aims at monopoly. See ANTI-TRUST.

“[A] trust involves three elements, namely, (1) a trustee, who holds the trust property and is subject to equitable duties to deal with it for the benefit of another; (2) a beneficiary, to whom the trustee owes equitable duties to deal with the trust property for his benefit; (3) trust property, which is held by the trustee for the beneficiary.” Restatement (Second) of Trusts § 2 cmt. h (1959).

“One must distinguish, . . . [in] countries where English is spoken, between a wide and a narrow sense of the word ‘trust.’ In the wide sense a trust exists when property is to be held or administered by one person on behalf of another or for some purpose other than his own benefit. . . . In the narrow or strict sense a trust exists when the creator of the trust . . . hands over or is bound to hand over the control of an asset which, or the proceeds of which, is to be administered by another (the trustee or administrator) in his capacity as such for the benefit of some person (beneficiary) other than the trustee or for some impersonal object. A trust in this sense is a species of the genus ‘trust’ in the wide sense.” Tony Honoré, *The South African Law of Trusts* §§ 1-2, at 1-3 (3d ed. 1985).

“Some courts and legal writers have defined a trust as a certain kind of right that the beneficiary has against the trustee, or a certain kind of interest that the beneficiary has against the trustee, or a certain kind of interest that the beneficiary has in the trust property, thus looking at it from the point of view of the beneficiary. While it is true that the beneficiary has the right or interest described, the trust is something more than the right or interest of the beneficiary. The trust is the whole juridical device: the legal relationship between the parties with respect to the property that is its subject matter, including not merely the duties that the trustee owes to the beneficiary and to the rest of the world, but also the rights, privileges, powers, and immunities that the beneficiary has against the trustee and against the rest of the world. It would seem proper, therefore, to define the trust either as a relationship having certain characteristics stated in the definition or perhaps as a juridical device or legal institution involving such a relationship.”
1 Austin W. Scott & William F. Fratcher, *The Law of Trusts* § 2.4, at 42 (4th ed. 1987).

accumulation trust. A trust in which the trustee must accumulate income and gains from sales of trust assets for ultimate disposition when the trust terminates. • Many states restrict the time over which accumulations may be made or the amount that may be accumulated.

active trust. A trust in which the trustee has some affirmative duty of management or administration besides the obligation to transfer the property to the beneficiary. — Also termed *special trust*. Cf. *passive trust*.

alimony trust. A trust in which the husband transfers to the trustee property from which the wife, as beneficiary, will be supported after a divorce or separation.

annuity trust. A trust from which the trustee must pay a sum certain annually to one or more beneficiaries for their respective lives or for a term of years, and must then either transfer the remainder to or for the use of a qualified charity or retain the remainder for such a use. • The sum certain must not be less than 5% of the initial fair market value of the property transferred to the trust by the donor. A qualified annuity trust must comply with the requirements of IRC (26 USCA) § 664.

bank-account trust. See *Totten trust*.

blended trust. A trust in which the beneficiaries are a group, with no member of the group having a separable individual interest. • Courts rarely recognize these trusts.

blind trust. A trust in which the settlor places investments under the control of an independent trustee, usu. to avoid a conflict of interest.

bond trust. A trust whose principal consists of bonds that yield interest income.

business trust. A form of business organization, similar to a corporation, in which investors receive transferable certificates of beneficial interest (instead of stock shares). — Also termed *Massachusetts trust*; *common-law trust*.

“The business trust was developed in Massachusetts from 1910 to 1925 to achieve limited liability and to avoid restrictions then existing there on a corporation’s acquiring and developing real estate, by adoption of the trust device....” Henry G. Henn & John R. Alexander, *Laws of Corporations* § 58, at 117 (3d ed. 1983).

bypass trust. A trust into which a decedent’s estate passes, so that the surviving heirs get a life estate in the trust rather than the property itself, in order to avoid estate taxes on an estate larger than the tax-credit-sheltered amount (\$650,000 in 1999, increasing to \$1 million after 2005). — Also termed *credit-shelter trust*. See *unified credit* under TAX CREDIT.

charitable remainder annuity trust. A charitable-remainder trust in which the beneficiaries receive for a specified period a fixed payment of 5% or more of the fair market value of the original principal, after which the remaining principal passes to charity.

charitable-remainder trust. A trust that consists of assets that are designated for a charitable purpose and that are paid over to the trust after the expiration of a life estate or intermediate estate. — Also termed *split-interest trust*.

charitable trust. A trust created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity. • Charitable trusts are often eligible for favorable tax treatment. — Also termed *public trust*; *charitable use*. See CY PRES. Cf. *private trust*.

