

# W

**W-2 form.** *Tax.* A statement of earnings and taxes withheld (including federal, state, and local income taxes and FICA tax) during a given tax year. • The W-2 is prepared by the employer, provided to each employee, and filed with the Internal Revenue Service. Cf. W-4 FORM.

**W-4 form.** *Tax.* A form that indicates the number of personal exemptions an employee is claiming and that is used by the employer in determining the amount of income to be withheld from the employee's paycheck for federal-income tax purposes. — Also termed *Employee's Withholding Allowance Certificate*. Cf. W-2 FORM.

**wacreour** (wah-kroor), *n.* [Law French] *Hist.* A vagrant.

**Wade hearing.** *Criminal law.* A pretrial hearing in which the defendant contests the validity of his or her out-of-court identification. • If the court finds that the identification was tainted by unconstitutional methods, the prosecution cannot use the identification and must link the defendant to the crime by other means. *United States v. Wade*, 388 U.S. 218, 87 S.Ct. 1926 (1967).

**wadia** (way-dee-ə), *n.* [Law Latin] *Hist.* Pledges.

**wadset**, *n.* *Scots law.* **1.** A mortgage. **2.** A pledge or pawn.

**wadset**, *vb.* *Scots law.* **1.** To mortgage. **2.** To pledge.

**wafter** (waf-tər), *n.* [Law Latin “convoyer”] *Hist.* An English naval officer appointed under Edward IV to protect fishermen, esp. on the coast of Norfolk and Suffolk. — Also spelled *waftor*.

**waga** (way-gə), *n.* [Law Latin] *Hist.* A measure of weight; a measure of goods.

**wage**, *n.* (*usu. pl.*) Payment for labor or services, usu. based on time worked or quantity produced. Cf. SALARY.

**covered wages.** Wages on which a person is required to pay social-security taxes.

**current wages.** Wages for the current period; wages that are not past due.

**front wages.** Prospective compensation paid to a victim of job discrimination until the denied position becomes available.

**minimum wage.** The lowest permissible hourly rate of compensation for labor, as established by federal statute and required of employers engaged in interstate commerce. 29 USCA § 206.

**noncovered wages.** Wages on which a person is not required to pay social-security taxes.

**real wages.** Wages representing the true purchasing power of the dollar, derived by dividing a price index into money wages.

**wage**, *vb.* **1.** To engage in (a war, etc.). **2.** *Archaic.* To give security for (a performance, etc.). Cf. GAGE.

**wage-and-hour law.** A law (such as the federal Fair Labor Standards Act) governing minimum wages and maximum working hours for employees.

**wage and price controls.** A system of government-mandated maximum prices that can be charged for different goods and services or paid to various workers in different jobs.

**wage-and-price freeze.** See FREEZE.

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

**wage-earner's plan.** See CHAPTER 13.

**wager**, *n.* **1.** Money or other consideration risked on an uncertain event; a bet or gamble. **2.** A promise to pay money or other consideration on the occurrence of an uncertain event. **3.** See *wagering contract* under CONTRACT. — **wager**, *vb.* — **wagerer**, *n.*

**wagering contract.** See CONTRACT.

**wager of battle.** See TRIAL BY COMBAT.

**wager of law.** *Hist.* A method of proof in which a person defends against a claim by swearing that the claim is groundless, and by enlisting others (*compurgators*) to swear to the defendant's credibility. — Also termed *gager del ley* (**gay-jər del lay**); *vadiatio legis* (**vad-ee-ay-shee-oh lee-jis**). See COMPURGATION.

**wager policy.** See INSURANCE POLICY.

**Wagner Act.** See NATIONAL LABOR RELATIONS ACT.

**wagonage** (**wag-ə-nij**). **1.** Transportation by a wagon. **2.** The fee for carriage by wagon. **3.** A group of wagons.

**waif** (**wayf**), *n.* A stolen article thrown away by a thief in flight, usu. through fear of apprehension. • At common law, the rule was that if a waif is seized by a public officer or private person before the owner reclaims it, the title vests in the Crown, but today the general rule is that a waif passes to the state in trust for the true owner, who may regain it by proving ownership.

“Waifs, *bona waviata*, are goods stolen, and waived or thrown away by the thief in his flight, for fear of being apprehended. These are given to the king by the law, as a punishment upon the owner, for not himself pursuing the felon, and taking away his goods from him. And therefore if the party robbed do his diligence immediately to follow and apprehend the thief (which is called making fresh *suit*) or do convict him afterwards, or procure evidence to convict him, he shall have his goods again.” 1 William Blackstone, *Commentaries on the Laws of England* 286–87 (1765).

**wainable** (**way-nə-bəl**), *adj.* *Archaic.* (Of land) plowable; tillable.

**wainage** (**way-nij**), *n.* *Hist.* The plow, team, and other implements used by a person (esp. a villein) to cultivate the soil; instruments of husbandry. — Also termed *wainagium*; *waynagium* (**way-nay-jee-əm**).

**wait-and-see principle.** A modification to the rule against perpetuities, under which a court may determine the validity of a contingent future interest based on whether it actually vests within the perpetuities period, rather than on whether it possibly could have vested outside the period. — Also termed *second-look doctrine*.

**waiting clerk.** *Hist.* An officer who waits in attendance on the court of chancery. • The office of the waiting clerk was abolished in 1842 by the Court of Chancery Act. St. 5 & 6 Vict. ch. 103.

**waiting period.** A period that must expire before some legal right or remedy can be enjoyed or enforced. • For example, many states have waiting periods for the issuance of marriage licenses or the purchase of handguns.

**waive** (**wayv**), *n.* *Archaic.* A woman who has by her conduct deprived herself of the protection of the law; a female outlaw. • The term “outlaw” usu. referred only to a male. See OUTLAW.

**waive**, *vb.* **1.** To abandon, renounce, or surrender (a claim, privilege, right, etc.); to give up (a right or claim) voluntarily. • Ordinarily, to waive a right one must do it knowingly — with knowledge of the relevant facts. **2.** To refrain from insisting on (a strict rule, formality, etc.); to forgo.

**waiver** (**way-vər**), *n.* **1.** The voluntary relinquishment or abandonment — express or implied — of a legal right or advantage <waiver of notice>. • The party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it. Cf. ESTOPPEL.

“The term *waiver* is one of those words of indefinite connotation in which our legal literature abounds; like a cloak, it covers a multitude of sins.” William R. Anson, *Principles of the Law of Contract* 419 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“‘Waiver’ is often inexactly defined as ‘the voluntary relinquishment of a known right.’ When the waiver is reinforced by reliance, enforcement is often said to rest on ‘estoppel.’ . . . Since the more common definition of estoppel is limited to reliance on a misrepresentation of an existing fact, reliance on a waiver or promise as to the future is sometimes said to create a ‘promissory estoppel.’ The common definition of waiver may lead to the incorrect inference that the promisor must know his legal rights and must intend the legal effect of the promise. But . . . it is sufficient if he has reason to know the essential facts.” Restatement (Second) of Contracts § 84 cmt. b (1981).

“Although it has often been said that a waiver is ‘the intentional relinquishment of a known right,’ this is a misleading definition. What is involved is not the relinquishment of a right and the termination of a reciprocal duty but the excuse of the nonoccurrence or of a delay in the occurrence of a condition of a duty.” E. Allan Farnsworth, *Contracts* § 8.5, at 561 (1982).

**express waiver.** A voluntary and intentional waiver.

**implied waiver.** A waiver evidenced by a party's decisive, unequivocal conduct reasonably inferring the intent to waive.

"An implied waiver may arise where a person has pursued such a course of conduct as to evidence an intention to waive a right, or where his conduct is inconsistent with any other intention than to waive it. Waiver may be inferred from conduct or acts putting one off his guard and leading him to believe that a right has been waived. Mere silence, however, is no waiver unless there is an obligation to speak." 28 Am. Jur. 2d *Estoppel and Waiver* § 160, at 845-46 (1966).

**prospective waiver.** A waiver of something that has not yet occurred, such as a contractual waiver of future claims for discrimination upon settlement of a lawsuit.

**2.** The instrument by which a person relinquishes or abandons a legal right or advantage <the plaintiff must sign a waiver when the funds are delivered>.

**lien waiver.** A written and signed waiver of a subcontractor's mechanic's lien rights, usu. submitted to enable the owner or general contractor to receive a draw on a construction loan.

**waiver by election of remedies.** A defense arising when a plaintiff has sought two inconsistent remedies and by a decisive act chooses one of them, thereby waiving the other.

**waiver of claims and defenses.** **1.** The intentional relinquishment by a maker, drawer, or other obligor under a contract of the right to assert against the assignee any claims or defenses the obligor has against the assignor. **2.** The contractual clause providing for such a waiver.

**waiver of defenses.** *Real estate.* A document by which a mortgagor acknowledges that the mortgage is good and valid for the full amount of the mortgage note. • This document ensures that the mortgagor has no defenses to the mortgage. — Also termed *estoppel certificate*; *no-setoff certificate*; *declaration of no defenses*.

**waiver of exemption.** **1.** A debtor's voluntary relinquishment of the right to an exemption from a creditor's levy or sale of any part of the debtor's personal property by judicial process. **2.** The contractual clause expressly providing for such a waiver.

**waiver of immunity.** The act of giving up the right against self-incrimination and proceeding to testify. See IMMUNITY (3).

**waiver-of-premium clause.** *Insurance.* A provision for a waiver of premium payments after the insured has been disabled for a specified length of time, such as six months.

**waiver of protest.** A relinquishment by a party to a negotiable instrument of the formality of protest in case of dishonor. See PROTEST (2).

**waiver of tort.** The election to sue in quasi-contract to recover the defendant's unjust benefit, instead of suing in tort to recover damages. See *implied-in-law contract* under CONTRACT.

"A person upon whom a tort has been committed and who brings an action for the benefits received by the tortfeasor is sometimes said to 'waive the tort.'" Restatement of Restitution § 525 (1937).

"'Waiver of tort' is a misnomer. A party only waives a tort in the sense that he elects to sue in quasi-contract to recover the defendant's unjust benefit rather than to sue in tort to recover damages; he has a choice of alternative remedies. But the tort is not extinguished. Indeed it is said that it is a *sine qua non* of both remedies that he should establish that a tort has been committed." Lord Goff of Chieveley & Gareth Jones, *The Law of Restitution* 605 (3d ed. 1986).

**waivery.** *Hist.* The act of putting a woman outside the protection of the law. • At common law, a woman could not be "outlawed" because she was not considered "in law" — that is, she could not undertake legal proceedings on her own. By Bracton's day, the effect of outlawing a woman was achieved by "waiving" her — the act being called *waivery*.

**walk, vb. Slang.** **1.** To be acquitted <though charged with three thefts, Robinson walked each time>. **2.** To escape any type of real punishment <despite the seriousness of the crime, Selvidge spent only two nights in jail, and when convicted had to pay a fine of only \$750: he walked>.

**walker, n. Hist.** A forester who inspects an assigned area of land.

**walkout.** **1. STRIKE.** **2.** Loosely, the act of leaving a work assignment, meeting, or other event as a show of protest.

**wall.** An erection of stone, brick, or other material raised to varying heights, esp. inside or surrounding a building, for privacy, security, or enclosure.

**ancient wall.** A party wall that has stood for at least 20 years, thus giving each party an easement right to refuse to allow the other

party to remove or substantially change the wall.

**party wall.** A wall that divides two adjoining, separately owned properties and that is shared by the two property owners as tenants in common. — Also termed *common wall*.

**wallia** (*wahl-ee-ə*), *n.* [Law Latin] *Hist.* A wall (such as a mound or bank) erected in marshy areas for protection against the sea; a seawall.

**Walsh-Healey Act.** A federal law, enacted in 1936, stipulating that government contractors must: (1) pay their workers no less than the prevailing minimum wage; (2) observe the eight-hour day and 40-hour workweek (with time-and-a-half for work exceeding those hours); (3) employ no convict labor and no females under 18 or males under 16 years of age; and (4) maintain sanitary working conditions. 41 USCA §§ 35 et seq.

**wampum** (*wom-pəm*), *n.* *Hist.* Indian money consisting of shells, beads, or animal pelts. • In 1637, it became the first medium of exchange for the New England colonies by order of the General Court of Massachusetts, because England had not provided the colonies with a standard of exchange. The Court ordered that “wampampege should passe at 6 a penny for any sum under 12d.” Wampum was used as the medium of exchange, esp. for small transactions, until 1652 when the General Court ordered the first metallic currency.

**wanlass** (*wahn-ləs*). *Hist.* An ancient form of tenure requiring the tenant to drive deer to a stand so that the lord can take a shot. — Also spelled *wanlace*.

**wantage** (*wahnt-ij*), *n.* A deficiency of something; specif., a vessel's deficiency of not being full, due to leakage.

**want of consideration.** The lack of consideration for a contract. See CONSIDERATION. Cf. FAILURE OF CONSIDERATION.

**want of jurisdiction.** A court's lack of power to act in a particular way or to give certain kinds of relief. • A court may have no power to act at all, may lack authority over a person or the subject matter of a lawsuit, or may have no power to act until the prerequisites for its jurisdiction have been satisfied. — Also termed *lack of jurisdiction*. See JURISDICTION.

**want of prosecution.** Failure of a litigant to pursue the case <dismissal for want of prosecution>. — Also termed *lack of prosecution*; *no progress*. — Abbr. w.o.p.

**want of repair.** A defective condition, such as a condition on a highway making it unsafe for ordinary travel.

**wanton** (*wahn-tən*), *adj.* Unreasonably or maliciously risking harm while being utterly indifferent to the consequences. • In criminal law, *wanton* usu. connotes malice (in the criminal-law sense), while *reckless* does not. Cf. RECKLESS; WILLFUL.

“Wanton differs from reckless both as to the actual state of mind and as to the degree of culpability. One who is acting recklessly is fully aware of the unreasonable risk he is creating, but may be trying and hoping to avoid any harm. One acting wantonly may be creating no greater risk of harm, but he is not trying to avoid it and is indifferent to whether harm results or not. Wanton conduct has properly been characterized as ‘vicious’ and rates extreme in the degree of culpability. The two are not mutually exclusive. Wanton conduct is reckless plus, so to speak.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 879–80 (3d ed. 1982).

**wanton and reckless misconduct.** See *wanton misconduct* under MISCONDUCT.

**wanton misconduct.** See MISCONDUCT.

**wanton negligence.** See *gross negligence* under NEGLIGENCE.

**wantonness**, *n.* Conduct indicating that the actor is aware of the risks but indifferent to the results. • Wantonness usu. suggests a greater degree of culpability than recklessness, and it often connotes malice in criminal-law contexts. — **wanton**, *adj.* Cf. RECKLESSNESS.

**wapentake** (*wahp-ən-tayk* or *wap-*), *n.* [fr. *Saxon waepen* “weapons” + *tac* “touch”] *Hist.* In some English counties, a division corresponding to the hundred or ward in other counties. See HUNDRED. **2.** The court within such a division. **3.** A bailiff who works in such a court.

**war.** **1.** Hostile conflict by means of armed forces, carried on between nations, states, or rulers, or sometimes between parties within the same nation or state; a period of such conflict <the Gulf War>.

**civil war.** An internal armed conflict between people of the same nation; esp. (usu. cap.), the war from 1861 to 1865, resulting

from the Confederate states' attempted secession from the Union.

**imperfect war.** A war limited in terms of places, persons, and things.

**mixed war.** A war between a nation and private individuals.

**perfect war.** A war involving an entire nation against another.

**private war.** A war between private persons.

**public war.** A war between two nations under authority of their respective governments.

**solemn war.** A war formally declared — esp. by public declaration — by one country against another.

**2.** A dispute or competition between adversaries <fare wars are common in the airline industry>. **3.** A struggle to solve a pervasive problem <America's war against drugs>.

