



قدم به قدم، همراه دانشجو...

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جامع ترین و به روزترین پرتال دانشجویی کشور (پرتال دانش)
با ارائه خدمات رایگان، تحصیلی، آموزشی، رفاهی، شغلی و...
برای دانشجویان

- (۱) راهنمای ارتقاء تحصیلی. (کاردانی به کارشناسی، کارشناسی به ارشد و ارشد به دکتری)
- (۲) ارائه سوالات کنکور مقاطع مختلف سالهای گذشته، همراه پاسخ، به صورت رایگان
- (۳) معرفی روش های مقاله و پایان نامه نویسی و ارائه پکیج های آموزشی مربوطه
- (۴) معرفی منابع و کتب مرتبط با کنکورهای تحصیلی (کاردانی تا دکتری)
- (۵) معرفی آموزشگاه ها و مراکز مشاوره تحصیلی معتبر
- (۶) ارائه جزوات و منابع رایگان مرتبط با رشته های تحصیلی
- (۷) راهنمای آزمون های حقوقی به همراه دفترچه سوالات سالهای گذشته (رایگان)
- (۸) راهنمای آزمون های نظام مهندسی به همراه دفترچه سوالات سالهای گذشته (رایگان)
- (۹) آخرین اخبار دانشجویی، در همه مقاطع، از خبرگزاری های پربازدید
- (۱۰) معرفی مراکز ورزشی، تفریحی و فروشگاه های دارای تخفیف دانشجویی
- (۱۱) معرفی همایش ها، کنفرانس ها و نمایشگاه های ویژه دانشجویی
- (۱۲) ارائه اطلاعات مربوط به بورسیه و تحصیل در خارج و معرفی شرکت های معتبر مربوطه
- (۱۳) معرفی مسائل و قوانین مربوط به سربازی، معافیت تحصیلی و امریه
- (۱۴) ارائه خدمات خاص ویژه دانشجویان خارجی
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- (۱۶) صفحه ویژه نقل و انتقالات دانشجویی
- (۱۷) صفحه ویژه ارائه شغل های پاره وقت، اخبار استخدامی
- (۱۸) معرفی خوابگاه های دانشجویی معتبر
- (۱۹) دانلود رایگان نرم افزار و اپلیکیشن های تخصصی و...
- (۲۰) ارائه راهکارهای کارآفرینی، استارت آپ و...
- (۲۱) معرفی مراکز تایپ، ترجمه، پرینت، صحافی و ... به صورت آنلاین
- (۲۲) راهنمای خرید آنلاین ارزی و معرفی شرکت های مطرح
- (۲۳)



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BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

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By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,
Bankruptcy, Mortgages, Constitutional Law, Interpretation
of Laws, Rescission and Cancellation of Contracts, Etc.

REVISED FOURTH EDITION

BY

THE PUBLISHER'S EDITORIAL STAFF

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PREFACE

REVISED FOURTH EDITION

THE sustained and growing popularity of BLACK'S LAW DICTIONARY since its appearance more than seventy five years ago is a striking tribute to the scholarship and learning of Henry Campbell Black, and to the essential soundness of the plan adopted by him for the compilation of a legal lexicon.

In accordance with the original plan of this work, consistently adhered to in all subsequent editions, the law student, confronted in his casebooks with reports from the Year Books, or with extracts from Glanvil, Bracton, Littleton, or Coke, will find in this dictionary an unusually complete collection of definitions of terms used in old English, European, and feudal law. The student will also find in this volume, on page 1795, a useful Table of British Regnal Years, listing the sovereigns of England for more than 900 years, together with the date of accession to the throne, and the length of reign.

BLACK'S LAW DICTIONARY has proven its value through the years to the busy practitioner, judge and law student who requires quick and convenient access to the meanings of legal terms and phrases found in statutes or judicial opinions, as well as to the special legal meanings of standard English words—meanings which frequently cannot be found in the ordinary English language dictionaries.

In the period of more than thirty five years since the publication of the Third Edition, the law has undergone substantial changes and developments. The vocabulary of the law has shown corresponding change and growth. A word, in the often quoted dictum of Mr. Justice Holmes, is "the skin of a living thought," and the words of statutes and judicial opinions reflect the contemporary thinking of legislators and jurists. In order adequately to represent this thinking in the fourth edition, a patient examination was made of the thousands of opinions handed down by the appellate courts each year. Some revisions and additions have been included in this Revised Fourth Edition.

Abbreviations of common words and phrases likely to be encountered by the user are explained in appropriate places throughout the main body of the work. A Table of Abbreviations of the titles of law reports, textbooks, and other legal literature is contained in the back of the volume and a Guide to Pronunciation is included in the front of the volume.

New features in this Revised Fourth Edition include the following:

- Code of Professional Responsibility

- Canons of Judicial Ethics

- An Outline of the Minimum Requirements for

 - Admission to Legal Practice in the United States

PREFACE—REVISED FOURTH EDITION

In order that BLACK'S LAW DICTIONARY should continue to be a handy one-volume work of ready reference, the enlarged contents of the Fourth Edition necessitated an improved typographical style. The type for the Fourth Edition was accordingly completely reset and arranged in wider columns, in a more attractive and readable manner.

The Publisher has drawn freely on its wide experience to make the present edition of BLACK'S LAW DICTIONARY superior to any of the earlier editions. It is confidently believed that this edition, both in content and format, sets new standards of excellence among law dictionaries.

THE PUBLISHER

ST. PAUL, MINN.
June, 1968

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GUIDE TO PRONUNCIATION

A NOTE ON PRONUNCIATION OF LATIN

One of the difficulties in pronouncing legal terms is that one commonly hears both the English system and the Roman system of pronouncing Latin words. Before 1900, the English pronunciation of Latin had developed for legal, medical, and other scientific terms. During the second half of the nineteenth century, scholars established that what is now known as the Roman pronunciation was used between 50 B.C. and 50 A.D. Nearly all schools in English-speaking countries adopted the Roman system of pronunciation. But by and large, the English pronunciation has persisted among lawyers, physicians, and scientists.

The main difference between the Roman and the English pronunciation of Latin is in the long sounds of a, e, and i. In English these sounds are a, ē, and I; in Roman, a is a; e is a; and i is -e.

The dominant usage among lawyers today is probably the English pronunciation, but the Roman system taught in the schools still has its influence. Lawyers who studied Latin in school often tend toward the Roman, and others often tend toward the English. Yet nearly all use both systems, or variations from both systems, to some extent.

For instance, many lawyers use the English pronunciation, *réz jōO'di-kalia*, but many lawyers prefer to say *raz* is neither English nor Roman but a mixture. The Roman *ras yOrYdl-ca-ta* is seldom if ever heard. Probably all lawyers use the English *ha'be-as corpus* or *ha'bèz corpus*; a lawyer who tries to get his client out of jail by asking for a writ of *ha'bd-as corpus* might not be understood. Yet the prevailing practice is probably to use the Roman *d-mè'cils cure-I*, and not the English *d-mi'cils cferi-ē*. One usually hears the mixture, *sine qua non*; one seldom if ever hears the English *One qua non*.

The following list is devoted mostly but not altogether to Latin words. For those words the English pronunciation is always in first place, followed by the Roman or a variation of the Roman whenever it is known to be widely used. The English pronunciation is never incorrect in the view of lexicographers, although local or general usage may often cause some lawyers to prefer a pronunciation other than the English. As the study of Latin in the schools declines still further, the English pronunciation is likely to continue to increase.

If a uniform system is ever achieved, it is much more likely to be the English than the Roman.

GUIDE TO PRONUNCIATION

KEY TO PRONUNCIATION

Make; chaotic; care; cat; art; across; eat; evade; ebb; runner;
ice; hit; oak; Obey; Order; hot; food; foot; Unit; unite; Urge; up;
N (French nasal, as in ensemble, aN saN'b1).

a fortiori	a fOr'shi-O'ri
a mensa et thoro	a men'sd et thO'rel
a priori	a pri-O'ri, pri-O'ri; d' pri-ore
ab inconvenienti	ab in'cOn-ve'n1-en'ti
ab initio	ab
actio in rem	ak'shi-O in rem
ad idem	ad i'dem
affiant	a-firant
agister	d-fisler
aleatory	a'l6-a-tO'ff; -ter-I
aliquot	al'i-kwOt
ambulatory	
amicus curiae	a-mi'kfis kteri-e; a-me'cUs
animo revertendi	rev'er-ten'di
animo testamenti	an'i-mO tesla-men't1
appellant	a-pel'ant
appellate	
appellee	ap'e-le'
assignee	
autre vie, pur	poor Ot're ve
bona fides	bO'nd fi'dez
bona vacantia	bO'na
capias	ka'pi-as; kap'i-as
casus belli	ka'sfis bell*
casus foederis	ka'stis fed'er-is
casus fortuitus	for-tfti-tils
casus omissus	
causa causans	kO'zänz; kou'zd kou'zdnz
causa mortis	kO'za mortis; kou'zd mOr'tis
causa sine qua ncn	kO'zd sine kwa nOn'; kou'zà, sine kwd nOn
caveat emptor	ka've-at emp'tOr; kä've-at
certiorari	sfir'shi-O-rarl;
cestui que trust	set'i ka trust
chose	shOz

GUIDE TO PRONUNCIATION

codicil	keid'i-s11
consortium	kein-sOeshi-um
contra bonos mores	kein'tra 1345'nOs mO'rez
coram nobis	lcO'ram
corpus delicti	
corpus juris	Weptls jo—O'ris
curtesy	
cy-pres	se' pra'
damnum absque injuria	ddm'niim abs'kwe in-jeWri-A
de bene esse	de Wile es'e
de facto	de fdlc'tel
de jure	de jOb're
de novo	de nO'vO"
del credere	del kred'er-e; kre'der-e
delegatus non potest	non pa'tést délie-gal're
delegare	
demesne	de-man', -men'
demur	
demurrer	de-mileêr
descriptio personae	de-skrip'shi-6 per-sO'ne
detinue	
devise	de-viz'
devisee	dév'i-ze'; d0-viz'e'
domicile	
dominium	
donatio mortis causa	do-nd'shi-e5 mortis laza; kou'zd
duces tecum	da'ses tē'ktim
ejusdem generis	jen'er-is
eleemosynary	el'e-e;
en ventre sa mere	aN vaN'te sa' mar'
enfeoff	en-fer ; en-fer
ex gratis	eks gra'shi-a
ex parte	eks pa.ete
ex post facto	Rs post fak'tO
exequatur	ék'se-kwa'tër
expressio unius est	elcs-presh'I-6 ffni-as est eks-klaTi'zhi-ti
exclusio alterius	al-Writ-Us
facias	fä.'shi-as
(scire facias)	sire fa'shi-ds
(fieri facias)	fī'e-ri fa'shi-as
falsa demonstratio	demon-strd'slii-E•
feme covert	fern kilv'ért
feme sole	fern sOl

GUIDE TO PRONUNCIATION

ferae naturae	fe"r"e na-tiVre
force majeure	fors' rrazhile
forma pauperis, in	in fOr'md pope-ris
functus officio	ffingklas
gratis	gratis
gravamen	grd-vYmen
habeas corpus	hă'be-as ki5eptis; ha.'136z
ignorantia juris	Ig'nO-rdn'shi-d jəVris
imperium	
imprimatur	im'pri-mater; -pri-
in esse	in es'è
in extremis	in eks-tre'mis
in fieri	in fire-ri
in futuro	in fil-tferO
in limine	in limq-ne
in loco parentis	in WM pd-ren'tis
in pays	in pa
in pari delicto	in pă'ri de-lic't6;
in pari materia	in pa'ri ma-tê'ff-d; O'A
in personam	in per-sO'ndm
in praesenti	in pre-zèn'ti
in re	in re
in rem	In rem
in toto	in bYtO
in transitu	in trăn'si-til
indebitatus assumpsit	in-debl-tăVis, In-dal-M.1as; A-samp'sit,
indicia	
indictment	In-difment
inter partes	inter par'tez
inter se	in'ter se'
inter vivos	inter
intra vires	in'tra vi'rez
jura in re	jaYrd in re
jus	bus
jus accrescendi	jus akTO-sen'di
jus civile	jus si-viTe
jus gentium	jus jen'shi-um
jus naturale	jus nărA-rd'le
jus tertii	jus
lathes	lăch'ez
lessee	
lex domicilii	Mks 1016ml-sing

GUIDE TO PRONUNCIATION

lex forl	léks	
lex loci	Mks 16'si	
lex situs	Mks siVis	
lien	ré'en; len	
locus standi	stdn'di	
mala fides	maga fi'dez; ma'la	
mandamus		
mare clausum	ma'rê	mare klou'zihn
mare liberum	mare	mare lé'be-ram
mens rea	ménz	
mesne	men; man	
mutatis mutandis	mu-fan'dis	
ne exeat republica	ne ek's6-dt re-ptabli-ka	
nihil est	ni'hil -est	
nisi prius	ni'si	
nolle prosequi	nOl'é prOs'e-kwi; prose-kwi	
non est factum	non est fäletilm	
non obstante veredicto	nOn Ob-stan'tê vèr'e-dik'tO	
non sequitur	nOn sèk'wi-ter	
nudum pactum	paklarn	
nulla bona	ba'na	
nunc pro tune	nfingk' pra ^t tangk'	
obiter dictum	Obri-ter dik'tilm, Ob'i-ter	
obligatio	613-11-0.'shi-O	
obligee	Ob	
obligor	Ob Obqi-gOr	
onus probandi	O'nfis pro-bdn'di	
parens patriae	pa'renz pa'tri-ê, pätrénz	
pari delicto	pa'ri pätri	
pari passu	pari pas'u; pä'r'i pas'156	
particeps criminis	parli-sops krim'i-nis	
pendente lite	pen-den' to li'tê	
persona non grata	per-sO'nd nOn grata	
plene administravit	plO'nê ad-mini-stra'vit	
poenitentiae, locus		
postea	poste-a	
praecipe	prês'i-pe; pre'si-pe	
prima facie	prima fa'shi-ê; fa'sh6	
profit a prendre	profit a praN'de	
pro rata	pro rata; rata	
publici juris	joTh'ris	
qua	kwa; kwa	
quaere	kwê'r6	

GUIDE TO PRONUNCIATION

quantum meruit	kwOn'tilm mèt'66-It; merl l-it	
quantum valebat	kwOn'tilm vá-letat	
quare clausum fregit	kwa're kleezilm fre'fit,	
quasi	kwa'si; kwa'si	
qui facit per alium	kwi fa'sit per d'li-um fd'sit per se	
facit per se		
quia timet	trmét	
quo warranto	kwO w15-ran'tO	
ratio decidendi	ra'shi-O dèt'i-dèn'di	
rebus sic stantibus	rebus sik	
renvoi	ren-voi'; raN'vwd	
res	rez; raz	
res gestae	rez jes'te; raz Ks'ti	
res inter alios acta	rez inter ak'td	
res ipsa loquitur	rez lOk'wi-ter; raz	
res judicata	rez jòVdi-käftd, raz	
restitutio in integrum	res ⁱ ti-ta'shi-O in in'te-gram	
sans recours	saN re-koor'	
scienter	si-e-n'tér	
scire facias	si're fd'shi-as	
secus		
semble	sernt'l	
seriatim	serii-d'tim;	
sine die	dre	
sine qua non	sine qua non; sine qua non	
solatium		
stare decisis	sta're de-srsis, stare	
status quo	status kwe•	
sub judice	sub jaii'di-se	
subpoena	sii-pe'nd	
subpoena duces tecum	sti-pe'nd;	te'kiim
suggestio falsi	farsi	
sui generic	sfei jen'ér-is	
sui juris	sa ^l jo-O'ris	
supersedeas	super-se'de-as	
suppressio yeti	ve'ri	
tabula rasa	rd'sa	
ubi jus, ibi remedium	u'bi jus, i'bI	
ultra vires	ultra vi'rez	
uxor		
venue	ven'a	
vis major	vis major	
volenti non fit injuria	vel-lén'ti am fit in-jdO'fi-a	

CODE OF PROFESSIONAL RESPONSIBILITY *

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CODE OF PROFESSIONAL RESPONSIBILITY

With amendments to February 24, 1970

PREAMBLE AND PRELIMINARY STATEMENT

Preamble ¹

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government.² Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system.³ A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling his professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which he may encounter can be foreseen,⁴ but fundamental ethical principles are always present to guide him. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.⁵

The Code of Professional Responsibility points the way to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of his profession and of the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

Preliminary Statement

In furtherance of the principles stated in the Preamble, the American Bar Association has promulgated this Code of Professional Responsibility, consisting of three separate but interrelated parts: Canons, Ethical Considerations, and Disciplinary Rules.⁶ The Code is designed to be adopted by appropriate agencies both as an inspirational guide to the members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the Disciplinary Rules.

Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to non-lawyers; however, they do define the type of ethical conduct that the public has a right to expect not

¹ The footnotes are intended merely to enable the reader to relate the provisions of this Code to the ABA Canons of Professional Ethics adopted in 1908, as amended, the Opinions of the ABA Committee on Professional Ethics, and a limited number of other sources; they are not intended to be an annotation of the views taken by the ABA Special Committee on Evaluation of Ethical Standards. Footnotes citing ABA Canons refer to the ABA Canons of Professional Ethics, adopted in 1908, as amended.

² Cf. ABA Canons, Preamble.

³ "[T]he lawyer stands today in special need of a clear understanding of his obligations and of the vital connection between those obligations and the role his profession plays in society." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1160 (1958).

⁴ "No general statement of the responsibilities of the legal profession can encompass all the situations in which the lawyer may be placed. Each position held by him makes its own peculiar demands. These demands the lawyer must clarify for himself in the light of the particular role in which he serves." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1218 (1958).

⁵ "The law and its institutions change as social conditions change. They must change if they are to preserve, much less advance, the political and social values from which they derive their purposes and their life. This is true of the most important of legal institutions, the profession of law. The profession, too, must change when conditions change in order to preserve and advance the social values that are its reasons for being." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and the Organized Bar*, 12 U.C.L.A.L. Rev. 438, 440 (1965).

⁶ The Supreme Court of Wisconsin adopted a Code of Judicial Ethics in 1967. "The code is divided into standards and rules, the standards being statements of what the general desirable level of conduct should be, the rules being particular canons, the violation of which shall subject an individual judge to sanctions." In re Promulgation of a Code of Judicial Ethics, 36 Wis.2d 252, 255, 153 N.W.2d 873, 874 (1967).

The portion of the Wisconsin Code of Judicial Ethics entitled "Standards" states that "[t]he following standards set forth the significant qualities of the ideal judge" *Id.*, 36 Wis.2d at 256, 153 N.W.2d at 875. The portion entitled "Rules" states that "[t]he court promulgates the following rules because the requirements of Judi-

only of lawyers but also of their non-professional employees and associates in all matters pertaining to professional employment. A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client.

The Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Considerations and the Disciplinary Rules are derived.

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.⁷

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the frame-

cial conduct embodied therein are of sufficient gravity to warrant sanctions if they are not obeyed” *Id.*, 36 Wis.2d at 259, 153 N.W.2d at 876.

⁷ “Under the conditions of modern practice it is peculiarly necessary that the lawyer should understand, not merely the established standards of professional conduct, but the reasons underlying these standards. Today the lawyer plays a changing and increasingly varied role. In many developing fields the precise contribution of the legal profession is as yet undefined.” *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159 (1958).

“A true sense of professional responsibility must derive from an understanding of the reasons that lie back of specific restraints, such as those embodied in the Canons. The grounds for the lawyer’s peculiar obligations are to be found in the nature of his calling. The lawyer who seeks a clear understanding of his duties will be led to reflect on the special services his profession renders to society and the services it might render if its full capacities were realized. When the lawyer fully understands the nature of his office, he will then discern what restraints are necessary to keep that office wholesome and effective.” *Id.*

⁸ “Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. . . . He is accordingly entitled to procedural due process, which includes fair notice of the charge.” *In re Ruffalo*, 390 U.S. 544, 550, 20 L.Ed.2d 117, 122, 88 S.Ct. 1222, 1226 (1968), *rehearing denied*, 391 U.S. 961, 20 L.Ed.2d 874, 88 S.Ct. 1833 (1968).

“A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. . . . A State can require high standards of qualification . . . but any qualification must have a rational connection with the applicant’s fitness or capacity to practice law.” *Schwartz v. Bd. of Bar Examiners*, 353 U.S. 232, 239, 1 L.Ed.2d 796, 801-02, 77 S.Ct. 752, 756 (1957).

“[A]n accused lawyer may expect that he will not be condemned out of a capricious self-righteousness or denied the essentials of a fair hearing.” *Kingsland v. Dorsey*, 338 U.S. 318, 320, 94 L. Ed. 123, 126, 70 S.Ct. 123, 124-25 (1949).

“The attorney and counsellor being, by the solemn judicial act of the court, clothed with his office, does not hold

work of fair trial,⁸ the Disciplinary Rules should be uniformly applied to all lawyers,⁹ regardless of the nature of their professional activities.¹⁰ The Code makes no attempt to prescribe either disciplinary procedures or penalties¹¹ for violation of a Disciplinary Rule,¹² nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances.¹³ An enforcing agency, in applying the Disciplinary Rules, may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

it as a matter of grace and favor. The right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency.” *Ex parte Garland*, 71 U.S. (4 Wall.) 333, 378-79, 18 L. Ed. 366, 370 (1866).

See generally Comment, *Procedural Due Process and Character Hearings for Bar Applicants*, 15 Stan.L.Rev. 500 (1963).

⁹ “The canons of professional ethics must be enforced by the Courts and must be respected by members of the Bar if we are to maintain public confidence in the integrity and impartiality of the administration of justice.” *In re Meeker*, 76 N.M. 354, 357, 414 P.2d 862, 864 (1966), *appeal dismissed*, 385 U.S. 449 (1967).

¹⁰ *See* ABA Canon 45.

“The Canons of this Association govern all its members, irrespective of the nature of their practice, and the application of the Canons is not affected by statutes or regulations governing certain activities of lawyers which may prescribe less stringent standards.” ABA Comm. on Professional Ethics, *OPINIONS*, No. 203 (1940) [hereinafter each Opinion is cited as “ABA Opinion”].

Cf. ABA Opinion 152 (1936).

¹¹ “There is generally no prescribed discipline for any particular type of improper conduct. The disciplinary measures taken are discretionary with the courts, which may disbar, suspend, or merely censure the attorney as the nature of the offense and past indicia of character may warrant.” Note, 43 Cornell L.Q. 489, 495 (1958).

¹² The Code seeks only to specify conduct for which a lawyer should be disciplined. Recommendations as to the procedures to be used in disciplinary actions and the gravity of disciplinary measures appropriate for violations of the Code are within the jurisdiction of the American Bar Association Special Committee on Evaluation of Disciplinary Enforcement.

¹³ “The severity of the judgment of this court should be in proportion to the gravity of the offenses, the moral turpitude involved, and the extent that the defendant’s acts and conduct affect his professional qualifications to practice law.” *Louisiana State Bar Ass’n v. Steiner*, 204 La. 1073, 1092-93, 16 So.2d 843, 850 (1944) (Higgins, J., concurring in decree).

“Certainly an erring lawyer who has been disciplined and who having paid the penalty has given satisfactory evidence of repentance and has been rehabilitated and restored to his place at the bar by the court which knows him best ought not to have what amounts to an order of permanent disbarment entered against him by a federal court solely on the basis of an earlier criminal record and without regard to his subsequent rehabilitation and present good character We think, therefore, that the district court should reconsider the appellant’s appli-

CODE OF PROFESSIONAL RESPONSIBILITY

CANON 1

A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession

ETHICAL CONSIDERATIONS

EC 1-1 A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

EC 1-2 The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education¹ or moral standards² or of other relevant factors³ but who nevertheless

cation for admission and grant it unless the court finds it to be a fact that the appellant is not presently of good moral or professional character." In re Dreier, 258 F.2d 68, 69-70 (3d Cir. 1958).

1 "[W]e cannot conclude that all educational restrictions [on bar admission] are unlawful. We assume that few would deny that a grammar school education requirement, before taking the bar examination, was reasonable. Or that an applicant had to be able to read or write. Once we conclude that *some* restriction is proper, then it becomes a matter of degree—the problem of drawing the line.

"We conclude the fundamental question here is whether Rule IV, Section 6 of the Rules Pertaining to Admission of Applicants to the State Bar of Arizona is 'arbitrary, capricious and unreasonable.' We conclude an educational requirement of graduation from an accredited law school is not." Hackin v. Lockwood, 361 F.2d 499, 503-04 (9th Cir. 1966), *cert. denied*, 385 U.S. 960, 17 L.Ed.2d 305, 87 S.Ct. 396 (1966).

2 "Every state in the United States, as a prerequisite for admission to the practice of law, requires that applicants possess 'good moral character.' Although the requirement is of judicial origin, it is now embodied in legislation in most states." Comment, *Procedural Due Process and Character Hearings for Bar Applicants*, 15 Stan.L.Rev. 500 (1963).

"Good character in the members of the bar is essential to the preservation of the integrity of the courts. The duty and power of the court to guard its portals against intrusion by men and women who are mentally and morally dishonest, unfit because of bad character, evidenced by their course of conduct, to participate in the administrative law, would seem to be unquestioned in the matter of preservation of judicial dignity and integrity." In re Monaghan, 126 Vt. 53, 222 A.2d 665, 670 (1966).

"Fundamentally, the question involved in both situations [i.e. admission and disciplinary proceedings] is the same—is the applicant for admission or the attorney sought to be disciplined a fit and proper person to be permitted to practice law, and that usually turns upon whether he has committed or is likely to continue to commit acts of moral turpitude. At the time of oral argument the attorney for respondent frankly conceded that the test for admission and for discipline is and should be the same. We agree with this concession." Hallinan v. Comm. of Bar Examiners, 65 Cal.2d 447, 453, 421 P.2d 76, 81, 55 Cal. Rptr. 228, 233 (1966).

³ "Proceedings to gain admission to the bar are for the purpose of protecting the public and the courts from the ministrations of persons unfit to practice the profession. Attorneys are officers of the court appointed to assist the

seek to practice law. To assure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar.⁴ In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of pre-admission and post-admission legal education.

EC 1-3 Before recommending an applicant for admission, a lawyer should satisfy himself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, he should report to proper officials all unfavorable information he possesses relating to the character or other qualifications of an applicant.⁵

EC 1-4 The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules.⁶ A lawyer should, upon request, serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules."

EC 1-5 A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all

court in the administration of justice. Into their hands are committed the property, the liberty and sometimes the lives of their clients. This commitment demands a high degree of intelligence, knowledge of the law, respect for its function in society, sound and faithful judgment and, above all else, integrity of character in private and professional conduct." In re Monaghan, 126 Vt. 53, 222 A.2d 665, 676 (1966) (Holden, C. J., dissenting).

⁴ "A bar composed of lawyers of good moral character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and act as members of an Independent Bar." *Konigsberg v. State Bar*, 353 U.S. 252, 273, 1 L.Ed.2d 810, 825, 77 S.Ct. 722, 733 (1957).

⁵ See ABA Canon 29.

⁶ ABA Canon 28 designates certain conduct as unprofessional and then states that : "A duty to the public and to the profession devolves upon every member of the Bar having knowledge of such practices upon the part of any practitioner immediately to inform thereof, to the end that the offender may be disbarred." ABA Canon 29 states a broader admonition : "Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession."

⁷ "It is the obligation of the organized Bar and the individual lawyer to give unstinted cooperation and assistance to the highest court of the state in discharging its function and duty with respect to discipline and in purging the profession of the unworthy." *Report of the Special Committee on Disciplinary Procedures*, 80 A.B.A.Rep. 463, 470 (1955).

illegal and morally reprehensible conduct.⁸ Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

EC 1-6 An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice.⁹ In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice.

DISCIPLINARY RULES

DR 1-101 Maintaining Integrity and Competence of the Legal Profession.

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.¹⁰

⁸ Cf. ABA Canon 32.

⁹ "We decline, on the present record, to disbar Mr. Sherman or to reprimand him—not because we condone his actions, but because, as heretofore indicated, we are concerned with whether he is mentally responsible for what he has done.

"The logic of the situation would seem to dictate the conclusion that, if he was mentally responsible for the conduct we have outlined, he should be disbarred; and, if he was not mentally responsible, he should not be permitted to practice law.

"However, the flaw in the logic is that he may have been mentally irresponsible [at the time of his offensive conduct] . . . and, yet, have sufficiently improved in the almost two and one-half years intervening to be able to capably and competently represent his clients. .

"We would make clear that we are satisfied that a case has been made against Mr. Sherman, warranting a refusal to permit him to further practice law in this state unless he can establish his mental irresponsibility at the time of the offenses charged. The burden of proof is upon him.

"If he establishes such mental irresponsibility, the burden is then upon him to establish his present capability to practice law." In re Sherman, 58 Wash.2d 1, 6-7, 354 P.2d 888, 890 (1960), cert. denied, 371 U.S. 951, 9 L.Ed.2d 499, 83 S.Ct. 506 (1963).

¹⁰ "This Court has the inherent power to revoke a license to practice law in this State, where such license was issued by this Court, and its issuance was procured by the fraudulent concealment, or by the false and fraudulent representation by the applicant of a fact which was manifestly material to the issuance of the license." North Carolina ex rel. Attorney General v. Gorson, 209 N.C. 320, 326, 183 S.E. 392, 395 (1936), cert. denied, 298 U.S. 662, 80 L.Ed. 1387, 56 S.Ct. 752 (1936).

See also Application of Patterson, 318 P.2d 907, 913 (Or. 1957), cert. denied, 356 U.S. 947, 2 L.Ed.2d 822, 78 S.Ct. 795 (1958).

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute."

DR 1-102 Misconduct.

(A) A lawyer shall not:

- (1) Violate a Disciplinary Rule.
- (2) Circumvent a Disciplinary Rule through actions of another.¹²
- (3) Engage in illegal conduct involving moral turpitude.¹³

¹¹ See ABA Canon 29.

¹² In *ABA Opinion 95* (1933), which held that a municipal attorney could not permit police officers to interview persons with claims against the municipality when the attorney knew the claimants to be represented by counsel, the Committee on Professional Ethics said :

"The law officer is, of course, responsible for the acts of those in his department who are under his supervision and control." *Opinion 85. In re Robinson*, 136 N.Y.S. 548 (affirmed 209 N.Y. 354-1912) held that it was a matter of disbarment for an attorney to adopt a general course of approving the unethical conduct of employees of his client, even though he did not actively participate therein,

" . . . 'The attorney should not advise or sanction acts by his client which he himself should not do.' *Opinion 75.*"

¹³ "The most obvious non-professional ground for disbarment is conviction for a felony. Most states make conviction for a felony grounds for automatic disbarment. Some of these states, including New York, make disbarment mandatory upon conviction for any felony, while others require disbarment only for those felonies which involve moral turpitude. There are strong arguments that some felonies, such as involuntary manslaughter, reflect neither on an attorney's fitness, trustworthiness, nor competence and, therefore, should not be grounds for disbarment, but most states tend to disregard these arguments and, following the common law rule, make disbarment mandatory on conviction for any felony." Note, 43 Cornell L.Q. 489, 490 (1958).

"Some states treat conviction for misdemeanors as grounds for automatic disbarment However, the vast majority, accepting the common law rule, require that the misdemeanor involve moral turpitude. While the definition of moral turpitude may prove difficult, it seems only proper that those minor offenses which do not affect the attorney's fitness to continue in the profession should not be grounds for disbarment. A good example is an assault and battery conviction which would not involve moral turpitude unless done with malice and deliberation." *Id.* at 491.

"The term 'moral turpitude' has been used in the law for centuries. It has been the subject of many decisions by the courts but has never been clearly defined because of the nature of the term. Perhaps the best general definition of the term 'moral turpitude' is that it imports an act of baseness, vileness or depravity in the duties which one person owes to another or to society in general, which is contrary to the usual, accepted and customary rule of right and duty which a person should follow. 58 C.J.S. at page 1201. Although offenses against revenue laws have been held to be crimes of moral turpitude, it has also been held that the attempt to evade the payment of taxes due to the government or any subdivision thereof, while wrong and unlawful, does not involve moral turpitude. 58 C.J.S. at page 1205." Comm. on Legal Ethics v. Scheer, 149 W.Va. 721, 726-27, 143 S.E.2d 141, 145 (1965).

CODE OF PROFESSIONAL RESPONSIBILITY

- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (5) Engage in conduct that is prejudicial to the administration of justice.
- (6) Engage in any other conduct that adversely reflects on his fitness to practice law.¹⁴

DR 1-103 Disclosure of Information to Authorities.

- (A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.¹⁵
- (B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.¹⁶

CANON 2

A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available

ETHICAL CONSIDERATIONS

EC 2-1 The need of members of the public for legal services ¹ is met only if they recognize their

"The right and power to discipline an attorney, as one of its officers, is inherent in the court. . . . This power is not limited to those instances of misconduct wherein he has been employed, or has acted, in a professional capacity; but, on the contrary, this power may be exercised where his misconduct outside the scope of his professional relations shows him to be an unfit person to practice law." In re Wilson, 391 S.W.2d 914, 917-18 (Mo. 1965).

¹⁴ "It is a fair characterization of the lawyer's responsibility in our society that he stands 'as a shield,' to quote Devlin, J., in defense of right and to ward off wrong. From a profession charged with these responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as 'moral character' ". Schwab v. Bd. of Bar Examiners, 353 U.S. 232, 247 L.Ed.2d 796, 806, 77 S.Ct. 752, 761 (1957) (Frankfurter, J., concurring).

"Particularly applicable here is Rule 4.47 providing that 'A lawyer should always maintain his integrity; and shall not willfully commit any act against the interest of the Public; nor shall he violate his duty to the courts or his clients; nor shall he, by any misconduct, commit any offense against the laws of Missouri or the United States of America, which amounts to a crime involving acts done by him contrary to justice, honesty, modesty or good morals; nor shall he be guilty of any other misconduct whereby, for the protection of the public and those charged with the administration of justice, he should no longer be entrusted with the duties and responsibilities belonging to the office of an attorney.' " In re Wilson, 391 S.W.2d 914, 917 (Mo. 1965).

¹⁵ See ABA Canon 29; cf. ABA Canon 28.

¹⁶ Cf. ABA Canons 28 and 29.

¹ "Men have need for more than a system of law; they have need for a system of law which functions, and that

legal problems, appreciate the importance of seeking assistance,² and are able to obtain the services of acceptable legal counsel.³ Hence, important functions of the legal profession are to educate laymen to recognize their legal problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.⁴

Recognition of Legal Problems

EC 2-2 The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not

means they have need for lawyers." Cheatham, *The Lawyer's Role and Surroundings*, 25 Rocky Mt.L.Rev. 405 (1953).

² "Law is not self-applying; men must apply and utilize it in concrete cases. But the ordinary man is incapable. He cannot know the principles of law or the rules guiding the machinery of law administration; he does not know how to formulate his desires with precision and to put them into writing; he is ineffective in the presentation of his claims." Cheatham, *The Lawyer's Role and Surroundings*, 25 Rocky Mt.L.Rev. 405 (1953).

³ "This need [to provide legal services] was recognized by . . . Mr. [Lewis F.] Powell [Jr., President, American Bar Association, 1963-64], who said: 'Looking at contemporary America realistically, we must admit that despite all our efforts to date (and these have not been insignificant), far too many persons are not able to obtain equal justice under law. This usually results because their poverty or their ignorance has prevented them from obtaining legal counsel.' " Address by E. Clinton Bamberger, Association of American Law Schools 1965 Annual Meeting, Dec. 28, 1965, in Proceedings, Part II, 1965, 61, 63-64 (1965).

"A wide gap separates the need for legal services and its satisfaction, as numerous studies reveal. Looked at from the side of the layman, one reason for the gap is poverty and the consequent inability to pay legal fees. Another set of reasons is ignorance of the need for and the value of legal services, and ignorance of *where* to find a dependable lawyer. There is fear of the mysterious processes and delays of the law, and there is fear of overreaching and overcharging by lawyers, a fear stimulated by the occasional exposure of shysters." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar*, 12 U.C.L.A.L.Rev. 438 (1965).

⁴ "It is not only the right but the duty of the profession as a whole to utilize such methods as may be developed to bring the services of its members to those who need them, so long as this can be done ethically and with dignity." *ABA Opinion* 320 (1968).

"[T]here is a responsibility on the bar to make legal services available to those who need them. The maxim, 'privilege brings responsibilities,' can be expanded to read, exclusive privilege to render public service brings responsibility to assure that the service is available to those in need of it." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar*, 12 U.C.L.A.L.Rev. 438, 443 (1965).

"The obligation to provide legal services for those actually caught up in litigation carries with it the obligation to make preventive legal advice accessible to all. It is among those unaccustomed to business affairs and fearful of the ways of the law that such advice is often most needed. If it is not received in time, the most valiant and skillful representation in court may come too late." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1216 (1958).

timely noticed.⁵ Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers.⁶ Examples of permissible activities include preparation of institutional advertisements⁷ and professional articles for lay publications⁸ and participation in

⁵ "Over a period of years institutional advertising of programs for the benefit of the public have been approved by this and other Ethics Committees as well as by the courts.

"To the same effect are opinions of this Committee : *Opinion 179* dealing with radio programs presenting a situation in which legal advice is suggested in connection with a drafting of a will; *Opinions 205* and *227* permitting institutional advertising of lawyer referral plans; *Opinion 191* holding that advertising by lawyer members of a non-bar associated sponsored plan violated Canon 27. The Illinois Ethics Committee, in its *Opinion 201*, sustained bar association institutional advertising of a check-up plan

"This Committee has passed squarely on the question of the propriety of institutional advertising in connection with a legal check-up plan. Informal Decision C-171 quotes with express approval the Michigan Ethics Committee as follows :

As a public service, the bar has in the past addressed the public as to the importance of making wills, consulting counsel in connection with real estate transactions, etc. In the same way, the bar, as such, may recommend this program, provided always that it does it in such a way that there is not suggestion of solicitation on behalf of any individual lawyer."

ABA Opinion 307 (1962).

⁶ "We recognize a distinction between teaching the lay public the importance of securing legal services preventive in character and the solicitation of professional employment by or for a particular lawyer. The former tends to promote the public interest and enhance the public estimation of the profession. The latter is calculated to injure the public and degrade the profession.

"Advertising which is calculated to teach the layman the benefits and advantages of preventive legal services will benefit the lay public and enable the lawyer to render a more desirable and beneficial professional service. . . ." *ABA Opinion 179* (1938).

⁷ "[A bar association] may engage in a dignified institutional educational campaign so long as it does not involve the identification of a particular lawyer with the check-up program. Such educational material may point out the value of the annual check-up and may be printed in newspapers, magazines, pamphlets, and brochures, or produced by means of films, radio, television or other media. The printed materials may be distributed in a dignified way through the offices of persons having close dealings with lawyers as, for example, banks, real estate agents, insurance agents and others. They may be available in lawyers' offices. The bar association may prepare and distribute to lawyers materials and forms for use in the annual legal check-up." *ABA Opinion 307* (1962).

⁸ "A lawyer may with propriety write articles for publications in which he gives information upon the law . . ." *ABA Canon 40*.

"The newsletters, by means of which respondents are alleged to have advertised their wares, were sent to the officers of union clients represented by their firm.

seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity.⁹

EC 2-3 Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances.¹⁰ The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems.¹¹ The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit,¹² secure personal publicity, or cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact

They contain no reference to any cases handled by the respondents. Their contents are confined to rulings of boards, commissions and courts on problems of interest to labor union, together with proposed and completed legislation important to the Brotherhood, and other items which might affect unions and their members. The respondents cite *Opinion 213* of the Committee on Professional Ethics and Grievances as permitting such practice. After studying this opinion, we agree that sending of newsletters of the above type to regular clients does not offend Canon 27." In re Ratner, 194 Kan. 362, 371, 399 P.2d 865, 872-73 (1965).

Cf. ABA Opinion 92 (1933).

⁹ *Cf. ABA Opinions 307* (1962) and *179* (1938).

"There is no ethical or other valid reason why an attorney may not write articles on legal subjects for magazines and newspapers. The fact that the publication is a trade journal or magazine, makes no difference as to the ethical question involved. On the other hand, it would be unethical and contrary to the precepts of the Canons for the attorney to allow his name to be carried in the magazine or other publication . . . as a free legal adviser for the subscribers to the publication. Such would be contrary to *Canons 27* and *35* and *Opinions* heretofore announced by the Committee on Professional Ethics and Grievances. (See *Opinions 31, 41, 42, and 56*)." *ABA Opinion 162* (1936).

¹⁰ See *ABA Canon 28*.

¹¹ This question can assume constitutional dimensions : "We meet at the outset the contention that 'solicitation' is wholly outside the area of freedoms protected by the First Amendment. To this contention there are two answers. The first is that a State cannot foreclose the exercise of constitutional rights by mere labels. The second is that abstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion. .

"However valid may be Virginia's interest in regulating the traditionally illegal practice of barratry, maintenance and champerty, that interest does not justify the prohibition of the NAACP activities disclosed by this record. Malicious intent was of the essence of the common-law offenses of fomenting or stirring up litigation. And whatever may be or may have been true of suits against governments in other countries, the exercise in our own, as in this case of First Amendment rights to enforce Constitutional rights through litigation, as a matter of law, cannot be deemed malicious." *NAACP v. Button*, 371 U.S. 415, 429, 439-40, 9 L.Ed.2d 405, 415-16, 422, 83 S.Ct. 328, 336, 341 (1963).

¹² See *ABA Canon 27*.

a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.

EC 2-4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result.¹³ A lawyer who volunteers advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.¹⁴

EC 2-5 A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems,¹⁵ since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laymen should caution them not to attempt to solve individual problems upon the basis of the information contained therein.¹⁰

¹³ "The Canons of Professional Ethics of the American Bar Association and the decisions of the courts quite generally prohibit the direct solicitation of business for gain by an attorney either through advertisement or personal communication; and also condemn the procuring of business by indirection through touters of any kind. It is disreputable for an attorney to breed litigation by seeking out those who have claims for personal injuries or other grounds of action in order to secure them as clients, or to employ agents or runners, or to reward those who bring or influence the bringing of business to his office. . . . Moreover, it tends quite easily to the institution of baseless litigation and the manufacture of perjured testimony. From early times, this danger has been recognized in the law by the condemnation of the crime of common barratry, or the stirring up of suits or quarrels between individuals at law or otherwise." In re Ades, 6 F.Supp. 467, 474-75 (D. Mary. 1934).

¹⁴ "Rule 2.

"Sa.

"[A] member of the State Bar shall not solicit professional employment by

"(1) Volunteering counsel or advice except where ties of blood relationship or trust make it appropriate." Cal. Business and Professions Code § 6076 (West 1962).

¹⁵ "Rule 18 . . . A member of the State Bar shall not advise inquirers or render opinions to them through or in connection with a newspaper, radio or other publicity medium of any kind in respect to their specific legal problems, whether or not such attorney shall be compensated for his services." Cal. Business and Professions Code § 6076 (West 1962).

¹⁶ "In any case where a member might well apply the advice given in the opinion to his individual affairs, the lawyer rendering the opinion [concerning problems common to members of an association and distributed to the members through a periodic *bulletin*] should specifically state that this opinion should not be relied on by any

Selection of a Lawyer: Generally

EC 2-6 Formerly a potential client usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom he had confidence. This traditional selection process worked well because it was initiated by the client and the choice was an informed one.

EC 2-7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen to make intelligent choices.¹⁷ The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers.¹⁸

EC 2-8 Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties—relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment.¹⁰ A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations.²⁰

Selection of a Lawyer: Professional Notices and Listings

EC 2-9 The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory²¹ brashness in seeking business and

member as a basis for handling his individual affairs, but that in every case he should consult his counsel. In the publication of the opinion the association should make a similar statement." *ABA Opinion* 273 (1946).

¹⁷ "A group of recent interrelated changes bears directly on the availability of legal services. . . . [One] change is the constantly accelerating urbanization of the country and the decline of personal and neighborhood knowledge of whom to retain as a professional man." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar*, 12 U.C.L.A.L. Rev. 438, 440 (1965).

¹⁸ Cf. Cheatham, *A Lawyer When Needed: Legal Services for the Middle Classes*, 63 Colum.L.Rev. 973, 974 (1963).

¹⁹ See ABA Canon 27.

²⁰ See ABA Canon 28.

²¹ " 'Self-laudation' is a very flexible concept; Canon 27 does not define it, so what course of conduct would be said to constitute it under a given state of facts would no doubt vary as the opinions of men vary. As a famous English judge said, it would vary as the length of the chancellor's foot. It must be in words and tone *that* will 'offend the traditions and lower the tone of our profession.' When it

thus could mislead the layman.²² Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers.²³ Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions.²⁴ History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.

does this, it is 'reprehensible.' This seems to be the test by which 'self-laudation' is measured." *State v. Nichols*, 151 So.2d 257, 259 (Fla. 1963).

²² "Were it not for the prohibitions of . . . [Canon 27] lawyers could, and no doubt would be forced to, engage competitively in advertising of all kinds in which each would seek to explain to the public why he could serve better and accomplish more than his brothers at the Bar.

"Susceptible as we are to advertising the public would then be encouraged to choose an attorney on the basis of which had the better, more attractive advertising program rather than on his reputation for professional ability.

"This would certainly maim, if not destroy, the dignity and professional status of the Bar of this State." *State v. Nichols*, 151 So.2d 257, 268 (Fla. 1963) (O'Connell, J., concurring in part and dissenting in part).

²³ *Cf.* ABA Canon 8.

²⁴ "The prohibition of advertising by lawyers deserves some examination. All agree that advertising by an individual lawyer, if permitted, will detract from the dignity of the profession, but the matter goes deeper than this. Perhaps the most understandable and acceptable additional reasons we have found are stated by one commentator as follows :

"1. That advertisements, unless kept within narrow limits, like any other form of solicitation, tend to stir up litigation, and such tendency is against the public interest.

"2. That if there were no restrictions on advertisements, the least capable and least honorable lawyers would be apt to publish the most extravagant and alluring material about themselves, and that the harm which would result would, in large measure, fall on the ignorant and on those least able to afford it.

"3. That the temptation would be strong to hold out as inducements for employment, assurances of success or of satisfaction to the client, which assurances could not be realized, and that the giving of such assurances would materially increase the temptation to use ill means to secure the end desired by the client.

"In other words, the reasons for the rule, and for the conclusion that it is desirable to prohibit advertising entirely, or to limit it within such narrow bounds that it will not admit of abuse, are based on the possibility and probability that this means of publicity, if permitted, will be abused.' Harrison Hewitt in a comment at 15 A.B.A.J. 116 (1929) reproduced in Cheatham, *Cases and Materials on the Legal Profession* (2d Ed., 1955), p. 525.

"Of course, competition is at the root of the abuses in advertising. If the individual lawyer were permitted to compete with his fellows in publicity through advertising, we have no doubt that Mr. Hewitt's three points, quoted above, would accurately forecast the result." *Jacksonville Bar Ass'n v. Wilson*, 102 So.2d 292, 294-95 (Fla. 1958).

EC 2-10 Methods of advertising that are subject to the objections stated above²⁵ should be and are prohibited.²⁶ However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory,²⁷ in the office building directory, and on his letterhead and professional card.²⁸ But at all times the permitted notices should be dignified and accurate.

EC 2-11 The name under which a lawyer conducts his practice may be a factor in the selection process.²⁹ The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder.³⁰ Accordingly, a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby.³¹ However, the name of a partner

²⁵ See ABA Canon 27.

²⁶ *Cf. ABA Opinions* 309 (1963) and 284 (1951).

²⁷ *Cf. ABA Opinions* 313 (1964) and 284 (1951).

²⁸ See ABA Canon 27.

²⁹ *Cf. ABA Opinion* 303 (1961).

³⁰ See ABA Canon 33.

³¹ *Id.*

"The continued use of a firm name by one or more surviving partners after the death of a member of the firm whose name is in the firm title is expressly permitted by the Canons of Ethics. The reason for this is that all of the partners have by their joint and several efforts over a period of years contributed to the good will attached to the firm name. In the case of a firm having widespread connections, this good will is disturbed by a change in firm name every time a name partner dies, and that reflects a loss in some degree of the good will to the building up of which the surviving partners have contributed their time, skill and labor through a period of years. To avoid this loss the firm name is continued, and to meet the requirements of the Canon the individuals constituting the firm from time to time are listed." *ABA Opinion* 267 (1945).

"Accepted local custom in New York recognizes that the name of a law firm does not necessarily identify the individual members of the firm, and hence the continued use of a firm name after the death of one or more partners is not a deception and is permissible. . . . The continued use of a deceased partner's name in the firm title is not affected by the fact that another partner withdraws from the firm and his name is dropped, or the name of the new partner is added to the firm name." *Opinion* No. 45, Committee on Professional Ethics, New York *State Bar Assn*, 39 N. Y. St. B. J. 455 (1967).

Cf. ABA Opinion 258 (1943).

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who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2-12 A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name,³² and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

EC 2-13 In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status.³³ He should not hold himself out as being a partner or associate of a law firm if he is not one in fact,³⁴ and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer.³⁵

EC 2-14 In some instances a lawyer confines his practice to a particular field of law.³⁶ In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist³⁷ or as having special training or ability, other than in the historically excepted fields of admiralty, trademark, and patent law.³⁸

³² Cf. ABA Canon 33 and ABA *Opinion* 315 (1965).

³³ Cf. ABA *Opinions* 283 (1950) and 81 (1932).

³⁴ See ABA *Opinion* 316 (1967).

³⁵ "The word 'associates' has a variety of meanings. Principally through custom the word when used on the letterheads of law firms has come to be regarded as describing those who are employees of the firm. Because the word has acquired this special significance in connection with the practice of the law the use of the word to describe lawyer relationships other than employer-employee is likely to be misleading." In re Sussman and Tanner, 241 Ore. 246, 248, 405 P.2d 355, 356 (1965).

According to ABA *Opinion* 310 (1963), use of the term "associates" would be misleading in two situations ; (1) where two lawyers are partners and they share both responsibility and liability for the partnership ; and (2) where two lawyers practice separately, sharing no responsibility or liability, and only share a suite of offices and some costs.

³⁶ "For a long time, many lawyers have, of necessity, limited their practice to certain branches of law. The increasing complexity of the law and the demand of the public for more expertness on the part of the lawyer has, in the past few years—particularly in the last ten years—brought about specialization on an increasing scale." *Report of the Special Committee on Specialization and Specialized Legal Services*, 79 A.B.A.Rep. 582, 584 (1954).

³⁷ "In varying degrees specialization has become the *modus operandi* throughout the legal profession. . . . American society is specialization conscious. The present Canons, however, do not allow lawyers to make known to the lay public the fact that they engage in the practice of a specialty. . . ." Tucker, *The Large Law Firm: Considerations Concerning the Modernization of the Canons of Professional Ethics*, 1965 Wis.L.Rev. 344, 348' 49 (1965).

³⁸ See ABA Canon 27.

EC 2-15 The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

Financial Ability to Employ Counsel: Generally

EC 2-16 The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees³⁹ should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services,⁴⁰ and lawyers should support and participate in ethical activities designed to achieve that objective.⁴¹

Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees

EC 2-17 The determination of a proper fee requires consideration of the interests of both client and lawyers.⁴² A lawyer should not charge more than a reasonable fee,⁴³ for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.⁴⁴

EC 2-18 The determination of the reasonableness of a fee requires consideration of all relevant circumstances,⁴⁵ including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, and reputation, the

³⁹ See ABA Canon 12.

⁴⁰ Cf. ABA Canon 12.

⁴¹ "If there is any fundamental proposition of government on which all would agree, it is that one of the highest goals of society must be to achieve and maintain equality before the law. Yet this ideal remains an empty form of words unless the legal profession is ready to provide adequate representation for those unable to pay the usual fees." *Professional Representation: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1216 (1958).

⁴² See ABA Canon 12.

⁴³ Cf. ABA Canon 12.

⁴⁴ "When members of the Bar are induced to render legal services for inadequate compensation, as a consequence the quality of the service rendered may be lowered, the welfare of the profession injured and the administration of justice made less efficient." ABA *Opinion* 302 (1961). Cf. ABA *Opinion* 307 (1962).

⁴⁵ See ABA Canon 12.

nature of the employment, the responsibility involved, and the results obtained. Suggested fee schedules and economic reports of state and local bar associations provide some guidance on the subject of reasonable fees.⁴⁶ It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of any fee for services rendered a brother lawyer or a member of his immediate family.

EC 2-19 As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

EC 2-20 Contingent fee arrangements⁴⁷ in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his claim, and (2) a successful prosecution of the claim produces a *res* out of which the fee can be paid.⁴⁸ Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement. Because of the

⁴⁶ *Id.*

"[U]nder . . . [Canon 12], this Committee has consistently held that minimum fee schedules can only be suggested or recommended and cannot be made obligatory . . ." *ABA Opinion* 302 (1961).

"[A] compulsory minimum fee schedule is contrary to Canon 12 and repeated pronouncements of this committee." *ABA Opinion* 190 (1939).

Cf. ABA Opinions 171 (1937) and 28 (1930).

⁴⁷ See ABA Canon 13; see also Mackinnon, *Contingent Fees for Legal Services* (1964) (A report of the American Bar Foundation).

"A contract for a reasonable contingent fee where sanctioned by law is permitted by Canon 13, but the client must remain responsible to the lawyer for expenses advanced by the latter. There is to be no barter of the privilege of prosecuting a cause for gain in exchange for the promise of the attorney to prosecute at his own expense." (Cardozo, C. J. in *Matter of Gilman*, 251 N.Y. 265, 270-271.) *ABA Opinion* 246 (1942).

⁴⁸ See Comment, *Providing Legal Services for the Middle Class in Civil Matters: The Problem, the Duty and a Solution*, 26 U.Pitt.L.Rev. 811, 829 (1965).

human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the same considerations as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a *res* with which to pay the fee.

EC 2-21 A lawyer should not accept compensation or any thing of value incident to his employment or services from one other than his client without the knowledge and consent of his client after full disclosure.⁴⁹

EC 2-22 Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers⁵⁰ properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer⁵¹ and if the total fee is reasonable.

EC 2-23 A lawyer should be zealous in his efforts to avoid controversies over fees with clients⁵² and should attempt to resolve amicably any differences on the subject.⁵³ He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.⁵⁴

⁴⁹ See ABA Canon 38.

"Of course, as . . . [Informal Opinion 679] points out, there must be full disclosure of the arrangement [that an entity other than the client pays the attorney's fee] by the attorney to the client . . ." *ABA Opinion* 320 (1968).

⁵⁰ "Only lawyers may share in . . . a division of fees, but . . . it is not necessary that both lawyers be admitted to practice in the same state, so long as the division was based on the division of services or responsibility." *ABA Opinion* 316 (1967).

⁵¹ See ABA Canon 34.

"We adhere to our previous rulings that where a lawyer merely brings about the employment of another lawyer but renders no service and assumes no responsibility in the matter, a division of the latter's fee is improper. (*Opinions* 18 and 153).

"It is assumed that the bar, generally, understands what acts or conduct of a lawyer may constitute 'services' to a client within the intentment of Canon 12. Such acts or conduct invariably, if not always, involve 'responsibility' on the part of the lawyer, whether the word 'responsibility' be construed to denote the possible resultant legal or moral liability on the part of the lawyer to the client or to others, or the onus of deciding what should or should not be done in behalf of the client. The word 'services' in Canon 12 must be construed in this broad sense and may apply to the selection and retainer of associate counsel as well as to other acts or conduct in the client's behalf." *ABA Opinion* 204 (1940).

⁵² See ABA Canon 14.

⁵³ *Cf. ABA Opinion* 320 (1968).

⁵⁴ See ABA Canon 14.

"Ours is a learned profession, not a mere money-getting trade. . . . Suits to collect fees should be avoided. Only where the circumstances imperatively require, should resort be had to a suit to compel payment. And where a lawyer does resort to a suit to enforce payment of fees

Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees

EC 2-24 A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.⁵⁵

EC 2-25 Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need.⁵⁶ Thus it has been necessary for the

which involves a disclosure, he should carefully avoid any disclosure not clearly necessary to obtaining or defending his rights." *ABA Opinion* 250 (1943).

But cf. ABA Opinion 320 (1968).

⁵⁵ "As a society increases in size, sophistication and technology, the body of laws which is required to control that society also increases in size, scope and complexity. With this growth, the law directly affects more and more facets of individual behavior, creating an expanding need for legal services on the part of the individual members of the society. . . . As legal guidance in social and commercial behavior increasingly becomes necessary, there will come a concurrent demand from the layman that such guidance be made available to him. This demand will not come from those who are able to employ the best of legal talent, nor from those who can obtain legal assistance at little or no cost. It will come from the large 'forgotten middle income class,' who can neither afford to pay proportionately large fees nor qualify for ultra-low-cost services. The legal profession must recognize this inevitable demand and consider methods whereby it can be satisfied. If the profession fails to provide such methods, the laity will." Comment, *Providing Legal Services for the Middle Class in Civil Matters: The Problem, the Duty and a Solution*, 26 U.Pitt.L.Rev. 811, 811-12 (1965).

"The issue is not whether we shall do something or do nothing. The demand for ordinary everyday legal justice is so great and the moral nature of the demand is so strong that the issue has become whether we devise, maintain, and support suitable agencies able to satisfy the demand or, by our own default, force the government to take over the job, supplant us, and ultimately dominate us." Smith, *Legal Service Offices for Persons of Moderate Means*, 1949 Wis.L.Rev. 416, 418 (1949).

⁵⁶ "Lawyers have peculiar responsibilities for the just administration of the law, and these responsibilities include providing advice and representation for needy persons. To a degree not always appreciated by the public at large, the bar has performed these obligations with zeal and devotion. The Committee is persuaded, however, that a system of justice that attempts, in mid-twentieth century America, to meet the needs of the financially incapacitated accused

profession to institute additional programs to provide legal services.⁵⁷ Accordingly, legal aid offices,⁵⁸ lawyer referral services,⁵⁹ and other related programs have been developed, and others will be developed, by the profession.⁶⁰ Every lawyer should support all proper efforts to meet this need for legal services.⁶¹

through primary or exclusive reliance on the uncompensated services of counsel will prove unsuccessful and inadequate. . . . A system of adequate representation, therefore, should be structured and financed in a manner reflecting its public importance. . . . We believe that fees for private appointed counsel should be set by the court within maximum limits established by the statute." Report of the Att'y Gen's Comm. on Poverty and the Administration of Criminal Justice 41-43 (1963).

⁵⁷ "At present this representation [of those unable to pay usual fees] is being supplied in some measure through the spontaneous generosity of individual lawyers, through legal aid societies, and—increasingly—through the organized efforts of the Bar. If those who stand in need of this service know of its availability and their need is in fact adequately met, the precise mechanism by which this service is provided becomes of secondary importance. It is of great importance, however, that both the impulse to render this service, and the plan for making that impulse effective, should arise within the legal profession itself." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1216 (1958).

⁵⁸ "Free legal clinics carried on by the organized bar are not ethically objectionable. On the contrary, they serve a very worthwhile purpose and should be encouraged." *ABA Opinion* 191 (1939).

⁵⁹ "We are of the opinion that the [lawyer referral] plan here presented does not fall within the inhibition of the Canon. No solicitation for a particular lawyer is involved. The dominant purpose of the plan is to provide as an obligation of the profession competent legal services to persons in low-income groups at fees within their ability to pay. The plan is to be supervised and directed by the local Bar Association. There is to be no advertisement of the names of the lawyers constituting the panel. The general method and purpose of the plan only is to be advertised. Persons seeking the legal services will be directed to members of the panel by the Bar Association. Aside from the filing of the panel with the Bar Association, there is to be no advertisement of the names of the lawyers constituting the panel. If these limitations are observed, we think there is no solicitation of business by or for particular lawyers and no violation of the inhibition of Canon 27." *ABA Opinion* 205 (1940).

⁶⁰ "Whereas the American Bar Association believes that it is a fundamental duty of the bar to see to it that all persons requiring legal advice be able to attain it, irrespective of their economic status . . .

"Resolved, that the Association approves and sponsors the setting up by state and local bar associations of lawyer referral plans and low-cost legal service methods for the purpose of dealing with cases of persons who might not otherwise have the benefit of legal advice . . ." *Proceedings of the House of Delegates of the American Bar Association*, Oct. 30, 1946, 71 A.B.A.Rep. 103, 109-10 (1946).

⁶¹ "The defense of indigent citizens, without compensation, is carried on throughout the country by lawyers representing legal aid societies, not only with the approval, but with the commendation of those acquainted with the work. Not infrequently services are rendered out of sympathy or for other philanthropic reasons, by individual lawyers who do not represent legal aid societies. There is nothing whatever in the Canons to prevent a lawyer

Acceptance and Retention of Employment

EC 2-26 A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and the bar generally.⁶²

EC 2-27 History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.⁶³

EC 2-28 The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers,⁶⁴ public officials, or influential members of the community does not justify his rejection of tendered employment.

EC 2-29 When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking

from performing such an act, nor should there be." *ABA Opinion 148* (1935).

⁶² But cf. ABA Canon 31.

⁶³ "One of the highest services the lawyer can render to society is to appear in court on behalf of clients whose causes are in disfavor with the general public." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1216 (1958).

One author proposes the following proposition to be included in "A Proper Oath for Advocates": "I recognize that it is sometimes difficult for clients with unpopular causes to obtain proper legal representation. I will do all that I can to assure that the client with the unpopular cause is properly represented, and that the lawyer representing such a client receives credit from and support of the bar for handling such a matter." Thode, *The Ethical Standard for the Advocate*, 39 Texas L. Rev. 575, 592 (1961).
"§ 6068. . . . It is the duty of an attorney :

"(h) Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed." Cal.Business and Professions Code § 6068 (West 1962). Virtually the same language is found in the Oregon statutes at Ore.Rev.Stats. Ch. 9 § 9.460(8).

See Rostow, *The Lawyer and His Client*, 48 A.B.A.J. 25 and 146 (1962).

⁶⁴ See ABA Canons 7 and 29.

"We are of the opinion that it is not professionally improper for a lawyer to accept employment to compel another lawyer to honor the just claim of a layman. On the contrary, it is highly proper that he do so. Unfortunately, there appears to be a widespread feeling among laymen that it is difficult, if not impossible, to obtain justice when they have claims against members of the Bar because other lawyers will not accept employment to proceed against them. The honor of the profession, whose members proudly style themselves officers of the court, must surely be sullied if its members bind themselves by custom to refrain from enforcing just claims of laymen against lawyers." *ABA Opinion 144* (1935).

the representation except for compelling reasons.⁶⁵ Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity⁶⁶ or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty,⁶⁷ or the belief of the lawyer regarding the merits of the civil case.⁶⁸

EC 2-30 Employment should not be accepted by a lawyer when he is unable to render competent service⁶⁹ or when he knows or it is obvious that the person seeking to employ him desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another.⁷⁰ Likewise, a lawyer should decline employment if the intensity of his personal feeling, as distinguished from a community attitude, may impair his effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, he should not accept employment in the matter unless the other counsel approves⁷¹ or withdraws, or the client terminates the prior employment.⁷²

EC 2-31 Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent his client by advising whether to take an appeal and, if the appeal is prosecuted, by representing him through the appeal unless new counsel is substituted or withdrawal is permitted by the appropriate court.

⁶⁵ ABA Canon 4 uses a slightly different test, saying, "A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason . . ."

⁶⁶ Cf. ABA Canon 7.

⁶⁷ See ABA Canon 5.

⁶⁸ Dr. Johnson's reply to Boswell upon being asked what he thought of "supporting a cause which you know to be bad" was : "Sir, you do not know it to be good or bad till the Judge determines it. I have said that you are to state facts fairly ; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from supposing your arguments to be weak and inconclusive. But, Sir, that is not enough. An argument which does not convince yourself, may convince the Judge to whom you urge it : and if it does convince him, why, then, Sir, you are wrong, and he is right." 2 Boswell, *The Life of Johnson* 47-48 (Hill ed. 1887).

⁶⁹ "The lawyer deciding whether to undertake a case must be able to judge objectively whether he is capable of handling it and whether he can assume its burdens without prejudice to previous commitments. . . ." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1158, 1218 (1958).

⁷⁰ "The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong." ABA Canon 30.

⁷¹ See ABA Canon 7.

⁷² *Id.*

"From the facts stated we assume that the client has discharged the first attorney and given notice of the discharge. Such being the case, the second attorney may properly accept employment. Canon 7; *Opinions* 10, 130, 149." *ABA Opinion* 209 (1941).

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EC 2-32 A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances⁷³, and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client and the possibility of prejudice to his client⁷⁴ as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal;⁷⁵ suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, he should refund to the client any compensation not earned during the employment;⁷⁶

DISCIPLINARY RULES

DR 2-101 Publicity in General^{1.77}

(A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.

(B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity,⁷⁸ nor shall he authorize or permit others to do so in his behalf⁷⁹ except as permitted under DR 2-103.

⁷³ See ABA Canon 44.

"I will carefully consider, before taking a case, whether it appears that I can fully represent the client within the framework of law. If the decision is in the affirmative, then it will take extreme circumstances to cause me to decide later that I cannot so represent him." Thode, *The Ethical Standard for the Advocate*, 39 Texas L.Rev. 575, 592 (1961) (from "A Proper Oath for Advocates").

⁷⁴ ABA Opinion 314 (1965) held that a lawyer should not disassociate himself from a cause when "it is obvious that the very act of disassociation would have the effect of violating Canon 37."

ABA Canon 44 enumerates instances in which "... the lawyer may be warranted in withdrawing on due notice to the client, allowing him time to employ another lawyer."

⁷⁶ See ABA Canon 44.

⁷⁷ Cf. ABA Canon 27; see generally ABA Opinion 293 (1957).

⁷⁸ cf. ABA Opinions 133 (1935), 116 (1934), 107 (1934), 73 (1932), 59 (1931), and 43 (1931).

⁷⁹ "There can be no justification for the participation and acquiescence by an attorney in the development and publication of an article which, on its face, plainly amounts to a self-interest and unethical presentation of his achieve-

This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name 99:

- (1) In political advertisements when his professional status is germane to the political campaign or to a political issue.
- (2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.
- (3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.
- (4) In and on legal documents prepared by him.
- (5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.

(C) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.⁸²

DR 2-102 Professional Notices, Letterheads, Offices, and Law Lists.

(A) A lawyer or law firm shall not use professional cards, professional announcement cards,

ments and capabilities." Matter of Connelly, 18 App.Div. 2d 466, 478, 240 N.Y.S.2d 126, 138 (1963).

"An announcement of the fact that the lawyer had resigned and the name of the person to succeed him, or take over his work, would not be objectionable, either as an official communication to those employed by or connected with the administrative agency or instrumentality [that had employed him], or as a news release.

"But to include therein a statement of the lawyer's experience in and acquaintance with the various departments and agencies of the government, and a laudation of his legal ability, either generally or in a special branch of the law, is not only bad taste but ethically improper.

"It can have but one primary purpose or object; to aid the lawyer in securing professional employment in private practice by advertising his professional experience, attainments and ability." ABA Opinion 184 (1938).

Cf. ABA Opinions 285 (1951) and 140 (1935).

⁸⁰ "The question is always . . . whether under the circumstance the furtherance of the professional employment of the lawyer is the primary purpose of the advertisement, or is merely a necessary incident of a proper and legitimate objective of the client which does not have the effect of unduly advertising him." ABA Opinion 290 (1956).

See ABA Opinion 285 (1951).

⁸¹ See ABA Opinions 299 (1961), 290 (1956), 158 (1936), and 100 (1933); cf. ABA Opinion 80 (1932).

⁸² "Rule 2.

"[A] member of the State Bar shall not solicit professional employment by . . .

"(4) The making of gifts to representatives of the press, radio, television or any medium of communication in anticipation of or in return for publicity." Cal.Business and Professions Code § 6076 (West 1962).

office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices,⁸³ except that the following may be used if they are in dignified form:

- (1) A professional card of a lawyer identifying him by name and as a lawyer, and *giving* his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification⁸⁴ but may not be published in periodicals, magazines, newspapers,⁸⁵ or other media.⁸⁶
- (2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives.⁸⁷ It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer.⁸⁸ It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.⁸⁹
- (3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.
- (4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving

his addresses, telephone numbers, the name of his law firm, associates, and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates,⁹⁰ and names and dates relating to deceased and retired members.⁹¹ A lawyer may be designated "Of Counsel" on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional, time in the representation of that client.⁹² The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

- (5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides⁹³ and in the city directory of the city in which his or the firm's office is located;⁹⁴ but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers.⁹⁵ The listing shall not be in distinctive form⁹⁶ or type.⁹⁷ A law firm may have a listing in the firm name separate from that of its members and associates.⁹⁸ The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers",⁹⁹

⁸³ Cf. *ABA Opinions* 233 (1941) and 114 (1934).

⁸⁴ See *ABA Opinion* 175 (1938).

⁸⁵ See *ABA Opinions* 260 (1944) and 182 (1938).

⁸⁶ But cf. *ABA Opinions* 276 (1947) and 256 (1943).

⁸⁷ See *ABA Opinion* 301 (1961).

⁸⁸ "[I]t has become commonplace for many lawyers to participate in government service ; to deny them the right, upon their return to private practice, to refer to their prior employment in a brief and dignified manner, would place an undue limitation upon a large element of our profession. It is entirely proper for a member of the profession to explain his absence from private practice, where such is the primary purpose of the announcement, by a brief and dignified reference to the prior employment.

⁸⁹ "[A]ny such announcement should be limited to the immediate past connection of the lawyer with the government, made upon his leaving that position to enter private practice." *ABA Opinion* 301 (1961).

⁹⁰ See *ABA Opinion* 251 (1943).

⁹¹ "Those lawyers who are working for an individual lawyer or a law firm may be designated on the letterhead and in other appropriate places as 'associates'." *ABA Opinion* 310 (1963).

⁹² See *ABA Canon* 33.

⁹³ But see *ABA Opinion* 285 (1951).

⁹⁴ See *ABA Opinion* 295 (1959).

⁹⁵ But see *ABA Opinion* 313 (1964) which says the Committee "approves a listing in the classified section of the city directory for lawyers only when the listing includes all lawyers residing in the community and when no charge is made therefor."

⁹⁶ "The listing should consist only of the lawyer's name, address and telephone number." *ABA Opinion* 313 (1964).

⁹⁷ "[A]dding to the regular classified listing a 'second line' in which a lawyer claims that he is engaged in a 'specialty' is an undue attempt to make his name distinctive." *ABA Opinion* 284 (1951).

⁹⁸ "[Opinion 284] held that a lawyer could not with propriety have his name listed in distinctive type in a telephone directory or city directory. We affirm that opinion." *ABA Opinion* 313 (1964).

See *ABA Opinions* 123 (1934) and 53 (1931).

⁹⁹ "[I]f a lawyer is a member of a law firm, both the firm, and the individual lawyer may be listed separately." *ABA Opinion* 313 (1964).

See *ABA Opinion* 284 (1951).

except that additional headings or classifications descriptive of the types of practice referred to in DR 2-105 are permitted.¹⁰⁰

- (6) A listing in a reputable law list¹⁰¹ or legal directory *giving* brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession.¹⁰² A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses¹⁰³ and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates;¹⁰⁴ a statement that practice is limited to one or more fields of law; a statement that the lawyer or law firm specializes in a particular field of law or law practice but only if authorized under DR 2-105 (A) (4);¹⁰⁵ date and place of birth; date and place of admission to the bar of state and federal courts; schools

attended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional associations and societies; foreign language ability; names and addresses of references,¹⁰⁶ and, with their consent, names of clients regularly represented.¹⁰⁷

- (B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.¹⁰⁸ A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm,¹⁰⁹ and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.¹¹⁰

¹⁰⁰ See *Silverman v. State Bar of Texas*, 405 F.2d 410, (5th Cir. 1968); but see *ABA Opinion* 286 (1952).

¹⁰¹ Cf. ABA Canon 43.

¹⁰² Cf. *ABA Opinion* 255 (1943).

¹⁰³ "We are asked to define the word 'addresses' appearing in the second paragraph of Canon 27"

"It is our opinion that an address (other than a cable address) within the intentment of the canon is that of the lawyer's office or of his residence. Neither address should be misleading. If, for example, an office address is given, it must be that of a bona fide office. The residence address, if given, should be identified as such if the city or other place of residence is not the same as that in which the law office is located." *ABA Opinion* 249 (1942).

¹⁰⁴ "[T]oday in various parts of the country Committees on Professional Ethics of local and state bar associations are authorizing lawyers to describe themselves in announcements to the Bar and in notices in legal periodicals and approved law lists as specialists in a great variety of things. Thus in the approved law lists or professional announcements there appear, in connection with the names of individual practitioners or firms, such designations as 'International Law, Public and Private'; 'Trial Preparation in Personal Injury and Negligence Actions'; 'Philippine War Damage Claims'; 'Anti-Trust'; 'Domestic Relations'; 'Tax Law'; 'Negligence Law'. It would seem that the ABA has given at least its tacit approval to this sort of announcement.

"It is important that this sort of description is not, in New York at least, permitted on letterheads or shingles or elsewhere in communications to laymen. This is subject to the single exception that such announcement to laymen is permitted in the four traditional specialties, Admiralty, Patent, Copyright and Trade-mark." *Report of the Special Committee on Specialization and Specialized Legal Education*, 79 A.B.A.Rep. 582, 586 (1954).

¹⁰⁵ This provision is included to conform to action taken by the ABA House of Delegates at the Mid-Winter Meeting, January, 1969.

¹⁰⁶ See ABA Canon 43 and *ABA Opinion* 119 (1934); but see *ABA Opinion* 236 (1941).

¹⁰⁷ See ABA Canon 27.

¹⁰⁸ See ABA Canon 33; cf. *ABA Opinions* 318 (1967), 267 (1945), 219 (1941), 208 (1940), 192 (1939), 97 (1933), and 6 (1925).

¹⁰⁹ *ABA Opinion* 318 (1967) held, "anything to the contrary in Formal Opinion 315 or in the other opinions cited notwithstanding" that: "Where a partner whose name appears in the name of a law firm is elected or appointed to high local, state or federal office, which office he intends to occupy only temporarily, at the end of which time he intends to return to his position with the firm, and provided that he is not precluded by holding such office from engaging in the practice of law and does not in fact sever his relationship with the firm but only takes a leave of absence, and provided that there is no local law, statute or custom to the contrary, his name may be retained in the firm name during his term or terms of office, but only if proper precautions are taken not to mislead the public as to his degree of participation in the firm's affairs."

Cf. *ABA Opinion* 143 (1935), New York County Opinion 67, and New York City Opinions 36 and 798; but cf. *ABA Opinion* 192 (1939) and Michigan Opinion 164.

¹¹⁰ Cf. ABA Canon 33.

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- (C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.¹¹¹
- (D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions;¹¹² however, the same firm name may be used in each jurisdiction.
- (E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.
- (F) Nothing contained herein shall prohibit a lawyer from using or permitting the use, in connection with his name, of an earned degree or title derived therefrom indicating his training in the law.

DR 2-103 Recommendation of Professional Employment.¹¹³

- (A) A lawyer shall not recommend employment, as a private practitioner,¹¹⁴ of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.¹¹⁵
- (B) Except as permitted under DR 2-103(C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment¹¹⁶ by a client, or as a reward for having made a recommendation resulting in his employment¹¹⁷ by a client.

¹¹¹ See *ABA Opinion* 277 (1948) ; cf. ABA Canon 33 and *ABA Opinions* 318 (1967), 126 (1935), 115 (1934), and 106 (1934).

¹¹² See *ABA Opinions* 318 (1967) and 316 (1967) ; cf. ABA Canon 33.

¹¹³ Cf. ABA Canons 27 and 28.

¹¹⁴ "We think it clear that a lawyer's seeking employment in an ordinary law office, or appointment to a civil service position, is not prohibited by . . . [Canon 27]." *ABA Opinion* 197 (1939).

¹¹⁵ "[A] lawyer may not seek from persons not his clients the opportunity to perform . . . a [legal] check-up." *ABA Opinion* 307 (1962).

¹¹⁶ Cf. *ABA Opinion* 78 (1932).

¹¹⁷ "No financial connection of any kind between the Brotherhood and any lawyer is permissible. No lawyer can properly pay any amount whatsoever to the Brotherhood or any of its departments, officers or members as compensation, reimbursement of expenses or gratuity in connection with the procurement of a case." "In re Brotherhood of R. R. Trainmen, 13 Ill.2d 391, 398, 150 N.E. 2d 163, 167 (1958), quoted in *In re Ratner*, 194 Kan 362, 372, 399 P.2d 865, 873 (1965).

See *ABA Opinion* 147 (1935).

- (C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate,¹¹⁸ except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.¹¹⁹

- (D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

(1) A legal aid office or public defender office:

- (a) Operated or sponsored by a duly accredited law school.
- (b) Operated or sponsored by a bona fide non-profit community organization.
- (c) Operated or sponsored by a governmental agency.
- (d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.¹²⁰

(2) A military legal assistance office.

- (3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.¹²¹

- (4) A bar association representative of the general bar of the geographical area in which the association exists.¹²²

¹¹⁸ "This Court has condemned the practice of ambulance chasing through the media of runners and touters. In similar fashion we have with equal emphasis condemned the practice of direct solicitation by a lawyer. We have classified both offenses as serious breaches of the Canons of Ethics demanding severe treatment of the offending lawyer." *State v. Dawson*, 111 So.2d 427, 431 (Fla. 1959).

¹¹⁹ "Registrants [of a lawyer referral plan] may be required to contribute to the expense of operating it by a reasonable registration charge or by a reasonable percentage of fees collected by them." *ABA Opinion* 291 (1956).
Cf. *ABA Opinion* 227 (1941).

¹²⁰ Cf. *ABA Opinion* 148 (1935).

¹²¹ Cf. *ABA Opinion* 227 (1941).

¹²² "If a bar association has embarked on a program of institutional advertising for an annual legal check-up and provides brochures and reprints, it is not improper to have these available in the lawyer's office for persons to read and take." *ABA Opinion* 307 (1962).
Cf. *ABA Opinion* 121 (1934).

- (5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities,¹²³ and only if the following conditions, unless prohibited by such interpretation, are met:

- (a) The primary purposes of such organization do not include the rendition of legal services.
- (b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.
- (c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.
- (d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter.

- (E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this Disciplinary Rule.

DR 2-104 Suggestion of Need of Legal Services.¹²⁴

- (A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice,¹²⁵ except that:

- (1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.¹²⁶
- (2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to rec-

¹²³ *United Mine Workers v. Ill. State Bar Ass'n*, 389 U.S. 217, 19 L.Ed.2d 426, 88 S.Ct. 353 (1967); *Brotherhood of R.R. Trainmen v. Virginia*, 371 U.S. 1, 12 L.Ed.2d 89, 84 S.Ct. 1113 (1964); *NAACP v. Button*, 371 U.S. 415, 9 L.Ed.2d 405, 83 S.Ct. 328 (1963).

¹²⁴ ABA Canon 28.

¹²⁵ *Cf.* ABA *Opinions* 229 (1941) and 173 (1937).

¹²⁶ "It certainly is not improper for a lawyer to advise his regular clients of new statutes, court decisions, and administrative rulings, which may affect the client's interests, provided the communication is strictly limited to such information. .

"When such communications go to concerns or individuals other than regular clients of the lawyer, they are thinly disguised advertisements for professional employment, and are obviously improper." ABA *Opinion* 213 (1941).

"It is our opinion that where the lawyer has no reason to believe that he has been supplanted by another lawyer, it is not only his right, but it might even be his duty to

ognize legal problems, to make intellⁱ

available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D) (1) through (5), to the extent and under the conditions prescribed therein.

- (3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2-103(D) (1), (2), or (5) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.
- (4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics¹²⁷ so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.
- (5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.¹²⁸

DR 2-105 Limitation of Practice.¹²⁹

- (A) A lawyer shall not hold himself out publicly as a specialist¹³⁰ or as limiting his practice,¹³¹ except as permitted under DR 2-102(A) (6) or as follows:

- (1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms, on his letterhead and office sign. A lawyer engaged in the trademark practice may use the designation "Trademarks," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms, on his letterhead and office sign, and a lawyer engaged in the admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or "Admiralty Lawyer," or any combination of those terms, on his letterhead and office sign.¹³²

advise his client of any change of fact or law which might defeat the client's testamentary purpose as expressed in the will

"Periodic notices might be sent to the client for whom a lawyer has drawn a will, suggesting that it might be wise for the client to reexamine his will to determine whether or not there has been any change in his situation requiring a modification of his will." ABA *Opinion* 210 (1941).

Cf. ABA Canon 28.

¹²⁷ *Cf.* ABA *Opinion* 168 (1937).

¹²⁸ *But cf.* ABA *Opinion* 111 (1934).

¹²⁹ See ABA Canon 45; *cf.* ABA Canons 27, 43, and 46.

¹³⁰ *Cf.* ABA *Opinions* 228 (1941) and 194 (1939).

¹³¹ See ABA *Opinions* 251 (1943) and 175 (1938).

¹³² See ABA Canon 27; *cf.* ABA *Opinion* 286 (1952).

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- (2) A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.
- (3) A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability,¹³³ but the announcement shall not contain a representation of special competence or experience.¹³⁴ The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals.
- (4) A lawyer who is certified as a specialist in a particular field of law or law practice by the authority having jurisdiction under state law over the subject of specialization by lawyers may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.¹³⁵

DR 2-106 Fees for Legal Services.¹³⁶

- (A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.¹³⁷
- (B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:
 - (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
 - (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
 - (3) The fee customarily charged in the locality for similar legal services.

¹³³ Cf. *ABA Opinion* 194 (1939).

¹³⁴ See *ABA Canon* 46.

¹³⁵ This provision is included to conform to action taken by the ABA House of Delegates at the Mid-Winter Meeting, January, 1969.

¹³⁶ See *ABA Canon* 12.

¹³⁷ The charging of a "clearly excessive fee" is a ground for discipline. *State ex rel. Nebraska State Bar Ass'n. v. Richards*, 165 Neb. 80, 90, 84 N.W.2d 136, 143 (1957).

"An attorney has the right to contract for any fee he chooses so long as it is not excessive (see *Opinion* 190), and this Committee is not concerned with the amount of such fees unless so excessive as to constitute a misappropriation of the client's funds (see *Opinion* 27)." *ABA Opinion* 320 (1968).

Cf. *ABA Opinions* 209 (1940), 190 (1939), and 27 (1930) and *State ex rel. Lee v. Buchanan*, 191 So.2d 33 (Fla. 1966).

- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.¹³⁸

- (C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.¹³⁹

DR 2-107 Division of Fees Among Lawyers.

- (A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:
 - (1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.
 - (2) The division is made in proportion to the services performed and responsibility assumed by each.¹⁴⁰
 - (3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.¹⁴¹

¹³⁸ Cf. *ABA Canon* 13; see generally MacKinnon, *Contingent Fees for Legal Services* (1964) (A Report of the American Bar Foundation).

¹³⁹ "Contingent fees, whether in civil or criminal cases, are a special concern of the law. . .

"In criminal cases, the rule is stricter because of the danger of corrupting justice. The second part of Section 542 of the Restatement [of Contracts] reads: 'A bargain to conduct a criminal case . . . in consideration of a promise of a fee contingent on success is illegal. . . .'
Peyton v. Margiotti, 398 Pa. 86, 156 A.2d 865, 967 (1959).

"The third area of practice in which the use of the contingent fee is generally considered to be prohibited is the prosecution and defense of criminal cases. However, there are so few cases, and these are predominantly old, that it is doubtful that there can be said to be any current law on the subject. . . . In the absence of cases on the validity of contingent fees for defense attorneys, it is necessary to rely on the consensus among commentators that such a fee is void as against public policy. The nature of criminal practice itself makes unlikely the use of contingent fee contracts." MacKinnon, *Contingent Fees for Legal Services* 52 (1964) (A Report of the American Bar Foundation).

¹⁴⁰ See *ABA Canon* 34 and *ABA Opinions* 316 (1967) and 294 (1958); see generally *ABA Opinions* 265 (1945), 204 (1940), 190 (1939), 171 (1937), 153 (1936), 97 (1933), 63 (1932), 28 (1930), 27 (1930), and 18 (1930).

¹⁴¹ "*Canon* 12 contemplates that a lawyer's fee should not exceed the value of the services rendered. . .

"*Canon* 12 applies, whether joint or separate fees are charged [by associate attorneys] . . ." *ABA Opinion* 204 (1940).

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- (B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2-108 Agreements Restricting the Practice of a Lawyer.

- (A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.¹⁴²
- (B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law.

DR 2-109 Acceptance of Employment.

- (A) A lawyer shall not accept employment on behalf of a person if he knows or it is obvious that such person wishes to:
- (1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person.¹⁴³
 - (2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2-110 Withdrawal from Employment.¹⁴⁴

- (A) In General.
- (1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.
 - (2) In any event, a lawyer shall not withdraw from employment until he has

¹⁴² "[A] general covenant restricting an employed lawyer, after leaving the employment, from practicing in the community for a stated period, appears to this Committee to be an unwarranted restriction on the right of a lawyer to choose where he will practice and inconsistent with our professional status. Accordingly, the Committee is of the opinion it would be improper for the employing lawyer to require the covenant and likewise for the employed lawyer to agree to it." *ABA Opinion* 300 (1961).

¹⁴³ See ABA Canon 30.

"**Rule 13.** . . . A member of the State Bar shall not accept employment to prosecute or defend a case solely out of spite, or solely for the purpose of harassing or delaying another . . ." Cal.Business and Professions Code 6067 (West 1962).

¹⁴⁴ Cf. ABA Canon 44.

taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

- (3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

- (1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.
- (2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.¹⁴⁵
- (3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.
- (4) He is discharged by his client.

(C) Permissive withdrawal.¹⁴⁶

If DR 2-110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

- (1) His client:
 - (a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.¹⁴⁷
 - (b) Personally seeks to pursue an illegal course of conduct.
 - (c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.
 - (d) By other conduct renders it unreasonably difficult for the law-

¹⁴⁵ See also Code of Professional Responsibility, DR 5-102 and DR 5-105.

¹⁴⁶ Cf. ABA Canon 4.

¹⁴⁷ Cf. *Anders v. California*, 386 U.S. 738, 18 L.Ed.2d 493, 87 S.Ct. 1396 (1967), *rehearing denied*, 388 U.S. 924, 18 L.Ed.2d 1377, 87 S.Ct. 2094 (1967).

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yer to carry out his employment effectively.

- (e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.
- (f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

His continued employment is likely to result in a violation of a Disciplinary Rule.

His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

His mental or physical condition renders it difficult for him to carry out the employment effectively.

His client knowingly and freely assents to termination of his employment.

He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

CANON 3

A Lawyer Should Assist in Preventing the Unauthorized Practice of Law

ETHICAL CONSIDERATIONS

EC 3-1 The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

EC 3-2 The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment.

EC 3-3 A non-lawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a regulated

profession committed to *such* standards.' The Disciplinary Rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his client.

EC 3-4 A layman who seeks legal services often is not in a position to judge whether he will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he is subject to the regulations of the legal profession.

EC 3-5 It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law.² Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, non-lawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

EC 3-6 A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product.³ This delegation enables a law-

¹ "The condemnation of the unauthorized practice of law is designed to protect the public from legal services by persons unskilled in the law. The prohibition of lay intermediaries is intended to insure the loyalty of the lawyer to the client unimpaired by intervening and possibly conflicting interests." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar*, 12 U.C.L.A.L.Rev. 438, 439 (1965).

² "What constitutes unauthorized practice of the law in a particular jurisdiction is a matter for determination by the courts of that jurisdiction." *ABA Opinion* 198 (1939).

"In the light of the historical development of the lawyer's functions, it is impossible to lay down an exhaustive definition of 'the practice of law' by attempting to enumerate every conceivable act performed by lawyers in the normal course of their work." *State Bar of Arizona v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 87, 366 P.2d 1, 8-9 (1961), *modified*, 91 Ariz. 293, 371 P.2d 1020 (1962).

³ "A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants, lay scriveners,

yer to render legal service more economically and efficiently.

EC 3-7 The prohibition against a non-lawyer practicing law does not prevent a layman from representing himself, for then he is ordinarily exposing only himself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but anyone who does not wish to avail himself of such representation is not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences.

EC 3-8 Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman.⁴ This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in his firm or practice may not be paid to his estate or specified persons such as his widow or heirs.⁵ In like manner,

nonlawyer draftsmen or nonlawyer researchers. In fact, he may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings a part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible to the client." *ABA Opinion* 316 (1967).

ABA Opinion 316 (1967) also stated that if a lawyer practices law as part of a law firm which includes lawyers from several states, he may delegate tasks to firm members in other states so long as he "is the person who, on behalf of the firm, vouched for the work of all of the others and, with the client and in the courts, did the legal acts defined by that state as the practice of law."

"A lawyer cannot delegate his professional responsibility to a law student employed in his office. He may avail himself of the assistance of the student in many of the fields of the lawyer's work, such as examination of case law, finding and interviewing witnesses, making collections of claims, examining court records, delivering papers, conveying important messages, and other similar matters. But the student is not permitted, until he is admitted to the Bar, to perform the professional functions of a lawyer, such as conducting court trials, giving professional advice to clients or drawing legal documents for them. The student in all his work must act as agent for the lawyer employing him, who must supervise his work and be responsible for his good conduct." *ABA Opinion* 85 (1932).

⁴ "No division of fees for legal services is proper, except with another lawyer . . ." *ABA Canon* 34. Otherwise, according to *ABA Opinion* 316 (1967), "[t]he Canons of Ethics do not examine into the method by which such persons are remunerated by the lawyer. . . . They may be paid a salary, a per diem charge, a flat fee, a contract price, etc."

See *ABA Canons* 33 and 47.

⁵ "Many partnership agreements provide that the active partners, on the death of any one of them, are to make payments to the estate or to the nominee of a deceased partner on a pre-determined formula. It is only where the effect of such an arrangement is to make the estate or nominee a member of the partnership along with the surviving partners that it is prohibited by Canon 34. Where the payments are made in accordance with a pre-existing agreement entered into by the deceased partner during his lifetime and providing for a fixed method for determining

profit-sharing retirement plans of a lawyer or law firm which include non-lawyer office employees are not improper.⁶ These limited exceptions to the rule against sharing legal fees with laymen are permissible since they do not aid or encourage laymen to practice law.

EC 3-9 Regulation of the practice of law is accomplished principally by the respective states.⁷ Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states.⁸ In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.⁹

their amount based upon the value of services rendered during the partner's lifetime and providing for a fixed period over which the payments are to be made, this is not the case. Under these circumstances, whether the payments are considered to be delayed payment of compensation earned but withheld during the partner's lifetime, or whether they are considered to be an approximation of his interest in matters pending at the time of his death, is immaterial. In either event, as Henry S. Drinker says in his book, *Legal Ethics*, at page 189: 'It would seem, however, that a reasonable agreement to pay the estate a proportion of the receipts for a reasonable period is a proper practical settlement for the lawyer's services to his retirement or death.' " *ABA Opinion* 308 (1963).

⁶ Cf. *ABA Opinion* 311 (1964).

⁷ "That the States have broad power to regulate the practice of law is, of course, beyond question." *United Mine Workers v. Ill. State Bar Ass'n*, 389 U.S. 217, 222 (1967).

"It is a matter of law, not of ethics, as to where an individual may practice law. Each state has its own rules." *ABA Opinion* 316 (1967).

⁸ "Much of clients' business crosses state lines. People are mobile, moving from state to state. Many metropolitan areas cross state lines. It is common today to have a single economic and social community involving more than one state. The business of a single client may involve legal problems in several states." *ABA Opinion* 316 (1967).

⁹ "[W]e reaffirmed the general principle that legal services to New Jersey residents with respect to New Jersey matters may ordinarily be furnished only by New Jersey counsel; but we pointed out that there may be multistate transactions where strict adherence to this thesis would not be in the public interest and that, under the circumstances, it would have been not only more costly to the client but also 'grossly impractical and inefficient' to have had the settlement negotiations conducted by separate lawyers from different states." *In re Estate of Waring*, 47 N.J. 367, 376, 221 A.2d 193, 197 (1966).

Cf. *ABA Opinion* 316 (1967).

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DISCIPLINARY RULES

DR 3-101 Aiding Unauthorized Practice of Law.¹⁰

- (A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.¹¹
- (B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.¹²

DR 3-102 Dividing Legal Fees with a Non-Lawyer.

- (A) A lawyer or law firm shall not share legal fees with a non-lawyer,¹³ except that:
- (1) An agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.¹⁴
 - (2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.
 - (3) A lawyer or law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.¹⁵

DR 3-103 Forming a Partnership with a Non-Lawyer.

- (A) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.¹⁶

¹⁰ Conduct permitted by the Disciplinary Rules of Canons 2 and 5 does not violate DR 3-101.

¹¹ See ABA Canon 47.

¹² It should be noted, however, that a lawyer may engage in conduct, otherwise prohibited by this Disciplinary Rule, where such conduct is authorized by preemptive federal legislation. See *Sperry v. Florida*, 373 U.S. 379, 10 L.Ed.2d 428, 83 S.Ct. 1322 (1963).

¹³ See ABA Canon 34 and *ABA Opinions* 316 (1967), 180 (1938), and 48 (1931).

"The receiving attorney shall not under any guise or form share his fee for legal services with a lay agency, personal or corporate, without prejudice, however, to the right of the lay forwarder to charge and collect from the creditor proper compensation for non-legal services rendered by the law [*sic*] forwarder which are separate and apart from the services performed by the receiving attorney." *ABA Opinion* 294 (1958).

¹⁴ See *ABA Opinions* 309 (1963) and 266 (1945).

¹⁵ Cf. *ABA Opinion* 311 (1964).

¹⁶ See ABA Canon 33; cf. *ABA Opinions* 239 (1942) and 201 (1940).

ABA Opinion 316 (1967) states that lawyers licensed in different jurisdictions may, under certain conditions, enter "into an arrangement for the practice of law" and that a lawyer licensed in State A is not, for such purpose, a layman in State B.

CANON 4

A Lawyer Should Preserve the Confidences and Secrets of a Client

ETHICAL CONSIDERATIONS

EC 4-1 Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him.¹ A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client.² A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

EC 4-2 The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when his client consents

¹ See ABA Canons 6 and 37 and *ABA Opinion* 287 (1953).

"The reason underlying the rule with respect to confidential communications between attorney and client is well stated in *Mecham on Agency*, 2d Ed., Vol. 2, § 2297, as follows: 'The purposes and necessities of the relation between a client and his attorney require, in many cases, on the part of the client, the fullest and freest disclosures to the attorney of the client's objects, motives and acts. This disclosure is made in the strictest confidence, relying upon the attorney's honor and fidelity. To permit the attorney to reveal to others what is so disclosed, would be not only a gross violation of a sacred trust upon his part, but it would utterly destroy and prevent the usefulness and benefits to be derived from professional assistance. Based upon considerations of public policy, therefore, the law wisely declares that all confidential communications and disclosures, made by a client to his legal adviser for the purpose of obtaining his professional aid or advice, shall be strictly privileged;—that the attorney shall not be permitted, without the consent of his client,—and much less will he be compelled—to reveal or disclose communications made to him under such circumstances.' " *ABA Opinion* 250 (1943).

"While it is true that complete revelation of relevant facts should be encouraged for trial purposes, nevertheless an attorney's dealings with his client, if both are sincere, and if the dealings involve more than mere technical matters, should be immune to discovery proceedings. There must be freedom from fear of revelation of matters disclosed to an attorney because of the peculiarly intimate relationship existing." *Ellis-Foster Co. v. Union Carbide & Carbon Corp.*, 159 F.Supp. 917, 919 (D.N.J. 1958).

Cf. *ABA Opinions* 314 (1965), 274 (1946) and 268 (1945).

² "While it is the great purpose of law to ascertain the truth, there is the countervailing necessity of insuring the right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice and a proper defense. This assistance can be made safe and readily available only when the client is free

after full disclosure,³ when necessary to perform his professional employment, when permitted by a Disciplinary Rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of his client to partners or associates of his firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to non-lawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of his client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in his professional relationship.⁴ Thus, in the absence of consent of his client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should he, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or his confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning his clients.

EC 4-3 Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

EC 4-4 The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he should avoid professional

from the consequences of apprehension of disclosure by reason of the subsequent statements of the skilled lawyer." *Baird v. Koerner*, 279 F.2d 623, 629-30 (9th Cir. 1960).
Cf. *ABA Opinion* 150 (1936).

³ "Where . . . [a client] knowingly and after full disclosure participates in a [legal fee] financing plan which requires the furnishing of certain information to the bank, clearly by his conduct he has waived any privilege as to that information." *ABA Opinion* 320 (1968).

⁴ "The lawyer must decide when he takes a case whether it is a suitable one for him to undertake and after this decision is made, he is not justified in turning against his client by exposing injurious evidence entrusted to him. . . . [D]oing something intrinsically regrettable, because the only alternative involves worse consequences, is a necessity in every profession." Williston, *Life and Law* 271 (1940).

Cf. *ABA Opinions* 177 (1938) and 83 (1932).

discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client.

EC 4-5 A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes.⁵ Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates.⁶ Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another,⁷ and no employment should be accepted that might require such disclosure.

EC 4-6 The obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment.⁸ Thus a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets.⁹ A lawyer should also provide for the protection of the confidences and secrets of his client following the termination of the practice of the lawyer, whether termination is due to death, disability, or retirement. For example, a lawyer might provide for the personal papers of the client to be returned to him and for the papers of the lawyer to be delivered to another lawyer or to be destroyed. In determining the method of disposition, the instructions and wishes of the client should be a dominant consideration.

DISCIPLINARY RULES

DR 4-101 Preservation of Confidences and Secrets of a Client.¹⁰

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be em-

See ABA Canon 11.

⁶ See ABA Canon 37.

⁷ See ABA Canons 6 and 37.

"[A]n attorney must not accept professional employment against a client or a former client which will, or even may require him to use confidential information obtained by the attorney in the course of his professional relations with such client regarding the subject matter of the employment . . . " *ABA Opinion* 165 (1936).

⁸ See ABA Canon 37.

"Confidential communications between an attorney and his client, made because of the relationship and concerning the subject-matter of the attorney's employment, are generally privileged from disclosure without the consent of the client, and this privilege outlasts the attorney's employment. Canon 37." *ABA Opinion* 154 (1936).

⁹ Cf. *ABA Opinion* 266 (1945).

¹⁰ See ABA Canon 37; cf. ABA Canon 6.

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barrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

- (1) Reveal a confidence or secret of his client."
- (2) Use a confidence or secret of his client to the disadvantage of the client.
- (3) Use a confidence or secret of his client for the advantage of himself¹² or of a third person,¹³ unless the client consents after full disclosure.

(C) A lawyer may reveal:

- (1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.¹⁴
- (2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.¹⁵

¹¹ "§ 6068 . . . It is the duty of an attorney :

"(e) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client." Cal. Business and Professions Code § 6068 (West 1962). Virtually the same provision is found in the Oregon statutes. Ore.Rev.Stats. ch. 9, § 9.460(5).

"Communications between lawyer and client are privileged (Wigmore on Evidence, 3d. Ed., Vol. 8, §§ 2290-2329). The modern theory underlying the privilege is subjective and is to give the client freedom of apprehension in consulting his legal adviser (*ibid.*, § 2290, p. 548). The privilege applies to communications made in seeking legal advice for any purpose (*ibid.*, § 2294, p. 563). The mere circumstance that the advice is given without charge therefore does not nullify the privilege (*ibid.*, § 2303)." *ABA Opinion* 216 (1941).

"It is the duty of an attorney to maintain the confidence and preserve inviolate the secrets of his client . . . " *ABA Opinion* 155 (1936).

¹² See ABA Canon 11.

"The provision respecting employment is in accord with the general rule announced in the adjudicated cases that a lawyer may not make use of knowledge or information acquired by him through his professional relations with his client, or in the conduct of his client's business, to his own advantage or profit (7 C.J.S., § 125, p. 958; *Healy v. Gray*, 184 Iowa 111, 168 N.W. 222; *Baumgardner v. Hudson*, D.C.App., 277 F. 552; *Goodrum v. Clement*, D.C.App., 277 F. 586)." *ABA Opinion* 250 (1943).

¹³ See *ABA Opinion* 177 (1938).

¹⁴ "[A lawyer] may not divulge confidential communications, information, and secrets imparted to him by the client or acquired during their professional relations, unless he is authorized to do so by the client (*People v. Gerold*, 265 Ill. 448, 107 N.E. 165, 178; *Murphy v. Riggs*, 238 Mich. 151, 213 N.W. 110, 112; Opinion of this Committee, No. 91)." *ABA Opinion* 202 (1940).

Cf. ABA Opinion 91 (1933).

¹⁵ "A defendant in a criminal case when admitted to bail is not only regarded as in the custody of his bail, but he is also in the custody of the law, and admission to bail does not deprive the court of its inherent power to deal with the person of the prisoner. Being in lawful custody, the defendant is guilty of an escape when he gains his liberty before he is delivered in due process of law, and is guilty of a separate offense for which he may

(3) The intention of his client to commit a crime¹⁶ and the information necessary to prevent the crime.¹⁷

(4) Confidences or secrets necessary to establish or collect his fee¹⁸ or to defend himself or his employees or associates against an accusation of wrongful conduct.¹⁹

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

be punished. In failing to disclose his client's whereabouts as a fugitive under these circumstances the attorney would not only be aiding his client to escape trial on the charge for which he was indicted, but would likewise be aiding him in evading prosecution for the additional offense of escape.

"It is the opinion of the committee that under such circumstances the attorney's knowledge of his client's whereabouts is not privileged, and that he may be disciplined for failing to disclose that information to the proper authorities. . . . " *ABA Opinion* 155 (1936).

"We held in *Opinion* 155 that a communication by a client to his attorney in respect to the future commission of an unlawful act or to a continuing wrong is not privileged from disclosure. Public policy forbids that the relation of attorney and client should be used to conceal wrongdoing on the part of the client.

"When an attorney representing a defendant in a criminal case applies on his behalf for probation or suspension of sentence, he represents to the court, by implication at least, that his client will abide by the terms and conditions of the court's order. When that attorney is later advised of a violation of that order, it is his duty to advise his client of the consequences of his act, and endeavor to prevent a continuance of the wrongdoing. If his client thereafter persists in violating the terms and conditions of his probation, it is the duty of the attorney as an officer of the court to advise the proper authorities concerning his client's conduct. Such information, even though coming to the attorney from the client in the course of his professional relations with respect to other matters in which he represents the defendant, is not privileged from disclosure. . . . " *ABA Opinion* 156 (1936).

¹⁶ *ABA Opinion* 314 (1965) indicates that a lawyer must disclose even the confidences of his clients if "the facts in the attorney's possession indicate beyond reasonable doubt that a crime will be committed."

See *ABA Opinion* 155 (1936).

¹⁷ See ABA Canon 37 and *ABA Opinion* 202 (1940).

¹⁸ *Cf. ABA Opinion* 250 (1943).

¹⁹ See ABA Canon 37 and *ABA Opinions* 202 (1940) and 19 (1930).

"[T]he adjudicated cases recognize an exception to the rule [that a lawyer shall not reveal the confidences of his client], where disclosure is necessary to protect the attorney's interests arising out of the relation of attorney and client in which disclosure was made.