Clafin trust. See *indestructible trust*.

Clifford trust. An irrevocable trust, set up for at least ten years and a day, whereby income from the trust property is paid to the beneficiary but the property itself reverts back to the settlor when the trust expires. • These trusts were often used by parents — with their children as beneficiaries — to shelter investment income, but the Tax Reform Act of 1986 eliminated the tax advantage by imposing the kiddie tax and by taxing the income of settlors with a reversionary interest that exceeds 5% of the trust’s value. This term gets its name from *Helvering v. Clifford*, 309 U.S. 331, 60 S.Ct. 554 (1940). — Also termed *short-term trust*.

common-law trust. See *business trust*.

community trust. See COMMUNITY TRUST.

complete voluntary trust. See *executed trust*.

complex trust. 1. A trust having elaborate provisions. 2. See *discretionary trust*.

constructive trust. A trust imposed by a court on equitable grounds against one who has obtained property by wrongdoing, thereby preventing the wrongful holder from being unjustly enriched. • Such a trust creates no fiduciary relationship. — Also termed *implied trust*; *involuntary trust*; *trust de son tort*; *trust ex delicto*; *trust ex maleficio*; *remedial trust*; *trust in invitum*. Cf. *resulting trust*.

"A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." *Beatty v. Guggenheim Exploration Co.*, 122 N.E. 378, 380 (N.Y. 1919) (Cardozo, J.).

"It is sometimes said that when there are sufficient grounds for imposing a constructive trust, the court 'constructs a trust.' The expression is, of course, absurd. The word 'constructive' is derived from the verb 'construe,' not from the verb 'construct.' . . . The court construes the circumstances in the sense that it explains or interprets them; it does not construct them." 5 Austin W. Scott & William F. Fratcher, *The Law of Trusts* § 462.4 (4th ed. 1987).

contingent trust. An express trust depending for its operation on a future event.

credit-shelter trust. See *bypass trust*.

custodial trust. A revocable trust in which the trustee manages property in the event of the disability of the primary beneficiary, usu. intended for use by elderly property owners. • This type of trust is sometimes used as a will substitute to avoid probate in disposing of trust property when the primary beneficiary dies.

destructible trust. A trust that can be destroyed by the happening of an event or by operation of law.

directory trust. 1. A trust that is not completely and finally settled by the instrument creating it, but only defined in its general purpose and to be carried into detail according to later specific directions. 2. See *fixed trust*.

direct trust. See *express trust*.

discretionary trust. A trust in which the trustee alone decides whether or how to distribute the trust property or its income to the beneficiary. • The beneficiary, in other words, has no say in the matter.

donative trust. A trust requiring no payment of consideration by a beneficiary.

dry trust. 1. A trust that merely vests legal title in a trustee and does not require that trustee to do anything. 2. See *passive trust*.

educational trust. A trust to found, endow, or support a school.

equipment trust. See EQUIPMENT TRUST.

estate trust. A trust all or part of the income of which is to be accumulated during the surviving spouse's life and added to the trust property, with the accumulated income and trust property being paid to the estate of the surviving spouse at death. • This type of trust is commonly used to qualify property for the marital deduction.

ex delicto trust (də-lik-toh). A trust that is created for an illegal purpose, esp. to prevent the settlor's creditors from collecting their claims out of the trust property.

executed trust. A trust in which the estates and interests in the subject matter of the trust are completely limited and defined by the instrument creating the trust and require no further instruments to complete them. — Also termed *complete voluntary trust*.

executory trust (eg-zek-yə-tor-ee). A trust in which the instrument creating the trust is intended to be provisional only, and further conveyances are contemplated by the trust instrument before the terms of the trust can be carried out. — Also termed *imperfect trust*.

express active trust. An active trust created under a will that confers upon the executor authority to generally manage the estate property and pay over the net income to the devisees or legatees.

express private passive trust. A trust in which land is conveyed to or held by one person in trust for another, without any power being expressly or impliedly given to the trustee to take actual possession of the land or exercise any ownership rights over it, except at the beneficiary's direction.

express trust. A trust created with the settlor's express intent, usu. declared in writing; an ordinary trust as opposed to a resulting trust or a constructive trust. — Also termed *direct trust*.

fixed trust. A trust in which the trustee may not exercise any discretion over the trust's management or distributions. — Also termed *directory trust*; *nondiscretionary trust*.