**warantizare.** See WARRANTIZARE.

**war clause.** U.S. Const. art. I, § 8, cl. 11–14, giving Congress the power to declare war. See WAR POWER.

**war contribution.** *Int'l law.* An extraordinary payment imposed by an occupying power on the population of an occupied territory during wartime. — Often shortened to *contribution*.

**war crime.** Conduct that violates international laws governing war. • Examples of war crimes are the killing of hostages, abuse of civilians in occupied territories, abuse of prisoners of war, and devastation that is not justified by military necessity.

**ward. 1.** A person, usu. a minor, who is under a guardian's charge or protection. See GUARDIAN.

**permanent ward.** A ward who has been assigned a permanent guardian, the rights of the natural parents having been terminated by a juvenile court.

**temporary ward.** A minor who is under the supervision of a juvenile court but whose parents' parental rights have not been terminated.

**ward-in-chancery.** *Hist.* An infant under the superintendence of the chancellor.

**ward of admiralty.** *Hist.* A seaman, so called because of the legal view that a seaman, in contractual matters, should be treated as a beneficiary and the other contracting party as a fiduciary due to their perceived inequitable bargaining positions.

**ward of the state.** A person who is housed by, and receives protection and necessities from, the government.

**2.** A territorial division in a city, usu. defined for purposes of city government. **3.** The act of guarding or protecting something or someone.

**4.** *Archaic.* One who guards. **5.** CASTLE-GUARD. — Formerly also termed *warda*.

**warda** (wor-də), *n.* [Law Latin] *Hist.* Wardship; guardianship.

**wardage.** See WARDPENNY.

**warden.** A person in charge of something <game warden> <port warden>; esp., the official in charge of a prison or jail <prison warden>.

**warden of the cinque ports** (singk ports).

*Hist.* A magistrate with jurisdiction over the five cinque ports. • This office was created in imitation of the Roman policy of strengthening coasts against enemies. The warden, formally called the Lord Warden, presided over the Court of the Lord Warden of the Cinque Ports, which was created in the 14th century and, over time, variously exercised civil, equity, and admiralty jurisdiction. — Formerly termed *guardian of the cinque ports*. See CINQUE PORTS.

**ward-horn.** *Hist.* The duty of keeping watch and ward with a horn to blow in the event of a surprise. See WATCH AND WARD.

**ward-in-chancery.** See WARD.

**wardite.** *Hist.* A fine that a tenant was required to pay upon failing to fulfill the duty of castle-guard. See CASTLE-GUARD.

**wardmote** (word-moht). *Hist.* **1.** A court maintained in every London ward. — Also termed *wardmote court*; *inquest*. **2.** A meeting of a ward.

**ward of admiralty.** See WARD.

**wardpenny, n.** *Hist.* **1.** Money paid in lieu of military service. **2.** Money paid to the sheriff or castellains in exchange for watching and warding a castle. — Also termed *wardage*; *warth*.

**wardship. 1.** Guardianship of a person, usu. a minor. **2.** The condition of being a ward. **3.** *Hist.* The right of the feudal lord to guardianship of a deceased tenant's minor heir until the heir reached the age of majority.

**wardship in chivalry.** Wardship as incident to the tenure of knight-service.

**wardship in copyholds.** Wardship by which the lord is guardian of an infant tenant by special custom.

**wardstaff, n. Hist.** A staff carried by an authority; esp., a constable's or watchman's staff.

**wardwit, n. Hist. 1.** An immunity or exemption from the duty of warding or contributing to warding. **2.** A fine for failing to watch and ward. — Also termed *warwit*; *wardwite*.

**warectare** (wor-ək-tair-ee), *vb.* [Law Latin "to let lie fallow"] *Hist.* To plow land in the spring and then let it lie fallow for a better wheat crop the next year.

**warehouse.** A building used to store goods and other items.

**bonded warehouse.** A special type of private warehouse used to store products subject to customs duties. See WAREHOUSE SYSTEM.

**warehouse book.** A book used by merchants to account for quantities of goods received, shipped, and in stock.

**warehouseman.** See WAREHOUSER.

**warehouseman's lien.** See *warehouse's lien* under LIEN.

**warehouser.** One who, as a business, keeps or stores the goods of another for a fee. ● The transaction in which a warehouser engages is a bailment for the benefit of both parties, and the bailee is liable for ordinary negligence. — Also termed *warehouseman*. See BAILEE.

**warehouse receipt.** A document evidencing title to goods stored with someone else; esp., a receipt issued by a person engaged in the business of storing goods for a fee. ● A warehouse receipt, which is considered a document of title, may be a negotiable instrument and is often used for financing with inventory as security. See BAILMENT.

**warehouse's lien.** See LIEN.

**warehouse system.** A system of maintaining bonded warehouses so that importers can either store goods for reexportation without paying customs duties or store the goods without paying duties until the goods are removed for

domestic consumption. See *bonded warehouse* under WAREHOUSE.

**warehousing. 1.** A mortgage banker's holding of mortgages until the resale market improves. **2.** A corporation's giving of advance notice of a tender offer to institutional investors, who can then buy stock in the target company before public awareness of the takeover inflates the stock's price. See TENDER OFFER.

**warfare. 1.** The act of engaging in war or military conflict. See WAR. **2.** Loosely, the act of engaging in any type of conflict.

**biological warfare.** The use of biological or infectious agents in war, usu. by delivering them via airplanes or ballistic missiles.

**economic warfare. 1.** A hostile relationship between two or more countries in which at least one tries to damage the other's economy for economic, political, or military ends. **2.** The collective measures that might be taken to achieve such ends.

**guerrilla warfare.** Hostilities that are conducted by individuals or small groups who are usu. not part of an organized army and who fight by means of surprise attacks, ambushes, and sabotage. ● Formerly, it was thought that the hostilities had to be conducted in enemy-occupied territory. Typically, guerrilla warfare is carried out only when geographical conditions are favorable and when the civilian population is at least partly cooperative.

**land warfare.** Hostilities conducted on the ground, as opposed to at sea or in the air.

**WARN** (worn). *abbr.* WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT.

**warning.** The pointing out of a danger, esp. to one who would not otherwise be aware of it. ● State and federal laws (such as 21 USCA § 825) require warning labels to be placed on potentially dangerous materials, such as drugs and equipment.

**warnistura** (wor-nə-st[y]oor-ə), *n.* [Law Latin] *Hist.* Furniture; provision.

**warnoth** (wor-noht). *Hist.* A defunct custom by which a tenant who failed to pay rent on a set day had to pay double the amount due, and on failing a second time had to pay triple (and so on).

**war power.** The constitutional authority of Congress to declare war and maintain armed forces

(U.S. Const. art. I, § 8, cls. 11–14), and of the President to conduct war as commander-in-chief (U.S. Const. art. II, § 2, cl. 1).

**war-powers resolution.** A resolution passed by Congress in 1973 (over the President's veto) restricting the President's authority to involve the United States in foreign hostilities without congressional approval, unless the United States or one of its territories is attacked. 50 USCA §§ 1541–1548.

**warrant, n. 1.** A writ directing or authorizing someone to do an act, esp. one directing a law enforcer to make an arrest, a search, or a seizure.

**administrative warrant.** A warrant issued by a judge at the request of an administrative agency. • This type of warrant is sought to conduct an administrative search. See *administrative search* under SEARCH.

**anticipatory search warrant.** See SEARCH WARRANT.

**arrest warrant.** A warrant, issued only on probable cause, directing a law-enforcement officer to arrest and bring a person to court. — Also termed *warrant of arrest*.

**bench warrant.** A warrant issued directly by a judge to a law-enforcement officer, esp. for the arrest of a person who has been held in contempt, has been indicted, has disobeyed a subpoena, or has failed to appear for a hearing or trial.

**blanket search warrant.** See SEARCH WARRANT.

**commitment warrant.** See *warrant of commitment*.

**death warrant.** A warrant authorizing a warden or other prison official to carry out a death sentence. • A death warrant typically sets the time and place for a prisoner's execution.

**distress warrant. 1.** A warrant authorizing a court officer to distrain property. See DISTRESS. **2.** A writ allowing an officer to seize a tenant's goods for failing to pay rent due to the landlord.

**escape warrant. 1.** A warrant directing a peace officer to rearrest an escaped prisoner. **2. Hist.** A warrant granted to retake a prisoner who had escaped from a royal prison after being committed there. • The warrant was obtained on affidavit from the judge of the court in which the action had been brought, and was directed to all sheriffs throughout

England, commanding them to retake and commit the prisoner to the nearest jail.

**extradition warrant.** A warrant for the return of a fugitive from one jurisdiction to another. Cf. *rendition warrant*.

**fugitive warrant.** A warrant that authorizes law-enforcement officers to take into custody a person who has fled from one state to another to avoid prosecution or punishment.

**general warrant. 1. Hist.** A warrant issued by the English Secretary of State for the arrest of the author, printer, or publisher of a seditious libel, without naming the persons to be arrested. • General warrants were banned by Parliament in 1766.

“A practice had obtained in the secretaries office ever since the restoration, grounded on some clauses in the acts for regulating the press, of issuing *general warrants* to take up (without naming any person in particular) the authors, printers and publishers of such obscene or seditious libels, as were particularly specified in the warrant. When those acts expired in 1694, the same practice was inadvertently continued, in every reign and under every administration, except the four last years of queen Anne, down to the year 1763: when such a warrant being issued to apprehend the authors, printers and publishers of a certain seditious libel, its validity was disputed; and the warrant was adjudged by the whole court of king's bench to be void, in the case of *Money v. Leach*. *Trin. 5 Geo. III. E.R.* After which the issuing of such general warrants was declared illegal by a vote of the house of commons.” 4 William Blackstone, *Commentaries on the Laws of England* 288 n.i (1769).

**2.** A warrant that gives a law-enforcement officer broad authority to search and seize unspecified places or persons; a search or arrest warrant that lacks a sufficiently particularized description of the person or thing to be seized or the place to be searched. • General warrants are unconstitutional because they fail to meet the Fourth Amendment's specificity requirements.

“But though there are precedents of general warrants to search all suspected places for stolen goods, these are not at common law legal, because it would be extremely dangerous to leave it to the discretion of a common officer to arrest what person, or search what houses he thinks fit. And in the great case of *Money v. Leach*, it was declared by Lord Mansfield, that a warrant to search for, and secure the person and papers of the author, printer and publisher of a libel, is not only illegal in itself, but is so improper on the face of it, that it will afford no justification to an officer acting under its sanction. And by two resolutions of the House of Commons such general warrants were declared to be invalid.” 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 66 (2d ed. 1826).

**justice's warrant.** See *peace warrant*.

**landlord's warrant.** A type of distress warrant from a landlord to seize the tenant's

goods, to sell them at public sale, and to compel the tenant to pay rent or observe some other lease stipulation. See *DISTRAIN*; *DISTRESS*.

**no-knock search warrant.** See *SEARCH WARRANT*.

**outstanding warrant.** An unexecuted arrest warrant.

**peace warrant.** A warrant issued by a justice of the peace for the arrest of a specified person. — Also termed *justice's warrant*.

**preliminary warrant.** A warrant to bring a person to court for a preliminary hearing on probable cause.

**rendition warrant.** A warrant requesting the extradition of a fugitive from one jurisdiction to another. Cf. *extradition warrant*.

**search warrant.** See *SEARCH WARRANT*.

**surreptitious-entry warrant.** A warrant that authorizes a law officer to enter and observe an ongoing criminal operation (such as an illegal drug lab).

**tax warrant.** An official process that is issued for collecting unpaid taxes and under which property may be seized and sold.

**warrant of arrest.** See *arrest warrant*.

**warrant of commitment.** A warrant committing a person to custody. — Also termed *commitment warrant*.

**warrant upon indictment or information.** An arrest warrant issued at the request of the prosecutor for a defendant named in an indictment or information. Fed. R. Crim. P. 9.

**2.** A document conferring authority, esp. to pay or receive money.

**deposit warrant.** A warehouse receipt used as security for a loan.

**dock warrant.** See *DOCK RECEIPT*.

**interest warrant.** An order drawn by a corporation on its bank directing the bank to pay interest to a bondholder.

**municipal warrant.** An order to draw money from a municipality's treasury for the payment of the municipality's expenses or debts.

**tax-anticipation warrant.** A warrant that is issued to raise public money and that is payable out of tax receipts when collected.

**treasury warrant.** An order in the form of a check on which government disbursements are paid.

**3.** An order by which a drawer authorizes someone to pay a particular sum of money to another.

**county warrant.** A warrant drawn by a county official, directing the county treasurer to pay a sum of money out of county funds to bearer, to a named individual, or to the named individual's order.

#### 4. SUBSCRIPTION WARRANT.

**warrant, vb.** **1.** To guarantee the security of (realty or personalty, or a person) <the store warranted the safety of the customer's jewelry>. **2.** To give warranty of (title); to give warranty of title to (a person) <the seller warrants the property's title to the buyer>. **3.** To promise or guarantee <warrant payment>.

"Even today lawyers use the verb 'to warrant' meaning to promise without necessarily indicating that the promise is a warranty." P.S. Atiyah, *An Introduction to the Law of Contract* 145 n.1 (3d ed. 1981).

**4.** To justify <the conduct warrants a presumption of negligence>. **5.** To authorize <the manager warranted the search of the premises>.

**Warrant Clause.** The clause of the Fourth Amendment to the U.S. Constitution requiring that warrants be issued on probable cause.

**warrant creditor.** See *CREDITOR*.

**warrantee** (wor-ən-tee or wahr-). A person to whom a warranty is given.

**warrantia chartae.** See *DE WARRANTIA CHARTAE*.

**warrantia custodiae** (wə-ran-shee-ə kə-stoh-dee-ee), *n.* [Law Latin] *Hist.* A writ for a purchaser of land held in knight's service against the seller (and heirs), who had warranted that the land was free of wardship when a wardship was later claimed.

**warrantia diei.** See *DE WARRANTIA DIEI*.

**warrantizare** (wor-ən-tə-zair-ee), *vb.* [Law Latin] *Hist.* To warrant by covenant (in a deed of conveyance) to defend the grantee's title and possession. — Also spelled *warrantizare*.

**warrantless arrest.** See *ARREST*.

**warrantless search.** See *SEARCH*.

**warrant of arrest.** See *arrest warrant* under *WARRANT* (1).



**warrant of attorney.** 1. POWER OF ATTORNEY (1). 2. *Hist.* Written authority given by a client to a lawyer to appear in court and to confess judgment in favor of a specified party. • It usu. instructed the attorney not to bring any action, seek a writ of error, or file a bill in equity that might delay the judgment. The warrant was typically given as security for an obligation on which judgment was authorized. Cf. CONFESION OF JUDGMENT; COGNOVIT.

"A warrant of attorney was not required to be under seal, though it generally was so. In order to guard against any imposition in procuring debtors to execute warrants of attorney or *cognovits* in ignorance of the effect of such instruments, it is provided that a warrant of attorney to confess judgment in any personal action, or *cognovit actionem*, given by any person, shall not be of any force, unless there is present some attorney of one of the superior courts on behalf of such person, expressly named by him and attending at his request, to inform him of the nature and effect of such warrant or *cognovit*, before the same is executed . . ." Joshua Williams, *Principles of the Law of Personal Property* 125 (11th ed. 1881).

**warrant of commitment.** See WARRANT (1).

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

**warrantor** (*wor-ən-tor or -tər or wahr-*). A person who gives a warranty.

**warrant recall**, *n.* A procedure for removing from government computers information about canceled warrants in order to avoid repeated or mistaken arrests.

**warrant to sue and defend.** *Hist.* 1. Written authority given by a client to a lawyer to authorize commencement or defense of a lawsuit. 2. A special warrant from the Crown authorizing a party to appoint an attorney to sue or defend on the party's behalf.