"The exception is stated in *Mechem on Agency*, 2d Ed., Vol. 2, § 2313, as follows : 'But the attorney may disclose information received from the client when it becomes necessary for his own protection, as if the client should bring an action against the attorney for negligence or misconduct, and it became necessary for the attorney to

CODE OF PROFESSIONAL RESPONSIBILITY

CANON 5

A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client

ETHICAL CONSIDERATIONS

EC 5-1 The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties.¹ Neither his

show what his instructions were, or what was the nature of the duty which the client expected him to perform. So if it became necessary for the attorney to bring an action against the client, the client's privilege could not prevent the attorney from disclosing what was essential as a means of obtaining or defending his own rights.'

"Mr. Jones, in his Commentaries on Evidence, 2d Ed., Vol. 5, § 2165, states the exception thus : 'It has frequently been held that the rule as to privileged communications does not apply when litigation arises between attorney and client to the extent that their communications are relevant to the issue. In such cases, if the disclosure of privileged communications becomes necessary to protect the attorney's rights, he is released from those obligations of secrecy which the law places upon him. He should not, however, disclose more than is necessary for his own protection. It would be a manifest injustice to allow the client to take advantage of the rule of exclusion as to professional confidence to the prejudice of his attorney, or that it should be carried to the extent of depriving the attorney of the means of obtaining or defending his own rights. In such cases the attorney is exempted from the obligations of secrecy.' " *ABA Opinion* 250 (1943).

¹ Cf. ABA Canon 35.

"[A lawyer's] fiduciary duty is of the highest order and he must not represent interests adverse to those of the client. It is also true that because of his professional responsibility and the confidence and trust which his client may legitimately repose in him, he must adhere to a high standard of honesty, integrity and good faith in dealing with his client. He is not permitted to take advantage of his position or superior knowledge to impose upon the client; nor to conceal facts or law, nor in any way deceive him without being held responsible therefor." *Smoot v. Lund*, 13 Utah 2d 168, 172, 369 P.2d 933, 936 (1962).

"When a client engages the services of a lawyer in a given piece of business he is entitled to feel that, until that business is finally disposed of in some manner, he has the undivided loyalty of the one upon whom he looks as his advocate and champion. If, as in this case, he is sued and his home attached by his own attorney, who is representing him in another matter, all feeling of loyalty is necessarily destroyed, and the profession is exposed to the charge that it is interested only in money." *Grievance Comm. v. Rattner*, 152 Conn. 59, 65, 203 A.2d 82, 84 (1964).

"One of the cardinal principles confronting every attorney in the representation of a client is the requirement of complete loyalty and service in good faith to the best of his ability. In a criminal case the client is entitled to a fair trial, but not a perfect one. These are fundamental requirements of due process under the Fourteenth Amendment. . . . The same principles are applicable in Sixth Amendment cases (not pertinent herein) and suggest that an attorney should have no conflict of interest and that he must devote his full and faithful efforts toward the defense of his client." *Johns v. Smyth*, 176 F.Supp. 949, 952 (E.D.Va.1959), *modified*, *United States ex rel. Wilkins v. Banmiller*, 205 F.Supp. 123, 128 n. 5 (E.D.Pa.1962), *aff'd*, 325 F.2d 514 (3d Cir. 1963), *cert. denied*, 379 U.S. 847, 13 L.Ed.2d 51, 85 S.Ct. 87 (1964).

personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

Interests of a Lawyer That May Affect His Judgment

EC 5-2 A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client.² After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client.

EC 5-3 The self-interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not presently interfere with the exercise of his independent judgment, but the likelihood of interference can reasonably be foreseen by him, a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

EC 5-4 If, in the course of his representation of a client, a lawyer is permitted to receive from his client a beneficial ownership in publication rights relating to the subject matter of the employment, he may be tempted to subordinate the interests of his client to his own anticipated pecuniary gain.

² "Attorneys must not allow their private interests to conflict with those of their clients. . . . They owe their entire devotion to the interests of their clients." *United States v. Anonymous*, 215 F.Supp. 111, 113 (E.D. Tenn.1963).

"[T]he court [below] concluded that a firm may not accept any action against a person whom they are presently representing even though there is no relationship between the two cases. In arriving at this conclusion, the court cited an opinion of the Committee on Professional Ethics of the New York County Lawyers' Association which stated in part : 'While under the circumstances * * * there may be no actual conflict of interest * * * "maintenance of public confidence in the Bar requires an attorney who has accepted representation of a client to decline, while representing such client, any employment from an adverse party in any matter even though wholly unrelated to the original retainer." See Question and Answer No. 350, N.Y. County L. Ass'n, Questions and Answer No. 450 (June 21, 1956).' " *Grievance Comm. v. Rattner*, 152 Conn. 59, 65, 203 A.2d 82, 84 (1964).

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For example, a lawyer in a criminal case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his employment has previously ended.

EC 5-5 A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances.³ Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.⁴

EC 5-6 A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.⁵

EC 5-7 The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of his client or otherwise

to become financially interested in the outcome of the litigation.⁶ However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of litigation. Although a contingent fee arrangement⁷ gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layman can obtain the services of a lawyer of his choice. But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the arrangement will be beneficial to the client.

EC 5-8 A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client.⁸ Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action,⁹ but the ultimate liability for such costs and expenses must be that of the client.

EC 5-9 Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

EC 5-10 Problems incident to the lawyer-witness relationship arise at different stages; they relate

⁶ See ABA Canon 10.

⁷ See Code of Professional Responsibility, EC 2-20.

⁸ See ABA Canon 42.

⁹ "Rule 3a. . . . A member of the State Bar shall not directly or indirectly pay or agree to pay, or represent or sanction the representation that he will pay, medical, hospital or nursing bills or other personal expenses incurred by or for a client, prospective or existing; provided this rule shall not prohibit a member

"(1) with the consent of the client, from paying or agreeing to pay to third persons such expenses from funds collected or to be collected for the client; or

(2) after he has been employed, from lending money to his client upon the client's promise in writing to repay such loan; or

(3) from advancing the costs of prosecuting or defending a claim or action. Such costs within the meaning of this subparagraph (3) include all taxable costs or disbursements, costs or investigation and costs of obtaining and presenting evidence." Cal. Business and Professions Code § 6076 (West Supp.1967).

³ "Courts of equity will scrutinize with jealous vigilance transactions between parties occupying fiduciary relations toward each other. . . . A deed will not be held invalid, however, if made by the grantor with full knowledge of its nature and effect, and because of the deliberate, voluntary and intelligent desire of the grantor. . . . Where a fiduciary relation exists, the burden of proof is on the grantee or beneficiary of an instrument executed during the existence of such relationship to show the fairness of the transaction, that it was equitable and just and that it did not proceed from undue influence. . . . The same rule has application where an attorney engages in a transaction with a client during the existence of the relation and is benefited thereby. . . . Conversely, an attorney is not prohibited from dealing with his client or buying his property, and such contracts, if open, fair and honest, when deliberately made, are as valid as contracts between other parties. . . . [I]mportant factors in determining whether a transaction is fair include a showing by the fiduciary (1) that he made a full and frank disclosure of all the relevant information that he had; (2) that the consideration was adequate; and (3) that the principal had independent advice before completing the transaction." McFall v. Braden, 19 Ill.2d 108, 117-18, 166 N.E.2d 46, 52 (1960).

⁴ See State ex rel. Nebraska State Bar Ass'n v. Richards, 165 Neb. 80, 94-95, 84 N.W.2d 136, 146 (1957).

See ABA Canon 9.

either to whether a lawyer should accept employment or should withdraw from employment.¹⁰ Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative or if his testimony will relate only to an uncontested issue.¹¹ In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness.¹² In making such decision, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment.¹³ Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate.¹⁴

3.0 "When a lawyer knows, prior to trial, that he will be a necessary witness, except as to merely formal matters such as identification or custody of a document or the like, neither he nor his firm or associates should conduct the trial. If, during the trial, he discovers that the ends of justice require his testimony, he should, from that point on, if feasible and not prejudicial to his client's case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of the trial, the lawyer should not argue the credibility of his own testimony." *A Code of Trial Conduct: Promulgated by the American College of Trial Lawyers*, 43 A.B.A.J. 223, 224-25 (1957).

11 Cf. Canon 19 : "When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel."

12 "It is the general rule that a lawyer may not testify in litigation in which he is an advocate unless circumstances arise which could not be anticipated and it is necessary to prevent a miscarriage of justice. In those rare cases where the testimony of an attorney is needed to protect his client's interests, it is not only proper but mandatory that it be forthcoming." *Schwartz v. Wenger*, 267 Minn. 40, 43-44, 124 N.W.2d 489, 492 (1963).

13 "The great weight of authority in this country holds that the attorney who acts as counsel and witness, in behalf of his client, in the same cause on a material matter, not of a merely formal character, and not in an emergency, but having knowledge that he would be required to be a witness in ample time to have secured other counsel and given up his service in the case, violates a highly important provision of the Code of Ethics and a rule of professional conduct, but does not commit a legal error in so testifying, as a result of which a new trial will be granted." *Erwin M. Jennings Co. v. DiGenova*, 107 Conn. 491, 499, 141 A. 866, 869 (1928).

14 "[C]ases may arise, and in practice often do arise, in which there would be a failure of justice should the attorney withhold his testimony. in such a case it would be a vicious professional sentiment which would deprive

EC 5-11 A lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed.¹⁵ In like manner, his personal interests should not deter him from suggesting that additional counsel be employed; on the contrary, he should be alert to the desirability of recommending additional counsel when, in his judgment, the proper representation of his client requires it. However, a lawyer should advise his client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and he should disclose the reasons for his belief.

EC 5-12 Inability of co-counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken.¹⁶

EC 5-13 A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how he should fulfill his professional obligations to a person or organization that employs him as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, he should be vigilant to safeguard his fidelity as a lawyer to his employer, free from outside influences.

Interests of Multiple Clients

EC 5-14 Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client.¹⁷ This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.¹⁸

EC 5-15 If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or

the client of the benefit of his attorney's testimony." *Connolly v. Straw*, 53 Wis. 645, 649, 11 N.W. 17, 19 (1881).

But see Canon 19: "Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client."

15 Cf. ABA Canon 7.

16 See ABA Canon 7.

17 See ABA Canon 6; cf. *ABA Opinions* 261 (1944), 242 (1942), 142 (1935), and 30 (1931).

18 The ABA Canons speak of "conflicting interests" rather than "differing interests" but make no attempt to define such other than the statement in Canon 6: "Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests,¹⁹ and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients.

EC 5-16 In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires.²⁰ Thus before a lawyer may represent

¹⁹ "Canon 6 of the Canons of Professional Ethics, adopted by the American Bar Association on September 30, 1937, and by the Pennsylvania Bar Association on January 7, 1938, provides in part that 'It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this Canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.' The full disclosure required by this canon contemplates that the possibly adverse effect of the conflict be fully explained by the attorney to the client to be affected and by him thoroughly understood.

"The foregoing canon applies to cases where the circumstances are such that possibly conflicting interests may permissibly be represented by the same attorney. But manifestly, there are instances where the conflicts of interest are so critically adverse as not to admit of one attorney's representing both sides. Such is the situation which this record presents. No one could conscientiously contend that the same attorney may represent both the plaintiff and defendant in an adversary action. Yet, that is what is being done in this case." *Jedwabny v. Philadelphia Transportation Co.*, 390 Pa. 231, 235, 135 A.2d 252, 254 (1957), *cert. denied*, 355 U.S. 966, 2 L.Ed.2d 541, 78 S.Ct. 557 (1958).

²⁰ "Glasser wished the benefit of the undivided assistance of counsel of his own choice. We think that such a desire on the part of an accused should be respected. Irrespective of any conflict of interest, the additional burden of representing another party may conceivably impair counsel's effectiveness.

"To determine the precise degree of prejudice sustained by Glasser as a result of the court's appointment of Stewart as counsel for Kretske is at once difficult and unnecessary. The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from

multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent.²¹ If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.²²

EC 5-17 Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer,²³ and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon his judgment is not unlikely.

EC 5-18 A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced

its denial." *Glasser v. United States*, 315 U.S. 60, 75-76, 86 L.Ed. 680, 702 S.Ct. 457, 467 (1942).

²¹ See ABA Canon 6.

²² *Id.*

²³ Cf. *ABA Opinion* 282 (1950).

"When counsel, although paid by the casualty company, undertakes to represent the policyholder and files his notice of appearance, he owes to his client, the assured, an undeviating and single allegiance. His fealty embraces the requirement to produce in court all witnesses, fact and expert, who are available and necessary for the proper protection of the rights of his client. . . .

" . . . The Canons of Professional Ethics make it pellucid that there are not two standards, one applying to counsel privately retained by a client, and the other to counsel paid by an insurance carrier." *American Employers Ins. Co. v. Goble Aircraft Specialties*, 205 Misc. 1066, 1075, 131 N.Y.S.2d 393, 401 (1954), *motion to withdraw appeal granted*, 1 App.Div.2d 1008, 154 N.Y.S.2d 835 (1956).

"[C]ounsel, selected by State Farm to defend Dorothy Walker's suit for \$50,000 damages, was apprised by Walker that his earlier version of the accident was untrue and that actually the accident occurred because he lost control of his car in passing a Cadillac just ahead. At that point, Walker's counsel should have refused to participate further in view of the conflict of interest between Walker and State Farm. . . . Instead he participated in the ensuing deposition of the Walkers, even took an *ex parte* sworn statement from Mr. Walker in order to advise State Farm what action it should take, and later used the statement against Walker in the District Court. This action appears to contravene an Indiana attorney's duty 'at every peril to himself, to preserve the secrets of his client' . . ." *State Farm Mut. Auto Ins. Co. v. Walker*, 382 F.2d 548, 552 (1967), *cert. denied*, 389 U.S. 1045, 19 L.Ed. 2d 837, 88 S.Ct. 789 (1968).

by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

EC 5-19 A lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, he should explain any circumstances that might cause a client to question his undivided loyalty.²⁴ Regardless of the belief of a lawyer that he may properly represent multiple clients, he must defer to a client who holds the contrary belief and withdraw from representation of that client.

EC 5-20 A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he should not thereafter represent in the dispute any of the parties involved.

Desires of Third Persons

EC 5-21 The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment.²⁵ The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his client; 26 and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.

EC 5-22 Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter

in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.

EC 5-23 A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occasions, decisions on priority of work may be made by the employer rather than the lawyer with the result that prosecution of work already undertaken for clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further its own economic interests through the actions of the lawyers employed by it. Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom.²⁷

EC 5-24 To assist a lawyer in preserving his professional independence, a number of courses are available to him. For example, a lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law,²⁸ if any director, officer, or stockholder of it is a non-lawyer. Although a lawyer may be employed by a business corporation with non-lawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman. Various types of legal aid of-

²⁴ See ABA Canon 6.

²⁵ See ABA Canon 35.

"Objection to the intervention of a lay intermediary, who may control litigation or otherwise interfere with the rendering of legal services in a confidential relationship, . . . derives from the element of pecuniary gain. Fearful of dangers thought to arise from that element, the courts of several States have sustained regulations aimed at these activities. We intimate no view one way or the other as to the merits of those decisions with respect to the particular arrangements against which they are directed. It is enough that the superficial resemblance in form between those arrangements and that at bar cannot obscure the vital fact that here the entire arrangement employs constitutionally privileged means of expression to secure constitutionally guaranteed civil rights." *NAACP v. Button*, 371 U.S. 415, 441-42, 9 L.Ed.2d 405, 423-24, 83 S.Ct. 328, 342-43 (1963).

²⁸ Cf. ABA Canon 38.

²⁷ "Certainly it is true that 'the professional relationship between an attorney and his client is highly personal, involving an intimate appreciation of each individual client's particular problem.' And this Committee does not condone practices which interfere with that relationship. However, the mere fact the lawyer is actually paid by some entity other than the client does not affect that relationship, so long as the lawyer is selected by and is directly responsible to the client. See Informal Opinions 469 and 679. Of course, as the latter decision points out, there must be full disclosure of the arrangement by the attorney to the client. . . ." ABA Opinion 320 (1968).

"[A] third party may pay the cost of legal services as long as control remains in the client and the responsibility of the lawyer is solely to the client. Informal Opinions 469 ad [sic] 679. See also Opinion 237." *Id.*

²⁸ ABA Opinion 303 (1961) recognized that "[s]tatutory provisions now exist in several states which are designed to make [the practice of law in a form that will be classified as a corporation for federal income tax purposes] legally possible, either as a result of lawyers incorporating or forming associations with various corporate characteristics."

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fices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between him and the organization and provides for his independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer.

DISCIPLINARY RULES

DR 5-101 Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

- (A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.²⁹
- (B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:
 - (1) If the testimony will relate solely to an uncontested matter.
 - (2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

²⁹ Cf. ABA Canon 6 and *ABA Opinions* 181 (1938), 104 (1934), 103 (1933), 72 (1932), 50 (1931), 49 (1931), and 33 (1931).

"New York County [Opinion] 203. . . . [A lawyer] should not advise a client to employ an investment company in which he is interested, without informing him of this." Drinker, *LEGAL ETHICS* 956 (1953).

"In *Opinions* 72 and 49 this Committee held: The relations of partners in a law firm are such that neither the firm nor any member or associate thereof, may accept any professional employment which any member of the firm cannot properly accept.

"In *Opinion* 16 this Committee held that a member of a law firm could not represent a defendant in a criminal case which was being prosecuted by another member of the firm who was public prosecuting attorney. The *Opinion* stated that it was clearly unethical for one member of the firm to oppose the interest of the state while another member represented those interests. . . . Since the prosecutor himself could not represent both the public and the defendant, no member of his law firm could either." *ABA Opinion* 296 (1959).

- (3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.
- (4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

DR 5-102 Withdrawal as Counsel When the Lawyer Becomes a Witness.³⁰

- (A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B) (1) through (4).
- (B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.³¹

DR 5-103 Avoiding Acquisition of Interest in Litigation.

- (A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client,³² except that he may:
 - (1) Acquire a lien granted by law to secure his fee or expenses.
 - (2) Contract with a client for a reasonable contingent fee in a civil case.³³
- (B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial as-

³⁰ Cf. ABA Canon 19 and *ABA Opinions* 220 (1941), 185 (1938), 50 (1931), and 33 (1931); but cf. *Erwin M. Jennings Co. v. DiGenova*, 107 Conn. 491, 498-99, 141 A. 866, 868 (1928).

³¹ "This Canon [19] of *Ethics* needs no elaboration to be applied to the facts here. Apparently, the object of this precept is to avoid putting a lawyer in the obviously embarrassing predicament of testifying and then having to argue the credibility and effect of his own testimony. It was not designed to permit a lawyer to call opposing counsel as a witness and thereby disqualify him as counsel." *Galarowicz v. Ward*, 119 Utah 611, 620, 230 P.2d 576, 580 (1951).

³² ABA Canon 10 and *ABA Opinions* 279 (1949), 246 (1942), and 176 (1938).

³³ See Code of Professional Responsibility, DR 2-106(C).

prevent prospective jurors from being impartial at the outset of the trial⁵⁴ and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial.⁵⁵

"Court proceedings are held for the solemn purpose of endeavoring to ascertain the truth which is the *sine qua non* of a fair trial. Over the centuries Anglo-American courts have devised careful safeguards by rule and otherwise to protect and facilitate the performance of this high function. As a result, at this time those safeguards do not permit the televising and photographing of a criminal trial, save in two States and there only under restrictions. The federal courts prohibit it by specific rule. This is weighty evidence that our concepts of a fair trial do not tolerate such an indulgence. We have always held that the atmosphere essential to the preservation of a fair trial—the most fundamental of all freedoms—must be maintained at all costs." *Estes v. State of Texas*, 381 U.S. 532, 540, 14 L.Ed.2d 543, 549, 85 S.Ct. 1628, 1631-32 (1965), *rehearing denied*, 382 U.S. 875, 15 L.Ed.2d 118, 86 S.Ct. 18 (1965).

⁵⁴ "Pretrial can create a major problem for the defendant in a criminal case. Indeed, it may be more harmful than publicity during the trial for it may well set the community opinion as to guilt or innocence. . . . The trial witnesses present at the hearing, as well as the original jury panel, were undoubtedly made aware of the peculiar public importance of the case by the press and television coverage being provided, and by the fact that they themselves were televised live and their pictures rebroadcast on the evening show." *Id.*, 381 U.S. at 536-37, 14 L.Ed.2d at 546-47, 85 S.Ct. at 1629-30.

⁵⁵ "The undeviating rule of this Court was expressed by Mr. Justice Holmes over half a century ago in *Patterson v. Colorado*, 205 U.S. 454, 462 (1907) :

The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." *Sheppard v. Maxwell*, 384 U.S. 333, 351, 16 L.Ed.2d 600, 614, 86 S.Ct. 1507, 1516 (1966).

"The trial judge has a large discretion in ruling on the issue of prejudice resulting from the reading by jurors of news articles concerning the trial. . . . Generalizations beyond that statement are not profitable, because each case must turn on its special facts. We have here the exposure of jurors to information of a character which the trial judge ruled was so prejudicial it could not be directly offered as evidence. The prejudice to the defendant is almost certain to be as great when that evidence reaches the jury through news accounts as when it is a part of the prosecution's evidence. . . . It may indeed be greater for it is then not tempered by protective procedures." *Marshall v. United States*, 360 U.S. 310, 312-13, 3 L.Ed.2d 1250, 1252, 79 S.Ct. 1171, 1173 (1959).

"The experienced trial lawyer knows that an adverse public opinion is a tremendous disadvantage to the defense of his client. Although grand jurors conduct their deliberations in secret, they are selected from the body of the public. They are likely to know what the general public knows and to reflect the public attitude. Trials are open to the public, and aroused public opinion respecting the merits of a legal controversy creates a court room atmosphere which, without any vocal expression in the presence of the petit jury, makes itself felt and has its effect upon the action of the petit jury. Our fundamental concepts of justice and our American sense of fair play require that the petit jury shall be composed of persons with fair and impartial minds and without preconceived views as to the merits of the controversy, and that it shall determine the issues presented to it solely upon the evidence adduced at the trial and according to the law given in the instructions of the trial judge.

The release by a lawyer of out-of-court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal.⁵⁶ For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

EC 7-34 The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer,⁵⁷ therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal.⁵⁸

EC 7-35 All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party.⁵⁹ For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

EC 7-36 Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealous-

"While we may doubt that the effect of public opinion would sway or bias the judgment of the trial judge in an equity proceeding, the defendant should not be called upon to run that risk and the trial court should not have his work made more difficult by any dissemination of statements to the public that would be calculated to create a public demand for a particular judgment in a prospective or pending case." *ABA Opinion* 199 (1940).

Cf. Estes v. State of Texas, 381 U.S. 532, 544-45, 14 L. Ed.2d 543, 551, 85 S.Ct. 1628, 1634 (1965), *rehearing denied*, 381 U.S. 875, 15 L.Ed.2d 118, 86 S.Ct. 18 (1965).

⁵⁶ See ABA Canon 20.

⁵⁷ Canon 3 observes that a lawyer "deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor."

See ABA Canon 32.

⁵⁸ "Judicial Canon 32 provides :

"A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment."

"The language of this Canon is perhaps broad enough to prohibit campaign contributions by lawyers, practicing before the court upon which the candidate hopes to sit. However, we do not think it was intended to prohibit such contributions when the candidate is obligated, by force of circumstances over which he has no control, to conduct a campaign, the expense of which exceeds that which he should reasonably be expected to personally bear!" *ABA Opinion* 226 (1941).

⁵⁹ See ABA Canons 3 and 32.

ly, he should not engage in any conduct that offends the dignity and decorum of proceedings.⁶⁰ While maintaining his independence, a lawyer should be respectful, courteous, and above-board in his relations with a judge or hearing officer before whom he appears.⁶¹ He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-37 In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers.⁶² A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7-38 A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client.⁶³ He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so.⁶⁴ A lawyer should be punctual in fulfilling all professional commitments.⁶⁵

EC 7-39 In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law.

DISCIPLINARY RULES

DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally:⁶⁶

- (1) Fail to seek the lawful objectives of his client through reasonably available means⁶⁷ permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating

⁶⁰ Cf. ABA Canon 18.

⁶¹ See ABA Canons 1 and 3.

⁶² See ABA Canon 17.

⁶³ See ABA Canon 24.

⁶⁴ See ABA Canon 25.

⁶⁵ See ABA Canon 21.

⁶⁶ See ABA Canon 15.

⁶⁷ See ABA Canons 5 and 15 cf. ABA Canons 4 and 32.

with courtesy and consideration all persons involved in the legal process.

- (2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.
- (3) Prejudice or damage his client during the course of the professional relationship⁶⁸ except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

- (1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.
- (2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client Within the Bounds of the Law.

(A) In his representation of a client, a lawyer shall not:

- (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.⁶⁹
- (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.
- (3) Conceal or knowingly fail to disclose that which he is required by law to reveal.
- (4) Knowingly use perjured testimony or false evidence.⁷⁰
- (5) Knowingly make a false statement of law or fact.
- (6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.
- (7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.
- (8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

- (1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call

⁶⁸ Cf. ABA Canon 24.

⁶⁹ See ABA Canon 30.

⁷⁰ Cf. ABA Canons 22 and 29.

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upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal:^a

- (2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal¹²

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.⁷³

- (A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.
- (B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-104 Communicating With One of Adverse Interest.⁷⁴

- (A) During the course of his representation of a client a lawyer shall not:
- (1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party⁷⁵ or is authorized by law to do so.
- (2) Give advice to a person who is not represented by a lawyer, other than the ad-

⁷¹ See ABA Canon 41; *cf.* *Hinds v. State Bar*, 19 Cal.2d 87, 92-93, 119 P.2d 134, 137 (1941); *but see* *ABA Opinion* 287 (1953) and Texas Canon 38. *Also see* Code of Professional Responsibility, DR 4-101(C) (2).

⁷² See *Precision Inst. Mfg. Co. v. Automotive M. M. Co.*, 324 U.S. 806, 89 L.Ed. 1381, 65 S.Ct. 993 (1945).

⁷³ *Cf.* ABA Canon 5.

⁷⁴ "Rule 12. . . . A member of the State Bar shall not communicate with a party represented by counsel upon a subject of controversy, in the absence and without the consent of such counsel. This rule shall not apply to communications with a public officer, board, committee or body." Cal.Business and Professions Code § 6076 (West 1962).

⁷⁵ See ABA Canon 9; *cf.* *ABA Opinions* 124 (1934), 108 (1934), 95 (1933), and 75 (1932); *also see* *In re Schwabe*, 242 Or. 169, 174-75, 408 P.2d 922, 924 (1965).

"It is clear from the earlier opinions of this committee that Canon 9 is to be construed literally and does not allow a communication with an opposing party, without the consent of his counsel, though the purpose merely be to investigate the facts. *Opinions* 117, 95, 66," *ABA Opinion* 187 (1938).

vice to secure counsel,⁷⁶ if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.⁷⁷

DR 7-105 Threatening Criminal Prosecution.

- (A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

DR 7-106 Trial Conduct.

- (A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.
- (B) In presenting a matter to a tribunal, a lawyer shall disclose:⁷⁸
- (1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.⁷⁹
- (2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him⁸⁰

⁷⁶ *Cf.* *ABA Opinion* 102 (1933).

⁷⁷ *Cf.* ABA Canon 9 and *ABA Opinion* 58 (1931).

⁷⁸ *Cf.* Note, 38 Texas L.Rev. 107, 108-09 (1959).

⁷⁹ "In the brief summary in the 1947 edition of the Committee's decisions (p. 17), *Opinion* 146 was thus summarized: *Opinion* 146—A lawyer should disclose to the court a decision directly adverse to his client's case that is unknown to his adversary.

"We would not confine the *Opinion* to 'controlling authorities'—i.e., those decisive of the pending case—but, in accordance with the tests hereafter suggested, would apply it to a decision directly adverse to any proposition of law on which the lawyer expressly relies, which would reasonably be considered important by the judge sitting on the case.

". . . The test in every case should be: Is the decision which opposing counsel has overlooked one which the court should clearly consider in deciding the case? Would a reasonable judge properly feel that a lawyer who advanced, as the law, a proposition adverse to the undisclosed decision, was lacking in candor and fairness to him? Might the judge consider himself misled by an implied representation that the lawyer knew of no adverse authority?" *ABA Opinion* 280 (1949).

⁸⁰ "The authorities are substantially uniform against any privilege as applied to the fact of retainer or identity of the client. The privilege is limited to confidential communications, and a retainer is not a confidential communication, although it cannot come into existence without some communication between the attorney and the—at that stage prospective—client." *United States v. Pape*, 144 F.2d 778, 782 (2d Cir. 1944), *cert. denied*, 323 U.S. 752, 89 L.Ed.2d 602, 65 S.Ct. 86 (1944).

"To be sure, there may be circumstances under which the identification of a client may amount to the prejudicial disclosure of a confidential communication, as where the

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(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

- (1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.⁸¹
- (2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.⁸²
- (3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.
- (4) Assert his personal opinion as to the justice of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused;⁸³ but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.
- (5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.⁸⁴

substance of a disclosure has already been revealed but not its source." *Colton v. United States*, 306 F.2d 633, 637 (2d Cir. 1962).

⁸¹ See ABA Canon 22; *cf.* ABA Canon 17.

"The rule allowing counsel when addressing the jury the widest latitude in discussing the evidence and presenting the client's theories falls far short of authorizing the statement by counsel of matter not in evidence, or indulging in argument founded on no proof, or demanding verdicts for purposes other than the just settlement of the matters at issue between the litigants, or appealing to prejudice or passion. The rule confining counsel to legitimate argument is not based on etiquette, but on justice. Its violation is not merely an overstepping of the bounds of propriety, but a violation of a party's rights. The jurors must determine the issues upon the evidence. Counsel's address should help them do this, not tend to lead them astray." *Cherry Creek Nat. Bank v. Fidelity & Cas. Co.*, 207 App.Div. 787, 790-91, 202 N.Y.S. 611, 614 (1924).

⁸² *Cf.* ABA Canon 18.

"§ 6068. . . . It is the duty of an attorney :

"(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged." *Cal. Business and Professions Code* § 6068 (West 1962).

⁸³ "The record in the case at bar was silent concerning the qualities and character of the deceased. It is especially improper, in addressing the jury in a murder case, for the prosecuting attorney to make reference to his knowledge of the good qualities of the deceased where there is no evidence in the record bearing upon his character. . . . A prosecutor should never inject into his argument evidence not introduced at the trial." *People v. Dukes*, 12 Ill.2d 334, 341, 146 N.E.2d 14, 17-18 (1957).

⁸⁴ "A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel." ABA Canon 25.

- (6) Engage in undignified or discourteous conduct which is degrading to a tribunal.
- (7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107 Trial Publicity.⁸⁵

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

- (1) Information contained in a public record.
- (2) That the investigation is in progress.
- (3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.
- (4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.
- (5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition

⁸⁵ The provisions of Sections (A), (B), (C), and (D) of this Disciplinary Rule incorporate the fair trial-free press standards which apply to lawyers as adopted by the ABA House of Delegates, Feb. 19, 1968, upon the recommendation of the Fair Trial and Free Press Advisory Committee of the ABA Special Committee on Minimum Standards for the Administration of Criminal Justice.

Cf. ABA Canon 20; *see generally* ABA Advisory Committee on Fair Trial and Free Press, Standards Relating to Fair Trial and Free Press (1966).

"From the cases coming here we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. And appellate tribunals have the duty to make an independent evaluation of the circumstances. Of course, there is nothing that prescribes the press from reporting events that transpire in the courtroom. But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity. . . . The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures." *Sheppard v. Maxwell*, 384 U.S. 333, 362-63, 16 L.Ed.2d 600, 620, 86 S.Ct. 1507, 1522 (1966).

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without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

- (1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.
 - (2) The possibility of a plea of guilty to the offense charged or to a lesser offense.
 - (3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.
 - (4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.
 - (5) The identity, testimony, or credibility of a prospective witness.
 - (6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.
- (C) DR 7-107(B) does not preclude a lawyer during such period from announcing:
- (1) The name, age, residence, occupation, and family status of the accused.
 - (2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.
 - (3) A request for assistance in obtaining evidence.
 - (4) The identity of the victim of the crime.
 - (5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.
 - (6) The identity of investigating and arresting officers or agencies and the length of the investigation.
 - (7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.
 - (8) The nature, substance, or text of the charge.
 - (9) Quotations from or references to public records of the court in the case.
 - (10) The scheduling or result of any step in the judicial proceedings.
 - (11) That the accused denies the charges made against him.
- (D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably

likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

- (E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.
- (F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.
- (G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:
- (1) Evidence regarding the occurrence or transaction involved.
 - (2) The character, credibility, or criminal record of a party, witness, or prospective witness.
 - (3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
 - (4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.
 - (5) Any other matter reasonably likely to interfere with a fair trial of the action.
- (H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:
- (1) Evidence regarding the occurrence or transaction involved.
 - (2) The character, credibility, or criminal record of a party, witness, or prospective witness.
 - (3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
 - (4) His opinion as to the merits of the claims, defenses, or positions of an interested person.
 - (5) Any other matter reasonably likely to interfere with a fair hearing.

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- (I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies,
- (J) A lawyer shall exercise reasonable care to prevent his employees and associates from making an extrajudicial statement that he would be prohibited from making under DR 7-107.

DR 7-108 Communication with or Investigation of Jurors.

- (A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.
- (B) During the trial of a case:
 - (1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.⁸⁶
 - (2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.
- (C) DR 7-108(A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.
- (D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.⁸⁷
- (E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.
- (F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.
- (G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

DR 7-109 Contact with Witnesses.

- (A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.⁸⁸

⁸⁶ See ABA Canon 23.

⁸⁷ "Mt would be unethical for a lawyer to harass, entice, induce or exert influence on a juror to obtain his or her testimony." *ABA Opinion* 319 (1968).

⁸⁸ See ABA Canon 5.

- (B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.⁸⁹
- (C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case.⁹⁰ But a lawyer may advance, guarantee, or acquiesce in the payment of:

- (1) Expenses reasonably incurred by a witness in attending or testifying.
- (2) Reasonable compensation to a witness for his loss of time in attending or testifying.
- (3) A reasonable fee for the professional services of an expert witness.

DR 7-110 Contact with Officials.⁹¹

- (A) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal.
- (B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:
 - (1) In the course of official proceedings in the cause.
 - (2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.
 - (3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.
 - (4) As otherwise authorized by law.⁹²

⁸⁹ Cf. ABA Canon 5.

"**Rule 15.** . . . A member of the State Bar shall not advise a person, whose testimony could establish or tend to establish a material fact, to avoid service of process, or secrete himself, or otherwise to make his testimony unavailable." Cal.Business and Professions Code § 6076 (West 1962).

⁹⁰ See *In re O'Keefe*, 49 Mont. 369, 142 P. 638 (1914).

⁹¹ Cf. ABA Canon 3.

⁹² "**Rule 16.** . . . A member of the State Bar shall not, in the absence of opposing counsel, communicate with or argue to a judge or judicial officer except in open court upon the merits of a contested matter pending before such judge or judicial officer; nor shall he, without furnishing opposing counsel with a copy thereof, address a written communication to a judge or judicial officer concerning the merits of a contested matter pending before such judge or judicial officer. This rule shall not apply to ex parte matters." Cal.Business and Professions Code § 6076 (West 1962).

CODE OF PROFESSIONAL RESPONSIBILITY

CANON 8

A Lawyer Should Assist in Improving the Legal System

ETHICAL CONSIDERATIONS

EC 8-1 Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system.¹ This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system,² without regard to the general interests or desires of clients or former clients.³

EC 8-2 Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded.⁴ Like-

¹ [Another] task of the great lawyer is to do his part individually and as a member of the organized bar to improve his profession, the courts, and the law. As President Theodore Roosevelt aptly put it, 'Every man owes some of his time to the upbuilding of the profession to which he belongs.' Indeed, this obligation is one of the great things which distinguishes a profession from a business. The soundness and the necessity of President Roosevelt's admonition insofar as it relates to the legal profession cannot be doubted. The advances in natural science and technology are so startling and the velocity of change in business and in social life is so great that the law along with the other social sciences, and even human life itself, is in grave danger of being extinguished by new gods of its own invention if it does not awake from its lethargy. Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public*, 40 A.B.A.J. 31, 31-32 (1954).

² See ABA Canon 29; Cf. Cheatham, *The Lawyer's Role and Surroundings*, 25 Rocky Mt.L.Rev. 405, 406-07 (1953).

"The lawyer tempted by repose should recall the heavy costs paid by his profession when needed legal reform has to be accomplished through the initiative of public-spirited laymen. Where change must be thrust from without upon an unwilling Bar, the public's least flattering picture of the lawyer seems confirmed. The lawyer concerned for the standing of his profession will, therefore, interest himself actively in the improvement of the law. In doing so he will not only help to maintain confidence in the Bar, but will have the satisfaction of meeting a responsibility inhering in the nature of his calling." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1217 (1958).

³ See Stayton, *Cum Honore Officium*, 19 Tex.B.J. 765, 766 (1956); *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1162 (1958); and Paul, *The Lawyer as a Tax Adviser*, 25 Rocky Mt.L.Rev. 412, 433-34 (1953).

⁴ "There are few great figures in the history of the Bar who have not concerned themselves with the reform and

wise, legal procedures should be improved whenever experience indicates a change is needed.

EC 8-3 The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the *resultant* need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

EC 8-4 Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself, a client, or the public.⁵ A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

EC 8-5 Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. Unless constrained by his obligation to preserve the confidences and secrets of his client, a lawyer should reveal to appropriate authorities any knowledge he may have of such improper conduct.

EC 8-6 Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified.⁶ It is the duty of

improvement of the law. The special obligation of the profession with respect to legal reform rests on considerations too obvious to require enumeration. Certainly it is the lawyer who has both the best chance to know when the law is working badly and the special competence to put it in order." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1217 (1958).

⁵ "Rule 14. . . . A member of the State Bar shall not communicate with, or appear before, a public officer, board, committee or body, in his professional capacity, without first disclosing that he is an attorney representing interests that may be affected by action of such officer, board, committee or body." Cal.Business and Professions Code § 6076 (West 1962).

⁶ See ABA Canon 2.

"Lawyers are better able than laymen to appraise accurately the qualifications of candidates for judicial office. It is proper that they should make that appraisal known to the voters in a proper and dignified manner. A lawyer may with propriety endorse a candidate for judicial office and seek like endorsement from other lawyers. But

lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected⁷ or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism.⁸ While a lawyer as a citizen has a right to criticize such officials publicly,⁹ he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system.¹⁰ Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

EC 8-7 Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the im-

the lawyer who endorses a judicial candidate or seeks that endorsement from other lawyers should be actuated by a sincere belief in the superior qualifications of the candidate for judicial service and not by personal or selfish motives; and a lawyer should not use or attempt to use the power or prestige of the judicial office to secure such endorsement. On the other hand, the lawyer whose endorsement is sought, if he believes the candidate lacks the essential qualifications for the office or believes the opposing candidate is better qualified, should have the courage and moral stamina to refuse the request for endorsement." *ABA Opinion* 189 (1938).

⁷ "[W]e are of the opinion that, whenever a candidate for judicial office merits the endorsement and support of lawyers, the lawyers may make financial contributions toward the campaign if its cost, when reasonably conducted, exceeds that which the candidate would be expected to bear personally." *ABA Opinion* 226 (1941).

⁸ See ABA Canon 1.

⁹ "Citizens have a right under our constitutional system to criticize governmental officials and agencies. Courts are not, and should not be, immune to such criticism." *Konigsberg v. State Bar of California*, 353 U.S. 252, 269 (1957).

¹⁰ "[E]very lawyer, worthy of respect, realizes that public confidence in our courts is the cornerstone of our governmental structure, and will refrain from unjustified attack on the character of the judges, while recognizing the duty to denounce and expose a corrupt or dishonest judge." *Kentucky State Bar Ass'n v. Lewis*, 282 S.W.2d 321, 326 (Ky. 1955).

"We should be the last to deny that Mr. Meeker has the right to uphold the honor of the profession and to expose without *fear or favor* corrupt or dishonest conduct in the profession, whether the conduct be that of a judge or not. . . . However, this Canon [29] does not permit one to make charges which are false and untrue and unfounded in fact. When one's fancy leads him to make false charges, attacking the character and integrity of others, he does so at his peril. He should not do so without adequate proof of his charges and he is certainly not authorized to make careless, untruthful and vile charges against his professional brethren." *In re Meeker*, 76 N.M. 354, 364-65, 414 P.2d 862, 869 (1966), *appeal dismissed*, 385 U.S. 449, 17 L.Ed.2d 510, 87 S.Ct. 613 (1967).

provement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so.

EC 8-8 Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.¹¹

EC 8-9 The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.

DISCIPLINARY RULES

DR 8-101 Action as a Public Official.

(A) A lawyer who holds public office shall not:

- (1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.
- (2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

¹¹ *Opinions* 16, 30, 34, 77, 118 and 134 relate to Canon 6, and pass on questions concerning the propriety of the conduct of an attorney who is a public officer, in representing private interests adverse to those of the public body which he represents. The principle applied in those opinions is that an attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his public position to further his professional success or personal interests." *ABA Opinion* 192 (1939).

"The next question is whether a lawyer-member of a legislative body may appear as counsel or co-counsel at hearings before a zoning board of appeals, or similar tribunal, created by the legislative group of which he is a member. We are of the opinion that he may practice before fact-finding officers, hearing bodies and commissions, since under our views he may appear as counsel in the courts where his municipality is a party. Decisions made at such hearings are usually subject to administrative review by the courts upon the record there made. It would be inconsistent to say that a lawyer-member of a legislative body could not participate in a hearing at which the record is made, but could appear thereafter when the cause is heard by the courts on administrative review. This is subject to an important exception. He should not appear as counsel where the matter is subject to review by the legislative body of which he is a member. . . . We are of the opinion that where a lawyer does so appear there would be conflict of interests between his duty as an advocate for his client on the one hand and the obligation to his governmental unit on the other." *In re Becker*, 16 Ill.2d 488, 494-95, 158 N.E.2d 753, 756-57 (1959).

Cf. ABA Opinions 186 (1938), 136 (1935), 118 (1934), and 77 (1932).

- (3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers.¹²

- (A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.
- (B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

CANON 9

A Lawyer Should Avoid Even the Appearance of Professional Impropriety

ETHICAL CONSIDERATIONS

EC 9-1 Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system.' A lawyer should promote public confidence in our system and in the legal profession.²

EC 9-2 Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and effi-

¹² Cf. ABA Canons 1 and 2.

¹ "Integrity is the very breath of justice. Confidence in our law, our courts, and in the administration of justice is our supreme interest. No practice must be permitted to prevail which invites towards the administration of justice a doubt or distrust of its integrity." Erwin M. Jennings Co. v. DiGenova, 107 Conn. 491, 499, 141 A. 866, 868 (1928).

² "A lawyer should never be reluctant or too proud to answer unjustified criticism of his profession, of himself, or of his brother lawyer. He should guard the reputation of his profession and of his brothers as zealously as he guards his own." Rochelle and Payne, *The Struggle for Public Understanding*, 25 Texas B.J. 109, 162 (1962).

ciency of the legal system and the legal profession.³

EC 9-3 After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists.'

EC 9-4 Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9-5 Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9-6 Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect of the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.⁵

³ See ABA Canon 29.

⁴ See ABA Canon 36.

⁵ "As said in Opinion 49 of the Committee on Professional Ethics and Grievances of the American Bar Association, page 134: 'An attorney should not only avoid impropriety but should avoid the appearance of impropriety.' " State ex rel, Nebraska State Bar Ass'n v. Richards, 165 Neb. 80. 93, 84 N.W.2d 136, 145 (1957).

"It would also be preferable that such contribution [to the campaign of a candidate for judicial office] be made to a campaign committee rather than to the candidate personally. In so doing, possible appearances of impropriety would be reduced to a minimum." ABA Opinion 226 (1941).

"The lawyer assumes high duties, and has imposed upon him grave responsibilities. He may be the means of much good or much mischief. Interests of vast magnitude are entrusted to him; confidence is reposed in him ; life, liberty, character and property should be protected by him. He should guard, with jealous watchfulness, his own reputation, as well as that of his profession." People ex rel. Cutler v. Ford, 54 Ill. 520, 522 (1870), and also quoted in State Board of Law Examiners v. Sheldon, 43 Wyo. 522, 526, 7 P.2d 226, 227 (1932).

See ABA Opinion 150 (1936).

DISCIPLINARY RULES

DR 9-101 Avoiding Even the Appearance of Impropriety.⁶

- (A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.⁷
- (B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.⁸
- (C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body,⁹ or public official.

⁶ Cf. Code of Professional Responsibility, EC 5-6.

⁷ See ABA Canon 36.

"It is the duty of the judge to rule on questions of law and evidence in misdemeanor cases and examinations in felony cases. That duty calls for impartial and uninfluenced judgment, regardless of the effect on those immediately involved or others who may, directly or indirectly, be affected. Discharge of that duty might be greatly interfered with if the judge, in another capacity, were permitted to hold himself out to employment by those who are to be, or who may be, brought to trial in felony cases, even though he did not conduct the examination. His private interests as a lawyer in building up his clientele, his duty as such zealously to espouse the cause of his private clients and to defend against charges of crime brought by law-enforcement agencies of which he is a part, might prevent, or even destroy, that unbiased judicial judgment which is so essential in the administration of justice.

"In our opinion, acceptance of a judgeship with the duties of conducting misdemeanor trials, and examinations in felony cases to determine whether those accused should be bound over for trial in a higher court, ethically bars the judge from acting as attorney for the defendants upon such trial, whether they were examined by him or by some other judge. Such a practice would not only diminish public confidence in the administration of justice in both courts, but would produce serious conflict between the private interests of the judge as a lawyer, and of his clients, and his duties as a judge in adjudicating important phases of criminal processes in other cases. The public and private duties would be incompatible. The prestige of the judicial office would be diverted to private benefit, and the judicial office would be demeaned thereby." *ABA Opinion* 242 (1942).

"A lawyer, who has previously occupied a judicial position or acted in a judicial capacity, should refrain from accepting employment in any matter involving the same facts as were involved in any specific question which he acted upon in a judicial capacity and, for the same reasons, should also refrain from accepting any employment which might reasonably appear to involve the same facts." *ABA Opinion* 49 (1931).

See *ABA Opinion* 110 (1934).

⁸ See *ABA Opinions* 135 (1935) and 134 (1935) ; cf. ABA Canon 36 and *ABA Opinions* 39 (1931) and 26 (1930). But see *ABA Opinion* 37 (1931).

⁹ "[A statement by a governmental department or agency with regard to a lawyer resigning from its staff that includes a laudation of his legal ability] carries implications, probably not founded in fact, that the lawyer's acquaintance and previous relations with the personnel of the administrative agencies of the government place him in an advantageous position in practicing before such agencies. So to imply would not only represent what prob-

DR 9-102 Preserving Identity of Funds and Property of a Client.¹⁰

- (A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) Funds reasonably sufficient to pay bank charges may be deposited therein.
 - (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (B) A lawyer shall:
 - (1) Promptly notify a client of the receipt of his funds, securities, or other properties.
 - (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
 - (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the

ably is untrue, but would be highly reprehensible." *ABA Opinion* 184 (1938).

¹⁰ See ABA Canon 11.

"**Rule 9.** . . . A member of the State Bar shall not commingle the money or other property of a client with his own ; and he shall promptly report to the client the receipt by him of all money and other property belonging to such client. Unless the client otherwise directs in writing, he shall promptly deposit his client's funds in a bank or trust company . . . in a bank account separate from his own account and clearly designated as 'Clients' Funds Account' or 'Trust Funds Account' or words of similar import. Unless the client otherwise directs in writing, securities of a client in bearer form shall be kept by the attorney in a safe deposit box at a bank or trust company, . . . which safe deposit box shall be clearly designated as 'Clients' Account' or 'Trust Account' or words of similar import, and be separate from the attorney's own safe deposit box." Cal.Business and Professions Code § 6076 (West 1962).

"[C]ommingling is committed when a client's money is intermingled with that of his attorney and its separate identity lost so that it may be used for the attorney's personal expenses or subjected to claims of his creditors. . . . The rule against commingling was adopted to provide against the probability in some cases, the possibility in many cases, and the danger in all cases that such commingling will result in the loss of clients' money." *Black v. State Bar*, 57 Cal.2d 219, 225-26, 368 P.2d 118, 122, 18 Cal.Rptr. 518, 522 (1962).

sistance to his client,³⁴ except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5-104 Limiting Business Relations with a Client.

- (A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.
- (B) Prior to conclusion of all aspects of the matter *giving* rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which he acquires an interest in publication rights with respect to the subject matter of his employment or proposed employment.

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

- (A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment,³⁵ except to the extent permitted under DR 5-105(C).³⁶
- (B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).³⁷
- (C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

³⁴ See ABA Canon 42; cf. *ABA Opinion* 288 (1954).

³⁵ See ABA Canon 6; cf. *ABA Opinions* 167 (1937), 60 (1931), and 40 (1931).

³⁶ *ABA Opinion* 247 (1942) held that an attorney could not investigate a night club shooting on behalf of one of the owner's liability insurers, obtaining the cooperation of the owner, and later represent the injured patron in an action against the owner and a different insurance company unless the attorney obtain the "express consent of all concerned given after a full disclosure of the facts," since to do so would be to represent conflicting interests.

See *ABA Opinions* 247 (1942), 224 (1941), 222 (1941), 218 (1941), 112 (1934), 83 (1932), and 86 (1932).

³⁷ Cf. *ABA Opinions* 231 (1941) and 160 (1936).

- (D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

DR 5-106 Settling Similar Claims of Clients.³⁸

- (A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

DR 5-107 Avoiding Influence by Others Than the Client.

- (A) Except with the consent of his client after full disclosure, a lawyer shall not:
 - (1) Accept compensation for his legal services from one other than his client.
 - (2) Accept from one other than his client any thing of value related to his representation of or his employment by his client.³⁹
- (B) A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.⁴⁰
- (C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
 - (1) A non-lawyer owns any interest therein,⁴¹ except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) A non-lawyer is a corporate director or officer thereof;⁴² or

³⁸ Cf. *ABA Opinions* 243 (1942) and 235 (1941).

³⁹ See ABA Canon 38.

"A lawyer who receives a commission (whether delayed or not) from a title insurance company or guaranty fund for recommending or selling the insurance to his client, or for work done for the client or the company, without either fully disclosing to the client his financial interest in the transaction, or crediting the client's bill with the amount thus received, is guilty of unethical conduct." *ABA Opinion* 304 (1962).

⁴⁰ See ABA Canon 35; cf. *ABA Opinion* 237 (1941).

"When the lay forwarder, as agent for the creditor, forwards a claim to an attorney, the direct relationship of attorney and client shall then exist between the attorney and the creditor, and the forwarder shall not interpose itself as an intermediary to control the activities of the attorney." *ABA Opinion* 294 (1958).

⁴¹ "Permanent beneficial and voting rights in the organization set up to practice law, whatever its form, must be restricted to lawyers while the organization is engaged in the practice of law." *ABA Opinion* 303 (1961).

⁴² "*Canon 33* . . . promulgates underlying principles that must be observed no matter in what form of organiza-

- (3) A non-lawyer has the right to direct or control the professional judgment of a lawyer.⁴³

CANON 6

A Lawyer Should Represent a Client Competently

ETHICAL CONSIDERATIONS

EC 6-1 Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice¹ and should accept employment only in matters which he is or intends to become competent to handle.

EC 6-2 A lawyer is aided in attaining and maintaining his competence by keeping abreast of current legal literature and developments, participat-

tion lawyers practice law. Its requirement that no person shall be admitted or held out as a practitioner or member who is not a member of the legal profession duly authorized to practice, and amenable to professional discipline, makes it clear that any centralized management must be in lawyers to avoid a violation of this Canon." *ABA Opinion* 303 (1961).

43 "There is no intervention of any lay agency between lawyer and client when centralized management provided only by lawyers may give guidance or direction to the services being rendered by a lawyer-member of the organization to a client. The language in *Canon 35* that a lawyer should avoid all relations which direct the performance of his duties by or in the interest of an intermediary refers to lay intermediaries and not lawyer intermediaries with whom he is associated in the practice of law." *ABA Opinion* 303 (1961).

¹ "[W]hen a citizen is faced with the need for a lawyer, he wants, and is entitled to, the best informed counsel he can obtain. Changing times produce changes in our laws and legal procedures. The natural complexities of law require continuing intensive study by a lawyer if he is to render his clients a maximum of efficient service. And, in so doing, he maintains the high standards of the legal profession; and he also increases respect and confidence by the general public." Rochelle & Payne, *The Struggle for Public Understanding*, 25 Texas B.J. 109, 160 (1962).

"We have undergone enormous changes in the last fifty years within the lives of most of the adults living today who may be seeking advice. Most of these changes have been accompanied by changes and developments in the law. . . . Every practicing lawyer encounters these problems and is often perplexed with his own inability to keep up, not only with changes in the law, but also with changes in the lives of his clients and their legal problems.

"To be sure, no client has a right to expect that his lawyer will have all of the answers at the end of his tongue or even in the back of his head at all times. But the client does have the right to expect that the lawyer will have devoted his time and energies to maintaining and improving his competence to know where to look for the answers, to know how to deal with the problems, and to know how to advise to the best of his legal talents and abilities." Levy & Sprague, *Accounting and Law: Is Dual Practice in the Public Interest?*, 52 A.B.A.J. 1110, 1112 (1966).

ing in continuing legal education programs,² concentrating in particular areas of the law, and by utilizing other available means. He has the additional ethical obligation to assist in improving the legal profession, and he may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of his younger associates and the giving of sound guidance to all lawyers who consult him. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to meet those standards himself.

EC 6-3 While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified.³ However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which he is not and does not expect to become so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.⁴

EC 6-4 Having undertaken representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.

EC 6-5 A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

² "The whole purpose of continuing legal education, so enthusiastically supported by the ABA, is to make it possible for lawyers to make themselves better lawyers. But there are no nostrums for proficiency in the law; it must come through the hard work of the lawyer himself. To the extent that that work, whether it be in attending institutes or lecture courses, in studying after hours or in the actual day in and day out practice of his profession, can be concentrated within a limited field, the greater the proficiency and expertness that can be developed." *Report of the Special Committee on Specialization and Specialized Legal Education*, 79 A.B.A.Rep. 582, 588 (1954).

³ "If the attorney is not competent to skillfully and properly perform the work, he should not undertake the service." *Degen v. Steinbrink*, 202 App.Div. 477, 481, 195 N.Y.S. 810, 814 (1922), *aff'd mem.*, 236 N.Y. 669, 142 N.E. 328 (1923).

⁴ Cf. *ABA Opinion* 232 (1941).

EC 6-6 A lawyer should not seek, by contract or other means, to limit his individual liability to his client for his malpractice. A lawyer who handles the affairs of his client properly has no need to attempt to limit his liability for his professional activities and one who does not handle the affairs of his client properly should not be permitted to do so. A lawyer who is a stockholder in or is associated with a professional legal corporation may, however, limit his liability for malpractice of his associates in the corporation, but only to the extent permitted by law.⁵

DISCIPLINARY RULES

DR 6-101 Failing to Act Competently.

(A) A lawyer shall not:

- (1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.
- (2) Handle a legal matter without preparation adequate in the circumstances.
- (3) Neglect a legal matter entrusted to him.⁶

DR 6-102 Limiting Liability to Client.

(A) A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

CANON 7

A Lawyer Should Represent a Client Zealously Within the Bounds of the Law

ETHICAL CONSIDERATIONS

EC 7-1 The duty of a lawyer, both to his client 1 and to the legal system, is to represent his client zealously ² within the bounds of the law, ³ which

See ABA Opinion 303 (1961) ; cf. Code of Professional Responsibility, EC 2-11.

⁶ The annual report for 1967-1968 of the Committee on Grievances of the Association of the Bar of the City of New York showed a receipt of 2,232 complaints ; of the 828 offenses against clients, 76 involved conversion, 49 involved "overreaching," and 452, or more than half of all such offenses, involved neglect. *Annual Report of the Committee on Grievances of the Association of the Bar of the City of New York, N.Y.L.J.*, Sept. 12, 1968, at 4, col. 5.

¹ "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law." *Powell v. Alabama*, 287 U.S. 45, 68-69, 77 L.Ed. 158, 170, 53 S.Ct. 55, 64 (1932).

² Cf. ABA Canon 4.

"At times . . . [the tax lawyer] will be wise to discard some arguments and he should exercise discretion to emphasize the arguments which in his judgment are most likely to be persuasive. But this process involves legal judgment rather than moral attitudes. The tax lawyer should put aside private disagreements with Congressional and Treasury policies. His own notions of policy, and his personal view of what the law should be, are irrelevant. The job entrusted to him by his client is to use all his learning and ability to protect his client's rights, not to

includes Disciplinary Rules and enforceable pro-

help in the process of promoting a better tax system. The tax lawyer need not accept his client's economic and social opinions, but the client is paying for technical attention and undivided concentration upon his affairs. He is equally entitled to performance unfettered by his attorney's economic and social predilections." Paul, *The Lawyer as a Tax Adviser*, 25 Rocky Mt. L. Rev. 412, 418 (1953).

³ See ABA Canons 15 and 32.

ABA Canon 5, although only speaking of one accused of crime, imposes a similar obligation on the lawyer : "[T]he lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law."

"Any persuasion or pressure on the advocate which deters him from planning and carrying out the litigation on the basis of 'what, within the framework of the law, is best for my client's interest?' interferes with the obligation to represent the client fully within the law.

"This obligation, in its fullest sense, is the heart of the adversary process. Each attorney, as an advocate, acts for and seeks that which in his judgment is best for his client, within the bounds authoritatively established. The advocate does not *decide* what is just in this case-- he would be usurping the function of the judge and jury-- he acts for and seeks for his client that which he is entitled to under the law. He can do no less and properly represent the client." Thode, *The Ethical Standard for the Advocate*, 39 Texas L.Rev. 575, 584 (1961).

"The [Texas public opinion] survey indicates that distrust of the lawyer can be traced directly to certain factors. Foremost of these is a basic misunderstanding of the function of the lawyer as an advocate in an adversary system.

"Lawyers are accused of taking advantage of 'loopholes' and 'technicalities' to win. Persons who make this charge are unaware, or do not understand, that the lawyer is hired to win, and if he does not exercise every legitimate effort in his client's behalf, then he is betraying a sacred trust." Rochelle & Payne, *The Struggle for Public Understanding*, 25 Texas B.J. 109, 159 (1962).

"The importance of the attorney's undivided allegiance and faithful service to one accused of crime, irrespective of the attorney's personal opinion as to the guilt of his client, lies in Canon 5 of the American Bar Association Canon of Ethics.

"The difficulty lies, of course, in ascertaining whether the attorney has been guilty of an error of judgment, such as an election with respect to trial tactics, or has otherwise been actuated by his conscience or belief that his client should be convicted in any event. All too frequently courts are called upon to review actions of defense counsel which are, at the most, errors of judgment, not properly reviewable on habeas corpus unless the trial is a farce and a mockery of justice which requires the court to intervene. . . . But when defense counsel, in a truly adverse proceeding, admits that his conscience would not permit him to adopt certain customary trial procedures, this extends beyond the realm of judgment and strongly suggests an invasion of constitutional rights." *Johns v. Smyth*, 176 F.Supp. 949, 952 (E.D.Va.1959), *modified*, United States ex rel. Wilkins v. Banmiller, 205 F.Supp. 123, 128, n. 5 (E.D.Pa.1962), *aff'd*, 325 F.2d 514 (3d Cir. 1963), *cert. denied*, 379 U.S. 847, 13 L.Ed.2d 51, 85 S.Ct. 87 (1964).

"The adversary system in law administration bears a striking resemblance to the competitive economic system. In each we assume that the individual through partisanship or through self-interest will strive mightily for his side, and that kind of striving we must have. But neither system would be tolerable without restraints and modi-

fessional regulations.⁴ The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law;⁵ to seek any lawful objective⁶ through legally permissible means;⁷ and to present for adjudication any lawful claim, issue, or defense.

EC 7-2 The bounds of the law in a given case are often difficult to ascertain.⁸ The language of

fictions, and at times without outright departures from the system itself. Since the legal profession is entrusted with the system of law administration, a part of its task is to develop in its members appropriate restraints without impairing the values of partisan striving. An accompanying task is to aid in the modification of the adversary system or departure from it in areas to which the system is unsuited." Cheatham, *The Lawyer's Role and Surroundings*, 25 Rocky Mt. L.Rev. 405, 410 (1953).

⁴ "Rule 4.15 prohibits, in the pursuit of a client's cause, 'any manner of fraud or chicanery'; Rule 4.22 requires ' candor and fairness' in the conduct of the lawyer, and forbids the making of knowing misquotations; Rule 4.47 provides that a lawyer 'should always maintain his integrity,' and generally forbids all misconduct injurious to the interests of the public, the courts, or his clients, and acts contrary to 'justice, honesty, modesty or good morals.' Our Commissioner has accurately paraphrased these rules as follows: 'An attorney does not have the duty to do all and whatever he can that may enable him to win his client's cause or to further his client's interest. His duty and efforts in these respects, although they should be prompted by his "entire devotion" to the interest of his client, must be within and not without the bounds of the law.' " In re Wines, 370 S.W.2d 328, 333 (Mo.1963).

See Note, 38 Texas L.Rev. 107, 110 (1959).

⁵ "Under our system of government the process of adjudication is surrounded by safeguards evolved from centuries of experience. These safeguards are not designed merely to lend formality and decorum to the trial of causes. They are predicated on the assumption that to secure for any controversy a truly informed and dispassionate decision is a difficult thing, requiring for its achievement a special summoning and organization of human effort and the adoption of measures to exclude the biases and prejudgments that have free play outside the courtroom. All of this goes for naught if the man with an unpopular cause is unable to find a competent lawyer courageous enough to represent him. His chance to have his day in court loses much of its meaning if his case is handicapped from the outset by the very kind of prejudgment our rules of evidence and procedure are intended to prevent." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1216 (1958).

⁶ "[I]t is . . . [the tax lawyer's] positive duty to show the client how to avail himself to the full of what the law permits. He is not the keeper of the Congressional conscience." Paul, *The Lawyer as a Tax Adviser*, 25 Rocky Mt.L.Rev. 412, 418 (1953).

⁷ See ABA Canons 15 and 30.

"The fact that it desired to evade the law, as it is called, is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can if you do not pass it . . . It is a matter of proximity and degree as to which minds will differ . . . Justice Holmes, in *Superior Oil Co. v. Missis-*

legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges from well-settled rules through areas of conflicting authority to areas without precedent.

EC 7-3 Where the bounds of law are uncertain, the action of a lawyer may depend on whether he is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different.⁹ In asserting a position on behalf of his client, an advocate for the most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily assists his client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law.¹⁰ In serving a client as adviser, a lawyer in appropriate

sippi, 280 U.S. 390, 395-96, 74 L. Ed. 504, 508, 50 S.Ct. 169, 170 (1930).

⁹ "Today's lawyers perform two distinct types of functions, and our ethical standards should, but in the main do not, recognize these two functions. Judge Philbrick McCoy recently reported to the American Bar Association the need for a reappraisal of the Canons in light of the new and distinct function of counselor, as distinguished from advocate, which today predominates in the legal profession.

" . . . In the first place, any revision of the canons must take into account and speak to this new and now predominant function of the lawyer. . . . It is beyond the scope of this paper to discuss the ethical standards to be applied to the counselor except to state that in my opinion such standards should require a greater recognition and protection for the interest of the public generally than is presently expressed in the canons. Also, the counselor's obligation should extend to requiring him to inform and to impress upon the client a just solution of the problem, considering all interests involved." Thode, *The Ethical Standard for the Advocate*, 39 Texas L.Rev. 575, 578-79 (1961).

"The man who has been called into court to answer for his own actions is entitled to fair hearing. Partisan advocacy plays its essential part in such a hearing, and the lawyer pleading his client's case may properly present it in the most favorable light. A similar resolution of doubts in one direction becomes inappropriate when the lawyer acts as counselor. The reasons that justify and even require partisan advocacy in the trial of a cause do not grant any license to the lawyer to participate as legal advisor in a line of conduct that is immoral, unfair, or of doubtful legality. In saving himself from this unworthy involvement, the lawyer cannot be guided solely by an unreflective inner sense of good faith; he must be at pains to preserve a sufficient detachment from his client's interests so that he remains capable of a sound and objective appraisal of the propriety of what his client proposes to do." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1161 (1958).

¹⁰ "[A] lawyer who is asked to advise his client . . . may freely urge the statement of positions most favorable to the client just as long as there is reasonable basis for those positions." *ABA Opinion 314* (1965).

circumstances should give his professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law.

Duty of the Lawyer to a Client

EC 7-4 The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail.¹¹ His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.¹²

¹¹ "The lawyer . . . is not an umpire, but an advocate. He is under no duty to refrain from making every proper argument in support of any legal point because he is not convinced of its inherent soundness. . . . His personal belief in the soundness of his cause or of the authorities supporting it, is irrelevant." *ABA Opinion* 280 (1949).

"Counsel apparently misconceived his role. It was his duty to honorably present his client's contentions in the light most favorable to his client. Instead he presumed to advise the court as to the validity and sufficiency of prisoner's motion, by letter. We therefore conclude that the prisoner had no effective assistance of counsel and remand this case to the District Court with instructions to set aside the Judgment, appoint new counsel to represent the prisoner if he makes no objection thereto, and proceed anew." *McCartney v. United States*, 343 F.2d 471, 472 (9th Cir. 1965).

¹² "Here the court-appointed counsel had the transcript but refused to proceed with the appeal because he found no merit in it. . . . We cannot say that there was a finding of frivolity by either of the California courts or that counsel acted in any greater capacity than merely as *amicus curiae* which was condemned in *Ellis*, *supra*. Hence California's procedure did not furnish petitioner with counsel acting in the role of an advocate nor did it provide that full consideration and resolution of the matter as is obtained when counsel is acting in that capacity.

"The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of *amicus curiae*. The no-merit letter and the procedure it triggers do not reach that dignity. Counsel should, and can with honor and without conflict, be of more assistance to his client and to the court. His role as advocate requires that he support his client's appeal to the best of his ability. Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal." *Anders v. California*, 386 U.S. 738, 744, 18 L.Ed.

EC 7-5 A lawyer as adviser furthers the interest of his client by giving his professional opinion as to what he believes would likely be the ultimate decision of the courts on the matter at hand and by informing his client of the practical effect of such decision.¹³ He may continue in the representation of his client even though his client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position. A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor.¹⁴

EC 7-6 Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when his client is contemplating a course of conduct having legal consequence that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist his client in developing evidence relevant to the state of mind of the client at a particular time. He may properly assist his client in the development and preservation of evidence of existing motive, intent, or desire; obviously, he may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the state of mind of his client, and in those situations he should resolve reasonable doubts in favor of his client.

EC 7-7 In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative defense. A defense lawyer in a criminal case has the *duty* to advise his client fully on whether a particular plea to a charge appears to be desirable and as to the pros-

2d 493, 498, 87 S.Ct. 1396, 1399-1400 (1967), *rehearing denied*, 388 U.S. 924, 18 L.Ed.2d 1377, 87 S.Ct. 2094 (1967).

See Paul, *The Lawyer As a Tax Adviser*, 25 Rocky Mt. L. Rev. 412, 432 (1953).

¹³ See ABA Canon 32.

¹⁴ "For a lawyer to represent a syndicate notoriously engaged in the violation of the law for the purpose of advising the members how to break the law and at the same time escape it, is manifestly improper. While a lawyer may see to it that anyone accused of crime, no matter how serious and flagrant, has a fair trial, and present all available defenses, he may not co-operate in planning violations of the law. There is a sharp distinction, of course, between advising what can lawfully be done and advising how unlawful acts can be done in a way to avoid conviction. Where a lawyer accepts a retainer from an organization, known to be unlawful, and agrees in advance to defend its members when from time to time they are accused of crime arising out of its unlawful activities, this is equally improper."

"See also *Opinion 155*." *ABA Opinion* 281 (1952).

pects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.¹⁵

EC 7-8 A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations.¹⁶ A lawyer should advise his client of the possible effect of each legal alternative.¹⁷ A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint.¹⁸ In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible.¹⁹ He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and

¹⁵ See ABA Special Committee on Minimum Standards for the Administration of Criminal Justice, *Standards Relating to Pleas of Guilty* pp. 69-70 (1968).

¹⁶ "First of all, a truly great lawyer is a wise counselor to all manner of men in the varied crises of their lives when they most need disinterested advice. Effective counseling necessarily involves a thoroughgoing knowledge of the principles of the law not merely as they appear in the books but as they actually operate in action." Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public*, 40 A.B.A.J. 31 (1954).

¹⁷ "A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon. . . ." ABA Canon 8.

¹⁸ "[I]n devising charters of collaborative effort the lawyer often acts where all of the affected parties are present as participants. But the lawyer also performs a similar function in situations where this is not so, as, for example, in planning estates and drafting wills. Here the instrument defining the terms of collaboration may affect persons not present and often not born. Yet here, too, the good lawyer does not serve merely as a legal conduit for his client's desires, but as a wise counselor, experienced in the art of devising arrangements that will put in workable order the entangled affairs and interests of human beings." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1162 (1958).

¹⁹ See ABA Canon 8.

"Vital as is the lawyer's role in adjudication, it should not be thought that it is only as an advocate pleading in open court that he contributes to the administration of the law. The most effective realization of the law's aims often takes place in the attorney's office, where litigation is forestalled by anticipating its outcome, where the lawyer's quiet counsel takes the place of public force. Contrary to popular belief, the compliance with the law thus brought about is not generally lip-serving and narrow, for a reminding him of its long-run costs the lawyer often deters his client from a course of conduct technically permissible under existing law, though inconsistent with its underlying spirit and purpose." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1161 (1958).

not for himself. In the event that the client in a non-adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.²⁰

EC 7-9 In the exercise of his professional judgment on those decisions which are for his determination in the handling of a legal matter,²¹ a lawyer should always act in a manner consistent with the best interests of his client.²² However, when an action in the best interest of his client seems to him to be unjust, he may ask his client for permission to forego such action.²³

EC 7-10 The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7-11 The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

EC 7-12 Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all

²⁰ "My summation of Judge Sharswood's view of the advocate's duty to the client is that he owes to the client the duty to use all legal means in support of the client's case. However, at the same time Judge Sharswood recognized that many advocates would find this obligation unbearable if applicable without exception. Therefore, the individual lawyer is given the choice of representing his client fully within the bounds set by the law or of telling his client that he cannot do so, so that the client may obtain another attorney if he wishes." Thode, *The Ethical Standard for the Advocate*, 39 Texas L.Rev. 575, 582 (1961). Cf. Code of Professional Responsibility, DR 2-110 (C).

²¹ See ABA Canon 24.

²² Thode, *The Ethical Standard for the Advocate*, 39 Texas L.Rev. 575, 592 (1961).

²³ Cf. ABA *Opinions* 253 (1946) and 178 (1938).

circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent.

EC 7-13 The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict.²⁴ This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecution's case or aid the accused.

EC 7-14 A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

²⁴ See ABA Canon 5 and *Berger v. United States*, 295 U.S. 78, 79 L. Ed. 1314, 55 S.Ct. 629 (1935).

"The public prosecutor cannot take as a guide for the conduct of his office the standards of an attorney appearing on behalf of an individual client. The freedom elsewhere wisely granted to a partisan advocate must be severely curtailed if the prosecutor's duties are to be properly discharged. The public prosecutor must recall that he occupies a dual role, being obligated, on the one hand, to furnish that adversary element essential to the informed decision of any controversy, but being possessed, on the other, of important governmental powers that are pledged to the accomplishment of one objective only, that of impartial justice. Where the prosecutor is recreant to the trust implicit in his office, he undermines confidence, not only in his profession, but in government and the very ideal of justice itself." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1218 (1958).

"The prosecuting attorney is the attorney for the state, and it is his primary duty not to convict but to see that justice is done." *ABA Opinion* 150 (1936).

EC 7-15 The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial, or a combination of both. They may be *ex parte* in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency,²⁵ regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law.²⁶ Where the applicable rules of the agency impose specific obligations upon a lawyer, it is his duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify himself, his client if identity of his client is not privileged,²⁷ and the representative nature of his appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying his client.

EC 7-16 The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from his role in representing a person under investigation or on trial by a legislative body. When a lawyer appears in connection with proposed legislation, he seeks to affect the lawmaking process, but when he appears on behalf of a client in investigatory or impeachment proceedings, he is concerned with the protection of the rights of *his* client. In either event, he should identify himself and his client, if identity of his client is not privileged, and should comply with applicable laws and legislative rules.²⁸

EC 7-17 The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligation to adopt a personal viewpoint favorable to the in-

²⁵ As to appearances before a department of government, Canon 26 provides: "A lawyer openly . . . may render professional services . . . in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts

²⁶ "But as an advocate before a service which itself represents the adversary point of view, where his client's case is fairly arguable, a lawyer is under no duty to disclose its weaknesses, any more than he would be to make such a disclosure to a brother lawyer. The limitations within which he must operate are best expressed in Canon 22" *ABA Opinion* 314 (1965).

²⁷ See *Baird v. Koerner*, 279 F.2d 623 (9th Cir. 1960).

²⁸ See ABA Canon 26.

terests or desires of his client.²⁹ While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client.

EC 7-18 The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of his client with a person he knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he has the consent of the lawyer for that person.³⁰ If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting to represent himself,³¹ except that he may advise him to obtain a lawyer.

Duty of the Lawyer to the Adversary System of Justice

EC 7-19 Our legal system provides for the adjudication of disputes governed by the rules of substantive, evidentiary, and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known;³² the advocate, by his zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments.³³ The duty of a

²⁹ "Law should be so practiced that the lawyer remains free to make up his own mind how he will vote, what causes he will support, what economic and political philosophy he will espouse. It is one of the glories of the profession that it admits of this freedom. Distinguished examples can be cited of lawyers whose views were at variance from those of their clients, lawyers whose skill and wisdom make them valued advisers to those who had little sympathy with their views as citizens." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1217 (1958).

"No doubt some tax lawyers feel constrained to abstain from activities on behalf of a better tax system because they think that their clients may object. Clients have no right to object if the tax adviser handles their affairs competently and faithfully and independently of his private views as to tax policy. They buy his expert services, not his private opinions or his silence on issues that gravely affect the public interest." Paul, *The Lawyer as a Tax Adviser*, 25 Rocky Mt.L.Rev. 412, 434 (1953).

³⁰ See ABA Canon 9.

³¹ *Id.*

³² See *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1160 (1958).

³³ "Without the participation of someone who can act responsibly for each of the parties, this essential narrowing of the issues [by exchange of written pleadings or stipulations of counsel] becomes impossible. But here again the true significance of partisan advocacy lies deeper, touching once more the integrity of the adjudicative process itself. It is only through the advocate's participation that the hearing may remain in fact what it purports to be in

lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law.³⁴

EC 7-20 In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently³⁵ according to procedures that command public confidence and respect.³⁶ Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the bases for standards of professional conduct set forth in the Disciplinary Rules.

EC 7-21 The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process;³⁷ further, the person against whom the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

EC 7-22 Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his lawyer may, in good faith and

theory : a public trial of the facts and issues. Each advocate comes to the hearing prepared to present his proofs and arguments, knowing at the same time that his arguments may fail to persuade and that his proof may be rejected as inadequate. . . . The deciding tribunal, on the other hand, comes to the hearing uncommitted. It has not represented to the public that any fact can be proved, that any argument is sound, or that any particular way of stating a litigant's case is the most effective expression of its merits." *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1160-61 (1958).

³⁴ Cf. ABA Canons 15 and 32.

³⁵ Cf. ABA Canon 21.

³⁶ See *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A.J. 1159, 1216 (1958).

³⁷ "We are of the opinion that the letter in question was improper, and that in writing and sending it respondent was guilty of unprofessional conduct. This court has heretofore expressed its disapproval of using threats of criminal prosecution as a means of forcing settlement of civil claims. . . .

"Respondent has been guilty of a violation of a principle which condemns any confusion of threats of criminal prosecution with the enforcement of civil claims. For this misconduct he should be severely censured." Matter of Gelman, 230 App.Div. 524, 527, 245 N.Y.S. 416, 419 (1930).

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within the framework of the law, take steps to test the correctness of a ruling of a tribunal.³⁸

EC 7-23 The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client.³⁹ Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary has done so; but, having made such disclosure, he may challenge its soundness in whole or in part.⁴⁰

EC 7-24 In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact.⁴¹ It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rules otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client. However, a lawyer may argue, on his analysis of the evidence, for any position or

conclusion with respect to any of the foregoing matters.

EC 7-25 Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, he is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them.⁴² As examples, a lawyer should subscribe to or verify only those pleadings that he believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless he believes that his statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing him*, and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

EC 7-26 The law and Disciplinary Rules prohibit the use of fraudulent, false, or perjured testimony or evidence.⁴³ A lawyer who knowingly⁴⁴ participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his client desires to have presented unless he knows, or from facts within his knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.⁴⁵

EC 7-27 Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.⁴⁶

EC 7-28 Witnesses should always testify truthfully⁴⁷ and should be free from any financial inducements that might tempt them to do other-

³⁸ "An attorney has the duty to protect the interests of his client. He has a right to press legitimate argument and to protest an erroneous ruling." *Gallagher v. Municipal Court*, 31 Cal.2d 784, 796, 192 P.2d 905, 913 (1948).

"There must be protection, however, in the far more frequent case of the attorney who stands on his rights and combats the order in good faith and without disrespect believing with good cause that it is void, for it is here that the independence of the bar becomes valuable." Note, 39 Colum.L.Rev. 433, 438 (1939).

³⁹ "Too many do not understand that accomplishment of the layman's abstract ideas of justice is the function of the judge and jury, and that it is the lawyer's sworn duty to portray his client's case in its most favorable light." Rochelle and Payne, *The Struggle for Public Understanding*, 25 Texas B.J. 109, 159 (1962).

⁴⁰ "We are of the opinion that this Canon requires the lawyer to disclose such decisions [that are adverse to his client's contentions] to the court. He may, of course, after doing so, challenge the soundness of the decisions or present reasons which he believes would warrant the court in not following them in the pending case." *ABA Opinion* 146 (1935).

Cf. ABA Opinion 280 (1949) and Thode, *The Ethical Standard for the Advocate*, 39 Texas L. Rev. 575, 585-86 (1961).

⁴¹ See ABA Canon 15.

"The traditional duty of an advocate is that he honorably uphold the contentions of his client. He should not voluntarily undermine them." *Harders v. State of California*, 373 F.2d 839, 842 (9th Cir. 1967).

⁴² See ABA Canon 22.

⁴³ *Id.* Cf. ABA Canon 41.

⁴⁴ See generally *ABA Opinion* 287 (1953) as to a lawyer's duty when he unknowingly participates in introducing perjured testimony.

⁴⁵ "Under any standard of proper ethical conduct an attorney should not sit by silently and permit his client to commit what may have been perjury, and which certainly would mislead the court and the opposing party on a matter vital to the issue under consideration. .

"Respondent next urges that it was his duty to observe the utmost good faith toward his client, and therefore he could not divulge any confidential information. This duty to the client of course does not extend to the point of authorizing collaboration with him in the commission of fraud." In re Carroll, 244 S.W.2d 474, 474-75 (Ky. 1951).

⁴⁶ See ABA Canon 5; cf. *ABA Opinion* 131 (1935).

⁴⁷ Cf. ABA Canon 39.

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wise.⁴⁸ A lawyer should not pay or agree to pay a non-expert witness an amount in excess of reimbursement for expenses and financial loss incident to his being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for his services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that his client and lay associates conform to these standards.⁴⁹

EC 7-29 To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences.⁵⁰ When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the juror⁵¹ or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected.⁵² When

an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerably and with deference to the personal feelings of the juror.

EC 7-30 Vexatious or harassing investigations of veniremen or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

EC 7-31 Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

EC 7-32 Because of his duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

EC 7-33 A goal of our legal system is that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury.⁵³ Such news or comments may

⁴⁸ "The prevalence of perjury is a serious menace to the administration of justice, to prevent which no means have as yet been satisfactorily devised. But there certainly can be no greater incentive to perjury than to allow a party to make payments to its opponents witnesses under any guise or on any excuse, and at least attorneys who are officers of the court to aid it in the administration of justice, must keep themselves clear of any connection which in the slightest degree tends to induce witnesses to testify in favor of their clients." In re Robinson, 151 App.Div. 589, 600, 136 N.Y.S. 548, 556-57 (1912), *aff'd*, 209 N.Y. 354, 103 N.E. 160 (1913).

⁴⁹ "It will not do for an attorney who seeks to justify himself against charges of this kind to show that he has escaped criminal responsibility under the Penal Law, nor can he blindly shut his eyes to a system which tends to suborn witnesses, to produce perjured testimony, and to suppress the truth. He has an active affirmative duty to protect the administration of justice from perjury and fraud, and that duty is not performed by allowing his subordinates and assistants to attempt to subvert justice and procure results for his clients based upon false testimony and perjured witnesses." *Id.*, 151 App.Div. at 592, 136 N.Y.S. at 551.

⁵⁰ See ABA Canon 23.

⁵¹ "[I]t is unfair to jurors to permit a disappointed litigant to pick over their private associations in search of something to discredit them and their verdict. And it would be unfair to the public too if jurors should understand that they cannot convict a man of means without risking an inquiry of that kind by paid investigators, with, to boot, the distortions an inquiry of that kind can produce." State v. LaFera, 42 N.J. 97, 107, 199 A.2d 630, 636 (1964).

⁵² ABA Opinion 319 (1968) points out that "[m]any courts today, and the trend is in this direction, allow the testi-

mony of jurors as to all irregularities in and out of the courtroom except those irregularities whose existence can be determined only by exploring the consciousness of a single particular juror, New Jersey v. Kocielek, 20 N.J. 92, 118 A.2d 812 (1955). Model Code of Evidence Rule 301. Certainly as to states in which the testimony and affidavits of jurors may be received in support of or against a motion for new trial, a lawyer, in his obligation to protect his client, must have the tools for ascertaining whether or not grounds for a new trial exist and it is not unethical for him to talk to and question jurors."

⁵³ Generally see ABA Advisory Committee on Fair Trial and Free Press, Standards Relating to Fair Trial and Free Press (1966).

"[T]he trial court might well have proscribed extrajudicial statements by any lawyer, party, witness, or court official which divulged prejudicial matters . . . See State v. Van Dwyne, 43 N.J. 369, 389, 204 A.2d 841, 852 (1964), in which the court interpreted Canon 20 of the American Bar Association's Canons of Professional Ethics to prohibit such statements. Being advised of the great public interest in the case, the mass coverage of the press, and the potential prejudicial impact of publicity, the court could also have requested the appropriate city and county officials to promulgate a regulation with respect to dissemination of information about the case by their employees. In addition, reporters who wrote or broadcast prejudicial stories, could have been warned as to the impropriety of publishing material not introduced in the proceedings. . . . In this manner, Sheppard's right to a trial free from outside interference would have been given added protection without corresponding curtailment of the news media. Had the judge, the other officers of the court, and the police placed the interest of justice first, the news media would have soon learned to be content with the task of reporting the case as it unfolded in the courtroom—not pieced together from extrajudicial statements." Sheppard v. Maxwell, 384 U.S. 333, 361-62, 16 L. Ed.2d 600, 619-20, 86 S.Ct. 1507, 1521-22 (1966).

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lawyer and render appropriate accounts to his client regarding them.

- (4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

DEFINITIONS*

As used in the Disciplinary Rules of the Code of Professional Responsibility:

- (1) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

* "Confidence" and "secret" are defined in DR 4-101(A).

- (2) "Law firm" includes a professional legal corporation.

"Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

"Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

"State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

"Tribunal" includes all courts and all other adjudicatory bodies.

"A bar association representative of the general bar" includes a bar association of specialists as referred to in DR 2-105(A) (1) or (4).

CANONS OF JUDICIAL ETHICS *

With Amendments to January 1, 1968

Ancient Precedents.

"And I charged your judges at that time, saying Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

"Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I wil hear it"—*Deuteronomy*, I, 16-17.

"Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift; for a gift doth blind the eyes of the wise, and pervert the words of the righteous."—*Deuteronomy*, XVI, 19.

"We will not make any justiciaries, constables, sheriffs or bailiffs, but from those who understand the law of the realm and are well disposed to observe it."—*Magna Charta*, XLV.

"Judges ought to remember that their office is *jus dicere* not *jus dare*; to interpret law, and not to make law, or give law." .

"Judges ought to be more learned than witty; more reverend than plausible; and more advised than confident. Above all things, integrity is their portion and proper virtue." . .

"Patience and gravity of hearing is an essential part of justice; and an over speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the Bar, or to show quickness of conceit in cutting off evidence or counsel too short; or to prevent information by questions though pertinent."

"The place of justice is a hallowed place; and therefore not only the Bench, but the foot-pare and precincts and purprise thereof ought to be preserved without scandal and corruption." .

—*Bacon's Essay "Of Judicature."*

Preamble.

In addition to the Canons for Professional Conduct of Lawyers which it has formulated and adopted, the American Bar Association, mindful

* These Canons, to and including Canon 34, were adopted by the American Bar Association at its Forty-Sixth Annual Meeting, at Philadelphia, Pennsylvania, on July 9, 1924. The Committee of the Association which prepared the Canons was appointed in 1922, and composed of the following: William H. Taft, District of Columbia, Chairman; Leslie C. Cornish, Maine; Robert von Moschzisker, Pennsylvania; Charles A. Boston, New York; and Garret W. McEnerney, California. George Sutherland, of Utah, originally a member of the Committee, retired and was succeeded by Mr. McEnerney. In 1923, Frank M. Angellotti, of California, took the place of Mr. McEnerney.

Canons 28 and 30 were amended at the Fifty-Sixth Annual Meeting, Grand Rapids, Michigan, August 30-September 1, 1933. Canon 28 was further amended at the Seventy-Third Annual Meeting, Washington, D. C., September 20, 1950. Canons 35 and 36 were adopted at the Sixtieth Annual Meeting, at Kansas City, Missouri, September 30, 1937. Canon 35 was amended at San Francisco, Calif., Sept. 1952.

that the character and conduct of a judge should never be objects of indifference, and that declared ethical standards tend to become habits of life, deems it desirable to set forth its views respecting those principles which should govern the personal practice of members of the judiciary in the administration of their office. The Association accordingly adopts the following Canons, the spirit of which it suggests as a proper guide and reminder for judges, and as indicating what the people have a right to expect from them.

1. Relations of the Judiciary.

The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his relation to the state and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses, jurors and attendants who aid him in the administration of its functions.

2. The Public Interest.

Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.

3. Constitutional Obligations.

It is the duty of all judges in the United States to support the federal Constitution and that of the state whose laws they administer; in so doing, they should fearlessly observe and apply fundamental limitations and guarantees.

4. Avoidance of Impropriety.

A judge's official conduct should be free from impropriety and the appearance of impropriety; he should avoid infractions of law; and his personal behavior, not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach.

5. Essential Conduct.

A judge should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts.

6. Industry.

A judge should exhibit an industry and application commensurate with the duties imposed upon him.

7. Promptness.

A judge should be prompt in the performance of his judicial duties, recognizing that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality on his part justifies dissatisfaction with the administration of the business of the court.

8. Court Organization.

A judge should organize the court with a view to the prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, and other assistants who are sometimes prone to presume too much upon his good natured acquiescence by reason of friendly association with him.

It is desirable too, where the judicial system permits, that he should cooperate with other judges of the same court, and in other courts, as members of a single judicial system, to promote the more satisfactory administration of justice.

9. Consideration for Jurors and Others.

A judge should be considerate of jurors, witnesses and others in attendance upon the court.

10. Courtesy and Civility.

A judge should be courteous to counsel, especially to those who are young and inexperienced, and also to all others appearing or concerned in the administration of justice in the court.

He should also require, and so far as his power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to the court and to jurors, witnesses, litigants and others having business in the court.

11. Unprofessional Conduct of Attorneys and Counsel.

A judge should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counsellors, brought to his attention; and, if adverse comment is not a sufficient corrective, should send the matter at once to the proper investigating and disciplinary authorities.

12. Appointees of the Judiciary and Their Compensation.

Trustees, receivers, masters, referees, guardians and other persons appointed by a judge to aid in the administration of justice should have the strictest probity and impartiality and should be selected with a view solely to their character and fitness. The power of making such appointments should not be exercised by him for personal or partisan advantage. He should not permit his appointments to be controlled by others than himself. He should also avoid nepotism and undue favoritism in his appointments.

While not hesitating to fix or approve just amounts, he should be most scrupulous in granting or approving compensation for the services or charges of such appointees to avoid excessive allowances, whether or not excepted to or complained of. He cannot rid himself of this responsibility by the consent of counsel.

13. Kinship or Influence.

A judge should not act in a controversy where a near relative is a party; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position or influence of any party or other person.

14. Independence.

A judge should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

15. Interference in Conduct of Trial.

A judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial manner or tone.

He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to the unnecessary display of learning or a premature judgment.

16. Ex parte Applications.

A judge should discourage *ex parte* hearings of applications for injunctions and receiverships where the order may work detriment to absent parties; he should act upon such *ex parte* applications only where the necessity for quick action is clearly shown; if this be demonstrated, then he should endeavor to counteract the effect of the absence of opposing counsel by a scrupulous cross-examination and investigation as to the facts and the principles of law on which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. He should remember that an injunction is a limitation upon the freedom of action of defendants and should not be granted lightly or inadvisedly. One applying for such relief must sustain the burden of showing clearly its necessity and this burden is increased in the absence of the party whose freedom of action is sought to be restrained even though only temporarily.

17. Ex parte Communications.

A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to

be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* application.

While the conditions under which briefs of argument are to be received are largely matters of local rule or practice, he should not permit the contents of such brief presented to him to be concealed from opposing counsel. Ordinarily all communications of counsel to the judge intended or calculated to influence action should be made known to opposing counsel.

18. Continuances.

Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. A judge, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public interest, to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

19. Judicial Opinions.

In disposing of controverted cases, a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of counsel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law.

It is desirable that Courts of Appeals in reversing cases and granting new trials should so indicate their views on questions of law argued before them and necessarily arising in the controversy that upon the new trial counsel may be aided to avoid the repetition of erroneous positions of law and shall not be left in doubt by the failure of the court to decide such questions.

But the volume of reported decisions is such and is so rapidly increasing that in writing opinions which are to be published judges may well take this fact into consideration, and curtail them accordingly, without substantially departing from the principles stated above.

It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusion and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Except in case of conscientious difference of opinion on fundamental principle, dissenting opinions should be discouraged in courts of last resort.

20. Influence of Decisions Upon the Development of the Law.

A judge should be mindful that his duty is the application of general law to particular instances, that ours is a government of law and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what

he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of law.

21. Idiosyncrasies and Inconsistencies.

Justice should not be moulded by the individual idiosyncrasies of those who administer it. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgments, or spectacular or sensational in the conduct of the court. Though vested with discretion in the imposition of mild or severe sentences he should not compel persons brought before him to submit to some humiliating act or discipline of his own devising, without authority of law, because he thinks it will have a beneficial corrective influence.

In imposing sentence he should endeavor to conform to a reasonable standard of punishment and should not seek popularity or publicity either by exceptional severity or undue leniency.

22. Review.

In order that a litigant may secure the full benefit of the right of review accorded to him by law, a trial judge should scrupulously grant to the defeated party opportunity to present the questions arising upon the trial exactly as they arose, were presented, and decided, by full and fair bill of exceptions or otherwise; any failure in this regard on the part of the judge is peculiarly worthy of condemnation because the wrong done may be irremediable.

23. Legislation.

A judge has exceptional opportunity to observe the operation of statutes, especially those relating to practice, and to ascertain whether they tend to impede the just disposition of controversies; and he may well contribute to the public interest by advising those having authority to remedy defects of procedure, of the result of his observation and experience.

24. Inconsistent Obligations.

A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions.

25. Business Promotions and Solicitations for Charity.

A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.

26. Personal Investments and Relations.

A judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in the court; and, after his accession to the Bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss. It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

He should not utilize information coming to him in a judicial capacity for purposes of speculation; and it detracts from the public confidence in his integrity and the soundness of his judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

27. Executorships and Trusteeships.

While a judge is not disqualified from holding executorships or trusteeships, he should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments in enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him.

28. Partisan Politics.*

While entitled to entertain his personal views of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

He should neither accept nor retain a place on any party committee nor act as party leader, nor engage generally in partisan activities.

Where, however, it is necessary for judges to be nominated and elected as candidates of a political party, nothing herein contained shall prevent the judge from attending or speaking at political gatherings, or from making contributions to the campaign funds of the party that has nominated him and seeks his election or re-election.

29. Self-Interest.

A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

30. Candidacy for Office.**

A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create

the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.

While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.

If a judge becomes a candidate for any judicial office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy or the success of his party.

He should not permit others to do anything in behalf of his candidacy which would reasonably lead to such suspicion.

31. Private Law Practice.

In many states the practice of law by one holding judicial position is forbidden. In superior courts of general jurisdiction, it should never be permitted. In inferior courts in some states, it is permitted because the county or municipality is not able to pay adequate living compensation for a competent judge. In such cases one who practises law is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success.

He should not practise in the court in which he is a judge, even when presided over by another judge, or appear therein for himself in any controversy.

If forbidden to practise law, he should refrain from accepting any professional employment while in office.

He may properly act as arbitrator or lecture upon or instruct in law, or write upon the subject, and accept compensation therefor, if such course does not interfere with the due performance of his judicial duties, and is not forbidden by some positive provision of law.

32. Gifts and Favors.

A judge should not accept any presents or favors from litigants, or from lawyers practising before him or from others whose interests are likely to be submitted to him for judgment.

33. Social Relations.

It is not necessary to the proper performance of judicial duty that a judge should live in retirement or seclusion; it is desirable that, so far as reasonable attention to the completion of his work will permit, he continue to mingle in social intercourse and that he should not discontinue his interest in or appearance at meetings of members of the Bar. He should, however, in pending or prospective litigation before him be particularly careful to avoid such action as may reasonably tend to awaken the suspicion that his social or business relations or friendships constitute an element in influencing his judicial conduct.

34. A Summary of Judicial Obligation.

In every particular his conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of

As amended August 31, 1933 and September 20, 1950.

** As amended August 31, 1933.

CANONS OF JUDICIAL ETHICS

public praise, and indifferent to private political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

35. Improper Publicizing of Court Proceedings.*

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting or televising of court proceedings detract from the essential dignity of the proceedings, distract participants and witnesses in giving testimony, and create misconceptions with respect thereto in the mind of the public and should not be permitted.

* Adopted September 30, 1937 ; amended September 15, 1952 and February 5, 1963.

Provided that this restriction shall not apply to the broadcasting or televising, under the supervision of the court, of such portions of naturalization proceedings (other than the interrogation of applicants) as are designed and carried out exclusively as a ceremony for the purpose of publicly demonstrating in an impressive manner the essential dignity and the serious nature of naturalization.

36. Conduct of Court Proceedings.*

Proceedings in court should be so conducted as to reflect the importance and seriousness of the inquiry to ascertain the truth.

The oath should be administered to witnesses in a manner calculated to impress them with the importance and solemnity of their promise to adhere to the truth. Each witness should be sworn separately and impressively at the bar or the court, and the clerk should be required to make a formal record of the administration of the oath, including the name of the witness.

* Adopted September 30, 1937.

MINIMUM REQUIREMENTS FOR ADMISSION TO LEGAL PRACTICE IN THE UNITED STATES *

This table contains information of educational and residence requirements reported November 1, 1970. Full information and subsequent changes, if any, may be obtained by writing to the Clerk of the highest appellate Court or the Secretary of the Bar Board in each state. The compilation following does not reflect changes which may become effective on or after January 1, 1971.

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Residence Requirements (for original applicants only, does not apply to lawyers seeking admission on comity for whom separate requirements are usually laid down)

LXX vi

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2

LXX VII

REQUIREMENTS FOR ADMISSION TO LEGAL PRACTICE IN U. S.

[illegible]

REQUIREMENTS FOR ADMISSION TO LEGAL PRACTICE IN U. S.

[illegible]

REQUIREMENTS FOR ADMISSION TO LEGAL PRACTICE IN U. S.

	Minimum amount of general education required before:	Taking final examination	
South Carolina			
South Dakota			
Tennessee	3 years college with scholastic average of 75% that required for graduation		
Texas			
Utah			
Vermont			
Virginia			
Washington			
West Virginia			
Wisconsin			
Wyoming			

BLACK'S

DICTIONARY OF LAW

FOURTH EDITION

A. The first letter in the English and most other alphabets derived from the Roman or Latin alphabet, which was one of several ancient Italian alphabets derived from the Greek, which was an adaptation of the Phoenician. The first letter in the Phoenician alphabet was called *aleph*, meaning "ox", which is also the meaning of the first letter in the Greek alphabet, *alpha*.

Alpha and the second letter of the Greek alphabet, *beta*, were combined to form "alphabet," which is largely the same in different languages. In Danish, Dutch, Polish and Swedish *alfabet*; in English, German and French, *alphabet*; in Italian, Portuguese and Spanish, *alfabeto*; in Russian, *alfabetli*, etc. This striking similarity shows borrowing, either mediately or immediately, from the same source.

A has several different forms, the most curious of which is little a and big A. All of our letters were first capitals, and remained so for a long time. Then small letters alone were used for centuries. Later capitals were used with small letters, largely for ornamental purposes. The ancient Egyptians had twenty a's to choose from, and it is said that a is the initial letter of about one-seventh of all Armenian words.

Nundinal Letters

A is also the first of the nundinal letters consisting of the first eight letters of the alphabet. These letters were repeated successively from the first to the last day of the year by the Romans and every ninth day was market day, when the country people came into the city to buy and sell and to attend to their private or religious affairs. However, no market day could coincide with the first day of January or the ninth day of the other months. The first market day of the year fell eight days from the preceding market day, which

made the nundinal letter change every year, but if the nundinal letter for a given year was, for example, A, the market day always coincided with A, which was the ninth day from the preceding market day, both inclusive. No judgment could be pronounced, nor assemblies of the people held, on these days, but this was changed by the *lex Hortensia* in 246 B.C. Proposed laws were posted, and a vote could not be taken until three Roman weeks (*trinum nundinum*), or 24 days, had elapsed. A judgment debtor had 30 days to satisfy judgment against him. If he failed to do so, he was seized and taken before the magistrate and if he could find no surety he was put in chains and held by the judgment creditor for 60 days, during which time the amount of his debt was proclaimed on three successive market days, and then if he failed, the XII Tables provided: "** * Tertius nundinus partis secanto; si plus minusve secuerint, se fraude esto.*" (On the third market day let him be cut into pieces; if any one [any creditor] cut more or less than his share, it shall not be a crime). Shylock, it will be remembered, had to cut just a pound of flesh and no more.

Dominical or Sunday Letters

A is also the first of the Dominical or Sunday letters, consisting of the first seven letters of the alphabet, which were introduced to replace the nundinal letters of the Romans. These letters, repeated successively from the first to the last day of the year, show the order of Sundays according to the Christian calendar. If the first day of January is on Sunday, all the rest of the days designated by A will also be Sundays. Since each common year ends on the same day of the week that it begins, the dominical letters change each year in retrogression. If the year is a leap year an adjustment is made either on the 25th or 29th

of February. The dominical letters are used to determine the date of Easter but may also be used to determine the day of the week on which a given date falls in any year.

A as Symbol

Both as a symbol and as an abbreviation, A is used in every phase of human activity and learning. In law, commerce, manufacturing, engineering, printing, music, medicine, geometry, mathematics, physics, chemistry, logic, philosophy, aeronautics, artillery, etc., these devices, which are meaningless to the uninitiated, simply could not be dispensed with. The Puritans first burned A on the forehead of the adulterer,—or at least on that of the adulteress!—and later fastened it on the sinner's clothing. The Roman judges used three wax-covered wooden tables. On one was inscribed A for *Absolvo* (I acquit) ; on the second C for *Condemn*° (I condemn), and on the third N. L. for *Non liquet* (It is not clear). When a proposed law was to be voted on, Roman voters received two tablets, on one of which was inscribed A for *antiquo* (for the old law), and on the other U. R. for *Uti rogas* (as you ask). A is also the first of the letters employed by the Semites and the ancient Greeks as numeral signs. If the Greek A was accented above, it stood for 1; if below, it stood for 1000. The Romans also used A as a numeral sign before they adopted the letter D. If A was not accented, it stood for 500, but if accented thus, A, it stood for 5000.

The symbol is a graphic modification of the Latin *ad*, meaning "at" or "to". Some European railroads use A to designate first class railroad coaches. In European tourist guides A is used to designate places where there are hotels able to satisfy the wants of motorists. Mercantile agencies use A to indicate the highest commercial credit. A is also the highest mark given by teachers to pupils. Ship registries in United States, England, Germany and Norway use A to indicate the highest class of vessel.

In the record of American Shipping A1 stands for a first-class vessel of the highest seaworthiness, the lower degrees being expressed by A1 1/2, etc., A3 being the lowest. In Lloyd's Register A1 means a first-class vessel. A printed in red means an over-aged vessel. ZE a third-class vessel. The broad A means an iron ship. The description of a ship as "A1" amounts to a warranty. 011 live v. Booker, 1 Exch. 423.

In ceramics A has various meanings. On fine old Sevres A alone shows that the piece was made in 1753, whereas AA shows that it was made in 1777. A is also used as a brand by certain breeders of bulls for the bull ring, as well as by manufacturers of fine Toledo swords. A denotes the first of a series, and is used to distinguish the first page of a folio from the second, which is marked b (Coke, Litt. 114a, 114b), as well as the first foot-note and the first section or subsection in statutes. It is also the name of the sixth note of the natural diatonic scale of C, or the first note

of the relative minor scale. To this note all orchestral instruments are tuned. A also indicates the key in which many great pieces of music are composed. The money coined at the Paris mint is marked with an A, and it was long supposed that such coinage was superior to that of the provincial mints. This gave rise to the phrase *Etre marque a l'A* (to be marked with an A) and was used to indicate a man of eminent rank or merit, just as we use A-1 or A to indicate excellence of either persons or commodities.

A is also used in numerous other phrases and proverbs. For example, *A word to the wise is sufficient*. This ordinarily admonitory proverb was held to be libellous in view of the context in which it was used. One who had sold out to his partner warned customers that the buyer was not responsible for his debts, since he was a minor, and that "a word to the wise is sufficient." The court said: "But when what was previously said is followed by the significant and proverbially precautionary words—'A word to the wise is sufficient,' the idea is at once conveyed that plaintiff, is wanting in honor and integrity as a business man, and that those who should deal with him would suffer loss." *Hays v. Mather*, 15 Ill.App. 30, 34. For the phrase, *from alpha to omega*, there is our *from A to Z* and *A to izzard*, and the German von *A bis Z*, which mean from beginning to end; completely; thoroughly; or in more modern slang, from soup to nuts. The German proverb *Wer A sagt, mus auch B sagen* is based on a profound knowledge of human nature, and translates, you can't say A without saying B; in for a penny, in for a pound. In other words, don't take the *first* step if you don't want to go the limit. Of a very ignorant or stupid person it has long been said that *He does not know great A from a bull's foot* or that he knows ni A ni B (neither A nor B). In *Birds of a feather flock together*, a means the same, or a feather means the same kind.

A as Abbreviation

As an abbreviation a, either alone or in combination with other letters, is used in all the arts and sciences as well in hundreds of non-technical ways. Its meaning as an abbreviation largely depends on context. In common usage, it may mean *about*, *accepted*, *acne*, *aged*, *answer*, *ante*, *area*, *amateur*, etc. It is also used for almost any name of a person beginning with A, as Alfred, Anna, etc. In chemistry it stands for argon. A note provided for "Int. @ p. a." The court said: "The letter when used in a note, as it is here, is known and recognized among commercial people and businessmen as standing for 'at.'" *Belford v. Beatty*, 34 N.E. 254, 255, 145 Ill. 414, 418.