foreign-situs trust (-sī-təs). A trust that owes its existence to foreign law. • For tax

purposes, this type of trust is treated as a nonresident alien individual.

foreign trust. A trust created and administered under foreign law.

generation-skipping trust. A trust that is established to transfer (usu. principal) assets to a skip person (a beneficiary more than one generation removed from the settlor). • The transfer is often accomplished by giving some control or benefits (such as trust income) of the assets to a nonskip person, often a member of the generation between the settlor and skip person. This type of trust is subject to a generation-skipping transfer tax. IRC (26 USCA) §§ 2601 et seq. See DEEMED TRANSFEROR; GENERATION-SKIPPING TRANSFER; *generation-skipping transfer tax* under TAX; SKIP PERSON.

governmental trust. 1. A type of charitable trust established to provide a community with facilities ordinarily supplied by the government, esp. by a municipality, and to promote purposes that are sufficiently beneficial to the community to justify permitting the property to be perpetually devoted to those purposes. • Examples of such facilities include public buildings, bridges, streets, parks, schools, and hospitals. 2. A type of charitable trust established for general governmental or municipal purposes, such as defraying the expenses of a governmental entity or paying the public debt. Restatement (Second) of Trusts §§ 373, 374 (1959).

grantor trust. A trust in which the settlor retains control over the trust property or its income to such an extent that the settlor is taxed on the trust's income. See *Clifford trust*.

honorary trust. A trust that is legally invalid and unenforceable because it lacks a proper beneficiary. • Examples include trusts that honor dead persons, maintain cemetery plots, or benefit animals.

Illinois land trust. See *land trust*.

illusory trust. An arrangement that looks like a trust but, because of powers retained in the settlor, has no real substance and is not a completed trust.

imperfect trust. See *executory trust*.

implied trust. See *constructive trust*.

indestructible trust. A trust that, because of the settlor's wishes, cannot be prematurely terminated by the beneficiary. — Also termed *Claffin trust*.

insurance trust. A trust whose principal consists of insurance policies or their proceeds.

inter vivos trust (in-tər vī-vohs or -vee-vohs). A trust that is created and takes effect during the settlor's lifetime. — Also termed *living trust*. Cf. *testamentary trust*.

investment trust. See *investment company* under COMPANY.

involuntary trust. See *constructive trust*.

irrevocable trust (i-rev-ə-kə-bəl). A trust that cannot be terminated by the settlor once it is created. • In most states, a trust will be deemed irrevocable unless the settlor specifies otherwise.

land trust. A land-ownership arrangement by which a trustee holds both legal and equitable title to land while the beneficiary retains the power to direct the trustee, manage the property, and draw income from the trust. — Also termed *Illinois land trust*; *naked land trust*.

life-insurance trust. A trust consisting of one or more life-insurance policies payable to the trust when the insured dies.

limited trust. A trust created for a limited period. Cf. *perpetual trust*.

liquidating trust. A trust designed to be liquidated as soon as possible. • An example is a trust into which a decedent's business is placed to safeguard the business until it can be sold.

living trust. See *inter vivos trust*.

marital-deduction trust. A testamentary trust created to take full advantage of the marital deduction; esp., a trust entitling a spouse to lifetime income from the trust and sufficient control over the trust to include the trust property in the spouse's estate at death.

Massachusetts trust. See *business trust*.

Medicaid-qualifying trust. A trust that is deemed to have been created in an effort to reduce someone's assets so that the person may qualify for Medicaid, and that will be included as an asset for purposes of determining the person's eligibility. • Someone who wants to apply and qualify for Medicaid, but who has too many assets to qualify, will sometimes set up a trust — or have a spouse or custodian set up a trust — using the applicant's own assets, under which the applicant may be the beneficiary of all or part of the payments from the trust, which are distributed by a trustee with discretion to make trust payments to the applicant. Such a trust may be presumed to have been established for

the purpose of attempting to qualify for Medicaid, and may be counted as an asset of the applicant, resulting in a denial of benefits.

ministerial trust. See *passive trust*.

mixed trust. A trust established to benefit both private individuals and charities.

naked land trust. See *land trust*.

naked trust. See *passive trust*.

nominal trust. See *passive trust*.

nominee trust. 1. A trust in which the beneficiaries have the power to direct the trustee's actions regarding the trust property. 2. An arrangement for holding title to real property under which one or more persons or corporations, under a written declaration of trust, declare that they will hold any property that they acquire as trustees for the benefit of one or more undisclosed beneficiaries.