**warrant upon indictment or information.** See WARRANT (1).

**warranty** (*wor-ən-tee or wahr-*), *n.* 1. *Property.* A covenant by which the grantor in a deed promises to secure to the grantee the estate conveyed in the deed, and pledges to compensate the grantee with other land if the grantee is evicted by someone having better title. • The covenant is binding on the grantor's heirs. See COVENANT (4). Cf. *quitclaim deed* under DEED.

**collateral warranty.** A warranty that is made by a stranger to the title, and that consequently runs only to the covenantee and not to the land.

**general warranty.** A warranty against the claims of all persons.

**lineal warranty.** *Hist.* A warranty existing when an heir derives title to land from the warrantor; a warranty from the same ancestor as the one from whom the land derived.

**special warranty.** A warranty against any person's claim made by, through, or under the grantor or the grantor's heirs.

2. *Contracts.* An express or implied promise that something in furtherance of the contract is guaranteed by one of the contracting parties; esp., a seller's promise that the thing being sold is as represented or promised. • A warranty differs from a representation in four principal ways: (1) a warranty is an essential part of a contract, while a representation is usu. only a collateral inducement, (2) a warranty is always written on the face of the contract, while a representation may be written or oral, (3) a warranty is conclusively presumed to be material, while the burden is on the party claiming breach to show that a representation is material, and (4) a warranty must be strictly complied with, while substantial truth is the only requirement for a representation. Cf. CONDITION (3).

"[T]wo points must be borne in mind. In the first place, the words 'condition' and 'warranty' are not invariably kept as distinct as accuracy of definition demands; and in insurance law especially 'warranty' is very commonly used in the sense ascribed to 'condition' . . . . In the second place, the injured party, if he chooses to waive his right to repudiate the contract on breach of a condition, may still bring an action for such damages as he has sustained." William R. Anson, *Principles of the Law of Contract* 223 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"The distinction between conditions and warranties is relatively modern so far as the terminology is concerned, and it will be found that in the older cases the word 'warranty' is frequently used to mean any term of the contract. There is some ground for regretting the modern usage. The difference between a condition and a warranty is that a breach of the former gives the innocent party the option of treating the whole contract as discharged, while a breach of the latter merely entitles the innocent party to claim damages, but does not discharge him from performing his own duties under the contract. In other words, the right to the other party's performance is conditional upon conditions (but not warranties) being performed." P.S. Atiyah, *An Introduction to the Law of Contract* 145-46 (3d ed. 1981).

**as-is warranty.** A warranty that goods are sold with all existing faults. See AS IS.

**construction warranty.** A warranty from the seller or building contractor of a new home that the home is free of structural, electrical, plumbing, and other defects and is fit for its intended purpose.

**deceptive warranty.** A warranty containing false or fraudulent representations or promises.

**express warranty.** A warranty created by the overt words or actions of the seller. • Under the UCC, an express warranty is created by any of the following: (1) an affirmation of fact or promise made by the seller to the buyer relating to the goods that becomes the basis of the bargain; (2) a description of the goods that becomes part of the basis of the bargain; or (3) a sample or model made part of the basis of the bargain. UCC § 2-313.

**extended warranty.** An additional warranty often sold with the purchase of consumer goods (such as appliances and motor vehicles) to cover repair costs not otherwise covered by a manufacturer's standard warranty, by extending either the standard-warranty coverage period or the range of defects covered. — Also termed *extended service warranty*; *extended service contract*.

**full warranty.** A warranty that fully covers labor and materials for repairs. • Under federal law, the warrantor must remedy the consumer product within a reasonable time and without charge after notice of a defect or malfunction. 15 USCA § 2304. Cf. *limited warranty*.

**implied warranty.** A warranty arising by operation of law because of the circumstances of a sale, rather than by the seller's express promise.

**implied warranty of fitness for a particular purpose.** A warranty — implied by law if the seller has reason to know of the buyer's special purposes for the property — that the property is suitable for those purposes. — Sometimes shortened to *warranty of fitness*.

"Those unfamiliar with the differences between the warranty of merchantability (fitness for the ordinary purposes for which such goods are used) and the warranty of fitness for a particular purpose often confuse the two; one can find many opinions in which the judges used the terms 'merchantability' and 'fitness for a particular purpose' interchangeably. Such confusion under the Code is inexcusable." 1 James J. White & Robert S. Summers, *Uniform Commercial Code* § 9-10, at 527 (4th ed. 1995).

**implied warranty of habitability.** In a residential lease, a warranty from the landlord to the tenant that the leased property is fit to live in and that it will remain so during the term of the lease. — Also termed *covenant of habitability*.

**implied warranty of merchantability.** A warranty that the property is fit for the ordinary purposes for which it is used. — Some-

times shortened to *warranty of merchantability*.

**limited warranty.** A warranty that does not fully cover labor and materials for repairs. • Under federal law, a limited warranty must be clearly labeled as such on the face of the warranty. Cf. *full warranty*.

**personal warranty.** A warranty arising from an obligation to pay all or part of the debt of another.

**presentment warranty.** An implied promise concerning the title and credibility of an instrument, made to a payor or acceptor upon presentment of the instrument for payment or acceptance. UCC §§ 3-417, 3-418, 4-207(1).

**transfer warranty.** 1. An implied promise concerning the title and credibility of an instrument, made by a transferor to a transferee and, if the transfer is by indorsement, to remote transferees. UCC §§ 3-417, 4-207. 2. A warranty made by a transferee of a document of title upon a transfer of the document for value to the immediate transferee. UCC § 7-507.

**warranty ab initio** (ab i-nish-ee-oh). An independent subsidiary promise whose breach does not discharge the contract, but gives to the injured party a right of action for the damage sustained as a result of the breach. Cf. *warranty ex post facto*.

**warranty against infringement.** A merchant seller's warranty that the goods being sold do not violate any patent, copyright, trademark, or similar claim. • The warranty does not arise if the buyer provides the seller with the specifications for the goods purchased.

**warranty ex post facto** (eks pohst fak-toh). A broken condition for which the injured party could void the contract, but decides instead to continue the contract, with a right of action for the broken condition (which amounts to a breached warranty). See CONDITION (2). Cf. *warranty ab initio*.

**warranty of actual title.** See *warranty of title*.

**warranty of assignment.** An assignor's implied warranty that he or she (1) has the rights assigned, (2) will do nothing to interfere with those rights, and (3) knows of nothing that impairs the value of the assignment.

**warranty of authorship.** *Copyright.* An author's contractual warranty that the work is an original work by that author.

**warranty of merchantability.** See *implied warranty of merchantability*.

**warranty of title.** A warranty that the seller or assignor of property has title to that property, that the transfer is rightful, and that there are no liens or other encumbrances beyond those that the buyer or assignee is aware of at the time of contracting. ● This warranty arises automatically whenever anyone sells goods. — Also termed *warranty of actual title*.

**written warranty.** A warranty made in writing; specif., any written affirmation or promise by a supplier of a consumer product to a buyer (for purposes other than resale), forming the basis of the bargain and providing that the material or workmanship is free of defects or will be repaired or replaced free of charge if the product fails to meet the required specifications. 15 USCA § 2301.

**Y2K warranty.** See Y2K WARRANTY.

**3. Insurance.** A pledge or stipulation by the insured that the facts relating to the person insured, the thing insured, or the risk insured are as stated.

**affirmative warranty.** A warranty — express or implied — that facts are as stated at the beginning of the policy period. ● An affirmative warranty is usu. a condition precedent to the policy taking effect.

**executory warranty.** A warranty that arises when an insured undertakes to perform some executory stipulation, such as a promise that certain acts will be done or that certain facts will continue to exist.

**promissory warranty.** A warranty that facts will continue to be as stated throughout the policy period, such that a failure of the warranty provides the insurer with a defense to a claim under the policy. — Also termed *continuing warranty*.

**warranty ab initio.** See WARRANTY (2).

**warranty against infringement.** See WARRANTY (2).

**warranty deed.** See DEED.

**warranty ex post facto.** See WARRANTY (2).

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

**warranty of assignment.** See WARRANTY (2).

**warranty of authorship.** See WARRANTY (2).

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

**warren (wor-ən or wahr-ən).** **1.** A place for the preservation of certain wildlife (such as pheasants, partridges, or rabbits). **2.** A privilege to keep wildlife or game in a warren. **3.** The area to which the privilege extends.

**free warren.** A warren privilege giving the grantee the sole right to kill the wildlife to the extent of the grantee's warren area. — Also termed *libera warrena*.

"Free warren is a . . . franchise, erected for preservation or custody . . . of beasts and fowls of warren; which being *ferae naturae*, every one had a right to kill as he could; but upon the introduction of the forest laws . . . these animals being looked upon as royal game and the sole property of our savage monarchs, this franchise of free warren was invented to protect them; by giving the grantee a sole and exclusive power of killing such game . . . on condition of his preventing other persons. A man therefore that has the franchise of warren is in reality no more than a royal gamekeeper; but no man, not even a lord of a manor, could by common law justify sporting on another's soil, or even on his own, unless he had the liberty of free warren." 2 William Blackstone, *Commentaries on the Laws of England* 38-39 (1766).

**war-risk insurance.** See INSURANCE.

**Warsaw Convention.** *Int'l law.* A treaty (to which the United States is a party) negotiated in Warsaw, Poland, in 1929, consisting of uniform rules governing claims made for personal injuries arising out of international air travel. Cf. MONTREAL AGREEMENT.

"Under the [Warsaw] Convention . . . air carriers are absolutely liable up to a preset monetary ceiling for any accident in which a passenger suffers bodily injury or death, as long as the accident took place on board the aircraft or in the process of any of the operations of embarking or disembarking. The Convention limits the liability of the carrier for each passenger to the sum of 125,000 francs, unless the carrier and passenger by special contract agree to a higher limit of liability, or unless it can be established that the carrier has been guilty of 'willful misconduct.' The Convention contains a two-year time limitation for bringing suit, and also absolves the carrier from liability upon a showing of due care on its part." 8A Am. Jur. 2d *Aviation* § 149, at 160-61 (1997).

**warth.** See WARDPENNY.

**warwit.** See WARDWIT.

**war zone.** *Int'l law.* A designated area, on land or at sea, within which the rights of neutral countries are not respected by belligerent countries.

**wash**, *n.* The shallow part of a river or the arm of a sea; the sand, rocks, and gravel washed down by a mountain stream and deposited on level land near the mouth of a canyon.

**wash sale.** See SALE.

**wash transaction.** See *wash sale* under SALE.

**waste**, *n.* 1. Permanent harm to real property committed by a tenant (for life or for years) to the prejudice of the heir, the reversioner, or the remainderman. • In the law of mortgages, any of the following acts by the mortgagor may constitute waste: (1) physical damage, whether intentional or negligent, (2) failure to maintain and repair, except for repair of casualty damage or damage caused by third-party acts, (3) failure to pay property taxes or governmental assessments secured by a lien having priority over the mortgage, so that the payments become delinquent, (4) the material failure to comply with mortgage covenants concerning physical care, maintenance, construction, demolition, or casualty insurance, or (5) keeping the rents to which the mortgagee has the right of possession. — Also termed *vastum*.

“The old action of waste was a mixed action, being founded in part on the statute of Gloucester (A.D. 1278), which provided that ‘he which shall be attainted of waste shall lose the thing wasted, and moreover shall recompense thrice as much as the waste shall be taxed at.’ The action was to recover the land in which waste had been done and the treble damages. The statute of Gloucester was imported into this country, but many variant statutes now regulate the subject.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 13 (2d ed. 1899).

**active waste.** See *commissive waste*.

**affirmative waste.** See *commissive waste*.

**ameliorating waste** (ə-meel-yə-ray-ting). A lessee’s unauthorized change to the physical character of a lessor’s property — technically constituting waste, but in fact resulting in improvement of the property. • Generally, equity will not enjoin such waste. — Also termed *ameliorative waste*.

**commissive waste** (kə-mis-iv). Waste caused by the affirmative acts of the tenant. — Also termed *active waste*; *affirmative waste*; *voluntary waste*.

**double waste.** *Hist.* The destruction occurring when a tenant having a duty to repair allows a house to deteriorate, and then unlawfully cuts down timber to repair it.

**equitable waste.** An abuse of the privilege of nonimpeachability for waste at common law, for which equity will restrain the commission

of willful, destructive, malicious, or extravagant waste; esp., waste caused by a life tenant who, although ordinarily not responsible for permissive waste, flagrantly damages or destroys the property.

“A life tenant with the benefit of an express exemption from liability for voluntary waste will nevertheless be restrained in equity from committing acts of flagrant destruction to the premises; hence the (seemingly paradoxical) term, ‘equitable waste’. A life tenant who has engaged in, or who threatens to engage in, reprehensible acts of voluntary waste will not be permitted unconscientiously to shield behind his legal right to commit waste to the detriment of those next entitled to enjoyment of the property, for this would be to abuse the legal right.” Peter Butt, *Land Law* 114–15 (2d ed. 1988).

**permissive waste.** A tenant’s failure to make normal repairs to property so as to protect it from substantial deterioration.

**voluntary waste.** Waste resulting from some positive act of destruction. See *commissive waste*.

“*Voluntary waste.* This involves some positive act of injury to the property, diminishing its value for the person next in succession; it is a deliberate and active change to the property. Examples are altering the character of premises by demolishing internal walls and fittings or opening and working a mine on the land (but not working a mine already opened, for the pre-existence of the mine shows an intention on the part of the grantor that the profits from the mine are to be enjoyed by the life tenant). A life tenant is liable for voluntary waste, unless the instrument conferring the interest expressly exempts liability for voluntary waste.” Peter Butt, *Land Law* 114 (2d ed. 1988).

2. Refuse or superfluous material, esp. that remaining after a manufacturing or chemical process <toxic waste>.

**hazardous waste.** Waste that — because of its quantity, concentration, or physical, chemical, or infectious characteristics — may cause or significantly contribute to an increase in mortality or otherwise harm human health or the environment. 42 USCA § 6903(5). — Also termed *hazardous substance*.

**toxic waste.** Hazardous, poisonous substances, such as dichlorodiphenyltrichloroethane (DDT). • Most states regulate the handling and disposing of toxic waste, and several federal statutes (such as the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), 42 USCA §§ 9601–9657) regulate the use, transportation, and disposal of toxic waste.

**waste book.** A merchant’s book for making rough entries of transactions before posting them into a journal. — Also termed *blotter*.

**wastewater.** See WATER.

**wasting asset.** See ASSET.

**wasting property.** A right to or an interest in something that is consumed in its normal use, such as a wasting asset, a leasehold interest, or a patent right.

**wasting trust.** See TRUST.

**wastor, n. Hist.** A type of thief, mentioned in Stat. 4 Hen. 4, ch. 27.

**watch, n. Maritime law.** **1.** A division of a ship's crew <port or starboard watch>. **2.** The division of the day into time periods of service by officers and the crew <four-hour watch>.

**watch, vb. Hist.** To stand guard during the night.

**watch and ward, n. Hist.** A feudal duty that some tenants had to keep guard through continuous vigilance. ● The phrase denotes keeping guard by night (*watch*) and by day (*ward*). — Also termed *watching and warding*.

**water. 1.** The transparent liquid that is a chemical compound of hydrogen and oxygen (H<sub>2</sub>O). **2.** A body of this liquid, as in a stream, river, lake, or ocean.

**backwater.** Water in a stream that, because of a dam or obstruction, cannot flow forward and sometimes flows back.

**coast water.** Tidewater navigable by an ocean vessel; all water opening directly or indirectly into the ocean and navigable by a vessel coming in from the ocean. — Also termed *coastal water*.