A is an abbreviation of *adversus* (against). *Versus* and its abbreviation v. are much oftener used in this sense, though the original Latin meaning of *versus* is toward; in the direction of.

A, angstrom unit; the unit for measuring the length of light waves.. The ultra violet rays of sunlight between 3130A and 2900A activate pro-

vitamins in the skin and certain foods, so as to produce the antirachitic substance known as vitamin D, which is also extracted from fish liver oils.

The Spelling of A

A was formerly spelt a-per-se, a ("a" by itself makes the word "a") of which A-per-se-A, A per-sey, and apersie were corruptions and synonymous with superior, chief, first, etc.

A in Latin and Law Latin

Anglo-American law abounds in Latin and French words and phrases, and the use of A in these languages is important to the English-speaking lawyer. In Latin "A" was used both as an abbreviation and as a symbol. For example "A" was an abbreviation for "Aulus," a praenomen, or the first of the usual three names of a person by which he was distinguished from others of the same family; also for "ante" in "a. d.," *ante diem* (before the day), and for "anno" (year) in a. u. c., *anno urbis conditae* (the year of the building of the city) and in *anno ab urbe condita* (from the year of the building of the city). As a preposition, the form was either A, AB or ABS. A was used before consonants; ab was usually used before vowels, but sometimes before consonants, whereas abs was used before "c" or "t." The meaning was "from," "away from," "on the side of," "at," "after," "since," "by," "by means of," "out of," "with reference to," "in regard of," "near by," and "along." For example, *A fronte* in front; *ab tergo*, from behind; *a puertitia*, from youth; *ab sole orbe*, from or at sunrise; *ab intestato*, without a will, intestate. In law Latin, "a" means "by," "with," "from," "in," "of," and "on," and AB means "by," "from," and "in." 1 C.J.S. p. 2.

A in French and Law French

In French A is a preposition, the meaning of which largely depends on context. It is usually translated as "into," "at," "to," "in," "by," "of," "with," "on," "from," "for," "under," "till," "within," "between," etc. It also changes into au and aux when combined with "the." A is also the third person, singular number, present tense, indicative mood of the verb avoir, (to have) : Il a (he has). In law French "a" is used as a preposition meaning "at," "for," "in," "of," "on," "to," and "with." 1 C.J.S. p. 2.

A in Roman Criminal Law

Among the Romans this letter was used in criminal trials. The judges were furnished with small tables covered with wax, and each one inscribed on it the initial letter of his vote: A (absolvo) when he voted to acquit the accused; C (condemno) when he was for condemnation; and N L (non liquet), when the matter did not appear clearly, and he desired a new argument.

The letter A (i. e. antiquo, "for the old law") was inscribed upon Roman ballots under the Lex Tabellaria, to indicate a negative vote; Tayl.Civ. Law, 191, 192.

A as Indefinite Article

A is the form of the indefinite article that is used before consonants and initial consonant sounds, on being used before initial vowel sounds, as, for example, a *house*, a *year*, a *utility*; but an oak, an *ape* and an *hour*, because the h is silent. Formerly where the initial h of certain words was not accented, as historical, hypothetical, hotel, humble, etc., an was used, but now the h is no longer silent, and the best usage in both the United States and England is to use a before such words. A *hypothetical question*, a *historical monument*, a *hotel*, etc., are the correct forms.

The word "a" has varying meanings and uses. "A" means "one" or "any," but less emphatically than either. It may mean one where only one is intended, or it may mean any one of a great number. It is placed before nouns of the singular number, denoting an individual object or quality individualized. First Trust Joint Stock Land Bank of Chicago v. Armstrong, 222 Iowa 425, 269 N.W. 502, 506, 107 L.R.A. 873.

The article "a" is not necessarily a singular term; it is often used in the sense of "any" and is then applied to more than one individual object. Philadelphia & R. R. Co. v. Green & Flinn, 2 W.W. Harr. (Del.) 78, 119 A. 840, 846; In re Sanders, 54 Law J.Q.B. The article "a" is not generally used in a singular sense unless such an intention is clear from the language of the statute, 1 C.J.S., A, p. 1, but statute providing that parties to "a" reorganization shall be deemed a single employing unit referred to quality or nature of changes, rather than quantity, and meant not one or only one, but any, and fact that there had been more than one reorganization did not prevent statute from applying. Lindley v. Murphy, 387 Ill. 506, 56 N.E.2d 832, 838. So under a statute providing that the issuance of "a" certificate to one carrier should not bar a certificate to another over the same route, a certificate could be granted to more than two carriers over the same route. State ex rel. Crown Coach Co. v. Public Service Commission, 238 Mo.App. 287, 179 S.W.2d 123, 127. But the meaning depends on context. For example, in Workmen's Compensation Act, on, or in or about "a" railway, factory, etc., was held not to mean any railway, factory, etc., but *the* railway, factory, etc., of the employer. Francis v. Turier, [1900] 1 Q.B. 478; 69 L.J.Q.B. 182; 81 L.T. 770; 48 W.R. 228; 64 J.P. 53.

Insurance against loss occasioned by "a sea" did not limit insured to loss occasioned by a single wave, but covered losses occasioned by heavy waves during voyage. Snowden v. Guion, 101 N. Y. 458, 5 N.E. 322.

In State ex rel. Atty. Gen. v. Martin, 60 Ark. 343, 30 S. W. 421, 28 L.R.A. 153, the state Constitution provided for "a judge" in each circuit. Owing to increase in judicial business, the Legislature provided for an additional judge for the sixth circuit. It was contended that the statute was unconstitutional. The court said:

"Now, the adjective 'a,' commonly called the 'indefinite article,' and so called, too, because it does not define any particular person or thing, is entirely too indefinite, in the connection used, to define or limit the number of

judges which the legislative wisdom may provide for the judicial circuits of the state. And it is perfectly obvious that its office and meaning was well understood by the framers of our constitution, for nowhere in that instrument do we find it used as a numerical limitation. It is insisted that if 'a' does not mean 'one,' and 'but one,' in the section quoted, then the way is open for a latitudinarian construction in the various other sections where it occurs.

" * * * So the question recurs as to the significance of the letter 'a,' for the convention must be taken to have meant what they have plainly said. It performs precisely the same office here as in every other section where it occurs. Section 6 of the article 7 says, 'A judge of the supreme court shall be learned in the law,' etc.; section 16 says, 'A circuit judge shall be learned in the law,' etc.; section 41, 'A justice of the peace shall be a qualified elector and a resident of the township,' etc. Does the word 'a' in these sections mean one, and only one, judge or justice? If so, which one? In the same section in which 'a judge' occurs we find, 'He shall be 'a' conservator of the peace within the circuit.' Does 'a conservator' mean that he is to be the only conservator of the peace for the circuit? If so, this provision is plainly in conflict with others. See sections 4, 40. It is apparent that 'a' was used before the word 'judge' in the section under consideration because, according to our English idiom, the sentence could not have been euphoniously expressed without it. In some languages—the Latin and Russian, for instance—it would not have been used at all. It could have been omitted without in the least impairing the sense, and its use gave no additional force or meaning to the sentence. To use the illustration of the learned counsel for the state: If one orders 'a sack of flour, a ham, a horse, a ton of coal,' etc., it is understood he means but one. So it would be understood if he left off the 'a,' and said 'sack of flour, ham, horse, ton of coal,' the 'a' being used before the words beginning with the consonant sound simply to preserve the euphony. If the limitation is not in the word 'judge' without the 'a,' there is certainly no restriction with it. According to Mr. Webster, 'a' means 'one' or 'any,' but less 'emphatically than either.' It may mean one where only one is intended, or it may be any one of a great number. That is the trouble. Of itself, it is in no sense a term of limitation. If there were a dozen judges in any one circuit each would still be 'a judge' for that circuit. Mr. Webster also says, 'It is placed before nouns of the singular number, denoting an individual object, or quality individualized.' 'Quality' is defined as (1) 'the condition of being of such a sort as distinguished from others; (2) special or temporary character; profession, occupation.' Webster, Dict. The 'a' was so used here. The character, or profession, individualized, was that of a judge. The functions of the office to be performed were those of 'a judge,' not governor, sheriff, or constable. A review of the various other provisions of the constitution, supra, where the word 'a' occurs, shows that no absurd consequences, such as filling the offices in other departments with a multitudinous array of incumbents, could possibly result."

Where the law required the delivery of a copy of a notice to husband and a copy to wife, the sheriff's return that he had delivered "a copy" to husband and wife was insufficient. *State v. Davis*, Tex.Civ.App., 139 S.W.2d 638, 640.

In *Lakeside Forge Co. v. Freedom Oil Works*, 265 Pa. 528, 109 A. 216, 217, it was said:

" 'A car or two' signifies an indefinite small number, and may include as many as seven. In that respect the expression is similar to 'a few.' It must be construed with reference to the subject matter, and is not necessarily confined to one or two. It is like the words 'in a day or two.' "

In *Deutsch v. Mortgage Securities Co.*, 96 W.Va. 676, 123 S.E. 793, the deed contained a covenant against construction of flats or apartments and provided that no dwelling but "a one-family house" should be built on the lot. The grantee built two one-family dwelling houses; and it was held that he could properly do so.

"A" is sometimes read as "the." *Bookham v. Potter*, 37 L.J.C.P. 276; L.R. 3 C.P. 490; 16 W.R. 806; 18 L.T. 479, though the two terms are ordi-

narily distinguishable. *Howell v. State*, 138 S.E. 206, 164 Ga. 204. The grant of "a" right of sporting on land, gives only a concurrent right, but the grant of "the" right gives it exclusively. *Sutherland v. Heathcote*, [1892] 1 Ch. 475; 61 L.J. 248; 66 L.T. 210. And a license to fish with "a" rod and line does not justify the use of more than one rod and one line. *Combridge v. Harrison*, 72 L.T. 592; 64 L.J.M.C. 175; 59 J.P. 198.

Hinson v. Hinson, 176 N.C. 613, 97 S.E. 465, involved a will providing that son taking care of widow should receive \$100 "a year." It was held that the quoted words were not synonymous with annually, but merely fixed the rate of compensation, and that there was no right to compensation until widow's death.

AAA. Agricultural Adjustment Act.

A. A. C. *Anno ante Christum*, the year before Christ.

A. A. C. N. *Anno ante Christum natum*, the year before the birth of Christ.

A AVER ET TENER. L. Fr. (L. Lat. *habendum et tenendum*.) To have and to hold. Co.Litt. §§ 523, 524. *A aver et tener a luy et a ses heires, a touts fours*,—to have and to hold to him and his heirs forever. Id. § 625. See *Aver et Tener*.

A. B. Able-bodied seaman. In English law a seaman is entitled to be rated A. B. when he has served at sea three years before the mast. In the United States the term "Able Seaman" is used. For the requirements of able seaman, see 46 U.S.C.A. § 672. Also *artium baccalaureus*, bachelor of arts. In England, generally written B. A.

A. B. A. American Bar Association.

A. B. A. J. American Bar Association Journal.

A BON DROIT. With good reason; justly; rightfully.

A. C., *Anno Christi*, the year of Christ.

A/C means account and is much used by bookkeepers. As used in a check, it has been held not a direction to the bank to credit the amount of the check to the person named, but rather a memorandum to identify the transaction in which the check was issued. *Marsh v. First State Bank & Trust Co. of Canton*, 185 29, 32.

A CANCELLANDO. From cancelling. 3 Bl. Comm. 46.

A CANCELLIS, The Chancellor.

A CANCELLIS CURIAE EXPLODI. To be expelled from the bar of the court.

A CAPELLA OR A LA CAPELLA. In music, in the church style; also that the instruments are to play in unison with the vocal part, or that one part is to be played by a number of instruments.

A CAUSA DE CY. For this reason.

A. C. C. Agricultural Credit Corporation.

A CE. For this purpose.

A CEL JOUR. At this day.

A CELO USQUE AD CENTRUM. From the heavens to the center of the earth. Or more fully, *Cujus est solum ejus est usque ad coelum et ad inferos*. The owner of the soil owns to the heavens and also to the lowest depths. Or, *Cujus est solum est usque ad cceium*,—the owner of the soil owns to the heavens. This doctrine has been questioned. *Butler v. Frontier Telephone Co.*, 186 N.Y. 486, 79 N.E. 716, 11 L.R.A., N.S., 920—and the flight of airplanes and recent oil and gas regulations undoubtedly have qualified the owner's dominion not only in the heavens but in the lowest depths. See *American Digest System*, Mines and Minerals, C=92, and Trespass, 010.

A COMMUNI OBSERVANTIA NON EST RECE-DENDUM. From common observance there should be no departure; there must be no departure from common usage. 2 Coke, 74; Co. Litt. 186a, 229b, 365a; Wing. Max. 752, max. 203. A maxim applied to the practice of the courts, to the ancient and established forms of pleading and conveyancing, and to professional usage generally. Id. 752-755. Lord Coke applies it to common professional opinion. Co. Litt. 186a, 364b.

A CONFECTIONE. From the making. *Clayton's Case*, 5 Coke, pt. II, la; Anonymous, 1 Ld. Raym. 480.

A CONFECTIONE PRAESSENTIUM. From the making of the indentures. *Clayton's Case*, 5 Coke, pt. II, la.

A CONSILIIS. (Lat. *consilium*, advice.) Of counsel; a counsellor. The term is used in the civil law by some writers instead of a *responsis*. Spelman, "*Apocrisarius*."

A CONTRARIO SENSU. On the other hand; in the opposite sense.

A CUEILLETTE. In French law. In relation to the contract of affreightment, signifies when the cargo is taken on condition that the master succeeds in completing his cargo from other sources. *Arg. Fr. Merc. Law*, 543.

A. D. *Anno Domini*, in the year of our Lord.

An information charging that act was committed on 4th day of August, "A. D. 190," alleged an impossible year "and it is quite evident that the last figure of the year was inadvertently omitted but what that figure was intended to be * * * cannot be inferred with any certainty." *People v. Weiss*, 168 Ill. App. 502, 504.

"The information alleges that the offense therein sought to be charged was committed 'on the 30th day of April, A. D. 19.' There is no other allegation of time in the information, and it is in effect and for all practical purposes wholly wanting in any allegation as to time. The time alleged is impossible and in that respect the information is absurd. The objection is not merely technical, as that term is commonly used, but is substantial and fatal." *People v. Wagner*, 172 Ill. App. 84.

A DATO. From the date. *Cro. jac.* 135. See *A Dato*.

A DATU. Law Latin. From the date. Anonymous, 1 Ld. Raym. 480; *Haths v. Ash*, 2 Salk. 413. See *A Dato*.

A DIE CONFECTIONIS. From the day of the making. *Barwick's Case*, 5 Coke 93b.

A DIE DATUS. From the day of the date. *Hatter v. Ash*, 1 Ld. Raym. 84; Anonymous, 1 Ld. Raym. 480; *Seignoret v. Noguire*, 2 Ld. Raym. 1241. Used in leases to determine the time or running of the estate, and when so used includes the day of the date. *Doe v. Watkins*, 1 Cowp. 189, 191. But *contra*, see *Haths v. Ash*, 2 Salk. 413.

A DIGNIORI FIERI DEBET DENOMINATIO. Denomination ought to be from the more worthy. The description (of a place) should be taken from the more worthy subject (as from a will). *Fleta*, lib. 4, c. 10, § 12.

A DIGNIORI FIERI DEBET DENOMINATIO ET RESOLUTIO. The title and exposition of a thing ought to be derived from, or given, or made with reference to, the more worthy degree, quality, or species of it. *Wing. Max.* 265, max. 75.

A. E. C. Atomic Energy Commission.

A FINE FORCE. Of pure necessity.

A FORCE. Of necessity.

A FORCE ET ARMIS. With force and arms.

A FORFAIT ET SANS GARANTIE. In French law. A formula used in indorsing commercial paper, and equivalent to "without recourse."

A FORTIORI. With stronger reason; much more. A term used in logic to denote an argument to the effect that because one ascertained fact exists, therefore another, which is included in it, or analogous to it, and which is less improbable, unusual, or surprising, must also exist.

A GRATIA. By grace; not of right.

A. H., *Anno Hegirae* (in the year of the hegira).

A ISSUE. At issue.

A JURE SUO CADUNT. They (for example, persons abandoning chattels) lose their right.

A JUSTITIA (QUASI A QUODAM FONTE) OMNIA JURA EMANANT. From justice, as a fountain, all rights flow. *Brae.* 2 b.

A LA GRANDE GREVAUNCE. To the great grievance.

A LARGE. Free; at large.

A LATERE. Lat. Collateral. Used in this sense in speaking of the succession to property. *Bract.* 20b, 62b. From, on, or at the side; collaterally. *A latere ascendit (jus)*. The right ascends collaterally. Justices of the *Curia Regis* are described as a *latere regis residentes*, sitting at the side of the King; *Bract.* fol. 108a; 2 *Reeve, Hist. Eng. L.* 250.

A LATERE

In Civil Law and by Bracton, a synonym for *e transverso*, across. Bract. fol. 67a.

Applied also to a process or proceeding. Keilw. 159. Out of the regular or lawful course; incidentally or casually. Bract. fol. 42b; Fleta, lib. 3, c. 15, § 13.

From the side of; denoting closeness of intimacy or connection; as a court held before auditors *specialiter a latere regis destinatis*. Fleta, lib. 2, c. 2, § 4.

Apostolic; having full powers to represent the Pope as if he were present. Du Cange, *Legati, a latere*; 4 Bla.Com. 306.

A LIBELLIS. L. Lat. An officer who had charge of the *libelli* or petitions addressed to the sovereign. Calvin. A name sometimes given to a chancellor, (*cancellarius*.) in the early history of that office. Spelman, "*Cancellarius*."

A L'IMPOSSIBLE NUL N'EST TENU. No one is bound to do the impossible.

A LOUR FOY. In their allegiance.

A LUY ET A SES HEIRES A TOUTS JOURS. To him and to his heirs forever.

A. M. *Ante meridiem*, before noon. Only the abbreviation is ordinarily used. Orvik v. Casselman, 105 N.W. 1105, 15 N.D. 34. Also *artium magister*, master of arts. Also *annus mirabilis*, the wonderful year-1666, the year of the defeat of the Dutch fleet and of the great London fire. Also *anno mundi*, in the year of the world; that is, when the creation of the world is said to have taken place, 4004 B. C.

A. M. A. Agricultural Marketing Act.

A MA INTENT. On my action. Mitchell v. Reynolds, 1 Smith Lead.Cas. (7th Am. ed.) 516.

A MANIBUS. Lat. Royal scribe. Amanuensis.

A MANU SERVUS. Lat. A handservant; a scribe; a secretary.

A ME. (Lat. *ego*, I.) A term in feudal grants denoting direct tenure of the superior lord. 2 Bell, H.L.Sc. 133.

Unjustly detaining from me. He is said to withhold a *me* (from me) who has obtained possession of my property unjustly. Calvinus, Lex. To pay a *me*, is to pay from my money.

A MENSA ET THORO. Lat. From table and bed, but more commonly translated, from bed and board. A kind of divorce, which is rather a separation of the parties by law, than a dissolution of the marriage. 27 C.J.S., Divorce, § 160.

A MULTO FORTIORI. By far the stronger reason.

A NATIVITATE. From birth, or from infancy. Denotes that a disability, status, etc., is congenital 3 Bla.Comm. 332; Reg.Orig. 266b.

A NON POSSE AD NON ESSE SEQUITUR ARGUMENTUM NECESSARIE NEGATIVE, LICET NON AFFIRMATIVE. A literal translation—From impossibility to non-existence the inference follows necessarily in the negative, though not in the affirmative—is as ambiguous as the original. It could be translated thus: The negative inference of non-existence necessarily follows from impossibility of existence, but the affirmative inference of existence cannot be drawn from mere possibility.

A. O. C. *Anno orbis conditi*, the year of the creation of the world.

A OUTRANCE. To the bitter end; to excess; to the utmost extent. Frequently incorrectly written by persons with only a smattering of French a l'outrance.

A PAIS. To the country; at issue.

A PALATIO. L. Lat. From *Palatium*, (a palace.) Counties palatine are hence so called. 1 Bl.Comm. 117. See *Palatium*.

A. P. C. Alien Property Custodian.

A. P. C. N. *Anno post Christum natum*, the year after the birth of Christ.

A PIRATIS AUT LATRONIBUS CAPTI LIBERI PERMANENT. Persons taken by pirates or robbers remain free. Dig. 49, 15, 19, 2; Gro. de J. B. lib. 3, c. 3, § 1.

A PIRATIS ET LATRONIBUS CAPTA DOMINUM NON MUTANT. Capture by pirates and robbers does not change title. Bynk. bk. 1, c. 17; 1 Kent, Comm. 108, 184. No right to booty vests in piratical captors; no right can be derived from them by recaptors to the prejudice of the original owners. 2 Wood.Lect. 428.

A POSTERIORI. Lat. From the effect to the cause; from what comes after. A term used in logic to denote an argument founded on experiment or observation, or one which, taking ascertained facts as an effect, proceeds by synthesis and induction to demonstrate their cause.

A. P. R. C. *Anno post Roman conditam*, year after the foundation of Rome.

A PRENDRE. L. Fr. To take; to seize. *Bret a prendre la terre*, a writ to take the land. Fet Ass. § 51. A right to take something out of the soil of another is a profit a *prendre*, or a right coupled with a profit. 1 Crabb, Real Prop. p. 125, § 115. Distinguished from an easement. 5 Adol. & E. 758. Sometimes written as one word, *apprendre*, *apprender*. See Profit a *prendre*.

Rightfully taken from the soil. 1 N. & P. 172; Waters v. Lilley, 4 Pick. (Mass.) 145, 16 Am.Dec. 333.

A PRIORI. Lat. From the cause to the effect; from what goes before. A term used in logic to

denote an argument founded on analogy, or abstract considerations, or one which, positing a general principle or admitted truth as a cause, proceeds to deduce from it the effects which must necessarily follow.

A PROVISIONE VIRI. By the provision of man. 4 Kent, Comm. 55.

A QUO. Lat. From which. A court a *quo* (also written "a qua") is a court from which a cause has been removed. The judge a *quo* is the judge in such court. *Clegg v. Alexander*, 6 La. 339.

A term used, with the correlative *ad quem* (to which), in expressing the computation of time, and also of distance in space. Thus, *dies a quo*, the day from which and *dies ad quem*, the day to which, a period of time is computed. So, *terminus a quo*, the point or limit from which, and *terminus ad quem*, the point or limit to which, a distance or passage in space is reckoned.

A QUO INVITO ALIQUID EXIGI POTEST. From whom something may be exacted against his will.

A. R. Anno *Regni*. In the year of the reign; as A. R. V. R. 22, (*Anno Regni Victoriae Reginae vicesimo secundo*) in the twenty-second year of the reign of Queen Victoria.

A REMENAUNT. Forever.

A RENDRE. (Fr. to render, to yield.) That which is to be rendered, yielded, or paid. *Profits a rendre* comprehend rents and services. Ham. N.P. 192.

A RESCRIPTIS VALET ARGUMENTUM. An argument from rescripts [*i. e.* original writs in the register] is valid. Co.Litt. 11 a.

A RESPONSIS. L. Lat. In ecclesiastical law. One whose office it was to give or convey answers; otherwise termed *responsalis*, and *apocrisarius*. One who, being consulted on ecclesiastical matters, gave answers, counsel, or advice; otherwise termed a *consiliis*. Spelman, "*Apocrisarius*."

A RETRO. L. Lat. Behind; in arrear. *Et reditus proveniens rode a retro fuerit*, and the rent issuing therefrom be in arrear. Fleta, lib. 2, c. 55, § 2; c. 62, § 14.

A RUBRO AD NIGRUM. Lat. From the red to the black; from the rubric or title of a statute (which, anciently, was in *red* letters), to its body, which was in the ordinary *black*. Tray.Lat.Max.; Bell, "*Rubric*;" Erskine, Inst. 1, 1, 49.

A SAVOIR. To wit.

A SUMMO REMEDIO AD INFERIOREM ACTIONEM NON HABETUR REGRESSUS, NEQUE AUXILIUM. From (after using) the highest remedy, there can be no recourse (going back) to an inferior action, nor assistance, (derived from

it.) Fleta, lib. 6, c. 1, § 2. A maxim in the old law of real actions, when there were grades in the remedies given; the rule being that a party who brought a writ of right, which was the highest writ in the law, could not afterwards resort or descend to an inferior remedy. Bract. 112b; 3 Bl.Comm. 193, 194.

A TEMPORE CUJUS CONTRARIUM MEMORIA NON EXISTET. From a time of which there is no memory to the contrary.

A TENERIS ANNIS. By reason of youth.

A TERME. For a or the term.

A TERME DE SA VIE. For the term of his life. U.B. 3 Edw. II, 55.

A TERME QUE N'EST MYE ENCORE PASSE. For a term that has not yet passed.

A TERME QUE PASSE EST. For a term that has passed.

A TORT. Without reason; unjustly; wrongfully.

A TORT ET A TRAVERS. Without consideration or discernment.

A TORT OU A DROIT. Right or wrong.

A VERBIS LEGIS NON EST RECENDENDUM. The words of a statute must not be departed from. 5 Coke 119; Wing.Max. 25. A court is not at liberty to disregard the letter of a statute, in favor of a supposed intention. 1 Steph.Comm. 71; Broom, Max. 268.

A VINCULO MATRIMONII. Lat. From the bond of matrimony. A term descriptive of a kind of divorce, which effects a complete dissolution of the marriage contract. See Divorce.

A B (fr. *Abba*, Syr., Father). The eleventh month of the Jewish civil year, and the fifth of the sacred year. It answers to the moon that begins in July, and consists of thirty days. On the 24th is observed a feast in memory of the abolishment of the Sadducean law, which required sons and daughters to be equal heirs and heiresses of their parents' estates. Brown's Diet. of Bible, John's Bib.Antiq. AB, at the beginning of English-Saxon names of places, is generally a contraction of abbot or abbey; whence it is inferred that those places once had an abbey there, or belonged to one elsewhere, as Abingdon in Berkshire. Blount's Law Gloss. Wharton's Law Lexicon.

AB. ABR. Abridgment.

AB ABUSU AD USUM NON VALET CONSEQUENTIA. A conclusion as to the use of a thing from its abuse is invalid. Broom, Max. 17.

AB ACTIS. Lat. An officer having charge of *acta*, public records, registers, journals, or minutes; an officer who entered on record the *acta* or proceedings of a court; a clerk of court; a

AB AGENDO

notary or actuary. Calvin.Lex.Jurid. See "*Acta*." This, and the similarly formed epithets a *cancellis*, a *secretis*, a *libellis*, were also anciently the titles of a chancellor, (*cancellarius*;) in the early history of that office. Spelman, "*Cancellarius*."

AB AGENDO. Disabled from acting; unable to act; incapacitated for business or transactions of any kind.

AB ANTE. Lat. Before; in advance. Thus, a legislature cannot agree *ab ante* to any modification or amendment to a law which a third person may make. Allen v. McKean, 1 Sumn. 308, Fed. Cas.No.229 (college charter).

AB ANTECEDENTE. Lat. Beforehand; in advance. 5 M. & S. 110.

AB ANTIQUO. From old times; from ancient time; of old; of an ancient date. 3 Bl.Comm. 95.

AB ASSUETIS NON FIT INJURIA. From things to which one is accustomed (or in which there has been long acquiescence) no legal injury or wrong arises. If a person neglect to insist on his right, he is deemed to have abandoned it. Amb. 645; 3 Brown, Ch. 639; Jenk.Cent.Introd. vi.

AB EPISTOLIS. Lat. An officer having charge of the correspondence (*epistolce*) of his superior or sovereign; a secretary. Calvin.; Spiegelius.

AB EXTRA. (Lat. *extra*, beyond, without.) From without. Lunt v. Holland, 14 Mass. 151.

AB INCONVENIENT! From hardship, or inconvenience. An argument founded upon the hardship of the case, and the inconvenience or disastrous consequences to which a different course of reasoning would lead. Barber Asphalt Paving Co. v. Hayward, 248 Mo. 280, 154 S.W. 140.

AB INITIO. Lat. From the beginning; from the first act; entirely; as to all the acts done; in the inception. A party may be said to be a trespasser, an estate to be good, an agreement or deed to be void, or a marriage or act to be unlawful, *ab initio*. Plow. 6a, 16a; 1 Bl.Comm. 440; Hopkins v. Hopkins, 10 Johns. (N.Y.) 369.

Before. Contrasted in this sense with *ex post facto*, 2 Shars.Bla.Comm. 308; or with *postea*, Calvinus, Lex., *initium*.

Validity of insurance policy *ab initio*, In re Millers' & Manufacturers' Ins. Co., 97 Minn. 98, 106 N.W. 485; Unconstitutional statute as not void *ab initio*, State v. Poulin, 105 Me. 224, 74 A. 119, 24 L.R.A.,N.S., 408; physical incapacity, marriage not void *ab initio*, Bennett v. Bennett, 169 Ala. 618, 53 So. 986, L.R.A.1916C, 693.

AB INITIO MUNDI. Lat. From the beginning of the world. *Ab initio mundi usque ad hodiernum diem*, from the beginning of the world to this day. Y.B.M. 1 Edw. III, 24.

AB INTESTAT. Intestate. 2 Low.Can. 219. Merlin, Repert.

AB INTESTATO. - Lat. In the civil law. From an intestate; from the intestate; in case of intestacy. *Hc ereditas ab intestato*, an inheritance de-

rived from an intestate. Inst. 2, 9, 6. *Successio ab intestato*, succession to an intestate, or in case of intestacy. Id. 3, 2, 3; Dig. 38, 6, 1. This answers to the descent or inheritance of real estate at common law. 2 Bl.Comm. 490, 516; Story, Confl.Laws, § 480. "*Heir ab intestato*." 1 Burr. 420. The phrase "*ab intestato*" is generally used as the opposite or alternative of *ex testamento*, (from, by, or under a will.) *Vel ex testamento, vel ab intestato [hcereditates] pertinent*,—inheritances are derived either from a will or from an intestate, (one who dies without a will.) Inst. 2, 9, 6; Dig. 29, 4; Cod. 6, 14, 2.

AB INVITO. Unwillingly. Against one's will. By or from an unwilling party. A transfer *ab invito* is a compulsory transfer. See in *invitum* and *invito*.

AB JUDICATIO. A removal from court.

AB IRATO. Lat. By one who is angry. A devise or gift made by a man adversely to the interest of his heirs, on account of anger or hatred against them, is said to be made *ab irato*. A suit to set aside such a will is called an action *ab irato*. Merlin, Repert. *Ab irato*. Snell v. Weldon, 239 Ill. 279, 87 N.E. 1022.

AB OLIM. Of old.

AB OVO. The egg, hence from the beginning in allusion to old Roman custom of beginning a meal with eggs and ending with fruit, *ab ovo usque ad mala*. To begin with eggs and end with fruit. Also, at times in allusion to poets who began history of Trojan war with the egg from which Helen was said to have been hatched in contrast with Homer who plunged into the midst of things, or *in media res*.

AB 1URBE CONDITA. See A.U.C.

ABACIST or ABACISTA. A caster of accounts, an arithmetician.

ABACTION. A carrying away by violence.

ABACTOR. A stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from a person who steals a single animal or beast. Also called *abigeus*, q. v.

ABADENGO. In Spanish law. Land owned by an ecclesiastical corporation, and therefore exempt from taxation. In particular, lands or towns under the dominion and jurisdiction of an abbot. Escriche, Dicc. Raz.

ABALIENATE. To transfer interest or title.

ABALIENATIO. In Roman law. The perfect conveyance or transfer of property from one Roman citizen to another. This term gave place to the simple *alienatio*, which is used in the Digest and Institutes, as well as in the feudal law, and from which the English "alienation" has been formed. Inst. 2, 8, pr.; Id. 2, 1, 40; Dig. 50, 16, 28; Calvinus, Lex., *Abalienatio*.

ABALIENATION. In the Civil Law, a making over of realty, or chattels to another by due course of law.

ABAMITA. Lat. In the civil law. A great-great-grandfather's sister, (*abavi soror.*) Inst. 3, 6, 6; Dig. 38, 10, 3; Calvinus, Lex. Called *amita maxima*. Id. 38, 10, 17. Called, in Bracton, *abamita magna*. Bract. fol. 68b.

ABANDON. To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one's right or interest. *Burroughs v. Pacific Telephone & Telegraph Co.*, 220 P. 152, 155, 109 Or. 404. To give up or to cease to use. *Southern Ry. Co. v. Commonwealth*, 105 S.E. 65, 67, 128 Va. 176. To give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert. *Commonwealth v. Louisville & N. R. Co.*, 258 S.W. 101, 102, 201 Ky. 670. It includes the intention, and also the external act by which it is carried into effect.

ABANDONEE. A party to whom a right or property is abandoned or relinquished by another. Applied to the insurers of vessels and cargoes. *Lord Ellenborough, C.J.*, 5 Maule & S. 82; *Abbott, J.*, Id. 87; *Holroyd, J.*, Id. 89.

ABANDONMENT. The surrender, relinquishment, disclaimer, or cession of property or of rights. *Stephens v. Mansfield*, 11 Cal. 363 (land); *Munsey v. Marnet Oil & Gas Co.* (Tex.Civ.App.) 199 S.W. 686, 689 (oil lease); *Shepard v. Alden*, 201 N.W. 537, 539, 161 Minn. 135, 39 A.L.R. 1094 (bowling alleys); *Union Grain & Elevator Co. v. McCammon Ditch Co.*, 240 P. 443, 445, 41 Idaho 216 (water rights).

The giving up of a thing absolutely, without reference to any particular person or purpose, as throwing a jewel into the highway; leaving a thing to itself, as a vessel at sea; vacating property with the intention of not returning, so that it may be appropriated by the next corner. 2 Bl. Comm. 9, 10; *Judson v. Malloy*, 40 Cal. 299, 310. Intention to forsake or relinquish the thing is an essential element, to be proved by visible acts. *Sikes v. State*, Tex.Cr.App., 28 S.W. 688; *Jordan v. State*, 107 Tex.Cr.R. 414, 296 S.W. 585, 586 (auto parts); *Kunst v. Mabie*, 72 W.Va. 202, 77 S.E. 987, 990 (uncut timber); *Dow v. Worley*, 126 Okl. 175, 256 P. 56, 60 (oil and gas lease); *Duryea v. Elkhorn Coal & Coke Corporation*, 123 Me. 482, 124 A. 206, 208.

The voluntary relinquishment of possession of thing by owner with intention of terminating his ownership, but without vesting it in any other person. *Dober v. Ukase Inv. Co.*, 139 Or. 626, 10 P. 2d 356, 357. The relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property. *Foulke v. New York Consol. R. Co.*, 228 N.Y. 269, 127 N.E. 237, 238, 9 A.L.R. 1384 (package in subway car).

Abandonment in law depends upon concurrence of intention to abandon and some overt act or failure to act which carries implication that owner neither claims nor retains

any interest. *Stinnett v. Kinslow*, 238 Ky. 812, 38 S.W.2d 920, 922.

"Abandonment" includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether one has abandoned his property or rights, the intention is the first and paramount object of inquiry, for there can be no abandonment without the intention to abandon. *Boatman v. Andre*, 44 Wyo. 352, 12 P.2d 370, 373. Generally, "abandonment" can arise from a single act or from a series of acts. *Holly Hill Lumber Co. v. Grooms*, 16 S.E.2d 816, 821, 198 S.C. 118.

Time is not an essential element of "abandonment," although the lapse of time may be evidence of an intention to abandon, and where it is accompanied by acts manifesting such an intention, it may be considered in determining whether there has been an abandonment. *Ullman ex rel. Eramo v. Payne*, 127 Conn. 239, 16 A.2d 286, 287.

Merely nonuser is not necessarily an abandonment. *Harnett v. Dickinson*, 93 Md. 258, 48 A. 838 (home); *Welsh v. Taylor*, 131 N.Y. 450, 31 N.E. 896, 18 L.R.A. 535; *Phillis v. Gross*, 32 S.D. 438, 143 N.W. 373, 378 (contract for deed). See, however, *Corkran, Hill & Co. v. A. H. Kuhlemann Co.*, 136 Md. 525, 111 A. 471, 474 (trademark). Distinguished from neglect: *City of Vallejo v. Burrill*, 64 Cal.App. 399, 221 P. 676 (pipe line).

"Abandonment" differs from surrender in that surrender requires an agreement, *Noble v. Sturm*, 210 Mich. 462, 178 N.W. 99, 103; and from forfeiture, in that forfeiture may be against the intention of the party alleged to have forfeited, *Gila Water Co. v. Green*, 29 Ariz. 304, 241 P. 307, 308.

In the Civil and French Law it is the act by which a debtor surrenders his property for the benefit of his creditors; *Merlin, Repert.* See Abandonment for Torts.

Actions, In General

Failure for indefinite period to prosecute action or suit, *Morris v. Phifer State Bank*, 90 Fla. 55, 105 So. 150, unless caused by an injunction, *Barton v. Burbank*, 138 La. 997, 71 So. 134. By statute in some states a definite time has been stated which will render a suit abandoned and subject to dismissal. *Public Utilities Commission v. Smith*, 298 Ill. 151, 131 N.E. 371, 375.

Failure to submit issue by instruction, *Unterlacher v. Wells*, 317 Mo. 181, 296 S.W. 755, 756; failure to perform conditions necessary to valid appeal or writ of error, *Lewis v. Martin*, 210 Ala. 401, 98 So. 635; Board of Public Instruction for Marion County v. Goodwin, 89 Fla. 379, 104 So. 779; failure to take issue upon garnishee's answer, *Phelps v. Schmuck*, 151 Kan. 521, 100 P.2d 67, 71.

Assignments of Error

Not argued. *Meyer v. Hendrix*, 311 Ill.App. 605, 37 N.E.2d 445, 446.

Not presented in brief. *Roubay v. United States*, Q.C.A.Cal., 115 F.2d 49, 50.

Not supported by point, argument or authority. *Cone v. Ariss*, 13 Wash.2d 650, 126 P.2d 591, 593.

Bankrupt's Property

In re *Mirsky*, C.C.A.N.Y., 124 F.2d 1017.

Building Restrictions

Violations of restrictive covenant, *Meyer v. Stein*, 284 Ky. 497, 145 S.W.2d 105, 107.

ABANDONMENT

Cemeteries

No new burials and neglect of graves, *Andrus v. Remmert*, 136 Tex. 179, 146 S.W.2d 728, 730; casual use for farming purposes, *In re Gundry*, 294 Mich. 221, 292 N.W. 709, 711; disuse as to new interments, failure to cut grass & care for headstones, *In re Board of Transportation of City of New York*, 251 N.Y.S. 409, 413, 14 Misc. 557.

Children

Desertion or willful forsaking, *Cannon v. State*, 53 Ga.App. 264, 185 S.E. 364, 366.

Foregoing parental duties, *Wright v. Fitzgibbons*, Miss., 71 So.2d 709, 710.

Withdrawal or neglect of parental duties, *In re Potter*, 85 Wash. 617, 149 P. 23.

Relinquishment of parental claims, *Glendinning v. McComas*, 188 Ga. 345, 3 S.E.2d 562, 563.

Separation agreement committing custody of child to father, *Gardner v. Hall*, 132 N.J.Eq. 64, 26 A.2d 799, 809.

Separation from the child and failure to supply its needs, *State v. Clark*, 148 Minn. 389, 182 N.W. 452, 453.

Criminal offense, separation from child, and failure to supply its needs, *Curtis v. State*, 48 Ga.App. 135, 172 S.E. 99, 100.

Defeating recovery for wrongful death, *In re Schiffrin's Estate*, 272 N.Y.S. 583, 585, 152 Misc. 33,

Compensation Claims

Failure to file application for hearing, *Hanks v. Southern Public Utilities Co.*, 210 N.C. 312, 186 S.E. 252.

Condemnation Proceedings

Dismissal of a petition, *Will County v. Cleveland*, 372 Ill. 111, 22 N.E.2d 929, 930.

Failure of commissioners to report, *Kean v. Union County Park Commission*, 129 N.J.Eq. 67, 18 A.2d 279, 280, or judgment determining invalidity, *City of Los Angeles v. Abbott*, Cal., 12 P.2d 19, 22; failure to pay moneys adjudged, *Detroit International Bridge Co. v. American Seed Co.*, 228 N.W. 791, 795, 249 Mich. 289.

Construction Work

Cessation of operation and intent of owner and contractor to cease operations permanently, or at least for definite period, or some fair notice or knowledge of abandonment by lien claimant, actual or implied, *Block v. Love*, 136 Or. 685, 1 P.2d 588, 589.

Contracts

To constitute "abandonment" by conduct, action relied on must be positive, unequivocal, and inconsistent with the existence of the contract, *Mood v. Methodist Episcopal Church South*, Tex. Civ.App., 289 S.W. 461, 464. Abandonment is a matter of intent, *Lohn v. Fletcher Oil Co.*, 38 Cal. App.2d 26, 100 P.2d 505, 507, and implies not only

nonperformance, but an intent not to perform which may be inferred from acts which necessarily point to actual abandonment, *Losei Realty Corporation v. City of New York*, 254 N.Y. 41, 171 N.E. 899.

Copyrights

Common-law rights, *Tamas v. 20th Century Fox Film Corporation*, Sup., 25 N.Y.S.2d 899, 901; sale and delivery of uncopyrighted painting to state-owned public institution, *Pushman v. New York Graphic Soc.*, Sup., 25 N.Y.S.2d 32, 34; copyrighted lectures not delivered to general public, but only to paying audiences and classes, *National Institute for Improvement of Memory v. Nutt*, D.C.Conn., 28 F.2d 132, 134.

Crops

Sharecropping tenant's willful failure to cultivate crops, *Heaton v. Slaten*, 25 Ala.App. 81, 141 So. 267, 268.

Ditches

Town's nonuser for a short period after permitting ditch to be blocked was insufficient, *Foster v. Webster*, Sup., 44 N.Y.S.2d 153, 156. Mere nonuser does not constitute, *Musselshell Valley Farming & Livestock Co. v. Cooley*, 86 Mont. 276, 283 P. 213, 218. After prescriptive right attached, water shortage in subsequent years rendering use of ditch unnecessary would not constitute, *Bowman v. Bradley*, 270 P. 919, 922, 127 Or. 45.

Domicile

Permanent removal from, *Stafford v. Mills*, 57 N.J.L. 570, 31 A. 1023.

Easements

To establish "abandonment" of an easement created by deed, there must be some conduct on part of owner of servient estate adverse to and inconsistent with existence of easement and continuing for statutory period, or nonuser must be accompanied by unequivocal and decisive acts clearly indicating an intent on part of owner of easement to abandon use of it, *Richardson v. Tumbridge*, 111 Conn. 90, 149 A. 241, 242.

Permanent cessation of use or enjoyment with no intention to resume or reclaim, *Welsh v. Taylor*, 134 N.Y. 450, 31 N.E. 896, 18 L.R.A. 535; *Corning v. Gould*, 16 Wend., N.Y., 531. Intention and completed act are both essential, *Town of Orlando v. Stevens*, 90 Okl. 2, 215 P. 1050, 1051., *Goodman v. Brenner*, 219 Mich. 55, 188 N.W. 377; brick-ing up of the openings for stairway and halls of adjoining buildings, *Miller v. Teer*, 220 N.C. 605, 18 S.E.2d 173, 178; where object of use of dedicated property wholly fails, *Dallas County v. Miller*, 140 Tex. 242, 166 S.W.2d 922. But mere nonuser is not sufficient, *Smelcer v. Rippetoe*, 24 Tenn.App. 516, 147 S.W.2d 109, 113, 114; *O'Barr v. Duncan*, 187 Ga. 642, 2 S.E.2d 82, 83; right of way acquired by grant, *Burnham v. Mahoney*, 222 Mass. 524, 111 N.E. 396, 398; *Raleigh, C. & S. Ry. Co. v. McGuire*, 171 N.C. 277, 88 S.E. 337, 339. Where owner of building had easement in adjoining wall, wrecking building preparatory to erection of a new building, did not cause loss of easement, *Joel v. Publix-Lucas Theater*, 193 Ga. 531, 19 S.E.2d 730, 736. And a mere temporary or occasional obstruction or use of an easement by the servient owner is not an "abandonment", *Gerber v. Appel*, Mo.App., 164 S.W.2d 225, 228. However nonuser of railroad crossing for more than 20 years, and

conveyance of strips of land adjoining original right of way to railroad in fee simple, without reservation, constituted abandonment of easement in crossing. *Cityco Realty Co. v. Philadelphia, B. & W. R. Co.*, 158 Md. 221, 148 A. 441, 444.

Employment

During Christmas holidays, notwithstanding a call at employer's office and discussing business, *Stinson v. Dairymen's League Co-op. Ass'n*, 186 A. 687, 688, 14 N.J.Misc. 671. Deviation from route, *Loper v. Morrison*, 145 P.2d 4, 23 Cal.2d 600; truck driver unnecessarily permitting passenger to drive, *Ginther v. J. P. Graham Transfer Co.*, 33 A. 2d 923, 924, 348 Pa. 60. Contra where truck driver remained on driver's seat, directing operation of truck, and watched passenger's driving, *Ginther v. J. P. Graham Transfer Co.*, 27 A.2d 712, 714, 149 Pa.Super. 635; and where truck driver became sick, *Matzek v. United Storage & Trucking Co.*, 186 A. 193, 122 Pa.Super. 146. Truck drivers becoming intoxicated and remaining from work, *Naylon v. State*, Ct.Cl., 40 N.Y.S.2d 587, 590; Coal miner contrary to orders, riding on an empty car, *Soroka v. Philadelphia & Reading Coal & Iron Co.*, 138 Pa.Super. 296, 10 A.2d 904, 907. But automobile driver's choosing longer route by paved highways to pick up a needed change of clothing at home did not constitute an "abandonment" of his employment. *Mitchell v. Mitchell Drilling Co.*, 154 Kan. 117, 114 P.2d 841, 844.

Exceptions on Appeal

Not argued in brief, *Curran v. Curran*, 219 N.C. 815, 15 S.E.2d 279, 282. Not set out in brief, *Star Mfg. Co. v. Atlantic Coast Line R. Co.*, 222 N.C. 330, 23 S.E.2d 32, 40. Not complaining of rulings on exceptions, *Buckalew v. Brockner, La.App.*, 11 So.2d 720, 722. Failing to answer appeal to re-urge exception, *John Myers Implement Co. v. De Boer, La.App.*, 9 So.2d 832, 833. Filing answers without insisting on decision on exceptions to jurisdiction *ratione personae*, *Weaver v. Mansfield Hardwood Lumber Co., La.App.*, 4 So.2d 781, 782.

Family

Where father during three or four months following his departure contributed only \$32 to support of wife and three minor children, *Howton v. Howton*, 51 Cal.App.2d 323, 124 P.2d 837, 839. Contra where father helped to support family, *In re Hess' Estate*, 257 N.Y.S. 278, 282, 143 Misc. 335.

Franchises

'Inferior service and lack of any service for few short intervals held insufficient to show "abandonment" of ferry franchise. *McConnell v. Crittenden County*, 250 Ky. 359, 63 S.W.2d 329.

Highways

Where public ceases to use street or highway under circumstances indicating intent to abandon, *Grand Trunk Western R. Co. v. City of Flint, D. C.Mich.*, 55 F.2d 384, 386. But short sections of highway, discontinued by state highway commission upon relocating highway, were not aban-

oned. *Mosteller v. Southern Ry. Co.*, 220 N.C. 275, 17 S.E.2d 133, 135. And cultivation of highway for short period by abutting landowners was not an "abandonment" of highway. *Chicago & E. I. Ry. Co. v. Road Dist. No. 10*, 353 Ill. 160, 187 N.E. 155, 157.

Homesteads

Removal with an intention never to return constitutes an "abandonment", and nothing less does. *Farmers' State Bank of Georgetown v. Roberts, Tex.Civ.App.*, 59 S.W.2d 1089. Must be voluntary action, *Wood v. Wood*, 203 Ark. 344, 157 S.W.2d 36, 38. Temporary absence with intention to return, *Brewer v. Brewer*, 268 Ky. 625, 105 S.W.2d 582, 584. Absence of a design of permanent abandonment, *Lanier v. Lanier*, 95 Fla. 522, 116 So. 867, 868. Absence by necessity, *Hinds v. Buck*, 177 Tenn. 444, 150 S.W.2d 1071, 1072; sickness, *In re Dunlap's Estate*, 161 Or. 93, 87 P.2d 225, 229; advancing years and inability to care for selves, *Gulf Production Co. v. Continental Oil Co., Tex.*, 132 S.W.2d 553, 573, 576; to rent to winter tourists, *Collins v. Collins*, 150 Fla. 374, 7 So. 443, 444. A deed with reservation of a life estate did not constitute "abandonment" of homestead. *Arighi v. Rule & Sons*, 41 Cal.App. 852, 107 P.2d 970, 972. Nor did filing of suit to partition land. *Carr v. Langford, Tex.Civ.App.*, 144 S.W.2d 612, 613.

Husband

The act of a husband or wife who leaves his or her consort willfully, and with an intention of causing perpetual separation. *People v. Cullen*, 153 N.Y. 629, 47 N.E. 894, 44 L.R.A. 420.

Wife's leaving husband for a trip to Europe of less than two months against husband's wishes, did not constitute. *In re Boesenberg's Estate*, 37 N.Y.S.2d 194, 196, 179 Misc. 3.

Abandonment as cause for divorce must be willful and intentional without intention of returning, and without consent of spouse abandoned. *Hickey v. Hickey*, 152 Wash. 429, 277 P. 994, 995. Husband forcibly expelling wife from home, *Tenorio v. Tenorio*, 44 N.M. 89, 98 P.2d 838, 847. Refusal to talk to husband did not establish. *Wyahlyeth v. Wyahlyeth*, 182 Md. 663, 32 A.2d 380, 381. Wife refusing without good cause to accompany husband when moving, *Ventrano v. Ventrano*, 54 N.Y.S.2d 537, 539.

Word "abandoned," within statute providing that no wife who has abandoned husband shall have right of election to take against provisions of husband's will, has meaning ascribed thereto in matrimonial litigations, and carries no connotation of infidelity. Adultery of abandoned wife did not constitute "abandonment". *In re Green's Estate*, 280 N.Y.S. 692, 702, 155 Misc. 641.

A wife who told husband to get out of wife's home, and made no effort to effect a reconciliation, was not entitled to appointment as administratrix of his estate. *In re Banaszak's Estate*, 1 N.Y.S.2d 15, 164 Misc. 829.

Where husband paid wife living apart in caring for their child, she had not abandoned husband so as to preclude the recovery of an industrial pension for his death. *Johnson v. Department of Labor and Industries of Washington*, 3 Wash.2d 257, 100 P.2d 382, 385. But wife who had, prior to husband's death, left husband, resisted efforts toward a reconciliation, and instituted annulment proceedings, was not entitled to compensation for husband's death. *La Fountain v. Industrial Accident Commission*, 13 Cal.App.2d 130, 56 P.2d 257, 258.

Insured Property

A relinquishment or cession of property by the owner to the insurer of it, in order to claim as for

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a total loss. *Chicago S. S. Lines v. U. S. Lloyds*, C.C.A.111., 12 F.2d 733, 738.

The term is used only in reference to risks in navigation; but the principle is applicable in fire insurance, where there are remnants, and sometimes, also, under stipulations in life policies in favor of creditors. *Cincinnati Ins. Co. v. Duffield*, 6 Ohio St. 200, 67 Am. Dec. 339.

Inventions

The giving up of rights by inventor, as where he surrenders his idea or discovery or relinquishes the intention of perfecting his invention, and so throws it open to the public, or where he negligently postpones the assertion of his claims or fails to apply for a patent, and allows the public to use his invention. *Electric Storage Battery Co. v. Shimadzu, Pa.*, 59 S.Ct. 675, 681, 307 U.S. 5, 613, 616, 83 L.Ed. 1071.

Disclaimer of claim of patent, *Triumph Explosives v. Kilgore Mfg. Co.*, C.C.A.Md., 128 F.2d 444, 448; delaying 12 years after reducing shoe to practice before applying for patent, *Salisbury v. Pediforme Shoe Co.*, D.C.N.Y., 31 F.Supp. 3, 7; omitting for many years to take any step to reinstate or renew rejected application, *Na-Mac Products Corporation v. Federal Tool Corporation*, c.c.A.m., 118 F.2d 167, 171; acquiescing in rejection of claims in patent application for device shown in later application for patent, *Na-Mac Products Corporation v. Federal Tool Corporation*, C.C.A.Ill., 118 F.2d 167, 171; *Na-Mac Products Corporation v. Federal Tool Corporation*, D.C.Ill., 36 F.Supp. 426, 430. But mere lapse of time before an inventor applies for a patent is not sufficient. *Imperial Brass Mfg. Co. v. Bonney Forge & Tool Works*, D.C.Pa., 38 F. Supp. 829, 832. Patent application was not filed until 21/2 years after date of conception of invention, *Chicago Rawhide Mfg. Co. v. National Motor Bearing Co.*, D.C.Cal., 50 F.Supp. 458, 460. Nor is disclosing invention to individuals with purpose of interesting them in production or manufacture. *Pennington Engineering Co. v. Houde Engineering Corporation*, D.C.N.Y., 43 F.Supp. 698, 706.

Leases in General

To constitute an "abandonment" of leased premises, there must be an absolute relinquishment of premises by tenant consisting of act and intention. *Schnitzer v. Lanzara*, 115 N.J.L. 332, 180 A. 234.

Closing up butcher shop with intention of giving up business and in removing all perishable merchandise, although tenant retained key and did not notify landlord of intention to vacate premises, held an "abandonment" and not a "surrender" of premises. *Schnitzer v. Lanzara*, 115 N.J.L. 332, 18 A. 234. Refusal by lessee of lessor's offer to reconstruct burned building, *Girard Trust Co. v. Tremblay Motor Co.*, 291 Pa. 507, 140 A. 506, 512. But tenants surrendering premises pursuant to notice of forfeiture did not "abandon" premises. *Becker v. Rute*, 228 Iowa 533, 293 N.W. 18, 21.

Marriage

Withdrawal or denial of marital obligations without just cause, *Reppert v. Reppert*, Del.Super., 13 A.2d 705, 1 Terry 492.

Mineral Leases

"Abandonment" consists of an actual act of relinquishment, accompanied with the intent and purpose permanently to give up a claim and right of property. A distinction exists between "abandonment" and "surrender" which is the relinquishment of a thing or a property right thereto to another, which is not an essential element of

abandonment. Distinction also exists between elements of "abandonment" and those of estoppel. Neither formal surrender of oil and gas lease nor release is necessary to effectuate "abandonment." *Sigler Oil Co. v. W. T. Waggoner Estate*, Tex.Civ. App., 276 S.W. 936, 938. Voluntary, intentional relinquishment of known right. *Pure Oil Co. v. Sturm*, 43 Ohio App. 105, 182 N.E. 875, 882.

Failing to start work under the lease for more than 40 years, *Chapman v. Continental Oil Co.*, 149 Kan. 822, 89 P.2d 833, 834; breach of implied obligation to proceed with search and development of land with reasonable diligence, *Wood v. Arkansas Fuel Oil Co.*, D.C.Ark., 40 F. Supp. 42, 45; no drilling on leased land for more than two years, and failure to pay rentals, *Rehart v. Klossner*, 48 Cal.App.2d 40, 119 P.2d 145, 147; drawing of casing from well with no intention of replacing it, *Seaboard Oil Co. v. Commonwealth*, 193 Ky. 629, 237 S.W. 48, 50. But there must be an intention by lessee to relinquish leased premises, *Carter Oil Co. v. Mitchell*, C.C.A.Okl., 100 F.2d 945, 950, 951; or an intention not to drill, *Carter Oil Co. v. Mitchell*, C.C.A.Okl., 100 F.2d 945, 950, 951. And ceasing of operations is not alone sufficient. *Fisher v. Dixon*, 188 Okl. 7, 105 P.2d 776, 777. Doing no substantial work for about one year immediately preceding suit to cancel lease, but remaining in possession and doing some work, *Deace v. Stribling*, Tex.Civ.App., 142 S.W.2d 564, 567; disconnection of well for a brief interval while well was being drilled to a greater depth, *Cole v. Philadelphia Co.*, 345 Pa. 315, 26 A.2d 920, 923; abandoning work on unproductive well was not an abandonment of leased premises. *Smith v. Tullos*, 195 La. 400, 196 So. 912, 914.

Mining Claims

Relinquishment of a claim held by location without patent, where the holder voluntarily leaves his claim to be appropriated by the next corner, without any intention to retake or resume it, and regardless of what may become of it in the future. *O'Hanlon v. Ruby Gulch Mining Co.*, 48 Mont. 65, 135 P. 913, 918. The term includes both the intention to abandon and the act by which the abandonment is carried into effect. *Peachy v. Frisco Gold Mines Co.*, D.C.Ariz., 204 F. 659, 668.

Abandonment takes place whenever locator leaves claim without intention of holding it. *Crane v. French*, 39 Cal. App.2d 642, 104 P.2d 53, 60. But mere absence from claim, is not sufficient. *Crane v. French*, 39 Cal.App.2d 642, 104 P.2d 53, 60. And one co-owner's abandoning his interest is not an "abandonment" of entire claim. *Crane v. French*, 39 Cal.App.2d 642, 104 P.2d 53, 60.

Motions

Motion not called to court's attention until final hearing, *Williams v. Smith*, 149 Fla. 735, 6 So.2d 853, 854. Grounds not insisted on, *Meador v. Nowell*, 67 Ga.App. 564, 21 S.E.2d 312, 314; not argued in brief, *In re Horton's Estate*, 154 Kan. 269, 118 P. 2d 527, 531. Rulings not urged on appeal, *Spears v. Brown Paper Mill Co.*, La.App., 9 So.2d 332, 334. Admitting sufficiency of evidence to sustain verdict, *Copeland v. State*, 66 Ga.App. 142, 17 S.E.2d 288, 289. But service of answer after making of motion to strike out portions of a complaint was not an "abandonment" of the motion. *Russo v. Signode Steel Strapping Co.*, Sup., 37 N.Y.S.2d 166.

Office

Abandonment of a public office is a species of resignation, but differs from resignation in that

resignation is a formal relinquishment, while abandonment is a voluntary relinquishment through nonuser. *State v. Harmon*, 115 Me. 268, 98 A. 804, 805.

It is not wholly a matter of intention, but may result from the complete abandonment of duties of such a continuance that the law will infer a relinquishment. *Wilkinson v. City of Birmingham*, 193 Ala. 139, 68 So. 999, 1002. It must be total, and under such circumstances as clearly to indicate an absolute relinquishment; and whether an officer has abandoned an office depends on his overt acts rather than his declared intention. *Parks v. Ash*, 168 Ga. 868, 149 S.E. 207, 209. It implies nonuser, but nonuser does not, of itself constitute abandonment. The failure to perform the duties pertaining to the office must be with actual or imputed intention on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Abandonment may result from an acquiescence by the officer in his wrongful removal or discharge, but, as in other cases of abandonment, the question of intention is involved. *McCall v. Cull*, 51 Ariz. 237, 75 P.2d 696, 698.

Temporary absence is not ordinarily sufficient to constitute an "abandonment of office". *State v. Green*, 206 Ark. 361, 175 S.W.2d 575, 577. Responding to mandatory call for military service in emergency conditions, *Caudel v. Prewitt*, 296 Ky. 848, 178 S.W.2d 22, 25. And failure of former officers to assert right while decision of eligibility of elected successors was pending, was not an "abandonment" creating vacancy. *State v. Levy* Court of New Castle County, Del., 3 W.W.Harr. 554, 140 A. 642, 645.

Oil Wells

Where owner ceased working on well to work elsewhere to procure money to do further work on well, well was not abandoned. *Jones v. Jos. Greenspon's Son Pipe Corporation*, 313 Ill.App. 651, 40 N.E.2d 561.

Patents

There may be an abandonment of a patent, where the inventor dedicates it to the public use; and this may be shown by his failure to sue infringers, sell licenses, or otherwise make efforts to realize a personal advantage from his patent. *Ransom v. New York*, 4 Blatchf. 157, 20 Fed.Cas. 286.

Pleadings

The filing of a second amended complaint which was complete in itself and which did not reserve to itself any part of the original complaint or first amended complaint constituted an "abandonment" of the two former complaints. *Seely v. Gilbert*, 16 Wash.2d 611, 134 P.2d 710, 712. Cross-complainant by failing to take proper steps in trial court to have judgment that was silent on issues tendered by cross-complaint and answer thereto corrected did not thereby "abandon" cross-complaint. *Brown v. National Life Ins. Co. of Washington County, Vt.*, 112 Ind.App. 684, 46 N.E. 2d 246, 249.

Prescriptive Rights

Non-use alone is insufficient. *Burkman v. City of New Lisbon*, 246 Wis. 547, 19 N.W.2d 311, 313; *Smelcer v. Rippetoe*, 24 Tenn.App. 516, 147 S.W.2d 109, 113, 114.

Privileges

Witness before grand jury who answered questions and immediately asked to retract answers,

and thereupon asserted his privilege, did not "abandon" right to claim the privilege. *United States v. Weisman*, C.C.A.N.Y., 111 F.2d 260, 261.

Property

"Abandoned property" in a legal sense is that to which owner has relinquished all right, title, claim, and possession, with intention of not reclaiming it or resuming its ownership, possession or enjoyment. *Jackson v. Steinberg*, Or., 200 P.2d 376, 377, 378.

There must be concurrence of act and intent, that is, the act of leaving the premises or property vacant, so that it may be appropriated by the next comer, and the intention of not returning. *Cohn v. San Pedro, L. A. & S. L. R. Co.*, 103 Cal.App. 496, 284 P. 1051, 1052. Relinquishment of all title, possession, or claim; a virtual intentional throwing away of property. *Ex parte Szczygiel*, Sup., 51 N.Y.S.2d 699, 702. Actual relinquishment, gas in pipe was not abandoned. *Hein v. Shell Oil Co.*, 315 Ill.App. 297, 42 N.E.2d 949, 952. Nor was a sewing machine and phonograph left with landlady as security. *Dickens v. Singer Sewing Mach. Co.*, 140 So. 296, 298, 19 La.App. 735.

Property for Special Purposes

Moving of church to erect drilling rig held not "abandonment of use for church purposes." Abandonment meant to wholly discontinue church use, and additional use was not sufficient. *Skipper v. Davis*, Tex.Civ.App., 59 S.W.2d 454, 457.

Merger of churches was not. *Bridgeport-City Trust Co. v. Bridgeport Hospital*, 120 Conn. 27, 179 A. 92, 94. Nor where intention was that nonconforming use as a fraternity house would be resumed. *State ex rel. Morehouse v. Hunt*, 235 Wis. 358, 291 N.W. 745, 751, 752. Nor mere cessation of a nonconforming use in zoned area for a reasonable period. *Beyer v. Mayor and Council of Baltimore City, Md.*, 34 A.2d 765, 768, 769. Nor a discontinuance of a garage during war while owner served in army and on return postponed repossession for garage purposes due to city's using building. *State v. Murray*, 195 Wis. 657, 219 N.W. 271, 272. But removal of manufacturing equipment from manufacturing plant, was. *Francisco v. City of Columbus, Ohio App.*, 31 N.E.2d 236, 243. And also disposing of all machinery, taking down smokestack and using property for storage purposes, notwithstanding vague intention of resuming slaughter house business. *Beyer v. Mayor and City Council of Baltimore City*, 182 Md. 444, 34 A.2d 765, 768, 769.

Dedicated use must wholly fail. *Kirchen v. Remenga*, 291 Mich. 94, 288 N.W. 344, 350, 351. Erection of buildings on park lands without objection of adjoining owners was not sufficient. *Kirchen v. Remenga*, 291 Mich. 94, 288 N.W. 344, 350, 351. Nor city's permitting a citizen's rock garden on small portion of street improvement tract. *Kendrick V. City of St. Paul*, 213 Minn. 283, 6 N.W.2d 449, 451. Nor diverting parkway to roadway. *Ford v. City of Detroit*, 273 Mich. 449, 263 N.W. 425, 426. Nor tearing down school building for salvaging material for erection of a waiting station for school children. *McCullough v. Swifton Consol. School Dist.*, 202 Ark. 1074, 155 S.W.2d 353. Nor temporary disuse of school when land was offered for sale, later rescinded. *Bernard v. Bowen*, 214 N.C. 121, 198 S.E. 584.

Railroad Property

"Abandon" means to relinquish or give up with intent of never again resuming or claiming one's rights or interests in, to give up absolutely, to forsake entirely, to renounce utterly, to relinquish all connection with or concern in. *Capital Transit Co. v. Hazen*, 93 F.2d 250, 251, 68 App.D.C. 91. Abandonment did not mean a partial disuse with an intention to complete station on a contingency, but meant a final relinquishment, or giving up with-

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out intention of resuming. *Wheeling & L. E. Ry. Co. v. Pittsburgh & W. V. Ry. Co.*, C.C.A.Ohio, 33 F.2d WO, 392. And to constitute an "abandonment" of right of way, there must be not only an actual relinquishment of the property, but an intention to abandon it. *Abens v. Chicago, B. & Q. R. Co.*, 388 Ill. 261, 57 N.E.2d 883, 887.

Nonuser is a fact in determining it, but, though continued for years, is not conclusive. *Arlington Realty Co. v. Keller*, 105 N.J.Eq. 196, 147 A. 437, 438. Plowing up servient estate is not enough. *Les v. Alibozek*, 269 Mass. 153, 168 N.E. 919, 922, 66 A.L.R. 1094. Nor proposal to deliver and receive freight by motortrucks. *New York Dock Ry. v. Pennsylvania R. Co.*, D.C.Pa., 1 F.Supp. 20, 21. But failure to maintain and use that part of railroad on land conveyed constituted "abandonment." *Atlantic Coast Line R. Co. v. Sweat*, 177 Ga. 698, 171 S.E. 123, 129.

Remedies

Election of one of two inconsistent remedies, *Lumber Mutual Casualty Ins. Co. of New York v. Friedman*, 176 Misc. 703, 28 N.Y.S.2d 506, 509.

Rights in General

The relinquishment of a right. It implies some act of relinquishment done by the owner without regard to any future possession by himself, or by any other person, but with an intention to abandon. *Dyer v. Sanford*, 9 Mete., Mass., 395, 43 Am. Dec. 399.

It is properly confined to incorporeal hereditaments, since legal rights once vested must be divested according to law. But equitable rights may be abandoned. *Great Falls Co. v. Worster*, 15 N.H. 412; *Cox v. Colossal Cavern Co.*, 210 Ky. 612, 276 S.W. 540; *Inhabitants of School Dist. No. 4 v. Benson*, 31 Me. 381, 52 Am. Dec. 618.

Ship and Freight

Act by which shipowner surrenders ship and freight to a trustee for benefit of claimants. See 46 U.S.C.A. § 185; *Ohio Transp. Co. v. Davidson S. S. Co.*, 148 F. 185, 78 C.C.A. 319.

In France and other countries it is the surrender to a person having a claim arising out of a contract made with the master. *American Transp. Co. v. Moore*, 5 Mich. 368.

Taxing Power

Delegation of taxing power by legislature to city was not "abandonment of taxing power". *Mouledoux V. Maestri*, 197 La. 525, 2 So.2d 11, 16.

Trade-marks and Trade Names

There must be not only nonuser, but also an intent to abandon. *Rockowitz Corset & Brassiere Corporation v. Madame X Co.*, 248 N.Y. 272, 162 N. E. 76, 78; *Manz v. Philadelphia Brewing Co.*, D.C. Pa., 37 F.Supp. 79, 81. To give up use of trade-marks permanently. *Neva-Wet Corporation of America v. Never Wet Processing Corporation*, 277 N.Y. 163, 13 N.E.2d 755, 761.

Disuse not sufficient in itself. *Sherwood Co. v. Sherwood Distilling Co.*, 177 Md. 455, 9 A.2d 842, 845. Nor using owner's name. *Bunte Bros. v. Standard Chocolates*, D.C. Mass., 45 F.Supp. 478, 480. However, nonuser with extensive use by another is sufficient. *Sherwood Co. v. Sherwood Distilling Co.*, 177 Md. 455, 9 A.2d 842, 845. But not where receiver continuously operated trade-mark licensee's property. *American Dirigold Corporation v. Dirigold Metals Corporation*, C.C.A.Mich., 125 F.2d 446, 454. Nor sale of all physical assets of manufacturing company by trustee

in bankruptcy. *Reconstruction Finance Corporation v. J. G. Menihan Corporation*, D.C.N.Y., 28 F.Supp. 920, 923.

Trusts

State aid for hospital, with stipulation for beds for emergency cases, did not establish an "abandonment of trust". *Noble v. First Nat. Bank of Anniston*, 241 Ala. 85, 1 So.2d 289, 291.

Water Rights

"Abandonment," as applied to water rights may be defined to be an intentional relinquishment of a known right. It is not based on a time element, and mere nonuser will not establish "abandonment" for any less time, at least, than statutory period, controlling element in "abandonment" being matter of intent. *Hammond v. Johnson*, 94 Utah 20, 66 P.2d 894, 899. To desert or forsake right. The intent and an actual relinquishment must concur. *Central Trust Co. v. Culver*, 23 Colo. App. 317, 129 P. 253, 254. Concurrence of relinquishment of possession, and intent not to resume it for beneficial use. Neither alone is sufficient. *Osnes Livestock Co. v. Warren*, 103 Mont. 284, 62 P.2d 206, 211.

Not using water when there was no water in creek because of another user's obstruction of flow and appropriation of all the water did not constitute. *New Mexico Products Co. v. New Mexico Power Co.*, 42 N.M. 311, 77 P.2d 634, 641. Nor did milling company's permitting water's use by upper irrigators. *Hutchinson v. Stricklin*, 146 Or. 285, 28 P.2d 225, 230. Nor permitting upper appropriators to erect dam and store water. *Irion v. Hyde*, Mont., 81 P. 2d 353, 356. Nor change of place of use of decreed water right. *Harris v. Chapman*, 51 Idaho 283, 5 P.2d 733, 737. Nor failure to use all water to which entitled. *Horse Creek Conservation Dist. v. Lincoln Land Co.*, 54 Wyo. 320, 92 P.2d 572, 577. Use of only enough water to water stock, because supply was insufficient to irrigate land. *Federal Land Bank v. Morris*, 112 Mont. 445, 116 P.2d 1007, 1010. But right to use a particular quantity of water may be abandoned by failure to apply such water to a beneficial use for an unreasonable period of time. *Cundy v. Weber*, 68 S.D. 214, 300 N.W. 17, 22.

Wife

Abandonment justifying divorce is a voluntary, unjustified, and final separation of one of married parties from the other, accompanied by an intention to terminate the marital relation, or an unjustified refusal to resume suspended cohabitation, as where husband left his wife because his children by former marriage could not live peaceably with second wife. *Schwartz v. Schwartz*, 158 Md. 80, 148 A. 259, 263.

Refusal by husband of request by sick wife without means of support, to return to home held "abandonment" as respects disorderly conduct. *People v. Schenkel*, 252 N.Y.S. 415, 418, 140 Misc. 843. Contra where separation agreement existed. *People v. Gross*, 291 N.Y.S. 597, 601, 161 Misc. 514. Where parties separated by agreement, and husband, in lieu of periodic payments for wife's support, made conveyance constituting valuable consideration, held not "abandonment" as respects husband's statutory right against wife's will. In re *McCann's Estate*, 281 N.Y.S. 445, 155 Misc. 763; or even if wife was justified in leaving husband on account of his cruel treatment, there must be a desertion without consent. In re *Stolz' Estate*, 260 N.Y.S. 906, 145 Misc. 799. But while there can be no "desertion" for divorce where parties are apart by consent, yet there may be an "abandonment" as respects separate maintenance, although the separation originated and continued by consent of parties. *Pierson v. Pierson*, 189 A. 391, 395,

15 N.J.Misc. 117. And as respects maintenance, husband's conduct rendering wife's condition unendurable constitutes "abandonment." *Carder v. Carder*, 227 Mo.App. 1005, 60 S.W.2d 706. Cruel treatment, *Fallon v. Fallon*, 111 N.J. Eq. 512, 162 A. 406, 408. Husband's refusal of wife's request to resume living with her, *Clark v. Clark*, 176 A. 81, 83, 13 N.J.Misc. 49; or refusal to receive wife at his residence, is an "abandonment" of her. *Hockaday v. Hockaday*, 182 La. 88, 161 So. 164. But not a husband's removal from wife's home after wife had instituted separation action, *Kenneson v. Kenneson*, 36 N.Y.S.2d 676, 685, 178 Misc. 832; or where husband moved out on command of wife's father. *Anonymous v. Anonymous*, 24 N.Y.S.2d 613, 618. Mere failure to support wife is not an abandonment within Divorce Act. *Biddle v. Biddle*, 104 N.J.Eq. 313, 145 A. 639, 640; but failing to provide wife with necessities, etc., is. *Cooper v. Cooper*, 176 Md. 695, 4 A.2d 714, 716. And convict sentenced for life did not abandon wife. In re *Lindewall's Will*, 18 N.Y.S.2d 281, 284, 259 App. Div. 196.

ABANDONMENT FOR TORTS. In the civil law. The relinquishment of a slave or animal who had committed a trespass to the person injured, in discharge of the owner's liability for such trespass or injury. Just. Inst. 4, 8, 9. A similar right exists in Louisiana. *Fitzgerald v. Ferguson*, 11 La. Ann. 396.

ABANDUN, ABANDUM, or ABANDONUM. Anything sequestered, proscribed, or abandoned. *Abandon, i. e., in bannum res missa*, a thing banned or denounced as forfeited or lost, whence to *abandon, desert, or forsake*, as lost and gone. *Cunningham; Cowell*.

ABARNARE. Lat. To discover and disclose to a magistrate any secret crime. *Leges Canuti*, cap. 10.

ABATABLE NUISANCE. A nuisance which is practically susceptible of being suppressed, or extinguished, or rendered harmless, and whose continued existence is not authorized under the law. *Fort Worth & Denver City Ry. Co. v. Muncy, Tex. Civ.App.*, 31 S.W.2d 491, 494.

ABATAMENTUM. L. Lat. In old English law. An abatement of freehold; an entry upon lands by way of interposition between the death of the ancestor and the entry of the heir. Co. Litt. 277a; Yel. 151.

ABATARE. To abate. Yel. 151.

ABATE. To throw down, to beat down, destroy, quash. 3 Shars. Bla. Com. 168; *Klamath Lumber Co. v. Bamber*, 142 P. 359, 74 Or. 287. , To do away with or nullify or lessen or diminish. In re *Stevens' Estate*, Cal.App., 150 P.2d 530, 534; to bring entirely down or demolish, to put an end to, to do away with, to nullify, to make void, *Sparks Milling Co. v. Powell*, 283 Ky. 669, 143 S.W.2d 75, 77.

See, also, Abatement; Abatement and Revival.

ABATEMENT. A reduction, a decrease, or a diminution. The *Vestris*, D.C.N.Y., 53 F.2d 847, 852.

A judgment afforded a defense by way of abatement. *Panos v. Great Western Packing Co.*, Cal.App., 126 P.2d 889, 892.

Contracts

A reduction made by the creditor for the prompt payment of a debt due by the payor or debtor. *Wesk. Ins.* 7.

Debts

In equity, when equitable assets are insufficient to satisfy fully all the creditors, their debts must abate in proportion, and they must be content with a dividend, for *cequitas est quasi cequalitas*.

Freehold

The unlawful entry upon and keeping possession of an estate by a stranger, after the death of the ancestor and before the heir or devisee takes possession. Such an entry is technically called an "abatement," and the stranger an "abator." It is, in fact, a figurative expression, denoting that the rightful possession or freehold of the heir or devisee is overthrown by the unlawful intervention of a stranger. Abatement differs from intrusion, in that it is always to the prejudice of the heir or immediate devisee, whereas the latter is to the prejudice of the reversioner or remainder-man; and disseisin differs from them both, for to disseise is to put forcibly or fraudulently a person seised of the freehold out of possession. *Brown v. Burdick*, 25 Ohio St. 268. By the ancient laws of Normandy, this term was used to signify the act of one who, having an apparent right of possession to an estate, took possession of it immediately after the death of the actual possessor, before the heir entered. (*Howard, Anciennes Lois des Francais*, tome 1, p. 539.)

Legacies

A proportional diminution or reduction of the pecuniary legacies, when the funds or assets out of which such legacies are payable are not sufficient to pay them in full. *Ward, Leg.* p. 369, c. 6, § 7; 1 Story, Eq. Jur. § 555; 2 Bl. Comm. 512, 513; In re *Hawgood's Estate*, 37 S.D. 565, 159 N.W. 117, 123. Legacy accepted in lieu of dower. In re *Hartman's Estate*, 233 Iowa 405, 9 N.W.2d 359, 362.

Nuisance

The removal of a nuisance. 3 Bla. Comm. 5. See Nuisance.

Taxes and Duties

A drawback or rebate allowed in certain cases on the duties due on imported goods, in consideration of their deterioration or damage suffered during importation, or while in store. A diminution or decrease in the amount of tax imposed upon any person. *Rogers v. Gookin*, 198 Mass. 434, 85 N.E. 405 (real estate taxes); *Central National Bank v. City of Lynn*, 156 N.E. 42 (Shares in national banks) 259 Mass. 1.

As applied to taxation, it presupposes error or mistake in assessment. *Gulf States Steel Co. v. U. S.*, C.C.A. Ala., 56 F.2d 43, 46.

Abatement of taxes relieves property of its share of the burdens of taxation after the assessment has been made and the tax levied. *Sheppard v. Hidalgo County*, 126 Tex. 550, 83 S.W.2d 649, 657.

ABATEMENT

ABATEMENT AND REVIVAL

Actions at Law

As used in reference to actions at law, word abate means that action is utterly dead and cannot be revived except by commencing a new action. First Nat. Bank v. Board of Sup'rs of Harrison County, 221 Iowa 348, 264 N.W. 281, 106 A.L.R. 566.

The overthrow of an action caused by the defendant's pleading some matter of fact tending to impeach the correctness of the writ or declaration, which defeats the action for the present, but does not debar the plaintiff from recommencing it in a better way. 3 Bla. Comm. 301; 1 Chit. Pl. (6th Lond. Ed.) 446; Guild v. Richardson, 6 Pick. (Mass.) 370; Wirtele v. Grand Lodge A. O. U. W., 111 Neb. 302, 196 N.W. 510. See Plea in Abatement.

To put a final end to suit, Dodge v. Superior Court in and for Los Angeles County, 139 Cal.App. 178, 33 P.2d 695, 696; overthrow of pending action apart from cause of action, Burnand v. Irigoyen, 56 Cal.App.2d 624, 133 P.2d 3, 6.

On plaintiff's death, Piukkula v. Pillsbury Astoria Flouring Mills Co., 150 Or. 304, 44 P.2d 162, 99 A.L.R. 259. Mere lapse of time between the death of a party and the taking of necessary steps to continue the action by or against the heir or personal representative does not work an abatement, Whaley v. Slater, 202 S.C. 182, 24 S.E.2d 266, 267.

Cause of Action

Destruction of cause of action. In re Thomasson, Mo., 159 S.W.2d 626, 628.

Chancery Practice

It differs from an abatement at law in this: that in the latter the action is entirely dead and cannot be revived; but in the former the right to proceed is merely suspended, and may be revived; F. A. Mfg. Co. v. Hayden & Clemons, C.C.A.Mass., 273 F. 374; Mutual Ben. Health & Accident Ass'n v. Teal, D.C.S.C., 34 F.Supp. 714, 716.

In England, declinatory pleas to the jurisdiction and dilatory to the persons were (prior to the judicature act) sometimes, by analogy to common law, termed "pleas in abatement."

Declinatory and dilatory pleas, see Story, Eq. Pl. § 708.

Death of one of parties, Geiger v. Merle, 360 Ill. 497, 196 N.E. 497, 502. Want of proper parties, 2 Tidd Pr. 932; Story, Eq.Pl. § 354; Witt v. Ellis, 2 Cold., Tenn., 38; petition for widow's allowance, In re Samson's Estate, 142 Neb. 556, 7 N.W.2d 60, 62, 144 A.L.R. 264.

ABATOR. In real property law, a stranger who, having no right of entry, contrives to get possession of an estate of freehold, to the prejudice of the heir or devisee, before the latter can enter, after the ancestor's death. Litt. § 397. In the law of torts, one who abates, prostrates, or destroys a nuisance.

ABATUDA. Anything diminished. *Moneta abatuda* is money clipped or diminished in value. Cowell; Dufresne.

ABAVIA. Lat. In the civil law. A great-great-grandmother. Inst. 3, 6, 4; Dig. 38, 10, 1, 6; Bract. fol. 68b.

ABAVITA. A great-great-grandfather's sister. Bract. fol. 68b. This is a misprint for abamita (q. v.). Burrill.

ABAVUNCULUS. Lat. In the civil law. A great-great-grandmother's brother (*avavice frater*). Inst. 3, 6, 6; Dig. 38, 10, 3; Calvinus, Lex. Called *avunculus maximus*. Id. 38, 10, 17. Called by Bracton and Fleta *abavunculus magnus*. Bract. fol. 68b; Fleta, lib. 6, c. 2, § 19.

ABAVUS. Lat. In the civil law. A great-great-grandfather. Inst. 3, 6, 4; Dig. 38, 10, 1, 6; Bract. fol. 67a.

ABBACINARE. To blind by placing a burning basin or red-hot irons ^{before} the eye's. A form of punishment in the Middle Ages. Also spelt abacinare. The modern Italian is spelt with two b's, and means to blind. Abbacination. Blinding by placing burning basin or red-hot irons before the eyes. See Abbacinare.

ABBACY. The government of a religious house, and the revenues thereof, subject to an abbot, as a bishopric is to a bishop. Cowell. The rights and privileges of an abbot.

ABBEY. A monastery or nunnery for the use of an association of religious persons, having an abbot or abbess to preside over them.

ABBOT. A prelate in the 13th century who had had an immemorial right to sit in the national assembly. Taylor, Science of Jurispr. 287.

ABBOT, ABBAT. The spiritual superior or governor of an abbey. Feminine, *Abbess*.

ABBREVIATE OF ADJUDICATION. In Scotch law. An abstract of the decree of adjudication, and of the lands adjudged, with the amount of the debt. Adjudication is that diligence (execution) of the law by which the real estate of a debtor is adjudged to belong to his creditor in payment of a debt; and the abbreviate must be recorded in the register of adjudications.

ABBREVIATIO PLACITORUM. An abstract of ancient judicial records, prior to the Year Books. See Steph. Pl. (7th Ed.) 410.

ABBREVIATIONS. Shortened conventional expressions, employed as substitutes for names, phrases, dates, and the like, for the saving of space, of time in transcribing, etc. Abbott.

The abbreviations in common use in modern times consist of the initial letter or letters, syllable or syllables, of the word. Anciently, also, contracted forms of words, obtained by the omission of letters intermediate between the initial and final letters were much in use. These latter forms are now more commonly designated by the term *contraction*.

For Table of Abbreviations, see Appendix.

ABBREVIATIONUM ILLE NUMERUS ET SENSUS ACCIPIENDUS EST, UT CONCESSIO NON SIT INANIS. In abbreviations, such number and sense is to be taken that the grant be not made void. 9 Coke, 48.

ABBREVIATORS. In ecclesiastical law. Officers whose duty it is to assist in drawing up the Pope's briefs, and reducing petitions into proper form to be converted into papal bulls.

ABBROCHMENT, or ABBROACHMENT. The act of forestalling a market, by buying up at wholesale the merchandise intended to be sold there, for the purpose of selling it at retail. See *Forestalling the Market*.

ABBUTTALS. See *Abuttals*.

ABDICATION. The act of a sovereign in renouncing and relinquishing his government or throne, so that either the throne is left entirely vacant, or is filled by a successor appointed or elected beforehand.

Also, where a magistrate or person in office voluntarily renounces or gives it up before the time of service has expired.

The act of abdicating ; giving up of office, power or authority, right or trust; renunciation. *McCormick v. Engstrom*, 119 Kan. 698, 241 P. 685, 688.

Abdication of rights to property may constitute an assignment. In *re Johnston's Estate*, 186 Wis. 599, 203 N.W. 376, 377.

It differs from resignation, in that resignation is made by one who has received his office from another and restores it into his hands, as an inferior into the hands of a superior; abdication is the relinquishment of an office which has devolved by act of law. It is said to be a renunciation, quitting, and relinquishing, so as to have nothing further to do with, a thing, or the doing of such actions as are inconsistent with the holding of it. *Chambers*.

ABDITORIUM. An abditory or hiding place, to hide and preserve goods, plate or money. *Jacob*.

ABDUCTION. In criminal law. The offense of taking away a wife, child, or ward, by fraud and persuasion, or open violence. 3 Bl.Comm. 139-141; *State v. Chisenhall*, 106 N.C. 676, 11 S.E. 518 (female under 14) ; *State v. Hopper*, 186 N.C. 405, 119 S.E. 769, 772 (wife).

To take away surreptitiously by force in kidnapping. *Doss v. State*, 220 Ala. 30, 123 So. 231, 232, 68 A.L.R. 712.

The unlawful taking or detention of any female for purposes of marriage, concubinage, or prostitution. 4 Steph.Com. 84; *People v. Crotty*, 55 Hun, 611, 9 N.Y.S. 937. In many states this offense is created by statute and in most cases applies to females under a given age.

By statute in some states, abduction includes the withdrawal of a husband from his wife, as where another woman alienates his affection and entices him away and causes him to abandon his wife. *Humphrey v. Pope*, 122 Cal. 253, 54 P. 847.

ABEARANCE. Behavior; as a recognizance to be of good abearance signifies to be of good behavior. 4 Bl.Comm. 251, 256.

ABEREMURDER. (From Sax. *abere*, apparent, notorious; and *mord*, murder.) Plain or down-

right murder, as distinguished from the less heinous crime of manslaughter, or chance medley. *Spelman*; *Cowell*; *Blount*.

ABESSE. Lat. In the civil law. To be absent; to be away from a place. Said of a person who was *extra continentia urbis*, (beyond the suburbs of the city.)

ABET. A French word combined of two words "a" and "beter"—to bait or excite an animal. It includes knowledge of the wrongful purpose of the perpetrator and counsel and encouragement in the crime. *People v. Terman*, 4 Cal.App.2d 345, 40 P.2d 915, 916.

To encourage, incite, or set another on to commit a crime. This word is always applied to aiding the commission of a crime. To abet another to commit a murder is to command, procure, or counsel him to commit it, *Old Nat. Brev.* 21; *Co. Litt.* 475; to command, procure, counsel, encourage, induce, or assist, *Short v. Commonwealth*, 240 Ky. 477, 42 S.W.2d 696, 697; to encourage, counsel, induce, or assist, *State v. Watts*, Nev., 296 P. 26. To facilitate the commission of a crime, promote its accomplishment, or help in advancing or bringing it about. *State v. Lord*, 42 N.M. 638, 84 P.2d 80, 86. It includes knowledge of wrongful purpose of perpetrator. *Daniels v. State*, 58 Ga.App. 599, 199 S.E. 572, 577. *State v. Kneedy*, 232 Iowa 21, 3 N.W.2d 611, 615. *People v. Stein*, 55 Cal.App.2d 417, 130 P.2d 750, 751 (permitting wife to remain in house of prostitution).

See *Abettor*; *Aid* and *Abet*.

"Aid" and "abet" are nearly synonymous terms as generally used; but, strictly speaking, the former term does not imply guilty knowledge or felonious intent, whereas the word "abet" includes knowledge of the wrongful purpose and counsel and encouragement in the commission of the crime. *Forgery*, *People v. Dole*, 122 Cal. 486, 55 P. 581, 68 Am.St.Rep. 50; *Raiford v. State*, 59 Ala. 106; *Violation of law against free passes*, *State v. Ankrom*, 86 W.Va. 570, 103 S.E. 925, 927; *Crime against nature*, *State v. Start*, 65 Or. 178, 132 P. 512, 513; *Robbery*, *People v. Powers*, 293 Ill. 600, 127 N.E. 681, 682.

Instigate synonymous (malicious prosecution) *Hughes v. Van Bruggen*, 44 N.M. 534, 105 P.2d 494, 499.

"Abet" smacks more of technical terminology than does the word "aid", but it is almost synonymous with the word "aid". *Assault and battery*, *Gentry v. State*, 65 Ga. App. 100, 15 S.E.2d 464, 465.

ABETTATOR. L. Lat. In old English law. An abettor. *Fleta*, lib. 2, c. 65, § 7. See *Abettor*.

ABETTOR. In criminal law. An instigator, or setter on; one who promotes or procures a crime to be committed. *Old Nat.Brev.* 21. One who commands, advises, instigates, or encourages another to commit a crime; a person who, being present or in the neighborhood, incites another to commit a crime, and thus becomes a principal. See *State v. Baldwin*, 193 N.C. 566, 137 S.E. 590, 591.

Must have rendered assistance or encouragement to the perpetrator of the crime with knowledge of his felonious intent; offense of "aiding and abetting" being committed by person present who does some act or speaks some word aiding the actual perpetrator of the crime. *Combs v. Commonwealth*, 224 Ky. 653, 6 S.W.2d 1082, 1083. Must

ABETTOR

aid or commit some overt act or act of encouragement. Long v. Commonwealth, 288 Ky. 83, 155 S.W.2d 246, 247. One who so far participates in the commission of the offense as to be present for the purpose of assisting if necessary. State v. Epps, 213 N.C. 709, 197 S.E. 580, 583.

The distinction between abettors and accessories is the presence or absence at the commission of the crime. Cowell; Fleta, lib. 1, c. 34. Presence and participation are necessary to constitute a person an abettor. 4 Sharsw.Bla. Comm. 33; Bradley v. Commonwealth, 201 Ky. 413, 257 S.W. 11, 13. Common design to take life not necessary. State v. Lord, 42 N.M. 638, 84 P.2d 80, 86. Not essential that there should be a prearrangement or mutual understanding or concert of action. McKinney v. • Commonwealth, 284 Ky. 16, 143 S.W.2d 745, 747, 748.

ABEYANCE. In the law of estates. In expectation, remembrance, and contemplation of law; the condition of a freehold when there is no person in being in whom it is vested.

In such cases the freehold has been said to be *in nubibus* (in the clouds), McKown v. McKown, 93 W.Va. 689, 117 S.E. 557, 559; *in pendenti* (in suspension); and *in gremio legis* (in the bosom of the law). Where there is a tenant of the freehold, the remainder or reversion in fee may exist for a time without any particular owner, in which case it is said to be in abeyance; Lyle v. Richards, 9 S. & R. Pa. 367; 3 Plowd. 29 a, b, 35 a; 1 Washb.R.P. 47.

Franchise of a corporation; Trustees of Dartmouth College v. Woodward, 4 Wheat. (U. S.) 691, 4 L.Ed. 629. Personal property as in case of a vessel captured at sea from its captors until it becomes invested with the character of a prize; 1 Kent, 102; 1 C.Rob.Adm. 139; 3 *id.* 97, n.; or the rights of property of a bankrupt, pending adjudication; Bank v. Sherman, 101 U.S. 403, 25 L.Ed. 866.

A condition of being undetermined. Fenn v. American Rattan & Reed Mfg. Co., 75 Ind. App. 146, 130 N.E. 129, 130. (Seller stating its inability to promise to deliver.)

Sales to third parties, of property acquired by county at tax sale, being held in "abeyance", means that certain rights or conditions are in expectancy. Willard v. Ward County, 72 N.D. 291, 6 N.W.2d 566, 568.

ABIATICUS, or AVIATICUS. L. Lat. In feudal law. A son's son; a grandson in the male line. Du Cange, *Avius*; Spelman; Lib.Feud., Baraterii, tit. 8, cited *Id.*

ABIDE. To accept the consequences of; to rest satisfied with; to wait for.

With reference to an order, judgment, or decree of a court, to perform, to execute. Jackson v. State, 30 Kan. 88, 1 P. 317. Where a statute provides for a recognizance "to abide the judgment of the court," one conditioned "to await the action of the court" is not sufficient; Wilson v. State, 7 Tex.App. 38. Defendant does not "abide the judgment" until costs of appeal are paid. *Ex parte Tillery*, 22 Ala.App. 193, 114 So. 15. And see State v. Gregory, 205 Iowa, 707, 216 N.W. 17, 19.

Defendant's presence in courtroom not a compliance with supersedeas bond conditioned to "abide final judgment," where there was no formal offer to surrender defendant into court's custody. American Surety Co. of New York v. State, 50 Ga.App. 777, 179 S.E. 407.

To abide and satisfy is used to express the execution or performance of a judgment or order by carrying it into complete effect, Erickson v. Elder, 34 Minn. 371, 25 N.W. 804, *Cf.* Woolfolk v. Jones, D.C.Va., 216 F. 807, 809.

Where costs are to abide final result, "abide" is synonymous with conform to. Getz v. Johnston, 145 Md. 426, 125 A. 689, 691.

To abide order respecting seized property, means to perform, obey, conform to. Cantor v. Sachs, 18 Del.Ch. 359, 162 A. 73, 84.

ABIDING BY. In Scotch law. A judicial declaration that the party abides by the deed on which

he founds, in an action where the deed or writing is attacked as forged. Pat.Comp.. It has the effect of pledging the party to stand the consequences of founding on a forged deed. Bell.

"Abide by" means to adhere to, to submit to, to obey, to accept the consequences of. Detroit Fidelity & Surety Co. v. U. S., C.C.A.Ohio, 36 F.2d 682, 683. (Recognizance)

To abide by an award means to await the award without revoking the submission. It does not mean to "acquiesce in" or "not dispute," in the sense of not being at liberty to contest the validity of the award when made, Hunt v. Wilson, 6 N.H. 36; Quimby v. Melvin, 35 N.H. 198; Weeks v. Trask, 81 Me. 127, 16 A. 413, 2 L.R.A. 532.

ABIDING CONVICTION. A definite conviction of guilt derived from a thorough examination of the whole case. Hopt v. Utah, 7 S.Ct. 614, 120 U.S. 439, 30 L.Ed. 708. A settled or fixed conviction. Davis v. State, 8 Ala.App. 147, 62 So. 1027, 1033. People v. Castro, 68 Cal.App.2d 491, 157 P.2d 25, 30.

ABIDING FAITH. Belief or confidence in the guilt of one accused of crime which remains or continues in the minds of the jury. Gray v. State. 56 Okl.Cr. 208, 38 P.2d 967, 970.

ABIGEATORES. See Abigeus.

ABIGEATUS. Lat. In the civil law. The offense of stealing or driving away cattle. See Abigeus.

ABIGEI. See Abigeus.

ABIGERE. Lat. In the civil law. To drive away. Applied to those who drove away animals with the intention of stealing them. Applied, also, to the similar offense of cattle stealing on the borders between England and Scotland. See Abigeus.

To drive out; to expel by force; to produce abortion. Dig. 47, 11, 4.

ABIGEUS. Lat. (Pl., *abigei*, or more rarely *abigeatores*.) In the civil law. A stealer of cattle; one who drove or drew away (*subtraxit*) cattle from their pastures, as horses or oxen from the herds, and made booty of them, and who followed this as a business or trade.

The term was applied also to those who drove away the smaller animals, as swine, sheep, and goats. In the latter case, it depended on the number taken, whether the offender was *fur* (a common thief) or *abigeus*. But the taking of a single horse or ox seems to have constituted the crime of *abigeatus*. And those who frequently did this were clearly *abigei*, though they took but an animal or two at a time. Dig. 47, 14, 3, 2. See Cod. 9, 37; Nov. 22, c. 15, § 1; 4 Bl.Comm. 239.

ABILITY. When the word is used in statutes, it is usually construed as referring to pecuniary ability, as in the construction of Tenterden's Act (*q. v.*); 1 M. & W. 101.

Contemplates earning capacity as well as property actually owned, to support abandoned wife; State v. Witham, 70 Wis. 473, 35 N.W. 934, Contra, Washburn v. Washburn, 9 Cal. 475.

The ability to buy, required in a purchaser as a condition to the broker's right to a commission, is the financial

ability to meet the required terms of the sale, and does not mean solvency or ability to respond in damages for a breach of the contract. *Stewart v. Sisk*, 29 Ga.App. 17, 114 S.E. 71. See *Able to Purchase*.

A voter's "ability to read" within meaning of election statutes is satisfied if he can read in a reasonably intelligent manner sentences composed of words in common use and of average difficulty, although each word may not be always accurately pronounced, and "ability to write" is satisfied if he can by use of alphabetical signs express in a fairly legible way words of common use and average difficulty, though each word may not be accurately spelled. *Williams v. Hays*, 175 Ky. 170, 193 S.W. 1046, 1047. But the mere ability to write one's name and post office address, and nothing more, is insufficient. *Murrell v. Allen*, 180 Ky. 604, 203 S.W. 313, 314.

ABISHERING, or ABISHERSING. Quit of amercements. It originally signified a forfeiture or amercement, and is more properly *mishering*, *mishersing*, or *miskering*, according to Spelman. It has since been termed a liberty of freedom, because, wherever this word is used in a grant, the persons to whom the grant is made have the forfeitures and amercements of all others, and are themselves free from the control of any within their fee. *Termes de la Ley*, 7.

ABJUDICATIO. In old English law. The depriving of a thing by the judgment of a court; a putting out of court; the same as *forisjudicatio*, for judgment, for judgment. Co.Litt. 100a, b; Townsh. Pl. 49. A removal from court. Calvinus, Lex.

Used to indicate an adverse decision in a writ of right: Thus, the land is said to be *abjudged* from one of the parties and his heirs. 2 Poll. & Maitl. 62.

ABJURATION. A renunciation or abandonment by or upon oath.

The oath by which any person holding office in England was formerly obliged to bind himself not to acknowledge any right in the Pretender to the throne of England; 1 Bla.Com. 368; 13 and 14 W. III, c. 6, repealed by 30 and 31 Vic. c. 59.

It also denotes an oath abjuring certain doctrines of the church of Rome.

ABJURATION OF ALLEGIANCE. A naturalized citizen of the United States, must declare that he doth renounce and *abjure* all allegiance and fidelity which he owes to any foreign prince, state, etc. 8 U.S.C.A. § 735.

ABJURATION OF THE REALM. In ancient English law. A renunciation of one's country, a species of self-imposed banishment, under an oath never to return to the kingdom unless by permission. 4 Bl.Comm. 332; *Avery v. Everett*, 110 N.Y. 317, 18 N.E. 148, 1 L.R.A. 264. See *Abjure*.

ABJURE. To renounce, or abandon, by or upon oath. See *Abjuration*.

A departure from the state without the intention of returning, and not a renunciation of one's country, upon an oath of perpetual banishment, as the term originally implied. *Mead v. Hughes*, 15 Ala. 148, 1 Am.Rep. 123.

ABLE-BODIED. As used in a statute relating to service in the militia, this term does not imply an

absolute freedom from all physical ailment. It imports an absence of those palpable and visible defects which evidently incapacitate the person from performing the ordinary duties of a soldier. *Darling v. Bowen*, 10 Vt. 152. Ability to perform ordinary labor is not the test. *Town of Marlborough v. Sisson*, 26 Conn. 57.

ABLE SEAMAN. A grade of merchant seamen. 46 U.S.C.A. § 672.

ABLE TO EARN. The phrase in the Workmen's Compensation Act in reference to wages does not mean the maximum sum earned in any one week, but a fair average of the weekly wages which an employee is able to earn covering a sufficient period of time to determine his earning capacity. *Reeves v. Dietz*, 1 La.App. 501, 505. See also, *Mt. Olive & Staunton Coal Co. v. Industrial Commission*, 301 Ill. 521, 134 N.E. 16. Amount one is capable of earning if employed. *Ferrara v. Clifton Wright Hat Co.*, 125 Conn. 140, 3 A.2d 842, 843.

Ability to obtain and hold employment means that the person referred to is either able or unable to perform the usual duties of whatever employment may be under consideration, in the manner that such duties are customarily performed by the average person engaged in such employment. *Kinyon v. Kinyon*, 230 Mo.App. 623, 71 S.W.2d 78, 82.

ABLE TO PURCHASE "Ability" in sales contracts, dependent on ability to purchase, usually means financial ability. *Anderson v. Craig*, 111 Mont. 182, 108 P.2d 205, 206; *House v. Hornburg*, Sup., 39 N.Y.S.2d 20, 22. Purchaser must have financial ability and legal capacity to acquire land. *Campbell v. Hood*, Tex.Com.App., 35 S.W.2d 93, 95, 85 A.L.R. 266.

Purchaser is able to purchase, as respects broker's right to commission, if he is financially able to command the necessary funds to close the deal within the time required. *Hersh v. Garau*, 218 Cal. 460, 23 P.2d 1022. Even though part of the money must be obtained on the purchased property itself. *Pellaton v. Brunschi*, 69 Cal. App. 301, 231 P. 583, 584. But see *Bateman v. Richard*, 105 Okl. 272, 232 P. 443, 445; and *Reynor v. Mackrill*, 181 Iowa 210, 164 N.W. 335, 1 A.L.R. 523, holding that a person, to be able to purchase, must have the money for the cash payment, and not merely property on which he could raise it. See, also, *Peters v. Mullins*, 211 Ky. 123, 277 S.W. 316, 317. See *Financially Able*.

ABLEGATI. Papal ambassadors of the second rank, who are sent to a country where there is not a nuncio, with a less extensive commission than that of a nuncio. This title is equivalent to envoy.

ABLOCATIO. A letting out to hire, or leasing for money. Calvin. Sometimes used in the English form "ablocation."

ABMATERTERA. Lat. In the civil law. A great-great-grandmother's sister, (*abavice soror*). Inst. 3, 6, 6; Dig. 38, 10, 3. Called *matertera maxima*. Id. 38, 10, 10, 17. Called, by Bracton, *abmatertera magna*. Bract. fol. 68b.

ABNEPOS. Lat. A great-great-grandson. The grandson of a grandson or granddaughter. Calvinus, Lex.

ABNEPTIS

ABNEPTIS. Lat. A great-great-granddaughter. The granddaughter of a grandson or granddaughter. Calvinus, Lex.

ABODE. One's home; habitation; place of dwelling; or residence. Ordinarily means "domicile." Hanson v. Williams, 170 Ga. 779, 154 S.E. 240, 242. Living place impermanent in character. Fowler v. Fowler, 156 Fla. 316, 22 So.2d 817, 818. Evans v. Evans, 141 Fla. 860, 194 So. 215, 217. The place where a person dwells. Dorsey v. Brigham, 177 Ill. 250, 52 N.E. 303, In re Erickson, 18 N.J.Misc. 5, 10 A.2d 142, 146.

Residence of a legal voter. Fry's Election Case, 71 Pa. 302, 10 Am.Rep. 698; Dale v. Irwin, 78 Ill. 181; Pope v. Board of Election Com'rs, 370 Ill. 196, 18 N.E.2d 214, 216. Fixed place of residence for the time being. Augustus Co. for Use of Bourgeois v. Manzella, 19 N.J.Misc. 29, 17 A.2d 68, 70; Hudson v. Birmingham Water Works Co., 238 Ala. 38, 189 So. 72, 73. For service of process, one's fixed place of residence for the time being. State ex rel. Merritt v. Heffernan, 142 Fla. 496, 195 So. 145, 147; Kurilla v. Roth, 132 N.J.L. 213, 38 A.2d 862, 864.