nondiscretionary trust. See *fixed trust*.

oral trust. 1. A trust created by the settlor's spoken statements as opposed to a written agreement. • Trusts of real property must usu. be in writing (because of the statute of frauds), but trusts of personal property usu. can be created orally. — Also termed *parol trust*. 2. A trust created by operation of law, such as a resulting trust or a constructive trust.

passive trust. A trust in which the trustee has no duty other than to transfer the property to the beneficiary. — Also termed *dry trust*; *nominal trust*; *simple trust*; *naked trust*; *ministerial trust*. Cf. *active trust*.

pension trust. An employer-funded pension plan; esp., a pension plan in which the employer transfers to trustees amounts sufficient to cover the benefits payable to the employees.

perpetual trust. A trust that is to continue as long as the need for it continues, such as for the lifetime of a beneficiary or the term of a particular charity. Cf. *limited trust*.

personal trust. See *private trust*.

pourover trust. An inter vivos trust that receives property (usu. the residual estate) from a will upon the testator's death. Cf. *pourover will* under WILL.

power-of-appointment trust. A trust, used to qualify property for the marital deduction, under which property is left in trust for the surviving spouse. • The trustee must distribute income to the spouse for life, and the power of appointment is given to the spouse or to his or her estate.

precatory trust (*prek-ə-tor-ee*). A trust that the law will recognize to carry out the wishes of the testator or grantor even though the statement in question is in the nature of an entreaty or recommendation rather than a positive command.

presumptive trust. See *resulting trust*.

private trust. A trust created for the financial benefit of one or more designated beneficiaries rather than for the public benefit; an ordinary trust as opposed to a charitable trust. • Three elements must be present for a private trust: (1) sufficient words to create it, (2) a definite subject matter, and (3) a certain or ascertained object. — Also termed *personal trust*. Cf. *charitable trust*.

protective trust. A trust that is designed to protect the trust property to ensure the continued support of the beneficiary.

"In a broad sense, a spendthrift, support, or other similarly protective trust is one created to provide a fund for the maintenance of the beneficiary and at the same time to secure it against the beneficiary's improvidence or incapacity." 76 Am. Jur. 2d *Trusts* § 121 (1992).

public trust. See *charitable trust*.

purchase-money resulting trust. A resulting trust that arises when one person buys property but directs the seller to transfer the property and its title to another. • The buyer is the beneficiary, and the holder is the trustee. — Abbr. PMRT.

QTIP trust (*kyoo-tip*). A testamentary trust established to transfer assets between spouses when one spouse dies. • Under this trust, the assets — referred to as the qualified-terminable-interest property (QTIP) — are considered part of the surviving spouse's estate and are therefore not subject to the estate tax on the decedent spouse's estate.

real-estate investment trust. See REAL-ESTATE INVESTMENT TRUST.

reciprocal trust. A trust arrangement between two parties in which one party is beneficiary of a trust established by the other party, and vice versa. • Such trusts are common between husband and wife.

remedial trust. See *constructive trust*.

resulting trust. A trust imposed by law when property is transferred under circumstances suggesting that the transferor did not intend for the transferee to have the beneficial interest in the property. — Also termed *implied trust*; *presumptive trust*. Cf. *constructive trust*.

revocable trust (*rev-ə-kə-bəl*). A trust in which the settlor reserves the right to termi-

nate the trust and recover the trust property and any undistributed income.

savings-account trust. See *Totten trust*.

savings-bank trust. See *Totten trust*.

secret trust. A testamentary trust giving property to a legatee or devisee who orally promises to hold it in trust for another person.

self-settled trust. A trust in which the settlor is also the person who is to receive the benefits from the trust, usu. set up in an attempt to protect the trust assets from creditors. • In most states, such a trust will not protect trust assets from the settlor's creditors. Restatement (Second) of Trusts § 156 (1959).

shifting trust. An express trust providing that, upon a specified contingency, it may operate in favor of an additional or substituted beneficiary.

short-term trust. See *Clifford trust*.

simple trust. 1. A trust that must distribute all income as it accrues. 2. See *passive trust*.

special trust. See *active trust*.

spendthrift trust. A trust that prohibits the beneficiary's interest from being assigned and also prevents a creditor from attaching that interest.

split-interest trust. See *charitable-remainder trust*.

sprinkling trust. A trust in which the trustee has discretion to decide how much will be given to each beneficiary. — Also termed *spray trust*.

support trust. A trust in which the trustee pays to the beneficiary only as much trust income as the trustee believes is needed for the beneficiary's support. • As with a spendthrift trust, the beneficiary's interest cannot be assigned or reached by creditors.

tentative trust. See *Totten trust*.

testamentary trust (tes-tə-men-tə-ree or -tree). A trust that is created by a will and takes effect when the settlor (testator) dies. — Also termed *trust under will*. Cf. *inter vivos trust*.