**developed water.** Water brought to the surface and made available for use by the party claiming the water rights.

**diffused surface water.** Water, such as rainfall runoff, that collects and flows on the ground but does not form a watercourse. ● Surface water is usu. subject to different regulations from water flowing in a watercourse. — Often shortened to *surface water*. See COMMON-ENEMY DOCTRINE; WATERCOURSE.

**excess water.** Water that is flowing in a stream in addition to what may be termed adjudicated waters; any water not needed for the reasonable beneficial uses of those having priority rights. — Also termed *surplus water*.

**floodwater.** Water that escapes from a watercourse in large volumes and flows over adjoining property in no regular channel.

**foreign water.** Water belonging to another nation or subject to another jurisdiction.

**inland waters.** See INTERNAL WATERS.

**internal waters.** See INTERNAL WATERS.

**navigable water.** See NAVIGABLE WATER.

**navigable water of the United States.** See NAVIGABLE WATER.

**percolating water.** Water that oozes or seeps through the soil without a defined channel (such as rainwater or other water that has lost its status as part of a stream). ● Percolating water usu. constitutes part of the land on which it is found.

**posted water. (usu. pl.)** A body of water that is reserved for the exclusive use of the person who owns the land surrounding it. ● The owner secures the exclusive use by posting a notice prohibiting others from using the water.

**private water.** Nonnavigable water owned and controlled by one or more individuals and not subject to public use.

**public water.** Water adapted for purposes of navigation or public access.

**subterranean water.** Water naturally flowing, lying in an immovable body, or percolating beneath the earth's surface.

**surplus water. 1.** Water running off irrigated ground; water not consumed by the irrigation process. **2.** See *excess water*.

**territorial waters.** The waters under a state's or nation's jurisdiction, including both inland waters and surrounding sea (traditionally within three miles of the coastline). — Also termed *marine belt*; *maritime belt*.

**tidewater.** See TIDEWATER.

**wastewater. 1.** Water that escapes from the canals, ditches, or other receptacles of the lawful claimant; water that is not used by the appropriator and is permitted to run off the appropriator's property. **2.** Water that is left over, esp. after a chemical or manufacturing process.

**water bayley (bay-lee). Hist.** An officer (mentioned in the colony laws of New Plymouth in A.D. 1671) who primarily collects dues for fish taken out of the colony's waters.

**watercourse.** A body of water flowing in a reasonably definite channel with bed and banks. — Also termed *waterway*.

"Once water joins a watercourse it becomes subject to state control; in appropriation states it becomes available for appropriation to private uses according to state law . . . . [A] watercourse could be defined to include not only rivers and lakes, but every tiny brook flowing into them, all the gullies through which water flows to the brooks, the snowpack and rainfall that feed them, and the evaporating or transpiring water in the process of forming clouds. But we need not require scientists to trace water to such remote sources because it would be beyond the ability of governments to regulate these sources. Legal definitions are intended to define a point beyond which a state does not regulate water use. Usually that point is when water is not in a 'natural stream'." David H. Getches, *Water Law in a Nutshell* 106-107 (3d ed. 1997).

**ancient watercourse.** A watercourse in a channel that has existed from time immemorial.

**artificial watercourse.** A man-made watercourse, usu. to be used only temporarily. ● If the watercourse is of a permanent character and has been maintained for a sufficient length of time, it may be considered a natural watercourse to which riparian rights can attach.

"An artificial waterway or stream may, under some circumstances, have the characteristics and incidents of a natural watercourse. In determining the question, three things seem generally to be taken into consideration by the courts: (1) whether the way or stream is temporary or permanent; (2) the circumstances under which it was created; and (3) the mode in which it has been used and enjoyed." 78 Am. Jur. 2d *Waters* § 196, at 644 (1975).

**natural watercourse.** A natural stream of water flowing in a specific direction within a reasonably definite natural channel with banks. ● A *natural watercourse* does not include surface water, which often flows intermittently and in an indefinite channel. In addition, a natural stream is distinguished from an artificial ditch or canal, which is typically not the subject of riparian rights. See RIPARIAN RIGHTS; WATER.

**water district.** A geographical subdivision created by a state or local government entity to provide the public with a water supply.

**watered stock.** See STOCK.

**waterfront, n.** Land or land with buildings fronting a body of water.

**watergage, n.** 1. A seawall. 2. An instrument used to measure water.

**watergavel, n.** *Hist.* A fee paid for a benefit (such as fishing) obtained from a body of water.

**watermark. 1.** A mark indicating the highest or lowest point to which water rises or falls.

**high-water mark. 1.** The shoreline of a sea reached by the water at high tide. ● The high-water mark is usu. computed as a mean or average high tide and not as the extreme height of the water. 2. In a freshwater lake created by a dam in an unnavigable stream, the highest point on the shore to which the dam can raise the water in ordinary circumstances. 3. In a river not subject to tides, the line that the river impresses on the soil by covering it long enough to deprive it of agricultural value. — Also termed *high-water line*.

**low-water mark. 1.** The shoreline of a sea marking the edge of the water at the lowest point of the ordinary ebb tide. 2. In a river, the point to which the water recedes at its lowest stage.

2. The transparent design or symbol seen when paper is held up to the light, usu. to indicate the genuineness of the document or the document's manufacturer.

**water ordeal.** See ORDEAL.

**waterpower. 1.** The force obtained by converting water into energy. 2. The riparian owner's right consisting of the fall in the stream as it passes over or through the riparian owner's land; the difference of the level between the surface where the stream first touches one's land and the surface where the water leaves the land.

**water right.** (*often pl.*) The right to use water from a natural stream or from an artificial canal for irrigation, power, domestic use, and the like; RIPARIAN RIGHT. — Also termed *aquatic right*.

**waterscape, n.** An aqueduct or passage for water.

**waterway.** See WATERCOURSE.

**waveson (wayv-sən), n.** *Hist.* Goods that float on the sea after a shipwreck. Cf. FLOTSAM; JETSAM; LAGAN.

**wax scot (wak skot), n.** *Hist.* A duty on wax candles used in churches, usu. paid twice a year. — Also termed *cerage (seer-ij)*; *ceratium (si-ray-shee-əm)*.

**way.** 1. A passage or path. 2. A right to travel over another's property. See RIGHT-OF-WAY.

**private way.** 1. The right to pass over another's land. 2. A way provided by local authorities primarily to accommodate particular individuals (usu. at the individual's expense) but also for the public's passage.

**way of necessity.** See *implied easement* under EASEMENT.

**waybill.** See BILL OF LADING.

**way-going crop.** A grain crop, formerly sown by a tenant during a tenancy (esp. in Pennsylvania), that did not ripen until after expiration of the lease. • In the absence of an express agreement to the contrary, the tenant was entitled to the crop.

**way-leave, n.** 1. A right-of-way (usu. created by an express grant) over or through land for the transportation of minerals from a mine or quarry. 2. The royalty paid for such a right.

**waynagium** (way-nay-jee-əm). See WAINAGE.

**way of necessity.** See *implied easement* under EASEMENT.

**ways-and-means committee.** A legislative committee that determines how money will be raised for various governmental purposes.

**WC, abbr.** WORKERS' COMPENSATION.

**W.D, abbr.** Western District, in reference to U.S. judicial districts.

**weak mark.** See TRADEMARK (1).

**weak trademark.** See TRADEMARK.

**wealreaf** (weel-reef), *n.* *Archaic.* The robbery of a dead person in a grave.

**wealth.** 1. A large quantity of something. 2. The state of having abundant financial resources; affluence.

**wealth maximization.** An economic situation in which a change in the allocation of resources benefits the winner — i.e., the one who gains from the allocation — more than it harms the loser. — Also termed *Kaldor-Hicks efficiency*; *potential Pareto superiority*.

**weapon.** An instrument used or designed to be used to injure or kill someone.

**concealed weapon.** A weapon that is carried by a person but that is not visible by ordinary observation.

**dangerous weapon.** An object or device that, because of the way it is used, is capable of causing serious bodily injury.

**deadly weapon.** Any firearm or other device, instrument, material, or substance that, from the manner it is used or is intended to be used, is calculated or likely to produce death. — Also termed *lethal weapon*. Cf. DANGEROUS INSTRUMENTALITY.

**deadly weapon per se.** A weapon that is deadly in and of itself or would ordinarily result in death by its use <a gun is a deadly weapon>. — Also termed *per se deadly weapon*.

**lethal weapon.** See *deadly weapon*.

**weir, n.** [fr. Saxon *were* "a taking"] *Hist.* A dam made of stakes interlaced by twigs of willows that are placed across a river to more easily accommodate the netting of fish. — Also termed *weir*.

**wear and tear.** Deterioration caused by ordinary use <the tenant is not liable for normal wear and tear to the leased premises>. — Also termed *fair wear and tear*.

"'Fair wear' is the deterioration caused by the reasonable use of the premises; 'fair tear' is the deterioration caused by the ordinary operation of natural forces. A tenant's repairing covenant commonly exempts the tenant from the obligation to repair damage characterisable as 'fair wear and tear' (sometimes called 'reasonable wear and tear'). In the absence of such an exempting provision, a covenant to repair requires the repairing of damage characterisable as fair wear and tear. Where a covenant to repair exempts the tenant from liability for 'fair wear and tear', he is not responsible for deterioration or dilapidation caused by 'the reasonable use of the house by the tenant and the ordinary operation of natural forces.'" Peter Butt, *Land Law* 256 (2d ed. 1988).

**natural wear and tear.** The depreciation of property resulting from its ordinary and reasonable use.

**Webb-Pomerene Act.** A federal law, originally enacted in 1918, that provides a qualified exemption for an export business against the prohibitions of the antitrust laws. 15 USCA §§ 61 et seq.

"The Webb-Pomerene Act was passed to aid and encourage our manufacturers and producers to extend our foreign trade. Congress believed that American firms needed the power to form joint export associations in

order to compete with foreign cartels, but while Congress was willing to create an exemption from the antitrust laws to serve this narrow purpose, the exemption created by the Webb-Pomerene Act was carefully hedged in to avoid substantial injury to domestic interests. Organization under the Webb-Pomerene Act does not give an export association the right to agree with foreign competitors to fix prices . . . or establish exclusive markets . . ." 54 Am. Jur. 2d *Monopolies and Restraints of Trade* § 262, at 298 (1996).

**wedding.** See MARRIAGE CEREMONY.

**wedge principle.** The principle that an act is wrong in a specific instance if, when raised to a general level of conduct, it would injure humanity.

"[T]here is the familiar argument from the 'wedge principle,' which is used to deny the possibility of looking at particular circumstances in applying moral rules." Glanville Williams, *The Sanctity of Life and the Criminal Law* 315 (1957).

**wedlock.** The state of being married; matrimony.

**week.** 1. A period of seven consecutive days beginning on either Sunday or Monday. 2. Any consecutive seven-day period.

**weekend sentence.** See *intermittent sentence* under SENTENCE.

**week-work.** *Hist.* In feudal times, the obligation of a tenant to work two to four days in every week for his lord during the greater part of the year, and four or five during the summer months. See VILLEIN SERVICE.

**wehading.** See TRIAL BY COMBAT.

**weighage (way-ij).** A duty or other payment required in return for weighing merchandise.

**weight.** A measure of heaviness; a measure of the quantity of matter.

**gross weight.** The total weight of a thing, including its contents and any packaging.

**net weight.** The total weight of a thing, after deducting its container, its wrapping, and any other extraneous matter.

**weight of the evidence.** The persuasiveness of some evidence in comparison with other evidence <because the verdict is against the great weight of the evidence, a new trial should be granted>. See BURDEN OF PERSUASION. Cf. MANIFEST WEIGHT OF THE EVIDENCE; PREPONDERANCE OF THE EVIDENCE.

**weir.** See WEAR.

**welching.** See WELSHING.

**welfare.** 1. Well-being in any respect; prosperity.

**corporate welfare.** Governmental financial assistance given to a large company, usu. in the form of a subsidy.

**general welfare.** The public's health, peace, morals, and safety.

**public welfare.** A society's well-being in matters of health, safety, order, morality, economics, and politics.

2. A system of social insurance providing assistance to those who are financially in need, as by providing food stamps and family allowances.

**Welfare Clause.** See GENERAL WELFARE CLAUSE.

**welfare state.** A nation in which the government undertakes various social insurance programs, such as unemployment compensation, old-age pensions, family allowances, food stamps, and aid to the blind or deaf. — Also termed *welfare-regulatory state*.

**well, adv.** In a legally sufficient manner; unobjectionable <well-pleaded complaint>.

**well, adj. Marine insurance.** (Of a vessel) in good condition; safe and sound <the vessel was warranted well on January 1>.

**well, n.** A hole or shaft sunk into the earth to obtain a fluid, such as water, oil, or natural gas.

**limited-capacity well.** An oil or gas well that is limited to producing only a portion of its monthly allowable because of market demand.

**well-knowing, adj.** Intentional <a well-knowing act or omission>. ● This term was formerly used in a pleading to allege scienter. See SCIENTER.

**well-pleaded complaint.** See COMPLAINT.

**welshing.** 1. The act or an instance of evading an obligation, esp. a gambling debt. 2. The common-law act of larceny in which one receives a deposit to be paid back with additional money depending on the outcome of an event (such as a horse race) but at the time of the deposit the depositee intends to cheat and de-



fraud the depositor by absconding with the money. • Although this term is sometimes thought to be a slur against those hailing from Wales, etymologists have not been able to establish this connection. Authoritative dictionaries record the origin of the term as being unknown. — Also termed *welching*. — **welsh**, *vb.* — **welsher**, *n.*

**Welsh mortgage.** See MORTGAGE.

**wend**, *n. Hist.* A large section of land; a perambulation; a circuit.

**wergild** (**wər-gild**). *Hist.* The fixed value of a person's life, being the amount that a homicide's kindred must pay to the kindred of the slain person so as to avoid a blood feud. — Also spelled *wergeld*; *weregild*; *wehrgeld*. See EFFUSIO SANGUINIS; LEODES.

**Westlaw.** A West Group database for computer-assisted legal research, providing online access to legal resources, including federal and state caselaw, statutes, regulations, and legal periodicals. — Abbr. WL.

**Westminster Confession** (**west-min-stər**). A document containing a statement of religious doctrine, originating at a conference of British and continental Protestant divines at Westminster in 1643, and becoming the basis of the Scottish Presbyterian Church.

**Westminster the First, Statute of.** *Hist.* An English statute divided into 51 chapters (later correlating to separate acts of Parliament), including provisions (1) protecting the property of the church from the violence and spoliation of the Crown and nobles; (2) providing for the freedom of popular elections; (3) enforcing the rules contained in Magna Carta against excessive fines; (4) enumerating and correcting the abuses of tenures (esp. concerning marriages of wards); (5) regulating the levying of tolls; (6) correcting and restraining the powers of the royal escheator and other officers; (7) amending the criminal law (esp. by classifying rape as a most grievous, though not capital, offense); and (8) making criminal and civil procedures more expeditious and less costly. 3 Edw. (1275).

**West-Saxon law.** A system of rules introduced by the West Saxons and one of the three principal legal systems prevailing in England in the beginning of the 11th century. • It was observed primarily in southern English counties from Kent to Devonshire. — Also termed *West-Saxon lage*. See MERCENLAGE; DANELAW.

**wharf.** A structure on the shores of navigable waters, to which a vessel can be brought for loading or unloading.

**private wharf.** One that can be used only by its owner or lessee.

**public wharf.** One that can be used by the public.

**wharfage** (**worf-ij**), *n. Hist.* **1.** The fee paid for landing, loading, or unloading goods on a wharf. **2.** The accommodation for loading or unloading goods on a wharf.

**wharfinger** (**wor-fin-jər**), *n. Hist.* The owner or occupier of a wharf; one who keeps a wharf to receive merchandise for forwarding or delivery to a consignee.