ABOGADO. Sp. An advocate. See Bozero,

ABOLISH. To do away with wholly; to annul. Webster. To dispense with. Alexander v. City of Lampasas, Tex.Civ.App., 275 S.W. 614, 616. Put an end to. Stretch v. Murphy, 166 Or. 439, 112 P. 2d 1018, 1021.

Imports absolute destruction, having its root in the Latin word "abolere," meaning to destroy utterly. Applies particularly to things of a permanent nature, such as institutions, usages, customs, as the abolition of slavery. Pondelick v. Passaic County, 111 N.J.Law 187, 168 A. 146, 147.

ABOLITION. The destruction, annihilation, abrogation, or extinguishment of anything. Peterson v. Pratt, 183 Iowa 462, 167 N.W. 101. Also the leave given by the sovereign or judges to a criminal accuser to desist from further prosecution. 25 Hen. VIII, c. 21.

In the Civil, French and German law, abolition is used nearly synonymously with pardon, remission, grace. Dig. 39, 4, 3, 3. There is, however, this difference: *grace* is the generic term; *pardon*, according to those laws, is the clemency which the prince extends to a man who has participated in a crime, without being a principal or accomplice; *remission* is made in cases of involuntary homicides, and self-defence. *Abolition* is used when the crime cannot be remitted. The prince then may, by letters of abolition, remit the punishment, but the infamy remains, unless letters of abolition have been obtained before sentence. *Encycl. de D'Alembert*.

Abolition of position or office, Rextrew v. City of Huntington Park, Cal.App., 120 P.2d 136, 142. Positions of physicians and dentists, Lewin v. La Guardia, 22 N.Y.S.2d 409, 411, 175 Misc. 165. Lay-off of court attendant, Pondelick v. Passaic County, 111 N.J.L. 187, 168 A. 146, 147. Transfer not an abolition of office, Tremp v. Patten, 132 Conn. 120, 42 A.2d 834, 837.

ABORDAGE. Fr. In French commercial law. Collision of vessels.

ABORTIFACIENT. In medical jurisprudence. A drug or medicine capable of, or used for, producing abortion.

ABORTION. The expulsion of the fcetus at a period of utero-gestation so early that it has not acquired the power of sustaining an independent

life. The unlawful destruction, or the bringing forth prematurely, of the human foetus before the natural time of birth; State of Magnell, 51 A. 606, 3 Pennewill (Del.) 307. The act of bringing forth what is yet imperfect. Also the thing prematurely brought forth, or product of an untimely process. Sometimes loosely used for the offense of procuring a premature delivery; but strictly, the early delivering is the abortion; causing or procuring abortion is the full name of the offense. Wells v. New England Mut. L. Ins. Co., 191 Pa. 207, 43 A. 126, 53 L.R.A. 327.

Criminal miscarriage, Commonwealth v. Sierakowski, 154 Pa.Super. 321, 35 A.2d 790, 792; Mississippi State Board of Health v. Johnson, 197 Miss. 417, 19 So.2d 445, 448. "Abortion" and a "miscarriage produced by unlawful means" are synonymous, People v. Luckett, 23 Cal.App.2d 539, 73 P.2d 658, 659.

ABORTIONIST. One who criminally produces abortions, or one who follows business or practices of crime of producing abortions. State v. Guaraneri, 59 R.I. 173, 194 A. 589, 592, 593.

ABORTIVE TRIAL. A term descriptive of the result when a case has gone off, and no verdict has been pronounced, without the fault, contrivance, or management of the parties. Jebb & B. 51.

ABORTUS. Lat. The fruit of an abortion; the child born before its time, incapable of life.

ABOUT. Near in time, quantity, number, quality, or degree. Substantially, approximately, almost, or nearly. Odom v. Langston, 351 Mo. 609, 173 S.W.2d 826, 829. Testimony as to speed, Casto v. Hansen, 123 Or. 20, 261 P. 428, 429. Near, period of gestation of still born child, Life & Casualty Ins. Co. v. Walters, 190 Miss. 761, 198 So. 746, 748; Todd v. City of New York, City Ct., N.Y. 23 N.Y.S.2d 884, 888. Carrying burglar's tools in suitcase, Trousdale v. State, 168 Tenn. 210, 76 S.W. 2d 646, 647. Near the time. State ex rel. Nagle v. Leader Co., 97 Mont. 586, 37 P.2d 561, 564.

When used with reference to time, the term is of flexible significance, varying with the circumstances and the connection in which it is employed. Burlington Grocery Co. v. Heaphy's Estate, 98 Vt. 122, 126 A. 525, 528. But its use does not necessarily render time immaterial, nor make a contract one terminable at will. Costello v. Siems-Carey Co., 140 Minn. 208, 167 N.W. 551, 552. In a charter party, "about to sail" means just ready to sail. [1893] 2 Q.B. 274. And when it is said that one is "about" to board a street car, it means "in the act of." Fox v. Denver City Tramway Co., 57 Colo. 511, 143 P. 278, 280. With relation to quantity, the term suggests only an estimate of probable amount. Barkemeyer Grain & Seed Co. v. Hannant, 66 Mont. 120, 213 P. 208, 210. Its import is that the actual quantity is a near approximation to that mentioned, and it has the effect of providing against accidental variations. Norrington v. Wright, 6 S.Ct. 12, 115 U.S. 188, 29 L. Ed. 366. It may be given practically the same effect as the phrase more or less. Pierce v. Miller, 107 Neb. 851, 187 N.W. 105, 107; Cargo under vessel charter, Steamship Co. of 1912 v. C. H. Pearson & Son Hardwood Co., C.C.A. N.Y., 30 F.2d 770, 773. Contract for sale of electric energy, Merced Irr. Dist. v. San Joaquin Light & Power Corporation, 101 Cal.App. 153, 281 P. 415, 417. In a deed covers some slight or unimportant inaccuracy. Parrow v. Proulx, 111 Vt. 274, 15 A.2d 835, 838. Synonymous with "on" or "upon," as in offense of carrying concealed weapons. State v. Brunson, 162 La. 902, 111 So. 321, 323; Carriage of a pistol or revolver in a grip, satchel, or hand bag held in

the hand or connected with the person, *State v. Blazovitch*, 88 W.Va. 612, 107 S.E. 291, or on the running board of an automobile, *Armstrong v. State*, 98 Tex.Cr.R. 335, 265 S.W. 701. Paulk v. State, 97 Tex.Cr.R. 415, 261 S.W. 779, 780. Near by, close at hand, convenient of access. *Welch v. State*, 97 Tex.Cr.R. 617, 262 S.W. 485; *Brown v. U. S.*, 30 F.2d 474, 475, 58 App.D.C. 311. Weapon on shelf immediately behind defendant, who was seated in coupe type automobile. *Hampton v. Commonwealth*, 257 Ky. 626, 78 S.W.2d 748, 750. As to number, it merely implies an estimate of a particular lot or class and not a warranty. *Holland v. Rock*, 50 Nev. 340, 259 P. 415. In connection with distance or locality, the term is of relative significance, varying with the circumstances. *Parker v. Town of Pittsfield*, 88 Vt. 155, 92 A. 24, 26. Employee on an elevator is "about the premises". *Lienau v. Northwestern Telephone Exch. Co.*, 151 Minn. 258, 186 N.W. 945, 946. Workman 200 feet from a factory was "about" the factory. *Wise v. Central Dairy Co.*, 121 Kan. 258, 246 P. 501, 503. An automobile mechanic injured 17 1/2 blocks from the employers' shop while making a road test of an automobile is not injured on, in, or about the employers' place of business. *Iott v. Mosby*, 126 Kan. 294, 268 P. 109. "About" in lease meaning in other parts of building. *William A. Doe Co. v. City of Boston*, 262 Mass. 458, 160 N.E. 262. Estimate of distance, *Picharella v. Owens Transfer Co.*, 135 Pa.Super. 112, 5 A.2d 408, 409. Estimate as to time, charter of vessel, *Britain S. S. Co. v. Munson S. S. Line. D.C. N.Y.*, 25 F.2d 868, 869. Instruction regarding specified date, *State v. Loahmann, Mo.*, 58 S.W.2d 309, 311. Courses and distances, *Humble Oil & Refining Co. v. Luther, Tex. Civ.App.*, 40 S.W.2d 865, 867. Pistol under automobile seat. *Commonwealth v. Nunnolley*, 56 S.W.2d 689, 247 Ky. 109, 88 A.L.R. 805.

ABOUTISSEMENT. Fr. An abuttal or abutment. See Guyot, Repert. Univ. "Aboutissans."

ABOVE. Higher; superior. As, court above, plaintiff or defendant above. *Above all incumbences* means in excess thereof; *Williams v. McDonald*, 42 N.J.Eq. 395, 7 A. 886. Principal; as distinguished from what is auxiliary or instrumental. 3 Bl.Comm. 291.

Bail to the action, or special bail, is otherwise termed bail *above*. 3 Bl.Comm. 291. Jurisdiction "above" the jurisdiction of justices of the peace. Synonymous with "without." *Atlantic Coast Line R. Co. v. Nellwood Lumber Co.*, 21 Ga.App. 209, 94 S.E. 86, 87. Above high water means above a tide which might reasonably be expected to recur with some degree of frequency. *Banks v. Wilmington Terminal Co.*, Del.Super., 24 A.2d 592, 598, 599, 601, 602, 2 Terry 489.

ABOVE CITED, or MENTIONED. Quoted before. A figurative expression taken from the ancient manner of writing books on scrolls, where whatever is mentioned or cited before in the same roll must be *above*. Encyc. Lond.

ABPATRUUS. Lat. A great-great-uncle; or, a great-great-grandfather's brother (a bavi *frater*). Inst. 3, 6, 6; Dig. 38, 10, 3; Du Cange, Patruus. Called by Bracton and Fleta, *abpatruus magnus*. Bract. fol. 68b; Fleta, lib. 6, c. 2, § 17. It sometimes means uncle, and sometimes great-uncle.

ABRIDGE. To reduce or contract; usually spoken of written language.

Copyright Law

To epitomize; to reduce; to contract. It implies preserving the substance, the essence, of a work, in language suited to such a purpose. In making extracts there is no condensation of the author's language, and hence no abridgment. To

abridge requires the exercise of the mind; it is not copying. Between a compilation and an abridgment there is a clear distinction. A compilation consists of selected extracts from different authors; an abridgment is a condensation of the views of one author. *Story v. Holcombe*, 4 McLean, 306, 310, Fed.Cas.No.13,497.

Practice

To shorten a declaration or count by taking away or severing some of the substance of it. *Brooke, Abr., Com., Dig. Abridgment*; 1 Viner, Abr. 109. See Abridgment.

ABRIDGMENT. Condensation; contraction. An epitome or compendium of another and larger work, wherein the principal ideas of the larger work are summarily contained.

Abridgments of the law are brief digests of the law, arranged alphabetically. (1 Steph.Comm. 51.) The term "digest" has now supplanted that of "abridgment." Sweet.

ABRIDGMENT OF DAMAGES. The right of the court to reduce the damages in certain cases. *Vide Brooke, tit. "Abridgment."*

ABROAD. In English chancery law, beyond the seas.

ABROGATE. To annul, repeal, or destroy; to annul or repeal an order or rule issued by a subordinate authority; to repeal a former law by legislative act, or by usage.

ABROGATION. The destruction or annulling of a former law, by an act of the legislative power, by constitutional authority, or by usage.

It stands opposed to *rogation*; and is distinguished from *derogation*, which implies the taking away only some part of a law; from *subrogation*, which denotes the adding a clause to it; from *dispensation*, which only sets it aside in a particular instance; and from *antiquation*, which is the refusing to pass a law. Encyc. Lond. Implied abrogation takes place when the new law contains provisions which are positively contrary to former laws, without expressly abrogating such laws. *Bernard v. Vignaud*, 10 Mart.O.S. La. 560; and also when the order of things for which the law has been made no longer exists. See *Ex parte Lum Poy*, D.C., 23 F.2d 690.

For "Express Abrogation," see that title.

ABSCOND. To go in a clandestine manner out of the jurisdiction of the courts, or to lie concealed, in order to avoid their process. *Malvin v. Christoph*, 54 Iowa, 562, 7 N.W. 6. To hide, conceal, or absent oneself clandestinely, with the intent to avoid legal process. *Smith v. Johnson*, 43 Neb. 754, 62 N.W. 217. Postponing limitations. *Keck v. Pickens*, 207 Ark. 757, 182 S.W.2d 873, 875. Fleeing from arresting or prosecuting officers of this state. Code Cr.Proc. art. 8. *State v. Berryhill*, 188 La. 549, 177 So. 663.

ABSCONDING DEBTOR. One who absconds from his creditors.

An absconding debtor is one who lives without the state, or who has intentionally concealed himself from his creditors, or withdrawn himself from the reach of their suits, with intent to frustrate their just demands. Thus, if a person departs from his usual residence, or remains absent therefrom, or conceals himself in his house, so that he can-

ABSENCE

not be served with process, with intent unlawfully to delay or defraud his creditors, he is an absconding debtor; but if he departs from the state or from his usual abode, with the intention of again returning, and without any fraudulent design, he has not absconded, nor absented himself, within the intentment of the law. *Doughnut Corporation of America v. Tsakirides*, 121 N.J.L. 136, 1 A.2d 467, 469. A party may abscond, and subject himself to the operation of the attachment law against absconding debtors, without leaving the limits of the state. *Field v. Adreon*, 7 Md. 209. A debtor who is shut up from his creditors in his own house is an absconding debtor. *Ives v. Curtiss*, 2 Root (Conn.) 133. *Salzman v. Robinson*, 10 N.J.Misc.R. 51, 157 A. 547, 548.

ABSENCE. The state of being absent, removed, or away from one's domicile, or usual place of residence. *Maley v. Pennsylvania R. Co.*, 258 Pa. 73, 101 A. 911. Not present at particular time, opposite of appearance at a specified time. *Hamilton v. Bernstein*, 133 Kan. 229, 299 P. 581.

Absence is of a fivefold kind: (1) A *necessary absence*, as in banished or transported persons; this is entirely necessary. (2) *Necessary and voluntary*, as upon the account of the commonwealth, or in the service of the church. (3)

A *probable absence*, according to the civilians, as that of students on the score of study. (4) *Entirely voluntary*, on account of trade, merchandise, and the like. (5) *Absence cum dolo et culpa*, as not appearing to a writ, *subpoena*, citation, etc., or to delay or defeat creditors, or avoiding arrest, either on civil or criminal process. *Ayliffe*. Non-appearance to action, not merely that the party was not present in court vacating judgment. *Strine v. Kaufman*, 12 Neb. 423, 11 N.W. 867. In usual and natural signification, means physical absence. *Inhabitants of Lanesborough v. Inhabitants of Ludlow*, 250 Mass. 99, 145 N.E. 57, 58. Nonpresence, of official for service. *Kurre v. American Indemnity Co. of Galveston, Tex.*, 223 Mo.App. 406, 17 S.W.2d 685, 688.

Presumption of Death Created

Intent to establish home at place last heard from not required. *American Nat. Ins. Co. v. Garcia*, Tex.Civ.App., 46 S.W.2d 1011, 1012. Away from a place to which one is expected to return. *Woodmen of the World Life Ins. Soc. v. Cooper*, Tex.Civ.App., 164 S.W.2d 729, 731.

In Scotch Law, want or default of appearance. A decree is said to be *in absence* where the defender (defendant) does not appear. *Ersk. Inst. bk. 4, tit. 3, § 6*.

ABSENT. Being away from; at a distance from; not in company with.

Paine v. Drew, 44 N.H. 306, where it was held that the word when used as an adjective referred only to the condition or situation of the person or thing spoken of at the time of speaking without reference to any prior condition or situation of the same person or thing, but when used as a verb implies prior presence. It has also been held to mean "not being in a particular place at the time referred to," and *not* to import prior presence. The term *absent defendants* does not embrace non-resident defendants but has reference to parties resident in the state, but temporarily absent therefrom. *Wheeler v. Wheeler*, 35 Ill. App. 123. See, however, *Selmer v. James Dickinson Farm Mortg. Co.*, D.C.111., 299 F. 651, 658, holding that a foreign corporation is "absent" from the state, and limitation does not run in its favor. Commonwealth's attorney is "absent" when disqualified or disabled from performing functions of office. *Northcutt v. Howard*, 279 Ky. 219, 130 S.W.2d 70, 71, 72. A judge, disqualified to act. *Dark Tobacco Growers' Co-op. Ass'n v. Wilson*, 206 Ky. 550, 267 S.W. 1092, 1093. A deceased stockholder employee is not "absent" from duty, as respects sharing of profits, etc. *Nichols v. Olympia Veneer Co.*, 135 Wash. 8, 236 P. 794, 796. Nonresident with office in state is not absent from state. *Corash v. Texas Co.*, 35 N.Y.S.2d 334, 340, 264 App.Div. 292.

As a verb, "absent" means to take or withdraw to such a distance as to prevent intercourse; to depart from. *People v. Day*, 321 Ill. 552, 152 N.E. 495, 497.

ABSENT-MINDEDNESS. A state of mind in which the person affected fails to respond to the ordinary demands on his attention. Webster. See *Racine Tire Co. v. Grady*, 205 Ala. 423, 88 So. 337.

ABSENTE, Lat. Being absent; often used in the old reports of one of the judges not present at the hearing of a cause. 2 Mod. 14. *Absente Reo*, The defendant being absent.

ABSENTEE. One who dwells abroad; a landlord who resides in a country other than that from which he draws his rents. McCul. Pol. Econ.; 33 Brit. Quar. Rev. 455. One who is absent from his usual place of residence or domicile.

Foreign corporations, not filing declarations of domicile and names of agents. *Palmer v. Avalon Oil Co.*, 10 La. App. 512, 120 So. 781, 782. In Louisiana law, one who has left his residence in a state leaving no one to represent him. *Bartlett v. Wheeler*, 31 La. Ann. 540; or who resides in another state but has property in Louisiana. *Penn v. Evans*, 28 La. Ann. 576. It has been also defined as one who has never been domiciled in the state and -who resides abroad. *Morris v. Bienvenu*, 30 La. Ann. 878. One person cannot be both, at the same time, in the meaning of 1 he law, a resident and an absentee. *Spence v. Spence*, 105 So. 23, 29, 158 La. 961.

ABSENTEES, or DES ABSENTEES. A parliament so called was held at Dublin, 10th May, 8 Hen. VIII. It is mentioned in letters patent 29 Hen. VIII.

ABSENTEM ACCIPERE DEBEMUS EUM QUI NON EST EO LOCI IN QUO PETITUR. We ought to consider him absent who is not in the place where he is demanded (or sought). Dig. 50, 16, 199.

ABSENTIA EJUS QUI REIPUBLIC1E CAUSA ABEST, NEQUE EI NEQUE ALII DAMNOSA ESSE DEBET. The absence of him who is away in behalf of the republic (on business of the state) ought not to be prejudicial either to him or to another. Dig. 50, 17, 140.

ABSOILE, ASSOIL, ASSOILE. To pardon; to deliver from excommunication. *Staunford, Pl. Cr. 72; Kelham; Cowell*.

ABSOLUTA SENTENTIA EXPOSITORE NON INDIGET. An absolute sentence or proposition (one that is plain without any scruple, or absolute without any saving) needs not an expositor. 2 Inst. 533.

ABSOLUTE. Complete; perfect; final; without any condition or incumbrance; as an absolute bond (*simplex obligatio*) in distinction from a conditional bond. Unconditional; complete and perfect in itself; without relation to or dependence on other things or persons. Instruction as to an "absolute" gift, *Ketch v. Smith*, 131 Okl. 263, 268 P. 715, 717. Irrevocable, final. Gift inter vivos by husband, President and Directors of Manhattan Co. v. Janowitz, 14 N.Y.S.2d 375, 382, 172 Misc. 290. Within limitation or restriction, *Comfort v. Cantrell*, 177 Tenn. 553, 151 S.W.2d 1076, 1077.

An absolute estate is one that is free from all manner of condition or incumbrance; an estate in fee simple. *Johnson v. McIntosh*, 8 Wheat. 543, 5 L.Ed. 681; *Fuller v. Missroon*, 35 S.C. 31.4, 14 S.E. 714; *Bradford v. Martin*, 199 Iowa 250, 201 N.W. 574, 576; *Middleton v. Dudding*, Mo. Sup., 183 S.W. 443, 444. - A rule is said to be absolute when on the hearing it is confirmed and made final. A conveyance is said to be absolute, as distinguished from a mortgage or other conditional conveyance. *Gogarn v. Connors*, 153 N.W. 1068, 188 Mich. 161. Absolute property is where a man hath solely and exclusively the right and also the occupation of movable chattels; distinguished from a qualified property, as that of a bailee. 2 Kent 347. An absolute owner is one in whom elements of titles of possession, right of possession, and right of property, are combined. *Harris v. Southeast Portland Lumber Co.*, 123 Or. 549, 262 P. 243, 244. Absolute ownership exists when interest is so completely vested in insured that he cannot be deprived of it without his own consent. *Norwich Union Fire Ins. Soc. v. Sawyer*, 57 Ga.App. 739, 196 S.E. 223, 224. Absolute rights are such as appertain and belong to particular persons merely as individuals or single persons, as distinguished from relative rights, which are incident to them as members of society; 1 Sharsw.Bla.Com. 123; 1 Chit.Pr. 32. An absolute duty is one that is free from every restriction; unconditional; determined; not merely provisional; irrevocable. Broken telephone wires. *Home Telephone Co. v. Weir*, 101 N.E.1020, 1021, 53 Ind. App. 466; *Railroad employee, Lehigh Valley R. Co. v. Beltz*, C.C.A.N.Y., 10 F.2d 74, 77; *Pedestrians, Scibilia v. City of Philadelphia*, 279 Pa. 549, 124 A. 273, 275, 32 A.L.R. 981. An "absolute power of disposition," in the absence of statute, would be one by which the holder of the power might dispose of the property as fully and in the same manner as he might dispose of his individual estate acquired by his own efforts. In *re Briggs' Will*, 167 N.Y.S. 632, 635, 101 Misc. 191. In the law of insurance that is an *absolute interest* in property which is so completely vested in the individual that there could be no danger of his being deprived of it without his own consent. *Libby Lumber Co. v. Pacific States Fire Ins. Co.*, 79 Mont. 166, 255 P. 340, 345, 60 A.L.R. 1. It may be used in the sense of vested. *Hough v. Ins. Co.*, 29 Conn. 20, 76 Am.Dec. 581. "*Absolute control*" in Motor Vehicle Act does not require instant stoppage. *Goff v. Clarksburg Dairy Co.*, 86 W.Va. 237, 103 S.E. 58, 60. As to absolute control of a mine, see *People v. Boggess*, 75 Cal.App. 499, 243 P. 478, 481; and of an estate, see *Strickland v. Strickland*, 271 Ill. 614, 111 N.E. 592, 594. Absolute veto is equivalent to "pocket veto". *Okanogan, Methow, San Poelis (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of State of Washington v. United States*, 49 S.Ct. 463, 279 U.S. 655, 73 L.Ed. 894, 64 A.L.R. 1434.

As to absolute "Conveyance," "Covenant," "Delivery," "Divorce," "Estate," "Gift," "Guaranty," "Interest," "Legacy," "Nuisance," "Nullity," "Obligation," "Property," "Rights," "Rule," "Sale," "Title," "Warrantice," see those titles.

ABSOLUTE LAW. The true and proper law of nature, immutable in the abstract or in principle, in theory, but not in application; for very often the object, the reason, situation, and other circumstances, may vary its exercise and obligation. 1 Steph.Comm. 21 *et seq.*

ABSOLUTELY. Completely; wholly; without qualification; without reference or relation to, or dependence upon, any other person, thing, or event. Thus, *absolutely void* means utterly void; *Pearsoll v. Chapin*, 44 Pa. 9. *Absolutely necessary* may be used to make the idea of necessity more emphatic; *State v. Tetrick*, 34 W.Va. 137, 11 S.E. 1002. An "absolutely necessary repair," within terms of Wisconsin St. 1925, § 85.02, prohibiting parking of vehicles except for making absolutely necessary repairs, includes repair of a punctured tire. *Long v. Steffen*, 194 Wis. 179, 215 N.W. 892, 893, 61 A.L.R. 1155. Independently or unconditionally, wholly or positively. *Collins*

v. Hartford Accident & Indemnity Co., 178 Va. 501, 17 S.E.2d 413, 418.

"Absolutely void" is that which the law or nature of things forbids to be enforced at all, and that is "relatively void" which the law condemns as a wrong to individuals and refuses to enforce against them. *Kyle v. Chaves*, 42 N.Mex. 21, 74 P.2d 1030; *Scudder v. Hart*, 45 N.M. 76, 110 P.2d 536, 541.

A devise of property to have "absolutely" means without condition, exception, restriction, qualification or limitation, In *re Darr's Estate*, 206 N.W. 2, 3, 114 Neb. 116, and creates a fee-simple estate. In *re Reynold's Estate*, 94 Vt. 149, 109 A. 60, 63.

ABSOLUTION. In Canon Law, a juridical act whereby the clergy declare that the sins of such as are penitent are remitted. Among Protestants it is chiefly used for a sentence by which a person who stands excommunicated is released or freed from that punishment. *Encyc. Brit.*

In the Civil Law a sentence whereby a party accused is declared innocent of the crime laid to his charge.

In French Law, the dismissal of an accusation.

The term *acquittal* is employed when the accused is declared not guilty, and *absolution* when he is recognized as guilty but the act is not punishable by law or he is exonerated by some defect of intention or will. *Merlin, Report.*

ABSOLUTISM. In politics. A system of government in which public power is vested in some person or persons, unchecked and uncontrolled by any law, institution, constitutional device, or coordinate body.

ABSOLVE. To set free, or release, as from obligation, debt, or responsibility. *State ex rel. St. Louis Car Co. v. Hughes*, 348 Mo. 125, 152 S.W.2d 193, 194.

ABSOLVITOR. In Scotch law. An acquittal; a decree in favor of the defender in any action.

ABSQUE. Without. Occurs in phrases taken from the Latin; such as those immediately following.

ABSQUE ALIQUO INDE REDENDO. Lat. Without reserving any rent therefrom; without rendering anything therefrom. A term used of a free grant by the crown. 2 Rolle, Abr. 502.

ABSQUE CONSIDERATIONE CURVE. In old practice. Without the consideration of the court; without judgment. *Fleta*, lib. 2, c. 47, § 13.

ABSQUE HOC. Without this. These are technical words of denial, used in pleading at common law by way of special traverse, to introduce the negative part of the plea, following the affirmative part or inducement. *Martin v. Hammon*, 8 Pa. 270. See, also, *Traverse*.

ABSQUE IIPETITIONE VASTI. Without impeachment of waste; without accountability for waste; without liability to suit for waste. A clause anciently often inserted in leases (as the

equivalent English phrase sometimes is) signifying that the tenant or lessee shall not be liable to suit (*impetito*) or challenged, or called to account, for committing waste. Co. Litt. 220a; Litt. § 352. See Waste.

ABSQUE TALI CAUSA. Lat. Without such cause. A form of replication, now obsolete, in an action *ex delicto* which works a general denial of the whole matter of the defendant's plea of *de injuria*. Gould, Pl. c. 7, § 10; Steph. Pl. 191.

ABSTENTION. In French law. Keeping an heir from possession; also tacit renunciation of a succession by an heir. Merl. Repert.

ABSTRACT, n. A less quantity containing the virtue and force of a greater quantity; an abridgment. *Miller v. Kansas City Light & Power Co.*, C.C.A.Mo., 13 F.2d 723. A transcript is generally defined as a copy, and is more comprehensive than an abstract. *Harrison v. Mfg. Co.*, 10 S.C. 278, 283. Summary or epitome, or that which comprises or concentrates in itself the essential qualities of a larger thing or of several things. *Robbins Inv. Co. v. Robbins*, 49 Cal.App. 2d 446, 122 P.2d 91, 92.

ABSTRACT, v. To take or withdraw from; as, to abstract the funds of a bank. *Sprague v. State*, 188 Wis. 432, 206 N.W. 69, 70.

ABSTRACT OF A FINE. In old conveyancing. One of the parts of a fine, being an abstract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. 2 Bl.Comm. 351. More commonly called the "note" of the fine. See Fine; Concord.

ABSTRACT OF RECORD. A complete history in short, abbreviated form of the case as found in the record, complete enough to show that the questions presented for review have been properly reserved. *State ex rel. Wallace State Bank v. Trimble*, 308 Mo. 278, 272 S.W. 72, 73. Synopsis or summary of facts, rather than table of contents of transcript. *Wing v. Brasher*, 59 Mont. 10, 194 P. 1106, 1108. Abbreviated accurate and authentic history of proceedings. *Brown v. Reichmann*, 237 Mo.App. 136, 164 S.W.2d 201, 207.

ABSTRACT OF TITLE. A condensed history of the title to land, consisting of a synopsis or summary of the material or operative portion of all the conveyances, of whatever kind or nature, which in any manner affect said land, or any estate or interest therein, together with a statement of all liens, charges, or liabilities to which the same may be subject, and of which it is in any way material for purchasers to be apprised. *War^y. Abst.* § 2. *Stevenson v. Polk*, 71 Iowa, 278, 32 N.W. 340.

Record title, not extrinsic evidence thereof. *Upton v. Smith*, 166 N.W. 268, 183 Iowa 588. Showing a marketable title. *Morgan v. W. A. Howard Realty Co.*, 68 Colo. 414, 191 P. 114, 115. An epitome of the record evidence of title. *De Huy v. Osborne*, 96 Fla. 435, 118 So. 161, 162. Including maps, plats, and other aids. *Commissioners' Court of Madison County v. Wallace*, 118 Tex. 279, 15 S.W.2d 535, 536. An epitome of the conveyances, transfers, and other

facts relied on as evidence of title, together with all such facts appearing of record as may impair the title. *State ex rel. Freeman v. Abstractors Board of Examiners*, 99 Mont. 564, 45 P.2d 668, 670. *Vangness v. Bovill*, 58 S.D. 228, 235 N.W. 601, 604. Memorandum or concise statement in orderly form of the substance of documents or facts appearing on public records which affect title to real property. *State ex rel. Doria v. Ferguson*, 145 Ohio St. 12, 60 N.E.2d 476, 478.

ABSTRACT QUESTION. One which does not rest upon existing facts or rights. *Morris Plan Bank of Fort Worth v. Ogden*, Tex.Civ.App., 144 S.W.2d 998, 1004.

ABSTRACTION. Taking from with intent to injure or defraud, "wrongful abstraction" is "unauthorized and illegal taking or withdrawing of funds, etc., and appropriation thereof to taker's benefit." *Pacific Coast Adjustment Bureau v. Indemnity Ins. Co. of North America*, 115 Cal. App. 583, 2 P.2d 218, 219.

For benefit of taker or of another with his consent. *Austin v. Nieman*, Tex.Civ.App., 3 S.W.2d 128, 129. Offense for bank officer, popular sense of word. *Commonwealth v. Dauphinee*, 121 Pa.Super. 565, 183 A. 807, 813. Under the National Bank Act, not necessarily the same as embezzlement, larceny, or misapplication of funds. *Ferguson v. State*, 80 Tex.Cr.R. 383, 189 S.W. 271, 273. *State v. Hudson*, 93 W.Va. 435, 117 S.E. 122, 126.

ABSURDITY. That which is both physically and morally impossible; and that is to be regarded as morally impossible which is contrary to reason, so that it could not be imputed to a man in his right senses. *State v. Hayes*, 81 Mo. 574, 585. Anything which is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of men of ordinary intelligence and discretion. *Black, Interp. Laws*, 104; *Graves v. Scales*, 172 N.C. 915, 90 S.E. 439; obviously and flatly opposed to the manifest truth; inconsistent with the plain dictates of common sense; logically contradictory; nonsensical; ridiculous. *Wade v. Empire Dist. Electric Co.*, 98 Kan. 366, 158 P. 28, 30.

ABUNDANS CAUTELA NON NOCET. Abundant or extreme caution does no harm. 11 Co. 6; *Fleta*, lib. 1, c. 28, § 1; 6 *Wheat*. 108. This principle is generally applied to the construction of instruments in which superfluous words have been inserted more clearly to express the intention.

ABUS DE CONFIANCE. Fraudulently misusing or spending to anybody's prejudice goods, cash, bills, documents, or contracts handed over for a special object. *The Washington*, D.C.N.Y., 19 F. Supp. 719, 722.

ABUSE, n. Everything which is contrary to good order established by usage. Merl. Repert. Departure from use; immoderate or improper use.

Action that would be necessary in ordinary affairs to, make one guilty of an "abuse" connotes conduct of a different grade than what is meant when a court is said to have "abused its discretion." *Beck v. Wings Field, Inc.* C.C.A.Pa., 122 F.2d 114, 116.

Civil Law

The destruction of the substance of a thing in using it. See Abuse, v.

Corporate Franchise or Entity

The abuse or misuse of its franchises by a corporation signifies any positive act in violation of the charter and in derogation of public right, willfully done or caused to be done; the use of rights or franchises as a pretext for wrongs and injuries to the public. *People v. Atlantic Ave. R. Co.*, 125 N.Y. 513, 26 N.E. 622.

Discretion

"Abuse of discretion" is synonymous with a failure to exercise a sound, reasonable, and legal discretion. Disbarment, *Adair v. Pennewill*, 153 A. 859, 860, 4 W.W.Harr.(Del.) 390. It is a strict legal term indicating that appellate court is simply of opinion that there was commission of an error of law in the circumstances. Refusing motion to amend pleadings, *Tunstall v. Lerner Shops*, 160 S.C. 557, 159 S.E. 386. Motions to consolidate actions, *Bishop v. Bishop*, 164 S.C. 493, 162 S.E. 756, 757. Vacating judgment, *Detroit Fidelity & Surety Co. v. Foster*, 171 S.C. 121, 169 S.E. 871, 881. And it does not imply intentional wrong or bad faith, or misconduct, nor any reflection on the judge but means the clearly erroneous conclusion and judgment—one is that clearly against logic and effect of such facts as are presented in support of the application or against the reasonable and probable deductions to be drawn from the facts disclosed upon the hearing; an improvident exercise of discretion; an error of law. New trial, *State v. Draper*, 83 Utah, 115, 27 P.2d 39. Setting aside of decree pro confesso. *Ex parte Jones*, 246 Ala. 433, 20 So.2d 859, 862.

A discretion exercised to an end or purpose not justified by and clearly against reason and evidence. *Trimmer v. State*, 142 Okl. 278, 286 P. 783, 786; *Seaba v. State*, 290 P. 1098, 1101, 144 Okl. 295. Unreasonable departure from considered precedents and settled judicial custom, constituting error of law. *Beck v. Wings Field, Inc.*, C.C.A. Pa., 122 F.2d 114, 116, 117. The term is commonly employed to justify an interference by a higher court with the exercise of discretionary power by a lower court and is said by some authorities to imply not merely error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency. The exercise of an honest judgment, however erroneous it may appear to be, is not an abuse of discretion. *Stroup v. Raymond*, 183 Pa. 279, 38 A. 626. Where a court does not exercise a discretion in the sense of being discreet, circumspect, prudent, and exercising cautious judgment, it is an abuse of discretion. *State Board of Medical Examiners v. Spears*, 79 Colo. 588, 247 P. 563, 565. Difference in judicial opinion is not synonymous with "abuse of judicial discretion" as respects setting aside verdict as against evidence. *Belock v. State Mut. Fire Ins. Co.*, 106 Vt. 435, 175 A. .19, 22.

Distress

The using an animal or chattel distrained, which makes the distrainer liable as for a conversion.

Female Child

An injury to the genital organs in an attempt at carnal knowledge, falling short of actual penetration. *Lee v. State*, 246 Ala. 69, 18 So.2d 706, 707. But, according to other authorities, "abuse" is here equivalent to ravishment or rape. *Palin v. State*, 38 Neb. 862, 57 N.W. 743. Physical abuse. *Montgomery v. State*, 28 Ala.App. 442, 186 So. 589, 592.

Process

There is said to be an abuse of process when an adversary, through the malicious and unfounded use of some regular legal proceeding, obtains some advantage over his opponent. Wharton. Employment of process for doing an act clearly outside authority conveyed by express terms of writ. *Shane v. Gulf Refining Co.*, 114 Pa.Super. 87, 173 A. 738, 740.

The gist of an action for "abuse of process" is improper use or perversion of process after it has been issued. *Publix Drug Co. v. Breyer Ice Cream Co.*, 347 Pa. 346, 32 A.2d 413, 415. Holding of accused incommunicado before complying with warrant requiring accused to be taken before magistrate. *People v. Crabb*, 372 Ill. 347, 24 N.E.2d 46, 49. Warrant of arrest to coerce debtor. *In re Williams*, 233 Mo.App. 1174, 128 S.W.2d 1098, 1105. A malicious abuse of legal process occurs where the party employs it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it. *Lauzon v. Charroux*, 18 R.I. 467, 28 A. 975. *Vybiral v. Schildhauer*, 265 N.W. 241, 244, 130 Neb. 433; *Silverman v. Ufa Eastern Division Distribution*, 236 N.Y.S. 18, 20, 135 Misc. 814. Thus, where the purpose of a prosecution for issuance of a check without funds was to collect a debt, the prosecution constituted an abuse of criminal process. *Hotel Supply Co. v. Reid*, 16 Ala.App. 563, 80 So. 137, 138. Regular and legitimate use of process, although with a bad intention, is not a malicious "abuse of process." *Priest v. Union Agency*, 174 Tenn. 304, 125 S. W.2d 142, 143. Action for "abuse of process" is distinguished from action for "malicious prosecution," in that action for abuse of process rests upon improper use of regularly issued process, while "malicious prosecution" has reference to wrong in issuance of process. *Clikov v. Long*, 231 Ala. 424, 165 So. 394, 396; *McInnis v. Atlantic Inv. Corporation*, 137 Or. 648, 4 P.2d 314, 315; *Lobel v. Trade Bank of New York*, 229 N.Y.S. 778, 781, 132 Misc. 643.

ABUSE, v. To make excessive or improper use of a thing, or to employ it in a manner contrary to the natural or legal rules for its use; to make an extravagant or excessive use, as to abuse one's authority.

In the civil law, the borrower of a chattel which, in its nature, cannot be used without consuming it, such as wine or grain, is said to abuse the thing borrowed if he uses it. It has been held to include misuse; *Erie & North-East R. Co. v. Casey*, 26 Pa. 287; to signify to injure, diminish in value, or wear away by improper use; *id.*; to be synonymous with injure; *Dawkins v. State*, 58 Ala. 376, 29 Am. Rep. 754.

ABUSIVE. Tending to deceive; practicing abuse; prone to ill treat by coarse, insulting words. *U. S. v. Ault*, D.C.Wash., 263 F. 800, 810. Using ill treatment, injurious, improper, hurtful, offensive, reproachful. *People on Complaint of Wilson v. Sinclair*, 149 N.Y.S. 54, 56, 86 Misc. 426.

ABUT. To reach, to touch. In old law, the ends were said to abut, the sides to adjoin. *Cro. Jac.* 184. And see *Lawrence v. Killam*, 11 Kan. 499, 511; *Springfield v. Green*, 120 Ill. 269, 11 N.E. 261. To take a new direction; as where a bounding line changes its course. *Spelman, Gloss.* **Abuttare.** To touch at the end; be contiguous; join at a border or boundary; terminate; to end at; to border on; to reach or touch with an end. Assessment of property, *Hensler v. City of Anacortes*, 140 Wash. 184, 248 P. 406, 407. The term "abutting" implies a closer proximity than the term "adjacent." Reversion of vacated park land,

ABUT

City of Hutchinson v. Danley, 88 Kan. 437, 129 P. 163, 164. "Contiguous" synonymous, both conveying idea that lot borders on improvement. Reynard v. City of Caldwell, 55 Idaho 342, 42 P.2d 292, 296.

No intervening land. Johnson v. Town of Watertown, 131 Conn. 84, 38 A.2d 1, 4. Property at end of street sought to be vacated. Messenger v. City of Cincinnati, 36 Ohio App. 337, 173 N.E. 260, 262. Widen street, leaving fee access to paved street, property within assessment statutes. Goodman v. City of Birmingham, 223 Ala. 199, 135 So. 336, 337. Though the usual meaning of the word is that the things spoken of do actually adjoin, "bounding and abutting" have no, such inflexible meaning as to require lots assessed actually to touch the improvement; Cohen v. Cleveland, 43 Ohio St. 190, 1 N.E. 589.

ABUTMENTS. The walls of a bridge adjoining the land which support the end of the roadway and sustain the arches. The ends of a bridge, or those parts of it which touch the land. Board of Chosen Freeholders of Sussex County v. Strader, 18 N.J.Law, 108, 35 Am.Dec. 530. Support at either extreme end. City of New York v. New York Cent. R. Co., 48 N.Y.S.2d 189, 191, 183 Misc. 104.

ABUTTALS. Fr. The buttings or boundings of lands, showing to what other lands, highways, or places they belong or are abutting. Termes de la Ley; Cowell; Toml. It has been used to express the end boundary lines as distinguished from those on the sides, as "buttais and sidings"; Cro.Jac. 183.

ABUTTER. One whose property abuts, is contiguous, or joins at a border or boundary, as where no other land, road, or street intervenes.

ABUTTING OWNER. An owner of land which abuts or adjoins. The term usually implies that the relative parts actually adjoin, but is sometimes loosely used without implying more than close proximity. See Abut.

Where five-foot strip between property assessed for paving and street was conveyed to city but not used for street purposes, property assessed held not "abutting property." Davidson v. Salt Lake City, 81 Utah 203, 17 P.2d 234, 237. Property owners held "abutting property owners," subject to sewer assessment, notwithstanding street was widened from 40 to 50 feet when incorporated in state highway, and city bought the extra 5 feet on either side. Carey-Reed Co. v. Sisco, 251 Ky. 22, 64 S.W.2d 430, 433. Railroad in street was not "abutting owner". Town of Lenoir v. Carolina & N. W. Ry. Co., 194 N.C. 710, 140 S.E. 618, 619.

AC ETIAM. (Lat. And also.) The introduction of the statement of the real cause of action, used in those cases where it was necessary to allege a fictitious cause of action to give the court jurisdiction, and also the real cause in compliance with the statutes. It is sometimes written *acetiam*. 2 Stra. 922. See Bill of Middlesex under Bill, definition 2.

AC ETIAM BILLIE. And also to a bill. See Ac Etiam.

AC SI. (Lat. As if.) Townsh. P1. 23, 27. These words frequently occur in old English statutes.

Lord Bacon expounds their meaning in the statute of uses: "The statute gives entry, not *simpliciter*, but with an *ac si*." Bac. Read. Uses, Works, iv. 195.

ACADEME. Place of academic study. Sisters of Mercy v. Town of Hooksett, 93 N.H. 301, 42 A.2d 222, 225.

ACADEMY. An institution of learning. An association of experts in some particular branch of art, literature, or science.

In its original meaning, an association formed for mutual improvement, or for the advancement of science or art; in later use, a species of educational institution, of a grade between the common school and the college^{8e}. Academy of Fine Arts v. Philadelphia County, 22 Pa. 496; School holding rank between college and common school, U. S. ex rel. Jacovides v. Day, C.C.A.N.Y., 32 F.2d 542, 544; Sisters of Mercy v. Town of Hooksett, 93 N.H. 301, 42 A.2d 222, 225. See School.

ACAPTE, In French feudal law. A species of relief; a seignorial right due on every change of a tenant. A feudal right which formerly prevailed in Languedoc and Guyenne, being attached to that species of heritable estates which were granted on the contract of *emphyteusis*. Guyot, Inst. Feod. c. 5, § 12.

ACCEDAS AD CURIAM. (Lat. That you go to court.) An original writ out of chancery directed to the sheriff, for the purpose of removing a replevin suit from a Court Baron or a hundred court to one of the superior courts of law. It directs the sheriff *to go to the lower court*, and enroll the proceedings and send up the record. See Fitzh. Nat. Brev. 18; Dy. 169; 3 Bl. Comm. 34.

ACCEDAS AD VICE COMITEM. L. Lat. (You go to the sheriff.) A writ formerly directed to the coroners of a county in England, commanding them to go to the sheriff, where the latter had suppressed and neglected to return a writ of *pone*, and to deliver a writ to him requiring him to return it. Reg. Orig. 83. See Pone.

ACCELERATION. The shortening of the time for the vesting in possession of an expectant interest. Wharton. Hastening of the enjoyment of an estate which was otherwise postponed to a later period. Blackwell v. Virginia Trust Co., 177 Va. 299, 14 S.E.2d 301, 304.

If the life estate fails for any reason, the remainder is "accelerated". Elliott v. Brintlinger, 376 Ill. 147, 33 N.E. 2d 199, 201, 133 A.L.R. 1364. The word is also used in reference to contracts for payment of money in what is usually called an "acceleration clause" by which the time for payment of the debt is hastened or advanced because of breach of some condition such as failure to pay interest when due, McCormick v. Daggett, 162 Ark. 16, 257 S.W. 358; insolvency of the maker, Wright v. Seaboard Steel & Manganese Corporation, C.C.A.N.Y., 272 F. 807; or failure to keep mortgaged premises insured, Porter v. Schroll, 93 Kan. 297, 144 P. 216.

ACCEPT. To receive with approval or satisfaction; to receive with intent to retain. See Morris v. State, 102 Ark. 513, 145 S.W. 213, 214. Also, in the capacity of drawee of a bill, to recognize the draft, and engage to pay it when due. It is not

equivalent to "acquiesce." *Applett v. Empire Inv. Co.*, 99 Or. 533, 194 P. 461, 462. Admit and agree to; accede to or consent to; receive with approval; adopt; agree to. *Rocha v. Hulen*, 6 Cal.App.2d 245, 44 P.2d 478, 482, 483. Street committee's and city engineer's reports. *City of Morehead v. Blair*, 243 Ky. 84, 47 S.W.2d 741, 742. Means something more than to receive, meaning to adopt, to agree to carry out provisions. Assignee of lease, *Pickier v. Mershon*, 212 Iowa, 447, 236 N.W. 382, 385; *Central State Bank v. Herrick*, 214 Iowa 379, 240 N.W. 242, 246. Renewal health and accident policy premiums, *Prescott v. Mutual Ben. Health and Accident Ass'n, Fla.*, 183 So. 311, 314, 119 A.L.R. 525.

ACCEPTANCE. The taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made. *Brooke, Abr.* The act of a person to whom a thing is offered or tendered by another, whereby he receives the thing with the intention of retaining it, such intention being evidenced by a sufficient act. *JEtna Inv. Corporation v. Chandler Landscape & Floral Co.*, 227 Mo.App. 17, 50 S.W.2d 195, 197.

The exercise of power conferred by an offer by performance of some act. In re *Larney's Estate*, 266 N.Y.S. 564, 148 Misc. 871.

Bills of Exchange

An engagement to pay the bill in money when due. 4 East 72; *Hunt v. Security State Bank*, 91 Or. 362, 179 P. 248, 251.

The act by which the person on whom a bill of exchange is drawn (called the "drawee") assents to the request of the drawer to pay it, or, in other words, engages, or makes himself liable, to pay it when due. *Bell-Wayland Co. v. Bank of Sugden*, 95 Okl. 67, 218 P. 705. It may be by parol or in writing, and either general or special, absolute or conditional; and it may be impliedly, as well as expressly, given. 3 Kent, Comm. 83, 85; *Story, Bills*, §§ 238, 251. Telegram directing drawer to draw draft. *Hoffer v. Eastland Nat. Bank, Tex.Civ.App.*, 169 S.W.2d 275, 278. Certification at request of the payee or holder. *Welch v. Bank of Manhattan Co.*, 35 N.Y.S.2d 894, 895, 264 App.Div. 906. But the usual and regular mode of acceptance is by the drawee's writing across the face of the bill the word "accepted," and subscribing his name; after which he is termed the *acceptor*. *Story, Bills*, § 243.

Contracts

Compliance by offeree with terms and conditions of offer would constitute an "acceptance". *Davis & Clanton v. C. I. T. Corporation*, 190 S.C. 151, 2 S.E.2d 382, 383.

Qualifications or conditions make a "counteroffer," not an "acceptance." *Cohn v. Penn Beverage Co.*, 313 Pa. 349, 169 A. 768, 769. *Bullock v. McKeon*, 104 Cal.App. 72, 285 P. 392, 395.

Deed

Act by which vendee vests himself with title to the property. *Hardin v. Kazee*, 238 Ky. 526, 38 S.W.2d 438.

Insurance

In a contract of insurance, the "acceptance" occurs when insurer agrees to accept application and to issue policy. *Acacia Mut. Life Ass'n v. Berry*, 54 Ariz. 208, 94 P.2d 770, 772. Delay or inaction on the part of an insurer cannot constitute an "acceptance". *French American Banking Corporation v. Fireman's Fund Ins. Co.*, D.C.N.Y., 43 F.Supp. 494, 498. More than mere mental resolution or determination on part of insurer to accept application. Must be communicated to applicant. *Limbaugh v. Monarch Life Ins. Co.*, Springfield, Mass., Mo.App., 84 S.W.2d 208, 212.

Marine Insurance

The acceptance of an abandonment by the underwriter is his assent, either express or to be implied from the surrounding circumstances, to the sufficiency and regularity of the abandonment. *Rap. & Law.*

Sales

An acceptance implies, not only the physical fact of receiving the goods, but also the intention of retaining them. *Illinois Fuel Co. v. Mobile & O. R. Co.*, 319 Mo. 899, 8 S.W.2d 834, 841.

Retaining and using goods. *Ohio Electric Co. v. Wisconsin-Minnesota Light & Power Co.*, 161 Wis. 632, 155 N.W. 112, 113. Pressure tanks, *Dunck Tank Works v. Sutherland*, 236 Wis. 83, 294 N.W. 510, 513. Coal stokers used for 15 months before request for removal, *United States v. Lux Laundry Co.*, C.C.A.Ind., 118 F.2d 848, 849. Where goods are expressly rejected, receipt does not mean acceptance. *State Board of Administration v. Roquemore*, 218 Ala. 120, 117 So. 757, 760. The acceptance of goods sold under a contract which would be void by the statute of frauds without delivery and acceptance involves something more than the act of the vendor in the delivery. It requires that the vendee should also act, and that his act should be of such a nature as to indicate that he receives and accepts the goods delivered as his property. He must receive and retain the articles delivered, intending thereby to assume the title to them, to constitute the acceptance mentioned in the statute. *Rodgers v. Phillips*, 40 N.Y. 524. See, also, *Snow v. Warner*, 10 Mete. (Mass.) 132, 43 Am. Dec. 417. There must be some unequivocal act, with intent to take possession as owner. *Vacuum Ash & Soot Conveyor Co. v. Huyler's*, 101 N.J.Law, 147, 127 A. 203, 204. Title and possession must be in unrestricted control of buyer so as not to permit of recall or rescission. *Mellen Produce Co. v. Fink*, 225 Wis. 90, 273 N.W. 538. Mere words are insufficient to establish "delivery and receipt." *Mellen Produce Co. v. Fink*, 225 Wis. 90, 273 N.W. 538, 542.

The following are the principal varieties of acceptances :

Absolute. An express and positive agreement to pay the bill according to its tenor.

Conditional. An engagement to pay the bill on the happening of a condition. *Todd v. Bank of Kentucky*, 3 Bush, (Ky.) 628. A "conditional acceptance" is in effect a statement that the offeree is willing to enter into a bargain differing in some respects from that proposed in the original offer. The conditional acceptance is, therefore, itself a counter offer. *Hoskins v. Michener*, 33 Idaho, 681, 197 P. 724. *Morris F. Fox & Co. v. Lismann*, 208 Wis. 1, 237 N.W. 267, 271. *Worley v. Holding Corporation*, 348 Ill. 420, 181 N.E. 307, 309.

Express. An undertaking in direct and express terms to pay the bill; an absolute acceptance.

Implied. An undertaking to pay the bill inferred from acts of the drawee of a character which fairly warrant such an inference. In case of a bilateral contract, "acceptance" of an offer need not be expressed, but may be shown by any words or acts indicating the offeree's assent to the

ACCEPTANCE

proposed bargain. *Prescott v. Mutual Ben. Health and Accident Ass'n*, 133 Fla. 510, 183 So. 311, 315, 119 A.L.R. 525. *Frederick Raff Co. v. Murphy*, 110 Conn. 234, 147 A. 709, 711. Tenant for several months continued to occupy store-room and paid rentals, *C. R. Anthony Co. v. Stroud*, 189 Oki. 104, 114 P.2d 177, 178. Landlord's reletting leased premises after default in rent, *In re Lear Shoe Co.*, Sup., 22 N.Y.S.2d 778, 782. Taking possession, exercise of ownership and dominion and failure to complain to seller, *Bell v. Main*, D.C.Pa., 49 F.Supp. 689, 692.

Partial. An acceptance varying from the tenor of the bill. An acceptance to pay part of the amount for which the bill is drawn, 1 *Strange* 214, or to pay at a different time, 14 Jur. 806; *Hatcher v. Stolworth*, 25 Miss. 376; or at a different place, 4 M. & S. 462, would be partial. For some examples of what do and what do not constitute conditional acceptances, see *Heaverin v. Donnell*, 7 Smedes & M. (Miss.) 245, 45 Am.Dec. 302; *Campbell v. Pettengill*, 7 Greenl. (Me.) 126, 20 Am.Dec. 349; *Ensign v. Clark Bros. Cutlery Co.*, 195 Mo.App. 584, 193 S. W. 961, 962. Provisions respecting cutting of timber etc. on optioned land, did not destroy the "acceptance". *Bastian v. United States*, C. C.A.Ohio, 118 F.2d 777, 779. Would be in named place for purpose of entering into option, *Ackerman v. Carpenter*, 113 Vt. 77, 29 A.2d 922, 925. Counter proposition to option. *Tholl Oil Co. v. Miller*, 197 La. 976, 3 So.2d 97, 98. Conditional, qualified acceptance, *Moore Bros. v. Kirkpatrick*, Tex.Civ.App., 172 S.W.2d 135, 137.

Qualified. One either conditional or partial, and which introduces a variation in the sum, time, mode, or place of payment.

Supra protest. An acceptance by a third person, after protest of the bill for non-acceptance by the drawee, to save the honor of the drawer or some particular indorser. A general acceptance is an absolute acceptance precisely in conformity with the tenor of the bill itself, and not qualified by any statement, condition, or change. *Todd v. Bank of Kentucky*, 3 Bush (Ky.) 628. A special acceptance is the qualified acceptance of a bill of exchange, as where it is accepted as payable at a particular place "and not elsewhere." *Rowe v. Young*, 2 Brod. & B. 180. See Trade Acceptance.

ACCEPTANCE AU BESOIN. Fr, In French law. Acceptance in case of need; an acceptance by one on whom a bill is drawn *au besoin*, that is, in case of refusal or failure of the drawee to accept. *Story, Bills*, §§ 65, 254, 255.

ACCEPTARE,

Civil Law

Lat. To accept; to assent; to assent to a promise made by another. *Gro. de J. B. lib. 2, c. 11*, § 14.

Pleading

To accept. *Acceptavit*, he accepted. 2 *Strange*, 817. *Non acceptavit*, he did not accept. 4 *Man. & G. 7*.

ACCEPTEUR PAR INTERVENTION. In French law. Acceptor of a bill for honor.

ACCEPTILATION. In the civil and Scotch law. A release made by a creditor to his debtor of his debt, without receiving any consideration. *Ayl. Pand. tit. 26, p. 570*. It is a species of donation, but not subject to the forms of the latter, and is valid unless in fraud of creditors. *Merl. Repert.*

The verbal extinction of a verbal contract, with a declaration that the debt has been paid when it has not; or the acceptance of something merely imaginary in satisfaction of a verbal contract. *Sanders' Just. Inst. (5th Ed.) 386*.

ACCEPTOR. The person who accepts a bill of exchange, (generally the drawee,) or who engages to be primarily responsible for its payment. *Nissenbaum v. State*, 38 Ga.App. 253, 143 S.E. 776, 777.

ACCEPTOR SUPRA PROTEST. One who accepts a bill which has been protested, for the honor of the drawer or any one of the indorsers.

ACCESS. Approach; or the means, power, or opportunity of approaching. Sometimes importing the occurrence of sexual intercourse, *Jackson v. Jackson*, 182 Okl. 74, 76 P.2d 1062, 1066; otherwise as importing opportunity of communication for that purpose as between husband and wife.

In real property law, the term "access" denotes the right vested in the owner of land which adjoins a road or other highway to go and return from his own land to the highway without obstruction. *Cobb v. Commissioners of Lincoln Park*, 202 Ill. 427, 67 N.E. 5, G. 8. "Access" to property does not necessarily carry with it possession. *People v. Brenneauer*, 166 N.Y.S. 801, 806, 101 Misc. 156. A deed, however, which conveys land and "also the right of access to the adjoining park and use of spring on same," may be deemed to convey not merely the right to pass through the park in order to reach the spring, but to convey a right of entry into the park (as a park and by implication, the right to the use and enjoyment of the park. *Goetz v. Knoxville Power & Light Co.*, 154 Tenn. 545, 290 S. W. 409, 414.

The right of "access" as applied to a private wharf on public lands merely means that there may not be built an obstruction separating the lands from the navigable highway. *City of Oakland v. Hogan*, 41 Cal.App.2d 333, 106 P. 2d 987, 995.

The right of "access to public records" includes not only a legal right of access but a reasonable opportunity to avail oneself of the same. *American Surety Co. of New York v. Sandberg*, D.C.Wash., 225 F. 150, 155.

Canon Law

The right to some benefice at some future time.

ACCESS (EASEMENT OF). An "easement of access" is the right which an abutting owner has of ingress to and egress from his premises, in addition to the public easement in the street. *State Highway Board v. Baxter*, 167 Ga. 124, 144 S.E. 796, 800; *Lang v. Smith*, 113 Pa.Super. 559, 173 A. 682, 683. "Access to an underground sewer" means more than a right to open the surface to make repairs, and implies the right of connection by branches. *Heyman v. Biggs*, 150 N.Y.S. 246, 247, 164 App.Div. 430.

ACCESSARY. See Accessory.

ACCESSIO. In Roman law. An increase or addition; that which lies next to a thing, and is supplementary and necessary to the principal thing; that which arises or is produced from the principal thing; an "accessory obligation" (*q. v.*). *Calvinus, Lex. Jurid.*

One of the modes of acquiring property, being the extension of ownership over that which grows from, or is united to, an article which one already possesses. *Mather v. Chapman*, 40 Conn. 382, 397, 16 Am.Rep. 46.

Accessio includes both accession and accretion as used in the common law. See *Adjunctio*.

ACCESSION. Coming into possession of a right or office; increase; augmentation; addition.

The right to all which one's own property produces, whether that property be movable or immovable; and the right to that which is united to it by accession, either naturally or artificially. 2 Kent, 360; 2 Bl.Comm. 404; Franklin Service Stations v. Sterling Motor Truck Co. of N. E., 50 R. I. 336, 147 A. 754, 755.

Riparian owners' right to abandoned river beds and rights of alluvion by accretion and reliction, Manry v. Robison, 122 Tex. 213, 56 S.W.2d 438, 443, 444.

A principle derived from the civil law, by which the owner of property becomes entitled to all which it produces, and to all that is added or united to it, either naturally or artificially, (that is, by the labor or skill of another,) even where such addition extends to a change of form or materials; and by which, on the other hand, the possessor of property becomes entitled to it, as against the original owner, where the addition made to it by his skill and labor is of greater value than the property itself, or where the change effected in its form is so great as to render it impossible to restore it to its original shape. Twin City Motor Co. v. Rouzer Motor Co., 197 N.C. 371, 148 S.E. 461, 463. In Blackwood Tire & Vulcanizing Co. v. Auto Storage Co., 133 Tenn. 515, 182 S. W. 576, L.R.A. 1916E, 254, Ann.Cas.1917C, 1168, this principle was applied in favor of the conditional seller who, on nonpayment, retook the automobile sold, together with tire casings which the buyer had fitted thereto. Valley Chevrolet Co. v. O. S. Stapley Co., 50 Ariz. 417, 72 P.2d 945.

International Law

The absolute or conditional acceptance by one or several states of a treaty already concluded between other sovereignties. Merl. Répert. It may be of two kinds: *First*, the formal entrance of a third state into a treaty so that such state becomes a party to it; and this can only be with the consent of the original parties. *Second*, a state may accede to a treaty between other states solely for the purpose of guarantee, in which case, though a party, it is affected by the treaty only as a guarantor. 1 Oppenheim, Int.L. sec. 532. See Adhesion.

Also, the commencement or inauguration of a sovereign's reign.

ACCESSION, DEED OF. In Scotch law. A deed executed by the creditors of a bankrupt or insolvent debtor, by which they approve of a trust given by their debtor for the general behoof, and bind themselves to concur in the plans proposed for extricating his affairs. Bell, Diet.

ACCESSORIUM NON DUCIT, SED SEQUITUR SUUM PRINCIPALE, Co. Litt. 152a, 389a. That which is the accessory or incident does not lead, but follows, its principal.

ACCESSORIUS SEQUITUR NATURAM SUI PRINCIPALIS. An accessory follows the nature of his principal. 3 Inst. 139. One who is accessory to a crime cannot be guilty of a higher degree of crime than his principal.

ACCESSORY. Anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it, as an incident, or as subordinate to it, or which belongs to or with it; for example, the

halter of a horse, the frame of a picture, the keys of a house.

Adjunct or accompaniment. Louis Werner Saw Mill Co. v. White, 205 La. 242, 17 So.2d 264, 270.

A sale of land carried with it the standing timber as an "accessory." Woollums v. Hewitt, 142 La. 597, 77 So. 295, 296.

Automobile Accessories

Articles primarily adapted for use in motor vehicles, under revenue acts. Universal Battery Co. v. U. S., Ct.C1., 50 S.Ct. 422, 423, 281 U.S. 580, 74 L.Ed. 1051.

Criminal Law

Contributing to or aiding in the commission of a crime. One who, without being present at the commission of a felonious offense, becomes guilty of such offense, not as a chief actor, but as a participator, as by command, advice, instigation, or concealment; either before or after the fact or commission; a *particeps criminis*. 4 Bl.Comm. 35; Cowell.

One who is not the chief actor in the offense, nor present at its performance, but in some way concerned therein, either *before* or *after* the act committed. State v. Thomas, 136 A. 475, 477, 105 Conn. 757. One who aids and abets another. People v. Smith, 260 N.W. 911, 271 Mich. 553. Commands or counsels another. United States v. Peoni, C.C.A.N.Y., 100 F.2d 401, 402.

An "accessory" to a crime is always an "accomplice." People v. Ah Gee, 37 Cal.App. 1, 174 P. 371, 373. In certain crimes, there can be no accessories; all who are concerned are principals. These are (according to many authorities) treason, and all offenses below the degree of felony; 4 Bla.Comm. 35; Com. v. McAtee, 8 Dana (Ky.) 28; Williams v. State, 12 Smedes & M. (Miss.) 58.

Accessory Before the Fact

One who, being absent at the time a crime is committed, yet assists, procures, counsels, incites, induces, encourages, engages, or commands another to commit it. 4 Steph, Comm. 90, note n. People v. Owen, 241 Mich. 111, 216 N.W. 434. United States v. Pritchard, D.C.S.C., 55 F.Supp. 201, .203; rape, Clayton v. State, 244 Ala. 10, 13 So.2d 420, 422.

Murder, Wells v. State, 94 Ga. 70, 20 S.E.2d 580, 582. Distilling, State v. Lackmann, Mo., 12 S.W. 2d 424, 425.

Accessory During the Fact

One who stands by without interfering or giving such help as may be in his power to prevent the commission of a criminal offense. Farrell v. People, 8 Colo.App. 524, 46 P. 841.

Accessory After the Fact

One who, having full knowledge that a crime has been committed, conceals it from the magistrate, and harbors, assists, or protects the person charged with, or convicted of, the crime. Vernon's Ann.C.C.P. art. 53.

All persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.

ACCESSORY

Comp.Laws N.D.1913, § 9219; Rev.Code S.D.1919, § 3595.

An accessory *after the fact* is a person who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon, in order to enable him to escape from punishment, or the like. *Buck v. Commonwealth*, 116 Va. 1031, 83 S.E. 390, 393. Knowledge, or denial of knowledge, of perpetration of crime, or silence does not make one an "accessory after the fact." *Commonwealth v. Giacobbe*, 341 Pa. 187, 19 A.2d 71, 75. *Cantu v. State*, 135 S.W.2d 705, 710, 141 Tex.Cr.R. 99. But affirmative action by false testimony or otherwise usable by accused to escape punishment constitutes one "accessory" as to his testimony. *Fisher v. State*, 34 S.W.2d 293, 294, 117 Tex.Cr.R. 552; false statements to sheriff relative to defendant's connection with homicide in order to evade arrest, *Little v. State*, 111 Tex.Cr.R. 500, 14 S.W.2d 853, 854.

Aiders and Abettors Distinguished

The concept of an "accessory before the fact" presupposes a prearrangement to do the criminal act, and to constitute one an "aider and abettor" he must be on the ground and by his presence aid, encourage or incite the principal. *Morel v. United States*, C.C.A.Ohio, 127 F.2d 827, 830, 831.

Principal Distinguished

"Principal in the second degree," as distinguished from "accessory before the fact," is one who aids in commission of felony by being either actually or constructively present, aiding, and abetting commission of felony, when perpetrated. *Neumann v. State*, 116 Fla. 98, 156 So. 237, 239.

ACCESSORY ACTION. In Scotch practice. An action which is subservient or auxiliary to another. Of this kind are actions of "proving the tenor," by which lost deeds are restored; and actions of "transcripts," by which copies of principal deeds are certified. *Bell, Dict.*

ACCESSORY CONTRACT. In the civil law. A contract which is incident or auxiliary to another or principal contract; such as the engagement of a surety. *Poth. Obl. pt. 1, c. 1, § 1, art. 2.*

A principal contract is one entered into by both parties on their own accounts, or in the several qualities they assume. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others; such as suretyship, mortgage, and pledge. *Blaisdell v. Coe*, 83 N.H. 167, 139 A. 758, 65 A.L.R. 626.

ACCESSORY OBLIGATION.

Civil Law

An obligation which is incident to another or principal obligation; the obligation of a surety. *Poth. Obl. pt. 2, c. 1, § 6.*

Scotch Law

Obligations to antecedent or primary obligations, such as obligations to pay interest, etc. *Ersk. Inst. lib. 3, tit. 3, § 60.*

See, further, Obligation.

ACCESSORY TO ADULTERY. Implies more than connivance, which is merely knowledge with consent. A conniver abstains from interference;

an accessory directly commands, advises, or procures the adultery. 20 & 21 Vict. c. 85, §§ 29, 31.

ACCIDENT. The word "accident" is derived from the Latin verb "accidere" signifying "fall upon, befall, happen, chance." In an etymological sense anything that happens may be said to be an accident and in this sense, the word has been defined as befalling; a change; a happening; an incident; an occurrence or event. In its most commonly accepted meaning, or in its ordinary or popular sense, the word may be defined as meaning a fortuitous circumstance, event, or happening, an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an unusual, fortuitous, unexpected, unforeseen or unlooked for event, happening or occurrence; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; chance or contingency; fortune; mishap; some sudden and unexpected event taking place without expectation, upon the instant, rather than something which continues, progresses or develops; something happening by chance; something unforeseen, unexpected, unusual, extraordinary or phenomenal, taking place not according to the usual course of things or events, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence; the word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from any unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss, suffering or death; some untoward occurrence aside from the usual course of events. *Adams v. Metropolitan Life Ins. Co.*, 136 Pa.Super. 454, 7 A.2d 544, 547; without known or assignable cause, *Ramsay v. Sullivan Mining Co.*, 51 Idaho 366, 6 P.2d 856, 858.

In its proper use the term excludes negligence; *Dallas Ry. & Terminal Co. v. Allen*, Tex.Civ.App., 43 S.W.2d 165, 170; that is, an accident is an event which occurs without the fault, carelessness, or want of proper circumspection of the person affected, or which could not have been avoided by the use of that kind and degree of care necessary to the exigency and in the circumstances in which he was placed. *Brown v. Kendall*, 6 Cush. (Mass.) 292; essential requirement being that happening be one to which human fault does not contribute, *Hogan v. Kansas City Public Service Co.*, 322 Mo. 1103, 19 S.W.2d 707, 713, 65 A.L.R. 129; happening of an event without any human agency, *Terry v. Woodmen Accident Co.*, 225 Mo.App. 1223, 34 S.W.2d 163, 164. It has been said, moreover, that the word "accident" does not have a settled legal signification; *Klopfenstein v. Union Traction Co.*, 112 Kan. 770, 212 P. 1097, 1098; and that in its ordinary meaning it does not negative the idea of negligence on the part of the person whose physical act caused the occurrence. *Campbell v. Jones*, 73 Wash. 688, 132 P. 635, 636. Not merely inevitable casualty or the act of providence, or what is technically called vis major, or irresistible force. *Gardner v. State*, 1 N.Y. S.2d 994, 997, 166 Misc. 113.

See Act of God.

Automobiles

The word "accident" as used in automobile liability policy requiring notice of any "accident"

to be given to the insurer as a condition precedent to liability means an untoward and unforeseen occurrence in the operation of the automobile which results in injury to the person or property of another. *Ohio Casualty Ins. Co. v. Marr*, C.C. A.Okl., 98 F.2d 973, 975.

Connotes event which occurs without one's foresight or expectation, and does not exclude negligence. *American Indemnity Co. v. Jamison*, Tex.Civ.App., 62 S.W.2d 197; without intention or design, *Rothman v. Metropolitan Casualty Ins. Co.*, 134 Ohio St. 241, 16 N.E.2d 417, 421, 117 A. L. R. 1169.

The word "accident", requiring operator of vehicle to stop immediately in case of accident, contemplates any situation occurring on the highway wherein he so operates his automobile as to cause injury to the property or person of another using the same highway. *State v. Masters*, 100 W.Va. 46, 144 S.E. 718, 719.

Equity

Such an unforeseen event, misfortune, loss, act, or omission as is not the result of any negligence or misconduct in the party. *Engler v. Knoblaugh*, 131 Mo.App. 481, 110 S.W. 16.

Unforeseen and undesigned event, productive of disadvantage. *Wharton*. Surprise is used interchangeably. *State ex rel. Hartley v. Innes*, 137 Mo.App. 420, 118 S.W. 1168.

Occurrence, not the result of negligence or misconduct of the party seeking relief in relation to a contract, as was not anticipated by the parties when the same was entered into, and which gives an undue advantage to one of them over another in a court of law. *White & Hamilton Lumber Co. v. Foster*, 157 Ga. 493, 122 S.E. 29, 30.

Insurance Contracts

An accident within accident insurance policies is an event happening without any human agency, or, if happening through such agency, an event which, under circumstances, is unusual and not expected by the person to whom it happens. *Size-more v. National Casualty Co.*, 108 W.Va. 550, 151 S.E. 841.

Sudden and instant happening, referable to definite and fixed period of time. *Jackson v. Employers' Liability Assur. Corporation*, 248 N.Y.S. 207, 210, 139 Misc. 686.

May be inflicted intentionally and maliciously by one not the agent of the insured, if unintentional on the part of the insured. *Goodwin v. Continental Casualty Co.*, 175 Okl. 469, 53 P.2d 241, 243.

A more comprehensive term than "negligence," and in its common signification the word means an unexpected happening without intention or design. *Sontag v. Galer*, 279 Mass. 309, 181 N.E. 182, 183.

Accidental injury or death is an unintended and undesigned result arising from acts done, while injury or death by "accidental means" is a result arising from acts unintentionally done. *Adams v. Metropolitan Life Ins. Co.*, 136 Pa.Super. 454, 7 A.2d 544, 547.

Maritime Law and Marine Insurance

"Accidents of navigation" or "accidents of the sea" are such as are peculiar to the sea or to usual navigation or the action of the elements, which do not happen by the intervention of man, and are not to be avoided by the exercise of proper prudence, foresight, and skill. *The G. R. Booth*, 19 S.Ct. 9, 171 U.S. 450, 43 L.Ed. 234. See also *Perils of the Sea*.

Practice

That which ordinary prudence could not have guarded against. *Cupples v. Zupan*, 35 Idaho 458, 207 P. 328, 329. An event happening unexpectedly and without fault; an undesigned and unforeseen occurrence of an afflictive or unfortunate character; a casualty or mishap. *Allen v. State*, 13 Okl.Cr. 533, 165 P. 748; *Baird v. Kensal Light & Power Co.*, 246 N.W. 279, 282, 63 N.D. 88; drunkenness of juror during recess required discharge of jury. *Fetty v. State*, 119 Neb. 619, 230 N.W. 440, 442.

Workmen's Compensation

Term "accident," within Workmen's Compensation Act, has been defined as a befalling; an event that takes place without one's foresight or expectation; an undesigned, sudden, and unexpected event; chance; contingency; often, an undesigned and unforeseen occurrence of an afflictive or unfortunate character; casualty; mishap; as, to die by an accident. Its synonyms are chance, contingency, mishap, mischance, misfortune, disaster, calamity, catastrophe. Term "accidental" has been defined as happening by chance, or unexpectedly; taking place not according to the usual course of things; casual; fortuitous; as, an accidental visit. Its synonyms are undesigned, unintended, chance, unforeseen, unexpected, unpremeditated; accessory, collateral, secondary, subordinate; extrinsic, extraneous, additional, adscititious, dependent, conditional. *Indian Territory Illuminating Oil Co. v. Williams*, 157 Okl. 80, 10 P.2d 1093, 1094.

With or without negligence. *Great Atlantic & Pacific Tea Co. v. Sexton*, 242 Ky. 266, 46 S.W.2d 87, 88.

Not technical legal term. *Arquin v. Industrial Commission*, 349 Ill. 220, 181 N.E. 613, 614,

ACCIDENTAL. Happening by chance, or unexpectedly; taking place not according to usual course of things; casual; fortuitous. *Morris v. New York Life Ins. Co.*, C.C.A.Md., 49 F.2d 62, 63; *Murphy v. Travelers Ins. Co.*, Neb., 2 N.W.2d 576, 578, 579.

ACCIDENTAL KILLING. One resulting from an act which is lawful and lawfully done under a reasonable belief that no harm is possible;—distinguished from "involuntary manslaughter," which is the result of an unlawful act, or of a lawful act done in an unlawful way. *Rowe v. Commonwealth*, 206 Ky. 803, 268 S.W. 571, 573.

ACCIDENTAL VEIN. See Vein.

ACCIDERE. Lat. To fall; fall in; come to hand; happen. Judgment is sometimes given against an executor or administrator to be satisfied out of assets *quando acciderint*; *e.*, when they shall come to hand. See *Quando Acciderint*.

ACCION. In Spanish law. A right of action; also the method of judicial procedure for the

ACCIPERE

recovery of property or a debt. *Escriche*, Die. Leg. 49. *Wilder v. Lambert*, 91 Tex. 510, 44 S.W. 281, 284.

ACCIPERE QUID UT JUSTITIAM FACIAS, NON EST TAM ACCIPERE QUAM EXTORQUERE. To accept anything as a reward for doing justice is rather extorting than accepting. *Lofft*, 72.

ACCIPITARE. To pay relief to lords of manors. *Capitali domino accipitare*, *e.*, to pay a relief, homage, or obedience to the chief lord on becoming his vassal. *Fleta*, lib. 2, c. 50.

ACCOLA.

Civil Law

One who inhabits or occupies land near a place, as one who dwells by a river, or on the bank of a river. Dig. 43, 13, 3, 6.

Feudal Law

A husbandman; an agricultural tenant; a tenant at a manor. *Spelman*. A name given to a class of villeins in Italy. *Barr*, St. 302.

ACCOMENDA. In maritime law. A contract between the owner of goods and the master of a ship, by which the former intrusts the property to the latter to be sold by him on their joint account.

In such case, two contracts take place: First, the contract called *mandatum*, by which the owner of the property gives the master power to dispose of it; and the contract of partnership, in virtue of which the profits are to be divided between them. One party runs the risk of losing his capital; the other, his labor. If the sale produces no more than first cost, the owner takes all the proceeds. It is only the profits which are to be divided. *Emerig. Mar. Loans*, § 5.

ACCOMMODATED PARTY. One to whom the credit of the accommodation party is loaned, and is not necessarily the payee, since the inquiry always is as to whom did the maker of the paper loan his credit as a matter of fact. *Wilhoit v. Seavall*, 121 Kan. 239, 246 P. 1013, 1015, 48 A.L.R. 1273; not third person who may receive advantage, *State v. Banta*, 148 Okl. 239, 299 P. 479, 483. *First Nat. Bank v. Boxley*, 129 Okl. 159, 264 P. 184, 186, 64 A.L.R. 588.

ACCOMMODATION. An arrangement or engagement made as a favor to another, not upon a consideration received; something done to oblige, usually spoken of a loan of money or commercial paper; also a friendly agreement or composition of differences. *Abbott*; *Sales v. Martin*, 173 Ky. 616, 191 S.W. 480, 482. The word implies no consideration. *William D. Seymour & Co. v. Castell*, 160 La. 371, 107 So. 143, 145.

"While a party's intent may be to aid a maker of note by lending his credit, if he seeks to accomplish thereby legitimate objects of his own, and not simply to aid maker, the act is not for 'accommodation.'" *Bazer v. Grummett*, 16 La.App. 613, 135 So. 54, 56.

ACCOMMODATION ACCEPTANCE. The acceptance of accommodation paper.

ACCOMMODATION BILL OR NOTE. See Accommodation Paper.

ACCOMMODATION INDORSEMENT. See Indorsement.

ACCOMMODATION INDORSER. A party who places his name to a note without consideration for purpose of benefiting or accommodating some other party. *Stubbins Hotel Co. v. Bassbarth*, 43 N.D. 191, 174 N.W. 217, 218; *McDaniel v. Altoona State Bank*, 126 Kan. 719, 271 P. 394.

ACCOMMODATION LANDS. Land bought by a builder or speculator, who erects houses thereon, and then leases portions thereof upon an improved ground-rent.

ACCOMMODATION MAKER. One who puts his name to a note without any consideration with the intention of lending his credit to the accommodated party. In re *Chamberlain's Estate*, Cal. App., 109 P.2d 449, 454.

In this connection "without consideration" means "without consideration to the accommodating party directly." *Warren Nat. Bank, Warren, Pa., v. Suerken*, 45 Cal.App. 736, 188 P. 613, 614. One who receives no part of the proceeds, which are used exclusively for another maker's benefit, as in discharging his own personal obligation. *Backer v. Grummett*, 39 Cal.App. 101, 178 P. 312, 313. Must not receive any benefit or consideration directly or indirectly, and transaction must be one primarily for the benefit of the payee. *First Trust Co. of Lincoln v. Anderson*, 135 Neb. 397, 281 N.W. 796, 798; *Void of present or anticipated personal profit, gain, or advantage*. *Robertson v. City Nat. Bank of Bowie*, 120 Tex. 226, 36 S.W.2d 481, 483.

Incidental benefit to party insufficient. *Morrison v. Painter*, Mo.App., 170 S.W.2d 965, 970.

ACCOMMODATION NOTE. One to which accommodating party has put his name, without consideration, to accommodate some other party, who is to issue it and is expected to pay it. *Brown Carriage Co. v. Dowd*, 155 N.C. 307, 71 S.E. "721, 724; *Farmers Loan & Trust Co. v. Brown*, 182 Iowa, 1044, 165 N.W. 70, 73.

ACCOMMODATION PAPER. An accommodation bill or note is one to which the accommodating party, be he acceptor, drawer, or indorser, has put his name, without consideration, for the purpose of benefiting or accommodating some other party who desires to raise money on it, and is to provide for the bill when due. *Miller v. Larned*, 103 Ili. 562; *Crothers v. National Bank of Chesapeake City*, 158 Md. 587, 149 A. 270, 272; *Hickox v. Hickox*, Tex.Civ.App., 151 S.W.2d 913, 917.

Must be executed for the purpose of loaning credit, and incidental benefit to party is insufficient. *Morrison v. Painter*, Mo.App., 170 S.W.2d 965, 970.

ACCOMMODATION PARTY. One who has signed an instrument as maker, drawer, acceptor, or indorser without receiving value therefor, and for purpose of lending his name to some other person as means of securing credit. *Bachman v. Junkin*, 129 Neb. 165, 260 N.W. 813.

The term does not include one who, for the accommodation of the maker, guaranteed the payment of a note. *Noble v. Beeman-Spaulding-Woodward Co.*, 65 Or. 93, 131 P. 1006, 1010.

Indorser, Myrtilles, Inc., v. Johnson, 124 Conn. 177, 199 A. 115, 117; president and directors of bank, *Davis v. Holt*, Federal Deposit Ins. Corporation, Intervenor, Mo.App., 154

S.W.2d 595, 597; apparent comaker. *McLendon v. Lane*, 51 Ga.App. 409, 180 S.E. 746; to make note look better for payee bank, *Pirtle v. Johnson*, 145 Kan. 8, 64 P.2d 2, 4.

ACCOMMODATION ROAD. A road opened for benefit of certain individuals to go from and to their homes, for service of their lands, and for use of some estates exclusively. Civ.Code La. art. 706.

ACCOMMODATION TRAIN. One designed to accommodate local travel by stopping at most stations. *Gray v. Chicago, M. & St. P. R. Co.*, 189 Ill. 400, 59 N.E. 950, 951. In another aspect it is a train designed to carry passengers as well as freight. *White v. Ill. Cent. R. Co.*, 99 Miss. 651, 55 So. 593, 595.

ACCOMMODATION WORKS. Works which a railway company is required to make and maintain for the accommodation of the owners or occupiers of land adjoining the railway; *e. g.*, gates, bridges, culverts, fences, etc. 8 Vict. c. 20, § 68.

ACCOMMODATUM. The same as *commodatum*, *q.*

ACCOMPANY. To go along with. Webster's Diet. To go with or attend as a companion or associate, to occur in association with. *United States v. Lee*, C.C.A.Wis., 131. F.2d 464, 466.

The word has been defined judicially in cases involving varied facts; thus, a boy driver was held not accompanying the team when he was running to stop it. *Willis v. Semmes*, 111 Miss. 589, 71 So. 865, 866. A motion based on answer already deposited with the clerk of court is accompanied with copy of answer. *Los Angeles County v. Lewis*, 179 Cal. 398, 177 P. 154, 155. An automobile driver under sixteen is not accompanied by an adult person unless the latter exercises supervision over the driver. *Rush v. McDonnell*, 214 Ala. 47, 106 So. 175, 179. An unlicensed driver is not accompanied by a licensed driver unless the latter is near enough to render advice and assistance. *Hughes v. New Haven Taxicab Co.*, 87 Conn. 416, 87 A. 721.

ACCOMPLICE. In criminal law. A person who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of a crime. *State v. Keithley*, 83 Mont. 177, 271 P. 449, 451, *People v. Frahm*, 107 Cal.App. 253, 290 P. 678, 682, *State v. Coroles*, 74 Utah, 94, 277 P. 203, 204. One who is in some way concerned or associated in commission of crime; partaker of guilt; one who aids or assists, or is an accessory. *McLendon v. U. S.*, C.C.A.Mo., 19 F.2d 465, 466. Equally concerned in the commission of crime. *Fryman v. Commonwealth*, 289 Ky. 540, 159 S.W. 2d 426, 429.

An "accomplice" is one who is guilty of complicity in crime charged, either by being present and aiding or abetting in it, or having advised and encouraged it, though absent from place when it was committed, though mere presence, acquiescence, or silence, in the absence of a duty to act, is not enough, no matter how reprehensible it may be, to constitute one an accomplice. *State v. Arnold*, 84 Mont. 348, 275 P. 757, 760; presence unnecessary. *King v. State*, 135 Tex.Cr. 11, 378, 120 S.W.2d 590, 592. Knowledge and concealment not sufficient. *Wallis v. State*, Okl. Cr.App., 292 P. 1056, 1057.

Falsely denying having knowledge of crime not of itself sufficient. *Tipton v. State*, 126 Tex.Cr.R. 439, 72 S.W.2d 290, 293.

Thief and receiver of stolen property ordinarily not "accomplices". *People v. Lima*, 25 Cal.2d 573, 154 P.2d 698, 700, 701.

Giver of bribe is an "accomplice". *Turner v. State*, 58 Ga.Lpp. 775, 199 S.E. 837, 839, *Contra*, *State v. Emory*, 55 Idaho 649, 46 P.2d 67, 70.

As specifically applied to witnesses for the state and the necessity for corroborating them, "accomplice" includes all persons connected with the offense by an unlawful act or omission either before, at the time of, or after the commission of the offense, whether such witness was present or participated in the crime or not. *Chandler v. State*, 89 Tex.Cr.R. 309, 230 S.W. 1002, 1003.

Mere presence is insufficient. *Snowden v. State*, 27 Ala. App. 14, 165 So. 410.

Suborned witness is an "accomplice". *People v. Nicosia*, 4 N.Y.S.2d 35, 37, 166 Misc. 597. *Contra*, *State v. De Vaughn*, 2 Cal.App.2d 572, 39 P.2d 223, 224.

Receiver of bribe not "accomplice" of giver. *People v. Martin*, 114 Cal.App. 392, 300 P. 130, 132.

The term includes all the *participes criminis*, *Darden v. State*, 12 Ala.App. 165, 68 So. 550, 551, whether they are considered, in strict legal propriety, as principals in the first or second degree, or merely as accessories before or after the fact. In re *Rowe*, 23 C.C.A. 103, 77 F. 161; *Luck v. State*, 125 Tex.Cr.R. 152, 67 S.W.2d 302. But in Kentucky it has been held that "accomplice" does not include an accessory after the fact. See, however, *Commonwealth v. Barton*, 153 Ky. 465, 156 S.W. 113, 114. And the same rule has been announced elsewhere. *State v. Lyons*, 144 Minn. 348, 175 N.W. 689, 691. A feigned accomplice has been defined as one who co-operates with view of aiding justice to detect a crime. *State v. Verganadis*, 50 Nev. 1, 248 P. 900, 903; *Decoy* not "accomplice". U. S. v. *Becker*, C.C.A.N.Y., 62 F.2d 1007, 1009.

Liquor control board inspector, *Magee v. State*, 135 Tex. Cr.R. 381, 120 S.W.2d 248, 249.

ACCORD, n. A satisfaction agreed upon between the party injuring and the party injured which, when performed, is a bar to all actions upon this account. *Kromer v. Heim*, 75 N.Y. 576, 31 Am. Rep. 491; *Buob v. Feenaughty Machinery Co.*, 191 Wash. 477, 71 P.2d 559, 564. An agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled. *Whepley Oil Co. v. Associated Oil Co.*, 6 Cal.App.2d 94, 44 P.2d 670, 677.

Substitution of an agreement between the party injuring and the party injured, in view of the original obligation. *Barbarich v. Chicago, M., St. P. & P. Ry. Co.*, 92 Mont. 1, 9 P.2d 797, 799.

It may arise both where the demand itself is unliquidated or in dispute, and where the amount and nature of the demand is undisputed, and it is agreed to give and take less than the demand. *J. F. Morgan Paving Co. v. Carroll*, 211 Ala. 121, 99 So. 640, 641.

"Payment," as distinguished from accord, means full satisfaction. *State v. Tyler County State Bank*, Tex.Com. App., 277 S. W. 625, 627, 42 A.L.R. 1347.

See Accord and Satisfaction; Compromise and Settlement.

ACCORD, v. In practice. To agree or concur, as one judge with another. "I accord." *Eyre, C. J.*, 12 Mod. 7. "The rest accorded." 7 Mod. 361.

ACCORD AND SATISFACTION. An agreement between two persons, one of whom has a right of action against the other, that the latter should do or give, and the former accept, something in satisfaction of the right of action different from, and usually less than, what might be legally enforced.

When the agreement is executed, and satisfaction has been made, it is called "accord and satisfaction." *Rogers v. Spokane*, 9 Wash. 168, 37 P. 300.

It is discharge of contract, or of disputed claim arising either from contract or from tort, by substitution of agreement between parties in satisfaction of such contract or disputed claim and execution of the agreement. *Nelson v. Chicago Mill & Lumber Corporation*, C.C.A.Ark., 76 F.2d 17, 100 A.L.R. 87.

"Accord and satisfaction" results where there is assent to acceptance of payment in compromise of dispute, or in extinguishment of liability uncertain in amount, or where payment, coupled with condition whereby use of money will be wrongful if condition is ignored, is accepted. *Hudson v. Yonkers Fruit Co.*, 258 N.Y. 168, 179 N.E. 373. Regardless of whether claim is liquidated or unliquidated. *May Bros. v. Doggett*, 155 Miss. 849, 124 So. 476, 478.

Settlement of claims under insurance policies. *Lehane v. New York Life Ins. Co.*, 307 Mich. 125, 11 N.W.2d 830, 832.

Accepted amount tendered by insurer as cash surrender value of policies. *Greenberg v. Metropolitan Life Ins. Co.*, 379 Ill. 421, 41 N.E.2d 495, 497, 140 A.L.R. 775.

See, also, *Sierra & San Francisco Power Co. v. Universal Electric & Gas Co.*, 197 Cal. 376, 241 P. 76, 80.

More recently, a broader application of the doctrine has been made, where one promise or agreement is set up in satisfaction of another. *Continental Nat. Bank v. McGeoch*, 92 Wis. 286, 66 N.W. 606.

An "accord and satisfaction arises" where parties, by a subsequent agreement, have satisfied the former one, and the latter agreement has been executed. The execution of a new agreement may itself amount to a satisfaction, where it is so expressly agreed by the parties; and without such agreement, if the new promise is founded on a new consideration, in which case the taking of the new consideration amounts to the satisfaction of the former contract.

A dispute or controversy is not an essential element of some forms of accord and satisfaction, as an accord and satisfaction of a liquidated claim by the giving and acceptance of a smaller sum and some additional consideration, such as new security, payment of the debt before due, payment by a third person, or where property or personal services are accepted from an insolvent debtor in satisfaction. *Burgamy v. Holton*, 165 Ga. 384, 141 S.E. 42, 47.

"Composition settlement" contemplates agreement not only between debtor and creditors, but also among creditors, whereas "accord and satisfaction" is agreement between debtor and single creditor. *Russell v. Douget*, La.App., 171 So. 501, 502.

"Novation" is a species of "accord and satisfaction". *Munn v. Town of Drakesville*, 226 Iowa 1040, 285 N.W. 644, 648.

See Acceptance; Composition; Compromise; Novation.

ACCORDANCE. Agreement; harmony; concord; conformity. Webster, Dict.; *City and County of San Francisco v. Boyd*, 22 Cal.2d 685, 140 P.2d 666, 668.

An act done in accordance with a purpose once formed is not necessarily an act done in pursuance of such purpose, for the purpose may have been abandoned before the act was done. *State v. Robinson*, 20 W.Va. 713, 742. A charter providing that a city's power of taxation shall be exercised "in accordance with" the state Constitution and laws means in a manner not repugnant to or in conflict or inconsistent therewith. *City of Norfolk v. Norfolk Landmark Pub. Co.*, 95 Va. 564, 28 S.E. 959, 960. The words "in accordance with this act" as used in N. M. Laws 1899, c. 22, § 25, dealing with validity of tax titles, was not improperly interpreted as meaning "under this act." *Straus v. Foxworth*, 231 U.S. 162, 34 S.Ct. 42, 44, 58 L.Ed. 168.

ACCORDANT. Fr. and Eng. Agreeing; concurring. "Baron Parker, *accordant*," Hardr. 93;

"Holt, C. J., *accordant*," 6 Mod. 299; "Powys, J., *accord*," "Powell, J., *accord*," Id. 298.

ACCOUCHEMENT. The act of a woman in giving birth to a child. The fact of the accouchement, which may be proved by the direct testimony of one who was present, as a physician or midwife, is often important evidence in proving parentage.

ACCOUNT. A detailed statement of the mutual demands in the nature of debt and credit between parties, arising out of contracts or some fiduciary relation. *Portsmouth v. Donaldson*, 32 Pa. 202, 72 Am.Dec. 782.

A statement in writing, of debts and credits, or of receipts and payments; a list of items of debts and credits, with their respective dates. *Rensselaer Glass Factory v. Reid*, 5 Cow., N.Y., 593.

An "account" is defined as a statement of pecuniary transactions; a record or course of business dealings between parties; a list or statement of monetary transactions, such as payments, losses, sales, debits, credits, etc., in most cases showing a balance or result of comparison between items of an opposite nature; and is not held to include a liability for unliquidated damages resulting from the breach of an entire contract, expressing only an entire consideration. *Harnischfeger Sales Corporation v. Pickering Lumber Co.*, C.C.A.Mo., 97 F.2d 692, 695.

The word is sometimes used to denote the balance, or the right of action for the balance, appearing due upon a statement of dealings; as where one speaks of an assignment of accounts; but there is a broad distinction between an account and the mere balance of an account, resembling the distinction in logic between the premises of an argument and the conclusions drawn therefrom. A balance is but the conclusion or result of the debit and credit sides of an account. It implies mutual dealings, and the existence of debt and credit, without which there could be no balance. *McWilliams v. Allan*, 45 Mo. 574.

A generic term, difficult to define, having various meanings, depending somewhat upon the surrounding circumstances and the connection in which it is used. *Wolcott & Lincoln v. Butler*, 155 Kan. 105, 122 P.2d 720, 722, 141 A. L. R. 356.

Flexible in meaning, meaning valuation; worth; value. *Ex parte Means*, 200 Ala. 378, 76 So. 294; may refer either to past or future indebtedness, *Semel v. Braun*, 157 N.Y. S. 907, 908, 94 Misc. 238; an itemized account, *Brooks v. International Shoe Co.*, 132 Ark. 386, 200 S.W. 1027.

Closed

An account to which no further additions can be made on either side, but which remains still open for adjustment and set-off, which distinguishes it from an account stated. *Mandeville v. Wilson*, 5 Cranch 15, 3 L.Ed. 23.

Current

An open or running or unsettled account between two parties; the antithesis of an account stated. See *Watson v. Gillespie*, 200 N.Y.S. 191, 198, 205 App.Div. 613; *Caffarelli Bros. v. Lyons Bros. Co.*, Tex.Civ.App., 199 S.W. 685, 686; *Continental Casualty Co. v. Easley*, Tex.Civ.App., 290 S.W. 251, 253.

An "account current" is an active checking account, through which credit and debit items are constantly passing. In *re Fricke's Will*, 202 N.Y.S. 906, 912, 122 Misc. 427.

All items must constitute one demand. *Meyers v. Barrett & Zimmerman*, 196 Minn. 276, 264 N.W. 769, 773.

Duties

Duties payable by the English customs and inland revenue act, 1881, (44 Vict. c. 12, § 38,) on a *donatio mortis causa*, or on any gift, the donor of which dies within three months after making it, or on joint property voluntarily so created, and taken by survivorship, or on property taken under a voluntary settlement in which the settlor had a life-interest.

Mutual

Accounts comprising mutual credits between the parties; or an existing credit on one side which constitutes a ground for credit on the other, or where there is an understanding that mutual debts shall be a satisfaction or set-off *pro tanto* between the parties. *McConnell v. Arkansas Coffee Co.*, 172 Ark. 87, 287 S.W. 1007.

Open

An account which has not been finally settled or closed, but is still running or open to future adjustment or liquidation. Open account, in legal as well as in ordinary language, means an indebtedness subject to future adjustment, and which may be reduced or modified by proof. *James v. Lederer-Strauss & Co.*, 32 Wyo. 377, 233 P. 137, 139.

An open account can become an account stated only by the debtor's admission of liability, or failure to deny liability for a reasonable time after receipt of account. *Brooks v. White*, 187 N. C. 656, 122 S.E. 561.

Payable

"Accounts payable" are contract obligations owing by a person on open account. *West Virginia Pulp & Paper Co. v. Karnes*, 120 S.E. 321, 322, 137 Va. 714; *State Tax Commission v. Shattuck*, 38 P.2d 631, 39, 44 Ariz. 379.

Public

The accounts kept by officers of the nation, state, or kingdom, of the receipt and expenditure of the revenues of the government.

Rendered

An account made out by the creditor, and presented to the debtor for his examination and acceptance. When accepted, it becomes an account stated. *Freeland v. Cocke*, 17 Va. (3 Munf.) 352.

Settled

One in which the balance has been in fact paid, thereby differing from an account stated. See *Dempsey v. McGinnis*, 219 S.W. 148, 150, 203 Mo. App. 494.

Stated

The settlement of an account between the parties, with a balance struck in favor of one of them; an account rendered by the creditor, and by the debtor assented to as correct, either expressly, or by implication of law from the failure to object. *Preston v. La Belle View Corporation*, 212 N.W. 286, 288, 192 Wis. 168.

Monthly statements rendered by bank without depositor's objection, *Pierce & Garnet v. Live Stock Nat. Bank*, 213 Iowa 1388, 239 N.W. 580, 583.

Unperformed promise of one party to pay a stated sum. *Hammond Lumber Co. v. Richardson Building & Lumber Co.*, 209 Cal. 82, 285 P. 851, 853.

An agreement between 'parties who have had previous transactions of a monetary character that all the items of the account representing such transactions, and the balance struck, are correct, together with a promise, express or implied, for the payment of such balance. *Pelavin v. Fenton, Davis & Boyle*, 255 Mich. 680, 239 N.W. 268, 269.

No particular form is necessary; it may be oral, written, partly oral and partly written. *Murphy v. Smith*, 26 Ariz. 394, 226 P. 206, 208. An account stated is not ordinarily recognized in Virginia and West Virginia, except as between merchant and merchant, and principal and agent, with mutual accounts. *Price Hill Colliery Co. v. Pinkney*, 96 W.Va. 74, 122 S.E. 434, 436. This was also a common count in a declaration upon a contract under which the plaintiff might prove an absolute acknowledgment by the defendant of a liquidated demand of a fixed amount, which implies a promise to pay on request. It might be joined with any other count for a money demand. The acknowledgment or admission must have been made to the plaintiff or his agent. *Wharton*.

ACCOUNT, or ACCOUNT RENDER. In practice, "Account," sometimes called "account render," was a form of action at common law against a person who by reason of some fiduciary relation (as guardian, bailiff, receiver, etc.) was bound to render an account to another, but refused to do so. *Portsmouth v. Donaldson*, 32 Pa. 202, 72 Am.Dec. 782; *Peoples Finance & Thrift Co. of Visalia v. Bowman*, 137 P.2d 729, 731, 58 Cal.App.2d 729.

"Action of account" is common-law action to compel person to render account for property or money of another. *Dahlberg v. Fisse*, 328 Mo. 213, 40 S.W.2d 606, 609. Equitable in nature. *Gaines Bros. Co. v. Gaines*, 188 Okl. 300, 108 P.2d 177, 179.

In England, this action early fell into disuse; and as it is one of the most dilatory and expensive actions known to the law, and the parties are held to the ancient rules of pleading, and no discovery can be obtained, it never was adopted to any great extent in the United States. But in some states this action was employed, chiefly because there were no chancery courts in which a bill for an accounting would lie. The action is peculiar in the fact that two judgments are rendered, a preliminary judgment that the defendant do account with the plaintiff (*quod computet*) and a final judgment (*quod recuperet*) after the accounting for the balance found due. *Field v. Brown*, 146 Ind. 293, 45 N.E. 464, 16 Blatchf. 178.

ACCOUNT-BOOK. A book kept by a merchant, trader, mechanic, or other person, in which are entered from time to time the transactions of his trade or business. *Greenl. Ev.* §§ 115-118.

Volumes bound or sewed together in which accounts are regularly kept, and excluding collections of loose and indeterminate memoranda. *W. T. Raleigh Co. v. Rotenberry*, 174 Miss. 319, 164 So. 5, 6. May now include modern book of detachable leaves, but leaves must be of such appropriate uniformity of material as reasonably to constitute leaves of account book in which they are contained. *W. T. Raleigh Co. v. Rotenberry*, 174 Miss. 319, 164 So. 5, 6.

ACCOUNT COMPUTATIO. The primary idea of "account computatio", whether in proceedings of courts of law or equity, is some matter of debt and credit, or demand in nature thereof. *Coleman v. Kansas City*, 351 Mo. 254, 173 S.W.2d 572, 576.

ACCOUNT FOR. To pay over the money to the person entitled thereto. *U. S. v. Rehwald, D.C. Cal.*, 44 F.2d 663.

ACCOUNT IN BANK

ACCOUNT IN BANK, See Bank Account.

ACCOUNTABLE. Subject to pay; responsible; liable. Where one indorsed a note "A. C. accountable," it was held that, under this form of indorsement, he had waived demand and notice. *Furber v. Caverly*, 42 N.H. 74.

ACCOUNTABLE RECEIPT. An instrument acknowledging the receipt of money or personal property, coupled with an obligation to account for or pay or deliver the whole or some part of it to some person. *State v. Riebe*, 7 N.W. 262, 27 Minn. 315.

ACCOUNTANT. One who keeps accounts; a person skilled in keeping books or accounts; an expert in accounts or bookkeeping. See *U. S. ex rel. Liebmann v. Flynn*, D.C.N.Y., 16 F.2d 1006, 1007; *Frazer v. Shelton*, 150 N.E. 696, 701, 320 Ill. 253.

One competent to design and control systems of accounts. *Roberts v. Hosking*, 95 Mont. 562, 28 P.2d 199, 201.

A person who renders an account: an executor, guardian, etc.

ACCOUNTANT GENERAL, or ACCOMPTANT GENERAL. An officer of the court of chancery, appointed by act of parliament to receive all money lodged in court, and to place the same in the Bank of England for security. 12 Geo. I. c. 32; 1 Geo. IV, c. 35; 15 & 16 Vict. c. 87, §§ 18-22, 39. See *Daniell, Ch.Pr.* (4th Ed.) 1607 et seq. The office, however, has been abolished by 35 & 36 Vict. c. 44, and the duties transferred to her majesty's paymaster general.

ACCOUNTANTS, CHARTERED. Persons skilled in the keeping and examination of accounts, who are employed for the purpose of examining and certifying to the correctness of accounts of corporations and others. British Commonwealth equivalent of Certified Public Accountant.

ACCOUNTING. An act or system of making up or settling accounts; a statement of account, or a debit and credit in financial transactions. *Kansas City v. Burns*, 137 Kan. 905, 22 P.2d 444.

Rendition of an account, either voluntarily or by order of a court. *Buxton v. Edwards*, 134 Mass. 567, 578. In the latter case, it imports a rendition of a judgment for the balance ascertained to be due. *Apple v. Smith*, 106 Kan. 717, 190 P. 8, 10. The term may include payment of the amount due. *Pyatt v. Pyatt*, 46 N.J.Eq. 285, 18 A. 1048.

ACCOUNTS RECEIVABLE. Contract obligations owing to a person on open account. *West Virginia Pulp & Paper Co. v. Karnes*, 137 Va. 714, 120 S.E. 321, 322; *charge accounts*, *Haverfield Co. v. Evatt*, 143 Ohio St. 58, 54 N.E.2d 149, 152, installment balances, *Duke Power Co. v. Hillsborough Tp.*, *Somerset County*, 20 N.J.Misc. 240, 26 A.2d 713, 725.

ACCOUPLE. To unite; to marry. *Ne unques accouple*, never married.

ACCREDIT. In international law. (1) To acknowledge; to receive as an envoy in his public

character, and give him credit and rank accordingly. *Burke*. (2) To send with credentials as an envoy. *Webst.Dict.* This latter use is now the accepted one.

ACCREDITED LAW SCHOOL. "An accredited law school" and a "law school approved by this court," are synonymous. *Ex parte State Board of Law Examiners of Florida*, 141 Fla. 706, 193 So. 753.

ACCREDITED REPRESENTATIVE. As respects service of process, representative having general authority to act. *Rorick v. Stilwell*, 101 Fla. 4, 133 So. 609, 615.