Totten trust. A revocable trust created by one's deposit of money in one's own name as a trustee for another. • A Totten trust is commonly used to indicate a successor to the account without having to create a will. — Also termed *tentative trust*; *bank-account trust*; *savings-account trust*; *savings-bank trust*.

"A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary. In case the depositor dies before the beneficiary without revocation, or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor." *In re Totten*, 179 N.Y. 112, 125-26 (1904) (Vann, J.).

transgressive trust. A trust that violates the rule against perpetuities.

trust de son tort. See *constructive trust*.

trust ex delicto. See *constructive trust*.

trust ex maleficio. See *constructive trust*.

trust in invitum. See *constructive trust*.

trust under will. See *testamentary trust*.

unit-investment trust. 1. A trust in which funds are pooled and invested in income-producing securities. • Units of the trust are sold to investors, who maintain an interest in the trust in proportion to their investment. 2. An investment company that gives a shareholder an undivided interest in a fixed pool of securities held by the trustee. • This type of company can be organized in several ways (as by trust indenture, contract of custodianship or agency, or similar instrument), but is most commonly organized with a trust indenture. Such a company does not have a board of directors and issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities. 15 USCA § 80a-4. See *investment company* under COMPANY.

unitrust. See UNITRUST.

vertical trust. *Antitrust.* A combination that gathers together under a single ownership a number of businesses or plants engaged in successive stages of production or marketing.

voluntary trust. 1. A trust that is not founded on consideration. • One having legal title to property may create a voluntary trust by (1) declaring that the property is to be held in trust for another, and (2) transferring the legal title to a third person who acts as trustee. 2. An obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

voting trust. A trust in which corporate stockholders transfer their shares to a trustee for the purpose of creating a voting bloc. • The stockholders still receive dividends under such an arrangement. Cf. VOTING GROUP.

"At common law there was great suspicion of voting trusts. One commentator described a voting trust as 'little more than a vehicle for corporate kidnapping.' This attitude has largely disappeared. State statutes now uniformly recognize the validity of voting trusts and they have received a more hospitable judicial reception." Robert W. Hamilton, *The Law of Corporations in a Nutshell* 199 (3d ed. 1991).

wasting trust. A trust in which the trust property is gradually depleted by periodic payments to the beneficiary.

trust agreement. See *declaration of trust* (2) under DECLARATION (1).

trustbuster, n. A person — esp. a federal officer — who seeks the dissolution of trusts under the antitrust laws. See TRUST (1).

trust certificate. See EQUIPMENT TRUST CERTIFICATE.

trust company. See COMPANY.

trust deed. 1. See *declaration of trust* (2) under DECLARATION. **2.** See *deed of trust* under DEED.

trust de son tort (də sawn [or son] tor[t]). See *constructive trust* under TRUST.

trust distribution. See DISTRIBUTION.

trustee (trəs-tee), *n.* **1.** One who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary. • Generally, a trustee's duties are to convert to cash all debts and securities that are not qualified legal investments, to reinvest the cash in proper securities, to protect and preserve the trust property, and to ensure that it is employed solely for the beneficiary, in accordance with the directions contained in the trust instrument.

bare trustee. A trustee of a passive trust. • A bare trustee has no duty other than to transfer the property to the beneficiary. See *passive trust* under TRUST.

corporate trustee. A corporation that is empowered by its charter to act as a trustee, such as a bank or trust company.

indenture trustee. A trustee named in a trust indenture and charged with holding legal title to the trust property; a trustee under an indenture.

joint trustee. See COTRUSTEE.

judicial trustee. A trustee appointed by a court to execute a trust.

quasi-trustee. One who benefits from a breach of a trust to a great enough degree to become liable as a trustee.

successor trustee. A trustee who succeeds an earlier trustee, usu. as provided in the trust agreement.

testamentary trustee (tes-tə-men-tə-ree or -tree). A trustee appointed by or acting under a will; one appointed to carry out a trust created by a will.

trustee ad litem (ad li-tem or -təm). A trustee appointed by the court.

trustee de son tort (də sawn [or son] tor[t]). A person who, without legal authority, administers a living person's property to the detriment of the property owner. See *constructive trust* under TRUST.

trustee ex maleficio (eks mal-ə-fish-ee-oh). A person who is guilty of wrongful or fraudulent conduct and is held by equity to the duty of a trustee, in relation to the subject matter, to prevent him or her from profiting from the wrongdoing.