**wharfing out, right of.** See RIGHT OF WHARFING OUT.

**Wharton rule** ([h]wɔr-tən). *Criminal law.* The doctrine preventing conspiracy prosecution for a crime that necessarily involves the participation of two or more persons, such as illegal gambling. • But if an additional person participates so as to enlarge the scope of the agreement, all the actors may be charged with conspiracy. The doctrine takes its name from the influential criminal-law author Francis Wharton (1820–1889). — Also termed *Wharton's rule*; *concert-of-action rule*.

**wheel.** *Hist.* **1.** An instrument of torture used in medieval Europe, consisting of a wheel or cross on which a criminal was bound with arms and legs extended, while the criminal's bones were broken one by one with an iron bar, usu. until death. **2.** The torture itself.

**wheelage** ([h]weel-ij), *n. Hist.* A duty or toll for a vehicle to pass over certain property.

**wheel conspiracy.** See CONSPIRACY.

**when-issued security.** See SECURITY.

**whereabouts**, *n.* The general locale where a person or thing is <her whereabouts are unknown> <the Joneses' present whereabouts is a closely guarded secret>. • As the examples illustrate, this noun, though plural in form, may be construed with either a plural or a singular verb. — **whereabouts**, *adv. & conj.*

**whereas**, *conj.* **1.** While by contrast; although <McWilliams was stopped at 10:08 p.m. wearing a green hat, whereas the assailant had been

identified at 10:04 p.m. wearing a black hat>. **2.** Given the fact that; since <Whereas, the parties have found that their 1994 agreement did not adequately address incidental expenses . . . ; and Whereas, the parties have now decided in an equitable sharing of those expenses . . . ; Now, Therefore, the parties agree to amend the 1994 agreement as follows. . . >. • In sense 2, *whereas* is used to introduce contractual recitals and the like, but modern drafters increasingly prefer a simple heading, such as "Recitals" or "Preamble," and in that way avoid the legalistic *whereases*. — **whereas** (recital or preamble), *n.*

**whereat**, *conj.* **1.** At or toward which <the point whereat he was aiming>. **2.** As a result of which; whereupon <Pettrucione called Bickley a scurrilous name, whereat a fistfight broke out>.

**whereby**, *conj.* By which; through which; in accordance with which <the treaty whereby the warring nations finally achieved peace>.

**wherefore**, **premises considered.** For all these reasons; for the reason or reasons mentioned above.

**wherefrom**, *conj.* From which <the students sent two faxes to the president's office, wherefrom no reply ever came>.

**wherein**, *conj.* **1.** In which; where <the jurisdiction wherein Lynn practices>. **2.** During which <they listened intently at the concert, wherein both of them became convinced that the composer's "new" work was a fraud>. **3.** How; in what respect <Fallon demanded to know wherein she had breached any duty>. — **wherein**, *adv.*

**whereof**, *conj.* **1.** Of what <Judge Wald knows whereof she speaks>. **2.** Of which <citations whereof even the most responsible are far afield from the true issue>. **3.** Of whom <judges whereof only the most glowing words might be said>.

**whereon**, *conj.* On which <the foundation whereon counsel bases this argument>. — Also termed *whereupon*.

**whereto**, *conj.* To what place or time <at first, Campbell did not know whereto he was being taken>. — Also termed *whereunto*. — **whereto**, *adv.*

**whereupon**, *conj.* **1.** WHEREON <the precedent whereupon the defense bases its argument>. **2.** Soon after and as a result of which; and then <a not-guilty verdict was announced, whereupon a riot erupted>.

**wherewith**, *conj.* By means of which <the plaintiff lacked a form of action wherewith to state a compensable claim>.

**whim.** A passing fancy; an impulse <the jury was instructed to render a verdict based solely on the evidence, not on a whim>.

**whipping**, *n.* A method of corporal punishment formerly used in England and a few American states, consisting of inflicting long welts on the skin, esp. with a whip.

**whisper stock.** See STOCK.

**whistleblower**, *n.* An employee who reports employer illegality to a governmental or law-enforcement agency. • Federal and state laws protect whistleblowers from employer retaliation. — **whistleblowing**, *n.*

**whistleblower act.** A federal or state law protecting employees from retaliation for disclosing employer illegality, such as during an investigation by a regulatory agency. • Federal laws containing whistleblower provisions include the Occupational Safety and Health Act (29 USCA § 660), CERCLA (42 USCA § 9610), and the Air Pollution and Control Act (42 USCA § 7622).

**whiteacre.** A fictitious tract of land used in legal discourse (esp. law-school hypotheticals) to discuss real-property issues. See BLACKACRE.

**white book.** **1.** *Hist. (cap.)* ALBUS LIBER. **2.** A government report bound in white, common esp. in European and papal affairs.

**whitecapping.** The criminal act of threatening a person — usu. a member of a minority group — with violence in an effort to compel the person either to move away or to stop engaging in a certain business or occupation. • *Whitecapping* statutes were originally enacted to curtail the activities of the Ku Klux Klan.

**white-collar crime.** A nonviolent crime usu. involving cheating or dishonesty in commercial matters. • Examples include fraud, embezzlement, bribery, and insider trading.

**whitehorse case.** *Slang.* A reported case with facts virtually identical to those of the instant case, so that the disposition of the reported case should determine the outcome of the instant case. — Also termed *horse case*; *goose case*; *gray mule case*. Cf. ON ALL FOURS.

**white knight.** A person or corporation that rescues the target of an unfriendly corporate takeover, esp. by acquiring a controlling interest in the target corporation or by making a competing tender offer. — Also termed *friendly suitor*. See TAKEOVER. Cf. CORPORATE RAIDER.

**Whiteley rule.** See FELLOW-OFFICER RULE.

**White model.** *Labor law.* A method for determining whether a union member's state-law claim against the employer is preempted by federal law, by focusing on whether state law permits the claim to be waived by a private contract. • In *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 108 S.Ct. 1877 (1988), the Supreme Court held that a union member's state-law retaliatory-discharge claim was not preempted by the Labor-Management Relations Act because the claim could be resolved without interpreting the collective-bargaining agreement. There are at least two models for applying the *Lingle* test: the White model, which focuses on whether the claim is negotiable or nonnegotiable (that is, whether state law allows the claim to be waived by a private contract) and the Marcus model, which focuses on the independence of the claim in relation to the collective-bargaining agreement. Under the White model, all negotiable claims (those waivable by private contract) are necessarily preempted because their resolution will require an interpretation of the collective-bargaining agreement. A nonnegotiable claims (one that state law does not permit to be waived by private contract) will be preempted only if its resolution requires an interpretation of the collective-bargaining agreement. The White model is named for the author of the law-review article in which it was proposed. Rebecca Homer White, *Section 301's Preemption of State Law Claims: A Model for Analysis*, 41 Ala. L. Rev. 377 (1990). Cf. MARCUS MODEL. See LINGLE TEST.

**white rent.** *Hist.* A feudal rent paid in silver, rather than in work, grain, or money baser than silver. Cf. BLACK RENT.

**white slavery.** The practice of forcing a female (or, rarely, a male) to engage in commercial prostitution. • Trafficking in white slavery is

prohibited by the Mann Act (18 USCA §§ 2421-2424).

**White Slave Traffic Act.** See MANN ACT.

**whole blood.** See *full blood* under BLOOD.

**whole law.** The law applied by a forum court in a multistate or multinational case after referring to its own choice-of-law rules.

**whole life insurance.** See INSURANCE.

**wholesale, n.** The sale of goods or commodities usu. for resale by a retailer, as opposed to a sale to the ultimate consumer. — **wholesale, vb.** — **wholesale, adj.** Cf. RETAIL.

**wholesale dealer.** One who sells goods in gross to retail dealers rather than selling in smaller quantities directly to consumers.

**wholesale price.** See PRICE.

**wholesale price index.** See PRODUCER PRICE INDEX.

**wholesaler.** One who buys large quantities of goods and resells them in smaller quantities to retailers or other merchants, who in turn sell to the ultimate consumer.

**whole-statute rule.** The principle of statutory construction that a statute should be considered in its entirety, and that the words used within it should be given their ordinary meanings unless there is a clear indication to the contrary.

**wholly, adv.** Not partially; fully; completely.

**wholly and permanently disabled, adj.** *Insurance.* (Of an insured) completely and continuously unable to perform work for compensation or profit.

**wholly dependent, adj.** *Workers' compensation.* (Of a person) deriving full support from a worker's wages.

**wholly destroyed, adj.** *Insurance.* (Of a building) so damaged that it is no longer capable of being classified as a building, although some parts may remain intact.

**wholly disabled, adj.** *Insurance.* (Of a person) unable to perform the substantial and material

acts necessary to carry on a business or occupation in the customary and usual manner.

**widow, n.** A woman whose husband has died and who has not remarried.

**widower.** A man whose wife has died and who has not remarried.

**widower's allowance.** See *spousal allowance* under ALLOWANCE.

**widow's allowance.** See *spousal allowance* under ALLOWANCE.

**widow's election.** See RIGHT OF ELECTION.

**wifa** (wi-fə), *n.* [Law Latin] *Hist.* A mark or sign; esp., a landmark showing exclusive occupation or to prohibit an entry.

**wife's equity.** See EQUITY TO A SETTLEMENT.

**wife's settlement.** See EQUITY TO A SETTLEMENT.

**wildcat strike.** See STRIKE.

**wild deed.** See DEED.

**Wild's Case, Rule in.** See RULE IN WILD'S CASE.

**will, n.** 1. Wish; desire; choice <employment at will>. 2. A document by which a person directs his or her estate to be distributed upon death <there was no mention of his estranged brother in the will>. — Also termed *testament*; *will and testament*. — **will, vb.**

"The word 'will' has two distinct meanings. The first, and strict, meaning is metaphysical, and denotes the sum of what the testator wishes, or 'wills,' to happen on his death. The second, and more common, meaning is physical, and denotes the document or documents in which that intention is expressed." Anthony R. Mellows, *The Law of Succession* 6 (3d ed. 1977).

**ambulatory will.** A will that can be altered during the testator's lifetime.

**antenuptial will.** See *prenuptial will*.

**closed will.** See *mystic will*.

**conditional will.** A will that depends on the occurrence of an uncertain event for the will to take effect.

**conjoint will.** See *joint will*.

**contingent will.** A will that takes effect only if a specified event occurs.

**counter will.** See *mutual will*.

**double will.** See *mutual will*.

**duplicate will.** A will executed in duplicate by a testator who retains one copy and gives the second copy to another person. • The rules applicable to wills apply to both wills, and upon application for probate, both copies must be tendered into the registry of the probate court.

**holographic will** (hol-ə-graf-ik). A will that is entirely handwritten by the testator. • In many states, a holographic will is valid even if not witnessed. — Also termed *olographic will*.

**inofficious will.** See *inofficious testament* under TESTAMENT.

**international will.** A will that is executed according to formalities provided in an international treaty or convention, and that will be valid although it may be written in a foreign language by a testator domiciled in another country.

**invalid will.** A will that fails to make an effective disposition of property.

**joint and mutual will.** A will executed by two or more people — to dispose of property they own separately, in common, or jointly — requiring the surviving testator to dispose of the property in accordance with the terms of the will, and showing that the devisees are made in consideration of one another. • The word "joint" indicates the form of the will. The word "mutual" describes the substantive provisions. — Also termed *joint and reciprocal will*.

**joint will.** A single will executed by two or more testators, usu. disposing of their common property by transferring their separate titles to one devisee. — Also termed *conjoint will*.

**last will.** The most recent will of a deceased; the instrument ultimately fixing the disposition of real and personal property at the testator's death.

**living will.** See LIVING WILL.

**lost will.** An executed will that cannot be found at the testator's death. • Its contents can be proved by parol evidence in many jurisdictions, but in some states a lost will creates a rebuttable presumption that it has been revoked.

**mariner's will.** See *soldier's will*.

**mutual will.** (*usu. pl.*) One of two separate wills in which two persons, usu. a husband and wife, establish identical or similar testamentary provisions disposing of their estates in favor of each other. • It is also possible (though rare) for the testators to execute a

single mutual will, as opposed to separate ones. And it is possible (though, again, rare) for more than two parties to execute mutual wills. — Also termed *reciprocal will*; *counter will*; *double will*; *mutual testament*.

**mystic will.** *Civil law.* A secret will signed by the testator, sealed and delivered to a notary in the presence of three to seven witnesses, accompanied by the testator's declaration that it is a valid will. • The notary is then required to indorse on the envelope containing the will a statement of all the facts surrounding the transaction, and this is signed by the notary and all the witnesses. — Also termed *mystic testament*; *secret will*; *secret testament*; *closed will*; *closed testament*; *sealed will*; *sealed testament*.

**nonintervention will.** A will that authorizes the executor to settle and distribute the estate without court supervision.

**notarial will.** A will executed by a testator in the presence of two witnesses and a notary public.

**nuncupative will** (nəŋ-kyə-pay-tiv or nəŋ-kyoo-pə-tiv). An oral will made in contemplation of imminent death from an injury recently incurred. • Nuncupative wills are invalid in most states, but in those states allowing them, the amount that may be conveyed is usu. limited by statute, and they traditionally apply only to personal property. — Also termed *oral will*; *unwritten will*; *verbal will*.

"Nuncupative (i.e., oral) wills are by statute in almost all States required to be proved by two (sometimes three) witnesses, who were present and heard the testamentary words." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 299 (1935).

**olographic will.** See *holographic will*.

**oral will.** A will made by the spoken declaration of the testator and usu. dependent on oral testimony for proof.

**pourover will** (por-oh-vər). A will giving money or property to an existing trust. Cf. *pourover trust* under TRUST.

**prenuptial will** (pre-nəp-shəl). A will executed before marriage. • At common law, marriage automatically revoked a spouse's will, but modern statutes usu. provide that marriage does not revoke a will (although divorce does). Unif. Probate Code § 2-508. — Also termed *antenuptial will*.

**reciprocal will.** See *mutual will*.

**sealed will.** See *mystic will*.

**seaman's will.** See *soldier's will*.

**secret will.** See *mystic will*.

## willful and wanton misconduct

**self-proved will.** A will proved by the testator's affidavit instead of by the live testimony of attesting witnesses.

**soldier's will.** A soldier's informal oral or written will that is usu. valid despite its non-compliance with normal statutory formalities, as long as the soldier was in actual service at the time the will was made. — Also termed *seaman's will*; *mariner's will*; *military testament*.

**unnatural will.** A will that distributes the testator's estate to strangers rather than to the testator's relatives, without apparent reason.

**unofficial will.** See *inofficial testament* under TESTAMENT.

**unsolemn will.** *Civil law.* A will in which an executor is not named.

**unwritten will.** See *nuncupative will*.

**verbal will.** See *nuncupative will*.

**will contest.** *Wills & estates.* The litigation of a will's validity, usu. based on allegations that the testator lacked capacity or was under undue influence.

**willful, adj.** Voluntary and intentional, but not necessarily malicious. — Sometimes spelled *wilful*. — **willfulness, n.** Cf. WANTON.

"The word 'wilful' or 'wilfully' when used in the definition of a crime, it has been said time and again, means only intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety; while on the other hand it has been stated with equal repetition and insistence that the requirement added by such a word is not satisfied unless there is a bad purpose or evil intent." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 875-76 (3d ed. 1982).

"Almost all of the cases under [Bankruptcy Code § 523(a)(6)] deal with the definition of the two words 'willful' and 'malicious.' Initially one might think that willful and malicious mean the same thing. If they did, Congress should have used one word and not both. Most courts feel compelled to find some different meaning for each of them." David G. Epstein et al., *Bankruptcy* § 7-30, at 531 (1993).

**willful and malicious injury.** *Bankruptcy.* Under the statutory exception to discharge, damage to another entity (such as a creditor) caused by a debtor intentionally performing a wrongful act — without just cause or excuse — that the debtor knew was certain or substantially certain to cause injury. 11 USCA § 523(a)(6).