ACCREDULITARE. L. Lat. In old records. To purge an offense by oath. *Blount*; *Whishaw*.

ACCRESCE. In the civil and old English law. To grow to; to increase; to pass to, and become united with, as soil to land *per alluvionem*. Dig. 41, 1, 30, pr. The term is used in speaking of islands which are formed in rivers by deposit; *Calvinus, Lex.*; 3 Kent 428. It is used in a related sense in the common-law phrase *jus accrescendi*, the right of survivorship; 1 Washb.R.P. 426.

Pleading

To commence; to arise; to accrue. *Quod actio non accrevit infra sex anos*, that the action did not accrue within six years; 3 Chit.P1. 914.

ACCRETION. The act of growing to a thing; usually applied to the gradual and imperceptible accumulation of land by natural causes, as out of the sea or a river.

Civil Law

The right of heirs or legatees to unite or aggregate with their shares or portions of the estate the portion of any co-heir or legatee who refuses to accept it, fails to comply with a condition, becomes incapacitated to inherit, or dies before the testator. *Anderson v. Lucas*, 204 S.W. 989, 993, 140 Tenn. 336. Under a deed of trust: *Miller v. Douglass*, 192 Wis. 486, 213 N.W. 320, 322.

Mortgages

As used in a mortgage on cattle, with all increase thereof and accretions thereto, the word "accretions" is not confined to the results of natural growth, but includes the additions of parts from without, i. e., of cattle subsequently added to the herd. *Stockyards Loan Co. v. Nichols*, C.C.A.Okl., 243 F. 511, 513, 1 A.L.R. 547.

Realty

Addition of portions of soil, by gradual deposition through the operation of natural causes, to that already in possession of owner. *St. Louis, etc., R. Co. v. Ramsey*, 53 Ark. 314, 13 S.W. 931, 8 L.R.A. 559, 22 Am.St.Rep. 195; 51 L.R.A. 425, n.; *Willett v. Miller*, 176 Okl. 278, 55 P.2d 90, 92. Along banks of navigable or unnavigable stream. *Smith v. Whitney*, 105 Mont. 523, 74 P.2d 450, 453, change in river boundary, *Hancock v. Moore*, Tex.Civ.

App., 137 S.W.2d 45, 51, 52. Tideland artificially filled was not an "accretion". *City of Newport Beach v. Fager*, 39 Cal.App.2d 23, 102 P.2d 438, 442.

Accretion of land is of two kinds : By *alluvion*, 1. *e.*, by the washing up of sand or soil, so as to form firm ground; or by *dereliction*, as when the sea shrinks below the usual water-mark. The term "alluvion" is applied to deposit itself, while "accretion" denotes the act. However, the terms are frequently used synonymously. *Katz v. Patterson*, 135 Or. 449, 296 P. 54, 55. In determining whether change in course of river is by "accretion" or "avulsion," test is not whether witnesses might see from time to time that progress has been made, but whether witnesses could perceive change while it was going on. *Goins v. Merryman*, 183 Okl. 155, 80 P.2d 268, 270. Land uncovered by gradual subsidence of water is not an "accretion" but a "reliction." *Independent Stock Farm v. Stevens*, 128 Neb. 619, 259 N.W. 647, 648.

Trust Property

Receipts other than those ordinarily considered as income; and ordinary cash dividends, the sole income, were not accretions. *Doty v. C. I. R.*, C.C. A.1, 148 F.2d 503, 505.

See Accrue; Avulsion; Alluvion; Reliction.

ACCROACH. To encroach; to exercise power without due authority. In French law, to delay. *Whishaw*.

To attempt to exercise royal power. 4 Bl.Comm. 76. A knight who forcibly assaulted and detained one of the king's subjects till he paid him a sum of money was held to have committed treason, on the ground of accroachment. 1 Hale, P.C. 80.

ACCROCHER. Fr. To delay; retard; put off. *Accrocher un procès*, to stay the proceedings in a suit.

ACCRUAL, CLAUSE OF. See Accrue, Clause of.

ACCRUAL BASIS. A method of keeping accounts which shows expenses incurred and income earned for a given period, although such expenses and income may not have been actually paid or received in cash. *Orlando Orange Groves Co. v. Hale*, 119 Fla. 159, 161 So. 284.

Right to receive and not the actual receipt determines inclusion of amount in gross income. When right to receive an amount becomes fixed, right accrues. *H. Liebes & Co. v. Commissioner of Internal Revenue*, C.C.A.9, 90 F.2d 932, 937. Obligations payable to or by taxpayer are treated as if discharged when incurred. *H. Liebes & Co. v. Commissioner of Internal Revenue*, C.C.A.9, 90 F.2d 932, 936. Entries are made of credits and debits when liability arises, whether received or disbursed. *Insurance Finance Corporation v. Commissioner of Internal Revenue*, C.C.A.3, 84 F.2d 382. Books showing sales by accounts receivable and purchases by accounts payable, and set up inventories at beginning and end of year. *Consolidated Tea Co. v. Bowers*, D.C.N.Y., 19 F.2d 382.

ACCRUE. Derived from the Latin, "ad" and "cresco," to grow to. In past tense, in sense of due and payable; vested. It means to increase; to augment; to come to by way of increase; to be added as an increase, profit, or damage. *Hartsfield Co. v. Shoaf*, 184 Ga. 378, 191 S.E. 693, 695. Acquired; fell due; made or executed; matured; occurred; received; vested; was created; was incurred. *H. Liebes & Co. v. Commissioner of*

Internal Revenue, C.C.A.9, 90 F.2d 932, 936. To attach itself to, as a subordinate or accessory claim or demand arises out of, and is joined to, its principal. *Lifson v. Commissioner of Internal Revenue*, C.C.A.8, 98 F.2d 508.

Produce of money lent. "Interest accrues to principal." *Weiss v. Commissioners of Land Office*, 182 Okl. 39, 75 P.2d 1142, 1144. Costs accrue to a judgment.

The term is also used of independent or original demands, and then means to arise, to happen, to come into force or existence; to vest; as in the phrase, "The right of action did not *accrue* within six years." *Amy v. Dubuque*, 98 U.S. 470, 476, 25 L. Ed. 228. To 'become a present right or demand; to come to pass. *H. Liebes & Co. v. Commissioner of Internal Revenue*, C.C.A.9, 90 F.2d 932, 936.

It is distinguished from sustain; *Adams v. Brown*, 4 Litt. (Ky.) 7; and from owing; *Gross v. Partenheimer*, 159 Pa. 556, 28 A. 370; *Fay v. Holloran*, 35 Barb. (N. Y.) 295; it is also distinguished from arise; *State v. Circuit Court of Waushara County*, 165 Wis. 387, 162 N.W. 436, 437.

Cause of Action

A cause of action "accrues" when a suit may be maintained thereon. *Dillon v. Board of Pension Com'rs of City of Los Angeles*, 18 Cal.2d 427, 116 P.2d 37, 39, 136 A.L.R. 800. Whenever one person may sue another. *Hensley v. Conway*, Tex.Civ.App., 29 S.W.2d 416, 418.

Cause of action "accrues," on date that damage is sustained and not date when causes are set in motion which ultimately produce injury. *City of Philadelphia v. Lieberman*, C.C.A.Pa., 112 F.2d 424, 428. Date of injury. *Fredricks v. Town of Dover*, 125 N.J.L. 288, 15 A.2d 784, 787. When actual damage has resulted. *National Lead Co. v. City of New York*, C.C.A.N.Y., 43 F.2d 914, 916. As soon as contract is breached. *Wichita Nat. Bank v. United States Fidelity & Guaranty Co.*, Tex.Civ.App., 147 S.W.2d 295, 297.

Contracts

The word accrued, as Used in reference to contracts in which process may be sent out of the country to be served, has reference to the place where the contract was made and executed. *Phelps v. McGee*, 18 Ill. 155, 158.

Taxation

Income "accrues" to taxpayer when there arises to him a fixed or unconditional right to receive it. *Franklin County Distilling Co. v. Commissioner of Internal Revenue*, C.C.A.6, 125 F.2d 800, 804, 805. But not unless there is a reasonable expectancy that the right will be converted into money or its equivalent. *Swastika Oil & Gas Co. v. Commissioner of Internal Revenue*, C.C.A.6, 123 F.2d 382, 384.

Where taxpayer makes returns on accrual basis, item "accrues" when all events occur which fix amount payable and determine liability of taxpayer. *Hudson Motor Car Co. v. U. S.*, Ct.Cl., 3 F. Supp. 834, 847.

Tax "accrues" for deduction when all events have occurred which fix amount of tax and determine liability of taxpayer for it, although there has not yet been assessment or maturity. *Elmhirst v. Duggan*, D.C.N.Y., 14 F.Supp. 782, 784.

Estate tax "accrued," immediately on death, though not payable until one year thereafter. *Ewbank v. U. S.*, C.C.A.Ind., 50 F.2d 409.

ACCRUED

ACCRUED COMPENSATION. Awarded compensation, due and payable. *Wood Coal Co. v. State Compensation Com'r*, 119 W.Va. 581, 195 S.E. 528, 529.

ACCRUED DEPRECIATION. The lessened service value of the utility plant due to its consumption in furnishing service. *Wisconsin Telephone Co. v. Public Service Commission*, 232 Wis. 274, 287 N.W. 122, 152. Portion of useful service life which has expired. *State ex rel. City of St. Louis v. Public Service Commission*, 341 Mo. 920, 110 S.W.2d 749, 768.

ACCRUED RIGHT. As used in Constitution, a matured cause of action, or legal authority to demand redress. *Morley v. Hurst*, 174 Okl. 2, 49 P.2d 546, 548.

ACCRUER (or ACCRUAL), CLAUSE OF. An express clause, frequently occurring in the case of gifts by deed or will to persons as tenants in common, providing that upon the death of one or more of the beneficiaries his or their shares shall go to the survivor or survivors. *Brown*. The share of the decedent is then said to *accrue* to the others.

ACCRUING. Inchoate; in process of maturing. That which will or may, at a future time, ripen into a vested right, an available demand, or an existing cause of action. *Hartsfield Co. v. Shoal*, 184 Ga. 378, 191 S.E. 693, 695. Arising by way of increase, growth or profit. It connotes continuing growth, increase or augmentation. *Globe Indemnity Co. v. Bruce*, C.C.A.Ok., 81 F.2d 143, 153.

ACCRUING COSTS. Costs and expenses incurred after judgment.

ACCRUING INTEREST. Running or accumulating interest, as distinguished from accrued or matured interest; interest daily accumulating on the principal debt but not yet due and payable. *Gross v. Partenheimer*, 159 Pa. 556, 28 A. 370.

ACCRUING RIGHT. One that is increasing, enlarging, or augmenting. *Richards v. Land Co.*, 54 F. 209, 4 C.C.A. 290.

ACCT. An abbreviation for "account," of such universal and immemorial use that the courts will take judicial notice of its meaning. *Heaton v. Ainley*, 108 Iowa, 112, 78 N.W. 798.

ACCUMULATED PROFITS. Earned surplus or undivided profits. *Flint v. Commissioner of Corporations and Taxation*, 43 N.E.2d 789, 791, 792, 312 Mass. 204.

Include profits earned and invested. *Commissioner of Corporations and Taxation v. Filoon*, 310 Mass. 374, 38 N.E.2d 693, 698, 700.

And they take into account losses, as well as gains. *Commissioner of Corporations and Taxation v. Church*, Mass., 61 N.E.2d 143, 145.

ACCUMULATED SURPLUS. In statutes relative to the taxation of corporations, this term refers to the fund which the company has in excess of its capital and liabilities. *Trenton Iron Co. v.*

Yard, 42 N.J.Law, 357; *People's F. Ins. Co. v. Parker*, 34 N.J.Law, 479, 35 N.J.Law, 575. See *Earnings*.

ACCUMULATIONS. Increase by continuous or repeated additions, or, if taken literally, means either profit accruing on sale of principal assets, or increase derived from their investment, or both. *In re Wells' Will*, 300 N.Y.S. 1075, 1078, 165 Misc. 385.

Adding of interest or income of a fund to principal pursuant to provisions of a will or deed, preventing its being expended. *In re Watson's Will*, 258 N.Y.S. 755, 144 Misc. 213.

When an executor or other trustee masses the rents, dividends, and other income which he receives, treats it as a capital, invests it, makes a new capital of the income derived therefrom, invests that, and so on, he is said to accumulate the fund, and the capital and accrued income thus procured constitute *accumulations*. *Hussey v. Sargent*, 116 Ky. 53, 75 S.W. 211, *In re Rogers' Estate*, 179 Pa. 609, 36 A. 340. See *Perpetuity*.

ACCUMULATIVE. That which accumulates, or is heaped up; additional. Said of several things heaped together, or of one thing added to another.

ACCUMULATIVE JUDGMENT. Where a person has already been convicted and sentenced, and a second or additional judgment is passed against him, the execution of which is postponed until the completion of the first sentence, such second judgment is said to be *accumulative*.

As to accumulative "Legacy," see that title.

ACCUMULATIVE LEGACY. A second, double or additional legacy; a legacy given in addition to another given by the same instrument, or by another instrument.

ACCUMULATIVE SENTENCE. A sentence, additional to others, imposed on a defendant who has been convicted upon an indictment containing several counts, each of such counts charging a distinct offense, or who is under conviction at the same time for several distinct offenses; one of such sentences to begin at the expiration of another. *Carter v. McLaughry*, 183 U.S. 365, 22 S.Ct. 181, 46 L.Ed. 236; *State v. Hamby*, 126 N.C. 1066, 35 S.E. 614; *Braudon v. Mackey*, 122 Kan. 207, 251 P. 176, 177.

ACCUSARE NEMO SE DEBET, NISI CORAM DEO. No one is bound to accuse himself, except before God. See *Hardres*, 139.

ACCUSATION. A formal charge against a person, to the effect that he is guilty of a punishable offense, laid before a court or magistrate having jurisdiction to inquire into the alleged crime. *Coplon v. State*, 15 Ala.App. 331, 73 So. 225, 228. See *Accuse*.

"Accusation" is equivalent of "information" at common law which is mere allegation of prosecuting officer by whom it is preferred. *Sutton v. State*, 54 Ga.App. 349, 188 S.E. 60, 62.

ACCUSATOR POST RATIONABILE TEMPUS NON EST AUDIENDUS, NISI SE BENE DE OMISSIONE EXCUSAVÉRIT. Moore, 817. An accuser ought not to be heard after the expiration.

of a reasonable time, unless he can account satisfactorily for the delay.

ACCUSATORY PART. The "accusatory part" of an indictment is that part where the offense is named. *Deaton v. Commonwealth*, 220 Ky. 343, 295 S.W. 167, 168.

ACCUSE. To bring a formal charge against a person, to the effect that he is guilty of a crime or punishable offense, before a court or magistrate having jurisdiction to inquire into the alleged crime. *People v. Frey*, 112 Mich. 251, 70 N.W. 548.

In its popular sense "accusation" applies to all derogatory charges or imputations, whether or not they relate to a punishable legal offense, and however made, whether orally, by newspaper, or otherwise. *People v. Braman*, 30 Mich. 460. But in legal phraseology, it is limited to such accusations as have taken shape in a prosecution. *United States v. Patterson*, 150 U.S. 65, 14 S.Ct. 20, 37 L.Ed. 999.

ACCUSED. "Accused" is the generic name for the defendant in a criminal case, and is more appropriate than either "prisoner" or "defendant." 1 Car. & K. 131.

The person against whom an accusation is made; one who is charged with a crime or misdemeanor. See *People v. Braman*, 30 Mich. 468. The term cannot be said to apply to a defendant in a civil action; *Castle v. Houston*, 19 Kan. 417, 37 Am.Rep. 127; and see *Mosby v. Ins. Co.*, 31 Gratt. (Va.) 629.

ACCUSER. The person by whom an accusation is made.

ACCUSTOMED. Habitual; often used; synonymous with usual; *Farwell v. Smith*, 16 N.J.Law, 133.

ACEPHALI. The levelers in the reign of Hen. who acknowledged no head or superior. *Leges H. 1*; *Cowell*. Also certain ancient heretics, who appeared about the beginning of the sixth century, and asserted that there was but one substance in Christ, and one nature. *Wharton*; *Gibbon*, *Rom. Emp.* ch. 47.

ACEQUIA. A ditch, channel, or canal, through which water, diverted from its natural course, is conducted, for use in irrigation or other purposes; public ditches. *Comp.L.N.Mex. tit. 1, c. 1, § 6 (Comp.St.1929, §1 151-401)*.

ACHAT, also **ACHATE**, **ACHATA**, **ACHET**. In French law. A purchase or bargain. *Cowell*.

It is used in some of our law-books, as well as *achetor*, a purchaser, which in some ancient statutes means purveyor. *Stat. 36 Edw. III*; *Merlin*, *Rdpert*.

ACHERSET. In old English law. A measure of grain, conjectured to have been the same with our quarter, or eight bushels. *Cowell*.

ACHIEVE SUBJECT MATTER. The English equivalent for patentability. *Mesta Mach. Co. v. Federal Machine & Welder Co.*, C.C.A.Pa., 110 F. 2d 479, 480.

ACKNOWLEDGE. To own, avow, or admit; to confess; to recognize one's acts, and assume the responsibility therefor.

ACKNOWLEDGMENT. To "acknowledge" is to admit, affirm, declare, testify, avow, confess, or own as genuine. *Favello v. Bank of America Nat. Trust & Savings Ass'n*, 24 Cal.App.2d 342, 74 P.2d 1057, 1058.

Child

An avowal or admission that the child is one's own; recognition of a parental relation, either by a written agreement, verbal declarations or statements, by the life, acts, and conduct of the parties, or any other satisfactory evidence that the relation was recognized and admitted. *In re Spencer*, Sur., 4 N.Y.S. 395; *In re Hunt's Estate*, 33 N.Y.S. 256, 86 Hun, 232.

Parents formally acknowledged child during ceremony in which both marriage and baptism took place. *Cormier v. Cormier*, 185 La. 968, 171 So. 93, 97, 98. Letter to registrar of college where child was student. *In re Horne's Estate*, 149 Fla. 710, 7 So.2d 13, 16.

The "public acknowledgment" of paternity, under Civ. Code Cal. § 230, is the opposite of private acknowledgment, and means the same kind of acknowledgment a father would make of his legitimate child. *In re Baird's Estate*, 193 Cal. 225, 223 P. 974, 994.

Generally

Implying obligation or incurring responsibility. *Weyerhaeuser Timber Co. v. Marshall*, C.C.A. Wash., 102 F.2d 78, 81.

Act of a person who avows or admits the truth of certain facts which, if established, will entail a civil liability upon him. Thus, the debtor's *acknowledgment* of the creditor's demand or right of action will toll the statute of limitations. *Ft. Scott v. Hickman*, 112 U.S. 150, 163, 5 Sup.Ct. 56, 28 L.Ed. 636; *Letters, Leffek v. Luedeman*, 95 Mont. 457, 27 P.2d 511, 91 A.L.R. 286; *Lincoln-Alliance Bank & Trust Co. v. Fisher*, 286 N.Y.S. 722, 247 App.Div. 465; *payments, Erskine v. Upham*, 56 Cal.App.2d 235, 132 P.2d 219, 224, 225. *McMahan v. Dorchester Fertilizer Co.*, 184 Md. 155, 40 A.2d 313, 314.

Testator's statement to attesting witness. *Anthony v. College of the Ozarks*, 207 Ark. 212, 180 S.W.2d 321, 324.

Instruments

Formal declaration before authorized official, by person who executed instrument, that it is his free act and deed. *Jemison v. Howell*, 161 So. 806, 230 Ala. 423, 99 A.L.R. 1511. The certificate of the officer on such instrument that it has been so acknowledged. *Williford v. Davis*, 106 Okl. 208, 232 P. 828, 831.

Money

A sum paid in some parts of England by copyhold tenants on the death of their lords, as a recognition of their new lords, in like manner as money is usually paid on the attornment of tenants. Called a *fine* by Blackstone; 2 Bla.Com. 98.

Separate Acknowledgment

An acknowledgment of a deed or other instrument, made by a married woman, on her examination by the officer separate and apart from her husband. *Hutchinson v. Stone*, 79 Fla. 157, 84 So. 151, 154.

ACOLYTE. An inferior church servant, who, next under the sub-deacon, follows *and* waits upon the priests and deacons, and performs the offices

ACQUAINTED

of lighting the candles, carrying the bread and wine, and paying other servile attendance. *Spelman*; *Cowell*,

ACQUAINTED. Having personal knowledge of. *Kelly v. Calhoun*, 95 U.S. 710, 24 L.Ed. 544. Acquaintance expresses less than familiarity; In re *Carpenter's Estate*, 94 Cal. 406, 29 P. 1101. It is "familiar knowledge"; *Wyllis v. Haun*, 47 Iowa, 614; *Chauvin v. Wagner*, 18 Mo. 531.

"Acquaintance" expresses less than familiarity; familiarity less than intimacy. Acquaintance springs from occasional intercourse, familiarity from daily intercourse, intimacy from unreserved intercourse; acquaintance, having some knowledge, familiarity, from long habit, intimacy, by close connection. *Atkins Corporation v. Tourny*, 6 Cal.2d 206, 57 P.2d 480, 483. To be "personally acquainted with," and to "know personally," are equivalent terms; *Kelly v. Calhoun*, 95 U.S. 710, 24 L.Ed. 544. When used with reference to a paper to which a certificate or affidavit is attached, it indicates a substantial knowledge of the subject-matter thereof. *Bohan v. Casey*, 5 Mo. App. 101.

ACQUEREUR. In French and Canadian law. One who acquires title, particularly to immovable property, by purchase.

ACQUEST. An estate acquired newly, or by purchase. 1 *Reeve*, Eng.Law, 56.

ACQUITS. In the civil law. Property which has been acquired by purchase, gift, or otherwise than by succession. Immovable property which has been acquired otherwise than by succession. *Merl. Repert.*

Profits or gains of property, as between husband and wife. Civil Code La. art. 2402. The profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the joint industry of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even though the purchase be only in the name of one of the two, and not of both. See *Community*; *Conquêts*.

ACQUIESCE. To give an implied consent to a transaction, to the accrual of a right, or to any act, by one's mere silence, or without express assent or acknowledgment., *Scott v. Jackson*, 89 Cal. 258, 26 P. 898.

ACQUIESCENCE. Conduct recognizing the existence of a transaction, and intended, in some extent at least, to carry the transaction, or permit it to be carried, into effect; it is some act, not deliberately intended to ratify a former transaction known to be voidable, but recognizing the transaction as existing, and intended, in some extent at least, to carry it into effect, and to obtain or claim the benefits resulting from it, and thus differs from "confirmation," which implies a deliberate act, intended to renew and ratify a transaction known to be voidable. *De Boe v. Prentice Packing & Storage Co.*, 172 Wash. 514, 20 P.2d 1107, 1110.

Passive compliance or satisfaction; distinguished from avowed consent on the one hand, and, on the other, from opposition or open discontent. *Paul v. Western Distributing Co.*, 142 Kan. 816, 52 P.2d 379, 387. Acquiescence from which assent: may be reasonably inferred. *Frank v. Wilson & Co.*, 24 Del.Ch. 237, 9 A.2d 82, 86. Equivalent to assent inferred from silence with knowledge or from encourage-

ment and presupposes knowledge and assent. *Andrew v. Rivers*, 207 Iowa 343, 223 N.W. 102, 105. Imports tacit consent, concurrence, acceptance or assent. *Natural Soda Products Co. v. City of Los Angeles*, Cal.App., 132 P.2d 553, 563. A silent appearance of consent. *Worcester, Diet. Darnell v. Bidwell*, 115 Me. 227, 98 A. 743, 745, 5 A.L.R. 1320. Failure to make any objections. *Scott v. Jackson*, 89 Cal. 258, 26 P. 898. Submission to an act of which one had knowledge. See *Pence v. Langdon*, 99 U.S. 578, 25 L.Ed. 420. It imports full knowledge. *Rabe v. Dunlap*, 51 N.J.Eq. 40, 25 A. 959. Knowledge without objection. *Indiana Harbor Belt R. Co. v. Jones*, 220 Ind. 139, 41 N.E.2d 361, 363.

It is to be distinguished from avowed consent, on the one hand, and from open discontent or opposition, on the other.

It arises where a person who knows that he is entitled to impeach a transaction or enforce a right neglects to do so for such a length of time that, under the circumstances of the case, the other party may fairly infer that he has waived or abandoned his right. *Norfolk & W. R. Co. v. Perdue*, 40 W.Va. 442, 21 S.E. 755.

Acquiescence and *laches* are cognate but not equivalent terms. The former is a submission to, or resting satisfied with, an existing state of things, while *laches* implies a neglect to do that which the party ought to do for his own benefit or protection. Hence *laches* may be evidence of acquiescence. *Laches* imports a merely passive assent, while acquiescence implies active assent. In re *Wilbur's Estate*, 334 Pa. 45, 5 A.2d 325, 331. "Acquiescence" relates to inaction during performance of an act while "inches" relates to delay after act is done. *Bay Newfoundland Co. v. Wilson & Co.*, 24 Del.Ch. 30, 4 A.2d 668, 671, 673. "Acquiescence" is synonymous with "abandonment"; *Sclaw v. City of St. Paul*, 132 Minn. 238, 156 N.W. 283, 284, and is distinguished from "admission"; *Saunders v. Busch-Everett Co.*, 138 La. 1049, 71 So. 153, 154; and from "ratification" and "estoppel in pais"; *Marion Sa^v. Bank v. Leahy*, 200 Iowa 220, 204 N.W. 456, 458; but see *Murray v. Smith*, 152 N.Y.S. 102, 108, 166 App.Div. 528; differs from "confirmation", in that confirmation implies a deliberate act, intended to renew and ratify a transaction known to be voidable, *Bauer v. Dotterer*, 202 Ark. 1055, 155 S.W.2d 54, 57. A form of "equitable estoppel", *Schmitt v. Wright*, 317 Ill.App. 384, 46 N.E.2d 184, 192.

See Admission; Confession; Ratification,

ACQUIESCENCE, ESTOPPEL BY. Acquiescence is a species of estoppel. *Bankers' Trust Co. v. Rood*, 211 Iowa, 289, 233 N.W. 794, 802, 73 A.L.R. 1421.

An estoppel arises where party aware of his rights sees other party acting upon mistaken notion of his rights. *Minear v. Keith Furnace Co.*, Iowa, 239 N.W. 584, 587. Injury accruing from one's acquiescence in another's action to his prejudice creates "estoppel". *Lebold v. Inland Steel Co.*, C.C.A.111., 125 F.2d 369, 375; Passive conduct on the part of one who has knowledge of the facts may be basis of estoppel. *Winslow v. Burns*, 47 N.M. 29, 132 P.2d 1048, 1050.

It must appear that party to be estopped was bound in equity and good conscience to speak and that party claiming estoppel relied upon acquiescence and was misled thereby to change his position to his prejudice. *Sherlock v. Greaves*, 106 Mont. 206, 76 P.2d 87, 91.

Acquiescence in a judgment in order to constitute an estoppel must be unqualified. *Messer v. Henlein*, 72 N.D. 63, 4 N.W.2d 587, 589. One who stands by while his property is sold is "estopped" from setting up title against purchaser. *Meadows v. Hampton Live Stock Commission Co.*, 55 Cal.App.2d 634, 131 P.2d 591, 592, 593.

The doctrine is applicable only where there is some element of turpitude or neglect. *City of Lafayette v. Keen*, 113 Ind. App. 552, 48 N.E.2d 63, 70.

ACQUIETANDIS PLEGIIS. A writ of justices, formerly lying for the surety against a creditor who refuses to acquit him after the debt has been satisfied. *Reg. of Writs* 158; *Cowell*; *Blount*.

ACQUIRE. To gain by any means, usually by one's own exertions; to get as one's own; to obtain by search, endeavor, practice, or purchase; receive or gain in whatever manner; come to have. *Clarno v. Gamble-Robinson Co.*, 190 Minn. 256, 251 N.W. 268, 269.

In law of contracts and of descents, to become owner of property; to make property one's own. *Crutchfield v. Johnson & Latimer*, 243 Ala. 73, 8 So.2d 412. To gain ownership of. *Commissioner of Insurance v. Broad Street Mut. Casualty Ins. Co.*, 312 Mass. 261, 44 N.E.2d 683, 684. Broad meaning including both purchase and construction; acquisition being the act of getting or obtaining something which may be already in existence, or may be brought into existence through means employed to acquire it. *Ronnow v. City of Las Vegas*, 57 Nev. 332, 65 P.2d 133, 140. Sometimes used in the sense of "procure." *Jolly v. McCoy*, 36 Cal.App. 479, 172 P. 618, 619. It does not necessarily mean that title has passed, *Godwin v. Tuttle*, 70 Or. 424, 141 P. 1120, 1122. Includes taking by devise, *U. S. v. Merriam*, 263 U.S. 179, 44 S.Ct. 69, 70 68 L.Ed. 240, 29 A. L. R. 1547.

ACQUIRED. To get, procure, secure, acquire. *Jones v. State*, 126 Tex.Cr.R. 469, 72 S.W.2d 260, 263.

Coming to an intestate in any other way than by gift, devise, or descent from a parent or the ancestor of a parent. In *re Miller's Will*, 2 Lea (Tenn.) 54.

ACQUIRED RIGHTS. Those which a man does not naturally enjoy, but which are owing to his own procurement, as sovereignty, or the right of commanding, or the right of property. *Borden v. State*, 11 Ark. 519, 527, 44 Am.Dec. 217.

ACQUIRER TAX. German estate inheritance legacy tax, not true inheritance or legacy tax, imposed upon recipient, and not affecting executors. In *re Gotthelf's Will*, 273 N.Y.S. 247, 152 Misc. 309.

ACQUISITION. The act of becoming the owner of certain property; the act by which one acquires or procures the property in anything. *State ex rel. Fisher v. Sherman*, 135 Ohio St. 458, 21 N. E.2d 467, 470. Used also of the thing acquired. *Hartigan v. City of Los Angeles*, 170 Cal. 313, 149 P. 590, 592. Taking with, or against, consent. *Scribner v. Wikstrom*, 93 N.H. 17, 34 A.2d 658, 660. Especially a material possession obtained by any means. *Jones v. State*, 126 Tex.Cr.R. 469, 72 S.W.2d 260, 263.

Original acquisition is that by which a man secures a property in a thing which is not at the time he acquires it, and in its then existing condition, the property of any other individual. It may result from occupancy; 2 Kent, 289; accession; 2 Kent, 293; intellectual labor—namely, for inventions, which are secured by patent rights; and for the authorship of books, maps, and charts, which is protected by copyrights; 1 Bouv.Inst. 508, n.

Derivative acquisitions are those which are procured from others. Goods and chattels may change owners by act of law in the cases of forfeiture, succession, marriage, judgment, insolvency, and intestacy; or by act of the parties, as by gift or sale.

An acquisition may result from the act of the party himself, or those who are in his power acting for him, as his children while minors; *Gale v. Parrot*, 1 N.H. 28. See Dig. 41. 1. 53; Inst. 2. 9. 3.

See Accession.

ACQUIT. To set free, release or discharge as from an obligation, burden or accusation. *Commonwealth v. Benson*, 94 Pa.Super. 10, 15. To ab-

solve, one from an obligation or a liability; or to legally certify the innocence of one charged with crime. *Dolloway v. Turrill*, 26 Wend.N.Y. 383, 400.

ACQUIT A CAUTION. The certificate proving receipt of security that goods shipped from one French port to another shall not be sent to a foreign country. *Argles, Fr.Merc.Law*, 543.

ACQUIT BACK. In mineral deed, vested in the grantee the title to such mineral rights as grantor had at time of execution of deed, where grantor had received his title from grantee and the expression was intended to reconvey such title. *Allen v. Boykin*, 199 Miss. 417, 24 So.2d 748, 750.

ACQUITMENT. See Absolution,

ACQUITTAL.

Contracts

A release, absolution, or discharge from an obligation, liability, or engagement.

According to Lord Coke, there are three kinds of acquittal, namely : by deed, when the party releases the obligation; by prescription; by tenure; *Co. Litt.* 100 a.

Crimes

The legal and formal certification of the innocence of a person who has been charged with crime; a deliverance or setting free a person from a charge of guilt.

In a narrow sense, it is the absolution of a party accused on a trial before a traverse jury. *Thomas v. De Grafenreid*, 2 Nott & McC. (S. C.) 143. Properly speaking, however, one is not acquitted by the jury but by the judgment of the court. *People v. Rogers*, 170 N.Y.S. 86, 87, 102 Misc. 437. And he may be legally acquitted by a judgment rendered otherwise than in pursuance of a verdict, as where he is discharged by a magistrate because of the insufficiency of the evidence, or the indictment is dismissed by the court or a nol. pros. entered. *State v. Hart*, 90 N.J. Law 261, 101 A. 278. But. compare *State v. Smith*, 170 N.C. 742; 87 S.E. 98, 99.

"Nol. pros." not equivalent of "acquittal." *Bolton v. State*, 166 Miss. 290, 146 So. 453, 454. The unnecessary discharge of the jury without the consent of the accused after it has been sworn may constitute an acquittal. *Riley v. Commonwealth*, 190 Ky. 204, 227 S. W. 146, 147. Acquittal discharges from guilt, pardon only from punishment. *Younger v. State*, 2 W.Va. 579, 98 Am.Dec. 791.

It may occur even though the question of guilt or innocence has never been submitted to a jury, as where a defendant, having been held under an indictment or information, is discharged because not brought to trial within the time provided by the Criminal Code. *State v. Taylor*, 130 Kan. 813, 288 P. 731, 732.

Acquittals in fact are those which take place when the jury, upon trial, finds a verdict of not guilty.

Acquittals in law are those which take place by mere operation of law; as where a man has been charged merely as an assessor, and the principal has been acquitted. 2 Co.Inst. 364. Compare *State v. Walton*, 186 N.C. 485, 119 S.E. 886, 888.

See Jeopardy; Autrefois Acquit; Convict.

Feudal Law

The obligation on the part of a mesne lord to protect his tenant from any claims, entries or molestations by lords paramount arising out of the services due to them by the mesne lord. See *Co.Litt.* 100a.

ACQUITTANCE

ACQUITTANCE. A written discharge, whereby one is freed from an obligation to pay money or perform a duty. It differs from a *release* in not requiring to be under seal. Pothier, Oblig. n. 781. See *Milliken v. Brown*, 1 Rawle (Pa.) 391.

This word, though perhaps not strictly speaking synonymous with "receipt," includes it. A receipt is one form of an acquittance; a discharge is another. A receipt in full is an acquittance, and a receipt for a part of a demand or obligation is an acquittance *pro tanto*. *State v. Shelters*, 51 Vt. 104, 31 Am.Rep. 679.

ACQUITTED. Released; absolved; purged of an accusation; judicially discharged from accusation; released from debt, etc. Includes both civil and criminal prosecutions. *Dolloway v. Turrill*, 26 Wend. (N.Y.) 383, 399. See *Acquittal*.

ACRE. A quantity of land containing 160 square rods of land, in whatever shape. *Serg. Land Laws Pa.* 185; *Cro.Eliz.* 476, 665; 6 *Coke* 67; *Poph.* 55; *Co.Litt.* 5b.

Originally the word "acre" (*acer*, *aker*, or Sax, *cecer*) was not used as a measure of land, or to signify any determinate quantity of land, but to denote any open ground, (*latum quantumvis agrum*,) wide champaign, or field; which is still the meaning of the German *acker*, derived probably from the same source, and is preserved in the names of some places in England, as *Castle Acre*, *South Acre*, etc. *Burrill*. Originally a strip in the fields that was ploughed in the forenoon. *Maitland*, *Domesday* and *Beyond*, 387.

ACRE FOOT. 325,850 gallons, or the amount of water which will cover one acre one foot in depth. *Rowles v. Hadden*, *Tex.Civ.App.*, 210 S.W. 251, 258.

ACRE RIGHT. "The share of a citizen of a New England town in the common lands. The value of the acre right was a fixed quantity in each town, but varied in different towns. A 10-acre lot or right in a certain town was equivalent to 113 acres of upland and 12 acres of meadow, and a certain exact proportion was maintained between the acre right and salable lands." *Messages*, etc., of the Presidents, *Richardson*, X, 230.

ACREFIGHT, or ACRE. A camp or field fight; a sort of duel, or judicial combat, anciently fought by single combatants, English and Scotch, between the frontiers of the two kingdoms with sword and lance. Called "campfight," and the combatants "champions," from the open "acre" or *field* that was the stage of trial. *Cowell*.

ACROMIAL PROCESS. A point in the region of the shoulder about where the arm joins or fits into the shoulder *blade*. *Muskogee Electric Traction Co. v. Mueller*, 39 *Okl.* 63, 134 P. 51, 52.

ACROSS. From side to side. Transverse to the length of. *Hannibal & St. J. R. Co. v. Packet Co.*, 8 S.Ct. 874, 125 U.S. 260, 31 L.Ed. 731; but see *Appeal of Bennett's Branch Imp. Co.*, 65 Pa. 242. It may mean over, *Brown v. Meady*, 10 Me. 391, 25 Am.Dec. 248; or "upon and along," *Mt. Vernon Telephone Co. v. Franklin Farmers' Co-op. Telephone Co.*, 113 Me. 46, 92 A. 934, 935, Ann.Cas. 1917B, 649; or "upon," *Jefferson County v. Louisville & I. R. Co.*, 160 S.W. 502, 504, 155 Ky. 810; or "within," *Quanah, A. & P. Ry. Co. v. Cooper*,

Tex.Civ.App., 236 S.W. 811, 812. See *Comstock v. Van Deusen*, 5 Pick. (Mass.) 163, where a grant of a right of way *across* a lot of land was held not to mean a right to enter at one side, go partly across and come out at a place on the same side. And compare *Brooklyn Heights R. Co. v. Steers*, 106 N.E. 919, 920, 213 N.Y. 76; but see *Holley v. State*, 9 Ala.App. 33, 63 So. 738.

ACT, v. In Scotch practice. To do or perform judicially; to enter of record. Surety "acted in the Books of Adjournal." 1 *Broun*, 4.

ACT, n. Denotes affirmative; expression of will, purpose; carries idea of performance; primarily that which is done or doing; exercise of power, or effect of which power exerted is cause; a performance; a deed. *Brown v. Standard Casket Mfg.*Co.*, 234 Ala. 512, 175 So. 358, 364.

In its most general sense, this noun signifies something done voluntarily by a person; the exercise of an individual's power; an effect produced in the external world by an exercise of the power of a person objectively, prompted by intention, and proximately caused by a motion of the will. *Herman v. Pan American Life Ins. Co.*, 183 La. 1045, 165 So. 195, 200. In a more technical sense, it means something done voluntarily by a person, *aria* of such a nature that certain legal consequences attach to it. *Jefferson Standard Life Ins. Co. v. Myers*, *Tex.Com.App.*, 284 S.W. 216, 218. Thus a grantor acknowledges the conveyance to be his "act and deed," the terms being synonymous. It may denote something done by an individual, as a private citizen, or as an officer; or by a body of men, as a legislature, a council, or a court of justice; including not merely physical acts, but also decrees, edicts, laws, judgments, resolves, awards, and determinations. Some general laws made by the Congress of the United States are styled joint resolutions, and these have the same force and effect as those styled acts. But see *Decher v. Vaughan*, 209 Mich. 565, 177 N.W. 388, 392. Carries idea of performance. *Edmonds v. Shirley*, 22 Ala.App. 398, 116 So. 303.

An instrument in writing to verify facts. Webster, Dict.

It is used in this sense of the published acts of assembly, congress, etc. In a sense approaching this, it has been held in trials for treason that letters and other written documents were *acts*; 1 *Post.Cr.Cas.* 198; 2 *Stark.* 116.

Act indicates the intention. 8 *Co.* 146b; *Broom*, Max. 301.

Civil Law

An *act* is a writing which states in a legal form that a thing has been said, done, or agreed. *Merl. Report*.

Acts under private signature are those which have been made by private individuals under their hands.

Private acts are those made by private persons as registers in relation to their receipts and expenditures, schedules, acquittances, and the like.

Public acts are those which have a public authority, and which have been made before public officers, are authorized by a public seal, have been made public by the authority of a magistrate, or which have been extracted and been properly authenticated from public records.

Legislation

A written law, formally ordained or passed by the legislative power of a state, called in England an "act of parliament," and in the United States an "act of congress," or of the "legislature;" a statute. *People v. Tiphaine*, 3 *Parker, Cr.R.* (N. Y.) 241; *United States v. Smith*, 27 *Fed.Cas.* 1167.

The words bill and law are frequently used synonymously with *act*, *People v. City of Buffalo*, 161 N.Y.S. 706, 712, 175 App.Div. 218, but incorrectly; *Sedgwick County Com'rs v. Bailey*, 13 Kan. 600; a bill being only the draft or form of the act presented to the legislature but not enacted; *Southwark Bank v. Corn.*, 26 Pa. 446. "Act" does not include ordinances or regulations made by local authorities, or even statutes having only a local application; *People v. City of Buffalo*, 157 N.Y.S. 938, 940, 93 Misc. 275; although sometimes used interchangeably with "measure" and "law"; *Whittemore v. Terral*, 140 Ark. 493, 215 S.W. 686, 687. Generally, the word refers to entire statute enacted, rather than to a section. Board of Trustees of Firemen's Relief and Pension Fund of City of Muskogee v. Templeton, 184 Okl. 281, 86 P.2d 1000, 1002.

Acts are either public or private. Public acts (also called general acts, or general statutes, or statutes at large) are those which relate to the community generally, or establish a universal rule for the governance of the whole body politic. Private acts (formerly called special, Co. Litt. 126a) are those which relate either to particular persons (personal acts) or to particular places (local acts), or which operate only upon specified individuals or their private concerns. *Unity v. Burrage*, 103 U.S. 454, 26 L.Ed. 465. Public acts are those which concern the whole community and of which courts of law are bound to take judicial notice. *Sasser v. Martin*, 101 Ga. 447, 29 S.E. 278.

A "special" or "private" act is one operating only on particular persons and private concerns; a "local act" is one applicable only to a particular part of the legislative jurisdiction. *Trumper v. School Dist. No. 55 of Musselshell County*, 55 Mont., 90, 173 P. 946, 947.

To denote an avowal of criminal acts, or the concession of the truth of a criminal charge, the word "confession" seems more appropriate.

Practice

Anything done by a court and reduced to writing; a decree, judgment, resolve, rule, order, or other judicial proceeding. In Scotch law, the orders and decrees of a court, and in French and German law, all the records and documents in an action, are called "acts."

Scotch Practice

An abbreviation of *actor*, (proctor or advocate, especially for a plaintiff or pursuer,) used in records. "*Act. A. Alt. B.*" an abbreviation of *Actor*, *A. Alter*, *B.*; that is, for the pursuer or plaintiff, *A.*, for the defender, *B.* 1 Broun, 336, note.

ACT BOOK. In Scotch practice. The minute book of a court. 1 Swin. 81.

ACT IN PAIS. An act done out of court, and not a matter of record. A deed or an assurance transacted between two or more private persons in the country, that is, according to the old common law, upon the very spot to be transferred, is matter *in pais*. 2 Bl.Comm. 294.

ACT OF ATTAINDER. A legislative act, attainting a person. See Attainder.

ACT OF BANKRUPTCY. Any act which renders a person liable to be proceeded against as a bankrupt, or for which he may be adjudged bankrupt.

These acts are usually defined and classified in statutes on the subject. *Duncan v. Landis*, C.C.A.Pa., 106 Fed. 839, 45 C.C.A. 666; *In re Chapman*, D.C., 99 Fed. 395. Such as: insolvency or suffering or permitting a creditor to obtain a preference, *Von Segerlund v. Dysart*, C.C.A.Cal., 137 F.2d 755, 758, 761; appointment of a receiver, *United States v. Emory*, 62 S.Ct. 317, 319, 314 U.S. 423, 86 L.Ed. 315; hin-

dering, delaying or defrauding creditors, *In re Thompson*, D.C.La., 28 F.Supp. 707, 710; failure to discharge a lien, *In re Flushing Queensboro Laundry*, C.C.A.N.Y., 90 F.2d 601. Permitting creditor to obtain any levy, attachment, judgment, or other lien, *In re Day*, D.C.Md., 22 F.Supp. 946, 949; assignment for benefit of creditors, *In re Roy*, D.C.N.H., 46 F.Supp. 952, 954; or a written admission of one's inability to pay his debts, *In re Turner*, D.C.Ky., 51 F. Supp. 740, 743.

ACT OF CURATORY. In Scotch law. The act extracted by the clerk, upon any one's acceptance of being curator. *Forb.Inst.* pt. 1, b. 1, c. 2, tit. 2. 2 Kames, Eq. 291. Corresponding with the order for the appointment of a guardian, in English and American practice.

ACT OF ELIZABETH. See Act of Supremacy.

ACT OF GOD. An act occasioned exclusively by violence of nature without the interference of any human agency. It means a natural necessity proceeding from physical causes alone without the intervention of man. It is an act, event, happening, or occurrence, a disaster and effect due to natural causes and inevitable accident, or disaster; a natural and inevitable necessity which implies entire exclusion of all human agency which operates without interference or aid from man and which results from natural causes and is in no sense attributable to human agency. It is an accident which could not have been occasioned by human agency but proceeded from physical causes alone. *Short v. Kerr*, 104 Ind.App. 118, 9 N.E.2d 114, 118.

In the civil law, *vis major*. Any misadventure or casualty is said to be caused by the "act of God" when it happens by the direct, immediate, and exclusive operation of the forces of nature, uncontrolled or uninfluenced by the power of man and without human intervention, and is of such a character that it could not have been prevented or escaped from by any amount of foresight or prudence, or by any reasonable degree of care or diligence, or by the aid of any appliances which the situation of the party might reasonably require him to use. Inevitable accident, or casualty; any accident produced by any physical cause which is irresistible, such as lightning, tempests, perils of the seas, an inundation, or earthquake; and also the sudden illness or death of persons. *People v. Tubbs*, 37 N.Y. 586; *Central of Georgia Ry. Co. v. Hall*, 124 Ga. 322, 52 S.E. 679, 4 L.R.A., N.S., 898, 110 Am.St.Rep. 170, 4 Ann.Cas. 128. Story, *Bailm.* §§ 25, 511; 2 Bl.Comm. 122. Inevitable accident or casualty. *Noel Bros. v. Texas & P. Ry. Co.*, 16 La.App. 622, 133 So. 830, 832; not preventable by human care, skill, or foresight, but resulting from natural causes, *The Empress of France*, D.C.N.Y., 49 F.2d 291. Misfortunes and accidents arising from inevitable necessity which human prudence could not foresee or prevent. *Pleasure Beach Park Co. v. Bridgeport Dredge & Dock Co.*, 116 Conn. 496, 165 A. 691, 692. *Limited v. Lehigh Valley R. Co.*, D.C.N.Y., 254 F. 351, 353, a landslide in the Panama Canal, *Gans S. S. Line v. Wilhelmsen*, C.C.A.N.Y., 275 F. 254, 261, and changes in the styles of wearing apparel, *Rosenblatt v. Winstanley*, Mo.App., 186 S.W. 542, 543, are not "acts of God"; otherwise, however, as to a strike, accompanied with violence and intimidation, see *Southern Cotton Oil Co. v. Louisville & N. R. Co.*, 15 Ga.App. 751, 84 S.E. 198, 199.

The term is sometimes defined as equivalent to inevitable accident; *Neal v. Saunderson*, 2 Sm. & M. (Miss.) 572, 41 Am.Dec. 609; *Central of Georgia Ry. Co. v. Council Bros.*, 36 Ga.App. 573, 137 S.E. 569, 570 (see, however, *Canon v. Hunt*, 113 Ga. 509, 38 S.E. 983; *Harmony Grove Telephone Co. v. Potts*, 24 Ga.App. 178, 100 S.E. 236, but incorrectly, as there is a distinction between the two; *Alaska Coast Co. v. Alaska Barge Co.*, 79 Wash. 216, 140 P. 334, 335. *Bolton v. Burnett*, 5 Blackf. (Ind.) 222.

See Inevitable Accident; Perils of the Sea.

ACT OF GOVERNMENT

ACT OF GOVERNMENT. The usual name of Cromwell's Constitution vesting the supreme power in a Protector and two houses of Parliament, passed March 25, 1657.

ACT OF GRACE. In Scotch law. A term applied to the act of 1696, c. 32, by which it was provided that where a person imprisoned for a civil debt is so poor that he cannot aliment [maintain] himself, and will make oath to that effect, it shall be in the power of the magistrates to cause the creditor by whom he is incarcerated to provide an aliment for him, or consent to his liberation; which, if the creditor delay to do for 10 days, the magistrate is authorized to set the debtor at liberty. Bell. The term is often used to designate a general act of parliament, originating with the crown, such as has often been passed at the commencement of a new reign, or the coming of age or marriage of a sovereign, or at the close of a period of civil troubles, declaring pardon or amnesty to numerous offenders. Abbott.

ACT OF HONOR. When a bill has been protested, and a third person wishes to take it up, or accept it, for honor of one or more of the parties, the notary draws up an instrument, evidencing the transaction, called by this name.

ACT OF INDEMNITY. A statute by which those who have committed illegal acts which subject them to penalties are protected from the consequences of such acts.

ACT OF INSOLVENCY. Within the meaning of the national currency act, an act which shows a bank to be insolvent, such as nonpayment of its circulating notes, bills of exchange, or certificates of deposit; failure to make good the impairment of capital, or to keep good its surplus or reserve; in fact, any act which shows that the bank is unable to meet its liabilities as they mature, or to perform those duties which the law imposes for the purpose of sustaining its credit. *Hayden v. Chemical Nat. Bank, C.C.A.N.Y.*, 84 Fed. 874, 28 C.C.A. 548; *Kullman & Co. v. Woolley, C.C.A. Miss.*, 83 F.2d 129, 132; *Garvin v. Chadwick Realty Corporation*, 212 Ind. 499, 9 N.E.2d 268, 271.

ACT OF LAW. The operation of fixed legal rules upon given facts or occurrences, producing consequences independent of the design or will of the parties concerned; as distinguished from "act of parties." Also an act performed by judicial authority which prevents or precludes a party from fulfilling a contract or other engagement. *Metcalf v. State*, 57 Okl. 64, 156 P. 305, 306, L.R.A. 1916E, 595.

ACT OF PARLIAMENT. A statute, law, or edict, made by the British sovereign, with the advice and consent of the lords spiritual and temporal, and the commons, in parliament assembled. Acts of parliament form the *leges scriptae*, *e.*, the written laws of the kingdom.

ACT OF PROVIDENCE. An accident against which ordinary skill and foresight could not

guard. *McCoy v. Dan/ey*, 20 Pa. 91, 57 Am.Dec. 680. Equivalent to "act of God," see *supra*.

ACT OF SALE. In Louisiana law. An official record of a sale of property, made by a notary who writes down the agreement of the parties as stated by them, and which is then signed by the parties and attested by witnesses. *Hodge v. Palms, Mich.*, 117 Fed. 396, 54 C.C.A. 570.

ACT OF SETTLEMENT. The statute (12 & 13 Wm. III, c. 2) limiting the crown to the Princess Sophia of Hanover, and to the heirs of her body being Protestants. 1 Bla.Com. 128; 2 Steph.Com. 290. One clause of it made the tenure of judges' office for life or good behavior independent of the crown.

ACT OF STATE. An act done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him. An act of state cannot be questioned or made the subject of legal proceedings in a court of law.

ACT OF SUPREMACY. An act of 26 Hen. VIII. c. 1, and also 1 Eliz. c. 1, which recognized the king as the only supreme head on earth of the Church of England having full power to correct all errors, heresies, abuses, offenses, contempts and enormities. The oath, taken under the act, denies to the Pope any other authority than that of the Bishop of Rome.

ACT OF UNIFORMITY. In English law. The statute of 13 & 14 Car. II. c. 4, enacting that the book of common prayer, as then recently revised, should be used in every parish church and other place of public worship, and otherwise ordaining a uniformity in religious services, etc. 3 Steph. Comm. 104.

ACT OF UNION. The statutes uniting England and Wales, 27 Hen. VIII, c. 26, confirmed by 34 & 35 Hen. VIII, c. 26; England and Scotland, 5 Anne. c. 8; Great Britain and Ireland, 39 & 40 Geo. III, c. 67. 1 Bl.Comm. 97.

The act uniting the three lower counties (now Delaware) to the province of Pennsylvania, passed at Upland, Dec. 7, 1682, is so called.

ACT ON PETITION. A form of summary proceeding formerly in use in the high court of admiralty, in England, in which the parties stated their respective cases briefly, and supported their statements by affidavit. 2 Dod.Adm. 174, 184; 1 Hagg.Adm. 1, note.

ACTA DIURNA. Lat. In the Roman law. Daily acts or chronicles; the public registers or journals of the daily proceedings of the senate, assemblies of the people, courts of justice, etc. Supposed to have resembled a modern newspaper. Brande. Thus: I do not find the thing published in the *acta diurna* (daily records of affairs); Tacitus, Ann. 3, 3; Ainsworth, Lex.; Smith, Lex.

ACTA EXTERIORA INDICANT INTERIORA SECRETA. 8 Coke, 146b. External acts indicate undisclosed thoughts.

ACTA IN UNO JUDICIO NON PROBANT IN ALIO NISI INTER EASDEM PERSONAS. Things done in one action cannot be taken as evidence in another, unless it be between the same parties. Tray.Lat.Max. U.

ACTA PUBLICA. Lat. Things of general knowledge and concern; matters transacted before certain public officers. Calvinus, Lex.

ACTE. In French law, denotes a document, or formal, solemn writing, embodying a legal attestation that something has been done, corresponding to one sense or use of the English word "act."

Actes de naissance are the certificates of birth, and must contain the day, hour, and place of birth, together with the sex and intended christian name of the child, and the names of the parents and of the witnesses. *Actes de mariage* are the marriage certificates, and contain names, professions, ages, and places of birth and domicile of the two persons marrying, and of their parents; also the consent of these latter, and the mutual agreements of the intended husband and wife to take each other for better and worse, together with the usual attestations. *Actes de décès* are the certificates of death, which are required to be drawn up before any one may be buried. *Les actes de l'état civil* are public documents. Brown.

ACTE AUTHENTIQUE. A deed executed with certain prescribed formalities, in the presence of a notary, mayor, *greffier*, *huissier*, or other functionary qualified to act in the place in which it is drawn up. Argles, Fr.Merc.Law, 50.

ACTE DE FRANCISATION. The certificate of registration of a ship, by virtue of which its French nationality is established.

ACTE D'HERITIER. Act of inheritance. Any action or fact on the part of an heir which manifests his intention to accept the succession; the acceptance may be express or tacit. Duverger.

ACTE EXTRAJUDICIAIRE. A document served by a *huissier*, at the demand of one party upon another party, without legal proceedings.

ACTING. The word "acting" means doing duty for another; officiating; holding a temporary rank or position or performing services temporarily; as, an acting captain, manager, president. *Pellecchia v. Mattia*, 121 N.J.L. 21, 1 A.2d 28. Performing; operating. See *Meyer v. Johnston*, 64 Ala. 603, 665.

An acting trustee is one who takes upon himself to perform some or all of the trusts mentioned in a will. *Sharp v. Sharp*, 2 Barn. & Ald. 415.

ACTING OFFICER. The phrase "acting officer" is used to designate, not an appointed incumbent, but merely a *locum tenens*, who is performing the duties of an office to which he himself does not claim title. *State ex rel. Gossett v. O'Grady*, 137 Neb. 824, 291 N.W. 497, 501; *State Bank of Williams v. Gish*, 167 Iowa, 526, 149 N.W. 600, 601.

"Acting Supervising Architect." *Fraser v. United States*, 16 Ct.Cl. 514. An acting executor is one who assumes to act as executor for a decedent, not being the executor legally appointed or the executor in fact. *Morse v. Allen*, 99 Mich. 303, 58 N.W. 327.

ACTIO. Lat. In the civil law. An action or suit; a right or cause of action. It should be

noted that this term means both the proceeding to enforce a right in a court and the right itself which is sought to be enforced.

The first sense here given is the older one. Justinian, following Celsus, gives the well-known definition: *Actio nihil aliud est quam jus persequendi in judicio quod sibi debetur*, which may be thus rendered: An action is simply the right to enforce one's demands in a court of law. See Pollock, Expansion of C. L. 92.

ACTIO AD EXHIBENDUM. An action for the purpose of compelling a defendant to exhibit a thing or title in his power. It was preparatory to another action, which was always a real action in the sense of the Roman law; that is, for the recovery of a thing, whether it was movable or immovable. Merl.Quest.tome i, 84.

ACTIO JESTIMATORIA; ACTIO QUANTI MINOR'S. Two names of an action which lay in behalf of a buyer to reduce the contract price proportionately to the defects of the object, not to cancel the sale; the *judex* had power, however, to cancel the sale. Hunter, Rom.Law, 332, 505.

ACTIO ARBITRARIA. Action depending on the discretion of the judge. In this, unless defendant would make amends to plaintiff as dictated by the judge in his discretion, he was liable to be condemned. Hunter, Rom.Law, 825, 987.

ACTIO BONE FIDEI. (Lat.: An action of good faith.) A class of actions in which the judge might at the trial *ex officio*, take into account any equitable circumstances that were presented to him affecting either of the parties to the action. 1 Spence, Eq.Jur. 210, 218.

ACTIO CALUMNIE. An action to restrain defendant from prosecuting a groundless proceeding or trumped-up charge against plaintiff. Hunter, Rom.Law, 859, 1020. An action for malicious prosecution. So.Afr.Leg.Dict.

ACTIO CIVILIS. In the common law. A civil action, as distinguished from a criminal action.

Bracton divides personal actions into *criminales et civiles*, according as they grow out of crimes or contracts. Bract. fol. 101b. *Actiones civiles* are those forms of remedies which were established under the rigid system of the civil law, the *jus civilis*. See *Actio Honoraria*.

ACTIO COMMODATI. Included several actions appropriate to enforce the obligations of a borrower or a lender. Hunter, Rom.Law, 305.

ACTIO COMMODATI CONTRARIA. An action by the borrower against the lender, to compel the execution of the contract. Poth. *Prêt a Usage*, n. 75.

ACTIO COMMODATI DIRECTA. An action by a lender against a borrower, the principal object of which is to obtain a restitution of the thing lent. Poth. *Prêt a Usage*, nn. 65, 68.

ACTIO COMMUNI DIVIDUNDO. An action to procure a judicial division of joint property. Hunter, Rom.Law, 194. It was analogous in its object to proceedings for partition in modern law.

ACTIO CONDUCTIO

ACTIO CONDUCTIO INDEBITATI. An action by which the plaintiff recovers the amount of a sum of money or other thing he paid by mistake. Poth. *Promutuum*, n. 140; Merl. *Repert.*

ACTIO CONFESSORIA. An affirmative petitory action for the recognition and enforcement of a servitude. So called because based on plaintiff's affirmative allegation of a right in defendant's land. Distinguished from an *actio negatoria*, which was brought to repel a claim of defendant to a servitude in plaintiff's land. Mackeld. *Rom. Law*, § 324.

ACTIO CONTRARIO. Counter action or cross action.

ACTIO CRIMINALIS. Criminal action.

ACTIO DAMNI INJURIA. The name of a general class of actions for damages, including many species of suits for losses caused by wrongful or negligent acts. The term is about equivalent to our "action for damages."

ACTIO DE DOLO MALO. An action of fraud; an action which lay for a defrauded person against the defrauder and his heirs, who had been enriched by the fraud, to obtain the restitution of the thing of which he had been fraudulently deprived, with all its accessions (*cum omni causa*;) or, where this was not practicable, for compensation in damages. Mackeld. *Rom. Law*, § 227.

ACTIO DE PECULIO. An action concerning or against the *peculium*, or separate property of a party.

ACTIO DE PECUNIA CONSTITUTA. An action for money engaged to be paid; an action which lay against any person who had engaged to pay money for himself, or for another without any formal stipulation. Inst. 4, 6, 9; Dig. 13, 5; Cod. 4, 18.

ACTIO DE TIGNO JUNCTO. An action by the owner of material built by another into his building.

If so used in good faith double their value could be recovered; if in bad faith, the owner could recover suitable damage for the wrong, and recover the property when the building came down. So. Afr. *Leg. Diet.*

ACTIO DEPOSITI CONTRARIA. An action which the depositary has against the depositor, to compel him to fulfil his engagement towards him. Poth. *Du Depot*, n. 69.

ACTIO DEPOSITI DIRECTA. An action which is brought by the depositor against the depositary, in order to get back the thing deposited. Poth. *Du Depot*, n. 60.

ACTIO DIRECTA. A direct action; an action founded on strict law, and conducted according to fixed forms; an action founded on certain legal obligations which from their origin were accurately defined and recognized as actionable. See *Actio Utilis*.

ACTIO EMPTI. An action employed in behalf of a buyer to compel a seller to perform his obligations or pay compensation; also to enforce any special agreements by him, embodied in a contract of sale. Hunter, *Rom. Law*, 332, 505.

ACTIO EX CONDUCTO. An action which the bailor of a thing for hire may bring against the bailee, in order to compel him to redeliver the thing hired.

ACTIO EX CONTRACTU. In the civil and common law. An action of contract; an action arising out of, or founded on, contract. 3 Bl. *Comm.* 117.

ACTIO EX DELICTO. In the civil and common law. An action of tort; an action arising out of fault, misconduct, or malfeasance. Inst. 4, 6, 15; 3 Bl. *Comm.* 117. *Ex male ficio* is the more common expression of the civil law; which is adopted by Bracton. Inst. 4, 6, 1; Bract. fols. 102, 103.

ACTIO EX LOCATO. An action upon letting; an action which the person who let a thing for hire to another might have against the hirer. Dig. 19, 2; Cod. 4, 65.

ACTIO EX STIPULATU. An action brought to enforce a stipulation.

ACTIO EXERCITORIA. An action against the *exercitor* or employer of a vessel.

ACTIO FAMILIZE ERISCUNDIE. An action for the partition of an inheritance. Inst. 4, 6, 20; Id. 4, 17, 4. Called, by Bracton and Fleta, a mixed action, and classed among actions arising *ex quasi contractu*. Bract. fol. 10013; Bract. fols. 443 b, 444; Fleta, lib. 2, c. 60, § 1.

ACTIO FURTI. An action of theft; an action founded upon theft. Inst. 4, 1, 13-17; Bract. fol. 444. This could be brought only for the penalty attached to the offense, and not to recover the thing stolen, for which other actions were provided. Inst. 4, 1, 19. An appeal of larceny. The old process by which a thief can be pursued and the goods vindicated. 2 Holdsw. *Hist. Eng. L.* 202.

ACTIO HONORARIA. An honorary, or *prætorian* action. Dig. 44, 7, 25, 35. *Actiones honorarice* are those forms of remedies which were gradually introduced by the *prætors* and *diles*, by virtue of their equitable powers, in order to prevent the failure of justice which too often resulted from the employment of the *actiones civiles*. These were found so beneficial in practice that they eventually supplanted the old remedies, of which in the time of Justinian hardly a trace remained. Mackeldey, *Civ. L.* § 194; 5 Savigny, *System*.

ACTIO IN FACTUM. In action adapted to the particular case, having an analogy to some *actio in jus*, the latter being founded on some subsisting acknowledged law. 1 Spence, *Eq. Jur.* 212. The origin of these actions is similar to that of actions on the case at common law.

ACTIO IN PERSONAM.

Admiralty Law

An action directed against the particular person who is to be charged with the liability. It is distinguished from an *actio in rem*, which is a suit directed against a specific *thing* (as a vessel) irrespective of the ownership of it, to enforce a claim or lien upon it, or to obtain, out of the thing or out of the proceeds of its sale, satisfaction for an injury alleged by the claimant.

Civil Law

An action against the person, founded on a personal liability; an action seeking redress for the violation of a *jus in personam* or right available against a particular individual.

ACTIO IN REM. In the civil and common law. An action *for a thing*; an action for the recovery of a thing possessed by another. Inst. 4, 6, 1. An action for the enforcement of a right (or for redress for its invasion) which was originally available against all the world, and not in any special sense against the individual sued, until he violated it. See *In Rem*.

ACTIO JUDICATI. An action instituted, after four months had elapsed after the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards; and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and if, at the end of two months, the debt was not paid, the land was sold. Dig. 42, 1; Cod. 8, 34.

According to some authorities, if the defendant then utterly denied the rendition of the former judgment, the plaintiff was driven to a new action, conducted like any other action, which was called *actio judicati*, and which had for its object the determination of the question whether such a judgment had been rendered. The exact meaning of the term is by no means clear. See Savigny, Syst. 305, 411; 3 Ortolan, Just. § 2033.

ACTIO LEGIS AQUILINE. An action under the Aquilian law; an action to recover damages for maliciously or injuriously killing or wounding the slave or beast of another, or injuring in any way a thing belonging to another. Otherwise called *damni injurice actio*.

ACTIO MANDATI. Included actions to enforce contracts of mandate or obligations arising out of them. Hunter, Rom.Law, 316.

ACTIO MIXTA. A mixed action; an action brought for the recovery of a thing, or compensation for damages, and also for the payment of a penalty; partaking of the nature both of an *actio in rem* and *in personam*. Inst. 4, 6, 16, 18, 19, 20; Mackeld.Rom.Law, § 209.

ACTIO NEGATORIA (or NEGATIVA). An action brought to repel a claim of the defendant to a servitude in the plaintiff's land. Mackeld.Rom.Law, § 324. See *Actio Confessoria*.

ACTIO NEGOTIORUM GESTORUM. Included actions between principal and agent and other par-

ties to an engagement, whereby one person undertook the transaction of business for another.

ACTIO NON. In pleading. The Latin name of that part of a special plea which follows next after the statement of appearance and defense, and declares that the plaintiff "ought not to have or maintain his aforesaid action thereof against" the defendant (in Latin, *actionem non habere debet*). 1 Chit.Plead. 531; 2 *id.* 421; Stephens, Plead. 394.

ACTIO NON ACCREVIT INFRA SEX ANNOS. The name of the plea of the statute of limitations, when the defendant alleges that the plaintiff's action has not accrued within six years.

ACTIO NON DATUR NON DAMNIFICATO. An action is not given to one who is not injured. Jenk.Cent. 69.

ACTIO NON FACIT REUM, NISI MENS SIT REA. An act does not make one guilty, unless the intention be bad. Lofft, 37.

ACTIO NON ULTERIUS. In English pleading. A name given to the distinctive clause in the plea to the *further maintenance* of the action, introduced in place of the plea *puis darrein continuance*; the averment being that the plaintiff ought not *further (ulterius)* to have or maintain his action. Steph.Pl. 64, 65, 401.

ACTIO NOXALIS. A noxal action; an action which lay against a master for a crime committed or injury done by his slave; and in which the master had the alternative either to pay for the damage done or to deliver up the slave to the complaining party. Inst. 4, 8, pr.; Heinecc.Elem. lib. 4, tit. 8. So called from *noxa*, the offense or injury committed. Inst. 4, 8, 1.

ACTIO PERPETUA. An action without limitation period.

ACTIO PERSONALIS. In the civil and common law. A personal action.

The ordinary term for this kind of action in the civil law is *actio in personam*, (*q. v.*) the word *personalis* being of only occasional occurrence. Inst. 4, 6, 8, *in tit.*; Id. 4, 11, pr. 1. Bracton, however, uses it freely, and hence the *personal action* of the common law. Bract. fols. 102a, 159b. See *Action*.

ACTIO PERSONALIS MORITUR CUM PERSONA. A personal right of action dies with the person. Noy, Max. 14.

The maxim was originally applied to almost every form of action, whether arising out of contract or tort, but the common law was modified by the Statute of 4 Edward the III. *Momand v. Twentieth-Century Fox Film Corporation*, D.C.Okla., 37 F.Supp. 649, 652.

ACTIO PIGNORATITIA. An action of pledge; an action founded on the contract of pledge (*pignus*). Dig. 13, 7; Cod. 4, 24.

ACTIO PCENALIS. Called also *actio ex delicto*. An action in which a penalty was recovered of the delinquent.

Actiones pœnales and *actiones mixtæ* comprehended cases of injuries, for which the civil law permitted redress

ACTIO 1)(ENALIS

by private action, but which modern civilization universally regards as crimes; that is, offenses against society at large, and punished by proceedings in the name of the state alone. Thus, theft, receiving stolen goods, robbery, malicious mischief, and the murder or negligent homicide of a slave (in which case an injury to property was involved), gave rise to private actions for damages against the delinquent. Inst. 4, 1. *De obligationibus quae ex delicto nascuntur*; id. 2. *De bonis vi raptis*; id. 3. *De lege Aquilia*. And see Mackeldey, Civ.L. § 196; 5 Savigny, System, § 210.

Actio pœnalis in haredem non datur, nisi forte ex damno locupletior hares factus sit. A penal action is not given against an heir, unless, indeed, such heir is benefited by the wrong.

ACTIO PRIEJUDICIALIS. A preliminary or preparatory action. An action instituted for the determination of some preliminary matter on which other litigated matters depend, or for the determination of some point or question arising in another or principal action; and so called from its being *determined before*, (*prius*, or *præ judicari*.)

ACTIO PRIESCRIPTIS VERBIS. A form of action which derived its force from continued usage or the *responsa prudentium*, and was founded on the unwritten law. 1 Spence, Eq.Jur. 212. The distinction between this action and an *actio in factum* is said to be, that the latter was founded not on usage or the unwritten law, but by analogy to or on the equity of some subsisting law; 1 Spence, Eq.Jur. 212.

ACTIO PRIETORIA. A prætorian action; one introduced by the prætor, as distinguished from the more ancient *actio civilis*, (*q. v.*) Inst. 4, 6, 3; Mackeld.Rom.Law, § 207.

ACTIO PRO SOCIO. An action of partnership. An action brought by one partner against his associates to compel them to carry out the terms of the partnership agreement. Story, Partn., Bennett ed. § 352; Pothier, Contr. de Societe, n. 34.

ACTIO PUBLICIANA. An action which lay for one who had lost a thing of which he had bona fide obtained possession, before he had gained a property in it, in order to have it restored, under color that he had obtained a property in it by prescription. Inst. 4, 6, 4; Heinecc. Elem. lib. 4, tit. 6, § 1131; Halifax, Anal. b. 3, c. 1, n. 9. It was an honorary action, and derived its name from the prætor Publicius, by whose edict it was first given. Inst. 4, 6, 4.

ACTIO QUIELIBET IT SUA VIA. Every action proceeds in its own way. Jenk.Cent. 77.

ACTIO QUOD JUSSU. An action given against a master, founded on some business done by his slave, acting under his order, (*jussu*.) Inst. 4, 7, 1; Dig. 15, 4; Cod. 4, 26.

ACTIO QUOD METUS CAUSA. An action granted to one who had been compelled by unlawful force, or fear (*metus causa*) that was not groundless, (*metus probabilis* or *Justus*;) to deliver, sell, or promise a thing to another. Bract. fol. 103b; Mackeld.Rom.Law, § 226.

ACTIO REALIS. A real action. The proper term in the civil law was *rei vindicatio*. Inst. 4, 6, 3.

ACTIO REDHIBITORIA. An action to cancel a sale in consequence of defects in the thing sold.

It was prosecuted to compel complete restitution to the seller of the thing sold, with its produce and accessories, and to give the buyer back the price, with interest, as an equivalent for the restitution of the produce. Hunter, Rom.Law, 332. See Redhibitory Action.

ACTIO RERUM AMOTARUM. An action for things removed; an action which, in cases of divorce, lay for a husband against a wife, to recover things carried away by the latter, in contemplation of such divorce. Dig. 25, 2; Id. 25, 2; 25, 30. It also lay for the wife against the husband in such cases. Dig. 25, 2, 7, 11; Cod. 5, 21.

ACTIO RESCISSORIA. An action for restoring plaintiff to a right or title which he has lost by prescription, in a case where the equities are such that he should be relieved from the operation of the prescription. Mackeld.Rom.Law, § 226.

An action to rescind a prescriptive title by one who was entitled to exemption from the prescription law, as a minor, etc.

ACTIO SERVIANA. An action which lay for the lessor of a farm, or rural estate, to recover the goods of the lessee or farmer, which were pledged or bound for the rent. Inst. 4, 6, 7.

ACTIO STRICTI JURIS. An action of strict right. The class of civil law personal actions, which were adjudged only by the strict law, and in which the judge was limited to the precise language of the formula, and had no discretionary power to regard the bona fides of the transaction. See Inst. 4, 6, 28; Gaius, iii. 137; Mackeld. Rom.Law, § 210; 1 Spence, Eq.Jur. 218.

ACTIO TEMPORALIS. An action which must be brought within a limited time. See Limitation.

ACTIO TUTELIE. Action founded on the duties or obligations arising on the relation analogous to that of guardian and ward.

ACTIO UTILIS. A beneficial action or equitable action. An action founded on equity instead of strict law, and available for those who had equitable rights or the beneficial ownership of property.

Actions are divided into *actiones directæ* or *utiles*. The former are founded on certain legal obligations which from their origin were accurately defined and recognized as actionable. The latter were formed analogically in imitation of the former. They were permitted in legal obligations for which the *actiones directæ* were not originally intended, but which resembled the legal obligations which formed the basis of the direct action. Mackeld.Rom.Law, § 207.

ACTIO VENDITI. An action employed in behalf of a seller, to compel a buyer to pay the price, or perform any special obligations embodied in a contract of sale. Hunter, Rom.Law, 332.

ACTIO VI BONORUM RAPTORUM. An action for goods taken by force; a species of mixed action, which lay for a party whose goods or movables (*bona*) had been taken from him by force,

(vi,) to recover the things so taken, together with a penalty of triple the value. Inst. 4, 2; Inst. 4, 6, 19. Bracton describes it as lying *de rebus mobilibus vi ablati sive robbatis*, (for movable things taken away by force, or robbed.) Brac. fol. 103b.

ACTIO VULGARIS. A legal action; a common action. Sometimes used for *actio directa*. Mackeld.Rom.Law, § 207.

ACTION. Conduct; behavior; something done; the condition of acting; an act or series of acts.

French Commercial Law

Stock in a company, or shares in a corporation.

Practice

The legal and formal demand of one's right from another person or party made and insisted on in a court of justice. *Smith-Webster Co. v. John*, C.C.A.Pa., 259 F. 549, 551; *Dinsmore v. Barker*, 61 Utah, 332, 212 P. 1109; *Shaw v. Lone Star Building & Loan Ass'n*, Tex.Civ.App., 40 S.W. 2d 968, 969. Pursuit of right in court, without regard to form of procedure. *Ginzberg v. Wyman*, 272 Mass. 499, 172 N.E. 614, 615. Form of suit given by law for recovery of that which is one's due. Co.Litt. 284b, 285a; *Peterson v. A. Guthrie & Co.*, D.C.Wash., 3 F.Supp. 136, 138. Judicial means of enforcing a right. Code Ga. 1882, § 3151 (Civ.Code 1926, § 5507). Judicial remedy for the enforcement or protection of a right. *White v. White*, 98 Ind.App. 587, 186 N.E. 349, 351.

An ordinary proceeding in a court of justice by which one party prosecutes another for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. Code Civ.Proc.S.D.1903, § 12 (Comp.Laws 1929, § 2091); *Missionary Soc. v. Ely*, 47 N.E. 537, 56 Ohio St. 405.

Cross-action, *White v. St. Louis Post Offices Corporation*, 348 Mo. 961, 156 S.W.2d 695, 698, and counterclaim, *Webster v. Freeman*, 27 Cal.App.2d 5, 80 P.2d 497, 499, are actions but not set off, *Kress v. Central Trust Co. of Rochester*, 283 N.Y.S. 467, 471, 246 App. Div. 76.

It includes all the formal proceedings in a court of justice attendant upon the demand of a right made by one person of another in such court, including an adjudication upon the right and its enforcement or denial by the court.

Proceedings held actions : Disbarment, In re *Wilcox*, 90 Kan. 646, 135 P. 995; probating will, *Simpson v. Simpson*, 273 Ill. 90, 112 N.E. 276, 277; will contest, *Byrne v. Byrne*, Mo.Sup., 181 S.W. 391, 392; workmen's compensation, *Pigeon v. Employers' Liability Assur. Corporation*, 216 Mass. 51, 102 N.E. 932, 935, Ann.Cas.1915A, 737; criminal prosecution, *Mason v. U. S.*, C.C.A.111., 1 F.2d 279, 280; mandamus, *People v. Lueders*, 287 Ill. 107, 122 N.E. 374, 375; naturalization, In re *Fordiani*, 98 Conn. 435, 120 A. 338, 341.

Proceedings held not actions : attachment, *State v. Superior Court of Spokane County*, 110 Wash. 49, 187 P. 708; arbitration, *Temple v. Riverland Co.*, Tex.Civ.App., 228 S. W. 605, 609; criminal prosecution, *U. S. v. Cleveland*, D.C. Ala., 281 F. 249, 253; *Wynn v. Commonwealth*, 198 Ky. 644, 249 S.W. 783, 784; writ of citation, *McClelland v. State*, 101 Ohio St. 42, 127 N.E. 409, 410; certiorari, *Campbell v. Common Council of City of Watertown*, 46 S.D. 574, 195 N.W. 442; mandamus, *De Leyer v. Britt*, 212 N.Y. 565, 106 N.E. 57; child's support, *Head v. Fuller*, 122 Me. 15, 118 A. 714, 715; drainage, *Richardson County v. Drainage*

Dist. No. 2 of Richardson County, 96 Neb. 169, 147 N.W. 205, 206; condemnation, *State v. Superior Court for Ferry County*, 145 Wash. 576, 261 P. 110, 111.

Scotch Law

A suit or judicial proceeding.

Suit Distinguished

Strictly applied, action does not usually refer to chancery practice. *City of Beckley v. Craighead*, 125 W.Va. 484, 24 S.E.2d 908, 911. But terms "action" and "suit" are now nearly, if not entirely, synonymous. (3 Bl.Comm. 3, 116, et passim.) *Elmo v. James*, Tex.Civ.App., 282 S.W. 835, 839; *Coleman v. Los Angeles County*, 180 Cal. 714, 182 P. 440. Or, if there be a distinction, it is that the term "action" is generally confined to proceedings in a court of law, while "suit" is equally applied to prosecutions at law or in equity. *McBride v. University Club*, 112 Ohio St. 69, 146 N.E. 804, 805; *Guarantee Trust & Banking Co. v. Dickson*, 148 Ga. 311, 96 S.E. 561, 562; *Niantic Mills Co. v. Riverside & O. Mills*, 19 R.I. 34, 31 A. 432; *Ulshafer v. Stewart*, 71 Pa. 170. Formerly, however, an *action* was considered as terminating with the giving of judgment, the execution forming no part of it. (Litt. § 504; Co.Litt. 289a.) A *suit* included the execution. (Litt. § 291a.) So, an action is termed by Lord Coke, "the right of a *suit*." (2 Inst. 40.) *Burrill*.

Types of Actions

Actions are called, in common-law practice, *ex contractu* when they are founded on a contract; *ex delicto* when they arise out of a tort. *Nelson v. Great Northern R. Co.*, 28 Mont. 297, 72 Pac. 642; *Van Oss v. Synon*, 85 Wis. 661, 56 N.W. 190.

If a cause of action arises from a breach of promise, the action is "ex contractu," and, if it arises from breach of duty growing out of contract, it is "ex delicto." Tort or trespass is none the less such because it incidentally involves breach of contract. *Berning v. Colodny & Colodny*, 103 Cal.App. 188, 284 P. 496, 498.

As to class or representative actions. See Class Or Representative Action.

As to the distinction between a *revocatory action* and an *action in simulation*, see *Chapman v. Irwin*, 157 La. 920, 103 So. 263, 265.

Civil actions are such as lie in behalf of persons to enforce their rights or obtain redress of wrongs in their relation to individuals.

Common law actions are such as will lie, on the particular facts, at common law, without the aid of a statute.

Criminal actions are such as are instituted by the sovereign power, for the purpose of punishing or preventing offenses against the public.

Local action. See Local Action.

Mixed actions partake of twofold nature of real and personal actions, having for their object the demand and restitution of real property and also personal damages for a wrong sustained. 3 Bl.Comm. 118; *Hall v. Decker*, 48 Me. 257. Mixed actions are those which are brought for the specific recovery of lands, like real actions, but comprise, joined with this claim, one for damages in respect of such property; such as the action of waste, where, in addition to the recovery of the place wasted, the demandant claims damages; the writ of entry, in which, by statute, a demand of mesne profits may be joined; and

ACTION

dower, in which a claim for detention may be included. 48 Me. 255. In the civil law, an action in which some specific thing was demanded, and also some personal obligation claimed to be performed; or, in other words, an action which proceeded both *in rem* and *in personam*. Inst. 4, 6, 20.

Penal actions are such as are brought, either by the state or by an individual under permission of a statute, to enforce a penalty imposed by law for the commission of a prohibited act.

Personal action. In civil law, an action *in personam*. It seeks to enforce an obligation imposed on the defendant by his contract or delict; that is, it is the contention that he is bound to transfer some dominion or to perform some service or to repair some loss. Gaius, bk. 4, § 2. In common law. An action brought for the recovery of some debt or for damages for some personal injury, in contradistinction to the old real actions, which related to real property only. See 3 Bl.Comm. 117. Boyd v. Cronan, 71 Me. 286; Doe v. Waterloo Min. Co., C.C.Cal., 43 F. 219; Osborn v. Fall River, 140 Mass. 508, 5 N.E. 483. An action which can be brought only by the person himself who is injured, and not by his representatives.

Popular actions, in English usage, are those actions which are given upon the breach of a penal statute, and which any man that will may sue on account of the king and himself, as the statute allows and the case requires. Because the action is not given to one especially, but generally to any that will prosecute, it is called "action popular;" and, from the words used in the process, (*qui tam pro domino rege sequitur quam pro se ipso*, who sues as well for the king as for himself,) it is called a *qui tam* action. Tomlins.

Real actions. At common law, one brought for the specific recovery of lands, tenements, or hereditaments. Steph.Pl. 3; Crocker v. Black, 16 Mass. 448; Hall v. Decker, 48 Me. 256; Doe v. Waterloo Min. Co., C.C.Cal., 43 F. 220; Mathews v. Sniggs, 75 Okl. 108, 182 P. 703, 708. They are *droitural* when they are based upon the right of property, and *possessory* when based upon the right of possession. They are either writs of right; writs of entry upon disseisin (which lie in the per, the per et cui, or the post), intrusion, or alienation; writs ancestral possessory, as mort d'ancestor, aiel, besaiel, cossinage, or nuper obiit. Com.Dig. *Actions* (D 2). The former class was divided into *droitural*, founded upon demandant's own seisin, and *ancestral droitural* upon the demandant's claim in respect of a mere right descended to him from an ancestor. Possessory actions were divided in the same way—as to the demandant's own seisin and as to that of his ancestor. Among the civilians, real actions, otherwise called "vindication," were those in which a man demanded something that was his own. They were founded on doiminion, or *jus in re*. The real actions of the Roman law were not, like the real actions of the common law, confined to real estate, but they included personal, as well as real, property. Wharton.

Statutory actions are such as can only be based upon the particular statutes creating them.

Transitory actions are those founded upon a cause of action not necessarily referring to or arising in any particular locality. Their characteristic feature is that the right of action follows the person of the defendant. Brown v. Brown, 155 Tenn. ,30, 296 S.W. 356, 358. Actions are "transitory" when the transactions relied on might have taken place anywhere, and are "local" when they could not occur except in some particular place; the distinction being in the nature of the subject of the injury, and not in the means used or the place at which the cause of action arises. Brady v. Brady, 161 N.C. 324, 77 S.E. 235, 236, 44 L.R.A.,N.S., 279; Taylor v. Sommers Bros. Match Co., 35 Idaho, 30, 204 P. 472, 474, 42 A.L.R. 189. The test of whether an action is local or transitory is whether the injury is done to a subject-matter which, in its nature, could not arise beyond the locality of its situation, in contradistinction to the subject causing the injury. Mattix v. Swepston, 127 Tenn. 693, 155 S.W. 928, 929. Actions triable where defendant resides are termed "transitory" and those triable where the subject-matter is situated are termed "local." State v. District Court of Swift County, 164 Minn. 433, 205 N.W. 284, 285.

See Cause of Action.

ACTION EX CONTRACTU. An action for breach of promise set forth in a contract, express or implied. Bristol v. Sun Vacuum Stores, 181 Misc. 522, 42 N.Y.S.2d 501, 504; McCullough v. The American Workmen, 200 S.C. 84, 20 S.E.2d 640, 644.

ACTION EX DELICTO. An action arising from a breach of duty growing out of contract. Berning v. Colodny & Colodny, 103 Cal.App. 188, 284 P. 496, 498; Federal Life Ins. Co. v. Maxam, 70 Ind.App. 266, 117 N.E. 801, 806.

ACTION FOR ACCOUNTING. Action in equity based on inadequacy of legal remedy and particularly applicable to mutual and complicated accounts and where confidential or fiduciary relationship exists. Dahlberg v. Fisse, 328 Mo. 213, 40 S.W.2d 606, 609. To adjust mutual accounts and to strike a balance. Cline v. McKee, 186 Okl. 366, 98 P.2d 25, 27.

ACTION FOR MONEY HAD AND RECEIVED. One in assumpsit based upon promise to repay implied by law, and in respect of limitation is a stated or liquidated account. Mutual Building & Loan Ass'n v. Watson, 226 Ala. 526, 147 So. 817, 818.

Where one person has received money or its equivalent under such circumstances that in equity and good conscience he ought not to retain it and in justice it belongs to another. Interstate Life & Accident Co. v. Cook, 19 Tenn.App. 290, 86 S.W.2d 887, 891.

ACTION FOR POINDING. An action by a creditor to obtain a sequestration of the rents of land and the goods of his debtor for the satisfaction of the debt, or to enforce a distress.

ACTION IN PERSONAM, IN REM. See In Personam, In Rem.

ACTION OF ABSTRACTED MULTURES. An action for multures or tolls against those who are thirled to a mill, *i. e.*, bound to grind their corn at a certain mill, and fail to do so. Bell.

ACTION OF ADHERENCE. See Adherence.

ACTION OF A WRIT. A phrase used when a defendant pleads some matter by which he shows that the plaintiff had no cause to have the writ sued upon, although it may be that he is entitled to another writ or action for the same matter. Cowell.

ACTION OF ASSIZE. A real action which proves the title of the demandant, merely by showing his ancestor's possession. Sherman v. Dilley, 3 Nev. 21, 26, citing 5 Chit.B1. 184.

ACTION OF ASSUMPSIT. See Assumpsit.

ACTION OF BOOK DEBT. A form of action for the recovery of claims, such as are usually evidenced by a book-account; this action is principally used in Vermont and Connecticut. Newton v. Higgins, 2 Vt. 366.

ACTION ON CONTRACT. An action brought to enforce rights whereof the contract is the evi-

Bence, and usually the sufficient evidence. *Kokusai Kisen Kabushiki Kaisha v. Argos Mercantile Corporation*, C.C.A.N.Y., 280 F. 700, 701.

ACTION ON THE CASE. A species of personal action of very extensive application, otherwise called "trespass on the case," or simply "case," from the circumstance of the plaintiff's whole *case or cause of complaint* being set forth at length in the original writ by which formerly it was always commenced. 3 Bl.Comm. 122. *Wallace v. Wilmington & N. R. Co.*, 8 Houst. (Del.) 529, 18 A. 818.

In its most comprehensive signification it includes *assumpsit* as well as an action in form *ex delicto*; at present when it is mentioned it is usually understood to mean an action in form *ex delicto*. It is founded on the common law or upon acts of Parliament, and lies generally to recover damages for torts not committed with force, actual or implied; or having been occasioned by force where the matter affected was not tangible, or the injury was not immediate but consequential; or where the interest in the property was only in reversion, in all of which cases trespass is not sustainable; 1 Chit.P1. 132. In the progress of judicial contestation it was discovered that there was a mass of tortious wrongs unattended by direct and immediate force, or where the force, though direct, was not expended on an existing right of present enjoyment, for which the then known forms of action furnished no redress. The action on the case was instituted to meet this want. And wrongs which will maintain an action on the case are frequently committed in the nonobservance of duties, which are but the implication of contract obligation, duties of requisite skill, fidelity, diligence, and a proper regard for the rights of others, implied in every obligation to serve another. If the cause of action arises from a breach of promise, the action is "ex contractu"; but if the cause of action arises from a breach of duty growing out of the contract, it is in form *ex delicto* and case. When there is a contract, either express or implied, from which a common-law duty results, an action on the case lies for the breach of that duty. *Bently-Beale, Inc. v. Wesson Oil & Snowdrift Sales Co.*, 231 Ala. 562, 165 So. 830, 832. See *Assumpsit*.

ACTION QUASI IN REM. An action brought against persons which only seeks to subject certain property of those persons to discharge of claims asserted and judgment therein is only conclusive between parties and their privies. *Tobin v. McClellan*, 225 Ind. 335, 75 N.E.2d 149, 151.

ACTION REDHIBITORY. See *Redhibitory Action*.

ACTION TO QUIET TITLE. One in which plaintiff asserts his own estate and declares generally that defendant claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on defendant to set forth the nature of his claim, so that it may be determined by decree.

It differs from a "suit to remove a cloud," in that plaintiff therein declares on his own title, and also avers the source and nature of defendant's claim, points out its defect, and prays that it may be declared void as a cloud on plaintiff's estate. *Manning v. Gregoire*, 97 Or. 394, 192 P. 406, 407. The apparent difference between an action to restore a lost instrument and one to quiet title is that, in the former, ordinarily both the titles of plaintiff and defendant are deraigned in the complaint, which must disclose that, notwithstanding an apparent interest of defendant the property belongs to plaintiff; and in the latter action the complaint need only allege the ultimate fact of plaintiff's interest and defendant's outstanding claim. *Nicholson v. Nicholson*, 67 Mont. 517, 216 P. 328, 329, 31 A.L.R. 548. See, also, *Slette v. Review Pub. Co.*, 71 Mont. 518, 230 P. 580, 581. It embraces every sort of a claim whereby the plaintiff might be deprived of his property or his title

clouded or its value depreciated, or whereby the plaintiff might be incommoded or damaged by assertion of an outstanding title already held or to grow out of the adverse pretension. *Bank of American Nat. Trust & Savings Ass'n v. Town of Atherton*, 60 Cal.App.2d 268, 140 P.2d 678, 680.

ACTIONABLE. That for which an action will lie, furnishing legal ground for an action.

ACTIONABLE FRAUD. Deception practiced in order to induce another to part with property or surrender some legal right; a false representation made with an intention to deceive; may be committed by stating what is known to be false or by professing knowledge of the truth of a statement which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive. *Sawyer v. Prickett*, 19 Wall. 146, 22 L. Ed. 105.

To constitute "actionable fraud," it must appear that defendant made a material representation; that it was false; that when he made it he knew it was false, or made it recklessly without any knowledge of its truth and as a positive assertion; that he made it with intention that it should be acted on by plaintiff; that plaintiff acted in reliance on it; and that plaintiff thereby suffered injury. *Blair v. McCool*, 136 Or. 139, 295 P. 950, 952. Essential elements are representation, falsity, scienter, deception, and injury. *Cobb v. Cobb*, 211 N.C. 146, 189 S.E. 479, 482.

ACTIONABLE MISREPRESENTATION. A false statement respecting a fact material to the contract and which is influential in procuring it. *Wise v. Fuller*, 29 N.J.Eq. 257.

ACTIONABLE NEGLIGENCE. The breach or nonperformance of a legal duty, through neglect or carelessness, resulting in damage or injury to another. *Fidelity & Casualty Co. v. Cutts*, 95 Me. 162, 49 Atl. 673.

It is failure of duty, omission of something which ought to have been done, or doing of something which ought not to have been done, or which reasonable man, guided by considerations which ordinarily regulate conduct of human affairs, would or would not do. *Goff v. Emde*, 32 Ohio App. 216, 167 N.E. 699, 700. Essential elements are failure to exercise due care, injury, or damage, and proximate cause. *Rountree v. Fountain*, 203 N.C. 381, 166 S.E. 329, 330.

ACTIONABLE NUISANCE. Anything wrongfully done or permitted which injures or annoys another in the enjoyment of his legal rights. *Miller v. City of Dayton*, 70 Ohio App. 173, 41 N.E.2d 728, 730.

Anything injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property. *Cooper v. Overton*, 102 Tenn. 211, 52 S.W. 183, 45 L.R.A. 591.

ACTIONABLE TORT. To constitute an "actionable tort," there must be a legal duty, imposed by statute or otherwise, owing by defendant to the one injured, and in the absence of such duty damage caused is "injury without wrong" or "damnum absque injuria." *Coleman v. California Yearly Meeting of Friends Church*, 27 Cal.App.2d 579, 81 P.2d 469, 470.

ACTIONABLE WORDS. In law of libel and slander, such words as naturally imply damage. *Dahm v. O'Connell*, 161 N.Y.S. 909, 911, 96 Misc. 582.

ACTIONABLE

Per Quod

Words actionable only on allegation and proof of special damage. *Knapp v. Post Printing & Publishing Co.*, 111 Colo. 492, 144 P.2d 981, 984.

Words not actionable per se upon their face, but only in consequence of extrinsic facts showing circumstances under which they were said or the damages resulting to slandered party therefrom. *Smith v. Mustain*, 210 Ky. 445, 276 S.W. 154, 155, 44 A.L.R. 386. Not injurious on their face in their usual and natural signification, but only so in consequence of extrinsic facts and requiring innuendo. *Piplack v. Mueller*, 97 Fla. 440, 121 So. 459.

Per Se

Words in themselves libelous. *Knapp v. Post Printing & Publishing Co.*, 111 Colo. 492, 144 P.2d 981, 984.

Words which law presumes must actually, proximately, and necessarily damage defendant for which general damages are recoverable and whose injurious character is a fact of common notoriety, established by the general consent of men, necessarily importing damage. *Ellsworth v. Martindale-Hubbell Law Directory*, 66 N.D. 578, 268 N.W. 400, 407. Words themselves opprobrious; susceptible only of opprobrious meaning. *Fite v. Oklahoma Pub. Co.*, 146 Okl. 150, 293 P. 1073, 1075. Importing a charge of some punishable crime or some offensive disease, imputing moral turpitude, or tending to injure a party in his trade or business. *Barnes v. Trundy*, 31 Me. 321; *Lemons v. Wells*, 78 Ky. 117; *Mayrant v. Richardson*, 1 Nott & McC. 347, 9 Am.Dec. 707. Tending to injure one's reputation, thereby exposing him to public hatred, contempt or ridicule, tending to degrade or lower him. *Hodges v. Cunningham*, 160 Miss. 576, 135 So. 215, 217. Such words are actionable without allegation of special damages. *Kluender v. Semann*, 203 Iowa 68, 212 N.W. 326, 327. See also Libelous per se.

ACTIONABLE WRONG. Committed when a responsible person has neglected to use a reasonable degree of care for protection of another person from such injury as under existing circumstances should reasonably have been foreseen as a proximate consequence of that negligence. *Chadwick v. Bush*, 174 Miss. 75, 163 So. 823, 824.

ACTIONARE. L. Lat. (From *actio*, an action.) In old records. To bring an action; to prosecute, or sue. *Thorn's Chron.*; *Whishaw*.

ACTIONARY. A foreign commercial term for the proprietor of an *action* or share of a public company's stock; a stockholder.

ACTIONES LEGIS. In the Roman law, legal or lawful action; actions of or at law, (*legitimae actiones*.) Dig. 1, 2, 2, 6.

ACTIONES NOMINATIE. (Lat. named actions.) In the English chancery, writs for which there were precedents. The statute of Westminster, 2, c. 24, gave chancery authority to form new writs *in consimili case*; hence the action on the case.

ACTIONS. (Fr.) Shares of corporate stock. Compare Actionary.

ACTIONS ORDINARY. In Scotch law, all actions which are not rescissory. *Ersk.Inst.* 4, 1, 18.

ACTIONS RESCISSORY. In Scotch law, these are either (1) actions of proper improbation for declaring a writing false or forged; (2) actions of reduction-improbation for the production of a

writing in order to *have it set aside* or its effect ascertained under the certification that the writing if not produced shall be declared false or forged; and (3) actions of simple reduction, for declaring a writing called for null until produced. *Ersk.Princ.* 4, 1, 5.

ACTIONUM GENERA MAXIME SUNT SERVANDA. The kinds of actions are especially to be preserved. *Lofft* 460.

ACTIVE. That is in action; that demands action; actually subsisting; the opposite of passive. An active debt is one which draws interest. An active trust is a confidence connected with a duty. An active use is a present legal estate.

ACTIVE CONCEALMENT. This implies a purpose or design accomplished by words or acts, while passive concealment consists in mere silence where there is a duty to speak. *Vendt v. Duenke*, *Mo.App.*, 210 S.W.2d 692, 699.

Concealment becomes a fraud where it is effected by misleading and deceptive talk, acts, or conduct, where it is accompanied by misrepresentations, or where, in addition to a party's silence, there is any statement, word, or act on his part which tends affirmatively to a suppression of the truth. Such conduct is designated active concealment. *Equitable Life Ins. Co. of Iowa v. Halsey, Stuart & Co.*, *C.C.A.111.*, 112 F.2d 302, 309.

ACTIVE NEGLIGENCE. A term of extensive meaning obviously embracing many occurrences that would fall short of willful wrongdoing, or of crass negligence, for example, all inadvertent acts causing injury to others, resulting from failure to exercise ordinary care, likewise all acts the effects of which are misjudged or unforeseen, through want of proper attention, or reflection, and hence the term covers the acts of willful wrongdoing and also those which are not of that character. *Cohen v. Noel*, *Tenn.App.*, 104 S.W.2d 1001, 1005.

ACTIVE SERVICE. "Active service" in army does not necessarily mean actual service, but means service performed at direction of superior officer or officers while receiving emoluments to which soldier is entitled. *United States v. Woodworth*, *D.C.Mass.*, 36 F.Supp. 645, 646.

ACTIVE TRUST. See Trust.

ACTIVITY. A recreational "activity" is a physical or gymnastic exercise, an agile performance, such as dancing. *McClure v. Board of Education of City of Visalia*, 38 Cal.App. 500, 176 P. 711, 712.

ACTON BURNEL, STATUTE OF. In English law, a statute, otherwise called *Statutum Mercatorum* or *de Mercatoribus* the statute of the merchants, made at a parliament held at the castle or village of Acton Burnel in Shropshire, in the 11th year of the reign of Edward I. 2 Reeves, Eng. Law, 158-162. It was a statute for the collection of debts, the earliest of its class, being enacted in 1283. A further statute for the same object, and known as *De Mercatoribus*, was enacted 13 Edw. I. (c. 3.). See Statute Merchant.

ACTOR.

Old European Law

A patron, proctor, advocate, or pleader; one who acted for another in legal matters; one who represented a party and managed his cause. An attorney, bailiff, or steward; one who managed or acted for another. The Scotch "doer" is the literal translation.

Roman Law

One who acted for another; one who attended to another's business; a manager or agent. A slave who attended to, transacted, or superintended his master's business or affairs, received and paid out moneys, and kept accounts. Burrill.

The word has a variety of closely-related meanings, very nearly corresponding with manager. Thus, *actor dominice*, manager of his master's farm; *actor ecclesie*, manager of church property; *actores provinciarum*, tax-gatherers, treasurers, and managers of the public debt.

Actor ecclesie.—An advocate for a church; one who protects the temporal interests of a church. *Actor villæ* was the steward or head-bailiff of a town or village. Cowell.

Plaintiff or complainant. In a civil or private action the plaintiff was often called by the Romans "*petitor*;" in a public action (*causa publica*) he was called "*accusator*." The defendant was called "*reus*," both in private and public causes; this term, however, according to Cicero, (*De Orat.* 43,) might signify either party, as indeed we might conclude from the word itself. In a private action, the defendant was often called "*adversarius*," but either party might be called so.

Also, the term is used of a party who, for the time being, sustains the burden of proof, or has the initiative in the suit.

Actor qui contra regulam quid adduxit, non est audiendus. A plaintiff (or pleader) is not to be heard who has advanced anything against authority, (or against the rule.)

Actor sequitur forum rei. According as *rei* is intended as the genitive of *res*, a thing, or *reus*, a defendant, this phrase means: The plaintiff follows the forum of the property in suit, or the forum of the defendant's residence. Branch, Max. 4. Home, Law Tr. 232; Story, Conf.L. § 325 k; 2 Kent 462.

ACTORE NON PROBANTE REUS ABSOLVITUR. When the plaintiff does not prove his case the defendant is acquitted (or absolved). Hob. 103.

ACTORI INCUMBIT ONUS PROBANDI. The burden of proof rests on the plaintiff, (or on the party who advances a proposition affirmatively.) Hob. 103.

ACTORNAY. In old Scotch law, an attorney. Skene.

ACTRIX. Lat. A female actor; a female plaintiff. Calvinus, Lex.

ACTS OF COURT. Legal memoranda made in the admiralty courts in England, in the nature of pleas.

ACTS OF POSSESSION. To constitute adverse possession, acts of possession must be such as,

if seen by the party whose claim is sought to be divested, would apprise him that the party doing the acts claimed the ownership of the property. Crosby v. City of Greenville, 183 Mich. 452, 150 N.W. 246, 248.

ACTS OF SEDERUNT. In Scotch law, ordinances for regulating the forms of proceeding, before the court of session, in the administration of justice, made by the judges, who have the power by virtue of a Scotch act of parliament passed in 1540. Ersk. Prin. § 14.

ACTUAL. Real; substantial; existing presently in act, having a valid objective existence as opposed to that which is merely theoretical or possible. Ciaccio v. Hartman, 170 La. 949, 129 So. 540. Opposed to potential, possible, virtual, conceivable, theoretical, hypothetical, or nominal. American Ins. Co. of Newark, N. J., v. Seminole County Board of Education, 51 Ga.App. 808, 181 S.E. 783, 786. Something real, in opposition to constructive or speculative; something existing in act. Astor v. Merritt, 4 S.Ct. 413, 111 U.S. 202, 28 L. Ed. 401. Existing in act, fact, or reality. Guarisco v. Massachusetts Bonding & Insurance Co., 4 N.Y.S.2d 788, 792, 167 Misc. 875.

It is used as a legal term in contradistinction to virtual or constructive as of possession or occupation; Cleveland v. Crawford, 7 Hun (N.Y.) 616; or an actual settler, which implies actual residence; McIntyre v. Sherwood, 82 Cal. 139, 22 Pac. 937. An actual seizure means nothing more than seizure, since there was no fiction of constructive seizure before the act; L.R. 6 Exch. 203.

Actually is opposed to seemingly, pretendedly, or feignedly, as *actually engaged in farming* means really, truly, in fact; In re Strawbridge & Mays, 39 Ala. 367; Ayer & Lord Tie Co. v. Commonwealth, 208 Ky. 606, 271 S.W. 693, 694.

As to actual "Bias," "Damages," "Delivery," "Fraud," "Malice," "Notice," "Occupation," "Ouster," "Possession," "Residence," "Seisin," "Total Loss," see those titles.

ACTUAL AUTHORITY. In the law of agency, such authority as a principal intentionally confers on the agent, or intentionally or by want of ordinary care allows the agent to believe himself to possess. National Cash Register Co. v. Wichita Frozen Food Lockers, Tex.Civ.App., 172 S.W.2d 781, 787. Includes both express and implied authority. Grismore v. Consolidated Products Co., 232 Iowa 328, 5 N.W.2d 646, 651.

ACTUAL BIAS. See Bias.