2. Bankruptcy. An officer of the court who is elected by creditors or appointed by a judge to act as the representative of a bankruptcy estate. • The trustee's duties include (1) collecting and reducing to cash the assets of the estate, (2) operating the debtor's business with court approval if appropriate to preserve the value of business assets, (3) examining the debtor at a meeting of creditors, (4) filing inventories and making periodic reports to the court on the financial condition of the estate, (5) investigating the debtor's financial affairs, (6) examining proofs of claims and objecting to improper claims, (7) furnishing information relating to the bankruptcy to interested parties, and (8) opposing discharge through bankruptcy, if advisable. — Also termed (in sense 2) *bankruptcy trustee*; *trustee in bankruptcy*.

interim trustee. A bankruptcy trustee appointed to perform all the functions and duties of a trustee until the regular trustee is selected and qualified. • Before the meeting of creditors, the interim trustee often preliminarily investigates the debtor's assets and financial affairs.

trustee, vb. 1. To serve as trustee. **2.** To place (a person or property) in the hands of one or more trustees. **3.** To appoint (a person) as trustee, often of a bankrupt's estate in order to restrain a creditor from collecting moneys due. **4.** To attach (the effects of a debtor) in the hands of a third person.

trustee, U.S. See UNITED STATES TRUSTEE.

trustee ad litem. See TRUSTEE (1).

trustee de son tort. See TRUSTEE (1).

trustee ex maleficio. See TRUSTEE (1).

trustee in bankruptcy. See BANKRUPTCY TRUSTEE.

trustee process. See FACTORIZING PROCESS.

trusteeship. **1.** The office, status, or function of a trustee. **2.** *Int'l law.* Administration or supervision of a territory by one or more countries, esp. under a U.N. commission. Cf. MANDATE (6).

trust estate. See CORPUS (2).

trust ex delicto. See *constructive trust* under TRUST.

trust ex maleficio. See *constructive trust* under TRUST.

trust fund. The property held in a trust by a trustee; CORPUS (2).

common trust fund. A trust fund set up within a bank trust department to combine the assets of numerous small trusts to achieve greater investment diversification. ● Common trust funds are regulated by state law.

trust-fund doctrine. The principle that the assets of an insolvent company, including paid and unpaid subscriptions to the capital stock, are held as a trust fund to which the company's creditors may look for payment of their claims. ● The creditors may follow the property constituting this fund, and may use it to reduce the debts, unless it has passed into the hands of a bona fide purchaser without notice. — Also termed *trust-fund theory*.

trust indenture. See INDENTURE.

Trust Indenture Act. A federal law, enacted in 1939, designed to protect investors of certain types of bonds by requiring that (1) the SEC approve the trust indenture, (2) the indenture include certain protective clauses and exclude certain exculpatory clauses, and (3) the trustees be independent of the issuing company. 15 USCA §§ 77aaa et seq.

trust in invitum (in in-vi-təm). See *constructive trust* under TRUST.

trust instrument. See *declaration of trust* under DECLARATION.

trust legacy. See LEGACY.

trust officer. A trust-company official responsible for administering funds held by the company as a trustee.

trustor. One who creates a trust; SETTLOR (1).

trust ownership. See OWNERSHIP.

trust process. See PROCESS (1).

trust property. See CORPUS (2).

trust receipt. **1.** A pre-UCC security device — now governed by Article 9 of the Code — consisting of a receipt stating that the wholesale buyer has possession of the goods for the benefit of the financier. ● Today there must usu. be a security agreement coupled with a filed financing statement. **2.** A method of financing commercial transactions by which title passes directly from the manufacturer or seller to a banker or lender, who as owner delivers the goods to the dealer on whose behalf the banker or lender is acting, and to whom title ultimately goes when the banker's or lender's primary right has been satisfied.

trust res (reez or rays). See CORPUS (2).

trust territory. See TERRITORY.

trust under will. See *testamentary trust* under TRUST.

trusty, n. A convict or prisoner who is considered trustworthy by prison authorities and therefore given special privileges.

truth. **1.** A fully accurate account of events; factuality. **2.** *Defamation.* An affirmative defense by which the defendant asserts that the alleged defamatory statement is substantially accurate.