**willful and wanton misconduct.** Conduct committed with an intentional or reckless dis-

regard for the safety of others, as by failing to exercise ordinary care to prevent a known danger or to discover a danger. — Also termed *willful indifference to the safety of others*.

**willful and wanton negligence.** See *gross negligence* (2) under NEGLIGENCE.

**willful blindness.** Deliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable. ● A person acts with willful blindness, for example, by deliberately refusing to look inside an unmarked package after being paid by a known drug dealer to deliver it. Willful blindness creates an inference of knowledge of the crime in question.

**willful, continued, and obstinate desertion.** See *obstinate desertion* under DESERTION.

**willful indifference to the safety of others.** See WILLFUL AND WANTON MISCONDUCT.

**willful infringement.** See INFRINGEMENT.

**willful misconduct.** See MISCONDUCT.

**willful misconduct of employee.** The deliberate disregard by an employee of the employer's interests, including its work rules and standards of conduct, justifying a denial of unemployment compensation if the employee is terminated for the misconduct.

**willful murder.** See MURDER.

**willful neglect.** See NEGLIGENCE.

**willful negligence.** See *gross negligence* under NEGLIGENCE.

**willfulness.** A condition shown by the intentional disregard of a known duty necessary to another's safety of person or property, and the complete lack of care for another's life, person, or property. — Also termed *legal willfulness*.

**willful tort.** See *intentional tort* under TORT.

**willful wrong.** See *intentional wrong* under WRONG.

**Williams Act.** A federal statute, enacted in 1968, that amended the Securities Exchange Act of 1934 by requiring investors who own more than 5% of a company's stock to furnish

certain information to the SEC and to comply with certain requirements when making a tender offer.

**Wills Act.** 1. STATUTE OF WILLS (1). 2. An 1837 English statute that allowed people to dispose of every type of property interest by will and that required every will to be attested by two witnesses. — Also termed (in sense 2) *Lord Langdale's Act*.

**will substitute.** A document or instrument that attempts to dispose of an estate in the same or similar manner as a will, such as a trust or a life-insurance plan.

**Winchester, Statute of.** *Hist.* A statute passed in the 13th year of the reign of Edward I, requiring every man to provide himself with armor to keep the peace, recognizing and regulating the offices of high and petty constables, organizing the police, and enforcing the old Saxon police laws. ● It was repealed in 1827 by the Criminal Statutes (England) Repeal Act. St. 7 & 8 Geo. 4, ch. 27.

**Winchester measure.** *Hist.* The standard weights and measures of England, originally kept at Winchester.

**windfall.** An unanticipated benefit, usu. in the form of a profit and not caused by the recipient.

**windfall-profits tax.** See TAX.

**winding up, n.** The process of settling accounts and liquidating assets in anticipation of a partnership's or a corporation's dissolution. Cf. DISSOLUTION (3). — **wind up, vb.** — **wind up, n.**

**window-dressing.** The deceptive arrangement of something, usu. facts or appearances, to make it appear more attractive or favorable. ● The term is often used to describe the practice of some financial managers, esp. some managers of mutual funds, to sell certain positions at the end of a quarter to make an investment's quarterly performance appear better than it actually was.

**window tax.** See TAX.

**wire fraud.** See FRAUD.

**wiretapping, n.** Electronic or mechanical eavesdropping, usu. done by law-enforcement officers under court order, to listen to private

conversations. • Wiretapping is regulated by federal and state law. — **wiretap**, *vb.* — **wiretap**, *n.* — Often shortened to *tapping*. See BUGGING; EAVESDROPPING. Cf. PEN REGISTER.

**wish**, *vb.* **1.** To desire; to hope. **2.** To will; to devise; to give.

**witan** (**wit**-ən). [Anglo-Saxon “wise men”] *Hist.* The members of the king’s council who sat to assist the king in administrative and judicial matters. • Among the members were ealdormen, bishops, abbots, high officers, and occasionally the king’s friends and relatives.

**witchcraft**. The practices of a witch, esp. in black magic; sorcery. • Under the Witchcraft Act of 1541 (33 Hen. 8, ch. 8) and the Witchcraft Act of 1603 (1 Jac. ch. 12), witchcraft was a felony punishable by death without benefit of clergy. These acts were repealed in 1736, and the last execution in England for witchcraft occurred in 1716. In the United States, the most conspicuous (and nearly the last) persecution for witchcraft occurred in Salem, Massachusetts, where some 20 people were hanged for this offense in 1692.

**wite** (**wit**). *Hist.* A penal fine exacted by the Crown or other authority for a serious crime, such as murder. — Also spelled *wyte*.

**witenagemot** (**wit**-ə-nə-gə-moht). [Anglo-Saxon “a meeting of the wise”] *Hist.* A national assembly of noblemen, high ecclesiastics, and other great thanes of England who advised and aided the king in the general administration of the government. • Its composition depended on the will of the king. It passed out of existence with the Norman Conquest (1066). Although it was a precursor to the British Parliament, that was a separate growth — not a continuation of the witenagemot. — Also spelled *witenagemot*; *wittenagemot*; *witanagemote*.

**witepenny**. *Hist.* In early English law, money paid in satisfaction of a wite.

**with all deliberate speed**. See DELIBERATE SPEED, WITH ALL.

**with all faults**. See AS IS.

**withdrawal**, *n.* **1.** The act of taking back or away; removal <withdrawal of consent>. **2.** The act of retreating from a place, position, or situation <withdrawal from the moot-court competition>. **3.** The removal of money from a depository <withdrawal of funds from the

checking account>. **4.** RENUNCIATION (2) <withdrawal from the conspiracy to commit arson>. — **withdraw**, *vb.*

**withdrawal of charges**. The removal of charges by the one bringing them, such as a prosecutor. See NOLLE PROSEQUI.

**withdrawal of counsel**. An attorney’s termination of his or her role in representing a party in a lawsuit. • An attorney usu. must obtain the court’s permission to withdraw from a case. Such permission is usu. sought by a written motion (1) explaining the reason for the requested withdrawal (often, a conflict between attorney and client over a matter such as strategy or fees), and (2) stating whether the client agrees.

**withdrawing a juror**. The act or an instance of removing a juror, usu. to obtain a continuance in a case or, sometimes in English practice, to end the case, as when the case has settled, the parties are too anxious to proceed to verdict, or the judge recommends it because the action is not properly before the court.

**withdrawing record**. A plaintiff’s removing of the *nisi prius* or trial record to prevent the case from being tried, usu. either before the jury is sworn or afterwards with the consent of defense counsel.

**withernam** (**with**-ər-nahm), *n.* [fr. Saxon *weder* “other” + *naam* “a taking”] *Hist.* A reciprocal taking or distress in place of a previous one. See CAPIAS IN WITHERNAM.

**withersake** (**with**-ər-sayk). *Archaic.* An enemy; esp., a deliberately faithless renegade.

**withheld sentence**. See *suspended sentence* under SENTENCE.

**withholding**, *n.* **1.** The practice of deducting a certain amount from a person’s salary, wages, dividends, winnings, or other income, usu. for tax purposes; esp., an employer’s practice of taking out a portion of an employee’s gross earnings and paying that portion to the government for income-tax and social-security purposes. **2.** The money so deducted. — **withhold**, *vb.*

**withholding of evidence**. The act or an instance of obstructing justice by stifling or suppressing evidence knowing that it is being sought in an official investigation or a judicial proceeding. See OBSTRUCTION OF JUSTICE.

**withholding tax.** See TAX.

**without day.** See GO HENCE WITHOUT DAY.

**without delay.** 1. Instantly; at once. 2. Within the time reasonably allowed by law.

**without impeachment of waste.** (Of a tenant) not subject to an action for waste; not punishable for waste. ● This clause is inserted in a lease to give a tenant the right to take certain actions (such as cutting timber) without being held liable for waste. But a tenant cannot abuse the right and will usu. be held liable for maliciously committing waste. — Also termed *absque impetitione vasti*.

**without notice.** Lacking actual or constructive knowledge. ● To be a bona fide purchaser, one must buy something “without notice” of another’s claim to the item or of defects in the seller’s title. To be a holder in due course, one must take a bill or note “without notice” that it is overdue, has been dishonored, or is subject to a claim. UCC § 3-302(a)(2). See *bona fide purchaser* under PURCHASER.

**without prejudice, adv.** Without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party <dismissed without prejudice>. See *dismissal without prejudice* under DISMISSAL.

**without recourse.** (In an indorsement) without liability to subsequent holders. ● With this stipulation, one who indorses an instrument indicates that he or she has no further liability to any subsequent holder for payment. — Also termed *sans recours*.

**without reserve.** Of or relating to an auction at which an item will be sold for the highest bid price.

**without this, that.** See ABSQUE HOC.

**with prejudice, adv.** With loss of all rights; in a way that finally disposes of a party’s claim and bars any future action on that claim <dismissed with prejudice>. See *dismissal with prejudice* under DISMISSAL.

**with recourse, adv.** (In an indorsement) with liability to subsequent holders. ● With this stipulation, one who indorses an instrument indicates that he or she remains liable to the holder for payment.

**with reserve.** Of or relating to an auction at which an item will not be sold unless the highest bid exceeds a minimum price.

**with strong hand.** With force. ● In common-law pleading, this term implies a degree of criminal force, esp. as used in forcible-entry statutes.

**witness, n.** 1. One who sees, knows, or vouches for something <a witness to the accident>. 2. One who gives testimony, under oath or affirmation (1) in person, (2) by oral or written deposition, or (3) by affidavit <the prosecution called its next witness>. — **witness, vb.**

“The term ‘witness,’ in its strict legal sense, means one who gives evidence in a cause before a court; and in its general sense includes all persons from whose lips testimony is extracted to be used in any judicial proceeding, and so includes deponents and affiants as well as persons delivering oral testimony before a court or jury.” 97 C.J.S. *Witnesses* § 1, at 350 (1957).

“Every witness is an editor: he tells you not everything he saw and heard, for that would be impossible, but what he saw and heard and found significant, and what he finds significant depends on his preconceptions.” Patrick Devlin, *The Criminal Prosecution in England* 66 (1960).

**accomplice witness.** An accomplice in a criminal act. ● A codefendant cannot be convicted solely on the testimony of an accomplice witness.

**adverse witness.** See *hostile witness*.

**alibi witness.** A witness who testifies that the defendant was in a location other than the scene of the crime at the relevant time; a witness that supports the defendant’s alibi.

**attesting witness.** One who vouches for the authenticity of another’s signature by signing an instrument that the other has signed <proof of the will requires two attesting witnesses>.

**character witness.** A witness who testifies about another person’s character traits or community reputation. See *character evidence* under EVIDENCE.

**competent witness.** A witness who is legally qualified to testify. ● A lay witness who has personal knowledge of the subject matter of the testimony is competent to testify. Fed. R. Evid. 601-602.

**corroborating witness.** A witness who confirms or supports someone else’s testimony.

**credible witness.** A witness whose testimony is believable.

**disinterested witness.** A witness who is legally competent to testify and has no private interest in the matter at issue.



**expert witness.** A witness qualified by knowledge, skill, experience, training, or education to provide a scientific, technical, or other specialized opinion about the evidence or a fact issue. Fed. R. Evid. 702-706. — Also termed *skilled witness*. See EXPERT; DAUBERT TEST.

**going witness.** *Archaic.* A witness who is about to leave a court's jurisdiction, but not the country. • An example is the witness who leaves one state to go to another.

**grand-jury witness.** A witness who is called to testify in a matter under inquiry by a grand jury.

**hostile witness.** A witness who is biased against the examining party or who is unwilling to testify. • A hostile witness may be asked leading questions on direct examination. Fed. R. Evid. 611(c). — Also termed *adverse witness*.

**interested witness.** A witness who has a direct and private interest in the matter at issue.

**lay witness.** A witness who does not testify as an expert and who therefore may only give an opinion or make an inference that is based on firsthand knowledge and helpful in understanding the testimony or in determining facts. Fed. R. Evid. 701.

**material witness.** A witness who can testify about matters having some logical connection with the consequential facts, esp. if few others, if any, know about those matters.

**prosecuting witness.** A person who files the complaint that triggers a criminal prosecution and whose testimony the prosecution usu. relies on to secure a conviction.

**qualified witness.** A witness who, by explaining the manner in which a company's business records are made and kept, is able to lay the foundation for the admission of business records under an exception to the hearsay rule. Fed. R. Evid. 803(6).

**rebuttal witness.** A witness who contradicts or attempts to contradict evidence previously presented.

**res gestae witness.** A witness who, having been at the scene of an incident, can give a firsthand account of what happened. See RES GESTAE.

**skilled witness.** See *expert witness*.

**subscribing witness.** One who witnesses the signatures on an instrument and signs at the end of the instrument to that effect.

**swift witness.** See *zealous witness*.

**target witness.** 1. The person who has the knowledge that an investigating body seeks. 2. A witness who is called before a grand jury and against whom the government is also seeking an indictment.

**turncoat witness.** A witness whose testimony was expected to be favorable but who becomes (usu. during the trial) a hostile witness.

**zealous witness** (zel-əs). A witness who is unduly zealous or partial to one side of a lawsuit and shows bias through extreme readiness to answer questions or volunteer information advantageous to that side. — Also termed *swift witness*.

**witness box.** See WITNESS STAND.

**witnesseth, vb.** Shows; records. • This term, usu. set in all capitals, commonly separates the preliminaries in a contract, up through the recitals, from the contractual terms themselves, but modern drafters increasingly avoid it as an antiquarian relic. Traditionally, the subject of this verb was *This Agreement*: the sentence, boiled down, was *This Agreement witnesseth* [i.e., shows or records] *that, whereas [the parties have agreed to contract with one another], the parties therefore agree as follows . . .* Many modern contracts erroneously retain the *Witnesseth* even though a new verb appears in the preamble: *This Agreement is between* [one party and the other party]. After the preamble is a period, followed by an all-capped WITNESSETH. It is an example of a form retained long after its utility, and most lawyers do not know what it means or even what purpose it once served.

**witness fee.** See FEE (1).

**witnessing part.** See ATTESTATION CLAUSE.

**witness jurat.** See JURAT.

**witness-protection program.** A federal or state program in which a person who testifies against a criminal is assigned a new identity and relocated to another part of the country to avoid retaliation by anyone convicted as a result of that testimony. • The Federal Witness Protection Program was established by the Organized Crime Control Act of 1970 and is administered by the marshals of the U.S. Justice Department.

**witness stand.** The space in a courtroom, usu. a boxed area, occupied by a witness while testify-

ing. — Often shortened to *stand*. — Also termed *witness box*.

**witness tampering.** The act or an instance of obstructing justice by intimidating, influencing, or harassing a witness before or after the witness testifies. • Several state and federal laws, including the Victim and Witness Protection Act of 1982 (18 USCA § 1512), provide criminal penalties for tampering with witnesses or other persons in the context of a pending investigation or official proceeding. See OBSTRUCTION OF JUSTICE.

**witword (wit-wərd).** *Hist.* A legally allowed claim; esp., the right to vindicate ownership or possession by one's affirmation under oath.

**wobbler.** *Slang.* A public offense that may be either a felony or a misdemeanor.

**wolf's head.** *Hist.* An outlaw, who was formerly often referred to as carrying a wolf's head (*caput lupinum*) and to be no more than a wild beast or wolf who could be slain and whose head could be carried to the king. — Also termed *woolferthfod*. See OUTLAW.

"Outlawry is the last weapon of ancient law, but one that it must often use. As has been well said, it is the sentence of death pronounced by a community which has no police constables or professional hangmen. To pursue the outlaw and knock him on the head as though he were a wild beast is the right and duty of every law-abiding man. 'Let him bear the wolf's head:' this phrase is in use even in the thirteenth century." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 476 (2d ed. 1898).