ACTUAL CASH VALUE. The fair or reasonable cash price for which the property could be sold in the market, in the ordinary course of business, and not at forced sale; the price it will bring in a fair market after reasonable efforts to find a purchaser who will give the highest price. Peavy-Wilson Lumber Co. v. Jackson, 161 La. 669, 109 So. 351, 352. What property is worth in money, allowing for depreciation. Glens Falls Ins. Co. of New York v. Garner, 229 Ala. 39, 155 So. 533, 536. Ordinarily, "actual cash value," "fair market price," and "market value" are synonymous terms. Butler v. JETna Ins. Co. of Hartford, Conn., 64 N.D. 764, 256 N.W. 214, 218.

ACTUAL

ACTUAL CHANGE OF POSSESSION. In statutes of frauds, an open, visible, and unequivocal change of possession, manifested by the usual outward signs, as distinguished from a merely formal or constructive change. *Stevens v. Irwin*, 15 Cal. 503, 76 Am.Dec. 500.

ACTUAL COST. The actual price paid for goods by a party, in the case of a real *bona fide* purchase, and not the market value of the goods. *Ogunquit Village Corporation v. Inhabitants of Wells*, 123 Me. 207, 122 A. 522, 524.

"Actual cost" has no common-law significance, and it is without any well-understood trade or technical meaning. It is a general or descriptive term which may have varying meanings according to the circumstances in which it is used. It imports the exact sum expended or loss sustained rather than the average or proportional part of the cost. Its meaning may be restricted to overhead or extended to other items. *State v. Northwest Poultry & Egg Co.*, 203 Minn. 438, 281 N.W. 753, 755.

ACTUAL DELIVERY. See *Delivery*.

ACTUAL EVICTION. An actual expulsion of the tenant out of all or some part of the demised premises; a physical ouster or dispossession from the very thing granted or some substantial part thereof. *Cauley v. Northern Trust Co.*, 315 Ill. App. 307, 43 N.E.2d 147, 155, 315.

An arbitrary and willful interference with tenant's rights by landlord is essential. *Kusche v. Sabin, City Ct., New Rochelle*, 6 N.Y.S.2d 771, 773. Deprivation of beneficial enjoyment of property in whole or in part or exclusion from some portion of demised premises. *Kusche v. Sabin, City Ct., New Rochelle*, 6 N.Y.S.2d 771, 773. Dispossession by process of law. *Stanton v. Conley*, 278 N.Y.S. 275, 277, 244 App.Div. 84. Expulsion or exclusion from demised premises. *Liberal Savings & Loan Co. v. Frankel Realty Co.*, 137 Ohio St. 489, 30 N.E.2d 1012, 1017, physical expulsion by landlord. *General American Life Ins. Co. v. North American Mfg. Co.*, 320 Ill.App. 488, 51 N.E.2d 619, wrongful entry on premises by lessor is necessary. *Title & Trust Co. v. Durkheimer Inv. Co.*, 155 Or. 427, 63 P.2d 909.

ACTUAL FRAUD. See *Fraud*.

ACTUAL LOSS. One resulting from the real and substantial destruction of the property insured.

ACTUAL MARKET VALUE. In custom laws, the price at which merchandise is freely offered for sale to all purchasers; the price which the manufacturer or owner would have received for merchandise, sold in the ordinary course of trade in the usual wholesale quantities. *United States v. Sischo*, D.C.Wash., 262 F. 1001, 1011.

ACTUAL NOTICE. See *Notice*.

ACTUAL POSSESSION. See *Possession*.

ACTUAL PRACTICE. Active, open and notorious engagement in business, vocation or profession as opposed to casual, occasional or clandestine practice. *State ex rel. Laughlin v. Washington State Bar Ass'n*, 26 Wash.2d 914, 176 P.2d 301, 309.

ACTUAL RESIDENCE. The abode, where one actually lives, not mere naked legal residence. *In Re McGrath*, 243 App.Div. 803, 278 N.Y.S. 135.

ACTUAL SALE. Lands are "actually sold" at a tax sale, so as to entitle the treasurer to the statutory fees, when the sale is completed; when he has collected from the purchaser the amount of the bid. *Miles v. Miller*, 5 Neb. 272.

ACTUAL VALUE. "Actual value" to be awarded in condemnation proceeding is price that would probably result from negotiations between willing seller and willing buyer. *State v. Hoblitt*, 87 Mont. 403, 288 P. 181, 185. "Actual value," "market value," "fair value," and the like may be used as convertible terms. *Kerr v. Clinchfield Coal Corporation*, 169 Va. 149, 192 S.E. 741, 744. "Saleable value," "actual value," "cash value," and others used in directions to tax assessing officers, all mean the same thing. *In re Lang Body Co.*, C.C.A.Ohio, 92 F.2d 338, 340.

ACTUAL VIOLENCE. An assault with actual violence is an assault with physical force put in action, exerted upon the person assailed. The term violence is synonymous with physical force, and the two are used interchangeably in relation to assaults. *Tanner v. State*, 24 Ga.App. 132, 100 S.E. 44.

ACTUARIUS. In Roman law, a notary or clerk. One who drew the acts or statutes, or who wrote in brief the public acts.

An officer who had charge of the public baths; an officer who received the money for the soldiers, and distributed it among them; a notary.

An *actor*, which see. *Du Cange*.

ACTUARY. In English ecclesiastical law, a clerk that registers the acts and constitutions of the lower house of convocation; or a registrar in a court christian.

Also an officer appointed to keep savings banks accounts; the computing officer of an insurance company; a person skilled in calculating the value of life interests, annuities, and insurances. *Champagne v. Unity Industrial Life Ins. Co.*, La. App., 161 So. 52, 53.

ACTUM. Lat. A deed; something done.

ACTUS. In the civil law, an act or action. *Non tantum verbis, sed etiam actu*; not only by words, but also by act. Dig. 46, 8. 5.

A species of right of way, consisting in the right of driving cattle, or a carriage, over the land subject to the servitude. Inst.. 2, 3, pr. It is sometimes translated a "road," and included the kind of way termed "*iter*," or path. Lord Coke, who adopts the term "*actus*" from Bracton, defines it a foot and horse way, vulgarly called "pack and prime way;" but distinguishes it from a cart-way. *Co.Litt.* 56a; *Boyden v. Achenbach*, 79 N.C. 539.

In old English law, an act of parliament; a statute. 8 Coke 40. A distinction, however, was sometimes made between *actus* and *statutum*. *Actus parliamenti* was an act made by the lords and commons; and it became *statutum*, when it received the king's consent. *Barring.Obs.St.* 46, note b.

Actus curiae neminem gravabit. An act of the court shall prejudice no man. Jenk.Cent. 118. Where a delay in an action is the act of the court, neither party shall suffer for it.

Actus Del nemini est damnosus. The act of God is hurtful to no one. 2 Inst. 287. That is, a person cannot be prejudiced or held responsible for an accident occurring without his fault and attributable to the "act of God." See Act of God.

Actus Del nemini facit injuriam. The act of God does injury to no one. 2 Bl.Comm. 122. A thing which is inevitable by the act of God, which no industry can avoid, nor policy prevent, will not be construed to the prejudice of any person in whom there was no laches. Broom, Max. 230.

Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate testiae persona, vel ex contingenti, revocari non potest. An act already begun, the completion of which depends on the will of the parties, may be revoked; but if it depend on the will of a third person, or on a contingency, it cannot be revoked. Bac.Max. reg. 20.

Actus judiciarius coram non iudice irritus habetur, de ministeriali autem a quocunque provenit ratum esto. A judicial act by a judge without jurisdiction is void; but a ministerial act, from whomsoever proceeding, may be ratified. Lofft, 458.

Actus legis nemini est damnosus. The act of the law is hurtful to no one. An act in law shall prejudice no man. 2 Inst. 287.

Actus legis nemini facit injuriam. The act of the law does injury to no one. 5 Coke, 116.

Actus legitimi non recipiunt modum. Acts required to be done by law do not admit of qualification. Hob. 153; Branch, Princ.

Actus me invito factus non est meus actus. An act done by me, against my will, is not my act. Branch, Princ.

Actus non facit reum, nisi mens sit rea. An act does not make [the doer of it] guilty, unless the mind be guilty; that is, unless the intention be criminal. 3 Inst. 107. The intent and the act must both concur to constitute the crime. Lord Kenyon, C. J., 7 Term 514; Broom, Max. 306.

Actus repugnans non potest in esse produci. A repugnant act cannot be brought into being, *i. e.*, cannot be made effectual. Plowd. 355.

Actus servi in its quibus opera ejus communiter adhibita est, actus domini habetur. The act of a servant in those things in which he is usually employed, is considered the act of his master. Lofft, 227.

A. D. An abbreviation of Anno Domini meaning in the year of our Lord. Commonwealth v. Traylor, 20 Ky.Law Rep. 97, 98, 45 S.W. 356.

AD. Lat. At; by; for; near; on account of; to; until; upon; with relation to or concerning.

AD ABUNDANTIOREM CAUTELAM. L. Lat. For more abundant caution. 2 How. State Tr. 1182. Otherwise expressed, *ad cautelam ex superabundanti*. Id. 1163.

AD ADMITTENDUM CLERICUM. For the admitting of the clerk. A writ in the nature of an execution, commanding the bishop to admit his clerk, upon the success of the latter in a *quare impedit*.

AD ALIUD EXAMEN. To another tribunal; belonging to another court, cognizance, or jurisdiction.

AD ALIUM DIEM. At another day. A common phrase in the old reports. Yearb. P. 7 Hen. VI. 13.

AD ASSISAS CAPIENDAS. To take assises; to take or hold the assises. Bract. fol. 110a; 3 Bl. Comm. 185, 352. *Ad assisam capiendam*; to take an assise. Bract. fol. 110b.

AD AUDIENDAM CONSIDERATIONEM CURIÆ. To hear the judgment of the court. Bract. 383 b.

AD AUDIENDUM ET DETERMINANDUM. To hear and determine. St. Westm. 2, cc. 29, 30. 4 Bla.Com. 278.

AD BARRAM. To the bar; at the bar. 3 How. State Tr. 112.

AD BARRAM EVOCATUS. Called to the bar. 1 Ld.Raym. 59.

AD CAMPI PARTEM. For a share of the field or land, for champert. Fleta, lib. 2, c. 36, § 4.

AD CAPTUM VULGI. Adapted to the common understanding.

AD COLLIGENDUM. For collecting; as an administrator or trustee *ad colligendum*. 2 Kent 414.

AD COLLIGENDUM BONA DEFUNCTI. For collecting the goods of the deceased. See Administration of Estates.

AD COMMUNE NOCUMENTUM. To the common nuisance. Broom & H.Com. 196.

AD COMMUNEM LEGEM. At common law, the name of a writ of entry (now obsolete) brought by the reversioners after the death of the life tenant, for the recovery of lands wrongfully alienated by him.

AD COMPARENDUM. To appear. *Ad comparandum, et ad standum juri*, to appear and to stand to the law, or abide the judgment of the court. Cro.Jac. 67.

AD COMPUTUM REDDENDUM. To render an account. St.Westm. 2, c. 11.

AD CULPAM. Until misbehavior.

AD CURIAM

AD CURIAM. At a court. 1 Salk. 195. To court. *Ad curiam vocare*, to summon to court.

AD CUSTAGIA. At the costs. Toullier; Cowell; Whishaw.

AD CUSTUM. At the cost. 1 Bl.Comm. 314.

AD DAMNUM. In pleading. "To the damage." The technical name of that clause of the writ or declaration which contains a statement of the plaintiff's money loss, or the damages which he claims. *Vincent v. Life Ass'n*, 75 Conn. 650, 55 Atl. 177.

AD DEFENDENDUM. To defend. 1 Bl.Comm. 227.

AD DIEM. At a day; at the day. Townsh.Pl. 23. *Ad alium diem*. At another day. Y.B. 7 Hen. VI, 13. *Ad certum diem*, at a certain day. 2 Strange, 747. *Solvit ad diem*; he paid at or on the day. 1 Chit.Pl. 485.

AD EA QUZE FREQUENTIUS ACCIDUNT JURA ADAPTANTUR. Laws are adapted to those cases which most frequently occur. 2 Inst. 137; Broom, Max. 43.

Laws are adapted to cases which frequently occur. A statute, which, construed according to its plain words, is, in all cases of ordinary occurrence, in no degree inconsistent or unreasonable, should not be varied by construction in every case, merely because there is one possible but highly improbable case in which the laW would operate with great severity and against our notions of justice. The utmost that can be contended is that the construction of the statute should be varied in that particular case, so as to obviate the injustice. 7 Exch. 549; 8 Exch. 778.

AD EFFECTUM. To the effect, or end. Co.Litt. 204a; 2 Crabb, Real Prop. p. 802, § 2143. *Ad effectum sequentem*, to the effect following. 2 Salk. 417.

AD EVERSIONEM JURIS NOSTRI. To the overthrow of our right. 2 Kent 91.

AD EXCAMBIUM. For exchange; for compensation. Bract. fol. 12b, 37b.

AD EXHIEREDATIONEM. To the disherison, or disinheriting; to the injury of the inheritance. 3 Bl.Comm. 288.

Formal words in the old writ of waste, which calls upon, the tenant to appear and show cause why he hath committed waste and destruction in the place named, *ad excercationem*, etc.; Fitzherbert, Nat. Bev. 55.

AD EXITUM. At issue; at the end (of the pleadings.) Steph.Pl. 24.

AD FACIENDUM. To do. Co.Litt. 204a. *Ad faciendum, sub jiciendum et recipiendum*; to do, submit to, and receive. *Ad faciendam juratamilam*; to make up that jury. Fleta, lib. 2, c. 65, § 12.

AD FACTUM PR1ESTANDUM. In Scotch law, a name descriptive of a class of obligations marked by unusual severity. A debtor *ad fac. prces.* is denied the benefit of the act of grace, the privilege of sanctuary, and the *cessio bonorum*; Erskine, Inst. lib. 3, tit. 3, § 62; Kames, Eq. 216.

AD FEODI FIRMAM. To fee farm. Fleta, lib. 2, c. 50, § 30.

AD FIDEM. In allegiance. 2 Kent, Comm. 56. Subjects born *ad fidem* are those born in allegiance.

AD FILUM AQU1E. To the thread of the water; to the central line, or middle of the stream. *Usque ad filum aquce*, as far as the thread of the stream. Bract. fol. 208b; 235a. A phrase of frequent occurrence in modern law; of which *ad medium filum aquce* (q. v.) is another form, and etymologically more exact.

AD FILUM VIZE. To the middle of the way; to the central line of the road. *Parker v. Inhabitants of Framingham*, 8 Mete. (Mass.) 260.

AD FINEM. Abbreviated *ad fin.* To the end. It is used in citations to books, as a direction to read from the place designated to the end of the chapter, section, etc. *Ad finem litis*, at the end of the suit.

AD FIRMAM. To farm. Derived from an old Saxon word denoting rent. *Ad firmam noctis* was a fine or penalty equal in amount to the estimated cost of entertaining the king for one night. Cowell. *Ad feodi firmam*, to fee farm. Spelman.

AD FUNDANDAM JURISDICTIONEM. To make the basis of jurisdiction. [1905] 2 K.B. 555.

AD GAOLAS DELIBERANDAS. To deliver the gaols; to empty the gaols. Bract. fol. 109b. *Ad gaolam deliberandam*; to deliver the gaol; to make gaol delivery. Bract. fbl. 110b.

AD GRAVAMEN. To the grievance, injury, or oppression. Fleta, lib. 2, c. 47, § 10.

AD HOC. For this; for this special purpose.

An attorney *ad hoc*, or a guardian or curator *ad hoc*, is one appointed for a special purpose, generally to represent the client or infant in the particular action in which the appointment is made. *Bienvenu v. Insurance Co.*, 33 La. Ann. 212.

AD HOMINEM. To the person. A term used in logic with reference to a personal argument.

AD HUNC DIEM. At this day. 1 Leon. 90.

AD IDEM. To the same point, or effect. *Ad idem facit*, it makes to or goes to establish the same point. Bract. fol. 27b.

AD INDE. Thereunto. *Ad inde requisitus*, thereunto required. Townsh.Pl. 22.

AD INFINITUM. Without limit; to an infinite extent; indefinitely.

AD INQUIRENDUM. To inquire; a writ of inquiry; a judicial writ, commanding inquiry to be made of anything relating to a cause pending in court. Cowell.

AD INSTANTIAM. At the instance. 2 Mod. 44. *Ad instantiam partis*, at the instance of a party. Hale, Com.Law, 28.

AD INTERIM. In the meantime. An officer *ad interim* is one appointed to fill a temporary vacancy, or to discharge the duties of the office during the absence or temporary incapacity of its regular incumbent.

AD JUDICIUM. To judgment; to court. *Ad judicium provocare*; to summon to court; to commence an action; a term of the Roman law. Dig. 5, 1, 13, 14.

AD JUNGENDUM AUXILIUM. To joining in aid; to join in aid. See Aid Prayer.

AD JURA REGIS. To the rights of the king; a writ which was brought by the king's clerk, presented to a living against those who endeavored to eject him, to the prejudice of the king's title. Reg. Writs 61.

AD LARGUM. At large; as, title at large; assize at large. See Dane, Abr. c. 144, art. 16, § 7. Also at liberty; free, or unconfined. *Ire ad largum*, to go at large. Plowd. 37.

At large; giving details, or particulars; *in extenso*. A special verdict was formerly called a verdict at large. Plowd. 92.

AD LIBITUM. At pleasure. 3 Bla.Com. 292.

AD LITEM. For the suit; for the purposes of the suit; pending the suit. A guardian *ad litem* is a guardian appointed to prosecute or defend a suit on behalf of a party incapacitated by infancy or otherwise.

AD LUCRANDUM VEL PERDENDUM. For gain or loss. Emphatic words in the old warrants of attorney. Reg. Orig. 21, et seq. Sometimes expressed in English, "to lose and gain." Plowd. 201.

AD MAJOREM CAUTELAM. For greater security. 2 How.State Tr. 1182.

AD MANUM. At hand; ready for use. *Et querens sectam habeat ad manum*; and the plaintiff immediately have his suit ready. Fleta, lib. 2, c. 44, § 2.

AD MEDIUM FILUM AQUÆ. To the middle thread of the stream. See Ad Filum Aquas.

AD MEDIUM FILUM VISE. To the middle thread of the way.

AD MELIUS INQUIRENDUM. A writ directed to a coroner commanding him to hold a second inquest. See 45 Law J.Q.B. 711.

AD MORDENDUM ASSUETUS. Accustomed to bite. Cro.Car. 254. A material averment in declarations for damage done by a dog to persons or animals. 1 Chit.P1. 388; 2 Chit.P1. 597.

AD NOCUMENTUM. To the nuisance, or annoyance; to the hurt or injury. Fleta, lib. 2, c. 52, § 19. *Ad nocumentum liberi tenementi sui*, to the nuisance of his freehold. Formal words in the old assise of nuisance. 3 Bl.Comm. 221.

AD OFFICIUM JUSTICIARIORUM SPECTAT, UNICUIQUE CORAM EIS PLACITANTI JUSTITIAM EXHIBERE. It is the duty of justices to administer justice to every one pleading before them. 2 Inst. 451.

AD OMISSA VEL MALE APPRETIATA. With relation to omissions or wrong interpretations. 3 Ersk.Inst. 9, § 36.

AD OPUS. To the work. See 21 Harv.L.Rev. 264, citing 2 Poll. & Maitl. 232 et seq.; Use.

AD OSTENDENDUM. To show. Formal words in old writs. Fleta, lib. 4, c. 65, § 12.

AD OSTIUM ECCLESIE. At the door of the church. One of the five species of dower formerly recognized by the English law. 1 Washb.Real Prop. 149; 2 Bl.Comm. 132.

AD PIOS USUS. Lat. For pious (religious or charitable) uses or purposes. Used with reference to gifts and bequests.

AD PROSEQUENDAM. To prosecute. 11 Mod. 362.

Ad proximum antecedens fiat relatio nisi impediatur sententia. Relative words refer to the nearest antecedent, unless it be prevented by the context. Jenk.Cent. 180; Brown v. Brown, Del., 3 Terry 157, 29 A.2d 149, 153.

AD PUNCTUM TEMPORIS. At the point of time. Sto.Bailm. § 263.

AD QUIERIMONIAM. On complaint of.

AD QUAESTIONEM FACTI NON RESPONDENT JUDICES, AD QUAESTIONEM JURIS NON RESPONDENT JURATORES. Means that juries must answer to questions of fact and judges to questions of law. Ex parte United States, C.C.A. Wis., 101 F.2d 870, 874.

AD QUEM. To which.

A term used in the computation of time or distance, as correlative to a *quo*; denotes the end or terminal point. See A Quo.

The *terminus a quo* is the point of beginning or departure; the *terminus ad quem*, the end of the period or point of arrival.

AD QUESTIONES FACTI NON RESPONDENT JUDICES; AD QUESTIONES LEGIS NON RESPONDENT JURATORES. Judges do not answer questions of fact; juries do not answer questions of law. 8 Coke, 308; Co.Litt. 295.

AD QUESTIONES LEGIS JUDICES, ET NON JURATORES, RESPONDENT. Judges, and not jurors, decide questions of law. 7 Mass. 279.

AD QUOD CURIA CONCORDAVIT. To which the court agreed. Yearb.P. 20 Hen. VI. 27.

AD QUOD DAMNUM. The name of a writ formerly issuing from the English chancery, commanding the sheriff to make inquiry "to what damage" a specified act, if done, will tend.

AD QUOD DAMNUM

It is a writ which ought to be sued before the king grants certain liberties, as a fair, market, or such like, which may be prejudicial to others, and thereby it should be inquired whether it will be a prejudice to grant them, and to whom it will be prejudicial, and what prejudice 'will come thereby. Termes de la Ley.

There is also another writ of *ad quod damnum*, if any one will turn a common highway and lay out another way as beneficial. Termes de la Ley.

The writ of *ad quod damnum* is a common-law writ, in the nature of an original writ, issued by the prothonotary, and in condemnation proceedings is returnable to and subject to confirmation of the Superior Court. *Elbert v. Scott*, Del., 5 Boyce 1, 90 A. 587.

AD QUOD NON FUIT RESPONSUM. To which there was no answer.

A phrase used in the reports, where a point advanced in argument by one party was not denied by the other; or where a point or argument of counsel was not met or notice by the court; or where an objection was met by the court, and not replied to by the counsel who raised it. 3 Coke, 9; 4 Coke, 40.

AD RATIONEM PONEJE. To cite a person to appear. A technical expression in the old records of the Exchequer, signifying, to put to the bar and interrogate as to a charge made; to arraign on a trial.

AD RECOGNOSCENDUM. To recognize. Fleta, lib. 2, c. 65, § 12. Formal words in old writs.

AD RECTE DOCENDUM OPORTET, PRIMUM INQUIRERE NOMINA, QUIA RERUM COGNITIO A NOMINIBUS RERUM DEPENDET. In order rightly to comprehend a thing, inquire first into the names, for a right knowledge of things depends upon their names. Co.Litt. 68.

AD RECTUM. (L. Lat.) To right. To do right. To meet an accusation. To answer the demands of the law. *Habeant eos ad rectum*. They shall render themselves to answer the law, or to make satisfaction. Bract. fol. 124 b.

AD REPARATIONEM ET SUSTENTATIONEM. For repairing and keeping in suitable condition.

AD RESPONDENDUM. For answering; to make answer; words used in certain writs employed for bringing a person before the court to make answer in defense in a proceeding, as in *habeas corpus ad respondendum* and *capias ad respondendum*, q. v.

AD SATISFACIENDUM. To satisfy. The emphatic words of the writ of *capias ad satisfaciendum*, which requires the sheriff to take the person of the defendant to satisfy the plaintiff's claim.

AD SECTAM. At the suit of. Commonly abbreviated to *ads*.

Used in entering and indexing the names of cases, where it is desired that the name of the defendant should come first. Thus, "B. *ads*. A." indicates that B. is defendant in an action brought by A., and the title so written would be an inversion of the more usual form "A. v. B."

AD STUDENDUM ET ORANDUM. For studying and praying; for the promotion of learning and religion. A phrase applied to colleges and universities. 1 Bl.Comm. 467.

AD TERMINUM ANNORUM. For a term of years.

AD TERMINUM QUI PRIETERIT. For a term which has passed. Words in the Latin form of the writ of entry employed at common law to recover, on behalf of a landlord, possession of premises, from a tenant holding over after the expiration of the term for which they were demised. See Fitzh. Nat.Brev. 201.

AD TRISTEM PARTEM STRENUA EST SUSPICIO. Suspicion lies heavy on the unfortunate side.

AD TUNC ET IBIDEM. In pleading, the Latin name of that clause of an indictment containing the statement of the subject-matter "then and there being found."

AD ULTIMAN VIM TERMINORUM. To the most extended import of the terms; in a sense as universal as the terms will reach. 2 Eden, 54.

AD USUM ET COMMODUM. To the use and benefit.

AD VALENTIAM. To the value. See *Ad Valorem*.

AD VALOREM. According to value. *Powell v. Gleason*; Ariz., 74 P.2d 47, 50, 114 A.L.R. 838.

Duties are either *ad valorem* or *specific*; the former when the duty is laid in the form of a percentage on the value of the property; the latter where it is imposed as a fixed sum on each article of a class without regard to its value. The term *ad valorem* tax means a tax or duty upon the value of the article or thing subject to taxation. *Arthur v. Johnston*, 185 S.C. 324, 194 S.E. 151, 154.

AD VENTREM INSPICIENDUM. To inspect the womb. A writ for the summoning of a jury of matrons to determine the question of pregnancy.

AD VIM MAJOREM VEL AD CASUS FORTUITUS NON TENETUR QUIS, NISI SUA CULPA INTERVENERIT. No one is held to answer for the effects of a superior force, or of accidents, unless his own fault has contributed. Fleta, lib. 2, c. 72, § 16.

AD VITAM. For life. Bract. fol. 13b. *In feodo, vel ad vitam*; in fee, or for life. Id.

AD VITAM AUT CULPAM. For life or until fault. Words descriptive of a tenure of office "for life or good behavior," equivalent to *quamdium bene se gesserit*.

AD VOLUNTATEM. At will. Bract. fol. 27a. *Ad voluntatem domini*, at the will of the lord.

AD WARACTUM. To fallow. Bract. fol. 228b. See *Waractum*.

ADAPTED. Capable of use. *People v. Dorrington*, 221 Mich. 571, 191 N.W. 831, 832. Indicates that the object referred to has been made suitable; has been made to conform to; has been made fit by alteration. *Raynor v. United States*, C.C.A.Ind., 89 F.2d 469, 471.

ADAWLUT. Corrupted from *Adalat*, justice, equity; a court of justice. The terms "Dewanny Adawlut" and "Foujdarry Adawlut" denote the civil and criminal courts of justice in India. Wharton,

ADCORDABILIS DENARI. Money paid by a vassal to his lord upon the selling or exchanging of a feud. Enc. Lond,

ADD. To unite; attach; annex; join. Board of Com'rs of Hancock County v. State, 119 Ind. 473, 22 N.E. 10.

ADDENDUM. A thing that is added or to be added; a list or section consisting of added material.

ADDICERE. Lat. In the civil law, to adjudge or condemn; to assign, allot, or deliver; to sell. In the Roman law, *addico* was one of the three words used to express the extent of the civil jurisdiction of the praetors.

ADDICT. As defined in Acts 1894, No. 157, one who has acquired the habit of using spirituous liquors or narcotics to such an extent as to deprive him of reasonable self-control. Interdiction of Gasquet, 147 La. 722, 85 So. 884, 888.

ADDICTIO. In the Roman law, the giving up to a creditor of his debtor's person by a magistrate; also the transfer of the (deceased) debtor's goods to one who assumes his liabilities.

Additio probat minoritatem. An addition [to a name] proves or shows minority or inferiority. 4 Inst. 80; Wing.Max. 211, max. 60. That is, if it be said that a man has a fee tail, it is less than if he has the fee.

This maxim is applied by Lord Coke to courts, and, terms of law; *minoritas* being understood in the sense of difference, inferiority, or qualification. Thus, the style of the king's bench is *coram rege*, and the style of the court of chancery is *coram domino rege in cancellaria*; the addition showing the difference. 4 Inst. 80. By the word "fee" is intended *fee-simple*, fee-tail not being intended by it, unless there be added to it the *addition* of the word "tail." 2 Bl.Comm. 106; Litt. § 1.

ADDITION. Implies physical contact, something added to another. Structure physically attached to or connected with building itself. Mack v. Eyssell, 332 Mo. 671, 59 S.W.2d 1049; Washington Loan & Trust Co. v. Hammond, 51 App.D.C. 260, 278 F. 569, 571.

Extension; increase; augmentation. Meyering v. Miller, 330 Mo. 885, 51 S.W.2d 65, 66.

That which has become united with or a part of. Judge v. Bergman, 258 Ill. 246, 101 N.E. 574, 576.

French Law

A supplementary process to obtain additional information. Guyot, Repert.

Insurance

The word "addition," as applied to buildings, usually means a part added or joined to a main building. Agnew v. Sun Ins. Office, 167 Wis. 456, 167 N.W. 829. It may also apply to buildings ap-

purtenant to some other building though not actually in physical contact therewith. Taylor v. Northwestern Nat. Ins. Co., 34 Cal.App. 471, 167 P. 899. Not limited to structures physically a part of the main building. Gertner v. Glens Falls Ins. Co., 184 N.Y.S. 669, 670, 193 App.Div. 836,

Liens

Within the meaning of the mechanic's lien law, an "addition" to a building must be a lateral addition. Lake & Risley Co. v. Still, 7 N.J.Misc. 47, 144 A. 110. It must occupy ground without the limits of the building to which it constitutes an addition, so that the lien shall be upon the building formed by the addition and the land upon which it stands. Updike v. Skillman, 27 N.J.L. 132. See also, Lamson v. Maryland Casualty Co., 196 Iowa 1185, 194 N.W. 70, 71.

An alteration in a former building, by adding to its height, or to its depth, or to the extent of its interior accommodations, is merely an "alteration," and not an "addition." Putting a new story on an old building is not an addition. Updike v. Skillman, 27 N.J.L. 132. See, also, Lamson v. Maryland Casualty Co., 196 Iowa 1185, 194 N.W. 70, 71.

Did not include new livestock acquired by mortgagor after execution of mortgage. American State Bank of Watertown v. Boyle, 212 Minn. 293, 4 N.W.2d 108, 109.

Name

Whatever is added to a man's name by way of title or description. Cowell.

In English law, there are four kinds of *additions*,—*additions of estate*, such as yeoman, gentleman, esquire; additions of *degree*, or names of dignity, as knight, earl, marquis, duke; additions of *trade*, mystery, or occupation, as scrivener, painter, mason, carpenter; and additions of *place* of residence, as London, Chester, etc. The only additions recognized in American law are those of mystery and residence.

At common law there was no need of addition in any case; 2 Ld.Raym. 988; it was required only by stat. 1 Hen. V. c. 5, in cases where process of outlawry lies. In all other cases it is only a description of the person, and common reputation is sufficient; 2 Ld.Raym. 849.

ADDITIONAL. This term embraces the idea of joining or uniting one thing to another, so as thereby to form one aggregate. Ex parte Boddie, 200 S.C. 379, 21 S.E.2d 4, 8.

"Additional security" imports a security, which, united with or joined to the former one, is deemed to make it, as an aggregate, sufficient as a security from the beginning. State v. Hull, 53 Miss. 626; Searcy v. Cullman County, 196 Ala. 287, 71 So. 664, 665.

ADDITIONAL BURDEN. See Eminent Domain.

ADDITIONAL INSURED. A person using another's automobile, which is covered by liability policy containing statutory omnibus clause, only when insured's permission is expressly or impliedly given for particular use. Stewart v. City of Rio Vista, 72 Cal.App.2d 279, 164 P.2d 274, 275.

Driver chosen by friend to whom automobile was entrusted by husband who had possession with direct permission of wife in whose name record title lay was not additional insured. Fox v. Crawford, Ohio App., 80 N.E.2d 187, 189.

Where driver of automobile at time it struck pedestrian was using automobile for his own purpose after having received permission from owner only to get automobile

ADDITIONAL

started and return automobile to owner's home, driver was not additional insured. *Howe v. Farmers Auto. Inter-Insurance Exchange*; Wash., 202 P.2d 464, 472.

ADDITIONAL LEGACY. See *Legacy*.

ADDITIONAL SERVITUDE. The imposition of a new and additional easement or servitude on land originally taken by eminent domain proceedings, a use of a different character, for which owner of property is entitled to compensation. *S. D. Childs & Co. v. City of Chicago*, 198 Ill.App. 590, 593; *Williams v. Meridan Light & Ry. Co.*, 110 Miss. 174, 69 So. 596, 597.

ADDITIONAL WORK. Of nature involved in modifications and changes, not independent project. *Maryland Casualty Co. v. City of South Norfolk, C.C.A.Va.*, 54 F.2d 1032, 1037. Work which results from a change or alteration in plans concerning work which has to be done under a contract, while "extra work" relates to work which is not included within the contract itself. *De Martini v. Elade Realty Corp., Co.Ct.*, 52 N.Y.S.2d 487, 489.

ADDITIONALES. In the law of contracts. Additional terms or propositions to be added to a former agreement.

ADDITUR. The power of trial court to assess damages or increase amount of an inadequate award made by jury verdict, as condition of denial of motion for new trial, with consent of defendant whether or not plaintiff consents to such action. *Dorsey et al. v. Barba et al.*, 226 P.2d 677.

ADDLED. Stupid, muddled, foolish. *Windham v. State*, 93 Tex.Cr.R. 477, 248 S.W. 51, 54.

ADDLED PARLIAMENT. The parliament which met in 1614. It sat for but two months and none of its bills received the royal assent. *Taylor*, *Jurispr.* 359.

ADDONE, Addonne. L. Fr. Given to. *Kelham*.

ADDRESS. Place where mail or other communications will reach person. *Munson v. Bay State Dredging & Contracting Co.*, 314 Mass. 435, 50 N.E.2d 633, 636. Generally a place of business or residence.

Equity

Part of a bill wherein is given the appropriate and technical description of the court in which the bill is filed.

Legislation

A formal request addressed to the executive by one or both branches of the legislative body, requesting him to perform some act.

It is provided as a means for the removal of judges deemed unworthy, though the causes of removal would not warrant impeachment. It is not provided for in the Constitution of the United States; and even in those states where the right exists it is exercised but seldom.

Offense

Not synonym of hazard, but an antonym, and, as respects gaming and devices, means skillful

management, dexterity, or adroitness. In *re Wigton*, 151 Pa.Super. 337, 30 A.2d 352, 355.

ADDRESS TO THE CROWN. When the royal speech has been read in Parliament, an address in answer thereto is moved in both houses. Two members are selected in each house by the administration for moving and seconding the address. Since the commencement of the session 1890-1891, it has been a single resolution expressing their thanks to the sovereign for his gracious speech.

ADDUCE. To present, bring forward, offer, introduce. Used particularly with reference to evidence. *Tuttle v. Story County*, 56 Iowa 316, 9 N.W. 292.

Broader in its signification than the word "offered." *Beatty v. O'Connor*, 106 Ind. 81, 5 N.E. 880; *Brown v. Griffin*, 40 Ill.App. 558.

ADEEM. To take away, recall, or revoke. To satisfy a legacy by some gift or substituted disposition, made by the testator, in advance. *Tolman v. Tolman*, 85 Me. 317, 27 Atl. 184. *Woodburn Lodge No. 102, I. O. O. F., v. Wilson*, 148 Or. 150, 34 P.2d 611, 614. See *Ademption*.

If the identical thing bequeathed is not in existence, or has been disposed of, the legacy is "adeemed" and the legatee's rights are gone. *Lange v. Lange*, 127 N.J.Eq. 315, 12 A.2d 840, 843; *Welch v. Welch*, 147 Miss. 728, 113 So. 197, 198.

ADELANTADO. In Spanish law, the military and political governor of a frontier province. This office has long since been abolished. Also a president or president judge; a judge having jurisdiction over a kingdom, or over certain provinces only. So called from having authority over the judges of those places. *Las Partidas*, pt. 3, tit. 4, l. 1.

ADELING, or ATHELING. Noble; excellent. A title of honor among the Anglo-Saxons, properly belonging to the king's children. *Spelman*.

ADEMPATIO. Lat. In the civil law, a revocation of a legacy; an ademption. *Inst.* 2, 21, pr. Where it was expressly transferred from one person to another, it was called *translatio*. *Inst.* 2, 21, 1; *Dig.* 34, 4.

ADEMPATION. Extinction or withdrawal of legacy by testator's act equivalent to revocation or indicating intention to revoke. *Tagnon's Adm'x v. Tagnon*, 253 Ky. 374, 69 S.W.2d 714.

Removal. *Lewis v. Hill*, 387 Ill. 542, 56 N.E.2d 619, 621. Testator's giving to a legatee that which he has provided in his will, or his disposing of that part of his estate so bequeathed in such manner as to make it impossible to carry out the will. *Hurley v. Schuler*, 296 Ky. 118, 176 S.W.2d 275, 276. Revocation, recalling, or cancellation, of a legacy, according to the apparent intention of the testator, implied by the law from acts done by him in his life, though such acts do not amount to an express revocation of it. *Burnham v. Comfort*, 108 N.Y. 535, 15 N.E. 710.

The act by which the testator pays to his legatee, in his life-time, a general legacy which by his will he had proposed to give him at his death, 1 Rep.Leg. p. 365; and the act by which a specific legacy has become inoperative on account of the testator having parted with the subject. *Dillender v. Wilson*, 228 Ky. 758, 16 S.W.2d 173, 174.

See *Advancement*.

ADEO. Lat. So, as. *Adeo plene et integre*, as fully and entirely. 10 Coke, 65.

ADEQUATE. Sufficient; proportionate; equally efficient; equal to what is required; suitable to the case or occasion; satisfactory. *Nagle v. City of Billings*, 77 Mont. 205, 250 P. 445, 446. Equal to some given occasion or work. *Nissen v. Miller*, 44 N.M. 487, 105 P.2d 324, 326. Commensurate; it does not mean average or graduation. *Vander-made v. Appert*, 125 N.J.Eq. 366, 5 A.2d 868, 871.

ADEQUATE CARE. Such care as a man of ordinary prudence would himself take under similar circumstances to avoid accident; care proportionate to the risk to be incurred. *Wallace v. Wilmington & N. R. Co.*, 8 Houst. (Del.) 529, 18 Atl. 818.

ADEQUATE CAUSE. sufficient cause for a particular purpose. *Pennsylvania & N. Y. Canal & R. Co. v. Mason*, 109 Pa. 296, 58 Am.Rep. 722.

In criminal law, adequate cause for the passion which reduces a homicide committed under its influence from the grade of murder to manslaughter, means such cause as would commonly produce a degree of anger, rage, resentment, or terror, in a person of ordinary temper, sufficient to render the mind incapable of cool reflection. Insulting words or gestures, or an assault and battery so slight as to show no intention to inflict pain or injury, or an injury to property unaccompanied by violence are not adequate causes. *Vollintine v. State*, 77 Tex.Cr.R. 522, 179 S.W. 108; *Berry v. State*, 157 S.W.2d 650, 652, 143 Tex.Cr.R. 67. See *Adequate Provocation*.

ADEQUATE COMPENSATION. Just value of property taken under power of eminent domain, payable in money. *Buffalo, etc., R. Co. v. Ferris*, 26 Tex. 588. Market value of property when taken. *Louisiana Highway Commission v. Guidry*, 176 La. 389, 146 So. 1, 5. It includes interest. *Texarkana & Ft. S. Ry. Co. v. Brinkman*, Tex.Civ. App., 288 S.W. 852, 853. It may include the cost or value of the property to the owner for the purposes for which he designed it. *Elbert County v. Brown*, 16 Ga.App. 834, 86 S.E. 651, 656.

Such only as puts injured party in as good a condition as he would have been in if injury had not been inflicted. *Town of Winchester v. Cox*, 129 Conn. 106, 26 A.2d 592, 597.

ADEQUATE CONSIDERATION. One which is equal, or reasonably proportioned, to the value of that for which it is given. 1 Story, Eq.Jur. §§ 244-247. One which is not so disproportionate as to shock our sense of that morality and fair dealing which should always characterize transactions between man and man. *U. S. Smelting, Refining & Milling Co. v. Utah Power & Light Co.*, 197 P. 902, 905, 58 Utah, 168. Fair and reasonable under circumstances. *Boulenger v. Morison*, 88 Cal.App. 664, 264 P. 256, 259. Reasonably just and equitable. *Laguna Land & Water Co. v. Greenwood*, 92 Cal.App. 570, 268 P. 699, 700.

ADEQUATE OR REASONABLE FACILITIES. Such railroad facilities as might be fairly demanded, with regard to size of place, extent of demand for transportation, cost of furnishing additional accommodation asked for, and to all other facts which would have bearing upon question of convenience and cost. *Kurn v. State*, 175 Okl. 379, 52 P.2d 841, 843.

ADEQUATE PREPARATION. Embraces full consultation with accused, interviews with witnesses, study of facts and law, and determination of character of defense to be made and policy to be followed during trial. *Nelson v. Commonwealth*, 295 Ky. 641, 175 S.W.2d 132, 133.

ADEQUATE PROVOCATION. An adequate provocation to cause a sudden transport of passion that may suspend the exercise of judgment and exclude premeditation and a previously formed design is one that is calculated to excite such anger as might obscure the reason or dominate the volition of an ordinary reasonable man. *Commonwealth v. Webb*, 252 Pa. 187, 97 A. 189, 191.

ADEQUATE REMEDY. One vested in the complainant, to which he may at all times resort at his own option, fully and freely, without let or hindrance. *Wheeler v. Bedford*, 7 A. 22, 54 Conn. 244; *State ex rel. Heimov v. Thomson*, 131 Conn. 8, 37 A.2d 689, 692. Suitable, proportionate, or sufficient. *Fischer v. Damm*, 36 Ohio App. 515, 173 N.E. 449, 451.

A remedy which is plain and complete and as practical and efficient to the ends of justice and its prompt administration as the remedy in equity. *Farmers & Traders Bank v. Kendrick*, 341 Mo. 571, 108 S.W.2d 62, 64.

A remedy that affords complete relief with reference to the particular matter in controversy, and is appropriate to the circumstances of the case. *State v. Huwe*, 103 Ohio St. 546, 134 N.E. 456, 459. A remedy to be adequate, precluding resort to mandamus, must not only be one placing relator in statu quo, but must itself enforce in some way performance of the particular duty. *State v. Erickson*, 104 Conn. 542, 133 A. 683, 686. Must reach end intended, and, actually compel performance of duty in question. *Buchanan v. Buchanan*, 124 Va. 255, 6 S.E.2d 612, 620. Must be plain, accurate, certain, speedy, specific, and appropriate to the particular circumstances, and must also be equally as convenient, beneficial, and effective as the remedy by mandamus. *Simpson v. Williams Rural High School Dist.*, Tex.Civ.App., 153 S.W.2d 852, 856.

ADESSE. In the civil law; to be present; the opposite of *abesse*. Calvin.

ADEU. Without day, as when a matter is finally dismissed by the court. *Alez adeu*, go without day. Y. B. 5 Edw. II. 173. See *Adieu*.

ADFERRUMINATIO. In the civil law, the welding together of iron; a species of *adjunctio*, (q. v.). Called also *ferruminatio*. *Mackeld.Rom.Law*, § 276; Dig. 6, 1, 23, 5.

ADHERENCE. In Scotch law, the name of a form of action by which the mutual obligation of marriage may be enforced by either party. Bell. It corresponds to the English action for the restitution of conjugal rights. Wharton.

ADHERING. Joining, leagued with, cleaving to; as, "adhering to the enemies of the United States."

"Adhering" consists in giving to the United States the loyalty due from a citizen. *United States v. Stephan*, D.C. Mich., 50 F.Supp. 738, 741.

Any intentional act furthering hostile designs of enemies of the United States, or an act which intentionally strengthens or tends to strengthen enemies of the United States, or which weakens or tends to weaken power of the United States to resist and attack such enemies, constitutes "adhering" to such enemies. *United States v. Haupt*, D.C. Ill., 47 F.Supp. 836, 839.

Rebels, being citizens: are not "enemies," within the meaning of the constitution; hence a conviction for treason, in promoting a rebellion, cannot be sustained under that branch of the constitutional definition which speaks of "adhering to their enemies, giving them aid and comfort." *United States v. Greathouse*, 2 Abb.U.S. 364, Fed.Cas.No. 15,254.

ADHESION. The entrance of another state into an existing treaty with respect only to a part of the principles laid down or the stipulations agreed to. *Opp.Int.L.* § 533.

Properly speaking, by adhesion the third state becomes a party only to such parts as are specifically agreed to, and by accession it accepts and is bound by the whole treaty. See *Accession*.

ADHIBERE. In the civil law, to apply; to employ; to exercise; to use. *Adhibere diligentiam*, to use care. *Adhibere vim*, to employ force.

ADIATION. A term used in the laws of Holland for the application of property by an executor. *Wharton*.

ADIEU. L. Fr. Without day. A common term in the Year Books, implying final dismissal from court.

ADIPOCERE. A waxy substance (chemically margarate of ammonium or ammoniacal soap) formed by the decomposition of animal matter protected from the air but subjected to moisture; in medical jurisprudence, the substance into which a human cadaver is converted which has been buried for a long time in a saturated soil or has lain long in water.

ADIRATUS. Lost; strayed; a price or value set upon things stolen or lost, as a recompense to the owner. *Cowell*.

ADIT. In mining law, an entrance or approach; a horizontal excavation used as an entrance to a mine, or a vent by which ores and water are carried away; an excavation "in and along a lode," which in statutes of Colorado and other mining states is made the equivalent of a discovery shaft. *Electro-Magnetic M. & D. Co. v. Van Auken*, 9 Colo. 204, 11 P. 80.

ADITUS. An approach; a way; a public way. *Co.Litt.* 56a.

ADJACENT. Lying near or close to; sometimes, contiguous; neighboring. *Ex parte Jeffcoat*, 108 Fla. 207, 146 So. 827. *Adjacent* implies that the two objects are not widely separated, though they may not actually touch, *Harrison v. Guilford County*, 218 N.C. 718, 12 S.E.2d 269, while *adjoin-*

ing imports that they are so joined or united to each other that no third object intervenes. *Wolfe v. Hurley*, D.C.La., 46 F.2d 515, 521.

A word of flexible meaning, depending upon context and subject matter. *U. S. v. Denver & R. G. Ry. Co.*, D.C. Colo., 31 F. 886; *Johnston v. Davenport Brick & Tile Co.*, D.C.Iowa, 237 F. 668, 669.

Suburbs of city not within limits of another municipality though a long strip of land 10 feet wide connected the property with city limits. *Lefler v. City of Dallas, Tex.* Civ.App., 177 S.W.2d 231, 235.

ADJECTIVE LAW. The aggregate of rules of procedure or practice. As opposed to that body of law which the courts are established to administer, (called "substantive law,") it means the rules according to which the substantive law is administered. That part of the law which provides a method for enforcing or maintaining rights, or obtaining redress for their invasion. *Maurizi v. Western Coal & Mining Co.*, 321 Mo. 378, 11 S.W.2d 268, 272. *Holl.Jur.* 61,238.

ADJOINING. The word in its etymological sense, means touching or contiguous, as distinguished from lying near to or adjacent. *Broun v. Texas & N. O. R. Co.*, Tex.Civ.App., 295 S.W. 670, 674; *Plainfield-Union Water Co. v. Inhabitants of City of Plainfield*, 84 N.J.Law, 634, 87 A. 448, 450. To be in contact with; to abut upon. *State ex rel. Boynton v. Bunton*, 141 Kan. 103, 40 P.2d 326, 328. And the same meaning has been given to it when used in statutes. *City of New York v. Alheidt*, 151 N.Y.S. 463, 464, 88 Misc. 524. See *Adjacent*.

ADJOURN. To put off; defer; postpone. To postpone action of a convened court or body until another time specified, or indefinitely, the latter being usually called to adjourn *sine die*. *Bispham v. Tucker*, 2 N.J.L. 253; *Reynolds v. Cropsey*, 241 N.Y. 389, 150 N.E. 303. To suspend or recess during a meeting which continues in session. *Byrd v. Byrd*, 193 Miss. 249, 8 So.2d 510, 512.

Suspending business for a time, delaying. Probably, without some limitation, it would, when used with reference to a sale on foreclosure, or any judicial proceeding, properly include the fixing of the time to which the postponement was made. *Waldrop v. Kansas City Southern Ry. Co.*, 131 Ark. 453, 199 S.W. 369, 371, L.R.A.1918B, 1081.

ADJOURNAL. A term applied in Scotch law and practice to the records of the criminal courts. The original records of criminal trials were called "bukis of adiornale," or "books of adjournal," few of which are now extant. An "act of adjournal" is an order of the court of justiciary entered on its minutes.

ADJOURNAMENTUM EST AD DIEM DICERE SEU DIEM DARE. An adjournment is to appoint a day or give a day. 4 Inst. 27. Hence the formula "*eat sine die*."

ADJOURNATUR. L. Lat. It is adjourned. A word with which the old reports very frequently conclude a case. 1 Ld.Raym. 602; 1 Show. 7; 1 Leon. 88.

A continuation of the same meeting, and at such adjourned meeting the governing body can do any act which might have been done if no adjournment had taken place, and limitations imposed on governing body as regards action at original meeting obtain at adjourned meeting. *Vogel v. Parker*, 118 N.J.L. 521, 193 A. 817, 818. One ordered by board at regular meeting, and which is to convene after termination of such regular meeting and prior to next regular meeting. *Byrd v. Byrd*, 193 Miss. 249, 8 So.2d 510, 513.

ADJOURNED SUMMONS. A summons taken out in the chambers of a judge, and afterwards taken into court to be argued by counsel.

ADJOURNED TERM. In practice, a continuance, by adjournment, of a regular term. *Harris v. Gest*, 4 Ohio St. 473; *Kingsley v. Bagby*, 2 Kan. App. 23, 41 P. 991. Distinguished from an "additional term," which is a distinct term. *Harris v. Gest*, 4 Ohio St. 473; *Kingsley v. Bagby*, 2 Kan. App. 23, 41 P. 991. A continuation of a previous or regular term; the same term prolonged, wherein power of court over business which has been done, and the entries made at the regular term, continues. *Van Dyke v. State*, 22 Ala. 57; *Carter v. State*, 14 Ga.App. 242, 80 S.E. 533, 534.

ADJOURNMENT. A putting off or postponing of business or of a session until another time or place; the act of a court, legislative body, public meeting, or officer, by which the session or assembly is dissolved, either temporarily or finally, and the business in hand dismissed from consideration, either definitely or for an interval. If the adjournment is final, it is said to be *sine die*. See *Johnson City v. Tennessee Eastern Electric Co.*, 133 Tenn. 632, 182 S.W. 587, 589.

In the civil law a calling into court; a summoning at an appointed time. *Due Cange*.

ADJOURNMENT DAY. A further day appointed by the judges at the regular sittings at *nisi prius* to try issue of fact not then ready for trial.

ADJOURNMENT DAY IN ERROR. In English practice, a day appointed some days before the end of the term at which matters left undone on the affirmance day are finished. 2 Tidd, Pr. 1176.

ADJOURNMENT IN EYRE. The appointment of a day when the justices in eyre mean to sit again. *Cowell*; *Spelman*.

ADJOURNMENT SINE DIE. An adjournment without setting a time for another meeting or session. See *Sine Die*.

ADJUDGE. To pass on judicially, to decide, settle, or decree, or to sentence or condemn. *People v. Rave*, 364 Ill. 72, 3 N.E.2d 972, 975.

Judgment of a court of competent jurisdiction; equivalent of convicted and sentenced. In *re Tarlo's Estate*, 315 Pa. 321, 172 A. 139, 140. Implies a judicial determination of a fact, and the entry of a judgment. *Department of Banking v. Hedges*, 136 Neb. 382, 286 N.W. 277, 283. Does not mean the same as *deemed contra*, under statute, *State v. District Court*, 64 Mont. 181, 208 P. 952, 955. *Blaufus v. People*, 69 N.Y. 107, 25 Am.Rep. 148. Predicated

only of an act of the court. *Searight v. Com.*, 13 S. & R. Pa. 301. Compare *Drinkhouse v. Van Ness*, 202 Cal. 359, 260 P. 869, 874; *People ex rel. Strohsahl v. Strohsahl*, 222 N.Y.S. 319, 324, 221 App. Div. 86.

ADJUDICATAIRE. In Canadian law, a purchaser at a sheriff's sale. See 1 Low.Can. 241; 10 Low.Can. 325.

ADJUDICATE. To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense. *United States v. Irwin*, 8 S.Ct. 1033, 127 U.S. 125, 32 L.Ed. 99; *Street v. Benner*, 20 Fla. 700.

ADJUDICATEE. In French and civil law, the purchaser at a judicial sale. *Brent v. New Orleans*, 6 So. 793, 41 La. Ann. 1098.

ADJUDICATIO. In the civil law, an adjudication. The judgment of the court that the subject-matter is the property of one of the litigants; confirmation of title by judgment. *Mackeld.Rom.Law*, § 204.

ADJUDICATION. The giving or pronouncing a judgment or decree in a cause; also the judgment given. *People ex rel. Argus Co. v. Hugo*, 168 N.Y. S. 25, 27, 101 Misc. 481. Or the entry of a decree by a court in respect to the parties in a case. *Samuel Goldwyn, Inc., v. United Artists Corporation*, C.C.A.Del., 113 F.2d 703, 706.

It implies a hearing by a court, after notice, of legal evidence on the factual issue involved. *Genzer v. Fillip*, Tex.Civ.App., 134 S.W.2d 730, 732. The equivalent of a "determination." *Campbell v. Wyoming Development Co.*, 55 Wyo. 347, 100 P.2d 124, 132. And contemplates that the claims of all the parties thereto have been considered and set at rest. *Miller v. Scobie*, 152 Fla. 328, 11 So.2d 892, 894. The term is principally used in bankruptcy proceedings, the adjudication being the order which declares the debtor to be a bankrupt. *First Nat. Bank v. Pothuisje*, 217 Ind. 1, 25 N.E.2d 436, 438, 130 A.L.R. 1238.

French Law

A sale made at public auction and upon competition. Adjudications are voluntary, judicial, or administrative. *Duverger*.

Scotch Law

A species of diligence, or process for transferring the estate of a debtor to a creditor, carried on as an ordinary action before the court of session. A species of judicial sale, redeemable by the debtor. A decret of the lords of session, adjudging and appropriating a person's lands, hereditaments, or any heritable right to belong to his creditor, who is called the "adjudger," for payment or performance. *Bell*; *Ersk.Inst. c. 2, tit. 12, §§ 39-55*; *Forb.Inst. pt. 3, b. 1, c. 2, tit. 6*.

Adjudication contra hreditatem jacentem. When a debtor's heir apparent renounces the succession, any creditor may obtain a decree *cognitionis causel*, the purpose of which is that the amount of the debt may be ascertained so that the real estate may be adjudged.

Adjudication in bankruptcy. See *Bankruptcy*.

ADJUDICATION

Adjudication *in* implement. An action by a grantee against his grantor to compel him to complete the title.

ADJUNCT. Something added to another. *New York Trust Co. v. Carpenter*, C.C.A.Ohio, 250 F. 668, 672.

An additional judge sometimes appointed in the Court of Delegates, *q. v.*

ADJUNCTIO. In the civil law, adjunction; a species of *accessio*, whereby two things belonging to different proprietors are brought into firm connection with each other; such as interweaving, (*intertextura*); welding together, (*adferrumina-tio*); soldering together, (*applumbatura*); painting, (*pictura*); writing, (*scriptura*); building, (*inadificatio*); sewing, (*ratio*); and planting, (*plantatio*). Inst. 2, 1, 26-34; Dig. 6, 1, 23; Mackeld.Rom.Law, § 276. See *Accessio*.

ADJUNCTION. In civil law, the attachment or union permanently of a thing belonging to one person to that belonging to another. This union may be caused by *inclusion*, as if one man's diamond be set in another's ring, or by *soldering*, *sewing*, *construction*, *writing*, or *painting*.

The common law implicitly adopts the civil law doctrines. See 2 Bla.Com. 404. See *Accession*.

One associated with another in a subordinate or an auxiliary manner; an associate.

ADJUNCTS. Additional judges sometimes appointed in the Court of Delegates, *q. v.* See *Shelford*, Lun. 310; 1 Hagg.Eccl.Rep. 384; 2 Id. 84; 3 id. 471.

ADJUNCTUM ACCESSORIUM. An accessory or appurtenance.

ADJURATION. A swearing or binding upon oath.

ADJUST. To settle or arrange; to free from differences or discrepancies; to bring to satisfactory state so that parties are agreed, as to adjust amount of loss by fire. *Western Loggers' Machinery Co. v. National Union Fire Ins. Co.*, 136 Or. 549, 299 P. 311, 312. Controversy to property or estate, In re *Sidman's Estate*, 278 N.Y.S. 43, 154 Misc. 675. To bring to proper relations; to settle; *Jeff Davis County v. Davis*, Tex.Civ.App., 192 S.W. 291, 295. To determine and apportion an amount due. *Flaherty v. Insurance Co.*, 46 N.Y.S. 934, 20 App.Div. 275. Accounts are adjusted when they are settled and a balance struck. *Townes v. Birchett*, 12 Leigh Va. 173, 201. It is sometimes used in the sense of pay. See *Lynch v. Nugent*, 80 Iowa, 422, 46 N.W. 61. When used in reference to a liquidated claim, *Combination Oil & Gas Co. v. Brady*, Tex.Civ.App., 96 S.W.2d 415, 416.

ADJUSTED COST BASIS. For income tax purposes, original cost plus additions to capital less depreciation results in the "adjusted cost basis." *Herder v. Helvering*, 106 F.2d 153, 162, 70 App.D. C. 287.

ADJUSTER. One appointed to adjust a matter, to ascertain or arrange or settle. *Commercial Credit*

Co. v. Macht, 89 Ind.App. 59, 165 N.E. 766. One who makes any adjustment or settlement. *Popa v. Northern Ins. Co.*, 192 Mich. 237, 158 N.W. 945, 946, or who determines the amount of a claim, as a claim against an insurance company. *Samchuck v. Insurance Co. of North America*, 99 Or. 565, 194 P. 1095. He is a special agent for the person or company for whom he acts. *Bond v. National Fire Ins. Co.*, 77 W.Va. 736, 88 S.E. 389, 394; *Howe v. State Bar of California*, 212 Cal. 222, 298 P. 25, 27. Compare *Manheim v. Standard Fire Ins. Co. of Hartford, Conn.*, 84 Wash. 16, 145 P. 992.

ADJUSTMENT. An arrangement; a settlement. *Henry D. Davis Lumber Co. v. Pacific Lumber Agency*, 220 P. 804, 805, 127 Wash. 198.

In the law of insurance, the adjustment of a loss is the ascertainment of its amount and the ratable distribution of it among those liable to pay it; the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay. *Marsh.Ins.* 4th Ed. 499; 2 *Phil.Ins.* §§ 1814, 1815; *New York v. Insurance Co.*, 39 N.Y. 45, 100 Am. Dec. 400; *Whipple v. Insurance Co.*, 11 R. I. 139.

ADJUTANT GENERAL. The term "civil adjutant general" is used as one of convenience merely to designate state adjutant general who has not been officially recognized by War Department. *People v. Newlon*, 77 Colo. 516, 238 P. 44, 47.

ADJUVARI QUIPPE NOS, NON DECIPI, BENEFICIO OPORTET. We ought to be favored, not injured by that which is intended for our benefit. (The species of bailment called "loan" must be to the advantage of the borrower, not to his detriment.) *Story*, *Bailm.* § 275. See 8 El. & Bl. 1051.

ADLAMWR. In Welsh law, a proprietor who, for some cause, entered the service of another proprietor, and left him after the expiration of a year and a day. He was liable to the payment of 30 pence to his patron. *Wharton*.

ADLEGIARE. To purge one's self of a crime by oath.

ADMANUENSIS. A person who swore by laying his hands on the book.

ADMEASUREMENT. Ascertainment by measure; measuring out; assignment or apportionment by measure, that is, by fixed quantity or value, by certain limits, or in definite and fixed proportions.

ADMEASUREMENT OF DOWER. In practice, a remedy which lay for the heir on reaching his majority to rectify an assignment of dower made during his minority, by which the doweress had received more than she was legally entitled to. 2 Bl.Comm. 136; *Gilb. Uses*, 379.

The remedy is of rare occurrence. *Jones v. Brewer*, 1 Pick. (Mass.) 314; *McCormick v. Taylor*, 2 Ind. 336. In some of the states the statutory proceeding enabling a widow to compel the assignment of dower is called "admeasurement of dower."

ADMEASUREMENT OF PASTURE. In English law, a writ which lay between those that have

common of pasture appendant, or by vicinage, in cases where any one or more of them surcharges the common with more cattle than they ought. Bract. fol. 229a; 1 Crabb, Real Prop. p. 318, § 358. The remedy is now abolished in England; 3 Sharsw. Bla. Com. 239, n.; and in the United States; 3 Kent 419.

ADMEASUREMENT, WRIT OF. It lay against persons who usurped more than their share, in the two following cases: Admeasurement of dower, and admeasurement of pasture. Termes de la Ley.

ADMENSURATIO. In old English law, admeasurement. Reg. Orig. 156, 157.

ADMEZATORES. In old Italian law, persons chosen by the consent of contending parties, to decide questions between them. Literally, mediators. Spelman.

ADMINICLE. Used as an English word in the statute of 1 Edw. IV, c. 1, in the sense of aid, or support.

In civil law, imperfect proof. Merl. Répert. See Adminiculum.

In Scotch law, an aid or support to something else. A collateral deed or writing, referring to another which has been lost, and which it is in general necessary to produce -before the tenor of the lost deed can be proved by parol evidence. Ersk. Inst. b. 4, tit. 1, § 55.

ADMINICULAR. Auxiliary or subordinate to. "The murder would be *adminicular* to the robbery," (*i. e.*, committed to accomplish it.) The Marianna Flora, 3 Mason, 121, Fed. Cas. No. 9080.

ADMINICULAR EVIDENCE. Auxiliary or supplementary evidence; such as is presented for the purpose of explaining and completing other evidence. (Chiefly used in ecclesiastical law)

ADMINICULATE. To give adminicular evidence.

ADMINICULATOR. An officer in the Romish church, who administered to the wants of widows, orphans, and afflicted persons. Spelman.

ADMINICULUM. Lat. An adminicle; a prop or support; an accessory thing. An aid or support to something else, whether a right or the evidence of one. It is principally used to designate evidence adduced in aid or support of other evidence, which without it is imperfect. Brown.

ADMINISTER. To manage or conduct. Glocksens v. Holmes, 299 Ky. 626, 186 S.W.2d 634, 637. To discharge the duties of an office; to take charge of business; to manage affairs; to serve in the conduct of affairs, in the application of things to their uses; to settle and distribute the estate of a decedent. Hunter v. City of Louisville, 208 Ky. 562, 271 S.W. 690, 691.

Also, to give, as an oath; to direct or cause to be taken. Gilchrist v. Comfort, 34 N.Y. 239; Brinson v. State, 89 Ala. 105, 8 So. 527; State v. Van Wormer, 103 Kan. 309, 173 P. 1076, 1081.

To apply, as medicine or a remedy; to give, as a dose or something beneficial or suitable. Barfield v. State, 71 Okl. Cr. 195, 110 P.2d 316, 317. To cause or procure a person to take some drug or other substance into his or her system; to direct and cause a medicine, poison, or drug to be taken into the system. State v. Jones, 4 Pennewill (Del.) 109, 53 Atl. 861; McCaughey v. State, 156 Ind. 41, 59 N.E. 169.

Neither fraud nor deception is a necessary ingredient in the act of administering poison. To force poison into the stomach of another; to compel another by threats of violence to swallow poison; to furnish poison to another for the purpose and with the intention that the person to whom it is delivered shall commit suicide therewith, and which poison is accordingly taken by the suicide for that purpose; or to be present at the taking of poison by a suicide, participating in the taking thereof, by assistance, persuasion, or otherwise,—each and all of these are forms and modes of "administering" poison. Blackburn v. State, 23 Ohio St. 146.

ADMINISTRATION. Managing or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like. Webb v. Frohmiller, 52 Ariz. 128, 79 P.2d 510.

In public law, the administration of government means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organs of the sovereign; direction or oversight of any office, service, or employment. Greene v. Wheeler, C.C.A. Wis., 29 F.2d 468, 469. The term "administration" is also conventionally applied to the whole class of public functionaries, or those in charge of the management of the executive department. House v. Creveling, 147 Tenn. 589, 250 S.W. 357, 358.

ADMINISTRATION EXPENSE. "Administrative expenses" imply disbursements incidental to the management of the estate for which credit would be allowed on a voucher. In re Hooker's Estate, 18 N.Y.S.2d 107, 112, 173 Misc. 515. Those deductible in computing estate tax are merely charges which are proper deductions and in ordinary course of administration will ultimately be allowed. Bourne v. U. S., Ct. Cl., 2 F. Supp. 228, 231.

ADMINISTRATION OF ESTATES. Supervision by an executor or administrator. Peterson v. Demmer, D.C. Tex., 34 F. Supp. 697, 700. Management of estate by independent executrix. Palfrey v. Harborth, Tex. Civ. App., 158 S.W.2d 326, 327. Normally involves the collection, management, and distribution of estate, including legal proceedings necessary to satisfy claims of creditors, next of kin, legatees, or whatever other parties may have any claim to property of a deceased person. Hawley v. Hawley, 114 F.2d 745, 748, 72 App. D.C. 376.

The management and settlement of the estate of an intestate, or of a testator who has no executor, performed under the supervision of a court, by a person duly qualified

ADMINISTRATION

and legally appointed, and usually involving (1) the collection of the decedent's assets; (2) payment of debts and claims against him and expenses; (3) distributing the remainder of the estate among those entitled thereto.

The term is applied broadly to denote the management of an estate by an executor, and also the management of estates of minors, lunatics, etc., in those cases where trustees have been appointed by authority of law to take charge of such estates in place of the legal owners. *Bouvier*; *Crow v. Hubbard*, 62 Md. 565.

Administration is principally of the following kinds, viz.

Ad colligendum bona defuncti. To collect the goods of the deceased. Special letters of administration granted to one or more persons, authorizing them to collect and preserve the goods of the deceased, are so called. 2 Bl.Comm. 505; 2 Steph.Comm. 241. These are otherwise termed "letters *ad colligendum*," and the party to whom they are granted, a "collector."

An administrator *ad colligendum* is the mere agent or officer of the court to collect and preserve the goods of the deceased until some one is clothed with authority to administer them, and cannot complain that another is appointed administrator in chief. *Flora v. Mennice*, 12 Ala. 836.

Ancillary administration is auxiliary and subordinate to the administration at the place of the decedent's domicile; it may be taken out in any foreign state or country where assets are locally situated, and is merely for the purpose of collecting such assets and paying debts there.

Cum testamento annexo. Administration with the will annexed. Administration granted in cases where a testator makes a will, without naming any executors; or where the executors who are named in the will are incompetent to act, or refuse to act; or in case of the death of the executors, or the survivor of them. 2 Bl.Comm. 503, 504.

De bonis non. Administration of the goods not administered. Administration granted for the purpose of administering such of the goods of a deceased person as were not administered by the former executor or administrator. *Tucker v. Horner*, 10 Phila.Pa. 122.

De bonis non cum testamento annexo. That which is granted when an executor dies leaving a part of the estate unadministered. *Clemens v. Walker*, 40 Ala. 189.

Durante absentia. That which is granted during the absence of the executor and until he has proved the will.

Durante minori cetate. Where an infant is made executor; in which case administration with will annexed is granted to another, during the minority of such executor, and until he shall attain his lawful age to act. See *Godo*. 102.

Foreign administration. That which is exercised by virtue of authority properly conferred by a foreign power.

Pendente lite. Administration during the suit. Administration granted during the pendency of a suit touching the validity of a will. 18 N.J.Law, 15, 20.

Public administration is such as is conducted (in some jurisdictions) by an officer called the public administrator, who is appointed to administer in cases where the intestate has left no person entitled to apply for letters.

General administration. The grant of authority to administer upon the entire estate of a decedent, without restriction or limitation, whether under the intestate laws or with the will annexed. *Clemens v. Walker*, 40 Ala. 198.

Special administration. Authority to administer upon some few particular effects of a decedent, as opposed to authority to administer his whole estate. In re Senate Bill, 12 Colo. 193, 21 P. 482.

Letters of Administration. The instrument by which an administrator or administratrix is authorized by the probate court, surrogate, or other proper officer, to have the charge and administration of the goods and chattels of an intestate. See *Mutual Ben. L. Ins. Co. v. Tisdale*, 91 U.S. 243, 23 L.Ed. 314.

ADMINISTRATION SUIT. In English practice, a suit brought in chancery, by any one interested, for administration of a decedent's estate, when there is doubt as to its solvency. *Stimson*.

ADMINISTRATIVE. Connotes of or pertains to administration, especially management, as by managing or conducting, directing, or superintending, the execution, application, or conduct of persons or things. *Fluet v. McCabe*, Mass., 299 Mass. 173, 12 N.E.2d 89, 93. Particularly, having the character of executive or ministerial action. *Mauritz v. Schwind*, Tex.Civ.App., 101 S.W.2d 1085, 1090. In this sense, administrative functions or acts are distinguished from such as are judicial. *People v. Austin*, 46 N.Y.Supp. 526, 20 App.Div. 1. Synonymous with "executive." *Sheely v. People*, 54 Colo. 136, 129 P. 201, 202; *Saint v. Allen*, 126 So. 548, 555, 169 La. 1046. An administrative act concerns daily affairs as distinguished from permanent matters. *People v. Graham*, 70 Colo. 509, 203 P. 277, 278.

ADMINISTRATIVE ACTS. Acts of an officer which are to be deemed as acts of administration, and are commonly called "administrative acts" and classed among those governmental powers properly assigned to the executive department, 'are those acts which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body or such as are devolved upon it by the organic law of its existence. *Ex parte McDonough*, 27 Cal.App.2d 155, 80 P.2d 485, 487.

ADMINISTRATIVE AGENCY. An agency of the sovereign power charged with administering particular legislation. Examples are compensation and industrial commissions, *Joseph H. Weiderhoff, Inc., v. Neal*, D.C.Mo., 6 F.Supp. 798, 799; Federal Trade Commission, *Hastings Mfg. Co. v. Federal Trade Commission*, 153 F.2d 253, certiorari denied 66 S.Ct. 1344, 328 U.S. 853, 90 L.Ed. 1626; tax commissions, *First State Bank of Mountair v. State Tax Commission*, 59 P.2d 667, 40 N.M. 319; public service commissions, *New York Cent. R. Co. v. Public Service Commission*, 7 N.E. 2d 957, 212 Ind. 329; and the like.

ADMINISTRATIVE BOARD. The term is very broad and includes bodies exercising varied functions, some of which involve orders made or other acts done *ex parte* or without full hearing as to the operative facts, while others are done only after such a notice and hearing, and the functions of the former kind are plainly "administrative" and those of the latter are "quasi judicial". *Beaverdale Memorial Park v. Danaher*, 127 Conn. 175, 15 A.2d 17, 21.

"Administrative boards" differ from "courts" in that boards frequently represent public interests entrusted to boards, whereas courts are concerned with litigating rights of parties with adverse interests. *Rommell v. Walsh*, 15 A.2d 6, 9, 127 Conn. 16.

ADMINISTRATIVE DISCRETION. "Administrative discretion" means that the doing of acts or things required to be done may rest, in part at least, upon considerations not entirely susceptible of proof or disproof and at times which considering the circumstances and subject-matter cannot be supplied by the Legislature, and a statute confers such discretion when it refers a commission or officer to beliefs, expectations, or tendencies

instead of facts for the exercise of the powers conferred. *Culver v. Smith*, Tex.Civ.App., 74 S.W.2d 754, 757.

ADMINISTRATIVE LAW. That branch of public law which deals with the various organs of the sovereign power considered as in motion, and prescribes in detail the manner of their activity, being concerned with such topics as the collection of the revenue, the regulation of the military and naval forces, citizenship and naturalization, sanitary measures, poor laws, coinage, police, the public safety and morals, etc. See *Holl.Jur.* 305-307.

ADMINISTRATIVE OFFICER. Politically and as used in constitutional law, an officer of the executive department of government, and generally one of inferior rank; legally, a ministerial or executive officer, as distinguished from a judicial officer. *People v. Salsbury*, 134 Mich. 537, 96 N.W. 936.

One who performs mere ministerial or administrative functions. In *re Gold*, C.C.A.N.J., 93 F.2d 676, 680. Officers that are neither judicial nor legislative; executive officers, *Spivey v. State*, 104 P.2d 263, 277, 69 Okl.Cr. 397. Such as: The clerk of circuit court, State ex rel. and to Use of City of St. Louis v. Priest, 348 Mo. 37, 152 S.W.2d 109, 112. Receivers in bank liquidation proceedings, *People ex rel. Nelson v. Crawford State Sa^y. Bank*, 310 Ill.App. 533, 34 N.E.2d 872. State highway commissioner, *Strobel Steel Const. Co. v. Sterner*, 125 N.J.L. 622, 18 A.2d 28, 29.

ADMINISTRATIVE REMEDY. One not judicial, but provided by commission or board created by legislative power. *Kansas City Southern R. Co. v. Ogden Levee Dist.*, C.C.A.Ark., 15 F.2d 637, 642. Against wrongful assessment of benefits by a levee district. Board of Directors of St. Francis Levee Dist. v. St. Louis-San Francisco Ry. Co., C.C.A.Ark., 74 F.2d 183, 188.

ADMINISTRATOR, in the most usual sense of the word, is a person to whom letters of administration, that is, an authority to administer the estate of a deceased person, have been granted by the proper court. A representative of limited authority, whose duties are to collect assets of estate, pay its debts, and distribute residue to those entitled. *Smith v. White's Estate*, 108 Vt. 473, 188 A. 901, 904. A technical trustee. In *re Watkins' Estate*, Vt., 41 A.2d 180, 188.

He resembles an executor, but, being appointed by the court, and not by the deceased, he has to give security for the due administration of the estate, by entering into a bond with sureties, called the administration bond. *Smith v. Gentry*, 16 Ga. 31; *Collamore v. Wilder*, 19 Kan. 78; *Gormley v. Watson*, 177 Ga. 763, 171 S.E. 280, 281.

By the law of Scotland the father is what is called the "administrator-in-law" for his children. As such, he is *ipso jure* their tutor while they are pupils, and their curator during their minority. The father's power extends over whatever estate may descend to his children, unless where that estate has been placed by the donor or grantor under the charge of special trustees or managers. This power in the father ceases by the child's discontinuing to reside with him, unless he continues to live at the father's expense; and with regard to dnuhte-s, it ceases on their marriage, the husband being the legal curator of his wife. Bell.

Civil Law

A manager or conductor of affairs, especially the affairs of another, in his name or behalf. A manager of public affairs in behalf of others. Calvin. A public officer, ruler, or governor. Nov. 95, gl.; Cod. 12, 8.

Domestic

One appointed at the place of the domicile of the decedent; distinguished from a foreign or an ancillary administrator.

Foreign

One appointed or qualified under the laws of a foreign state or country, where the decedent was domiciled.

Public

An official provided for by statute in some states to administer upon the property of intestates in certain cases. See *Rocca v. Thompson*, 32 S.Ct. 207, 223 U.S. 317, 56 L.Ed. 453.

ADMINISTRATOR CUM TESTAMENTO ANNEXO. See Cum Testamento Annexo.

ADMINISTRATOR DE BONIS NON. "Administrators de bonis non administratis" are, as the term signifies, persons appointed by the court of probate to administer on the effects of a decedent which have not been included in a former administration. *Paul v. Butler*, 129 Kan. 244, 282 P. 732, 734.

Where will is set aside as void, administrator subsequently appointed is not "administrator de bonis non," but administrator of entire estate with power to attack nominated executor's report. *Douglas' Adm'r v. Douglas' Ex'r*, 48 S.W.2d 11, 14, 243 Ky. 321.

ADMINISTRATOR WITH WILL ANNEXED. One appointed administrator of deceased's estate after executors named in will refused to act. In *re Kenney's Estate*, 41 N.M. 576, 72 P.2d 27, 29, 113 A.L.R. 403.

ADMINISTRATRIX. A woman who administers, or to whom letters of administration have been granted.

ADMINISTRATIVIT. Lat. He has administered. Used in the phrase *plene administravit*, which is the name of a plea by an executor or administrator to the 'effect that he has "fully administered" (lawfully disposed of) all the assets of the estate that have come to his hands.

ADMIRAL. Title of high naval officers; they are of various grades,—rear admiral, vice-admiral, admiral, admiral of the fleet, the last named being the highest. But by Act of Jan. 24, 1873 (17 Stat. 418), certain grades ceased to exist when the offices became vacant.

In old English law, a high officer or magistrate that had the government of the king's navy, and the hearing of all causes belonging to the sea. Cowell.

In European law, an officer who presided over the *admiralitas*, or *collegium ammiralitatis*. Locc. de Jur.Mar. lib. 2, c. 2, § 1.

ADMIRALITAS

ADMIRALITAS. L. Lat. Admiralty; the admiralty, or court of admiralty.

In European law, an association of private armed vessels for mutual protection and defense against pirates and enemies

ADMIRALTY. A court which has a very extensive jurisdiction of maritime causes, civil and criminal, controversies arising out of acts done upon or relating to the sea, and questions of prize.

It is properly the successor of the consular courts, which were emphatically the courts of merchants and sea-going persons, established in the principal maritime cities on the revival of commerce after the fall of the Western Empire, to supply the want of tribunals that might decide causes arising out of maritime commerce.

Also, the system of jurisprudence relating to and growing out of the jurisdiction and practice of the admiralty courts.

American Law

A tribunal exercising jurisdiction over all maritime contracts, torts, injuries, or offenses. *Panama R. Co. v. Johnson*, 44 S.Ct. 391, 264 U.S. 375, 68 L.Ed. 748.

"Admiralty" does not extend to all navigable waters, but is limited to the ocean, navigable rivers running into the ocean, and the Great Lakes and their connections. *The Frank G. Fobert*, D.C.N.Y., 32 F.Supp. 214, 216.

The jurisdiction of the admiral, and the administration of the admiralty law proper—the local maritime law—as it became a judicial function, has passed into the hands of the courts. *Renew v. U. S.*, D.C.Ga., 1 F.Supp. 256, 259.

English Law

The court of the admiral, perhaps erected by Edward III, 3 Bla.Comm. 69, or as early, as the time of Henry I.

The building where the lords of the admiralty transact business.

ADMIRALTY, FIRST LORD OF THE. The normal head of the executive department of state which presides over the naval forces of the kingdom is the lord high admiral, but in practice the functions of the great office are discharged by several Lords Commissioners, of whom one, being the chief, is called the "First Lord," and is a member of the Cabinet. He is assisted by other lords, called Sea Lords, and by various secretaries.

ADMISSIBLE. Pertinent and proper to be considered in reaching a decision. Used with reference to the issues to be decided in any judicial proceeding.

As applied to evidence, the term means that it is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced.

ADMISSION.

Bail

The order of a competent court or magistrate that a person accused of crime be discharged from actual custody upon the taking of bail. *People v. Solomon*, 15 Pac. 4, 5 Utah, 277.

Admitting to bail is a judicial act to be performed by a court or judicial officer. *Trevathan v. Mutual Life Ins. Co. of New York*, 166 Or. 515, 113 P.2d 621, 624; and by "allowing bail" or "admitting to bail" is not meant the formal justification, subscription, or acknowledgment by the sureties, the term first mentioned relating to the order determining that the offense is bailable and fixing the amount of undertaking, and "taking the bail": meaning the final acceptance or approval of it by the court. *Clatsop County v. Wuopio*, 95 Or. 30, 186 P. 547.

English Ecclesiastical Law

The act of the bishop, who, on approval of the clerk presented by the patron, after examination, declares him fit to serve the cure of the church to which he is presented, by the words "*admitto to habilem*," I admit thee able. 1 Crabb, Real Prop. p. 138, § 123.

Immigration Laws

Authorities accepting alien seaman into body of our inhabitants as possible resident. *U. S. ex rel. Georgas v. Day*, C.C.A.N.Y., 43 F.2d 917, 919.

Membership in Corporation

The act of a corporation or company by which an individual acquires the rights of a member of such corporation or company.

Practice as Attorney at Law

The act by which attorneys and counsellors become recognized as officers of the court and are allowed to practice.

Testimony or Evidence

Admission or concession by a party in pleading or as evidence. See Admissions.

ADMISSIONALIS. In European law. An usher. *Spelman*.

ADMISSIONS. Confessions, concessions or voluntary acknowledgments made by a party of the existence of certain facts. *Roosevelt v. Smith*, 40 N.Y.S. 381, 17 Misc. 323. More accurately regarded, they are statements by a party, or some one identified with him in legal interest, of the existence of a fact which is relevant to the cause of his adversary. *Brooks v. Sessoms*, 171 S.E. 222, 223, 47 Ga.App. 554. They are against the interest of the party making them. *Little Fay Oil Co. v. Stanley*, 90 Okl. 265, 217 P. 377, 378.

It is not essential that an "admission" be contrary to interest of party at time it is made; it is enough if it be inconsistent with position which party takes either in pleadings or at trial. *Harvey v. Provandie*, 83 N.H. 236, 141 A. 136, 140.

The term "admission" is usually applied to civil transactions and to those matters of fact in criminal cases which do not involve criminal intent, while the term "confession" is generally restricted to acknowledgments of guilt. *People v. Sourisseau*, 62 Cal.App.2d 917, 145 P.2d 916, 923. *State v. Lindsey*, 26 N.M. 526, 194 P. 877, 878.

An "admission" as applied in criminal cases is the avowal of a fact or of circumstances from which guilt may be inferred, but only tending to prove the offense charged, and not amounting to a confession of guilt. *Theis v. State*, Ga., 164 S.

E. 456, 457. A statement by defendant of fact or facts pertinent to issues tending, in connection with proof of other facts or circumstances, to prove guilt, but which is, of itself, insufficient to authorize conviction. *Commonwealth v. Elliott*, 292 Pa. 16, 140 A. 537, 538. Does not include statements which are part of the *res gestæ*. *State v. Clark*, 102 Mont. 432, 58 P.2d 276, 278.

Direct, called also *express*, admissions are those which are made in direct terms.

Implied admissions are those which result from some act or failure to act of the party. Part payment of a debt is an admission of liability to pay debt. *Hart v. Deshong*, Del., 1 Terry 218, 8 A.2d 85, 87. Defendants' failure to specifically deny their signatures to notes, "admission" that they signed the acknowledgments. *Haas v. Johnson*, 203 La. 697, 14 So.2d 606, 608. Undenied accusations were implied "admission". *State v. Postal*, 215 Minn. 427, 10 N.W.2d 373, 378.

Incidental admissions are those made in some other connection, or involved in the admission of some other fact.

Judicial admissions are those made in court by a person's attorney for the purpose of being used as a substitute for the regular legal evidence of the facts at the trial. *Martin v. State*, 46 Okl.Cr. 411, 287 P. 424. Such as are made voluntarily by a party, which appear of record in the proceedings of the court. Formal acts done by a party or his attorney in court on the trial of a cause for the purpose of dispensing with proof by the opposing party of some fact claimed by the latter to be true. *Wiley v. Rutland R. Co.*, 86 Vt. 504, 86 A. 808, 810. Concession by defendant that she had executed a bill of sale for the automobile to intervene to secure an indebtedness was an "admission in judicio" by defendant against her title to the automobile. *McDay v. Long*, 63 Ga.App. 421, 11 S.E.2d 395, 399. But opening statements of counsel are not, technically, "admissions." *Wilkey v. State ex rel. Smith*, 238 Ala. 595, 192 So. 588, 591. See Acquiescence; Quasi-Admissions; True Admission.

Pleading

The acknowledgment or recognition by one party of the truth of some matter alleged by the opposite party, made in a pleading, the effect of which is to narrow the area of facts or allegations required to be proved by evidence. *Connecticut Hospital v. Brookfield*, 69 Conn. 1, 36 A. 1017.

An allegation not denied is deemed not controverted, and silence of pleader is usually treated as an admission against him for purpose of the action. *Doughty v. Pallisard*, 3 N.Y.S.2d 452, 453, 167 Misc. 55. Generally pleadings must be regarded as "judicial admissions", rather than ordinary "admissions". *Hughes v. Fort Worth Nat. Bank*, Tex.Civ.App., 164 S.W.2d 231, 232.

In *confession and avoidance*, admission of truth of opposite party's pleading is made.

Express admissions may be made of matters of fact only. See Confession and Avoidance.

In *Equity*. *Partial admissions* are those which are delivered in terms of uncertainty, mixed up with explanatory or qualifying circumstances.

Plenary admissions are those which admit the truth of the matter without qualification, whether it be asserted as from information and belief or as from actual knowledge. See *Burrell v. Hackley*, C.C.N.Y., 35 F. 833.

"Admissions against interest" are any statements made by or attributable to a party to an action, which constitute admissions against his interest and tend to establish or disprove any material fact in the case. *Kellner v. Whaley*, 148 Neb. 259, 27 N.W.2d 183, 189.

ADMIT. To allow, receive, or take; to suffer one to enter; to give possession; to license. *Gregory v. United States*, 17 Blatchf. 325, 10 Fed.Cas. 1195.

Confess. *Provident Life & Accident Ins. Co. v. Fodder*, 99 Ind.App. 556, 193 N.E. 698, 700. Unequivocal acknowledgment of guilt. *Ex parte Tozier*, D.C.Me., 2 F.2d 268, 269. See Admission; Admissions.

ADMITTANCE. In English law, the act of giving possession of a copyhold estate. It is of three kinds: (1) Upon a voluntary grant by the lord, where the land has escheated or reverted to him. (2) Upon surrender by the former tenant. (3) Upon descent, where the heir is tenant on his ancestor's death. 2 Bla.Comm. 366.

ADMITTENDO CLERICO. An old English writ issuing to the bishop to establish the right of the Crown to make a presentation to a benefice. A writ of execution upon a right of presentation to a benefice being recovered in *quare impedit*, addressed to the bishop or his metropolitan, requiring him to admit and institute the clerk or presentee of the plaintiff. Reg.Orig. 33a.

ADMITTENDO IN SOCIUM. A writ for associating certain persons, as knights and other gentlemen of the county, to justices of assize on the circuit. Reg.Orig. 206.

ADMIXTURE. A substance formed by mixing; state of being mixed; act of mixing.

ADMONISH. To caution or advise. *People v. Pennington*, 267 Ill. 45, 107 N.E. 871, 872. To counsel against wrong practices, or to warn against danger of an offense. *Ft. Smith Light & Traction Co. v. Hendrickson*, 126 Ark. 377, 189 S. W. 1064, 1067.

ADMONITION. A reprimand from a judge to a person accused, on being discharged, warning him of the consequences of his conduct, and intimating to him that, should he be guilty of the same fault for which he has been admonished, he will be punished with greater severity. *Merlin*, *Repert.* The admonition was authorized as a species of punishment for slight misdemeanors. In ecclesiastical law, this is the lightest form of punishment.

Any authoritative oral communication or statement by way of advice or caution by the court to the jury respecting their duty or conduct as jurors; the admissibility or nonadmissibility of evidence, or the purpose for which any evidence admitted may be considered by them. *Miller v. Noell*, 193 Ky. 659, 237 S.W. 373, 374.

ADMONITIO TRINA. The threefold warning given to a prisoner who stood mute, before he was subjected to *peine forte et dure* (*q. v.*). 4 Bl.Comm. 325; 4 Steph.Comm. 391.

ADMORTIZATION. The reduction of property of lands or tenements to mortmain, in the feudal customs.

ADM'R. This abbreviation will be judicially presumed to mean "administrator." *Moseley v. Mastin*, 37 Ala. 216, 221.

ADNEPOS

ADNEPOS. The son of a great-great-grandson. Calvinus, *Lex*.

ADNEPTIS. The daughter of a great-great-granddaughter. Calvinus, *Lex*.

ADNICHILED. Annulled, canceled, made void. 28 Hen. VIII.

ADNLHILARE. In old English law, to annul; to make void; to reduce to nothing; to treat as nothing; to hold as or for nought.

ADNOTATIO. In the civil law, the subscription of a name or signature to an instrument. Cod. 4, 19, 5, 7.

A rescript (*q. v.*) of the prince or emperor, signed with his own hand, or sign-manual. Cod. 1, 19, 1. "In the imperial law, casual homicide was excused by the indulgence of the emperor, signed with his own sign-manual, *annotatione principis*." 4 Bl.Comm. 187.

ADOBE. Earth. In arid or desert regions, an alluvial or playa clay from which bricks are made for construction of houses, called "adobe" houses. See *Sweeney v. Jackson County*, 93 Or. 96, 178 P. 365, 376.

ADOLESCENCE. That age which follows puberty and precedes the age of majority. It commences for males at fourteen, and for females at twelve years, and continues until twenty-one years complete.

ADOPT. To accept, appropriate, choose, or select; to make that one's own (property or act) which was not so originally.

To adopt a route for the transportation of the mail means to take the steps necessary to cause the mail to be transported over that route. *Rhodes v. U. S.*, Dev.Ct.C1. 47. To adopt a contract is to accept it as binding, notwithstanding some defect which entitles the party to repudiate it. Thus, when a person affirms a voidable contract, or ratifies a contract made by his agent beyond his authority, he is sometimes said to adopt it. Sweet. Strictly, however, the word "adopt" should be used to apply to void transactions, while the word "ratify" should be limited to the final approval of a voidable transaction by one who theretofore had the optional right to relieve himself from its obligations. *United German Silver Co. v. Bronson*, 92 Conn. 266, 102 A. 647, 648. "Adoption" of a contract by one not a party thereto is of the nature of a novation. *Edwards v. Heralds of Liberty*, 263 Pa. 548, 107 A. 324, 326. See *Affirm*.

To accept, consent to, and put into effective operation; as in the case of a constitution, constitutional amendment, ordinance, or by-law. *Real v. People*, 42 N.Y. 282; *People v. Norton*, 59 Barb. (N.Y.) 191. A Code. *City of Albany v. Nix*, 21 Ala.App. 164, 106 So. 199, 200. Statements in an application appearing above insured's signature. *Republic Mut. Ins. Co. v. Wilson*, 66 Ohio App. 522, 35 N.E.2d 467, 468.

To take into one's family the child of another and give him or her the rights, privileges, and duties of a child and heir. *State v. Thompson*, 13 La.Ann. 515; *Abney v. De Loach*, 84 Ala. 393.

Adoption of children was a thing unknown to the common law, but was a familiar practice under the Roman law and in those countries where the civil law prevails, as France and Spain. *Butterfield v. Sawyer*, 187 Ill. 598, 58 N.E. 602, 52 L.R.A. 75, 79 Am.St.Rep. 246. Creature of the law, and statutory requirements must be strictly carried out. *Owles v. Jackson*, 199 La. 940, 7 So.2d 192, 194.

To accept an alien as a citizen or member of a community or state and invest him with corresponding rights and privileges, either (in general and untechnical parlance) by naturalization, or by an act equivalent to naturalization, as where a white man is "adopted" by an Indian tribe. *Hampton v. Mays*, 4 Ind.T. 503, 69 S.W. 1115.

ADOPTION. The taking and receiving as one's own that to which he bore no prior relation, colorable or otherwise. *Davies v. Lahann*, C.C.A.N.M., 145 F.2d 656, 659. The act of one who takes another's child into his own family, treating him as his own, and giving him all the rights and duties of his own child. See *In re Chambers' Estate*, 183 N.Y.S. 526, 528, 112 Misc. 551. In manner provided by and with consequences specified in statute. *Fisher v. Robison*, 329 Pa. 305, 198 A. 81, 82. A juridical act creating between two persons certain relations, purely civil, of paternity and filiation. 6 Demol. § 1; *Grimes v. Grimes*, 207 N.C. 778, 178 S.E. 573. The relation thereby created is a statutory status, not a contractual relation. *Caruso v. Caruso*, 13 N.Y.S.2d 239, 241, 175 Misc. 290. Though legal adoption may confer on person adopted rights of actual relationship of child, simple "adoption" extends only to his treatment as member of the household. *Shepherd v. Sovereign Camp, W.O.W.*, 166 Va. 488, 186 S.E. 113, 116. See, also, *Adopt*.

Adoption, properly speaking, refers only to persons who are strangers in blood, *In re Lund's Estate*, Cal.App., 148 P.2d 709, 711. And is not synonymous with "legitimation," which refers to persons of the same blood. *Blythe v. Ayres*, 96 Cal. 532, 31 P. 915, 19 L.R.A. 40. But this distinction is not always observed. *In re Presley's Estate*, 113 Okl. 160, 240 P. 89, 90. It is a relationship artificially created by statute. *Borner v. Larson*, 70 N. D. 313, 293 N.W. 836, 839.

ADOPTION BY PUBLIC ACKNOWLEDGMENT. See *Legitimate*.

ADOPTIVE ACT. An act of legislation which comes into operation within a limited area upon being adopted, in manner prescribed therein, by the inhabitants of that area.

ADOPTIVUS. Lat. Adoptive. Applied both to the parent adopting, and the child adopted. Inst. 2, 13, 4; Inst. 3, 1, 10-14.

ADPROMISSOR. In the civil and Scotch law, a guarantor, surety, or cautioner; a peculiar species of *fidejussor*; one who adds his own promise to the promise given by the principal debtor, whence the name.

ADQUIETO. Payment. Blount.

ADRECTARE. To set right, satisfy, or make amends.

ADRHAMIRE. In old European law, to undertake, declare, or promise solemnly; to pledge; to pledge one's self to make oath. Spelman.

ADRIFT. Sea-weed, between high and low water-mark, which has not been deposited on the shore, and which during flood-tide is moved by each rising and receding wave, is *adrift*, although the

bottom of the mass may touch the beach. *Anthony v. Gifford*, 2 Allen (Mass.) 549.

ADROGATION. In the civil law, the adoption of one who was *impubes*; that is, if a male, under fourteen years of age; if a female, under twelve. Dig. 1, 7, 17, 1.

ADS. An abbreviation for *ad sectam* (*q. v.*), meaning "at the suit of." *Bowen v. Sewing Mach. Co.*, 86 Ill. 11.

ADSCENDENTES. Lat. In the civil law, ascendants. Dig. 23, 2, 68; Cod. 5, 5, 6.

ADSCRIPTI. See *Adscriptus*.

ADSCRIPTI GLEBIE. Slaves who served the master of the soil, who were annexed to the land, and passed with it when it was conveyed. Calvinus, Lex.

In Scotland, as late as the reign of George III., laborers in collieries and salt works were bound to the coal-pit or salt work in which they were engaged, in a manner similar to that of the *adscripti* of the Romans. Bell. These *servi adscripti* (or *adscriptitii*) *glebce* held the same position as the *villains* *regardant* of the Normans; 2 Bla.Com. 93. See 1 Poll. & Mait. 372.

ADSCRIPTITII. Lat. A species of serfs or slaves. See 1 Poll. & Mait. 372.

Those persons who were enrolled and liable to be drafted as legionary soldiers. Calvinus, Lex.

ADSCRIPTUS. In the civil law, added, annexed, or bound by or in writing; enrolled, registered; united, joined, annexed, bound to, generally. *Servus colonce adscriptus*, a slave annexed to an estate as a cultivator. Dig. 19, 2, 54, 2. *Fundus adscriptus*, an estate bound to, or burdened with a duty. Cod. 11, 2, 3.

ADSESSORES. Side judges. Assistants or advisers of the regular magistrates, or appointed as their substitutes in certain cases. Calvinus, Lex. See *Assessor*.

ADSTIPULATOR. In Roman law, an accessory party to a promise, who received the same promise as his principal did, and could equally receive and exact payment; or he only stipulated for a part of that for which the principal stipulated, and then his rights were coextensive with the amount of his own stipulation. One who supplied the place of a procurator at a time when the law refused to allow stipulations to be made by procurator. Sandars, Just.Inst. (5th Ed.) 348.

ADULT.

Civil Law

A male infant who has attained the age of fourteen; a female infant who has attained the age of twelve. Dom.Liv.Prel. tit. 2, § 2, n. 8.

Common Law

One who has attained the legal age of majority, generally 21 years, though in some states women are legally "adults" at 18. *Schenault v. State*, 10 Tex.App. 410; *Lucas v. United States Fidelity & Guaranty Co.*, 174 A. 712, 713, 113 N.J.Law, 491.

ADULTER. Lat. One who corrupts; one who seduces another man's wife. *Adulter solidorum*. A corruptor of metals; a counterfeiter. Calvinus, Lex.

ADULTERA. In the civil law, an adulteress; a woman guilty of adultery. Dig. 48, 5, 4, pr.; Dig. 48, 5, 15, 8.

ADULTERATION. The act of corrupting or debasing; the act of mixing something impure or spurious with something pure or genuine, or an inferior article with a superior one of the same kind. *State v. Norton*, 24 N.C. 40. The term is generally applied to the act of mixing up with food or drink intended to be sold other matters of an inferior quality, and usually of a more or less deleterious quality. *Grosvenor v. Duffy*, 121 Mich. 220, 80 N.W. 19, though the artificially colored poppy seeds were not deleterious and had the same food value as the naturally colored seeds. *U. S. v. Two Bags, Each Containing 110 Pounds, Poppy Seeds*, C.C.A.Ohio, 147 F.2d 123, 127.

ADULTERATOR. Lat. A corrupter. In the civil law. A forger; a counterfeiter. *Adulteratores monetce*, counterfeiters of money. Dig. 48, 19, 16, 9.

ADULTERINE. Begotten in an adulterous intercourse. Those are not deemed adulterine who are begotten of a woman openly married through ignorance of a former wife being alive. In the Roman and canon law, adulterine bastards were distinguished from such as were the issue of two unmarried persons, and the former were treated with more severity, not being allowed the *status* of natural children, and being ineligible to holy orders.

ADULTERINE BASTARDS. The offspring of adulterous relations. *Kotzke v. Kotzke's Estate*, 205 Mich. 184, 171 N.W. 442, 443. See, also, *Adulterous Bastards*.

ADULTERINE GUILDS. Traders acting as a corporation without a charter, and paying a fine annually for permission to exercise their usurped privileges. *Smith*, Wealth Nat. b. 1, c. 10.

ADULTERIUM. A fine anciently imposed for the commission of adultery.

ADULTEROUS BASTARDS. Those produced by an unlawful connection between two persons, who at the time when the child was conceived, were, either of them or both, connected by marriage with some other person. Civil Code La. art. 182.

ADULTERY. Voluntary sexual intercourse of a married person with a person other than the offender's husband or wife. *Franzetti v. Franzetti*, Tex.Civ.App., 120 S.W.2d 123, 127.

In some states, however, as was also true under the Roman and Jewish law, this crime is committed only when the woman is married to a third person; the unlawful commerce of a married man with an unmarried woman not being of the grade of adultery. *Corn. v. Call*, 21 Pick. Mass. 509, 32 Am.Dec. 284, and note; *Com. v. Elwell*, 2 Metc. 190, 39 Am.Dec. 398. In other jurisdictions, both parties are guilty of adultery, even though only one of

ADULTERY

them is married. *Goodwin v. State*, 70 Tex.Cr.R. 600, 158 S.W. 274, 275. In some jurisdictions, also, a distinction is made between double and single adultery, the former being committed where both parties are married to other persons, the latter where one only is so married. *Hunter v. U. S.*, 1 Pin.Wis. 91, 39 Am. Dec. 277.

Open and Notorious Adultery

To constitute living in open and notorious adultery, the parties must reside together publicly in the face of society, as if conjugal relations existed between them, and their so living and the fact that they are not husband and wife must be known in the community. *McCullough v. State*, 107 Tex.Cr.R. 258, 296 S.W. 530.

ADVANCE, v. To pay money or render other value before it is due; to furnish something before an equivalent is received; to loan; to furnish capital in aid of a projected enterprise, in expectation of return from it. *Powell v. Allan*, 70 Cal. App. 663, 234 P. 339, 344. To supply beforehand; to furnish on credit or before goods are delivered or work done; to furnish as a part of a stock or fund; to pay money before it is due; to furnish money for a specific purpose understood between the parties, the money or sum equivalent to be returned; furnishing money or goods for others in expectation of reimbursement; money or commodities furnished on credit; a loan, or gift or money advanced to be repaid conditionally; may be equivalent to "pay." In re *Altman's Will*, Sur., 6 N.Y.S.2d 972, 975.

An agreement to "advance" money for personal property implies a loan with property as pledge, rather than a payment of purchase money in sale. *Shelley v. Byers*, 73 Cal. App. 44, 238 P. 177, 182.

ADVANCE PAYMENT. Payments made in anticipation of a contingent or fixed future liability. *Smith v. Unity Industrial Life Ins. Co.*, La.App., 13 So.2d 129, 132.

ADVANCEMENT. Money or property given by a parent to his child or, sometimes, presumptive heir, or expended by the former for the latter's benefit, by way of anticipation of the share which the child will inherit in the parent's estate and intended to be deducted therefrom. It is the latter circumstance which differentiates an advancement from a gift or a loan. *Brewer's Adm'r v. Brewer*, 181 Ky. 400, 205 S.W. 393, 396; In re *Allen's Estate*, 207 Pa. 325, 56 A. 928.

A perfect and irrevocable gift. In re *Wiese's Estate*, 222 Iowa 935, 270 N.W. 380, 382. Passing title in lifetime of donor. *Burkhart v. Lowery*, 115 Ind.App. 445, 59 N.E.2d 732, 734; but which must be accounted for by donee on distribution of donor's estate. In re *Beier's Estate*, 205 Minn. 43, 284 N.W. 833, 835, 836, 837, 838. "Advancement," unlike "ademption" (q. v.), applies only to cases of intestacy. *Ellard v. Ferris*, 91 Ohio St. 339, 110 N.E. 476, 479. An "advancement by portion," within the meaning of the statute, is a sum given by a parent to establish a child in life, (as by starting him in business,) or to make a provision for the child, (as on the marriage of a daughter). L. R. 20 Eq. 155. See *Ademption*; *Gift*.

ADVANCES. Moneys paid before or in advance of the proper time of payment; money or commodities furnished on credit; a loan or gift, or money advanced to be repaid conditionally. *Powder Co. v. Burkhardt*, 97 U.S. 110, 24 L.Ed. 973.

This word, when taken in its strict legal sense, does not mean gifts, (advancements,) and does mean a sort of loan; and, when taken in its ordinary and usual sense, it includes both loans and gifts,—loans more readily, perhaps, than gifts. *Landrum & Co. v. Wright*, 11 Ala.App. 406, 66 So. 892.

Payments advanced to the owner of property by a factor or broker on the price of goods which the latter has in his hands, or is to receive, for sale.

"Loans" are repayable at maturity, while "advances" are not repaid by party receiving them, but are covered by proceeds of consigned goods. *People ex rel. James Talbott, Inc., v. Goldfogle*, 211 N.Y.S. 122, 123, 213 App.Div. 719.

ADVANTAGE. Any state, condition, circumstance, opportunity, or means specially favorable to success, prosperity, interest, reputation, or any desired end. *Duval v. State*, 92 Ind.App. 134, 166 N.E. 603, 604. Preference or priority. *United States v. Preston*, 4 Wash. 446, Fed.Cas.No.16,087.

ADVANTAGIUM. In old pleading, an advantage. Co.Ent. 484; Townsh.Pl. 50.