Truth in Lending Act. See CONSUMER CREDIT PROTECTION ACT. — Abbr. TILA.

try, vb. To examine judicially; to examine and resolve (a dispute) by means of a trial.

try title. The judicial examination of a title. See TRESPASS TO TRY TITLE; *action to quiet title* under ACTION.

TSCA. *abbr.* Toxic Substances Control Act. 42 USCA §§ 2601 et seq.

Tucker Act. A federal law enacted in 1887 to ameliorate the inadequacies of the original authority of the Court of Claims by extending that court's jurisdiction to include (1) claims founded on the Constitution, a federal statute, or a federal regulation, and (2) damage claims in cases not arising in tort.

turncoat witness. See WITNESS.

turnkey, *adj.* 1. (Of a product) provided in a state of readiness for immediate use <a turnkey computer network>. 2. Of, relating to, or involving a product provided in this manner <a turnkey contract>.

turnkey, *n.* A jailer; esp., one charged with keeping the keys to a jail or prison.

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

turnover duty. *Maritime law.* A shipowner's obligation to provide safe working conditions and to give notice of any nonobvious hazards regarding instruments and areas that the shipowner turns over to the stevedore and longshoremen while the ship is being loaded or unloaded. — Cf. ACTIVE-OPERATIONS DUTY; INTERVENTION DUTY.

turnover order. See ORDER (2).

turn state's evidence, *vb.* To cooperate with prosecutors and testify against other criminal defendants <after hours of intense negotiations, the suspect accepted a plea bargain and agreed to turn state's evidence>.

turntable doctrine. See ATTRACTIVE-NUISANCE DOCTRINE. • This term gets its name from the enticing yet dangerous qualities of railroad turntables, which have frequently been the subject of personal-injury litigation.

turpitude (tər-pə-t[y]ood). See MORAL TURPITUDE.

tutela (t[y]oo-tee-lə), *n.* [Latin "tutelage"] *Roman law.* A type of guardianship either for

those not having reached puberty (*tutela impuberum*) or for women (*tutela mulierum*). • The guardian was called the *tutor*, the ward the *pupillus*. Cf. CURA.

tutelage (t[y]oo-tə-lij), *n.* 1. The act of protecting or guiding; guardianship. 2. *Int'l law.* The state of being under the care and management of an international organization such as the League of Nations or United Nations. • This term applies, for example, to the status of a people who do not yet benefit from a fully operational government of their own — such as people displaced by war and living in a territory that will in the future be given its autonomy.

tutor, *n.* 1. One who teaches; esp., a private instructor. 2. *Civil law.* A guardian of a minor; a person appointed to have the care of the minor's person and estate. • The guardian of a minor past a certain age is called a *curator* and has duties somewhat different from those of a tutor.

tutorship. *Civil law.* The office and power of a tutor; the power that an individual has, *sui juris*, to take care of one who cannot care for himself or herself. • The four types of tutorship are (1) tutorship by nature, (2) tutorship by will, (3) tutorship by the effect of the law, and (4) tutorship by judicial appointment. La. Civ. Code art. 247.

tutorship by nature. 1. Tutorship of a minor child that belongs by right to a surviving parent. 2. Tutorship of a minor child that belongs to the parent under whose care the child has been placed following divorce or judicial separation. • If the parents are awarded joint custody, both have cotutorship and equal authority, privileges, and responsibilities. La. Civ. Code art. 250.

tutorship by will. Tutorship that is created (1) by the will of the parent who dies last, or (2) by any declaration of the surviving father or mother (or the parent who is the curator of the other spouse), executed before a notary and two witnesses. La. Civ. Code art. 257.

TVA. *abbr.* TENNESSEE VALLEY AUTHORITY.

Twelfth Amendment. The constitutional amendment, ratified in 1804, that altered the electoral-college system by separating the balloting for presidential and vice-presidential candidates.

twelve-day rule. *Criminal procedure.* A rule in some jurisdictions requiring that a person

charged with a felony be given a preliminary examination no later than 12 days after the arraignment on the original warrant.

twelve-month liquidation. See LIQUIDATION.