**Women's Suffrage Amendment.** See NINETEENTH AMENDMENT.

**wood-corn, n.** *Hist.* A quantity of oats or grain paid by customary tenants to a lord for the privilege of picking up dead or broken wood.

**wood-geld (wuud-geld).** *Hist.* 1. Money paid for the privilege of taking wood from a forest. 2. Immunity from paying money for this privilege. — Also termed *pudzeld*.

**wood-leave.** *Hist.* A license or right to cut down, remove, and use standing timber.

**wood-mote (wuud-moht).** See COURT OF ATTACHMENTS.

**Wood-Plea Court.** *Hist.* A court held twice a year in Clun Forest, in Shropshire, to determine matters of wood and agistments.

**woodshedding.** See HORSESHEDDING.

**woodward (wuud-word), n.** *Hist.* A forest officer who patrols and protects the forest.

**woolferthfod.** See WOLF'S HEAD.

**word of art.** See TERM OF ART.

**words actionable in themselves.** Language that is libelous or slanderous per se. See *slander per se* under SLANDER; *libel per se* under LIBEL.

**words of limitation.** Language in a deed or will — often nonliteral language — describing the extent or quality of an estate. • For example, under long-standing principles of property law, the phrasing "to A and her heirs" creates a fee simple and does not give anything to A's heirs. See LIMITATION (4).

**words of negotiability.** See NEGOTIABLE WORDS.

**words of procreation (prōh-kree-ay-shən).** Language in a deed essential to create an estate tail, such as an estate "to A and the heirs of his body."

**words of purchase.** Language in a deed or will designating the persons who are to receive the grant. • For example, the phrasing "to A for life with a remainder to her heirs" creates a life estate in A and a remainder in A's heirs. See PURCHASE (2).

**work, n.** 1. Physical and mental exertion to attain an end, esp. as controlled by and for the benefit of an employer; labor.

**additional work.** 1. Work that results from a change or alteration in plans concerning the work required, usu. under a construction contract; added work necessary to meet the performance goals under a contract. 2. See *extra work*.

**extra work.** In construction law, work not required under the contract; something done or furnished in addition to the contract's requirements; work entirely outside and independent of the contract and not contemplated by it. • A contractor is usu. entitled to charge for extra work consisting of labor and materials not contemplated by or subsumed within the original contract, at least to the extent that the property owner agrees to a change order. Materials and labor not contemplated by the contract, but that are required by later

changes in the plans and specifications, are considered to be extra work. — Also termed *additional work*.

**heavy work.** Work that involves frequent lifting and carrying of large items. • Under the Social Security Administration regulations for describing a worker's physical limitations, heavy work involves lifting no more than 100 pounds, with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR § 404.1567(d).

**light work.** Work that involves some limited lifting and moving. • Under the Social Security Administration regulations for describing a worker's physical limitations, light work includes walking, standing, sitting while pushing or pulling arm or leg controls, and lifting no more than 20 pounds, with frequent lifting or carrying of objects that weigh up to 10 pounds. 20 CFR § 404.1567(b).

**medium work.** Work that involves some frequent lifting and moving. • Under the Social Security Administration regulations for describing a worker's physical limitations, medium work includes lifting up to 50 pounds, with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR § 404.1567(c).

**sedentary work.** Work that involves light lifting and only occasional walking or standing. • Under the Social Security Administration regulations for describing a worker's physical limitations, sedentary work involves lifting of no more than ten pounds, occasionally carrying small items such as docket files and small tools, and occasional standing or walking. 20 CFR § 404.1567(a).

**semi-skilled work.** Work that may require some alertness and close attention, such as inspecting items or machinery for irregularities, or guarding property or people against loss or injury. 20 CFR § 404.1568(b). — Also written *semiskilled work*.

**skilled work.** Work requiring the worker to use judgment, deal with the public, analyze facts and figures, or work with abstract ideas at a high level of complexity. 20 CFR § 404.1568(c).

**unskilled work.** Work requiring little or no judgment, and involving simple tasks that can be learned quickly on the job. 20 CFR § 404.1568(a).

**very heavy work.** Work that involves frequent lifting of very large objects and frequent carrying of large objects. • Under the Social Security Administration regulations for describing a worker's physical limitations,

very heavy work involves lifting 100 pounds or more, and frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR § 404.1567(e).

**2. Copyright.** An original expression, in fixed or tangible form (such as paper, audiotape, or computer disk), that may be entitled to common-law or statutory copyright protection. • A work may take many different forms, including art, sculpture, literature, music, crafts, software, and photography.

**work, vb. 1.** To exert effort; to perform, either physically or mentally <lawyers work long hours during trial>. **2.** To function properly; to produce a desired effect <the strategy worked>. **3. Patents.** To develop and commercially exploit (the invention covered by a patent) <the patent owner failed to work the patent>.

"A patentee has the *exclusive* right to *make, use, or sell* the invention. 35 U.S.C.A. § 154. The right includes the right to *refrain* from making, using, or selling the invention. In many foreign countries, the inventor is obliged to 'work' the patent and if he does not do so, he can be required to grant a compulsory license to others who wish to exploit the invention. But an American patentee is under no such duty, although there are antitrust implications involved in the failure to work a patent." Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 128-29 (2d ed. 1990).

**work and labor. Hist.** A common count in an action of *assumpsit* for the work and labor performed and materials furnished by the plaintiff. See ASSUMPSIT.

**worker.** One who labors to attain an end; esp., a person employed to do work for another.

**Worker Adjustment and Retraining Notification Act.** A federal law that requires an employer to provide notice of a plant closing or mass layoff, 60 days before the closing or layoff, to the employees, the state-dislocated-workers unit, and the chief elected official of the unit of local government where the plant closing or layoff is to occur. 29 USCA §§ 2101-2109. — Abbr. WARN.

**workers' compensation.** A system of providing benefits to an employee for injuries occurring in the scope of employment. • Most workers'-compensation statutes both hold the employer strictly liable and bar the employee from suing in tort. — Also termed *workmen's compensation*; *employers' liability*. — Abbr. WC.

"Workers' compensation laws were designed to provide employees with expansive protection against the conse-

quences of employment-related injuries. Injured workers no longer had to establish negligence attributable to their employer in order to obtain legal redress. They merely had to demonstrate that their conditions arose out of and during the course of their employment." Mark A. Rothstein et al., *Employment Law* § 7.3, at 406 (1994).

**workers'-compensation board.** An agency that reviews cases arising under workers'-compensation statutes and administers the related rules and regulations. — Also termed *workers'-compensation commission*.

"Workers' compensation boards ... are tribunals ... of limited and special jurisdiction and have only such authority and power as have been conferred upon them by express grant, or by implication as necessary and incidental to the full exercise of their authority. The functions of such agencies may include the settlement of disputes with respect to the right to and the amount of compensation, the supervision of voluntary settlements or agreements, the collection and administration of compensation funds, and the supervision and regulation of matters pertaining to compensation insurance." 82 Am. Jur. 2d *Workers' Compensation* § 56, at 65 (1992).

**workfare.** A system of requiring a person receiving a public-welfare benefit to earn that benefit by performing a job provided by a government agency.

**work for hire.** *Copyright.* A copyrightable work produced either by an employee within the scope of employment or by an independent contractor under a written agreement; esp., a work specially ordered or commissioned for use as (1) a contribution to a collective work, (2) a translation, (3) a supplementary work, (4) a part of a movie or other audiovisual work, (5) a compilation, (6) an instructional text, (7) a test, (8) answer material for a test, or (9) an atlas. ● If the work is produced by an independent contractor, the parties must agree expressly in writing that the work will be a work for hire. The employer or commissioning party owns the copyright. — Also termed *work made for hire*.

**work furlough** (fər-loh). A prison-treatment program allowing an inmate to be released during the day to work in the community. See WORK-RELEASE PROGRAM.

**work-furlough program.** See WORK-RELEASE PROGRAM.

**workhouse.** A jail for criminals who have committed minor offenses and are serving short sentences.

**working capital.** See CAPITAL.

**working capital acceptance.** See *finance bill* under BILL (6).

**working control.** See CONTROL.

**working interest.** *Oil & gas.* The right to the mineral interest granted by an oil-and-gas lease. ● The term is so called because the lessee acquires the right to work on the lease property to search, develop, and produce oil and gas, and the obligation to pay all costs. See ROYALTY. — Also termed *leasehold interest*; *operating interest*.

**working papers.** **1.** WORK PERMIT. **2.** *Accounting.* The records kept by an independent auditor of the procedures followed, tests performed, information obtained, and conclusions reached in an audit.

**work-in-process.** A product being manufactured or assembled but not yet completed. — Also termed *work-in-progress*.

**work made for hire.** See WORK FOR HIRE.

**workmen's compensation.** See WORKERS' COMPENSATION.

**work of necessity.** Work reasonably essential to the public's economic, social, or moral welfare as determined by the community standards at a particular time, and excepted from the operation of blue laws. See BLUE LAW.

**workout, n.** **1.** The act of restructuring or refinancing overdue loans. **2.** *Bankruptcy.* A debtor's agreement, usu. negotiated with a creditor or creditors out of court, to reduce or discharge the debt. — **work out, vb.**

**work permit.** An alien's documentary work authorization from the Immigration and Naturalization Service. ● Under the Immigration Reform and Control Act of 1986, it is illegal for an employer to hire an alien who lacks a work permit. 8 USCA § 1324(a)(1). — Also termed *working papers*.

**work product.** Tangible material or its intangible equivalent — in unwritten or oral form — that was either prepared by or for a lawyer or prepared for litigation, either planned or in progress. ● Work product is generally exempt from discovery or other compelled disclosure. The term is also used to describe the products of a party's investigation or communications concerning the subject matter of a lawsuit if

made (1) to assist in the prosecution or defense of a pending suit, or (2) in reasonable anticipation of litigation. — Also termed *attorney work product*.

**work-product privilege.** See WORK PRODUCT.

**work-product rule.** The rule providing for qualified immunity of an attorney's work product from discovery or other compelled disclosure. Fed. R. Civ. P. 26(b)(3). • The exemption was primarily established to protect an attorney's litigation strategy. *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385 (1947). — Also termed *work-product immunity*; *work-product privilege*; *work-product exemption*.

"Although the work-product rule has often been spoken of as creating a 'privilege,' it is a qualified one that does not grant full immunity from discovery. To the extent the term 'privilege' causes confusion between the work-product rule and the absolute privilege for confidential communications between attorney and client, it is important to keep in mind this distinction. . . . Rule 26(b)(3) provides that work-product material is subject to discovery 'only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.'" 8 Charles Alan Wright et al., *Federal Practice and Procedure* § 2025, at 371, 373-74 (2d ed. 1994).

**work-release program.** A correctional program allowing a prison inmate — primarily one being readied for discharge — to hold a job outside prison. — Also termed *work-furlough program*. See HALFWAY HOUSE.

**works.** **1.** A mill, factory, or other establishment for manufacturing or other industrial purposes; a manufacturing plant; a factory. **2.** Any building or structure on land.

**new works.** *Civil law.* A structure newly commenced on a particular estate. • A denunciation of new works is a remedy allowed for an adjacent landowner whose property will be injured if the structure is completed.

**public works.** Structures (such as roads or dams) built by the government for public use and paid for by public funds.

**work stoppage.** A cessation of work; STRIKE.

**world.** **1.** The planet Earth <the world has limited natural resources>. **2.** All the Earth's inhabitants; the public generally <the world will benefit from this discovery>. **3.** All persons who have a claim or acquire an interest in a particular subject matter <a judgment *in rem* binds all the world>.

**World Bank.** A U.N. bank established in 1945 to provide loans that aid in economic development, through economically sustainable enterprises. • Its capital derives from U.N. member states' subscriptions and by loans on the open market. — Also termed *International Bank for Reconstruction and Development*.

**World Court.** See INTERNATIONAL COURT OF JUSTICE.

**worldly, adj.** Of or relating to the present state of existence; temporal; earthly <worldly possessions>. See SECULAR.

**worship.** **1.** Any form of religious devotion or service showing reverence for a divine being.

**public worship.** **1.** Worship conducted by a religious society according to the society's system of ecclesiastical authority, ritual propriety, and rules and regulations. **2.** Worship under public authority. **3.** Worship in a public place, without privacy or concealment. **4.** Worship allowed by all members of the public equally.

**2. English law.** A title of honor or dignity used in addressing certain magistrates or other high officers.

**wort** (wɔrt), *n.* *Archaic.* A country farm; a curtilage. — Also termed *worth*.

**worth, n.** **1.** The monetary value of a thing; the sum of the qualities that render a thing valuable and useful, expressed in the current medium of exchange. **2.** The emotional or sentimental value of something. **3.** The total wealth held by a person or entity. **4.** WORT.

**worthier-title doctrine.** **1. Hist.** At common law, the doctrine holding that if a beneficiary of a will would receive an identical interest as an heir under the laws of intestacy, the person takes the interest as an heir rather than as a beneficiary. • The doctrine has been abolished in most states. **2. Property.** The doctrine that favors a grantor's intent by construing a grant as a reversion in the grantor instead of as a remainder in the grantor's heirs. See REMAINDER; REVERSION.

**worthiest blood, n. Hist.** A descendant that, in a given legal system, is given preference in the laws of descent. See PRIMOGENITURE.

"Thus sons shall be admitted before daughters; or, as our male lawgivers have somewhat uncomplaisantly expressed it, the worthiest blood shall be preferred. As if John Stiles hath two sons, Matthew and Gilbert, and two

daughters, Margaret and Charlotte, and dies; first Matthew, and (in case of his death without issue) then Gilbert shall be admitted to the succession in preference to both the daughters." 2 William Blackstone, *Commentaries on the Laws of England* 213 (1766).

**worthless, *adj.*** Totally lacking worth; of no use or value.

**worthless check.** See *bad check* under CHECK.

**worthless person.** *Archaic.* A person who owns nothing.

**worthless security.** See SECURITY.

**worthy, *adj.*** Having worth; possessing merit; valuable.

**wounded feelings.** Injuries resulting from insults, indignity, or humiliation, as distinguished from the usual mental pain and suffering consequent to physical injury.

**wounding. 1.** An injury, esp. one involving a rupture of the skin. **2.** An injury to feelings or reputation. **3. *Hist.*** An aggravated type of assault and battery in which one person seriously injures another.

**wraparound mortgage.** See MORTGAGE.

**wreck, *n.* 1.** SHIPWRECK. **2.** Goods cast ashore from a wrecked vessel and not claimed by the owner within a specified period (such as one year).

**wreckfree, *adj.*** (Of a port, etc.) exempt from the forfeiture of shipwrecked goods and vessels to the Crown.

**writ (rit).** A court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act.

"[W]rits have a long history. We can trace their formal origin to the Anglo-Saxon formulae by which the king used to communicate his pleasure to persons and courts. The Anglo-Norman writs, which we meet with after the Conquest, are substantially the Anglo-Saxon writs turned into Latin. But what is new is the much greater use made of them, owing to the increase of royal power which came with the Conquest." W.S. Holdsworth, *Sources and Literature of English Law* 20 (1925).

**alias writ.** An additional writ issued after another writ of the same kind in the same case. • It derives its name from a Latin phrase that formerly appeared in alias writs: *sicut alias praecipimus*, meaning "as we at

another time commanded." Cf. *alias execution* under EXECUTION.

**alternative writ.** A common-law writ commanding the person against whom it is issued either to do a specific thing or to show cause why the court should not order it to be done.

**close writ. *Hist.* 1.** A royal writ sealed because the contents were not deemed appropriate for public inspection. Cf. *patent writ*; CLAUSE ROLLS. **2.** A writ directed to a sheriff instead of to a lord.

**concurrent writ.** A duplicate of an original writ (esp. a summons), issued either at the same time as the original writ or at any time while the original writ is valid.