ADVENA. In Roman law, one of foreign birth, who has left his own country and settled elsewhere, and who has not acquired citizenship in his new locality; often called *albanus*. Du Cange.

ADVENT. A period of time recognized by the English common and ecclesiastical law, beginning on the Sunday that falls either upon St. Andrew's day, being the 30th of November, or the next to it, and continuing to Christmas day. Wharton.

ADVENTITIOUS. That which comes incidentally, fortuitously, or out of the regular course. "Adventitious value" of lands, see *Central R. Co. v. State Board of Assessors*, 49 N.J.Law, 1, 7 A. 306.

ADVENTITIUS. Lat. Fortuitous; incidental; coming from an unusual source. *Adventitia bona* are goods which fall to a man otherwise than by inheritance. *Adventitia dos* is a dowry or portion given by some friend other than the parent.

ADVENTURA. An adventure. 2 Mon.Angl. 615; Townsh.Pl. 50. Flotson, jetson, and lagon are styled *adventurce maris*, (adventures of the sea.) Hale, De Jure Mar. pt. 1, c. 7.

ADVENTURE. A hazardous and striking enterprise, a bold undertaking in which hazards are to be met and issue hangs upon unforeseen events. *Bond v. O'Donnell*, 205 Iowa, 902, 218 N.W. 898, 902, 63 A.L.R. 901.

Generally

Adventure, bill of. In mercantile law, a writing signed by a merchant, stating that the property in goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce.

Gross adventure. In maritime law, a loan on bottomry. So named because the lender, in case

of a loss, or expense incurred for the common safety, must contribute to the *gross* or general average.

Joint adventure. A commercial or maritime enterprise undertaken by several persons jointly; a limited partnership,—not limited in the statutory sense as to the liability of the partners, but as to its scope and duration. *Lobsitz v. E. Lissberger Co.*, 168 App.Div. 840, 154 N.Y.S. 556, 557. A special partnership. *McDaniel v. State Fair of Texas*, Tex.Civ.App., 286 S.W. 513, 517. An association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge. *Forman v. Lumm*, 214 App.Div. 579, 212 N.Y.S. 487. A special combination of two or more persons, where, in some specific adventure, a profit is jointly sought, without any actual partnership or corporate designation. *Griffin v. Reilly*, Tex.Civ.App., 275 S.W. 242, 246.

It is ordinarily, but not necessarily, limited to a single transaction. *Forbes v. Butler*, 66 Utah, 373, 242 P. 950, 956, which serves to distinguish it from a partnership, *Barry v. Kern*, 184 Wis. 266, 199 N.W. 77, 78. But the business of conducting it to a successful termination may continue for a number of years. *Elliott v. Murphy Timber Co.*, 117 Or. 387, 244 P. 91, 93, 48 A.L.R. 1043. There is no real distinction between a "joint adventure" and what is termed a "partnership for a single transaction." *Atlas Realty Co. v. Galt*, 153 Md. 586, 139 A. 285, 286. A "joint adventure," while not identical with a partnership, is so similar in its nature and in the relations created thereby that the rights of the parties as between themselves are governed practically by the same rules that govern partnerships. *Goss v. Lanin*, 170 Iowa 57, 152 N.W. 43, 45.

Marine Insurance

A very usual word in policies of marine insurance, and everywhere used as synonymous, or nearly so, with "perils." It is often used by the writers to describe the enterprise or voyage as a "marine adventure" insured against. *Moore v. Louisville Underwriters*, C.C.Tenn., 14 Fed. 233.

Mercantile Law

Sending goods abroad under charge of a supercargo or other agent, at the risk of the sender, to be disposed of to the best advantage for the benefit of the owners.

The goods themselves so sent.

ADVENTURER. One who undertakes uncertain or hazardous actions or enterprises. It is also used to denote one who seeks to advance his own interests by unscrupulous designs on the credulity of others. It has been held that to impute that a person is an adventurer is a libel; 18 L.J.C.P. 241.

ADVERSARIA. (From Lat. *adversa*, things remarked or ready at hand.) Rough memoranda, common-place books.

ADVERSARY. A litigant-opponent, the opposite party in a writ or action.

ADVERSARY PROCEEDING. One having opposing parties; contested, as distinguished from an

ex parte application; one of which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. Excludes an adoption proceeding. *Platt v. Magagnini*, 187 P. 716, 718, 110 Wash. 39.

ADVERSE. Opposed; contrary; in resistance or opposition to a claim, application, or proceeding. Having opposing interests; having interests for the preservation of which opposition is essential. In *re National Lock Co.*, D.C.Ill., 9 F.Slipp. 432, 433.

As to adverse "Claim," "Enjoyment," "User," "Verdict," "Witness," see those titles.

ADVERSE INTEREST. The "adverse interest" of a witness, so as to permit cross-examination by the party calling him, must be so involved in the event of the suit that a legal right or liability will be acquired, lost, or materially affected by the judgment, and must be such as would be promoted by the success of the adversary of the party calling him. *Dinger v. Friedman*, 279 Pa. 8, 123 A. 641, 643. On petition in bankruptcy court for removal of trustee's attorney, attorney has an interest adverse to trustee. In *re Mallow Hotel Corporation*, D.C.Pa., 18 F.Supp. 15, 17.

ADVERSE PARTY. An "adverse party" entitled to notice of appeal is every party whose interest in relation to the judgment or decree appealed from is in conflict with the modification or reversal sought by the appeal.

Every party interested in sustaining the judgment or decree. *Harrigan v. Gilchrist*, 121 Wis. 127, 99 N.W. 909. All parties appearing against losing party unless reversal of case will not be to party's detriment. *Shea v. Shea*, Iowa, 264 N.W. 590. Any party who would be prejudicially affected by a modification or reversal of the judgment appealed from. *Great Falls Nat. Bank v. Young*, 67 Mont. 328, 215 P. 651, 652. One who has interest in opposing object sought to be accomplished by appeal. In *re Baxter's Estate*, 94 Mont. 257, 22 P.2d 182. Party to record, whose interest in subject-matter of appeal is adverse to, reversal or modification of judgment or order appealed from. *MacDonald v. Superior Court in and for City and County of San Francisco*, 101 Cal.App. 423, 281 P. 672, 673. A party who, by the pleadings, is arrayed on the opposite side. *Merrill v. St. Paul City Ry. Co.*, 170 Minn. 332, 212 N.W. 533. The other party to the action. *Highland v. Hines*, 80 N.H. 179, 116 A. 347, 349. A party to the record for, or against, whom judgment is sought. *Merchants' Supply Co. v. Hughes' Exrs*, 139 Va. 212, 123 S.E. 355, 356. "Opposite" party synonymous. In *re Wah-shah-she-met-sa-he's Estate*, 111 Okl. 177, 239 P. 177, 178. And term is not necessarily confined to plaintiffs as against defendants, or vice versa. *Arwood v. Hill's Adm'rs*, 135 Va. 235, 117 S.E. 603, 605. But a defaulting defendant is not an "adverse party"; *Holt v. Empey*, 32 Idaho, 106, 178 P. 703; nor is one who is named as a party but is not served; *Kissler v. Moss*, 26 Idaho, 516, 144 P. 647. Compare *Fergen v. Lonie*, 50 S.D. 328, 210 N.W. 102, 103 (garnishment debtor not served in garnishment proceeding).

ADVERSE POSSESSION. A method of acquisition of title by possession for a statutory period under certain conditions. *Lowery v. Garfield County*, Mont., 208 P.2d 478, 486. It has been described as the statutory method of acquiring title to land by limitation. *Field v. Sosby*, Tex.Civ. App., 226 S.W.2d 484, 486.

The possession must be actual, *Ortiz v. Pacific States Properties*, Cal.App., 215 P.2d 514, 516;

ADVERSE

adverse, *Flanery v. Greene*, 158 S.W.2d 413, 415, 289 Ky. 244; under claim of right, *Thomas v. Durchslag*, Ill., 90 N.E.2d 200, 204, 404 Ill. 581; continuous, *Davis v. Federal Land Bank of Columbia*, 13 S.E.2d 417, 419, 219 N.Car. 248; open *Wilberforce University v. College of Ed. and Indus. Arts at Wilberforce University*, 90 N.E.2d 172, 173, 86 Ohio App. 121; notorious, *Eddie v. Coleman*, 141 S.W.2d 238, 242, 243, 235 Mo.App. 1289; exclusive, *Laudati v. State*, 30 N.Y.S.2d 267, 270, and hostile, *Singley v. Dempsey*, 42 So.2d 609, 612, 252 Ala. 677. Although color of title is not essential, *Roesch v. Gerst*, 138 P.2d 846, 851, 852, 18 Wash.2d 294, it is of great evidentiary value in establishing adverse possession, *Lincoln v. Mills*, 2 So.2d 809, 811, 191 Miss. 512.

Adverse possession depends on intent of occupant to claim and hold real property in opposition to all the world, *Sertic v. Roberts*, 136 P.2d 248, 171 Ore. 121; and also embodies the idea that owner of or persons interested in property have knowledge of the assertion of ownership by the occupant, *Field v. Sosby*, Tex.Civ.App., 226 S.W.2d 484, 486.

Payment of taxes alone is not sufficient in itself to establish adverse possession, *Blitch v. Sapp*, 194 So. 328, 330, 142 Fla. 166. It is mandatory that the element of continuous possession exist for the full statutory period, *Wells v. Tietge*, 9 N.W.2d 180, 182, 143 Neb. 230.

ADVERSUS. In the civil law, against, (*contra*.) *Adversus bonos mores*, against good morals. Dig. 47, 10, 15.

Adversus extraneos vitiosa possessio prodesset. Prior possession is a good title of ownership against all who cannot show a better. D. 41. 2. 53; *Salmond*, Jurispr. 638.

ADVERTISE. To give notice to, inform or notify, give public notice of, announce publicly, notice or observe. *People v. Hopkins*, 263 N.Y.S. 290, 147 Misc. 12. To advise, announce, apprise, command, give notice of, inform, make known, publish. *People v. Montague*, 274 N.W. 347, 351, 280 Mich. 610. On call to the public attention by any means whatsoever; *Commonwealth v. Allison*, 227 Mass. 57, 116 N.E. 265, 266.

It includes publication by hand bills, signs, bill boards, sound trucks and radio, *Rust v. Missouri Dental Board*, 348 Mo. 616, 155 S.W.2d 80, 83; or in a newspaper, or by means of placards, or other written public notices; *Nichols v. Nichols*, 192 Ala. 206, 68 So. 186, 187. It is merely identification and description, apprising of quality and place, *Rast v. Van Deman & Lewis Co.*, 240 U.S. 342, 36 S.Ct. 370, 377, 60 L.Ed. 679. And "advertising purposes" are not limited to matters of vocation, or even avocation, but include advertisements essentially for unselfish purposes, *Almind v. Sea Beach Ry. Co.*, 141 N.Y.S. 842, 843, 157 App.Div. 230.

ADVERTISEMENT. Notice given in a manner designed to attract public attention. *Edwards v. Lubbock County, Tex.*, 33 S.W.2d 482, 484. Information communicated to the public, or to an individual concerned, as by handbills or the newspaper. *First Nat. Corporation v. Perrine*, 99 Mont. 454, 43 P.2d 1073, 1077.

A sign-board, erected at a person's place of business, giving notice that lottery tickets are for sale, *Com. v. Hooper*, 5 Pick.Mass. 42.

ADVERTISEMENTS OF QUEEN ELIZABETH. Certain articles or ordinances drawn up by Archbishop Parker and some of the bishops in 1564, at the request of Queen Elizabeth, the object of which was to enforce decency and uniformity in the ritual of the church. The queen subsequently refused to give her official sanction to these advertisements, and left them to be enforced by the bishops under their general powers. *Phillim.Ecc. Law*, 910; 2 Prob.Div. 276; 354.

ADVICE. View; opinion; the counsel given by lawyers to their clients; an opinion expressed as to wisdom of future conduct. *Hughes v. Van Bruggen*, 44 N.M. 534, 105 P.2d 494, 496.

The word has several different meanings, among others, as follows : Information or notice given; intelligence ;— usually information communicated by letter ;—Chiefly as to drafts or bills of exchange ; as, a letter of advice.— Advice implies real or pretended knowledge, often professional or technical, on the part of the one who gives it. *Provident Trust Co. v. National Surety Co.*, D.C.Pa., 44 F.Supp. 514, 515.

The instruction usually given by one merchant or banker to another by letter, informing him of shipments made to him, or of bills or „drafts drawn on him, with particulars of date, or sight, the sum, and the payee. Bills presented for acceptance or payment are frequently dishonored for want of advice.

Letter of advice is a communication from one person to another, advising or warning the latter of something which he ought to know, and commonly apprising him beforehand of some act done by the writer which will ultimately affect the recipient. *Chit. Bills*, 162.

ADVISARE, ADVISARI. Lat. To consult, deliberate, consider, advise; to be advised. Occurring in the phrase *curia advisari* 4vult, which see (usually abbreviated *cur. adv. vu/t*, or *C. A. V.*.) the court wishes to be advised, or to consider of the matter.

ADVISE. To give an opinion or counsel, or recommend a plan or course of action; also to give notice. *Long v. State*, 23 Neb. 33, 36 N.W. 310. To encourage. *Voris v. People*, 75 Colo. 574, 227 P. 551, 553. "Inform" or "acquaint." *Ericson v. Steiner*, 119 Cal.App. 305, 6 P.2d 298, 300.

It is different in meaning from "instruct" or "persuade." *Hughes v. Van Bruggen*, 44 N.M. 534, 105 P.2d 494, 497. Where a statute authorizes the trial court to advise the jury to acquit, the court has no power to instruct the jury to acquit. The court can only counsel, and the jury are not bound by the advice. *People v. Horn*, 70 Cal. 17, 11 P. 470. "Advise" imports that it is discretionary or optional with the person addressed whether he will act on such advice or not. *State v. Downing*, 23 Idaho, 540, 130 P. 461, 462.

ADVISED. Prepared to give judgment, after examination and deliberation. "The court took time to be advised." 1 Leon. 187.

ADVISEDLY. With deliberation; intentionally. 15 Moore P.C. 147.

ADVISEMENT. Consideration; deliberation; consultation. *Drainage Dist. No. 1 of Lincoln*

County v. Suburban Irr. Dist., 139 Neb. 460, 298 N.W. 131, 134. The consultation of a court, after the argument of a cause by counsel, and before delivering their opinion. In re Hohorst, 150 U.S. 662, 14 S.Ct. 221, 37 L.Ed. 1211.

ADVISORY. Counselling, suggesting, or advising, but not imperative or conclusive. A verdict on an issue out of chancery is advisory. *Watt v. Starke*, 101 U.S. 252, 25 L.Ed. 826. Not binding on chancellor. *Merritt v. Palmer*, 289 Ky. 141, 158 S.W.2d 163, 165.

ADVISORY OPINION. A formal opinion by judge or judges or a court or a law officer upon a question of law submitted by a legislative body or a governmental official, but not actually presented in a concrete case at law. *Douglas Oil Co. v. State*, Tex.Civ.App., 81 S.W.2d 1064, 1077.

Merely opinion of judges or court, which adjudicates nothing and is binding on no one, in exercise of wholly non or extra-judicial function. The expression ordinarily connotes the practice which existed in England from very early times of extra-judicial consultation of the judges by the Crown and the House of Lords. *Douglas Oil Co. v. State*, Tex.Civ.App., 81 S.W.2d 1064, 1077.

ADVOCACY. The act of pleading for, supporting, or recommending active espousal. *Gitlow v. People of State of New York*, 45 S.Ct. 625, 626, 268 U.S. 652, 69 L.Ed. 1138.

ADVOCARE. Lat. To defend; to call to one's aid; to vouch; to warrant.

ADVOCASSIE. L. Fr. The office of an advocate; advocacy. Kelham.

ADVOCATA. In old English law, a patroness; a woman who had the right of presenting to a church. Spelman.

ADVOCATE, v. To speak in favor of; defend by argument. *Ex parte Bernat*, D.C.Wash., 255 F. 429, 432. To support, vindicate, or recommend publicly. *Butash v. State*, 212 Ind. 492, 9 N.E.2d 88, 90. Not for an educational purpose, but to disseminate controversial "propaganda," which means plan for publication of doctrine or system of principles. *Leubuscher v. Commissioner of Internal Revenue*, C.C.A., 54 F.2d 998, 999.

ADVOCATE, n. One who assists, defends, or pleads for another; one who renders legal advice and aid and pleads the cause of another before a court or a tribunal, a counselor. *Haverty Furniture Co. v. Foust*, 174 Tenn. 203, 124 S.W.2d 694, 697.

A person learned in the law, and duly admitted to practice, who assists his client with advice, and pleads for him in open court. Holthouse.

An assistant; adviser; a pleader of causes.

Derived from *advocare*, to summon to one's assistance; *advocatus* originally signified an assistant or helper of any kind, even an accomplice in the commission of a crime; Cicero, *Pro Cœcina*, c. 8; Livy, lib. ii. 55; 47; Tertullian, *De Idolatr.* cap. xxiii.; Petron., *Satyr.* cap. xv. Secondly, it was applied to one called in to assist a party in the conduct of a suit; Inst. 1, 11, D, 50, 13. *de extr. cogn.* Hence, a pleader, which is its present signification.

Civil and Ecclesiastical Law

An officer of the court, learned in the law, who is engaged by a suitor to maintain or defend his cause.

Generally

—Advocate general. The adviser of the crown in England on questions of naval and military law.

—Lord Advocate. The principal crown lawyer in Scotland, and one of the great officers of state of Scotland. It is his duty to act as public prosecutor; but private individuals injured may prosecute upon obtaining his concurrence. He is assisted by a solicitor general and four junior counsel, termed "advocates-depute." He has the power of appearing as public prosecutor in any court in Scotland, where any person can be tried for an offense, or in any action where the crown is interested. Wharton.

—Queen's advocate. A member of the College of Advocates, appointed by letters patent, whose office is to advise and act as counsel for the crown in questions of civil, canon, and international law. His rank is next after the solicitor general.

ADVOCATI. Lat. In Roman law, patrons; pleaders; speakers.

ADVOCATI ECCLESIZE. Advocates of the church.

A term used in the ecclesiastical law to denote the patrons of churches who presented to the living on an avoidance. This term was also applied to those who were retained to argue the cases of the church. These were of two sorts: those retained as pleaders to argue the cases of the church and attend to its law-matters; and advocates, or patrons of the advowson. Cowell; Spelman, Gloss.

ADVOCATI FISCO. In civil law, those chosen by the emperor to argue his cause whenever a question arose affecting his revenues. 3 Bla. Comm. 27. Advocates of the fisc, or revenue; fiscal advocates, (*qui causam fisci egissent.*) Cod. 2, 9, 1; Cod. 2, 7, 13. Answering, in some measure, to the king's counsel in English law.

ADVOCATIA. In the civil law, the quality, function, privilege, or territorial jurisdiction of an advocate.

The functions, duty, or privilege of an advocate. Du Cange, *Advocatia*.

ADVOCATION. In Scotch law, a process by which an action may be carried from an inferior to a superior court before final judgment in the former.

ADVOCATIONE DECIMARUM. A writ which lay for tithes, demanding the fourth part or upwards, that belonged to any church.

ADVOCATOR. In old practice, one who called on or vouched another to warrant a title; a voucher. *Advocatus*; the person called on, or vouched; a vouchee. Spelman; Townsh. Pl. 45.

In Scotch practice, an appellant. 1 Broun, R. 67.

ADVOCATUS. A pleader; a narrator. Bracton, 412 a, 372 b.

In the civil law, an advocate; one who managed or assisted in managing another's cause before a judicial tribunal. Called also "*patronus*." Cod. 2, 7, 14. But distinguished from *causidicus*. Id. 2, 6, 6.

ADVOCATUS DIABOLI. In ecclesiastical law, the devil's advocate; the advocate who argues against the canonization of a saint.

Advocatus est, ad quern pertinet jus advocationis alicujus ecclesie, ut ad ecclesiam, nomine proprio, non alieno, possit proesentare. A patron is he to whom appertains the right of presentation to a church, in such a manner that he may present to such a church in his own name, and not in the name of another. Co.Litt. 119.

ADVOUTRER. In old English law, an adulterer. Beaty v. Richardson, 56 S.C. 173, 34 S.E. 73, 46 L.R.A. 517.

ADVOUTRY. In old English law, adultery between parties both of whom were married. Hunter v. U. S., 1 Pin. (Wis.) 91, 39 Am.Dec. 277. Or the offense by an adulteress of continuing to live with the man with whom she committed the adultery. Cowell; Termes de la Ley. Sometimes spelled "advowtry." See Advoutrer.

ADVOWEE, or AVOWEE. The person or patron who has a right to present to a benefice. Fleta, lib. 5, c. 14.

ADVOWEE PARAMOUNT. The sovereign, or highest patron.

ADVOWSON. In English ecclesiastical law, the right of presentation to a church or ecclesiastical benefice; the right of presenting a fit person to the bishop, to be by him admitted and instituted to a certain benefice within the diocese, which has become vacant. 2 Bl.Comm. 21; Co.Litt. 119b, 120a. The person enjoying this right is called the "patron" (*patronus*) of the church, and was formerly termed "*advocatus*," the advocate or defender, or in English, "*advowee*." Id.; 1 Crabb, Real Prop. p. 129, § 117.

When there is no patron, or he neglects to exercise his right within six months, it is called a *lapse*, and a title is given to the ordinary to collate to a church: when a presentation is made by one who has no right, it is called a *usurpation*.

Advowsons are of different kinds.

Advowson appendant is an advowson annexed to a manor, and passing with it, as incident or appendant to it, by a grant of the manor only, without adding any other words. 2 Bl.Comm. 22; Co.Litt. 120, 121; 1 Crabb, Real Prop. p. 130, § 118.

Advowson collative. Where the bishop happens himself to be the patron, in which case (presentation being impossible, or unnecessary) he does by one act, which is termed "*collation*," or conferring the benefice, all that is usually done by the separate acts of presentation and institution. 2 Bl.Comm. 22, 23; 1 Crabb, Real Prop. p. 131, § 119.

Advowson *donative* exists where the patron has the right to put his clerk in possession by his mere gift, or deed of donation, without any presentation to the bishop, or institution by him. 2 Bl.Comm. 23; 1 Crabb, Real Prop. p. 131, § 119.

Advowson in gross is an advowson separated from the manor, and annexed to the person. 2 Bl.Comm. 22; Co. Litt. 120; 1 Crabb, Real Prop. p. 130, § 118; 3 Steph. Comm. 116.

Advowson presentative is the usual kind of advowson, where the patron has the right of *presentation* to the bishop, or ordinary, and moreover to demand of him to institute his clerk, if he finds him canonically qualified. 2 Bl.Comm. 22; 1 Crabb, Real Prop. p. 131, § 119.

ADVOWTRY. See Advoutry.

2EDES. Lat. In the civil law, a house, dwelling, temple, place of habitation, whether in the city or country. Dig. 30, 41, 5. In the country everything upon the surface of the soil passed under the term "*cedes*." Du Cange; Calvin.

IEDIFICARE. Lat. In civil and old English law, to make or build a house; to erect a building. Dig. 45, 1, 75, 7.

)Edificare in tuo proprio solo non licet quod alteri noceat. 3 Inst. 201. To build upon your own land what may injure another is not lawful.

A proprietor of land has no right to erect an edifice on his own ground, interfering with the due enjoyment of adjoining premises, as by overhanging them, or by throwing water from the roof and eaves upon them, or by obstructing ancient lights and windows. Broom, Max. 369.

)Edificatum solo solo cedit. What is built upon land belongs to or goes with land. Broom, Max. 172; Co.Litt. 4a.

iEdificia solo cedunt. Buildings belong to [go with] the soil. Fleta, lib. 3, c. 2, § 12.

JEDILE, In Roman law, an officer who attended to the repairs of the temples and other public buildings; the repairs and cleanliness of the streets; the care of the weights and measures; the providing for funerals and games; and to regulating the prices of provisions. Ainsworth, Lex.; Smith, Lex.; Du Cange.

ÆDILITUM EDICTUM. In the Roman law, the IEdilitian Edict.

An edict providing remedies for frauds in sales, the execution of which belonged to the curule. **Dig. 21, 1.** See Cod. 4, 58. That provision by which the buyer of a diseased or imperfect slave, horse, or other animal was relieved at the expense of the vendor who had sold him as sound knowing him to be imperfect. Calvinus, Lex.

)EFESN. In old English law, the remuneration to the proprietor of a domain for the privilege of feeding swine under the oaks and beeches of his woods.

ZEGROTO. Lat. Being sick or indisposed. A term used in some of the older reports. "Holt *cegroto*." 11 Mod. 179.

AEGYLDE. Uncompensated, unpaid for, un-avenged. From the participle of exclusion, a, *ce*, or *ex*, (Goth.) and *gild*, payment, requital. Anc. Inst.Eng.

AEL. A Norman French term signifying "grandfather." It is also spelled "*aieul*" and "*ayle*." Kelham.

ZEQUIOR EST DISPOSITIO LEGIS QUAM HOMINIS. The disposition of the law is more equitable than that of man. 8 Coke, 152.

JEQUITAS. In the civil law, equity, as opposed to *strictum* or *summum jus*, (*q. v.*). Otherwise called *cequum*, *cequum bonum*, *cequum et bonum*, *cequum et justum*. Calvin.

Referring to the use of this term, Prof. Gray says (Nature and Sources of the Law 290) : "Austin and Maine take *cequitas* as having an analogous meaning to equity ; they apply the term to those rules which the prwtors introduced through the Edict in modification of the *jus civile*, but it seems to be an error to suppose that *cequitas* had this sense in the Roman Law." He quotes Prof. Clark (Jurisprudence 367) as doubting "whether *cequitas* is ever clearly used by the Roman jurists to indicate simply a *department* of Law" and expresses the opinion that an examination of the authorities more than justifies his doubt. *iEquitas* is opposed to *strictum jus* and varies in meaning between reasonable modification of the letter and substantial justice. It is to be taken as a frame of mind in dealing with legal questions and not as a source of law.

See JEquum et Bonum.

ZEquitas agit in personam. Equity acts upon the person. 4 Bouv.Inst. n. 3733.

2EQUITAS EST CORRECTIO LEGIS GENERALITER LATX, QUAPARTE DEFICIT. Equity is the correction of that wherein the law, by reason of its generality, is deficient. Plowd. 375.

ZEQUITAS EST CORRECTIO QUDAM LEGI ADHIBITA, QUIA AB EA ABEST ALIQUID PROPTER GENERALEM SINE EXCEPTIONE COMPREHENSIONEM. Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it. Plowd. 467.

LEQUITAS EST PERFECTA QUDAM RATIO QUAIUS SCRIPTURN INTERPRETATUR ET EMENDAT; NULLA SCRIPTURA COMPREHENSUS, SED SOLUM IN VERA RATIONE CONSISTENS. Equity is a certain perfect reason, which interprets and amends the written law, comprehended in no writing, but consisting in right reason alone. Co.Litt. 24b.

²EQUITAS EST QUASI AEQUALITAS. Equity is as it were equality; equity is a species of equality or equalization. .Co.Litt. 24.

ZEQUITAS IGNORANTIE OPITULATUR, OSCITANTE NON ITEM. Equity assists ignorance, but not carelessness.

XQUITAS NON FACIT JUS, SED JURI AUXILIATUR. Equity does not make law, but assists law. Lofft, 379.

ⁱEQUITAS NUNQUAM CONTRAVENIT LEGIS. Equity never counteracts the laws.

1-EQUITAS SEQUITUR LEGEM. Equity follows the law. 5 Barb.N.Y. 277, 282.

ⁱEQUITAS SUPERVACUA ODI. Equity abhors superfluous things. Lofft, 282.

IEQUITAS UXORIBUS, LIBERIS, CREDITORIBUS MAXIME FAVET. Equity favors wives and children, creditors most of all.

ZEQUUM ET BONUM. "The Roman conception involved in *cequum et bonum* or '*cequitas*' is identical with what we mean by 'reasonable' or nearly so.

"On the whole, the natural justice or 'reason of the thing' which the common law recognizes and applies does not appear to differ from the 'law of nature' which the Romans identified with *jus gentium*, and the medieval doctors of the civil and common law boldly adopted as being divine law revealed through man's natural reason." Sir F. Pollock, *Expans. of C. L.* 111, citing [1902] 2 Ch. 661, where *jus naturale* and *cequum et bonum* were taken to have the same meaning.

1EQUUM ET BONUM EST LEX LEGUM. What is equitable and good is the law of laws. Hob. 224.

IEQUUS. Lat. Equal; even. A provision in a will for the division of the residuary estate *ex cequus* among the legatees means equally or evenly. *Archer v. Morris*, 47 Atl. 275, 61 N.J.Eq. 152.

JERA, or ERA. A fixed point of chronological time, whence any number of years is counted; thus, the Christian era began at the birth of Christ, and the Mohammedan era at the flight of Mohammed from Mecca to Medina. The derivation of the word has been much contested. Wharton.

ZERARIUM. Lat. In the Roman law. The treasury, (*fiscus*.) Calvin.

ATRIAL NAVIGATION. See Aeronautics.

AERODROME. A term originally applied by Professor Langley to his flying machine but now used in the same sense as "airport" (*q. v.*).

AERONAUT. This term under some statutes includes every person who, being in or upon an airship or anything attached thereto, undertakes to direct its ascent, course, or descent in the air, or the ascent, course, or descent in the air of anything attached to such airship.

Under the Uniform Aeronautics Act it includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight. See Aeronautics.

AERONAUTIC ACTIVITY. The term is broad enough to cover what is ordinarily incident to an airplane trip.. The aeronautic activities of one who takes such a trip do not begin or end with the actual flight, but include his presence or movements in or near to the machine incidental to beginning or concluding the trip. *Blonski v. Bankers' Life Co.*, 209 Wis. 5, 243 N.W. 410.

Insured killed when struck by propeller after emerging from airplane at end of flight, *Day v. Equitable Life Assur. Soc. of U. S.*, C.C.A.Colo., 83 F.2d 147, 148. To a contrary effect: *Tierney v. Occidental Life Ins. Co.*, 89 Cal.App. 779, 265 P. 400.

AERONAUTIC EXPEDITION. Traveling as passenger in airplane operated in regular passenger service was engaging in "aeronautic expedition" under life policy. *Gibbs v. Equitable Life Assur. Soc. of U. S.*, 256 N.Y. 208, 176 N.E. 144. *Contra. King v. Equitable Life Assur. Soc. of United States*, 232 Iowa 541, 5 N.W.2d 845, 846, 155 A.L.R.

1022. Pleasure trip in airplane over airport on pleasant day was not "aeronautic expedition" under life policy. *Day v. Equitable Life Assur. Soc. of U. S.*, C.C.A.Colo., 83 F.2d 147, 149.

AERONAUTIC OPERATION. Passenger on regularly scheduled airplane trip engaged in "aeronautic operation," within life policy. *Day v. Equitable Life Assur. Soc. of U. S.*, C.C.A.Colo., 83 F.2d 147, 148. Did not include casual trip in airplane; "aeronautic operations" signifying more than occasional venture. *Gits v. New York Life Ins. Co.*, C.C.A.111., 32 F.2d 7, 10. Nor a pleasure flight in airplane. *Day v. Equitable Life Assur. Soc. of U. S.*, C.C.A.Colo., 83 F.2d 147, 148.

AERONAUTICS. The science, art or practice of sailing in the air; aerial navigation; the branch of aerostatics which treats of floating in or navigating the air as in an airship or airplane. *Massachusetts Protective Ass'n v. Bayersdorfer*, C.C.A. Ohio, 105 F.2d 595, 597. Operation of aircraft. *Equitable Life Assur. Soc. of United States v. Dyess*, 194 Ark. 1023, 109 S.W.2d 1263, 1265.

It is divided into two branches: aerostation, dealing with machines which, like balloons, are lighter than air; and aviation, dealing with artificial flight by machines which are heavier than air. *Bew v. Travelers' Ins. Co.*, 95 N.J.Law, 533, 112 A. 859, 860, 14 A.L.R. 983.

A passenger in an airplane, whether he takes part in its operation or not, "participates in aeronautics" within the meaning of an insurance policy. *Meredith v. Business Men's Acc. Ass'n of America*, 213 Mo.App. 688, 252 S.W. 976, 977. Contra as to a transport airplane passenger who could not pilot an airplane, had no knowledge of flying, and at time of accident was traveling on private business. *Gregory v. Mutual Life Ins. Co. of New York*, C.C.A.Ark., 78 F.2d 522, 524. As to an insured, who was a fare-paying passenger on a commercial transport plane over an established route while plane was wholly under the control of others. *Bayersdorfer v. Massachusetts Protective Ass'n*, D.C. Ohio, 20 F.Supp. 489, 492. A father riding with son as guest in airplane purchased by father for son. *Day v. Equitable Life Assur. Soc. of U. S.*, C.C.A.Colo., 83 F.2d 147, 149. And where insured after alighting from a flight, in bending over to avoid a wire, was struck by the propeller of the aeroplane. *Tierney v. Occidental Life Ins. Co. of California*, 89 Cal.App. 779, 265 P. 400, 401.

See, also, Aircraft; Airship; Airport; Airway; Aviation.

AEROPLANE. See Aircraft; Hydro-Aeroplane; Seaplane.

AEROSTATICS. "Ae" + "statics" is divided into two main branches; aer: "ation" dealing, properly, with machines, which, like balloons, are lighter than air, and aviation dealing with the problem of artificial flight by means of flying machines, which, like birds, are heavier than air. *Swasey v. Massachusetts Protective Ass'n*, C.C.A.Ariz., 96 F.2d 265, 266.

AEROSTATION. See Aerostatics, and Aeronautics, note.

-ES. Lat. In the Roman law, money, (literally, brass;) metallic money in general, including gold. Dig. 9, 2, 2, pr.; Dig. 9, 2, 27, 5; Dig. 50, 16, 159.

-ES ALIENUM. A civil law term signifying a debt. Literally translated, the money of another; the civil law considered borrowed money as

the property of another, as distinguished from *ces suum*, one's own money.

SUUM. One's own money. In the Roman law, debt; a debt; that which others owe to us, (*quod alii nobis debent.*) Dig. 50, 16, 213.

IESNECIA. In old English law, Esnecy; the right or privilege of the eldest born. *Spelman; Glanv. lib. 7, c. 3; Fleta, lib. 2, c. 66, §1 5, 6.*

IESNECIUS. See Anecius; Aesnecia.

-ESTHETIC. Relating to that which is beautiful or in good taste. *People v. Wolf*, 216 N.Y.S. 741, 744, 127 Misc. 382. Pertaining to the beautiful. *Ha^y-A-Tampa Cigar Co. v. Johnson*, 149 Fla. 148, 5 So.2d 433, 440.

-ESTIMATIO CAPITIS. Lat. The value of a head.

In Saxon law, the estimation or valuation of the head; the price or value of a man. The price to be paid for taking the life of a human being. By the laws of Athelstan, the life of every man not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or *cestimatio capitis*. *Crabb, Eng.Law*, c. 4.

-ETAS. Lat. In the civil law. Age.

-ESTIMATIO PRIETERITI DELICTI EX POST-REMO FACTO NUNQUAM CRESCIT. The weight of a past offense is never increased by a subsequent fact. *Bacon*.

-ETAS INFANTIZE (also written *infantili*) **PROXIMA.** The age next to infancy; the first half of the period of childhood (*pueritia*), extending from seven years to ten and a half. *Inst.* 3, 20, 9; 4 Bl.Comm. 22. See Age.

-ETAS LEGITIMA. Lawful age; the age of twenty-five. Dig. 3, 5, 27, pr.; Id. 26, 2, 32, 2; Id. 27, 7, 1, pr.

-ETAS PERFECTA. Complete age; full age; the age of twenty-five. Dig. 4, 4, 32; Id. 22, 3, 25, 1.

-ETAS PRIMA. The first age; infancy, (*infantia*). *Cod.* 6, 61, 8, 3.

-ETAS PUBERTATI PROXIMA. The age next to puberty; the last half of the period of childhood (*pueritia*), extending from ten and a half years to fourteen, in which there might or might not be criminal responsibility according to natural capacity or incapacity. *Inst.* 3, 20, 9; 4 Bl.Comm. 22. See Age.

-ETATE PROBANDA. A writ which inquired whether the king's tenant holding in chief by chivalry was of full age to receive his lands. It was directed to the escheator of the county. Now disused.

-ETHELING. In Saxon law, a noble; generally a prince of the blood.

AFFAIR. (Fr.). A law suit.

The term frequently refers to an amour; intrigue; liaison.

AFFAIRS. An inclusive term, bringing within its scope and meaning anything that a person may do. *Walker v. United States*, C.C.A.Mo., 93 F.2d 383, 391.

A person's concerns in trade or property; business. *Bragaw v. Bolles*, 51 N.J.Eq. 84, 25 A. 947. That which is done or to be done. *Wicks v. City and County of Denver*, 61 Colo. 266, 156 P. 1100, 1103. A corporation's borrowing money, and methods of obtaining loans. *Cameron v. First Nat. Bank*, Tex.Civ.App., 194 S.W. 469, 470. Person and estate of alleged incompetent. *State ex rel. Bevan v. Williams*, 316 Mo. 665, 291 S.W. 481, 482. General operations carried on by an employer. *Gocs v. Thomas E. Coale Coal Co.*, 142 Pa.Super. 479, 16 A.2d 720, 723.

AFFECT. To act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things. *Ryan v. Carter*, 93 U.S. 84, 23 L.Ed. 807; *Tyler v. Wells*, 2 Mo.App. 538; *Holland v. Dickerson*, 41 Iowa 373; *Meurer v. Hooper*, Tex.Civ.App., 271 S.W. 172, 177. Does not mean to impair. *Harris v. Friend*, 24 N.M. 627, 175 P. 722, 725. To lay hold of or attack (as a disease does); to act, or produce an effect upon; to impress or influence (the mind or feelings); to touch. *State v. Hurd*, 5 Wash.2d 308, 105 P.2d 59, 61, 62. Acted upon, influenced, concerned. In re *National Lock Co.*, D.C.Ill., 9 F. Supp. 432, 433. Implies an indirect relation. *Chapman v. Home Ice Co.*, D.C.Tenn., 43 F.Supp. 424, 428.

AFFECTED WITH A PUBLIC INTEREST. Affirmatively, phrase means that a business or property must be run or be so employed as to justify the conclusion that it has been devoted to a public use, and its use thereby in effect granted to the public. Negatively, it does not mean that a business is affected with a public interest merely because it is large or because the public are warranted in having a feeling of concern in respect of its maintenance. *H. Earl Clack Co. v. Public Service Commission of State of Montana*, 94 Mont. 488, 22 P.2d 1056.

A business given a virtual monopoly in its field or where the public adapt their business or conduct to the methods used by it. *Western Buse Telephone Co. v. Northwestern Bell Telephone Co.*, 188 Minn. 524, 248 N.W. 220, 229. The business must affect the prosperity of a large part of the members of the body politic. *Ex parte Kazas*, 22 Cal.App. 2d 161, 70 P.2d 962, 967. This phrase means something more than "quasi public," or "not strictly private," and similar phrases employed as a basis for upholding police regulations. A business is not affected with a public interest merely because the public derives benefit, accommodation, ease or enjoyment from its existence or operation, such as admissions to places of amusement or entertainment. *Tyson & Bro.-United Theatre Ticket Offices v. Banton*, 273 U.S. 418, 47 S.Ct. 426, 429, 71 L.Ed. 718, 58 A.L.R. 1236.

Businesses. Three classes of such businesses: (1) Those carried on under the authority of a public grant or privilege expressly or impliedly imposing an affirmative duty of rendering public service demanded by the public, such as common carriers and public utilities; (2) occupations regarded as exceptional, the public interest attaching to which has been recognized from earliest times and has survived the period of arbitrary laws by Parliament or colonial legislatures for regulating trades and callings, such as inns, cabs, and grist mills; (3) businesses which, though not public at their inception, have become such by devoting their business to a public use, thereby granting the public an interest in that use and subjecting themselves to public regulation to extent of that interest, although the property continues to belong to its private owner, and to be entitled to protection accordingly, as public warehouses

for storage of grain, banks, and insurance companies. *Rohrer v. Milk Control Board*, 121 Pa.Super. 281, 184 A. 133, 138.

AFFECTIO TUA NOIVIEN IMPONIT OPERI TUO. Your disposition (or motive, intention) gives name (or character) to your work or act. *Bract. fol. 2b, 101b.*

AFFECTION. The making over, pawning, or mortgaging of a thing to assure the payment of a sum of money, or the discharge of some other duty or service. *Crabb, Technol.Dict.*

In a medical sense, an abnormal bodily condition. A local "affection" is not a local disease within the meaning of an insurance policy, unless the affection has sufficiently developed to have some bearing on the general health. *Cady v. Fidelity & Casualty Co. of New York*, 134 Wis. 322, 113 N.W. 967, 971, 17 L.R.A., N.S., 260.

AFFECTUS. Disposition; intention, impulse or affection of the mind. One of the causes for a challenge of a juror is *propter affectum*, on account of a suspicion of *bias* or favor. 3 Bl.Comm. 363; Co.Litt. 156.

AFFECTUS PUNITUR LICET NON SEQUATUR EFFECTUS. The intention is punished although the intended result does not follow. 9 Coke, 55.

AFFEER. To assess, liquidate, appraise, fix in amount.

Account

To confirm it on oath in the exchequer. *Cowell; Blount; Spelman.*

Amercement

To establish the amount which one amerced in a court-leet should pay. See *Amercement*.

AFFEERORS. Persons who, in court-leets, upon oath, settle and moderate the fines and amercedments imposed on those who have committed offenses arbitrarily punishable, or that have no express penalty appointed by statute. They are also appointed to moderate fines, etc., in courts-baron. *Cowell.*

AFFERMER. L. Fr. To let to farm. Also to make sure, to establish or confirm. *Kelham.*

AFFIANCE. To assure by pledge. A plighting of troth between man and woman. *Littleton*, § 39.

An agreement by which a man and woman promise each other that they will marry together. *Pothier, Traité du Mar*, n. 24. Co.Litt. 34 a. See *Dig.* 23, 1, 1; *Code*, 5. 1. 4.

AFFIANT. The person who makes and subscribes an affidavit. The word is used, in this sense, interchangeably with "deponent." But the latter term should be reserved as the designation of one who makes a deposition.

AFFIDARE. To swear faith to; to pledge one's faith or do fealty by making oath. *Cowell.* Used of the mutual relation arising between landlord and tenant; 1 Washb.R.P. 19; 1 Bla.Com. 367; *Termes de la Ley, Fealty.* Affidavit is of kindred meaning.

AFFIDARI. To be mustered and enrolled for soldiers upon an oath of fidelity.

AFFIDATIO

AFFIDATIO. A swearing of the oath of fidelity or of fealty to one's lord, under whose protection the quasi-vassal has voluntarily come. Brown.

AFFIDATIO DOMINORUM. An oath taken by the lords in parliament.

AFFIDATUS. One who is not a vassal, but who for the sake of protection has connected himself with one more powerful. Spelman; 2 Bl.Comm. 46.

AFFIDAVIT. A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. Cox v. Stern, 170 Ill. 442, 48 N.E. 906, 62 Am.St.Rep. 385; Hays v. Loomis, 84 Ill. 18. A statement or declaration reduced to writing, and sworn to or affirmed before some officer who has authority to administer an oath or affirmation. Shelton v. Berry, 19 Tex. 154, 70 Am.Dec. 326, and In re Breidt, 84 N.J.Eq. 222, 94 A. 214, 216.

A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath. June v. School Dist. No. 11, Southfield Tp., 283 Mich. 533, 278 N.W. 676, 677, 116 A.L.R. 581. Any voluntary ex parte statement reduced to writing and sworn to or affirmed before some person legally authorized to administer oath or affirmation, made without notice to adverse party and without opportunity to cross-examine. Kirk v. Hartlieb, 193 Ark. 37, 97 S.W.2d 434, 435, 436. The word sometimes includes "depositions." U. S. v. Kaplan, D.C.Ga., 286 F. 963, 970.

"Affidavits" are of two kinds; those which serve as evidence to advise the court in the decision of some preliminary issue or determination of some substantial right, and those which merely serve to invoke the judicial power. Worthen v. State, 189 Ala. 395, 66 So. 686, 688.

AFFIDAVIT OF DEFENSE. An affidavit stating that the defendant has a good defense to the plaintiff's action on the merits. The statements required in such an affidavit vary considerably in the different states where they are required. Called also an affidavit of merits (*q. v.*), as in Massachusetts.

AFFIDAVIT OF DEMAND. "Affidavit of demand" filed under Code section to obtain judgment for want of affidavit of defense held not equivalent of "declaration." Penn Central Light & Power Co. v. Central Eastern Power Co., 6 W. W.Harr. 74, 171 A. 332.

AFFIDAVIT OF MERITS. One setting forth that the defendant has a meritorious defense (substantial and not technical) and stating the facts constituting the same. Palmer v. Rogers, 70 Iowa 381, 30 N.W. 645. Represents that, on the substantial facts of the case, justice is with the affiant. Wendel v. Wendel, 58 S.D. 438, 236 N.W. 468, 469.

AFFIDAVIT OF SERVICE. An affidavit intended to certify the service of a writ, notice, or other document.

AFFIDAVIT TO HOLD TO BAIL. An affidavit required in many cases before the defendant in a civil action may be arrested. Such an affidavit

must contain a statement, clearly and certainly expressed, by some one acquainted with the fact, of an indebtedness from the defendant to the plaintiff, and must show a distinct cause of action; 1 Chit.P1. 165.

AFFILARE. L. Lat. To put on record; to file or affile. *Affiletur*, let it be filed. 8 Coke, 160. *De recordo affilatum*, affiled of record. 2 Ld. Raym. 1476.

AFFILE. A term employed in old practice, signifying to put on file. 2 Maule & S. 202. In modern usage it is contracted to *file*.

AFFILIATE. Signifies a condition of being united, being in close connection, allied, or attached as a member or branch. Johanson v. Riverside County Select Groves, 4 Cal.App.2d 114, 40 P.2d 530, 534.

"Affiliate with" is defined as to receive on friendly terms; to associate with; to be intimate with; to sympathize with; to consort with; and to connect or associate one's self with. Wolck v. Weedin, C.C.A.Wash., 58 F.2d 928, 930. But "affiliated" does not bear construction that one of affiliated organizations is in all particulars identical with or covered by parent organization with which it may be said to be affiliated. People v. Horiuchi, 114 Cal.App. 415, 300 P. 457, 460.

AFFILIATION. Imports less than membership in an organization, but more than sympathy, and a working alliance to bring to fruition the proscribed program of a proscribed organization, as distinguished from mere co-operation with a proscribed organization in lawful activities, is essential. Bridges v. Wixon, Cal., 326 U.S. 135, 65 S.Ct. 1443, 1447, 89 L.Ed. 2103.

It includes an element of dependability upon which the organization can rely which, though not equivalent to membership duty, rests upon course of conduct that could not be abruptly ended without giving at least reasonable cause for charge of breach of good faith. U. S. ex rel. Kettunen v. Reimer, C.C.A.N.Y., 79 F.2d 315, 317.

The act of imputing or determining the paternity of a bastard child, and the obligation to maintain it.

Corporations

Actual control of corporations by same interests is insufficient; legally enforceable control of stock of corporations by same interests being required. Island Petroleum Co. v. Commissioner of Internal Revenue, C.C.A., 57 F.2d 992, 994. Commences with acquisition of corporation from owners outside of group and ends with disposal of all properties or stock to those outside group. Hernandez v. Charles Ilfeld Co., C.C.A.N.M., 66 F.2d 236, 238.

Ecclesiastical Law

A condition which prevented the superior from removing the person affiliated to another convent. Guyot, Report.

French Law

A species of adoption which exists by custom in some parts of France. The person affiliated succeeded equally with other heirs to the property acquired by the deceased to whom he had been affiliated, but not to that which he inherited.

AFFINAGE. A refining of metals. Blount.

AFFINES. In the civil law, connections by marriage, whether of the persons or their relatives. Calvinus, Lex.

Neighbors, who own or occupy adjoining lands. Dig. 10, 1, 12.

From this word we have affinity, denoting relationship by marriage; 1 Bla.Com. 434. The singular, *affinis*, is used in a variety of related significations—a boundary; Du Cange; a partaker or sharer, *affinis culpe* (an aider or one who has knowledge of a crime); Calvinus, Lex.

AFFINIS MEI AFFINIS NON EST MIHI AFFINIS. One who is related by marriage to a person related to me by marriage has no affinity to me. Shelf.Mar. & Div. 174.

AFFINITAS. Lat. In the civil law, affinity; relationship by marriage. Inst. 1, 10, 6.

AFFINITAS AFFINITATIS. Remote relationship by marriage. That connection between parties arising from marriage which is neither consanguinity nor affinity. Davidson v. Whitehill, 87 Vt. 499, 89 A. 1081, 1085. This term signifies the connection between the kinsmen of the two persons married, as, for example, the husband's brother and the wife's sister. Erskine, Inst. 1. 6. 8.

AFFINITY. A close agreement; relation; spiritual relation or attraction held to exist between certain persons. State ex inf. Norman v. Ellis, 325 Mo. 154, 28 S.W.2d 363, 367. Relation which, one spouse because of marriage has to blood relatives of the other. State v. Hooper, 140 Kan. 481, 37 P.2d 52.

Degrees of relationship by affinity are computed as are degrees of relationship by consanguinity. The doctrine of affinity grew out of the canonical maxim that marriage makes husband and wife one. The husband has the same relation, by affinity, to his wife's blood relatives as she has to them by consanguinity and vice versa. State v. Hooper, 140 Kan. 481, 37 P.2d 52.

Affinity is distinguished into three kinds: (1) *Direct*, or that subsisting between the husband and his wife's relations by blood, or between the wife and the husband's relations by blood; (2) *secondary*, or that which subsists between the husband and his wife's relations by marriage; (3) *collateral*, or that which subsists between the husband and the relations of his wife's relations. Wharton.

In a larger sense, consanguinity or kindred. Co.Litt. 157a.

Quasi Affinity

In the civil law, the affinity which exists between two persons, one of whom has been betrothed to a kinsman of the other, but who have never been married.

AFFIRM. To ratify, make firm, confirm, establish, reassert. Cowell; Ashby v. Peters, 128 Neb. 338, 258 N.W. 639, 644, 99 A.L.R. 843.

In the practice of appellate courts, to *affirm* a judgment, decree, or order, is to declare that it is valid and right, and must stand as rendered below; to ratify and reassert it; to concur in its correctness and confirm its efficacy. Boner v. Fall River County Bank, 25 Wyo. 260, 168 P. 726, 727.

Contracts

Ratify and accept voidable contract. Cf. Adopt.

Pleading

To allege or aver a matter of fact; to 'state it affirmatively; the opposite of 'deny or *traverse*.

Practice

To make affirmation; to make a solemn and formal declaration or asseveration that an affidavit is true, that the witness will tell the truth, etc., this being substituted for an oath in certain cases. Also, to give testimony on affirmation.

AFFIRMANCE. In practice. The confirming, or ratifying of a former law, or judgment. Cowell; Blount.

The confirmation and ratification by an appellate court of a judgment, order, or decree of a lower court brought before it for review. See Affirm, note.

The ratification or confirmation of a voidable contract or act by the party who is to be bound thereby.

The term is in accuracy to be distinguished from *ratification*, which is a recognition of the validity or binding force as against the party ratifying, of some act performed by another person; and from *confirmation*, which would seem to apply more properly to cases where a doubtful authority has been exercised by another in behalf of the person ratifying; but these distinctions are not generally observed with much care.

AFFIRMANCE DAY GENERAL. In the English court of exchequer, a day appointed by the judges of the common pleas, and barons of the exchequer, to be held a few days after the beginning of every term for the general affirmation or reversal of judgments. 2 Tidd, Pr. 1091.

AFFIRMANT. A person who testifies on affirmation, or who affirms instead of taking an oath. See Affirmation. Used in affidavits and depositions which are *affirmed*, instead of sworn to in place of the word "deponent."

AFFIRMANTI, NON NEGANTI INCUMBIT PROBATIO. The [burden of] proof lies upon him who affirms, not upon one who denies. Steph. Pl. 84.

AFFIRMANTIS EST PROBARE. He who affirms must prove. Porter v. Stevens, 9 Cush., Mass., 535.

AFFIRMATION. In practice, a solemn and formal declaration or asseveration that an affidavit is true, that the witness will tell the truth, etc., this being substituted for an oath in certain cases.

A solemn religious asseveration in the nature of an oath. 1 Greenl.Ev. § 371.

Quakers, as a class, and other persons who have conscientious scruples against taking an oath, are allowed to make affirmation in any mode which they may declare to be binding upon their consciences, in confirmation of the truth of testimony which they are about to give. 1 Atk. 21, 46; Cowp. 340, 389; 1 Leach Cr.Cas. 64; 1 Ry. & M. 77.

AFFIRMATION OF FACT. A statement concerning a subject-matter of a transaction which might otherwise be only an expression of opinion but which is affirmed as an existing fact material to

AFFIRMATIO UNIUS

t lie transaction, and reasonably induces the other party to consider and rely upon it, as a fact. *Stone v. McCarty*, 64 Cal.App. 158, 220 P. 690, 694.

AFFIRMATIO UNIUS EXCLUSIO EST ALTERI-CUS. The affirmance of one thing is the exclusion of the other. *State v. Evans*, 214 La. 472, 38 So.2d 140, 147.

AFFIRMATIVE. That which declares positively; that which avers a fact to be true; that which establishes; the opposite of negative.

The party who, upon the allegations of pleadings joining issue, is under the obligation of making proof, in the first instance, of matters alleged, is said to hold the affirmative, or, in other words, to sustain the burden of proof. *Abbott*.

As to affirmative "Damages," "Plea," "Proof," "Warranty," see those titles.

AFFIRMATIVE ACTION. The "affirmative action" which the National Labor Relations Board is authorized to take to effectuate the policies of the National Labor Relations Act is action to make effective the redress of rights conferred upon employees by the act. *National Labor Relations Board v. National Casket Co.*, C.C.A.2, 107 F.2d 992, 998.

It is broad, but is not unlimited, is remedial not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violations. *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U.S. 240, 59 S.Ct. 490, 497, 83 L. Ed. 627, 123 A.L.R. 599.

It is not disciplinary. *National Labor Relations Board v. Leviton Mfg. Co.*, C.C.A.2, 111 F.2d 619, 621.

AFFIRMATIVE AUTHORIZATION. Something more than authority by mere implication. *White, Gratwick & Mitchell v. Empire Engineering Co.*, 125 Misc. 47, 210 N.Y.S. 563, 572.

AFFIRMATIVE CHARGE. The general "affirmative charge" is an instruction to the jury that, whatever the evidence may be, defendant cannot be convicted under the count in the indictment to which the charge is directed. *Coker v. State*, 18 Ala.App. 550, 93 So. 384, 386.

AFFIRMATIVE DEFENSE. In code pleading. New matter constituting a defense; new matter which, assuming the complaint to be true, constitutes a defense to it. *Carter v. Eighth Ward Bank*, 33 Misc. 128, 67 N.Y.S. 300.

AFFIRMATIVE EASEMENT. An "affirmative easement" is one which gives to the owner of the dominant tenement the right to use the servient tenement, or to do some act thereon which would otherwise be unlawful. *Clements v. Taylor*, Tex. Civ.App., 184 S.W.2d 485, 487.

AFFIRMATIVE PREGNANT. In pleading, an affirmative allegation implying some negative in favor of the adverse party. *Fields v. State*, 134 Ind. 46, 32 N.E. 780.

AFFIRMATIVE PROOF. Such evidence of the truth of matters asserted as tends to establish them, regardless of character of evidence offered. *Glass v. Newport Clothing Co.*, 110 Vt. 368, 8 A.2d 651, 654.

AFFIRMATIVE RELIEF. Relief, benefit, or compensation which may be due and granted to defendant. *Garner v. Hannah*, 6 Duer, N.Y., 262. Relief for which defendant might maintain an action independently of plaintiff's claim and on which he might proceed to recovery, although plaintiff abandoned his cause of action or failed to establish it. *Southwestern Surety Ins. Co. v. Walser*, 77 Okl. 240, 188 P. 335, 336.

AFFIRMATIVE STATUTE. A statute couched in affirmative or mandatory terms. 1 Bl.Comm. 142.

One which directs the doing of an act, or declares what shall be done; as a *negative* statute is one which prohibits a thing from being done, or declares what shall not be done. Blackstonp describes affirmative acts of parliament as those "wherein justice is directed to be done according to the law of the land." 1 Bl.Comm. 142.

AFFIRMATIVE WARRANTY. Affirms existence of a fact at time policy is entered into, while promissory warranty requires that something be done or not done after policy has taken effect. *Sentinel Life Ins. Co. v. Blackmer*, C.C.A.Colo., 77 F.2d 347, 350.

AFFIX. Fix or fasten in any way, to attach physically. *Penn v. Dyba*, 115 Cal.App. 67, 1 P.2d 461, 464. To attach to, inscribe, or impress upon, as a signature, a seal, a trade-mark. *Pen.Code N.Y. § 367*. To attach, add to, or fasten upon, permanently, as in the case of fixtures annexed to real estate.

A thing is deemed to be affixed to land when it is attached to it by the roots; as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. *Miller v. Waddingham*, 3 Cal.Unrep.Cas. 375, 25 Pac. 688, 11 L.R.A. 510; *Tolle v. Vandenberg*, 44 Okl. 780, 146 P. 212, 213.

AFFIXING. Securely attached. *Mechanics' Nat. Bank of Trenton v. Newman*, 137 Misc. 587, 244 N.Y.S. 529, 531.

AFFIXUS. In the civil law, affixed, fixed, or fastened to.

AFFLICTION. A distress of mind or body; that which causes continuing anguish or suffering.

AFFORARE. To set a price or value on a thing. *Blount*.

AFFORATUS. Appraised or valued, as things vendible in a market. *Blount*.

AFFORCE. To add to; to increase; to strengthen; to add force to.

AFFORCE THE ASSIZE. In old English practice, a method of securing a verdict, where the jury disagreed, either by confining them without meat and drink, or, more anciently, by adding other jurors to the panel, to a limited extent, until twelve could be found who were unanimous. *Bract. fol. 185b, 292a; Fleta, lib. 4, c. 9, § 2; 2 Reeve, Hist.Eng.Law, 267.*

AFFORCIAMENTUM. In old English law, a fortress or stronghold, or other fortification. Cowell.

The calling of a court upon a solemn or extraordinary occasion. Id.

AFFOREST. To convert land into a forest in the legal sense of the word.

AFFORESTATION. The turning of a part of a country into forest or woodland or subjecting it to forest law, q. v.

AFFOUAGE. In French law, the right of the inhabitants of a commune or section of a commune to take from the forest the fire-wood which is necessary for their use. Duverger.

AFFRANCHIR. L. Fr. To set free. Kelham.

AFFRANCHISE. To liberate; to make free.

AFFRAY. The fighting of two or more persons in some public place to the terror of the people. *Wallace v. Commonwealth*, 207 Ky. 122, 268 S.W. 809, 813.

Where two or more persons voluntarily or by agreement engage in any fight, or use any blows or violence towards each other in an angry or quarrelsome manner, in any public place to the disturbance of others.

Words are insufficient, but if one person, by such abusive language toward another as is calculated and intended to bring on a fight, induces the other to strike him, both are guilty of "affray." *State v. Maney*, 194 N.C. 34, 138 S.E. 441, 442.

It differs from a riot in not being premeditated. *Hawk. P.C. bk. 1, c. 65, § 3; 4 Bl.Comm. 146; 1 Russ.Crimes, 271.*

AFFRECTAMENTUM. Affreightment; a contract for the hire of a vessel. From the Fr. *fret*, which, according to Cowell, meant tons or tonnage. *Affreightamentum* was sometimes used. Du Cange.

AFFREIGHTMENT. A contract of affreightment is a contract with a ship-owner to hire his ship, or part of it, for the carriage of goods. The *Fred Smartley, Jr.*, C.C.A.Va., 100 F.2d 971, 973.

Such a contract generally takes the form either of a charter-party or of a bill of lading. *Bramble v. Culmer*, 78 Fed. 501, 24 C.C.A. 182. A contract to transport goods constitutes a contract of "affreightment," although there is towage service connected therewith. *The Independent*, D.C.La., 37 F.Supp. 106, 111.

In French law, freighting and affreighting are distinguished. The owner of a ship freights it, (*le frette*;) he is called the freighter, (*freteur*;) he is the letter or lessor, (*locateur, locator*.) The merchant affreights (*affrete*) the ship, and is called the affreighter, (*affreteur*;) he is the hirer, (*locataire, conductor*.) *Emerig. Tr. des Ass. c. 11, § 3.*

AFFRETEMENT. Fr. In French law, the hiring of a vessel; affreightment (*q. v.*). Called also *nolisement*. *Ord.Mar. liv. 1, tit. 2, art. 2; Id. liv. 3, tit. 1, art. 1.*

AFFRI. In old English law, plow cattle, bullocks or plow horses. *Afri*, or *afri carucce*; beasts of the plow. Spelman.

AFFRONT. An insult or indignity; assault, insolence.

AFORESAID. Before, or already said, mentioned, or recited; premised. *Plowd. 67. Alabama Great Southern R. Co. v. Smith*, 191 Ala. 643, 68 So. 56, 57. Foresaid is used in Scotch law.

Although the words "preceding" and "aforesaid" generally mean next before, and "following" means next after, yet a different signification will be given to them if required by the context and the facts of the case. *Simpson v. Robert*, 35 Ga. 180.

AFORETHOUGHT. In criminal law, deliberate; planned; premeditated; prepense. *State v. Fiske*, 63 Conn. 388, 28 A. 572. See *Malice Aforethought; Premeditation*; 4 *Bla.Com. 199; Respublica v. Mulatto Bob*, 4 Dall., Pa., 146, 1 L.Ed. 776; *U. S. v. Cornell*, 2 Mas. 91, Fed.Cas.No.14,868.

"Aforethought" as used in the law of murder means thought of beforehand and for any length of time, however short, before the doing of the act, and is synonymous with premeditation. *State v. Smith*, 26 N.M. 482, 194 P. 869, 872.

AFRICAN DESCENT. Persons of African nativity or of "African descent" within the meaning of the Naturalization Act, as amended by Act July 14, 1870 (8 U.S.C.A. § 703 note), are members of the negro races of Africa or their descendants by intermixture with races constituting free white persons, the negro races referred to being those from which the emancipated slaves in the United States descend. *Ex parte Shahid*, D.C.S.C., 205 F. 812, 815.

AFTER. Later, succeeding, subsequent to, inferior in point of time or of priority or preference.

Subsequent in time to. *Cheney v. National Surety Corporation*, 256 App.Div. 1041, 10 N.Y.S.2d 706. *At. Hyman Bros. Box & Label Co. v. Industrial Accident Commission*, 180 Cal. 423, 181 P. 784, 786. On and after *New York Trust Co. v. Portland Ry. Co.*, 197 App.Div. 422, 189 N.Y.S. 346, 348. "At the end of" or "as soon as," and in computation of time, is generally understood in sense of excluding day of date mentioned. *Taylor v. National Life & Accident Ins. Co.*, Tex.Civ.App., 63 S.W.2d 1082, 1083. But the words "after the filing" as used in sections 63 and 68 of the Bankruptcy Act (11 U.S.C.A. §§ 103, 108) do not mean the day after that of filing, but refer to the very instant of filing if ascertainable. *In re Ledbetter*, D.C.Ga., 267 F. 893, 896. A note payable generally "after date," is payable on demand. *Love v. Perry*, 19 Ga.App. 86, 90 S.E. 978, 979.

AFTER-ACQUIRED. Acquired after a particular date or event. Thus, a judgment is a lien on after-acquired realty, *i. e.*, land acquired by the debtor after entry of the judgment. *Hughes v. Hughes*, 152 Pa. 590, 26 A. 101.

AFTER ACQUIRED TITLE. Doctrine under which title acquired by grantor who previously attempted to convey title to land which he did not in fact own, inures automatically to benefit of prior grantees. *Perkins v. White*, Miss., 43 So.2d 897, 899; *Morris v. Futscha*, 194 Okl. 224, 148 P.2d 986, 987.

AFTER-BORN CHILD. A statute making a will void as to after-born children means physical birth, and is not applicable to a child legitimated by the marriage of its parents. *Appeal of McCulloch*, 11.3 Pa. 247, 6 A. 253. See *En Ventre Sa Mere*; *Posthumous Child*.

AFTER-DISCOVERED

AFTER-DISCOVERED. Discovered or made known after a particular date or event.

AFTER-DISCOVERED EVIDENCE. See Evidence.

AFTER SIGHT. This term as used in a bill payable so many days after sight, means after legal sight; that is, after legal presentment for acceptance. The mere fact of having seen the bill or known of its existence does not constitute legal "sight." *Mitchell v. Degrand*, 17 Fed.Cas. 494.

AFTERMATH. A second crop of grass mown in the same season; also the right to take such second crop. See 1 Chit.Gen.Pr. 181.

"Aftermath" as used in the manufacture of window glass means the colder glass remaining on and in molten bath after drawing of glass cylinder. *Okmulgee Window Glass Co. v. Window Glass Mach. Co.*, C.C.A.Okl., 265 F. 626, 630.

AFTERNOON. May mean the whole time from noon to midnight, or it may mean the earlier part of that time as distinguished from evening. *Clevenger v. Carl B. King Drilling Co.*, Tex.Civ. App., 62 S.W.2d 1001. But ordinarily means that part of day between noon and evening. *Buttrick v. Woman's Hospital Aid Ass'n*, 87 N.H. 194, 177 A. 416, 418.

AFTERTHOUGHT. A thought composed after the event and with deliberation. A devise to escape difficulty.

AFTERWARD, AFTERWARDS. Subsequent in point of time; synonymous with "thereafter," *Lamoutte v. Title Guaranty & Surety Co.*, 165 App. Div. 573, 151 N.Y.S. 148, 154, or with "then," *Boyce v. Mosely*, 102 S.C. 361, 86 S.E. 771, 772.

AGAINST. Adverse to; contrary, *Cram v. Meagher*, 113 Vt. 463, 35 A.2d 855, *In re Dean's Estate*, 350 Mo. 494, 166 S.W.2d 529, 533. Signifies discord or conflict; opposed to; without the consent of; in contact with. *Palmer v. Superior Mfg. Co.*, D.C. N.Y., 203 F. 1003, 1005, *Clemens v. Perry*, Tex.Civ. App., 29 S.W.2d 529, 533. Sometimes meaning "upon," which is almost, if not altogether, synonymous with word "on." *Northern Pac. Ry. Co. v. Gas Development Co.*, 103 Mont. 214, 62 P.2d 204, 205. Denoting manifestation of raped woman's utmost reluctance and greatest resistance. *State v. Egner*, 317 Mo. 457, 296 S.W. 145, 146.

AGAINST THE EVIDENCE. Means "against the weight of the evidence." *Cram v. Meagher*, 113 Vt. 463, 35 A.2d 855.

AGAINST THE FORM OF THE STATUTE. Technical words which must be used in framing an indictment for a breach of the statute prohibiting the act complained of. The Latin phrase is *contra formam statuti*, *q. v. State v. Murphy*, 15 R.I. 543, 10 A. 585.

AGAINST THE PEACE. A technical phrase used in alleging a breach of the peace. See *Contra Pacem*. *State v. Tibbetts*, 86 Me. 189, 29 A. 979.

AGAINST THE WEIGHT OF THE EVIDENCE, "Contrary to the evidence". *Russell v. Pilger*, 113 Vt. 537, 37 A.2d 403, 411.

AGAINST THE WILL. Technical words which must be used in framing an indictment for robbery from the person, rape and some other offenses. *Whittaker v. State*, 50 Wis. 521, 7 N.W. 431, 36 Am.St.Rep. 856.

AGALMA. An impression or image of anything on a seal. Cowell.

AGARD. L. Fr. An award. *Nul fait agard*; no award made.

AGARDER. L. Fr. To award, adjudge, or determine; to sentence, or condemn.

AGE. The length of time during which a person has lived; the time at which one attains full personal rights and capacities. In law the term signifies those periods in the lives of persons of both sexes which enable them to do certain acts which, before they had arrived at those periods, they were prohibited from doing. 2 C.J.S., p. 1013.

As used in particular statutes, the term implies disability and, by definition, has been applied to all minors under a certain age and to others disabled by old age. *Hampton v. Ewert*, C.C.A.Okl., 22 F.2d 81, 87.

Age and schooling certificate. *Collings-Taylor Co. v. American Fidelity Co.*, 96 Ohio St. 123, 117 N.E. 158.

Age fixed by law. *Johnson v. Travelers' Ins. Co.*, 147 Or. 345, 32 P.2d 587.

Age of consent. *Ex parte Hutchens*, 296 Mo. 331, 246 S.W. 186, 189.

Age of legal consent. *Johnson v. Alexander*, 39 Cal.App. 177, 178 P. 297; *Fisher v. Bernard*, 65 Vt. 663, 27 A. 316.

Age of majority. *Gates v. Shaffer*, 72 Wash. 451, 130 P. 896.

Age of maturity. *Commercial Bank & Trust Co. v. Noble*, 112 So. 691, 146 Miss. 552.

Age of twenty-one years. *Vanderbilt v. Eidman*, 196 U.S. 480, 25 S.Ct. 331, 49 L. Ed. 563.

Legal Age. See Legal Age.

Legal school age. *Inhabitants of Needham v. Wellesley*, 139 Mass. 372, 31 N.E. 732.

AGE, Awe, Aive. L. Fr. Water. *Kelham*.

AGE PRAYER. A suggestion of nonage, made by an infant party to a real action, with a prayer that the proceedings may be deferred until his full age. It is now abolished. St. 11 Geo. IV.; 1 Wm. IV. c. 37, § 10; 1 Lil.Reg. 54; 3 Bl.Comm. 300.

AGENCY. Includes every relation in which one person acts for or represents another by latter's authority, *Saums v. Parfet*, 270 Mich. 165, 258 N.W. 235, where one person acts for another, either in the relationship of principal and agent, master and servant, or employer or proprietor and independent contractor, *Gorton v. Doty*, 57 Idaho 792, 69 P.2d 136, 139.

Properly speaking, agency relates to commercial or business transactions. *Humble Oil & Refining Co. v. Bell*, Tex.Civ.App., 172 S.W.2d 800,

803, and frequently is used in connection with an arrangement which does not: in law amount to an agency, as where the essence of an arrangement is bailment or sale, as in the case of a sale agency exclusive in certain territory. *State Compensation Ins. Fund v. Industrial Accident Commission*, 216 Cal. 351, 14 P.2d 306, 310.

It also designates a place at which business of company or individual is transacted by an agent. *Johnson Freight Lines v. Davis*, 170 Tenn. 177, 93 S.W.2d 637, 639.

The relation created by express or implied contract or by law, whereby one party delegates the transaction of some lawful business with more or less discretionary power to another, who undertakes to manage the affair and render to him an account thereof. *State ex rel. Cities Service Gas Co. v. Public Service Commission*, 337 Mo. 809, 85 S.W.2d 890, 894. Or where one person confides the management of some affair, to be transacted on his account, to other party. 1 *Liverm. Prin. & Ag.* 2. Or one party is authorized to do certain acts for, or in relation to the rights or property of the other. But means more than tacit permission, and involves request, instruction, or command. *Klee v. U. S., C.C.A. Wash.*, 53 F.2d 58, 61. Being the consensual relation existing between two persons, by virtue of which one is subject to other's control. *Tarver, Steele & Co. v. Pendleton Gin Co.*, Tex.Civ.App., 25 S.W.2d 156, 159.

Actual agency. Exists where the agent is really employed by the principal. *Weidenaar v. N. Y. Life Ins. Co.*, 36 Mont. 592, 94 P. 1, 6.

Agency by estoppel. One created by operation of law and established by proof of such acts of the principal as reasonably lead to the conclusion of its existence. *Sigel-Campion Live Stock Commission Co. v. Ardohain*, 71 Colo. 410, 207 P. 82, 83. Arises where principal, by negligence in failing to supervise agent's affairs, allows agent to exercise powers not granted to him, thus justifying others in believing agent possesses requisite authority. *Reifsnyder v. Dougherty*, 301 Pa. 328, 152 A. 98, 100. Though principal have no notice of agent's conduct, *Dispatch Printing Co. v. National Bank of Commerce*, 109 Minn. 440, 124 N.W. 236, 50 L.R.A., N.S., 74.

Agency of necessity. A term sometimes applied to the kind of implied agency which enables a wife to procure what is reasonably necessary for her maintenance and support on her husband's credit and at his expense, when he fails to make proper provision for her necessities. *Bostwick v. Brower*, 49 N.Y.S. 1046, 22 Misc. 709.

Deed of agency. A revocable and voluntary trust for payment of debts. *Wharton*.

Exclusive agency. Defined as an agreement by owner that during life of contract he will not sell property to a purchaser procured by another agent, which agreement does not preclude owner himself from selling to a purchaser of his own procuring, while a contract giving a broker "exclusive sale" is more than such exclusive agency, and is an agreement by the owner that he will not sell the property during the life of the contract to any purchaser not procured by the broker in question. *Harris v. McPherson*, 97 Conn. 164, 115 A. 723, 724, 24 A.L.R. 1530; *Harris & White v. Stone*, 137 Ark. 23, 207 S.W. 443, 444.

General agency. That which exists when there is a delegation to do all acts connected with a particular trade, business or employment. *Hinkson v. Kansas City Life Ins. Co.*, 93 Or. 473, 183 P. 24, 29. It implies authority on the part of the agent to act without restriction or qualification in all matters relating to the business of his principal. *Schwartz v. Maryland Casualty Co.*, 82 N.H. 177, 131 A. 352, 353.

Implied agency. One created by act of parties and deduced from proof of other facts. *Sigel-Campion Live Stock Commission Co. v. Ardohain*, 71 Colo. 410, 207 P. 82, 83. It is an actual agency, proved by deductions or inferences from other facts, and third party need have no knowledge of the principal's acts, nor have relied on them. *Kentucky-Pennsylvania Oil & Gas Corporation v. Clark*, 247 Ky. 438, 57 S.W.2d 65.

Ostensible agency. One which exists where the principal intentionally or by want of ordinary care causes a third person to believe another to be his agent who is not really employed by him. *Weidenaar v. N. Y. Life Ins. Co.*, 36 Mont. 592, 94 P. 1, 6. See, also, *Agency by Estoppel*.

AGENCY COUPLED WITH INTEREST. Interest in continued existence of power' or authority to act with reference to business, where secured by contract and based on consideration moving from agent to principal looking to exercise of power as means of reimbursement, creates "agency coupled with an interest." *Bowling v. National Convoy & Trucking Co.*, 101 Fla. 634, 135 So. 541, 544. Agent must have an interest or estate in the thing to be disposed of or managed under the power. *Eduardo Fernandez Y Compania v. Longino & Collins*, 199 La. 343, 6 So.2d 137, 142, 143.

AGENCY RELATIONSHIP. An employment for purpose of representation in establishing legal relations between principal and third persons. *Blabon v. Hay*, 269 Mass. 401, 169 N.E. 268, 271.

AGENDA. Memoranda of things to be done, as items of business or discussion to be brought up at a meeting; a program consisting of such items. *Webster. Baton Rouge Bldg. Trades Council v. T. L. James & Co.*, 201 La. 749, 10 So.2d 606, 619.

AGENESIA. In medical jurisprudence, impotentia generandi; sexual impotence; incapacity for reproduction, existing in either sex, and whether arising from structural or other causes.

AGENFRIDA. Sax. The true master or owner of a thing. *Spelman*.

AGENHINA. In Saxon law, a guest at an inn, who, having stayed there for three nights, was then accounted one of the family. *Cowell*.

AGENS. Lat. An agent, a conductor, or manager of affairs. Distinguished from *factor*, a workman. A plaintiff. *Fleta*, lib. 4, c. 15, § 8.

AGENT. A person authorized by another to act for him, one intrusted with another's business. *Downs v. Delco-Light Co.*, 175 La. 242, 143 So. 227. One who represents and acts for another under the contract or relation of agency, *q. v. Fowler v. Cobb*, Mo.App., 232 S.W. 1084. A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third persons. *Saums v. Parfet*, 270 Mich. 165, 258 N.W. 235. One who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the latter, and to render an account of it. 1 *Livermore, Ag.* 67. See *Co.Litt.* 207; 1 *B. & P.* 316; *Thomas B. Jeffrey Co. v. Lockridge*, 173 Ky. 282, 190 S.W. 1103, 1105. One who acts for or in place of another by authority from him; a substitute, a deputy, appointed by principal with power to do the things which principal may do. *Stephenson v. Golden*, 279 Mich. 710, 276 N.W. 849. One who deals not only with things, as does a servant, but with persons, using his own discretion as to means, and frequently establishing contractual relations between his

principal and third persons. *Rendleman v. Niagara Sprayer Co.*, D.C.111., 16 F.2d 122, 124. See, also, *State v. Bond*, 94 W.Va. 255, 118 S.E. 276, 279.

Agent and patient. A phrase indicating the state of a person who is required to do a thing, and is at the same time the person to whom it is done; as, when a man is indebted to another, and he appoints him his executor, required to pay the debt in his capacity of executor, and entitled to receive it in his own right. *Termes de la Ley*.

Apparent agent or ostensible agent. One whom the principal, either intentionally or by want of ordinary care, induces third persons to believe to be his agent, though he has not, either expressly or by implication, conferred authority on him. *Ware v. Home Mut. Ins. Ass'n of Iowa*, 135 Neb. 329, 281 N.W. 617, 620. A person who, whether or not authorized, reasonably appears to third person, because of manifestations of another, to be authorized to act as agent for such other. *Hansche v. A. J. Conroy, Inc.*, 222 Wis. 553, 269 N.W. 309, 312.

Diplomatic agent. A person employed by a sovereign to manage his private affairs, or those of his subjects in his name, at the court of a foreign government. *Wolff, Inst. Nat.* § 1237.

General agency business. One not engaged as agent for single firm or person, but holding himself out to public as being engaged in business of being agent. *Comer v. State Tax Commission of New Mexico*, 41 N.M. 403, 69 P.2d 936.

General agent. One employed in his capacity as a professional man or master of an art or trade, or one to whom the principal confides his whole business or all transactions or functions of a designated class; or he is a person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment. See *Story, Ag.* § 17; *Thompson v. Michigan Mut. Life Ins. Co.*, 56 Ind.App. 502, 105 N.E. 780, 782; *Little v. Minneapolis Threshing Mach. Co.*, 166 Iowa 651, 147 N.W. 872, 873. One empowered to transact all business of principal at any particular time or any particular place, a general manager. *Abuc Trading & Sales Corporation v. Jennings*, 151 Md. 392, 135 A. 166, 173. An agent to manage buildings and lease and collect the rents, *Daniel v. Pappas, C.C.A.Okla.*, 16 F.2d 880, 883. An agent empowered to enter into contracts without consulting insurer, notwithstanding restriction of his territory, *London & Lancashire Ins. Co. v. McWilliams*, 215 Ala. 481, 110 So. 909, 910.

Local agent. One appointed to act as the representative of a corporation and transact its business generally (or business of a particular character) at a given place or within a defined district. See *Frick Co. v. Wright*, 23 Tex. Civ.App. 340, 55 S.W. 608; *Moore v. Freeman's Nat. Bank*, 92 N.C. 594.

Managing agent. A person who is invested with general power, involving the exercise of judgment and discretion, as distinguished from an ordinary agent or employee, who acts in an inferior capacity, and under the direction and control of superior authority, both in regard to the extent of the work and the manner of executing the same. *Reddington v. Mariposa Land & Min. Co.*, 19 Hun, N.Y., 405; *Taylor v. Granite State Prov. Ass'n*, 32 N.C. 992, 136 N.Y. 343, 32 Am.St.Rep. 749. One who has exclusive supervision and control of some department of a corporation's business, the management of which requires of such person the exercise of independent judgment and discretion, and the exercise of such authority that it may be fairly said that service of summons upon him will result in notice to the corporation. *Federal Betterment Co. v. Reeves*, 73 Kan. 107, 84 P. 560, 4 L.R.A., N.S., 460; *Hatinen v. Payne*, 150 Minn. 344, 185 N.W. 386, 387. As used in section 4274, *Wilson's Statutes of Oklahoma 1903, Ann.*, an agent whose agency extends to all the transactions of the corporation within the state; one who has or is engaged in the management of the business of the corporation, in distinction from the management of a local or particular branch or department of said business. *Waters Pierce Oil Co. v. Foster*, 52 Okl. 412, 153 P. 169, 171.

Mercantile agents. Agents employed for the sale of goods or merchandise are called "mercantile agents," and are of two principal classes,—brokers and factors (*q. v.*); a factor is sometimes called a "commission agent," or "commission merchant." *Russ. Mere.* Ag. 1.

Practice of the House of Lords and Privy Council. In appeals, solicitors and other persons admitted to practice in those courts in a similar capacity to that of solicitors in ordinary courts, are technically called "agents." *Macph. Priv. Coun.* 65.

Private agent. An agent acting for an individual in his private affairs; as distinguished from a *public agent*, who represents the government in some administrative capacity.

Public agent. An agent of the public, the state, or the government; a person appointed to act for the public in some matter pertaining to the administration of government or the public business. See *Story, Ag.* § 302; *Whiteside v. United States*, 93 U.S. 254, 23 L.Ed. 882.

Real-estate agent. Any person whose business it is to sell, or offer for sale, real estate for others, or to rent houses, stores, or other buildings, or real estate, or to collect rent for others. *Act July 13, 1866, c. 184*, § 9, par. 25; *14 St. at Large*, 118. *Carstens v. McReavy*, 1 Wash.St. 359, 25 P. 471.

A special agent is one employed to conduct a particular transaction or piece of business for his principal or authorized to perform a specified act. *Hinkson v. Kansas City Life Ins. Co.*, 93 Or. 473, 183 P. 24, 29; *Pettijohn v. St. Paul Fire & Marine Ins. Co.*, 100 Kan. 482, 164 P. 1096, 1097; *Hoffman v. Marano*, 71 Pa.Super.Ct. 26, 28.

AGENTES ET SENTIENTES PART PCENA PLECTENTUR. Acting and consenting parties are liable to the same punishment. 5 Coke, 80.

AGER. Lat. A field; land generally. A portion of land inclosed by definite boundaries. *Municipality No. 2 v. Orleans Cotton Press*, 18 La. 167, 36 Am.Dec. 624. In old English law, an acre (*q. v.*). *Spelman*.

AGGER. Lat. In the civil law, a dam, bank or mound. *Cod.* 9, 38; *Townsh.Pl.* 48.

AGGRAVATED ASSAULT. The term has no technical and definite common law meaning. In *re Burns*, C.C.Ark., 113 F. 987; *People v. Ochotski*, 115 Mich. 601, 73 N.W. 889. The term is one which is employed to describe an assault which has, in addition to the mere intent to commit it, another object which is also criminal, *Brimhall v. State*, 31 Ariz. 522, 255 P. 165, 53 A.L.R. 231; or to include all those species of assault which, for various reasons, have come to be regarded as more heinous than common assault, *State v. Jones*, 133 S.C. 167, 130 S.E. 747; or which have been made the subject of special legislative provisions, *Daffan v. State, Tex.Cr.App.*, 21 S.W.2d 301 and *Njecick v. State*, 178 Wis. 94, 189 N.W. 147.

An assault where the means or instrument used to accomplish the injury is highly dangerous or where assailant has some ulterior and malicious motive in committing assault other than a mere desire to punish injured person. *Strickbine v. State*, 201 Ark. 1031, 148 S.W.2d 180, 181, 182; when committed with a deadly weapon under circumstances not amounting to an intent to murder, *Myers v. State*, 72 Tex.Cr.R. 630, 163 S.W. 432; or when the instrument or means used is such as inflicts disgrace upon the person assaulted, *Cirul v. State*, 83 Tex.Cr.R. 8, 200 S.W. 1088; *Scott v. State*, 73 Tex.Cr.R. 622, 166 S.W. 729, 730 (indecent and improper fondling of the person). In Arizona, aggravated assault is different from simple assault only by infliction of serious bodily injury, *Brimhall v. State*, 31 Ariz. 522, 255 P. 165, 166, 53 A.L.R. 231.

AGGRAVATING. Passenger ejected from plane. *Delta Air Corporation v. Porter*, 70 Ga.App. 152, 27 S.E.2d 758, 762.

AGGRAVATION. Any circumstance attending the commission of a crime or tort which increases its guilt or enormity or adds to its injurious consequences, but which is above and beyond the essential constituents of the crime or tort itself.

Matter of aggravation, correctly understood, does not consist in acts of the same kind and description as those constituting the gist of the action, but in something done by the defendant, on the occasion of committing the trespass, which is, to some extent, of a different legal character from the principal act complained of. *Hathaway v. Rice*, 19 Vt. 107. So on an indictment for murder the prisoner may be convicted of manslaughter, for the averment of malice aforethought is merely matter of aggravation. Co.Litt. 282 a.

In pleading, the introduction of matter into the declaration which tends to increase the amount of damages, but does not affect the right of action itself. Steph.P1. 257; 12 Mod. 597.

AGGRAVATION OF THE DISABILITY. Refers to the course or progress of the workman's condition resulting from the specific injury for which an award or arrangement of compensation has been made. *Keefer v. State Industrial Accident Commission*, 171 Or. 405, 135 P.2d 806, 809.

AGGREGATE. Entire number, sum, mass, or quantity of something; amount; complete whole, and one provision under will may be the aggregate if there are no more units to fall into that class. In re Curley's Will, 151 Misc. 664, 272 N.Y.S. 489. Composed of several; consisting of many persons united together; a combined whole. 1 Bl.Comm. 469.

AGGREGATE CORPORATION. See Corporation.

AGGREGATES. Name for materials consisting largely of rock, gravel and sand used for construction and surfacing of highways or, as a component part, in forming concrete for such construction. *Pioneer Gravel Equipment Mfg. Co. v. Diamond Iron Works*, C.C.A.Minn., 72 F.2d 161.

AGGREGATIO MENTIUM. The meeting of minds. The moment when a contract is complete. A supposed derivation of the word "agreement," *q. v.*

AGGREGATION. In law of patents, it means that the elements of a claimed combination are incapable of co-operation to produce a unitary result, and in its true sense does not need prior art patents to support it. *National Popsicle Corporation v. Harvey*, D.C.Pa., 6 F.Supp. 784, 786.

It does not imply mechanical interaction of parts, but only union of all elements of invention to realize single purpose. *Simplex Piston Ring Co. of America v. Horton-Gallo-Creamer Co.*, C.C.A.Conn., 61 F.2d 748, 750. A combination which merely brings together two or more functions to be availed of independently of each other does not represent "invention" but constitutes mere "aggregation." *Hemming v. S. S. Kresge Co.*, D.C.Conn., 24 F.Supp. 981, 983. The assembly of old elements, in a device in which each performs the same function in the same way as it did when used alone, without mutuality of action, interaction, or co-operation, is mere "aggregation" not involving invention. In re Smith, 57 App.D.C. 204, 19 F.2d 678, 679.

AGGRESSOR. One who first employs hostile force. *Penn v. Henderson*, 174 Or. 1, 146 P.2d 160, 766. The party who first offers violence or

offense. He who begins a quarrel or dispute, either by threatening or striking another. See *Wilkie v. State*, 33 Okl.Cr. 225, 242 P. 1057, 1059.

AGGRIEVED. Having suffered loss or injury; damnified; injured.

AGGRIEVED PARTY. One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly affected by a decree or judgment. *Glos v. People*, 259 Ill. 332, 102 N.E. 763, 766, Ann.Cas.1914C, 119. See next topic. One whose right of property may be established or divested. *McFarland v. Pierce*, 151 Ind. 546, 45 N.E. 706. The word "aggrieved" refers to a substantial grievance, a denial of some personal or property right, or the imposition upon a party of a burden or obligation. *Rouillard v. McSoley*, 54 R.I. 232, 172 A. 326, 327. Injured in a legal sense. In re Donnelly's Estate, 55 S.D. 426, 226 N.W. 563, 565.

Adoption, Appeal of *Cummings*, 126 Me. 111, 136 A. 662, 663; disbarment, *State v. Hunter*, 152 Tenn. 233, 276 S.W. 639, 640; bar association, *State v. Huddleston*, 173 Ark. 686, 293 S.W. 353, 358; *contra*, disciplinary proceedings; In re *Dolphin*, 240 N.Y. 89, 147 N.E. 538, 539; lunacy inquisition, *Commonwealth v. Davidson*, 269 Pa. 218, 112 A. 115. One 'against whom error has been committed, *Kinealy v. Macklin*, 67 Mo. 95. Or one against whom an appealable order or judgment has been entered. *Ely v. Frisbie*, 17 Cal. 260. Any party having an interest recognized by law in the subject-matter, which interest is injuriously affected by judgment. *Hornbeck v. Richards*, 80 Mont. 27, 257 P. 1025, 1026. A complainant who has received less than the relief demanded, or a defendant who has not been accorded the full amount of his set-off or counterclaim. *Blanchard v. Neill*, 83 N.J.Eq. 446, 91 A. 811. See, also, *Kondas v. Washoe County Bank*, 50 Nev. 181, 254 P. 1080, 1081. One under necessity of answering or replying to irrelevant and redundant matter in a pleading. *Shea v. Kiely*, Sup., 167 N.Y.S. 570, 572.

AGILD. In Saxon law, free from penalty, not subject to the payment of *gild*, or *weregild*; that is, the customary fine or pecuniary compensation for an offense. Spelman; Cowell.

AGILER. In Saxon law, an observer or informer.

AGILLARIUS. L. Lat. In old English law, a hayward, herdward, or keeper of the herd of cattle in a common field. Cowell.

AGIO. In commercial law, a term used to express the difference in point of value between metallic and paper money, or between one sort of metallic money and another. McCul.Dict.

An Italian word for accommodation.

AGIOTAGE. A speculation on the rise and fall of the public debt of states, or the public funds. The speculator is called "*agioteur*."

AGIST. In ancient law it meant to take in and give feed to the cattle of strangers in the king's forest, and to collect the money due for the same to the king's use. Spelman; Cowell.

In modern law it means to take in cattle to feed, or pasture, at a certain rate of compensation. *Bank of Tehama County v. Federal Realty Co.*, 2 Cal.2d 333, 40 P.2d 507, 509. See Agistment.

AGISTATIO ANIMALIUM IN FORESTA. The drift or numbering of cattle in the forest.

AGISTER. See Agistor.

AGISTERS, or GIST TAKERS. Officers appointed to look after cattle, etc. See Williams, Common, 232.

AGISTMENT. The taking and feeding of other men's cattle in the king's forest, or on one's own land, at a certain rate. Bank of Tehama County v. Federal Realty Co., 2 Cal.2d 333, 40 P.2d 507, 509. Also the profit or recompense for such pasturing of cattle. Williams v. Miller, 68 Cal. 290, 9 Pac. 166. A species of bailment. Patchen-Wilkes Stock Farm Co. v. Walton, 166 Ky. 705, 179 S.W. 823.

In canon law it is a composition or mean rate at which some right or due might be reckoned.

There is also agistment of *sea-banks*, where lands are charged with a tribute to keep out the sea; and *terra agistatce* are lands whose owners must keep up the sea-banks. Holthouse.

Tithe of Agistment was a small tithe paid to the rector or vicar on cattle or other produce of grass lands. It was paid by the occupier of the land and not by the person who put in his cattle to graze. Rawle, Exmoor 31.

AGISTOR. One who takes in horses or other animals to pasture at certain rates. Story, Bailm. § 443; Cox v. Chase, 99 Kan. 740, 163 P. 184, 186. An officer who had the charge of cattle pastured for a certain stipulated sum in the king's forest and who collected the money paid for them.

AGITATOR. One who stirs up; excites; ruffles; perturbs. One who incessant advocates a social change.

Labor agitator. One actively engaged in promoting the interests of the laboring men. The term does not imply the use of unlawful or improper means. Wabash R. Co. v. Young, 69 N.E. 1003, 1005, 1006, 162 Ind. 102, 4 L.R.A., N.S., 1091.

Seditious agitator. A disturber of the public peace, a subverter of just laws, and a bad citizen. Wilkes v. Shields, 64 N.W. 921, 62 Minn. 426, 427.

AGNATES. In the law of descents, relations by the father, or on the father's side. This word is used in the Scotch law, and by some writers as an English word, corresponding with the Latin *agnati*, (q. v.) Ersk.Inst. b. 1, tit. 7, § 4.

AGNATI. In Roman law, the term included all the cognates who trace their connection exclusively through males.

A table of *cognates* is formed by taking each lineal ancestor in turn and including all his descendants of both sexes in the tabular view. If, then, in tracing the various branches of such a genealogical table or tree, we stop whenever we come to the name of a female, and pursue that particular branch or ramification no further, all who remain after the descendants of women have been excluded are *agnates*, and their connection together is agnatic relationship. Maine, Anc. Law, 142.

All persons are agnatically connected together who are under the same *patria potestas*, or who have been under it, or who might have been under it if their lineal ancestor had lived long enough to exercise his empire. Maine, Anc. Law, 144.

The *agnate family* consisted of all persons living at the same time, who would have been subject to the *patria potestas* of a common ancestor, if his life had been continued to their time. Hadl.Rom.Law, 131.

Cognates were all persons who could trace their blood to a single ancestor or ancestress, and agnates were those cognates who traced their connection exclusively through males. Maine, Anc. Law. Between *agnati* and *cognati* there is this difference: that, under the name of *agnati*, *cognati* are included, but not *converso*; for instance, a father's brother, that is, a paternal uncle, is both *agnatus* and *cognatus*, but a mother's brother, that is, a maternal uncle, is a *cognatus* but not *agnatus*. (Dig. 38, 7, 5, pr.) Burrill.

AGNATIC. [From *agnati*, q. v.] Derived from or through males. 2 Bl.Comm. 236.

AGNATIO. In the civil law, relationship on the fathers' side; the relationship of *agnati*; agnation. *Agnatio a patre est.* Inst. 3, 5, 4; Id. 3, 6, 6.

AGNATION. Kinship by the father's side. See Agnates; Agnati.

AGNOMEN, Lat. An additional name or title; a nickname. A name or title which a man gets by some action or peculiarity; the last of the four names sometimes given a Roman. Thus, Scipio *Africanus*, (the African,) from his African victories. Ainsworth; Calvinus, Lex. See Nomen.

AGNOMINATION. A surname; an additional name or title; agnomen.

AGNUS DEL Lat. Lamb of God. A piece of white wax, in a flat, oval form, like a small cake, stamped with the figure of a lamb, and consecrated by the pope. Cowell.

AGONY. Violent physical pain or mental distress. City of Chicago v. McLean, 133 Ill. 148, 24 N.E. 527, 8 L.R.A. 765.

AGRAPHA. See Aphasia.

AGRARIAN. Relating to land, or to a division or distribution of land; as an agrarian law.

AGRARIAN LAWS. In Roman law, laws for the distribution among the people, by public authority, of the lands constituting the public domain, usually territory conquered from an enemy.

In common parlance the term is frequently applied to laws which have for their object the more equal division or distribution of landed property; laws for subdividing large properties and increasing the number of landholders.

AGRARIUM. A tax upon or tribute payable out of land.

AGREEMENTUM. In old English law, agreement; an agreement. Spelman.

AGREE. To concur; come into harmony; give mutual assent; unite in mental action; exchange promises; make an agreement; arrange; to settle. Mickleson v. Gypsy Oil Co., 110 Okl. 117, 238 P. 194, 198. Consent. Smith v. Jones, 185 Ga. 236, 194 S.E. 556, 560. Harmonize or reconcile. "You will agree your books." 8 Coke, 67. Concur or acquiesce in; approve or adopt. *Agreed, agreed*

to, are frequently used in the books, (like *accord*,) to show the concurrence or harmony of cases. *Agreed per curiam* is a common expression. Usually implies some contractual undertaking. In re Gray's Estate, 160 Misc. 710, 290 N.Y.S. 603, 605. To grant or covenant, as when a grantor agrees that no building shall be erected on an adjoining lot; Hogan v. Barry, 143 Mass. 538, 10 N. E. 253; or a mortgagor agrees to cause all taxes to be paid; Mackay v. Truchon, 171 Mo.App. 42, 153 S.W. 502, 503.

AGREt. In French law, a person authorized to represent a litigant before the Tribunals of Commerce. If such person be a lawyer, he is called an *avocat-agree*. Coxe, Manual of French Law.

AGREEANCE. In Scotch law, agreement; an agreement or contract.

AGREED. Settled or established by agreement.

This word in a deed creates a covenant.

It is a technical term, synonymous with "contracted," McKisick v. McKisick, Meigs Tenn. 433. It means, *ex vi termini*, that it is the agreement of both parties. Aikins v. Albany, V. & C. R. Co., 26 Barb.N.Y. 298.

AGREED CASE. Stipulations signed by litigants' attorneys, constituted an "agreed case". In re Davis Bros. Stone Co., 245 Wis. 130, 13 N.W.2d 512, 515.

Evidence presented by stipulation that stated facts constituted entire evidence is not an "agreed case". Struble-Werneke Motor Co. v. Metropolitan Securities Corporation, 93 Ind.App. 416, 178 N.E. 460, 462. Nor is an agreed statement of facts on which a case is submitted in lieu of evidence. Byers v. Essex Inv. Co., 281 Mo. 375, 219 S. W. 570, 571; Reddick v. Board of Com'rs of Pulaski County, 14 Ind.App. 598, 41 N.E. 834.

AGREED ORDER. The only difference between an agreed order and one which is made in the due course of the proceedings in an action is that in the one case it is agreed to, and in the other it is made as authorized by law. Claflin v. Gibson, 21 Ky.Law Rep. 337, 51 S.W. 439.

AGREED STATEMENT OF FACTS. A statement of facts, agreed on by the parties as true and correct, to be submitted to a court for a ruling on the law of the case. United States Trust Co. v. New Mexico, 183 U.S. 535, 22 Sup.Ct. 172, 46 L.Ed. 315. See Case Stated.

Where testimony was contradictory, stipulation relating to testimony did not constitute an "agreed state of facts". McPherson v. State Industrial Accident Commission, 169 Or. 190, 127 P.2d 344, 346.

AGREEMENT. A coming or knitting together of minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition; in law a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances; the consent of two or more persons concurring respecting the transmission of some property, right, or benefits, with the view of contracting an obligation, a mutual obligation. Bac.Abr.; Rocha v. Hulen, 6 Cal.App.2d 245, 44 P.2d 478, 482.

The act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering their rights and obligations. The union of two or more minds in a thing done or to be done; a mutual assent to do a thing. Corn. Dig. "Agreement," A 1. See Aggregatio Mentium. Carter v. Prairie Oil & Gas Co., 58 Okl. 365, 160 P. 319, 322. A compact between parties who are thereby subjected to the obligation or to whom the contemplated right is thereby secured. People v. Mills, 160 Misc. 730, 290 N.Y.S. 48, 52.

Although often used as synonymous with "contract," Douglass v. W. L. Williams Art Co., 143 Ga. 846, 85 S.E. 993, it is a wider term than "contract" (Anson, Cont. 4.) An agreement might not be a contract, because not fulfilling some requirement. And each of a series of mutual stipulations or constituent clauses in a contract might be denominated an "agreement." The meaning of the contracting parties is their agreement. Whitney v. Wyman, 101 U.S. 396, 25 L.Ed. 1050. "Agreement" is seldom applied to specialties. Pars.Cont. 6.

"Agreement" is not synonymous with "promise" or "undertaking." It signifies a mutual contract, on consideration. Andrews v. Pontue, 24 Wend.N.Y. 285; Wain v. Warlters, 5 East, 10; wherein parties must have a distinct intention common to both, and without doubt or difference. Blake v. Mosher, 11 Cal.App.2d 532, 54 P.2d 492, 494.

The writing or instrument which is evidence of an agreement.

Classification

Conditional agreements, the operation and effect of which depend upon the existence of a supposed state of facts, or the performance of a condition, or the happening of a contingency.

Executed agreements, which have reference to past events, or which are at once closed and *where* nothing further remains to be done by the parties.

Executory agreements are such as are to be performed in the future. They are commonly preliminary to other more formal or important contracts or deeds, and are usually evidenced by memoranda, parol promises, etc.

Express agreements are those in which the terms and stipulations are specifically declared and avowed by the parties at the time of making the agreement.

Implied agreement. (1) Implied in fact. One inferred from the acts or conduct of the parties, instead of being expressed by them in written or spoken words. Baltimore Mail S. S. Co. v. U. S., C.C.A.Md., 76 F.2d 582, 585. (2) Implied in law; more aptly termed a constructive or quasi contract. One where, by fiction of law, a promise is imputed to perform a legal duty, as to repay money obtained by fraud or duress. Baltimore Mail S. S. Co. v. U. S., C.C.A.Md., 76 F.2d 582, 585. One inferred by the law where the conduct of the parties with reference to the subject-matter is such as to induce the belief that they intended to do that which their acts indicate they have done. Baltimore & O. R. Co. v. U. S., 261 U.S. 592, 43 S.Ct. 425, 67 L.Ed. 816; Cuneo v. De Cuneo, 24 Tex.Civ.App. 436, 59 S.W. 284.

Parol agreements. Such as are either by word of mouth or are committed to writing, but are not under seal. The common law draws only one great line, between things under seal and not under seal. Wharton.

In agreement means in conformity, or harmony' with. Brown Real Estate Co. v. Lancaster County, 110 Neb. 665, 194 N.W. 897, 898.

AGREEMENT FOR INSURANCE. An agreement often made in short terms preliminary to the filling out and delivery of a policy with specific stipulations.

AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR. An agreement that necessarily must require more than year for performance. Marble

AGREEMENT

v. Town of Clinton, Mass., 9 N.E.2d 522, 524, 111 A.L.R. 1101. Incapable of performance within one year. *Street v. Maddux, Marshall, Moss & Mallory*, 58 App.D.C. 42, 24 F.2d 617, 619.

AGREEMENT OF SALE; AGREEMENT TO SELL. An agreement of sale may imply not merely an obligation to sell, but an obligation on the part of the other party to purchase (cf. *Loud v. St. Louis Union Trust Co.*, 313 Mo. 552, 281 S.W. 744, 755) while an agreement to sell is simply an obligation on the part of the vendor or promisor to complete his promise of sale; *Treat v. White*, 181 U.S. 264, 21 Sup.Ct. 611, 45 L.Ed. 853. It is a contract to be performed in future, and, if fulfilled, results in a sale; it is preliminary to sale and is not the sale. *Callender v. Crossfield Oil Syndicate*, 84 Mont. 263, 275 P. 273, 276.

AGREEMENT TO SELL LAND. A contract to be performed in future which if fulfilled results in sale. In *re Frayser's Estate*, 401 Ill. 364, 82 N.E. 2d 633, 638.

AGREER. Fr. In French marine law, to rig or equip a vessel. Ord. Mar. liv. 1, tit. 2, art. 1.

AGREZ. Fr. In French marine law, the rigging or tackle of a vessel. Ord. Mar. liv. 1, tit. 2, art. 1; Id. tit. 11, art. 2; Id. liv. 3, tit. 1, art. 11.

AGRI. Arable lands in common fields.

AGRI LIMITATI.

In Roman law, lands belonging to the state by right of conquest, and granted or sold in plots. *Sandars, Just.Inst.*, 5th Ed., 98.

In modern civil law, lands whose boundaries are strictly limited by the lines of government surveys. *Hardin v. Jordan*, 140 U.S. 371, 11 Sup. Ct. 808, 35 L.Ed. 428.