Twelve Tables. *Roman law.* The earliest surviving legislation enacted by the Romans, written on 12 tablets in the 5th century B.C. • The Tables set out all the main rights and duties of Roman citizens, including debtors' rights, family law, criminal law, wills, torts, and public law. They substituted a written body of laws, easily accessible and binding on all citizens of Rome, for an unwritten usage accessible to only a few. The law of the Twelve Tables was also known as the *Lex Duodecim Tabularum*.

"The Twelve Tables continued to be recognized for many centuries as the fundamental law of the Romans; they did not formally lose this character until it was taken from them by the legislation of Justinian." James Hadley, *Introduction to Roman Law* 74-75 (1881).

Twentieth Amendment. The constitutional amendment, ratified in 1933, that changed the date of the presidential and vice-presidential inaugurations from March 4 to January 20, and the date for congressional convention from March 4 to January 3, thereby eliminating the short session of Congress, during which a number of members sat who had not been reelected to office. — Also termed *lame-duck amendment*.

Twenty-fifth Amendment. The constitutional amendment, ratified in 1967, that established rules of succession for the presidency and vice presidency in the event of death, resignation, or incapacity.

Twenty-first Amendment. The constitutional amendment, ratified in 1933, that repealed the 18th Amendment (which established national Prohibition) and returned the power to regulate alcohol to the states.

Twenty-fourth Amendment. The constitutional amendment, ratified in 1964, that prohibits the federal and state governments from restricting the right to vote in a federal election because of one's failure to pay a poll tax or other tax.

Twenty-second Amendment. The constitutional amendment, ratified in 1951, that prohibits a person from being elected President more than twice (or, if the person succeeded to the office with more than half the predecessor's term remaining, more than once).

Twenty-seventh Amendment. The constitutional amendment, ratified in 1992, that prevents a pay raise for senators and representatives from taking effect until a new Congress convenes. • This amendment was proposed as part of the original Bill of Rights in 1789, but it took 203 years for the required three-fourths of the states to ratify it.

Twenty-sixth Amendment. The constitutional amendment, ratified in 1971, that sets the minimum voting age at 18 for all state and federal elections.

Twenty-third Amendment. The constitutional amendment, ratified in 1961, that allows District of Columbia residents to vote in presidential elections.

twisting, n. An insurance agent's or company's misrepresenting or misstating facts, or giving an incomplete comparison of policies, to induce an insured to give up a policy in one company and buy another company's policy.

two-dismissal rule. The rule that a notice of voluntary dismissal operates as an adjudication on the merits — not merely as a dismissal without prejudice — when filed by a plaintiff who has already dismissed the same claim in another court.

two-issue rule. The rule that if multiple issues were submitted to a trial jury and at least one of them is error-free, the appellate court should presume that the jury based its verdict on the proper issue — not on an erroneous one — and should therefore affirm the judgment.

two-stage trial. See *bifurcated trial* under TRIAL.

two-tier offer. A two-step technique by which a bidder tries to acquire a target corporation, the first step involving a cash tender offer and the second usu. a merger in which the target company's remaining shareholders receive securities from the bidder (these securities ordinarily being less favorable than the cash given in the first step).

two-witness rule. 1. The rule that, to support a perjury conviction, two independent witnesses (or one witness along with corroborating evidence) must establish that the alleged perjurer gave false testimony. **2.** The rule, as stated in the U.S. Constitution, that no person may be convicted of treason without two witnesses to the same overt act — or unless the accused

confesses in open court. U.S. Const. art. IV, § 2, cl. 2.

tying, *adj.* *Antitrust.* Of or relating to an arrangement whereby a seller sells a product to a buyer only if the buyer purchases another product from the seller <tying agreement>.

tying arrangement. *Antitrust.* **1.** A seller's agreement to sell one product or service only if the buyer also buys a different product or service. • The product or service that the buyer wants to buy is known as the *tying product* or *tying service*; the different product or service that the seller insists on selling is known as the *tied product* or *tied service*. Tying arrangements may be illegal under the Sherman or Clayton Act if their effect is too anticompetitive. **2.** A seller's refusal to sell one product or

service unless the buyer also buys a different product or service. — Also termed *tying agreement*; *tie-in*; *tie-in arrangement*. Cf. RECIPROCAL DEALING.

tying product. See TYING ARRANGEMENT (1).

tyranny, *n.* Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, whether vested constitutionally in one ruler or usurped by that ruler by breaking down the division and distribution of governmental powers. — **tyrannical**, **tyrannous**, *adj.*

tyrant, *n.* A sovereign or ruler, legitimate or not, who wields power unjustly and arbitrarily to oppress the citizenry; a despot.