**counterpart writ.** A copy of an original writ, to be sent to a court in another county when a defendant resides in, or is found in, that county.

**extraordinary writ.** A writ issued by a court exercising unusual or discretionary power. • Examples are certiorari, habeas corpus, mandamus, and prohibition. — Also termed *prerogative writ*.

**ground writ. *Hist.*** A writ issued in a county having venue of an action in order to allow a writ of *capias ad satisfaciendum* or of *feri facias* to be executed in a county where the defendant or the defendant's property was found. • These two writs could not be executed in a county other than the county having venue of the action until a ground writ and then a *testatum* writ were first issued. This requirement was abolished in 1852. Cf. TESTATUM.

**judicial writ. 1.** A writ issuing from the court to which the original writ was returnable; a writ issued under the private seal of the court and not under the great seal of England. Cf. *original writ*. **2.** Any writ issued by a court.

**junior writ.** A writ issued at a later time than a similar writ, such as a later writ issued by a different party or a later writ on a different claim against the same defendant.

**optional writ.** At common law, an original writ issued when the plaintiff seeks specific damages, such as payment of a liquidated debt. • The writ commands the defendant either to do a specified thing or to show why the thing has not been done.

**original writ.** A writ commencing an action and directing the defendant to appear and answer. • In the United States, this writ has been largely superseded by the summons. At common law, this type of writ was a manda-

tory letter issuing from the court of chancery under the great seal, and in the king's name, directed to the sheriff of the county where the injury was alleged to have occurred, containing a summary statement of the cause of complaint, and requiring the sheriff in most cases to command the defendant to satisfy the claim or else appear in court to account for not satisfying it. — Sometimes shortened to *original*. See SUMMONS.

**patent writ** (pay-tənt). *Hist.* An open writ; one not closed or sealed up. Cf. *close writ*.

**peremptory writ** (pər-emp-tə-ree). At common law, an original writ issued when the plaintiff seeks only general damages, as in an action for trespass. • The writ, which is issued only after the plaintiff gives security for costs, directs the sheriff to have the defendant appear in court.

**pluries writ.** See PLURIES.

**prerogative writ.** See *extraordinary writ*.

**testatum writ** (tes-tay-təm). See TESTATUM.

**vicontiel writ** (vi-kon-tee-əl). *Hist.* A writ triable in the county court. • In the 13th–14th centuries, civil litigation could originate in the county court either by oral plaint or by a writ from the Chancery ordering the sheriff to do justice in a case. The writ that began such a proceeding was called *vicontiel* because it was addressed to the sheriff. See VICONTIEL (2).

“Vicontiel writs were of two sorts, the one founded on *Torts*, the other on *Contracts*. The *vicontiel* writs adapted for torts, were those of *trespass*, *replegiari facias*, *nuisance*, and others of the like nature; and those of matters of contract were called writs of *justicies*, which was a command to the sheriff to do justice between the parties. . . .” 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* vii–viii (3d ed. 1787).

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

**write-down**, *vb.* *Accounting.* To transfer a portion of the cost of an asset to an expense account because the asset's value has decreased.

**write off**, *vb.* To remove (an asset) from the books, esp. as a loss or expense <the partnership wrote off the bad debt>.

**writer of the tallies.** *English law.* An officer of the Exchequer who writes on the tallies the letters of tellers' bills. See TALLY.

**Writer to the Signet.** *Scots law.* A member of the oldest and leading society of Scottish solicitors, originally a clerk in the Scottish Secretary of State's office responsible for preparing warrants, writs, charters, and precepts.

**write-up**, *n.* **1.** A memorandum of a conference between an employer and an employee, usu. held to discuss the employee's poor work performance or a disciplinary action against the employee. **2.** A publication (such as a newspaper article) about a particular person, thing, or event.

**write-up**, *vb.* *Accounting.* To increase the valuation of an asset in a financial statement to reflect current value. • With a few minor exceptions, this is generally not permitted.

**writing**, *n.* Any intentional recording of words in a visual form, whether in the form of handwriting, printing, typewriting, or any other tangible form.

**writing obligatory**, *n.* A bond; a written obligation, as technically described in a pleading.

**writ of ad quod damnum.** See AD QUOD DAMNUM.

**writ of aiel** (ay-əl). See AIEL (2).

**writ of assistance.** **1.** A writ to enforce a court's decree transferring real property, the title of which has been previously adjudicated. **2.** *Hist.* A writ issued by the Court of Exchequer ordering the sheriff to assist in collecting a debt owed the Crown. **3.** *Hist.* In colonial America, a writ issued by a superior colonial court authorizing an officer of the Crown to enter and search any premises suspected of containing contraband. • The attempted use of this writ in Massachusetts — defeated in 1761 — was one of the acts that led to the American Revolution.

**writ of association.** *Hist. English law.* A writ whereby certain persons (usu. the clerk of assize and subordinate officers) were directed to associate themselves with the justices and serjeants so that there would be an adequate supply of commissioners for the assizes.

**writ of attachment.** See ATTACHMENT (3).

**writ of capias.** See CAPIAS.

**writ of certiorari.** See CERTIORARI.

**writ of conspiracy.** *Hist.* A writ against one who conspired to injure the plaintiff, esp. by indicting the plaintiff for treason or felony. ● Under common law, all other circumstances of conspiracy were actions on the case.

**writ of *coram nobis*.** See CORAM NOBIS.

**writ of *coram vobis*.** See CORAM VOBIS.

**writ of course.** A writ issued as a matter of course or granted as a matter of right. — Also termed *writ of right*.

**writ of covenant.** *Hist.* A writ for one claiming damages as a result of a breach of a promise under seal or other covenant. — Also termed *breve de conventionione* (breev or bree-vee dee kən-ven-shee-oh-nee).

“The writ of covenant (*breve de conventionione*) is not mentioned by Glanvill; but it appears within a short time after the publication of his book and already in the early years of Henry III. It can be had ‘as of course,’ at all events when the tenement that is in question is of small value. Before Henry’s death it has become a popular writ . . . . The great majority of actions of covenant are brought merely in order that they may be compromised. We doubt whether any principle was involved in the choice; but may infer that the procedure instituted by this writ was cheap and expeditious for those who wished to get to their final concord.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 216–17 (2d ed. 1899).

**writ of debt.** See DEBT (4).

**writ of deceit.** *Hist.* A writ against one who deceives and damages another by acting in the other’s name.

**writ of deliverance.** See DELIVERANCE (3).

**writ of detinue.** A writ in an action for detinue. See DETINUE.

**writ of dower.** 1. DE DOTE UNDE NIHIL HABET. 2. A widow’s writ of *right of dower* providing her the remainder of the dower to which she is entitled after part of it had been assigned by the tenant.

**writ of ejectment.** The writ in an action of ejectment for the recovery of land. See EJECTMENT.

**writ of entry.** A writ that allows a person wrongfully dispossessed of real property to enter and retake the property.

**writ of error.** 1. A writ issued by an appellate court directing a lower court to deliver the record in the case for review. Cf. ASSIGNMENT OF ERROR.

“The writ of error is the most common of all the forms of remedial process available to an unsuccessful party after a final determination of the merits of the action, and is in common use in this country at the present time, where the common-law modes of procedure are followed. Its object . . . is to obtain a reversal of the judgment, either by reason of some error in fact affecting the validity and regularity of the legal decision itself, or on account of some mistake or error in law, apparent upon the face of the record, from which the judgment appears to have been given for the wrong party.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 337, at 538 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**writ of error *coram nobis*.** See CORAM NOBIS.

**writ of error *coram vobis*.** See CORAM VOBIS.

2. *Hist.* A writ issued by a chancery court, at the request of a party who was unsuccessful at trial, directing the trial court either to examine the record itself or to send it to another court of appellate jurisdiction to be examined, so that some alleged error in the proceedings may be corrected.

**writ of escheat.** *Hist.* A writ allowing a lord to take possession of lands that had escheated to him. See ESCHEAT (1).

**writ of estrepement** (e-streep-mənt). See DE ESTREPAMENTO.

**writ of execution.** See EXECUTION (4).

**writ of *exigi facias*.** See EXIGI FACIAS.

**writ of extent.** See EXTENT (2).

**writ of formedon.** See FORMEDON.

**writ of habeas corpus.** See HABEAS CORPUS.

**writ of injunction.** See INJUNCTION.

**writ of inquiry.** *Hist.* A writ ordering the sheriff to empanel a jury and act as judge in a trial held to determine the amount of damages suffered by a plaintiff who has won a default judgment on an unliquidated claim.

**writ of mainprise.** See MAINPRISE (2).

**writ of mandamus.** See MANDAMUS.



**writ of mesne** (meen). See DE MEDIO.

**writ of ne exeat**. See NE EXEAT REPUBLICA.

**writ of possession**. A writ issued to recover the possession of land.

**writ of praecipe**. See PRAECIPE (1).

**writ of prevention**. A writ to prevent the filing of a lawsuit. See QUIA TIMET.

**writ of privilege**. *Hist.* A writ to enforce or maintain a privilege; esp., a writ to secure the release of a person who, though entitled to privilege from arrest, is arrested in a civil suit.

**writ of proclamation**. *Hist.* A writ, issued at the time an *exigent* was issued, ordering the sheriff of the county of a defendant's residence to make three proclamations of outlawry in a public and notorious place a month before the outlawry is declared. See OUTLAW.

**writ of prohibition**. See PROHIBITION (2).

**writ of protection**. **1.** A writ to protect a witness in a judicial proceeding who is threatened with arrest. **2.** A writ exempting anyone in the Crown's service from arrest in a civil proceeding for a year and a day.

**writ of quare impedit**. See QUARE IMPEDIT.

**writ of quominus**. See QUOMINUS.

**writ of quo warranto**. See QUO WARRANTO.

**writ of rebellion**. See COMMISSION OF REBELLION.

**writ of recaption**. *Hist.* A writ allowing a plaintiff to recover goods and damages from a defendant who makes a second distress while a replevin action for a previous distress is pending. See RECAPTION.

**writ of replevin**. See REPLEVIN (2).

**writ of restitution**. **1.** The process of enforcing a civil judgment in a forcible-entry-and-detainer action or enforcing restitution on a verdict in a criminal prosecution for forcible entry and detainer.

"In some states, following the British statutes, the prosecutor may have a writ of restitution for the premises immediately on the rendition of a verdict of guilty on an

indictment for forcible entry and detainer; and the operation of such writ of restitution is not suspended by an appeal by the defendant." 35 Am. Jur. 2d *Forcible Entry and Detainer* § 61, at 931 (1967).

**2.** A common-law writ issued when a judgment is reversed, whereby the prevailing party is restored all that was lost as a result of the judgment.

**writ of review**. A general form of process issuing from an appellate court to bring up for review the record of the proceedings in the court below; the common-law writ of certiorari.

**writ of right**. See WRIT OF COURSE.

**writ of second deliverance**. See DELIVERANCE (4).

**writ of sequestration**. A writ ordering that a court be given custody of something, or ordering that something not be taken from the jurisdiction, such as the collateral for a promissory note. • Such a writ is usu. issued during litigation, often so that the object will be available for attachment or execution after judgment.

**writ of summons**. *English law.* A writ by which, under the Judicature Acts of 1873-1875, all actions were commenced. See SUMMONS.

**writ of supersedeas**. See SUPERSEDEAS.

**writ of supervisory control**. A writ issued to correct an erroneous ruling made by a lower court either when there is no appeal or when an appeal cannot provide adequate relief and the ruling will result in gross injustice.

**writ of threats**. See SECURITATE PACIS.

**writ of tolt** (tohl't). See TOLT.

**writ of trial**. *Hist. English law.* By the Civil Procedure Act of 1835, a writ ordering an action brought in a superior court to be tried in an inferior court or before the undersheriff. • It was superseded by the County Courts Act of 1867, ch. 142, § 6 authorizing a defendant, in certain cases, to obtain an order that an action is to be tried in a county court. St. 3 & 4 Will. 4, ch. 42.

**writ of waste**. *Hist.* A writ to recover damages against a tenant who committed waste. See WASTE (1).

"After waste had been actually committed, the ancient corrective remedy, in a court of common law, was by a

writ of waste for the recovery of the place wasted, and treble damages as a compensation for the injury done to the inheritance." 78 Am. Jur. 2d *Waste* § 29, at 417 (1975).

**writ pro retorno habendo** (proh ri-tor-noh hæ-ben-doh), *n.* [Law Latin "for return to be had"] *Hist.* A writ ordering the return of goods to a defendant who, upon the plaintiff's default, obtained a favorable judgment in a replevin action.

**writ system.** The common-law procedural system under which plaintiff commenced an action by obtaining the appropriate type of original writ.

**written contract.** See CONTRACT.

**written directive.** See ADVANCE DIRECTIVE.

**written law.** Statutory law, together with constitutions and treaties, as opposed to judge-made law. — Also termed *jus scriptum*; *lex scripta*.

**written testimony.** See TESTIMONY.

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

**wrong, *n.*** Breach of one's legal duty; violation of another's legal right. — **wrong, *vb.***

"A wrong may be described, in the largest sense, as anything done or omitted contrary to legal duty, considered in so far as it gives rise to liability." Frederick Pollock, *A First Book of Jurisprudence* 68 (1896).

"A wrong is simply a wrong act — an act contrary to the rule of right and justice. A synonym of it is injury, in its true and primary sense of *injuria* (that which is contrary to *jus*) . . . ." John Salmond, *Jurisprudence* 227 (Glanville L. Williams ed., 10th ed. 1947).

**civil wrong.** A violation of noncriminal law, such as a tort, a breach of contract or trust, a breach of statutory duty, or a defect in performing a public duty; the breach of a legal duty treated as the subject matter of a civil proceeding. Cf. CRIME.

**continuing wrong.** An ongoing wrong that is capable of being corrected by specific enforcement. • An example is the nonpayment of a debt.

**intentional wrong.** A wrong in which the *mens rea* amounts to intention, purpose, or design. — Also termed *willful wrong*.

**legal wrong.** An act that is a violation of the law; an act authoritatively prohibited by a rule of law.

**moral wrong.** An act that is contrary to the rule of natural justice. — Also termed *natural wrong*.

**positive wrong.** A wrongful act, wilfully committed.

**private wrong.** An offense committed against a private person and dealt with at the instance of the person injured.

**public wrong.** An offense committed against the state or the community at large, and dealt with in a proceeding to which the state is itself a party. • Not all public wrongs are crimes. For example, a person that breaches a contract with the government commits a public wrong, but the offense is a civil one, not a criminal one.

**real wrong.** An injury to the freehold.

**transitory wrong.** A wrong that, once committed, belongs to the irrevocable past. • An example is defamation.

**willful wrong.** See *intentional wrong*.

**wrong of negligence.** A wrong in which the *mens rea* is a form of mere carelessness, as opposed to wrongful intent.

**wrong of strict liability.** A wrong in which a *mens rea* is not required because neither wrongful intent nor culpable negligence is a necessary condition of responsibility.

**wrongdoer, *n.*** One who violates the law <both criminals and tortfeasors are wrongdoers>. — **wrongdoing, *n.***

**wrongful, *adj.*** 1. Characterized by unfairness or injustice <wrongful military invasion>. 2. Contrary to law; unlawful <wrongful termination>. 3. (Of a person) not entitled to the position occupied <wrongful possessor>. — **wrongfully, *adv.***

**wrongful act.** See WRONGFUL CONDUCT.

**wrongful-birth action.** A lawsuit brought by parents against a doctor for failing to advise them prospectively about the risks of their having a child with birth defects.

**wrongful-conception action.** See WRONGFUL-PREGNANCY ACTION.

**wrongful conduct.** An act taken in violation of a legal duty; an act that unjustly infringes on another's rights. — Also termed *wrongful act*.

**wrongful-death action.** A lawsuit brought on behalf of a decedent's survivors for their dam-