AGRICULTURAL. Pertaining to, or dealing with, agriculture; also, characterized by or engaged in farming as the leading pursuit. *Oak Woods Cemetery Ass'n v. Murphy*, 383 Ill. 301, 50 N.E.2d 582, 587.

AGRICULTURAL CHEMISTRY. A study of products of the soil, especially foods, their nutritive value, their intensive production, study of composition of soil, chemical methods of fertilization, prevention or amelioration of plant diseases, extinction of insects and other detriments to agriculture, and in general study of animal and plant life with relation to the science of chemistry. In *re Frasch's Estate*, 125 Misc.Rep. 381, 211 N.Y.S. 635, 638.

AGRICULTURAL COMMODITIES. Generally synonymous with agricultural or farm products, and not including agricultural implements, *Bowles v. Rock*, D.C.Neb., 55 F.Supp. 865, 868; or commercial fertilizer and ground and crushed limestone, *Stiver v. Holley*, 215 Ind. 9, 17 N.E.2d 831, 832.

AGRICULTURAL EMPLOYMENT. Farm labor synonymous, and includes all farm work and work

incidental thereto. *Smythe v. Phoenix*, 63 Idaho 585, 123 P.2d 1010, 1012.

AGRICULTURAL HOLDING. Land cultivated for profit in some way. Within the meaning of the English Agricultural Holdings act of 1883, the term will not include natural grass lands. Such lands are pastoral holdings. 32 S.J. 630.

AGRICULTURAL LABOR. Services performed on farm, for owner or tenant. *California Employment Commission v. Butte County Rice Growers Ass'n*, Cal., 154 P.2d 892, 894. Broader in meaning than farming or farm labor and includes one engaged in horticulture. *St. Louis Rose Co. v. Unemployment Compensation Commission*, 348 Mo. 1153, 159 S.W.2d 249, 250, and maintenance work and similar service in employer's farm packing house. *Latimer v. United States*, D.C.Cal., 52 F.Supp. 228, 234, 235, 236, 237. The science and art of production of plants and animals useful to man. *Murphy v. Mid-West Mushroom Co.*, 350 Mo. 658, 168 S.W.2d 75, 77, 78.

AGRICULTURAL LANDS. A term used merely to distinguish rural from urban or other properties. *Eisenzimmer v. Bell*, 75 N.D. 733, 32 N.W. 2d 891, 893.

Land may be assessable as "agricultural land" though it be covered by native timber and underbrush, grass, and weeds. *Milne v. McKinnon*, 32 S.D. 627, 144 N.W. 117, 118. The term is synonymous with land "agricultural in character." *State v. Stewart*, 58 Mont. 1, 190 P. 129, 131.

AGRICULTURAL LIEN. A statutory lien in some states to secure money or supplies advanced to an agriculturist to be expended or employed in the making of a crop and attaching to that crop only. *Jones-Phillips Co. v. McCormick*, 174 N.C. 82, 93 S.E. 449, 452.

AGRICULTURAL PRODUCT. Things which have a situs of their production upon the farm and which are brought into condition for uses of society by labor of those engaged in agricultural pursuits as contradistinguished from manufacturing or other industrial pursuits. In *re Rodgers, Neb.*, 134 Neb. 832, 279 N.W. 800, 803.

That which is the direct result of husbandry and the cultivation of the soil. The product in its natural unmanufactured condition. *Getty v. Milling Co.*, 40 Kan. 281, 19 P. 617. It has been held not to include beef cattle; *Davis & Co. v. City of Macon*, 64 Ga. 128, 37 Am.Rep. 60; but to include forestry products; *Northern Cedar Co. v. French*, 131 Wash. 394, 230 P. 837, 846.

AGRICULTURAL PURSUITS. Every process and step taken and necessary to the completion of a finished farm product. *Big Wood Canal Co. v. Unemployment Compensation Division of Industrial Accident Board*, 61 Idaho 247, 100 P.2d 49, 51.

AGRICULTURAL SOCIETY. One for promoting agricultural interests, such as improvement of land, implements, and brands of cattle. *Crete Mills v. Nebraska State Board of Agriculture*, 132 Neb. 244, 271 N.W. 684, 688; or for giving agricultural fairs; *Town of West Hartford v. Connecticut Fair Ass'n*, 88 Conn. 627, 92 A. 432.

AGRICULTURAL WORKER. Tasks incidental to agricultural activities all are within the scope of the employment of an "agricultural worker." *Melendez v. Johns*, Ariz., 76 P.2d 1163, 1167.

AGRICULTURE. The art or science of cultivating the ground, including the harvesting of crops, and in a broad sense, the science or art of production of plants and animals useful to man, including in a variable degree, the preparation of these products for man's use. In the broad sense, it includes farming, horticulture, forestry, together with such subjects as butter, cheese, making sugar, etc. *Sancho v. Bowie*, C.C.A. Puerto Rico, 93 F.2d 323, 324.

The cultivation of soil for food products or any other useful or valuable growths of the field or garden tillage, husbandry; also, by extension, farming, including any industry practiced by a cultivator of the soil in connection with such cultivation, as breeding and rearing of stock, dairying, etc. The science that treats of the cultivation of the soil. *Stand. Diet.*; *State v. Stewart*, 58 Mont. 1, 190 P. 129, 131.

"Agriculture" refers to the field or farm with all its wants, appointments, and products, as distinguished from "horticulture," which refers to the garden, with its less important though varied products. *Dillard v. Webb*, 55 Ala. 468.

AGUSADURA. In ancient customs, a fee, due from the vassals to their lord for sharpening their plowing tackle.

AHTEID. In old European law, a kind of oath among the Bavarians. *Spelman*. In Saxon law. One bound by oath, *q. d.* "oathtied." From *ath*, oath, and *tied*. *Id.*

AID. To support, help, assist, or strengthen. *Hines v. State*, 16 Ga.App. 411, 85 S.E. 452, 454. Act in cooperation with. *Cornett v. Commonwealth*, 198 Ky. 236, 248 S.W. 540, 542.

Supplement the efforts of another. *Anderson v. Board of Medical Examiners*, 117 Cal.App. 113, 3 P.2d 344, 346.

A person "aids" when being present at the time and place he does some act to render aid to the actual perpetration of the crime, though he takes no direct share in its commission. *State v. Johnson*, 220 N.C. 773, 18 S.E.2d 358, 360.

This word must be distinguished from its synonym "encourage," the difference being that the former connotes active support and assistance. Although it may not import necessary criminality in the act furthered. See *Abet*.

AID AND ABET. Help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or encourage, counsel, or incite as to its commission. *State v. Lord*, 42 N.M. 638, 84 P.2d 80, 86.

Implies knowledge. *Winning v. Board of Dental Examiners*, 114 Cal.App. 658, 300 P. 866, 868.

At common law it consisted in being present at the time and place, and doing some act to render aid to the actual perpetrator of the crime, though without taking a direct share in its commission. See 4 Bl.Comm. 34; *State v. Tally*, 102 Ala. 25, 15 So. 722.

It comprehends all assistance rendered by words, acts, encouragement, support, or presence, actual or constructive, to render assistance if necessary. *Johnson v. State*, 21 Ala.App. 565, 110 So. 55; *State v. Davis*, 191 Iowa, 720, 183 N.W. 314, 316. But it is not sufficient that there is a mere

negative acquiescence not in any way made known to the principal malefactor. *People v. Barnes*, 311 Ill. 559, 143 N.E. 445, 447. See *Accessory*; *Abettor*; *Alder* and *Abettor*.

AID AND ASSIST. The words "aided and assisted," as used in the statute prohibiting the sale of intoxicating liquors, as regards the condemnation or confiscation of vehicles, implies either knowledge on the part of the owner that the vehicle was being used for unlawful transportation, or such negligence or want of care as to charge him with such knowledge or notice. *In re Gattina*, 203 Ala. 517, 84 So. 760.

AID AND COMFORT. Help; support; assistance; counsel; encouragement.

As an element in the crime of treason (see Constitution of the United States, art. 3, § 3), the giving of "aid and comfort" to the enemy may consist in a mere attempt. It is not essential to constitute the giving of aid and comfort that the enterprise commenced should be successful and actually render assistance. *Young v. United States*, 97 U.S. 39, 62, 24 L.Ed. 992. An act which intentionally strengthens or tends to strengthen enemies of the United States, or which weakens or tends to weaken power of the United States to resist and attack such enemies. *United States v. Haupt*, D.C.Ill., 47 F.Supp. 836, 839. Any intentional act furthering hostile designs of enemies of the United States. *United States v. Haupt*, D.C.Ill., 47 F.Supp. 836, 839.

AID BOND. See *Bond*.

AID OF THE KING. The king's tenant prays this, when rent is demanded of him by others.

AID PRAYER. In English practice, a proceeding formerly made use of, by way of petition in court, praying in aid of the tenant for life, etc., from the reversioner or remainderman, when the title to the inheritance was in question. It was a plea in suspension of the action. 3 Bl.Comm. 300.

AID SOCIETIES. See *Benefit Societies*.

AIDER. One who is actually or constructively present at the commission of the offense and is a "principal". *State v. Bachmeyer*, 247 Wis. 294, 19 N.W.2d 261, 263.

Mere proof of a defendant's presence at the time of the commission of a criminal act is not sufficient to render him an "aider". *Gentry v. State*, 65 Ga.App. 100, 15 S.E. 2d 464, 465.

AIDER AND ABETTOR. One who assists another in the accomplishment of a common design or purpose; he must be aware of, and consent to, such design or purpose. *Peats v. State*, 213 Ind. 560, 12 N.E.2d 270, 277.

One who advises, counsels, procures, or encourages another to commit a crime, himself being guilty of some overt act or advocacy or encouragement of his principal, actually or constructively present when crime is committed, and participating in commission thereof by some act, deed, word, or gesture. *Turner v. Commonwealth*, 268 Ky. 311, 104 S.W.2d 1085, and sharing the criminal intent of the principal. *State v. Reedy*, 97 W.Va. 549, 127 S.E. 24, 28. But one who incites or instigates the commission of a felony when he is neither actually nor constructively present is an "aider, abettor, or procurer" within the meaning of a statute. *Neal v. State*, 104 Neb. 56, 175 N.W. 669, 670.

AIDER BY VERDICT. The healing or remission, by a verdict rendered, of a defect or error in pleading which might have been objected to before verdict.

The presumption of the proof of all facts necessary to the verdict as it stands, coming to the aid of a record in which such facts are not distinctly alleged.

AIDING AN ESCAPE. Any overt act, intended and useful to assist attempted or completed departure of prisoner from lawful custody before his discharge by due process of law. *State v. Navarro*, 131 Me. 345, 163 A. 103, 104.

AIDS. In feudal law, originally mere benevolences granted by a tenant to his lord, in times of distress; but at length the lords claimed them as of right.

They were principally three : (1) To ransom the lord's person, if taken prisoner ; (2) to make the lord's eldest son and heir apparent a knight; (3) to give a suitable portion to the lord's eldest daughter on her marriage. Abolished by 12 Car. II, c. 24.

Also, extraordinary grants to the crown by the house of commons, which were the origin of the modern system of taxation. 2 Bl.Comm. 63, 64.

A *reasonable aid* was a duty claimed by the lord of the fee of his tenants, holding by knight service, to marry his daughter, etc. Cowell.

AIEL (spelled also *Ayel*, *Aile*, *Ayle*, and *Aieul*). L. Fr. A grandfather.

A writ which lieth where the grandfather was seized in his demesne as of fee of any lands or tenements in fee simple the day that he died, and a stranger abateth or entereth the same day and dispossessioneth the heir. Fitzh.Nat.Brev. 222; Termes de la Ley; 3 Bla.Com. 186; 2 Poll. & Matl. 57. See Abatement of Freehold.

AIELESSE. A Norman French term signifying "grandmother." Kelham.

AILE. A corruption of the French word *aieul*, grandfather. See Aiel.

AILMENT. Commonly means indisposition of body or mind, a slight illness. *Mutual Life Ins. Co. of New York v. Burton*, 167 Tenn. 606, 72 S.W.2d 778, 781.

But within meaning of an application for a benefit certificate, it is something which substantially impairs the health of the applicant, materially weakens the vigor of his constitution, or seriously deranges his vital functions, thereby excluding chronic rheumatism. *National Americans v. Ritch*, 121 Ark. 185, 180 S.W. 488, 489. And in life insurance application does not include mere temporary indisposition, which, though requiring medical treatment, is readily remediable. *Zogg v. Bankers' Life Co. of Des Moines, Iowa*, C.C.A.W.Va., 62 F.2d 575, 578. Nor passing discomfort. *Washington Fidelity Nat. Ins. Co. v. Lacey*, 45 Ohio App. 104, 186 N.E. 751, 754. However, it covers disorders which could not properly be called diseases. *Cromeens v. Sovereign Camp W. O. W.*, Mo.App., 247 S.W. 1033, 1034.

AIM A WEAPON. To point it intentionally. *Edwards v. State*, 28 Ga.App. 466, 111 S.E. 748. "Aim" denotes direction toward some minute point in an object, while "point" implies direction toward the whole object. *Buchanan v. State*, 25 Okl.Cr. 198, 219 P. 420, 423.

AINESSE. In French feudal law, the right or privilege of the eldest born; primogeniture; esnecy. Guyot, Inst.Feud. c. 17.

AIR. That fluid transparent substance which surrounds our globe. *Bank v. Kennett*, 101 Mo.App. 370, 74 S.W. 474.

AIR BASE. See Base.

AIR CONDITION. To render a room, building, office, hotel or the like reasonably comfortable by circulating air which is maintained at a predetermined temperature by either warming or cooling it. *Magee Laundry & Cleaners v. Harwell Appliance Co.*, 184 Miss. 435, 185 So. 571, 572.

AIR COURSES. As applied to the operation of coal mines, passages for conducting air. *Ricardo v. Central Coal & Coke Co.*, 100 Kan. 95, 163 P. 641, M3. See Airway.

AIRCRAFT. Any contrivance used, or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. 49 U.S.C.A. §§ 171-184.

As defined in the Uniform Aeronautics Act, the term includes balloon, airplane, hydroplane and every other vehicle used for navigation through the air. See Aeronautics; Airship; Hydro-Aeroplane.

AIRE. In old Scotch law, the court of the justices itinerant, corresponding with the English *eyre*, (*q. v.*) Skene de Verb. Sign. voc. *Iter*.

AIRPLANE. See Aeronautics; Hydro-Aeroplane; Aircraft; Airship.

AIRPORT. Landing and taking off place for air planes. *City of Mobile v. Lartigue*, 23 Ala.App. 479, 127 So. 257, 260.

With its beacons, landing fields, runways, and hangars, it is analogous to a harbor with its lights, wharves, and docks; the one is the landing place and haven of ships that navigate the water, the other of those that navigate the air. *Coleman v. City of Oakland*, 110 Cal.App. 715, 295 P. 59, 61. And includes all land, buildings, structures or other improvements, necessary or convenient in the establishment and operation of an airport. *Moore v. Gordon*, Tex.Civ.App., 122 S.W.2d 239, 242.

Any locality either of water or land which is adapted for the landing and taking off of aircraft and which provides facilities for shelter, supply, and repair of aircraft, or a place used regularly for receiving or discharging passengers or cargo by air. 49 U.S.C.A. §§ 171-184. *City of Wichita v. Clapp*, 125 Kan. 100, 263 P. 12, 63 A.L.R. 478.

AIRSHIP. Under some statutes it includes every kind of vehicle or structure intended for use as a means of transporting passengers or goods, or both, in the air. As defined by the International Flying Convention of 1919, an airship means an aircraft using gas lighter than air as a means of support and having means of propulsion.

See Aeronautics; Aircraft; Hydro-Aeroplane.

AIRT AND PAIRT. In old Scotch criminal law, accessory; contriver and partner. 1 Pitc.Crim. Tr. pt. 1, p. 133; 3 How.State Tr. 601. Now written *art and part*, (*q. v.*)

AIRWAY. Applies to air routes for either airplanes or seaplanes and is a material or permanent way through the air laid out with precision

and care that an engineer adopts in choosing the course of and laying down a roadway. *City of Wichita v. Clapp*, 125 Kan. 100, 263 P. 12, 14, 63 A.L.R. 478.

In English law, a passage for the admission of air into a mine. 24 & 25 Viet. c. 97, § 28. See *Air Courses*.

AISIAMENTUM (spelled also *Esamentum*, *Aismentum*). In old English law, an easement. Spelman.

AISNE or **EIGNE**. In old English law, the eldest or first born.

AJOURNMENT. In French law, the document pursuant to which an action or suit is commenced, equivalent to the writ of summons in England. Actions, however, are in some cases commenced by *requête* or petition. Arg.Fr.Merc.Law, 545.

AJUAR. In Spanish law, paraphernalia. The jewels and furniture which a wife brings in marriage.

AJUTAGE (spelled also *Adjutage*). A conical tube used in drawing water through an aperture, by the use of which the quantity of water drawn is much increased.

AKIN. In old English law. Of kin. "Next-a-kin." 7 Mod. 140.

AL. L. Fr. At the; to the. *Al barre*; at the bar. *Al huis d'esglise*; at the church door.

ALIE ECCLESLE. The wings or side aisles of a church. Blount.

ALANERARIUS. A manager and keeper of dogs for the sport of hawking; from *alanus*, a dog known to the ancients. A falconer. Blount.

ALARM LIST. The list of persons liable to military watches, who were at the same time exempt from trainings and musters. See *Prov.Laws* 1775-76, c. 10, § 18; *Const.Mass.* c. 11, § 1, art. 10; *Pub.St.Mass.* 1882, p. 1287.

ALBA FIRMA. In old English law, white rent; rent payable in silver or white money, as distinguished from that which was anciently paid in corn or provisions, called black mail, or black rent; *reditus nigri*. Spelman; *Reg.Orig.* 319b.

ALBACEA. In Spanish law, an executor or administrator; one who is charged with fulfilling and executing that which is directed by the testator in his testament or other last disposition. *Emeric v. Alvarado*, 64 Cal. 529, 2 Pac. 418, 433.

ALBANAGIUM. In old French law, the state of alienage; of being a foreigner or alien.

ALBANUS. In old French law, a stranger, alien, or foreigner.

ALBINATUS. In old French law, the state or condition of an alien or foreigner.

ALBINATUS JUS. In old French law, the *droit d'aubaine* in France, whereby the king, at an

alien's death, was entitied to all his property, unless he had peculiar exemption. Repealed in June, 1791.

ALBUM BREVE. A blank writ; a writ with a blank or omission in it.

ALBUS LIBER. The white book; an ancient book containing a compilation of the law and customs of the city of London.

ALCABALA. In Spanish law, a duty of a certain per cent. paid to the treasury on the sale or exchange of property.

ALCAIDE. Sp. Jailer, warden, governor of a fortress.

ALCALDE. The name of a judicial officer in Spain, and in those countries which have received their laws and institutions from Spain. His functions somewhat resembled those of mayor in small municipalities on the continent, or justice of the peace in England and most of the United States. *Castillero v. U. S.*, 2 Black, 17, 194, 17 L.Ed. 360.

ALCOHOLIC BEVERAGE. The term is distinguished from the term "intoxicating liquor," in that a beverage may be alcoholic in that it contains some alcohol, and yet not be intoxicating as defined in National Prohibition Act. *Premier-Pabst Sales Co. v. McNutt*, D.C.Ind., 17 F.Supp. 708, 714.

Beer. Liquor Control Commission v. McGillis, 91 Utah, 586, 65 P.2d 1136, 1141. Ethyl alcohol, within tax statute. *H. O. Hurley Co. v. Martin*, 267 Ky. 182, 101 S.W.2d 657, 660. It is immaterial whether the liquor is suitable or desirable for beverage purposes, if it is prohibited by law and is in fact used as a beverage. *Powell v. State*, 179 Md. 399, 18 A.2d 587, 590, 591. But it must be drinkable. *McChristy v. State*, 138 Tex.Cr.R. 26, 133 S.W.2d 976, 977.

ALCOHOLIC LIQUORS. "Alcoholic, spirituous and malt liquors" mean intoxicating liquors which can be used as a beverage, and which, when drunk to excess, will produce intoxication. *Howard v. Acme Brewing Co.*, 143 Ga. 1, 83 S.E. 1096, 1097, Ann. Cas.1917A, 91; *F. W. Woolworth Co. v. State*, 72 Okl.Cr. 125, 113 P.2d 399, 403.

The term includes raw alcohol. *C. J. Lincoln Co. v. State*, 122 Ark. 204, 183 S. W. 173, 174. Beer, ale, or wine in Selective Service Act, § 12 (50 U.S.C.A. § 226 note). *U. S. v. Kinsel*, D.C., 263 F. 141, 142. And lemon and vanilla extracts, made or used for beverage purposes, containing alcohol. *Brandon v. State*, 24 Ala.App. 289, 134 So. 890, 891. But not specially denatured alcohol. *M. H. McCarthy & Co. v. Doran*, D.C.Mass., 43 F.2d 659, 661. See *Intoxicating Liquor*.

ALCOHOLISM. In medical jurisprudence, the pathological effect (as distinguished from physiological effect) of excessive indulgence in intoxicating liquors.

A morbid condition resulting from the inordinate or excessive use of alcoholic beverages. *Cochran v. Commissioner of Internal Revenue*, C.C.A.4, 78 F.2d 176, 178.

It is *acute* when induced by excessive potations at one time or in the course of a single debauch. An attack of delirium tremens and alcoholic homicidal mania are examples of this form. It is *chronic* when resulting from the long-continued use of spirits in less quantities, as in the case of dipsomania.

ALCOVE ROOM. An "alcove room," within Tenement House Law N. Y. § 65, is a room with an alcove. People on Complaint of Hickey v. White-low, Mag.Ct.N.Y., 166 N.Y.S. 141, 148.

ALDERMAN. A judicial or administrative magistrate.

See Aldermannus.

Originally the word was synonymous with "elder" or "senator," but was also used to designate an earl, and even a king.

In *American cities*, one of a board of municipal officers next in order to the mayor. State v. Waterman, 95 Conn. 414, 111 A. 623, 624; Board of Lights and Waterworks v. Dobbs, 151 Ga. 53, 105 S.E. 611, 612. The aldermen are generally a legislative body, having limited judicial powers as a body, as in matters of internal police regulation, laying out and repairing streets, constructing sewers, and the like; though in many cities they hold separate courts, and have magisterial powers to a considerable extent.

In *English law*, an associate to the chief civil magistrate of a corporate town or city.

The word would seem to have been rather an appellation of honor, originally, than a distinguishing mark of office. Spelman Gloss.

ALDERMANNUS. L. Lat. An alderman.

ALDERMANNUS CIVITATIS VEL BURGI. Alderman of a city or borough, from which the modern office of alderman has been derived. T. Raym. 435, 437.

ALDERMANNUS COMITATUS. The alderman of the county. According to Spelman, he held an office intermediate between that of an earl and a sheriff. According to other authorities, he was the same as the earl. 1 Bl.Comm. 116.

ALDERMANNUS HUNDRED! SEU WAPEN•TACHIL Alderman of a hundred or wapentake. Spelman.

ALDERMANNUS REGIS. Alderman of the king. So called, either because he received his appointment from the king or because he gave the judgment of the king in the premises allotted to him.

ALDERMANNUS TOTIUS ANGLIZE. Alderman of all England. An officer among the Anglo-Saxons, supposed by Spelman to be the same with the chief justiciary of England in later times. Spelman.

ALE-CONNER. In old English law, an officer appointed by the court-leet, sworn to look to the assise and goodness of ale and beer within the precincts of the leet. Kitch. Courts, 46; Whishaw. And to look to the assise of bread. Cowell.

This officer is still continued in name, though the duties are changed or given up; 1 Crabb, Real Prop. 501.

ALE-HOUSE. A place where ale is sold to be drunk on the premises where sold.

ALE SILVER. A rent or tribute paid annually to the lord mayor of London, by those who sell ale within the liberty of the city.

ALE-STAKE. A maypole or long stake driven into the ground, with a sign on it for the sale of ale. Cowell.

ALEA. Lat. In the civil law, a game of chance or hazard. Dig. 11, 5, 1. See Cod. 3, 43. The chance of gain or loss in a contract.

ALEATOR. Lat. (From *alea*, *q. v.*, meaning dice). In the civil law, a gamester; one who plays at games of hazard. Dig. 11, 5; Cod. 3, 43.

ALEATORY CONTRACT. A mutual agreement, of which the effects, with respect both to the advantages and losses, whether to all the parties or to some of them, depend on an uncertain event. Losecco v. Gregory, 108 La. 648, 32 So. 985.

Contracts in which promise by one party is conditioned on fortuitous event. Southern Surety Co. v. MacMillan Co., C.C.A.Okl., 58 F.2d 541, 549.

A contract, the obligation and performance of which depend upon an uncertain event, such as insurance, engagements to pay annuities, and the like.

A contract is aleatory or hazardous when the performance of that which is., one of its objects depends on an uncertain event. It is certain when the thing to be done is supposed to depend on the will of the party, or when in the usual course of events it must happen in the manner stipulated.

ALER A DIEU. L. Fr. In old practice. To be dismissed from court; to go quit. Literally, "to go to God."

ALER SANS JOUR. In old practice, a phrase used to indicate the final dismissal of a case from court without continuance. "To go without day."

ALEU. Fr. In French feudal law, an allodial estate, as distinguished from a feudal estate or benefice.

ALFET. A cauldron into which boiling water was poured, in which a criminal plunged his arm up to the elbow, and there held it for some time, as an ordeal. Du Cange.

ALFRED'S CODE. See Dombec, Domboc.

ALGARUM MARIS. Probably a corruption of *Laganum maris*, *lagan* being a right, in the middle ages, like *jetsam* and *flotsam*, by which goods thrown from a vessel in distress became the property of the king, or the lord on whose shores they were stranded. Spelman; Jacob; Du Cange.

ALGO. Span. In Spanish law, property. White, Nov.Recop. b. 1, tit. 5, c. 3, § 4.

ALIA. Lat. Other things.

ALIA ENORMIA. Other wrongs. The name given to a general allegation of injuries caused by the defendant with which the plaintiff in an action of trespass under the common-law practice concluded his declaration. Archb.Crim.Pl. 694.

ALIAMENTA. A liberty of passage, open way, water-course, etc., for the tenant's accommodation. Kitchen.

ALIAS. Lat. Otherwise; equivalent of "alias dictus" or "otherwise called", indicating one was called by one or the other of two names, Corn-

monwealth v. Liebowitz, 143 Pa.Super. 75, 17 A.2d 719, 721; at another time; in another manner; formerly.

ALIAS DICTUS. "Otherwise called." *Antone v. State*, 49 Ariz. 168, 65 P.2d 646, 649, (shorter and more usual form, *alias*; see *Kennedy v. People*, 39 N.Y. 245). Known by both those names, and is called one or the other. *People v. Mellon*, 171 Misc. 171, 11 N.Y.S.2d 786, 790. A fictitious name assumed by a person is colloquially termed an "*alias*!" *State v. Melson*, 161 La. 423, 108 So. 794, 795.

ALIAS EXECUTION. One issued after first has been- returned without having accomplished its purpose. *Richards-Conover Hardware Co. v. Sharp*, 150 Kan. 506, 95 P.2d 360, 364.

ALIAS SUBPOENA. One issued after the first has been returned without having accomplished its purpose. *Richards-Conover Hardware Co. v. Sharp*, 150 Kan. 506, 95 P.2d 360, 364.

ALIAS SUMMONS. A summons issued when original has not produced its effect because defective in form or manner of service, and when issued, which supersedes the first writ. *Mansur v. Pacific Mut. Life Ins. Co. of California*, 136 Mo. App. 726, 118 S.W. 1193, 1194; *McGuire v. Montvale Lumber Co.*, 190 N.C. 806, 131 S.E. 274, 275.

ALIAS TAX WARRANT. One issued after the first has been returned without having accomplished its purpose. *Richards-Conover Hardware Co. v. Sharp*, 150 Kan. 506, 95 P.2d 360, 364.

ALIAS WRIT. A second writ. *Ditmar v. Beckham*, Tex.Civ.App., 77 S.W.2d 893, 894.

At common law "alias" as applied to an execution or fieri facias referred to new writ issued after original fieri facias was returned unproductive, but under the Code the term applies to an execution issued in lieu of a lost original. *U-Driv-It System of Macon v. Lyles*, 71 Ga.App. 70, 30 S.E.2d 111, 114. A writ issued where one of the same kind has already been issued in the same cause without having been effective. *Schmidt v. Schmidt*, 108 Mont. 246, 89 P.2d 1020, 1021. It is used of all species of writs.

Historically, the word "alias" refers to a former command of the same sort, and it was part of a Latin sentence meaning, "We command you as we have before (sicut alias) commanded you." *Schmidt v. Schmidt*, 108 Mont. 246, 89 P.2d 1020, 1021.

ALIAS WRIT OF EXECUTION. One issued after the first has been returned without having accomplished its purpose. *Richards-Conover Hardware Co. v. Sharp*, 150 Kan. 506, 95 P.2d 360, 364.

ALIBI. Lat. In criminal law, elsewhere; in another place. *State v. Hubbard*, 351 Mo. 143, 171 S.W.2d 701, 706.

Means that at time of commission of crime charged in indictment defendant was at different place so remote or distant or under such circumstances that he could not have committed offense. *State v. Parsons*, 206 Iowa 390, 220 N.W. 328, 330. It is a physical circumstance and derives its entire potency as a defense from fact that it involves the physical impossibility of guilt of accused. *Gregg v. State*, 69 Okl.Cr. 103, 101 P.2d 289, 296. Strictly it is not a defense though usually called such in criminal procedure. *State v. Norman*, 103 Ohio St. 541, 134 N.E. 474.

ALIEN. n. A foreigner; one born abroad.

A person who owes allegiance to a foreign government. *De Cano v. State*, 7 Wash.2d 613, 110 P.2d 627, 631, 633.

In this country is a person born out of the United States and unnaturalized under our Constitution and laws, 2 Kent, Comm. 50. *Caparell v. Goodbody*, 132 N.J.Eq. 559, 29 A.2d 563, 569. In England, one born out of the allegiance of the king.

A native born Filipino living in the United States but not admitted to United States citizenship was an "alien". *United States v. Gancy*, D.C.Minn., 54 F.Supp. 755, 758, 759. But term for immigration purposes would not apply to a Filipino seeking to enter the Territory of Hawaii or to a Filipino lawfully admitted to Hawaii who seeks entry therefrom into the United States. Id. Nor to citizens of the Philippine Islands of the Filipino race. *De Cano v. State*, 7 Wash.2d 613, 110 P.2d 627, 631, 633.

As to the effect of marriage on the status of women, whether they were originally aliens or citizens of the United States, see 8 U.S.C.A. § 9-368; U. S. ex rel. *Ulrich v. Kellogg*, 58 App.D.C. 360, 30 F.2d 984, 985, 71 A.L.R. 1210. *Petition of Peterson*, D.C.Wash., 33 F.Supp. 615, 616. *Johansen v. Staten Island Shipbuilding Co.*, 272 N.Y. 140, 5 N.E.2d 68, 70. In re *Pezzi*, D.C.Cal., 29 F.2c1. 999, 1001.

ALIEN or ALIENE. v. To transfer or make over to another; to convey or transfer the property of a thing from one person to another; to alienate. Usually applied to the transfer of lands and tenements. Co.Litt. 118; Cowell.

ALIEN AMY. In international law, alien friend. An alien who is the subject or citizen of a foreign government at peace with our own.

ALIEN AND SEDITION LAWS. Acts of congress of July 6 and July 14, 1798. See Whart. State Tr. 22.

ALIEN ENEMY. In international law, an alien who is the subject or citizen of some hostile state or power. See *Dyer*, 2b; Co.Litt. 129b. A person who, by reason of owing a permanent or temporary allegiance to a hostile power, becomes, in time of war, impressed with the character of an enemy. See 1 Kent, Comm. 74; 2 Id. 63; *Bell v. Chapman*, 10 Johns., N.Y., 183; *Dorsey v. Brigham*, 177 Ill. 250, 52 N.E. 303, 42 L.R.A. 809. Subjects of a foreign state at war with United States. *Caparell v. Goodbody*, 132 N.J.Eq. 559, 29 A.2d 563, 569.

Whether or not a person is an alien enemy depends, not on his nationality, but on the place in which he voluntarily resides or carries on business. *Porter v. Freudenberg*, [1915] 1 K.B. 857. See, also, *Noble v. Great American Ins. Co.*, 194 N.Y.S. 60, 66, 200 App.Div. 773.

ALIEN FRIEND. Subjects of a foreign state at peace with the United States. *Caparell v. Goodbody*, 132 N.J.Eq. 559, 29 A.2d 563, 569, 570. Or citizen; an *alien amy*. *Techt v. Hughes*, 229 N.Y. 222, 128 N.E. 185, 186, 11 A.L.R. 166.

ALIEN NÉE. An alien born, *i. e.*, a person who, has been born an alien.

ALIENA NEGOTIA EXACTO OFFICIO GERUNTUR. The business of another is to be conducted with particular attention. *Jones*, Bailm. 83; *First Nat. Bank of Carlisle v. Graham*, 79 Pa. 118, 21 Am.Rep. 49.

ALIENABLE

ALIENABLE. Proper to be the subject of alienation or transfer.

ALIENAGE. The condition or state of an alien.

&LIENATE. To convey; to transfer the title to property. Co.Litt. 118b. *Alien* is very commonly used in the same sense. 1 Washb. Real Prop. 53.

"Sell, *alienate*, and dispense" are the formal words of transfer in Scotch conveyances of heritable property. Bell.

The term has a technical legal meaning, and any transfer of real estate, short of a conveyance of the title, is not an alienation of the estate. *Masters v. Insurance Co.*, 11 Barb., N.Y., 630. See, also, *Nichols & Shepard Co. v. Dunnington*, 118 Okl. 231, 247 P. 353, 355. But the word has been defined as to convey or transfer to another as title, property, or right, to part voluntarily with ownership of property, and, in widest sense, property is alienated when transferred from one person to another in any way; but generally alienating is restricted to transfer of title to property by act of owner, as distinguished from transfer effected entirely by operation of law. *Delfelder v. Poston*, 42 Wyo. 176, 293 P. 354, 361.

ALIENATIO LICET PROHIBEATUR, CONSENSU TAMEN OMNIUM, IN QUORUM FAVOREM PROHIBITA EST, POTES FIERI, ET QUILIBET POTES RENUNCIARE JURI PRO SE INTRODUCTO. Although alienation be prohibited, yet, by the consent of all in whose favor it is prohibited, it may take place; for it is in the power of any man to renounce a law made in his own favor. Co.Litt. 98.

ALIENATIO REI PRIFERTUR JURI ACCRESCENDI. Alienation is favored by the law rather than accumulation. Co.Litt. 185.

ALIENATION. In real property law, the transfer of the property and possession of lands, tenements, or other things, from one person to another. *Termes de la Ley*.

The term is particularly applied to absolute conveyances of real property. *Conover v. Mutual Ins. Co.*, 1 N.Y. 290, 294. The voluntary and complete transfer from one person to another. *Rich v. Doneghey*, 71 Okl. 204, 177 P. 86, 89, 3 A.L.R. 352; *Chouteau v. Chouteau*, 49 Okl. 105, 152 P. 373, 376. Disposition by will. *Contra*, *Postlethwaite v. Edson*, 102 Kan. 619, 171 P. 769, 773, L.R.A.1918D, 983. Leases, especially of Indians' allotted lands. *Bailey v. King*, 57 Okl. 528, 157 P. 763, 764; *Ashton v. Noble*, 65 Okl. 45, 162 P. 784, 785; *Williams v. Hylan*, 215 N.Y.S. 101, 106, 126 Misc.Rep. 807. Every mode of passing realty by the act of the party, as distinguished from passing it by the operation of law. *Rathbun v. Allen*, 63 R.I. 109, 7 A.2d 273, 275. But the term is inapplicable to mortgages. *Worthington v. Tipton*, 24 N.M. 89, 172 P. 1048, 1049.

The act by which the title to real estate is voluntarily resigned by one person to another and accepted by the latter, in the forms prescribed by law. Cf. *In re Ehrhardt*, U.S.D.C., 19 F.2d 406, 407 (bankruptcy proceedings).

It is said to signify the wrongful transfer of property to another or the wrongful conversion of property for which an action of trover was maintainable at common law. *Sauls v. Whitman*, 171 Oki. 113, 42 P.2d 275, 280.

In medical jurisprudence, a generic term denoting the different kinds or forms of mental aberration or derangement.

ALIENATION IN MORTMAIN. See *Amortization*; *Mortmain*.

ALIENATION OF AFFECTIONS. The robbing of husband or wife of the conjugal affection, society, fellowship, and comfort which inheres in the nor-

mal marriage relation. *Young v. Young*, 236 Ala. 627, 184 So. 187, 190.

Loss of consortium between spouses from wrongful acts of others. *Young v. Young*, 236 Ala. 627, 184 So. 187, 190. The deprivation of one spouse of the right to the aid, comfort, assistance, and society of the other spouse in family relationships. *Hargraves v. Ballou*, 47 R.I. 186, 131 A. 643, 645.

ALIENATION OFFICE. In English practice, an office for the recovery of fines levied upon writs of covenant and entries.

ALIENEE. One to whom an alienation, conveyance, or transfer of property is made. See *Alienor*.

ALIENI GENERIS. Lat. Of another kind. 3 P. Wms. 247.

ALIENI JURIS. Lat. Under the control, or subject to the authority, of another person; *e. g.*, an infant who is under the authority of *his* father or guardian; a wife under the power of her husband. The term is contrasted with *Sui Juris*, (*q. v.*).

ALIENIGENA. One of foreign birth; an alien. 7 Coke, 31.

ALIENISM. The state, condition, or character of an alien. 2 Kent, Comm. 56, 64, 69.

ALIENIST. One who has specialized in the study of mental diseases. *State v. Reidell*, 9 Houst., Del., 470, 14 A. 550, 552. Persons qualified by experience, knowledge, and previous opportunities to express opinion as to defendant's mental condition at a particular time. *People v. Norton*, 138 Cal.App. 70, 31 P.2d 809, 810.

ALIENOR. He who makes a grant, transfer of title, conveyance, or alienation. Correlative of *alienee*.

ALIENUS. Lat. Another's; belonging to another; the property of another. *Alienus homo*, another's man, or slave. Inst. 4, 3, pr. *Aliena res*, another's property. Bract. fol. 13b.

ALIGNMENT. The act of laying out or adjusting a line. The state of being so laid out or adjusted. The ground plan of a railway or other road or work as distinguished from its profile or gradients. *Village of Chester v. Leonard*, 68 Conn. 495, 37 A. 397. An adjustment to a line. *Harner v. Monongalia County Court*, 80 W.Va. 626, 92 S.E. 781, 785.

ALIKE. Similar to another. The term is not synonymous with "identical," which means "exactly the same." *Carn v. Moore*, 74 Fla. 77, 76 So. 337, 340.

ALIMENT. In Scotch law, to maintain, support, provide for; to provide with necessities. As a noun, maintenance, support; an allowance from the husband's estate for the support of the wife. *Paters. Comp.* §§ 845, 850, 893.

In *civil law*, food and other things necessary to the support of life; money allowed for the purpose of procuring these. Dig. 50, 16, 43.

In *common law*, to supply with necessities. Purcell v. Purcell, 3 Edw.Ch.N.Y. 194.

ALIMENTA. Lat. In the civil law, aliments; things necessary to sustain life; means of support, including food, (*cibaria*), clothing, (*vestitus*), and habitation, (*habitatio*.) Dig. 34, 1, 6.

ALDIENTOS. The Spanish term for support and maintenance. Escriche Diccionario.

ALIMONY. Comes from Latin "alimonia" meaning sustenance, and means, therefore, the sustenance or support of the wife by her divorced husband and stems from the common-law right of the wife to support • by her husband. Eaton v. Davis, 176 Va. 330, 10 S.E.2d 893, 897. Derived from Latin word "alere," meaning to nourish or sustain. Allowances which husband by court order pays wife for maintenance while they are separated or after they are divorced. Merriman v. Hawbaker, D.C.Ill., 5 F.Supp. 432, 433. Or pending a suit for divorce. And see Bowman v. Worthington, 24 Ark. 522; Lynde v. Lynde, 64 N.J.Eq. 736, 52 A. 694, 58 L.R.A. 471. But in its strictly legal sense relates to the provisions made *pendente lite*. Warne v. Warne, 36 S.D. 573, 156 N. W. 60, 62. Compare Emerson v. Emerson, 120 Md. 584, 87 A. 1033, 1035, holding that in the absence of statute, in case of an absolute divorce the duty to support ceases and with it the right to alimony.

Generally it is restricted to money unless otherwise authorized by statute. Lloyd v. Lloyd, 183 Ga. 751, 189 S.E. 903, 904. But it may be such an allowance out of husband's estate. Davis v. Davis, 61 Okl. 275, 161 P. 190, 191. Equally applicable to all allowances, whether annual or in gross. Burrows v. Purple, 107 Mass. 432.

It may continue during the joint lives of husband and wife, or so long as they live apart. Cohen v. Cohen, Md., 174 Md. 61, 197 A. 564, 565, 566. But is essentially a different thing from a division of the property of the parties. Mesler v. Jackson, Circuit Judge, 188 Mich. 195, 154 N.W. 63, 65. Not being an "estate", nor the separate property of wife. Cizek v. Cizek, 69 Neb. 797, 99 N.W. 28.

It does not partake of nature of damages or penalty for husband's misconduct. Kennard v. Kennard, 87 N.H. 320, 179 A. 414, 419. Nor is it founded on contract, express or implied, but on husband's natural and legal duty to support wife. Smith v. Smith, D.C.N.Y., 7 F.Supp. 490, 491.

In its broad sense, it means also an award for the support of a child or children. Schafer v. Schafer, 193 N.Y.S. 43, 44, 118 Misc.Rep. 254; Brown v. Brown, 222 Mass. 415, 111 N.E. 42, 43. And it includes provision for an education. Floyd v. Floyd, 91 Fla. 910, 108 So. 896, 898.

Alimony in gross, or in a lump sum, is in the nature of a final property settlement, and hence in some jurisdictions is not included in the term "alimony," which in its strict or technical sense contemplates money payments at regular intervals. Parmly v. Parmly, 125 N.J.Eq. 545, 5 A.2d 789, 791; 27 C.J.S. Divorce, § 235, p. 965.

Alimony pendente lite is an allowance made pending a suit for divorce or separate maintenance including a reasonable allowance for preparation of the suit as well as for support. Davis v. Davis, 15 Wash.2d 297, 130 P.2d 355, 359. Or

pending an appeal. Robinson v. Robinson, N.J. Err. & App., 92 A. 94, 96, L.R.A.1915B, 1071.

Permanent alimony is a provision for the support and maintenance of a wife during her lifetime. In re Spencer, 83 Cal. 460, 23 P. 395, 17 Am.St.Rep. 266.

ALIO INTUITU. Lat. In a different view; under a different aspect. 4 Rob.Adm. & Pr. 151. With another view or object; with respect to another case or condition. 7 East, 558; 6 M. & S. 231. See Diverso Intuitu.

ALIQUID CONCEDITUR NE INJURIA REMANEAT IMPUNITA, QUOD ALIAS NON CONCEDERETUR. Something is (will be) conceded, to prevent a wrong remaining unredressed, which otherwise would not be conceded. Co.Litt. 197b.

ALIQUID POSSESSIONIS ET NIHIL JURIS. Somewhat of possession, and nothing of right, (but no right).

A phrase used by Bracton to describe that kind of possession which a person might have of a thing as a guardian, creditor, or the like; and also that kind of possession which was granted for a term of years, where nothing could be demanded but the usufruct. Bract. fols. 39a, 160a.

ALIQUIS NON DEBET ESSE JUDEX IN PROPRIA CAUSA, QUIA NON POTEST ESSE JUDEX ET PARS. A person ought not to be judge in his own cause, because he cannot act as judge and party. Co.Litt. 141; 3 Bl.Comm. 59.

ALQUOT. Strictly, contained in something else an exact number of times. But as applied to resulting trusts, "aliquot" is treated as meaning fractional. Fox v. Shanley, 94 Conn. 350, 109 A. 249, 251. And means any definite interest. Hinshaw v. Russell, 280 Ill. 235, 117 N.E. 406, 408.

ALITER. Otherwise; as otherwise held or decided.

ALIUD EST CELARE, ALIUD TACERE. To conceal is one thing; to be silent is another. Lord Mansfield, 3 Burr. 1910.

ALIUD EST DISTINCTIO, ALIUD SEPARATIO. Distinction is one thing; separation is another. It is one thing to make things distinct, another thing to make them separable.

ALIUD EST POSSIDERE, ALIUD ESSE IN POSSESSIONE. It is one thing to possess; it is another to be in possession. Hob. 163.

ALIUD EST VENDERE, ALIUD VENDENTI CONSENTIRE. To sell is one thing; to consent to a sale (seller) is another thing. Dig. 50, 17, 160.

ALIUD EXAMEN. A different or foreign mode of trial. 1 Hale, Com.Law, 38.

ALIUNDE, Lat. From another source; from elsewhere; from outside.

Evidence *aliunde*. Evidence from outside, from another source. In certain cases a written in-

strument may be explained by evidence *aliunde*, that is, by evidence drawn from sources exterior to the instrument itself, *e. g.*, the testimony of a witness to conversations, admissions, or preliminary negotiations.

Evidence *aliunde* (i. e., from without the will) may be received to explain an ambiguity in a will. 1 Greenl. Ev. § 291.

ALIUNDE RULE. A verdict may not be impeached by evidence of juror unless foundation for introduction thereof is first made by competent evidence *aliunde*, or from some other source. *State v. Adams*, 141 Ohio St. 423, 48 N.E.2d 861, 863, 146 A.L.R. 509.

ALIUS. Lat. Other. The neuter form is *aliud*, something else; another thing.

ALIVE. As respects birth, it means that child shall have an independent life of its own for some period, even momentarily, after birth. Evidenced by respiration or other indications of life, such as beating of heart and pulsation of arteries. *Fleming v. Sexton*, 172 N.C. 250, 90 S.E. 247, 249. Cf. Hydrostatic Test. Or heart tones in response to artificial respiration, or pulsation of umbilical cord after being severed. In *re Stuert' Estate*, 124 Neb. 149, 245 N.W. 412, 413.

In respect of estate matters, a child *en ventre sa mere* is "born" and "alive" for all purposes for his benefit. In *re Holthausen's Will*, 175 Misc. 1022, 26 N.Y.S.2d 140, 143.

ALL. Means the whole of—used with a singular noun or pronoun, and referring to amount, quantity, extent, duration, quality, or degree. The whole number or sum of—used collectively, with a plural noun or pronoun expressing an aggregate. Every member of individual component of; each one of—used with a plural noun. In this sense, all is used generically and distributively. "All" refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves. *State v. Hallenberg-Wagner Motor Co.*, 341 Mo. 771, 108 S.W.2d 398, 401. See Both.

ALL AMERICAN. Indicative of supremacy, superiority, and distinction in the athletic world. *R. W. Eldridge Co. v. Southern Handkerchief Mfg. Co.*, D.C.S.C., 23 F.Supp. 179, 182, 184, 185.

ALL AND SINGULAR. All without exception. A comprehensive term often employed in conveyances, wills, and the like, which includes the aggregate or whole and also each of the separate items or components. *McClaskey v. Barr*, C.C., 54 Fed. 798.

ALL CASES AT LAW. Within constitutional guaranty of jury trial, refers to common law actions as distinguished from causes in equity and certain other proceedings. *Breimhorst v. Beckman*, 227 Minn. 409, 35 N.W.2d 719, 734.

ALL DISABILITY. Includes both total and partial disability caused by a permanent injury to the leg or arm, or resulting from or relating to the

permanent injury, and embraces not only all incapacity to labor, directly or indirectly arising from such permanent injury, but likewise cases of no incapacity at all. *Bausch v. Fidler*, 277 Pa. 573, 121 A. 507. Includes pain, annoyance, inconveniences, disability to work, and everything incident to the permanent injury. *Vanaskie v. Stevens Coal Co.*, 133 Pa.Super. 457, 2 A.2d 531, 532.

ALL FAULTS. A sale of goods with "all faults" covers, in the absence of fraud on the part of the vendor, all such faults and defects as are not inconsistent with the identity of the goods as the goods described. *Whitney v. Boardman*, 118 Mass. 242.

ALL FOURS. Two cases or decisions which are alike in all material respects, and precisely similar in all the circumstances affecting their determination, are said to be or to run on "all fours."

ALL THE ESTATE. The name given in England to the short clause in a conveyance or other assurance which purports to convey "all the estate, right, title, interest, claim, and demand" of the grantor, lessor, etc., in the property dealt with. *Da^y. Conv.* 93.

ALL THE MEMBERS. The provision of a church constitution that "all the members" can discharge their parish priest means that all shall have opportunity to participate, but not that all members must attend the meeting or vote in the affirmative for the discharge of the priest. *Stryjewski v. Panfil*, 269 Pa. 568, 112 A. 764, 765.

ALL—ADDENDUM. As respects patent on a tooth gearing, "all-addendum" and "all-dedendum" mean that the working faces of the teeth of one element are outside, and those of the other element inside, their respective "pitch circles" which refers to circles passing through the pitch point and coaxial with the axes of rotation of the intermeshing gear wheels. In *re Cook, Cust. & Pat. App.*, 103 F.2d 909, 911.

ALLEGANS CONTRARIA NON EST AUDIENDUS. One alleging contrary or contradictory things (whose statements contradict each other) is not to be heard. 4 Inst. 279. Applied to the statements of a witness.

ALLEGANS SUAM TURPITUDINEM NON EST AUDIENDUS. One who alleges his own infamy is not to be heard. 4 Inst. 279.

ALLEGARI NON DEBIT QUOD PROBATUM NON RELEVAT. That ought not to be alleged which, if proved, is not relevant. 1 Ch.Cas. 45.

ALLEGATA. In Roman law, a word which the emperors formerly signed at the bottom of their rescripts and constitutions; under other instruments they usually wrote *signata* or *testata*. *Encyc. Lond.*

ALLEGATA ET PROBATA. Lat. Things alleged and proved. The allegations made by a party to a suit, and the proof adduced in their support. *Crump v. State*, 30 Ala.App. 241, 4 So.2d 188, 189.

ALLEGATIO CONTRA FACTUM NON EST ADMITTENDA. An allegation contrary to the deed (or fact) is not admissible.

ALLEGATION. The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove. *Mathews v. Underpinning & Foundation Co.*, 17 N. J. Misc. 79, 4 A.2d 788, 789.

A material allegation in a pleading is one essential to the claim or defense.

In *ecclesiastical law*, the statement of the facts intended to be relied on in support of the contested suit.

In English ecclesiastical practice the word seems to designate the pleading as a whole ; the three pleadings are known as the allegations; and the defendant's plea is distinguished as the defensive, or sometimes the responsive, allegation, and the complainant's reply as the rejoining allegation.

ALLEGATION OF FACT. Generally narration of transaction by stating details according to their legal effect, and statement of right or liability flowing from certain facts is conclusion of law. *Maylender v. Fulton County Gas & Electric Co.*, 131 Misc. 514, 227 N.Y.S. 209, 217.

ALLEGATION OF FACULTIES. A statement made by the wife of the property of her husband, in order to obtain alimony. *Wright v. Wright*, 3 Tex. 168. See *Faculties*.

ALLEGE. To state, recite, assert, or charge; to make an allegation. To affirm, assert, or declare. *State v. Hostetter*, Mo. Sup., 222 S.W. 750, 754.

ALLEGED. Stated; recited; claimed; asserted; charged. *Lynn v. Nichols*, 122 Misc. Rep. 170, 202 N.Y.S. 401, 406.

ALLEGIANCE. Obligation of fidelity and obedience to government in consideration for protection that government gives. *U. S. v. Kuhn*, D.C.N.Y., 49 F. Supp. 407, 414.

The citizen or subject owes an absolute and permanent allegiance to his government or sovereign until he becomes a citizen or subject of another government or another sovereign. The alien owes a local and temporary allegiance during period of his residence. *U. S. v. Wong Kim*, Ark., 169 U.S. 649, 18 Sup. Ct. 456, 42 L. Ed. 890.

"The tie or *ligamen* which binds the subject [or citizen] to the king [or government] in return for that protection which the king [or government] affords the subject, [or citizen.]" 1 Bl. Comm. 366. It consists in "a true and faithful obedience of the subject due to his sovereign," 7 Coke, 4b, and is a comparatively modern corruption of *ligance* (*ligeantia*), which is derived from *liege* (*ligius*), meaning absolute or unqualified. It signified originally liege fealty, i. e. absolute and unqualified fealty. 18 L. Q. Rev. 47.

In Norman French, alleviation; relief ; redress. Kelham.

Acquired allegiance, is that binding a naturalized citizen.

Local or actual allegiance, is that measure of obedience due from a subject of one government to another government, within whose territory he is temporarily resident. From this are excepted foreign sovereigns and their representatives, naval

and armed forces when permitted to remain in or pass through the country or its waters.

Natural allegiance. In English law, that kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth, which is intrinsic and perpetual, and- cannot be divested by any act of their own. 1 Bl. Comm. 369; 2 Kent, Comm. 42. In American law, the allegiance due from citizens of the United States to their native country, and also from naturalized citizens, and which cannot be renounced without the permission of government, to be declared by law. 2 Kent, Comm. 43-49.

It is said to be due to the king in his political, not his personal, capacity; L. R. 17 Q. B. D. 54, quoted in *U. S. v. Wong Kim*, Ark., 169 U.S. 663, 18 Sup. Ct. 456, 42 L. Ed. 890; and so in the United States "it is a political obligation" depending not on ownership of land, but on the enjoyment of the protection of government; *Wallace v. Harmstad*, 44 Pa. 492; and it "binds the citizen to the observance of all laws" of his own sovereign; *Adams v. People*, 1 N.Y. 173.

ALLEGIARE. To defend and clear one's self; to wage one's own law. An archaic word which simply means to define or justify by due course of law. *State v. Hostetter*, Mo., 222 S.W. 750.

ALLEGING DIMINUTION. The allegation in an appellate court, of some error in a subordinate part of the *nisi prius* record. See *Diminution*.

ALLEN CHARGE. An instruction advising jurors to have deference for each other's views, that they should listen, with a disposition to be convinced, to each other's argument, deriving its name from the case of *Allen v. United States*, 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528, wherein the instruction was approved. *Coupe v. United States*, 72 App. D.C. 86, 113 F.2d 145, 149; *Green v. U. S.*, 309 F.2d 852. Various called dynamite charge, shotgun instruction, third degree instruction.

ALLERGY. A susceptibility to disease. *Vogt v. Ford Motor Co.*, Mo. App., 138 S.W.2d 684, 688.

ALLEVIARE. L. Lat. In old records, to levy or pay an accustomed fine or composition; to redeem by such payment. Cowell.

ALLEY. A narrow way designed for the special accommodation of the property it reaches. *Atchison, T. & S. F. Ry. Co. v. City of Chanute*, 95 Kan. 161, 147 P. 836, 837; *Wooldridge v. Pacific Coast Coal Co.*, Wash., 155 P.2d 1001, 1003.

ALLIANCE. The relation or union between persons or families contracted by intermarriage; affinity.

In *international law*, a union or association of two or more states or nations, formed by league or treaty, for the joint prosecution of a war (offensive alliance), or for their mutual assistance and protection in repelling hostile attacks (defensive alliance). The league or treaty by which the association is formed. The act of confederating, by league or treaty, for the purposes mentioned.

The term is also used in a wider sense, embracing unions for objects of common interest to the contracting parties,

as the "Holy Alliance" entered into in 1815 by Prussia, Austria and Russia for the purpose of counteracting the revolutionary movement in the interest of political liberalism.

ALLISION. The running of one vessel into or against another, as distinguished from a collision, i. e., the running of two vessels against each other. But this distinction is not very carefully observed.

ALLOCABLE. Synonymous with "distributable". In analyzing accounts, the breaking down of a lump sum charged or credited to one account into several parts to be charged or credited to other accounts. *Fleming v. Commissioner of Internal Revenue*, C.C.A.Tex., 121 F.2d 7, 9.

ALLOCATE. Power to allocate critical materials included power to distribute, to assign, to allot. *Gallagher's Steak House v. Bowles*, C.C.A.N.Y., 142 F.2d 530, 534. To ration or withhold from private consumption. *State ex rel. Guide Management Corp. v. Alexander*, 223 Ind. 221, 59 N.E.2d 169, 172.

ALLOCATION. An allowance made upon an account in the English exchequer. *Cowell*. Placing or adding to a thing. *Encyc. Lond.*

Assignment or allotment. *Jacobson v. Bowles*, D.C.Tex., 53 F.Supp. 532, 534.

ALLOCATIONE FACIENDA. In old English practice, a writ for allowing to an accountant such sums of money as he hath lawfully expended in his office; directed to the lord treasurer and barons of the exchequer upon application made. *Jacob*.

ALLOCATO COMITATU. In old English practice, in proceedings in outlawry, when there were but two county courts holden between the delivery of the writ of *exigi facias* to the sheriff and its return, a special *exigi facias*, with an *allocato comitatu* issued to the sheriff in order to complete the proceedings. See *Exigent*.

ALLOCATUR. Lat. It is allowed. A word formerly used to denote that a writ or order was allowed.

A word denoting the allowance by a master or prothonotary of a bill referred for his consideration, whether touching costs, damages, or matter of account. *Lee*, *Diet*.

A *special allocatur* is the special allowance of a writ (particularly a writ of error) which is required in some particular cases.

ALLOCATUR EXIGENT. A species of writ anciently issued in outlawry proceedings, on the return of the original writ of *exigent*. 1 *Tidd*, Pr. 128. See *Exigent*.

ALLOCUTION. Formality of court's inquiry of prisoner as to whether he has any legal cause to show why judgment should not be pronounced against him on verdict of conviction. *Archb.Crim. Pl.* 173; *State v. Pruitt*, Mo., 169 S.W.2d 399, 400.

ALLOCUTUS. See *Allocution*.

ALLODARII. Owners of allodial lands. Owners of estates as large as a subject may have. *Co. Litt* 1; *Bac. Abr. "Tenure," A*.

ALLODIAL. Free; not holden of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal. *Barker v. Dayton*, 28 Wis. 384; *Wallace v. Harmstad*, 44 Pa. 499.

ALLODIUM. Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens.

An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof. 1 *Washb.Real Prop.* 16. *McCartee v. Orphan Asylum*, 9 Cow., N.Y., 511, 18 Am.Dec. 516.

ALLOGRAPH. A writing or signature made for a person by another; opposed to autograph.

ALLONGE. A piece of paper annexed to a bill of exchange or promissory note, on which to write endorsements for which there is no room on the instrument itself. *Pardessus*, n. 343; *Story*, *Prom. Notes*, §§ 121, 151; *Fountain v. Bookstaver*, 141 Ill. 461, 31 N.E. 17; *Bergmann v. Puhl*, 195 Wis. 120, 217 N.W. 746, 748, 56 A.L.R. 915.

ALLOPATHIC PRACTICE. The ordinary method of practicing medicine as adopted and taught by the great body of physicians. *Bradbury v. Bardin*, 34 Conn. 452, 453, 35 Conn. 577. Also, and more properly, that method of combatting disease by the use of remedies producing effects different from those of the disease being treated;—opposed to homeopathy.

ALLOT. To apportion, distribute; to divide property previously held in common among those entitled, assigning to each his ratable portion, to be held in severalty; to set apart specific property, a share of a fund, etc., to a distinct party. *Millet v. Bilby*, 110 Okl. 241, 237 P. 859, 861.

In the law of corporations, to allot shares, debentures, etc., is to appropriate them to the applicants or persons who have applied for them; this is generally done by sending to each applicant a letter of allotment, informing him that a certain number of shares have been allotted to him. *Sweet*.

ALLOTMENT. A share or portion; that which is allotted; apportionment, division; the distribution of shares in a public undertaking or corporation. *Reuter v. Reuter's Succession*, 206 La. 474, 19 So.2d 209, 212. Assignment. *Pace v. Eoff*, *Tex. Com.App.*, 48 S.W.2d 956, 963. Partition; the distribution of land under an enclosure act. The term ordinarily and commonly used to describe land held by Indians after allotment, and before the issuance of the patent in fee that deprives the land of its character as Indian country. *Estes v. U. S.*, C.C.A., 225 F. 980, 981; *Harris v. Grayson*, 90 Okl. 147, 216 P. 446, 449. See *Allottee*.

ALLOTMENT CERTIFICATE. A document issued to an applicant for shares in a company or public loan announcing the number of shares allotted or assigned and the amounts and due dates of the calls or different payments to be made on the same. An "allotment certificate," when issued to an enrolled member of the Five Civilized Tribes of the Indian Territory, is *an*

adjudication of the special tribunal empowered to decide the question that the party to whom it issues is entitled to the land, and it is a conveyance of the right to this title to the allottee. *Bowen v. Carter*, 42 Okl. 565, 144 P. 170, 173.

ALLOTMENT NOTE. In English law, a writing by a seaman, whereby he makes an assignment of part of his wages in favor of his wife, father or mother, grandfather or grandmother, brother or sister. *Motley & Whitley*.

ALLOTMENT SYSTEM. Designates the practice in England of dividing land in small portions for cultivation by agricultural laborers and other cottagers at their leisure, and after they have performed their ordinary day's work. *Wharton*.

ALLOTMENT WARDEN. By the English general inclosure act, 1845, § 108, when an allotment for the laboring poor of a district has been made on an inclosure under the act, the land so allotted is to be under the management of the incumbent and church warden of the parish, and two other persons elected by the parish, and they are to be styled "the allotment wardens" of the parish. *Sweet*.

ALLOTTEE. One to whom an allotment is made, who receives a ratable share under an allotment; a person to whom land under an inclosure act or shares in a public undertaking are allotted.

An "allottee," as the word is used in the act of April 21, 1904 (chapter 1402, 33 Stat. 189-204), is one, generally an Indian, freedman, or adopted citizen of a tribe of Indians, to whom a tract of land out of a common holding has been given by, or under the supervision of, the United States. *Lynch v. Franklin*, 37 Okl. 60, 130 P. 599, 600. The word does not include such allottee's heirs. *Bradley v. Goddard*, 45 Okl. 77, 145 P. 409, 410.

ALLOW. The word has no rigid or precise meaning, but its import varies according to circumstances or context in connection with which it is used. It may mean bestow, assign, to any one as his right or due, to accord, or to imply discretion, or unqualified and definite promise to do some specified thing. *Dunlop Sand & Gravel Corporation v. Hospelhorn*, 172 Md. 279, 191 A. 701, 706. To approve of, accept as true, approve, admit, concede, adopt, or fix. *Headford Bros. & Hitchins Foundry Co. v. Associated Manufacturers Corporation of America*, 224 Iowa 1364, 278 N.W. 624, 628. To grant something as a deduction or an addition; to abate or deduct; as, to allow a sum for leakage. *Pittsburgh Brewing Co. v. Commissioner of Internal Revenue*, C.C.A.3, 107 F.2d 155, 156. To grant, or permit; as to allow an appeal or a marriage; to allow an account or claim. Also to give a fit portion out of a larger property or fund. *Thurman v. Adams*, 82 Miss. 204, 33 So. 944. To sanction, either directly or indirectly, as opposed to merely suffering a thing to be done. *People v. Duncan*, 22 Cal.App. 430, 134 P. 797, 798; to acquiesce in. *Luckie v. Diamond Coal Co.*, 41 Cal.App. 468, 183 P. 178, 181; *Curtis & Gartside Co. v. Pigg*, 39 Okl. 31, 134 P. 1125, 1129. To suffer, to tolerate; *Gregory v. U. S.*, 17 Blatchf. 325, Fed.Cas.No.5,803; to fix;

Hinds v. Marmolejo, 60 Cal. 229. To substitute. *Glenn v. Glenn*, 41 Ala. 571. Intent in wills; and an equivalent of I will; *Ramsey v. Hanlon*, C.C. Pa., 33 F. 425.

ALLOWANCE. A deduction, an average payment, a portion assigned or allowed; the act of allowing. See *Stone v. State*, 197 Ala. 293; 72 So. 536, 537; *Sawyer v. U. S.*, C.C.A., 10 F.2d 416, 421. For "Family," see that title.

In army terminology, ordinarily refers to extra and special items in addition to regular compensation. *United States v. Jackson*, S.C., 302 U.S. 628, 58 S.Ct. 390, 392, 82 L. Ed. 488.

As distinguished from a "salary," which is a fixed compensation, decreed by authority and for permanence, and is paid at stated intervals, and depends upon time, and not the amount of the services rendered, "allowance" is a variable quantity. *Blaine County v. Pyrah*, 32 Idaho, 111, 178 P. 702, 703.

Not synonymous with "alimony". *Warne v. Warne*, 36 S.D. 573, 156 N.W. 60, 62.

Special allowances. In English practice, in taxing the costs of an action as between party and party, the taxing officer is, in certain cases, empowered to make special allowances; *i. e.*, to allow the party costs which the ordinary scale does not warrant. *Sweet*.

ALLOWANCE PENDENTE LITE. In the English chancery division, where property which forms the subject of proceedings is more than sufficient to answer all claims in the proceedings, the court may allow to the parties interested the whole or part of the income, or (in the case of personality) part of the property itself. *St. 15 & 16 Vict. c. 86*, § 57; *Daniell*, Ch.Pr. 1070.

ALLOWED CLAIM. Against an estate it is a debt or charge which is valid in law and entitled to enforcement. *Commissioner of Internal Revenue v. Lyne*, C.C.A.1, 90 F.2d 745, 747.

ALLOY. An inferior or cheaper metal mixed with gold or silver in manufacturing or coining. As respects coining, the amount of alloy is fixed by law, and is used to increase the hardness and durability of the coin.

A compound of two or more metals. *Treibacher-Chetische Werke Gesellschaft mit Beschränkter Haftung v. Roessler & Hasslacher Chemical Co.*, C.C.A.N.Y., 219 F. 210, 211. A mixture or combination of metals while in state of fusion. *Pittsburgh Iron & Steel Foundries Co. v. Seaman-Sleeth Co.*, D.C.Pa., 236 F. 756, 757; *Treibacher Chemische Werke Gesellschaft mit Beschränkter Haftung v. Roessler & Hasslacher Chemical Co.*, D.C.N.Y., 214 F. 410, 412.

ALLOYNOUR. L. Fr. One who conceals, steals, or carries off a thing privately. *Britt. c. 17*. See *Eloigne*.

ALLUVIO MARIS. Lat. In the civil and old English law, the washing up of the sea; the soil thus formed; formation of soil or land from the sea; maritime increase. *Hale*, Anal. § 8. "*Alluvio maris* is an increase of the land adjoining, by the projection of the sea, casting up and adding sand and slubb to the adjoining land, whereby it is increased, and for the most part by insensible degrees." *Hale*, de Jure Mar. pt. 1, c. 6.

ALLUVION. That increase of the earth on a shore or bank of a stream or the sea, by the force of the water, as by a current or by waves, which is so gradual that no one can judge how much is added at each moment of time. Inst. 1, 2, t. 1, § 20. Ang. Water Courses, 53. Jefferis v. East Omaha Land Co., 134 U.S. 178, 10 Sup.Ct. 518, 33 L.Ed. 872. Willett v. Miller, 176 Okl. 278, 55 P.2d 90, 92. "Accretion" denotes the act. However, the terms are frequently used synonymously. Katz v. Patterson, 135 Or. 449, 296 P. 54, 55. Avulsion is sudden and perceptible. St. Clair County v. Lovington, 23 Wall. 46, 23 L.Ed. 59. See Accretion; Avulsion.

ALLY. A nation which has entered into an alliance with another nation. 1 Kent, Comm. 69.

A citizen or subject of one of two or more allied nations. Siemund v. Schmidt, Mun.Ct.N.Y., 168 N.Y.S. 935.

ALMANAC. A publication, in which is recounted the days of the week, month, and year, both common and particular, often distinguishing the fasts, feasts, terms, etc., from the common days by proper marks, pointing out also the several changes of the moon, tides, eclipses, etc.

ALMARIA. The archives, or, as they are sometimes styled, muniments of a church or library.

ALMESFEOH. In Saxon law, alms-fee; alms-money. Otherwise called "Peter-pence." Cowell.

ALMOIN. Alms; a tenure of lands by divine service. See Frankalmoine.

ALMONER. One charged with the distribution of alms. The office was first instituted in religious houses and although formerly one of importance is now in England almost a sinecure.

ALMOXARIFAZGO. In Spanish law, a general term, signifying both export and import duties, as well as excise.

ALMS. Charitable donations. Any species of relief bestowed upon the poor. That which is given by public authority for the relief of the poor.

ALMS FEE. Peter-pence (or Peter's pence), *which see*.

ALMSHOUSE. A house for the publicly supported paupers of a city or county. People v. City of New York, 36 Hun, N.Y., 311. In England an almshouse is not synonymous with a workhouse or poorhouse, being supported by private endowment.

It may be a public institution kept up by public revenues, or it may be an institution maintained by private endowment and contributions, where the indigent, sick, and poor are cared for without cost to themselves. State Board of Control v. Buckstegge, 18 Ariz. 277, 158 P. 837, 839.

ALNAGER, or ULNAGER. A sworn officer of the king whose duty it was to look to the assise of woollen cloth made throughout the land, and to

the putting on the seals for that purpose ordained, for which he collected a duty called "alnage." Cowell; Termes de la Ley.

ALNETUM. In old records, a place where alders grow, or a grove of alder trees. Domesday Book; Co.Litt. 4b.

ALOD, Alode, Alodes, Alodis. L. Lat. In feudal law, old forms of *alodium* or *allodium* (*q. v.*).

A term used in opposition to *feodum* or *fief*, which means property, the use of which was bestowed upon another by the proprietor, on condition that the grantee should perform certain services for the grantor, and upon the failure of which the property should revert to the original possessor. See 1 Poll. & Maitl. 45.

ALODIAN. Sometimes used for *anodial*, but not well authorized. Cowell.

ALODIARI. See Allodaryl.

ALONE. Apart from others; singly; sole. Salem Capital Flour Mills Co. v. Water-Ditch & Canal Co., C.C.Or., 33 Fed. 154.

ALONG. Lengthwise of, implying motion or at or near, distinguished from across. Nicolai v. Wisconsin Power & Light Co., 227 Wis. 83, 277 N.W. 674, 678. By, on, up to, or over, according to the subject-matter and context. State v. Downes, 79 N.H. 505, 112 A. 246; Sioux City Bridge Co. v. Miller, C.C.A., 12 F.2d 41, 48. The term does not necessarily mean touching at all points; Com. v. Franklin, 133 Mass. 569; nor does it necessarily imply contact, Watts v. City of Winfield, 101 Kan. 470, 168 P. 319, 321.

ALSO. Besides; as well; in addition; likewise; in like manner; similarly; too; withal. West Jersey Trust Co. v. Hayday, 124 N.J.Eq. 85, 199 A. 407, 411. Some other thing; including; further; furthermore; in the same manner; moreover; nearly the same as the word "and" or "likewise." Schilling v. Central California Traction Co., 1 P. 2d 53, 55, 115 Cal.App. 30.

The word imports no more than "item" and may mean the same as "moreover"; but not the same as "in like manner"; Evans v. Knorr, 4 Rawle (Pa.) 68; nor is it synonymous with "other," City of Ft. Smith v. Gunter, 106 Ark. 371, 154 S.W. 181, 183. It may be (1) the beginning of an entirely different sentence, or (2) a copulative carrying on the sense of the immediately preceding words into those immediately succeeding. Stroud, Jud. Dict., citing 1 Jarm. 497 n.; 1 Salk. 239; Security State Bank v. Jones, 121 Kan. 396, 247 P. 862, 863.

ALT. In Scotch practice, an abbreviation of *Alter*, the other; the opposite party; the defender. 1 Broun, 336, note.

ALTA PRODITIO. L. Lat. In old English law, high treason. 4 Bl.Comm. 75. See High Treason.

ALTA VIA. L. Lat. In old English law, a highway; the highway. 1 Salk. 222. *Alta via regia*; the king's highway; "the king's high street." Finch, Law, b. 2, c. 9.

ALTARAGE. In ecclesiastical law, offerings made on the altar; all profits which accrue to the priest by means of the altar. Ayliffe, Parerg. 61.

ALTENHEIM. A German word meaning "home for old people." *German Pioneer Verein v. Meyer*, 70 N.J.Eq. 192, 63 A. 835.

ALTER. To make a change in; to modify; to vary in some degree; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. *Davis v. Campbell*, 93 Iowa, 524, 61 N.W. 1053. To change partially. *Cross v. Nee*, D.C.Mo., 18 F.Supp. 589, 594. To change in one or more respects, but without destruction of existence or identity of the thing changed; to increase or diminish. *Kraus v. Kraus*, 301 Ill.App. 606, 22 N.E.2d 862. See *Alteration*; *Change*.

To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject-matter which continues objectively the same while modified in some particular. To "amend" implies that the modification made in the subject improves it, which is not necessarily the case with an alteration. See *Ex parte Woo Jan*, D.C.Ky., 228 F. 927, 940.

But "alter" is sometimes used synonymously with "change." *Board of Sup'rs of Yavapai County v. Stephens*, 20 Ariz. 115, 177 P. 261, 264, and with "enlarge," *City of Jamestown v. Pennsylvania Gas Co.*, C.C.A.N.Y., 1 F.2d 871, 883.

The other; the opposite party. See *Alt*,

ALTER EGO. Second self. 3 C.J.S. *Alter Ego*.

Theory that subordinate or servient corporation may be controlled by superior or dominant corporation, so that dominant corporation may be held liable for subordinate corporation's negligence. *Barnes v. Liebig*, 146 Fla. 219, 1 So.2d 247, 253.

To establish the "alter ego" doctrine, it must be shown that the stockholders disregarded the entity of the corporation, made corporation a mere conduit for the transaction of their own private business, and that the separate individualities of the corporation and its stockholders in fact ceased to exist. *Sefton v. San Diego Trust & Savings Bank*, Cal.App., 106 P.2d 974, 984.

The doctrine of "alter ego" does not create assets for or in corporation, but it simply fastens liability on the individual who uses the corporation merely as an instrumentality in conducting his own personal business, and that liability springs from fraud perpetrated not on the corporation, but on third persons dealing with corporation. *Garvin v. Matthews*, 193 Wash. 152, 74 P.2d 990, 992.

A new corporation taking over all of mortgaged assets of old corporation in exchange for all of old corporation's capital stock and continuing to operate business formerly operated by old corporation was "alter ego" of old corporation so as to be obligated to pay annual patent royalty which old corporation was required to pay, notwithstanding that old corporation retained title to mortgaged assets. *Dummer v. Wheeler Osgood Sales Corp.*, 198 Wash. 381, 88 P.2d 453, 458.

ALTERATION. Variation; changing; making different. A change of a thing from one form or state to another; making a thing different from what it was without destroying its identity. *Paye v. City of Grosse Pointe*, 279 Mich. 254, 271 N.W. 826, 827. See *Alter*.

As applied to *buildings*, it is a change or substitution in a substantial particular of one part of a building for a building different in that particular; a change or changes within the superficial limits of an existing structure; an installation that becomes an integral part of the building and changes its structural quality; a substantial change therein; a varying or changing the form or nature of such building without destroying its identity. *Paye v. City of Grosse Pointe*, 279 Mich. 254, 271 N.W. 826, 827.

Alteration of *highway* means change of course of existing highway, leaving it substantially the same highway as before, but with its course in some respects changed. *Hue-nung v. Shenkenberg*, 208 Wis. 177, 242 N.W. 552, 553.

An alteration is an act done upon the *instrument* by which its meaning or language is changed. If what is written upon or erased from the instrument has no tendency to produce this result, or to mislead any person, it is not an alteration. *Oliver v. Hawley*, 5 Neb. 444.

An alteration is said to be *material* when it affects, or may possibly affect, the rights of the persons interested in the document.

Language different in legal effect, or change in rights, interests, or obligations of parties. *Bank of Moberly v. Meals*, 316 Mo. 1158, 295 S.W. 73, 77; *Commercial Credit Co. v. Giles*, Tex.Civ.App., 207 S.W. 596, 598. It introduces some change into instrument's terms, meaning, language, or details. See *U. S. v. Sacks*, 257 U.S. 37, 42 S.Ct. 38, 39, 66 L. Ed. 118. Strictly speaking, it is some material change on face of instrument by one of the parties thereto without consent of the other. *Johnston v. DePuy*, 15 N.J.Misc. 94, 188 A. 742, 743; since a mutual agreement of parties concerned creates a new agreement. *Leake*, Cont. 430. If performed by a mere stranger, it is more technically described as a *spoliation* or *mutilation*. *Knox v. Horne*, Tex.Civ.App., 200 S.W. 259, 260; *Bercot v. Velkoff*, 111 Ind. App. 323, 41 N.E.2d 686, 692. The term is not properly applied to any change which involves the substitution of a practically new document. *Kempner v. Simon*, 195 N.Y.S. 333, 334, 119 Misc.Rep. 60. And it should in strictness be reserved for the designation of changes *in form* or *language*, and not used with reference to modifications in matters of substance. The term is also to be distinguished from "defacement." Too, if what is done simply takes away what was given before, or a part of it under a *will*, it is a revocation; but if it gives something in addition or in substitution, then it is an alteration. *Appeal of Miles*, 68 Conn. 237, 36 A. 39, 36 L.R.A. 176.

ALTERCATION. Warm contentions in words, dispute carried on with heat or anger, controversy, wrangle, wordy contest. *Ivory v. State*, 128 Tex.Cr.R. 408, 81 S.W.2d 696, 698.

ALTERIUS CIRCUMVENTIO ALU NON PRIEBET ACTIONEM. The deceiving of one person does not afford an action to another. Dig. 50, 17, 49.

ALTERNAT. A usage among diplomatists by which the rank and places of different powers, who have the same right and pretensions to precedence, are changed from time to time, either in a certain regular order or one determined by lot. In drawing up treaties and conventions, for example, it is the usage of certain powers to alternate, both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place. *Wheat.Int. Law*, § 157.

ALTERNATE LEGACY. See *Legacy*.

ALTERNATIM. L. Lat. Interchangeably. Litt. § 371; *Townsh.Pl.* 37.

ALTERNATIVA PETITIO NON EST AUDIENDA. An alternative petition or demand is not to be heard. 5 Coke, 40.

ALTERNATIVE. One or the other of two things; giving an option or choice; allowing a choice between two or more things or acts to be done. See *Malone v. Meres*, 91 Fla. 709, 109 So. 677, 693.

ALTERNATIVE

ALTERNATIVE CONTRACT. A contract whose terms allow of performance by the doing of either one of several acts at the election of the party from whom performance is due. *Crane v. Peer*, 43 N.J.Eq. 553, 4 A. 72.

ALTERNATIVE JUDGMENT. See Judgment.

ALTERNATIVE OBLIGATION. An obligation allowing the obligor to choose which of two things he will do, the performance of either of which will satisfy the instrument. A promise to deliver a certain thing or to pay a specified sum of money is an example of this kind of obligation.

ALTERNATIVE PLEADING. A pleading alleging substantive facts so disjunctively that it cannot be determined upon which of them the pleader intends to rely as basis for recovery. *Groover v. Savannah Bank & Trust Co.*, 186 Ga. 476, 198 S.E. 217, 219.

ALTERNATIVE RELIEF. The term "alternative," as used in Equity Rule 25 (see Fed. Rules Civ. Proc. rule 8, 28 U.S.C.A.), allowing relief to be stated and sought in alternative forms, means mutually exclusive. *Boyd v. New York & H. R. Co.*, D.C.N.Y., 220 F. 174, 179.

ALTERNATIVE REMAINDERS. Remainders in which disposition of property is made in alternative, one to take effect only in case the other does not, and in substitution of it. *Riddle v. Killian*, 366 Ill. 294, 8 N.E.2d 629, 634.

ALTERNATIVE REMEDY. Where a new remedy is created in addition to an existing one, they are called "alternative" if only one can be enforced; but if both, "cumulative."

ALTERNATIVE WRIT. A writ commanding the person against whom it is issued to do a specified thing, or show cause to the court why he should not be compelled to do it. *Allee v. McCoy*, 2 Marv., Del., 465, 36 A. 359. Under the common-law practice, the first *mandamus* is an alternative writ; 3 Bla.Com. 111; but in modern practice this writ is often dispensed with and its place is taken by a rule to show cause. See *Mandamus*.

ALTERNIS VICIBUS. L. Lat. By alternate turns; at alternate times; alternately. Co.Litt. 4a; Shep.Touch. 206.

ALTERUM NON LIDERE. Not to injure another. This maxim, and two others, *honeste vivere*, and *suum cuique tribuere*, (*q. v.*) are considered by Justinian as fundamental principles upon which all the rules of law are based. Inst. 1, 1, 3.

ALTERUTER. Lat. One of two; either.

ALTUS NON TOLLENDI. In the civil law, a servitude due by the owner of a house, by which he is restrained from building beyond a certain height. Dig. 8, 2, 4; Sandars, Just.Inst. 119.

ALTUS TOLLENDI. In the civil law, a servitude which consists in the right, to him who is entitled to it, to build his house as high as he may

think proper. In general, however, every one enjoys this privilege, unless he is restrained by some contrary title. Sandars, Just.Inst. 119.

ALTO ET BASSO. High and low. This phrase is applied to an agreement made between two contending parties to submit all matters in dispute, *alto et basso*, to arbitration. Cowell.

ALTUM MARE. L. Lat. In old English law, the high sea, or seas. Co.Litt. 260b. The deep sea. *Super altum mare*, on the high seas. Hob. 212b.

ALUMNUS. A child which one has nursed; a foster-child. Dig. 40, 2, 14.

Also a graduate from a school, college, or other institution of learning.

ALVEUS. The bed or channel through which the stream flows when it runs within its ordinary channel. Calvinus, Lex.

Alveus derelictus, a deserted channel. Mackeld. Rom.Law, § 274.

AMALGAMATION. Union of different races, or diverse elements, societies, or corporations, so as to form a homogeneous whole or new body; interfusion; intermarriage; consolidation; coalescence; as, the amalgamation of stock. Stand. Dict.

To join in a single body two or more associations, organizations, or corporations. *Peterson v. Evans*, 288 Ill.App. 623, 6 N.E.2d 520.

In England it is applied to the merger or consolidation of two incorporated companies or societies.

The word has no definite meaning; it involves the blending of two concerns into one; 1904, 2 Ch. 268.

AMALPHITAN CODE OR TABLE. A collection of sea-laws, compiled about the end of the eleventh century, by the people of Amalphi.

It consists of the laws on maritime subjects, which were or had been in force in countries bordering on the Mediterranean; and was for a long time received as authority in those countries. Azuni; Wharton. It became a part of the law of the sea; *The Scotia*, 14 Wall., U.S., 170, 20 L.Ed. 822. See Code.

AMANUENSIS. One who writes on behalf of another that which he dictates.

AMBACTUS. A messenger; a servant sent about; one whose services his master hired out. Spelman.

AMBASCIATOR. A person sent about in the service of another; a person sent on a service, A word of frequent occurrence in the writers of the middle ages. Spelman.

AMBASSADOR. In international law, a public officer, clothed with high diplomatic powers, commissioned by a sovereign prince or state to transact the international business of his government at the court of the country to which he is sent.

The commissioner who represents one country in the seat of government of another. He is a public minister, which, usually, a consul is not. Brown. A person sent by one sovereign to another, with authority, by letters of credence, to treat on affairs of state. Jacob. The personal representatives of the head of the state which sends them,

entitled to special honors and special privileges and having varied duties; mouthpiece of communications, government informant, and protector of citizens of his country. *Russian Government v. Lehigh Valley R. Co.*, D.C.N.Y., 293 F. 133. See Letter of Credence; Minister.

A distinction was formerly made between Ambassadors Extraordinary, who were sent to conduct special business or to remain for an indeterminate period, and Ambassadors Ordinary, who were sent on permanent missions; but this distinction is no longer observed.

AMBER, or AMBRA. In old English law, a measure of four bushels.

AMBEDEXTER. Skillful with both hands; one who plays on both sides. Applied anciently to an attorney who took pay from both sides, and subsequently to a juror guilty of the same offense. Cowell.

AMBIGUA RESPONSIO CONTRA PROFERENTEM EST ACCIPIENDA. An ambiguous answer is to be taken against (is not to be construed in favor of) him who offers it. 10 Coke, 59.

AMBIGUIS CASIBUS SEMPER PRÆSUMITUR PRO REGE. In doubtful cases, the presumption always is in behalf of the crown. Lofft, Append. 248.

Alti1BIG1UITAS. Lat. From *ambiguus*, doubtful, uncertain, obscure. Ambiguity; uncertainty of meaning.

Ambiguitas latens, a latent ambiguity; *ambiguitas patens*, a patent ambiguity. See Ambiguity.

AMBIGUITAS CONTRA STIPULATOREM EST. Doubtful words will be construed most strongly against the party using them.

AMBIGUITAS VERBORUM LATENS VERIFICATIONE SUPPLETUR; NAM QUOD EX FACTO ORITUR AMBIGUUM VERIFICATIONE FACTI TOLLITUR. A latent ambiguity in the language may be removed by evidence; for whatever ambiguity arises from an extrinsic fact may be explained by extrinsic evidence. Bac.Max.Reg. 23. Said to be "an unprofitable subtlety; inadequate and uninformative." Prof. J. B. Thayer in 6 Harv. L. 417.

AMBIGUITAS VERBORUM PATENS NULLA VERIFICATIONE EXCLUDITUR. A patent ambiguity cannot be cleared up by extrinsic evidence (or is never holpen by averment). Lofft, 249; Bacon, Max. 25.

AMBIGUITY. Doubtfulness; doubleness of meaning. *Chapman v. Metropolitan Life Ins. Co.*, 172 S.C. 250, 173 S.E. 801, 803. Duplicity, indistinctness, or uncertainty of meaning of an expression used in a written instrument. *Arkansas Amusement Corporation v. Kempner*, C.C.A.Ark., 57 F. 2d 466, 472. Want of clearness or definiteness, difficult to comprehend or distinguish; of doubtful import. *Business Men's Assur. Ass'n v. Read*, Tex.Civ.App., 48 S.W.2d 678, 680. For "Extrinsic Ambiguity," see that title.

Ambiguity of language is to be distinguished from unintelligibility and inaccuracy, for words cannot be said to be ambiguous unless their signification seems doubtful and

uncertain to persons of competent skill and knowledge to understand them. Story, Contr. 272. It does not include uncertainty arising from the use of peculiar words, or of common words in a peculiar sense. Wig. Wills, 174; In re Milliet's Estate, 206 N.Y.S. 342, 349, 123 Misc.Rep. 745. It is *latent* where the language employed is clear and intelligible and suggests but a single meaning, but some extrinsic fact or extraneous evidence creates a necessity for interpretation or a choice among two or more possible meanings, as where a description apparently plain and unambiguous is shown to fit different pieces of property. *Logue v. Von Almen*, 379 Ill. 208, 40 N.E.2d 73, 82, 140 A.L.R. 251. A *patent* ambiguity is that which appears on the face of the instrument, and arises from the defective, obscure, or insensible language used. *Carter v. Holman*, 60 Mo. 504; *Stokeley v. Gordon*, 8 Md. 505; *Carroll v. Cave Hill Cemetery Co.*, 172 Ky. 204, 189 S.W. 186, 190.

AMBIGUITY UPON THE FACTUM. An ambiguity in relation to the very foundation of the instrument itself, as distinguished from an ambiguity in regard to the construction of its terms.

The term is applied, for instance, to a doubt as to whether a testator meant a particular clause to be a part of the will, or whether it was introduced with his knowledge, or whether a codicil was meant to republish a former will, or whether the residuary clause was accidentally omitted. *Eatherly v. Eatherly*, 1 Cold., Tenn., 461, 465, 78 Am. Dec. 499.

AMBIGUUM PACTUM CONTRA VENDITOREM INTERPRETANDUM EST. An ambiguous contract is to be interpreted against the seller.

AMBIGUUM PLACITUM INTERPRETARI DEBET CONTRA PROFERENTEM. An ambiguous plea ought to be interpreted against the party pleading it. Co.Litt. 303b.

AMBIT. A boundary line, as going around a place; an exterior or inclosing line or limit. *Ellcott v. Pearl*, 10 Pet., U.S., 412, 442, 9 L.Ed. 475.

The limits or circumference of a power or jurisdiction; the line circumscribing any subject-matter. As to the ambit of a port, see *Leonis Steamship Co.; Ltd., v. Rank, Ltd.*, [1907] 1 K.B. 344, 352; *Pyman Bros. v. Dreyfus Bros. & Co.* [1890] 24 Q.B.D. 152, 155.

AMBITUS. In the Roman law, a going around; a path worn by going around. A space of at least two and a half feet in width, between neighboring houses, left for the convenience of going around them. Calvin.

The procuring of a public office by money or gifts; the unlawful buying and selling of a public office. Inst. 4, 18, 11; Dig. 48, 14.

AMBLOTIC. Having the power to cause abortion; anything used to produce abortion.

AMBULANCE. A vehicle for the conveyance of the sick or wounded. In time of war they are considered neutral and must be respected by the belligerents. Oppenheim, Int.L. 126.

AMBULANCE CHASER. A lawyer or his agent who follows up accidents in the streets and tries to induce the injured person to sue for damages. *Kelley v. Boyne*, 239 Mich. 204, 214 N.W. 316, 318, 53 A.L.R. 273.

A popular name for one who solicits negligence cases for an attorney. In re Newell, 160 N.Y.S. 275, 278, 174 App. Div. 94. One seeking out persons and directing them to an attorney in consideration of a percentage of the recovery. In re Mitgang, 385 Ill. 52 N.E.2d 807, 816.

AMBULANCE CHASING. A term descriptive of the practice of some attorneys, on hearing of a personal injury which may have been caused by the negligence or wrongful act of another, of at once seeking out the injured person with a view to securing authority to bring action on account of the injury. *Chunes v. Duluth, W. & P. Ry. Co.*, D.C.Minn., 298 F. 964. Laymen's acquainting themselves with occurrence of accidents and approaching injured persons or their representatives with a view toward soliciting employment for an attorney in the litigation arising from the accident *State ex rel. Wright v. Hinckle*, 137 Neb. 735, 291 N.W. 68, 72.

AMBULATORIA EST VOLUNTAS DEFUNCTI USQUE AD VITAE SUPREMUM EXITUIVI. The will of a deceased person is ambulatory until the latest moment of life. Dig. 34, 4, 4.

AMBULATORY. (Lat. *ambulare*, *to walk about*). Movable; revocable; subject to change.

Ambulatoria voluntas (a changeable will) denotes the power which a testator possesses of altering his will during his life-time. *Hattersley v. Bissett*, 50 N.J.Eq. 577, 25 Atl. 332.

Courts. The court of king's bench in England was formerly called an ambulatory court, because it followed the king's person, and was held sometimes in one place and sometimes in another. So, in France, the supreme court or parliament was originally ambulatory. 3 Bl.Comm. 38, 39, 41.

A *sheriff's return* has been said to be ambulatory until it is filed. *Wilmot, J.*, 3 Burr. 1644.

AMBUSH. The noun "ambush" means (1) the act of attacking an enemy unexpectedly from a concealed station; (2) a concealed station, where troops or enemies lie in wait to attack by surprise, an ambuscade; (3) troops posted in a concealed place for attacking by surprise. The verb "ambush" means to lie in wait, to surprise, to place in ambush. *Dale County v. Gunter*, 46 Ala. 118, 142, referred to in *Darneal v. State*, 14 Okl.Cr. 540, 174 P. 290, 292, 1 A.L.R. 638.

AMELIORATING WASTE. An act of lessee, though technically constituting waste, yet in fact resulting in improving instead of doing injury to land. *J. H. Bellows Co. v. Covell*, 28 Ohio App. 277, 162 N.E. 621, 622.

AMELIORATIONS. Betterments; improvements. 6 Low.Can. 294; 9 Id. 503.

AMENABLE. Subject to answer to the law; accountable; responsible; liable to punishment. *Pickelsimer v. Glazener*, 173 N.C. 630, 92 S.E. 700, 704.

Also means tractable, that may be easily led or governed; formerly applied to a wife who is governable by her husband. *Cowell*.

AMEND. To improve. To change for the better by removing defects or faults. *Cross v. Nee*, D.C.Mo., 18 F.Supp. 589, 594. To change, correct, revise. *Texas Co. v. Fort*, 168 Tenn. 679, 80 S.W.2d 658, 660.

AMENDE HONORABLE. An apology.

In old English law, it was a penalty imposed upon a person by way of disgrace or infamy, as a punishment for any offense, or for the purpose of making reparation for any injury done to another, as the walking into church in a white sheet, with a rope about the neck and a torch in the hand, and begging the pardon of God, or the king, or any private individual, for some delinquency.

A punishment somewhat similar to this, which bore the same name, was common in France for offenses against public decency or morality. It was abolished by the law of the 25th of September, 1791; *Merlin, Répert.* In 1826 it was re-introduced in cases of sacrilege and was finally abolished in 1830.

AMENDMENT. A change, ordinarily for the better. *Musher v. Perera*, 162 Md. 44, 158 A. 14, 15. An amelioration of the thing without involving the idea of any change in substance or essence. *Van Deusen v. Ruth*, 343 Mo. 1096, 125 S.W.2d 1, 3.

Any writing made or proposed as an improvement of some principal writing. *Ex parte Woo Jan*, D.C.Ky., 228 F. 927, 941; *Couch v. Southern Methodist University*, Tex.Civ.App., 290 S.W. 256, 260.

In *legislation*, it is a modification or alteration proposed to be made in a bill on its passage, or an enacted law; also such modification or change when made. *Brake v. Callison*, C.C.Fla., 122 Fed. 722; *State v. MacQueen*, 82 W.Va. 44, 95 S.E. 666, 668.

It is to be distinguished from a "substitute for a bill." In *re Ross*, 86 N.J.Law, 387, 94 A. 304, 306. It is an alteration in the law already existing, leaving some part of the original still standing. *State ex inf. Crain ex rel. Peebles v. Moore*, 339 Mo. 492, 99 S.W.2d 17, 19. To effect an improvement or better carry out the purpose for which statute was framed. *State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 56 N.E.2d 265, 282. And it includes additions to, as well as corrections of, matters already treated. *Christian Feigenspan, Inc., v. Bodine*, D.C.N.J., 264 F. 186, 190. See, also, *State v. Fulton*, 99 Ohio St. 168, 124 N.E. 172, 175.

In *practice* it is the correction of error committed in progress of a cause. *Lintott v. McCluskey*, 105 N.J.Eq. 354, 148 A. 161, 164. The correction of an error committed in any process, pleading, or proceeding at law, or in equity, and which is done either of course, or by the consent of parties, or upon motion to the court in which the proceeding is pending. 3 Bl.Comm. 407, 448; 1 Tidd, Pr. 696. *Hardin v. Boyd*, 113 U.S. 756, 5 Sup.Ct. 771, 28 L. Ed. 1141.

An amendment to a pleading, as distinguished from a "supplemental pleading" (*q. v.*), has reference to facts existing at the time of the commencement of the action. *Fisher v. Bullock*, 198 N.Y.S. 538, 540, 204 App. Div. 523. And it is the correction of some error or mistake in a pleading already before the court. *Pantaleo v. Colt's Patent Fire Arms Mfg. Co.*, D.C.N.Y., 13 F.Supp. 989, 990.

AMENDS. A satisfaction given by a wrongdoer to the party injured, for a wrong committed. 1 Lil.Reg. 81.

AMENITY. In real property law, such circumstances, in regard to situation, outlook, access to a water course, or the like, as enhance the pleasantness or desirability of an estate for purposes of residence, or contribute to the pleasure and enjoyment of the occupants, rather than to their indispensable needs.

In England, upon the building of a railway or the construction of other public works, "amenity damages" may be given for the defacement of pleasure grounds, the impairment of riparian rights, or other destruction of or injury to the amenities of the estate.

In the law of *easements*, an "amenity" consists in restraining the owner from doing that with and on his property which, but for the grant or covenant, he might lawfully have done; sometimes called a "negative easement" as distinguished from that class of easements which compel the owner to suffer something to be done on his property by another. *Equitable Life Assur. Soc. v. Brennan*, 30 Abb.N.C. 260, 24 N.Y.Supp. 784, 788. A restrictive covenant. *South Buffalo Stores v. W. T. Grant Co.*, 274 N.Y.S. 549, 555, 153 Misc. 76.

AMENS. See Demens.

AMENTIA. Insanity; idiocy. See Insanity.

AMERALIUS. L. Lat. A naval commander, under the eastern Roman empire, but not of the highest rank; the origin, according to Spelman, of the modern title and office of admiral. Spelman.

AMERCE. To impose an amercement or fine; to punish by a fine or penalty.

AMERCEMENT. A pecuniary penalty, in the nature of a fine, imposed upon a person for some fault or misconduct, he being "in mercy" for his offense. It was assessed by the peers of the delinquent, or the affeerors, or imposed arbitrarily at the discretion of the court or the lord. *Good-year v. Sawyer*, C.C.Tenn., 17 Fed. 9.

The difference between *amercements* and *fines* is as follows: The latter are certain, and are created by some statute; they can only be imposed and assessed by courts of record; the former are arbitrarily imposed. *Termes de la Ley*, 40.

The word "amercement" has long been especially used of a mulct or penalty, imposed by a court upon its own officers for neglect of duty, or failure to pay over moneys collected. In particular, the remedy against a sheriff for failing to levy an execution or make return of proceeds of sale is, in several of the states, known as "amercement." In others, the same result is reached by process of attachment. *Abbott. Stansbury v. Mfg. Co.*, 5 N.J.Law, 441.

AMERCEMENT ROYAL. In Great Britain a penalty imposed on an officer for a misdemeanor in his office.

AMERICAN. Pertaining to the western hemisphere or in a more restricted sense to the United States. See *Beardsley v. Selectmen of Bridgeport*, 53 Conn. 493, 3 A. 557, 55 Am.Rep. 152. It was assumed in *Life Photo Film Corp. v. Bell*, 90 Misc.Rep. 469, 154 N.Y.S. 763, 764, that the term "American" included all classes of citizens, native and naturalized, irrespective of where they originally came from.

AMERICAN AGENCY SYSTEM. Its purport is that upon termination of an insurance agency, if the agent's financial obligations to the insurer are paid in full, all rights in the expiration data of existing insurance procured by the agent belong to him. *Woodruff v. Auto Owners Ins. Co.*, 300 Mich. 54, 1 N.W.2d 450, 453.

AMERICAN CLAUSE. In marine insurance, a proviso in a policy to the effect that, in case of any subsequent insurance, the insurer shall nev-

ertheless be answerable for the full extent of the sum subscribed by him, without right to claim contribution from subsequent underwriters. *American Ins. Co. v. Griswold*, 14 Wend., N.Y., 399.

AMERICAN EXPERIENCE TABLE OF MORTALITY. A series of tables dealing with life insurance, costs and values, varying according to the age of the insured, the period during which the policy has been in force, and the term of the particular policy. *Horton v. Atlantic Life Ins. Co.*, 187 S.C. 155, 197 S.E. 512, 514, 116 A.L.R. 788.

AMEUBLISSEMENT. In French law, a species of agreement which by a fiction gives to immovable goods the quality of movable. *Merl. Répert.*, 1 Low.Can. 25, 58.

AMI; AMY. A friend; as *alien ami*, an alien belonging to a nation at peace with us; *prochein ami*, a next friend suing or defending for an infant, married woman, etc.

AMICABLE. Friendly; mutually forbearing; agreed or assented to by parties having conflicting interests or a dispute; as opposed to hostile or adversary.

AMICABLE ACTION. An action brought and carried on by the mutual consent and arrangement of the parties, to obtain judgment of court on a doubtful question of law, the facts being usually settled by agreement. *Lord v. Veazie*, 8 How. 251, 12 L.Ed. 1067. See *Case Stated*.

AMIABLES COMPOSITEURS. See Amicable Compounders.

AMICABLE COMPOUNDERS. In Louisiana law and practice, amicable compounders are arbitrators authorized to abate something of the strictness of the law in favor of natural equity.

AMICABLE SCIRE FACIAS TO REVIVE A JUDGMENT. A written agreement, signed by the person to be bound by the revival, in the nature of a writ of scire facias with a confession of judgment thereon, which must be duly docketed, but which requires no judicial action on the part of the court, and which has the force and effect of a judgment rendered upon an adverse or contested writ of scire facias. *Second Nat. Bank, for Use of Federal Reserve Bank of Philadelphia, v. Faber*, 332 Pa. 124, 2 A.2d 747, 749.

AMICUS CURVE, Lat. A friend of the court.

A by-stander (usually a counsellor) who interposes and volunteers information upon some matter of law in regard to which the judge is doubtful or mistaken. *Fort Worth & D. C. Ry. Co. v. Greathouse*, Tex.Civ.App., 41 S.W.2d 418, 422; or upon a matter of which the court may take judicial cognizance. *The Claveresk*, C.C.A.N.Y., 264 F. 276, 279; *In re Perry*, 83 Ind. App. 456, 148 N.E. 163, 165. Implies friendly intervention of counsel to remind court of legal matter which has escaped its notice, and regarding which it appears to be in danger of going wrong. *Blanchard v. Boston & M. R.*, 86 N.H. 263, 167 A. 158, 160.

Also a person who has no right to appear in a suit but is allowed to introduce argument, authority, or evidence to protect his interests. *Ladue v. Goodhead*, 181 Misc. 807, 44 N.Y.S.2d 783, 787.

AMIRAL

AMIRAL. Fr. In French maritime law, admiral. Ord. de la Mar. liv. 1, tit. 1, § 1.

.NMITA. Lat. An aunt on the father's side. *Amita magna*. A great-aunt on the father's side. *Amita major*. A great-great aunt on the father's side. *Amita maxima*. A great-great-great aunt, or a great-great-grandfather's sister. Calvinus, Lex.

AMITINUS. The child of a brother or sister; a cousin; one who has the same grandfather, but different father and mother. Calvinus, Lex.

AMITTERE. Lat. In the civil and old English law, to lose. Hence the old Scotch "amitt."

AMITTERE CURIAM. To lose the court; to be deprived of the privilege of attending the court.

AMITTERE LEGEM TERRIE. To lose the protection afforded by the law of the land.

AMITTERE LIBERAM LEGEM. To lose one's frank-law.

A term having the same meaning as *amittere legem terre*, (*q. v.*) He who lost his law lost the protection extended by the law to a freeman, and became subject to the same law as thralls or serfs attached to the land.

To lose the privilege of giving evidence under oath in any court; to become infamous, and incapable of giving evidence. Glanville 2. If either party in a wager of battle cried "craven" he was condemned *amittere liberam legem*; 3 Bla.Com. 340.

AMNESIA. Loss of memory.

AMNESTY. A sovereign act of oblivion for past acts, granted by a government to all persons (or to certain persons) who have been guilty of crime or delict, generally political offenses,—treason, sedition, rebellion,—and often conditioned upon their return to obedience and duty within a prescribed time.

A general pardon or proclamation of such pardon from subjects' offenses against the government; while usually exerted in behalf of certain classes of persons, subject to trial, but not convicted, it is not confined to such cases. Commonwealth v. Hamburg Magistrate, 104 Pa.Super. 221, 158 A. 629, 631.

A declaration of the person or persons who have newly acquired or recovered the sovereign power in a state, by which they pardon all persons who composed, supported, or obeyed the government which has been overthrowt.

The word "amnesty" properly belongs to international law, and is applied *to treaties of peace following a state of war, and signifies there the burial in oblivion of the particular cause of strife, so that that shall not be again a cause for war between the parties; and this signification of "amnesty" is fully and poetically expressed in the Indian custom of burying the hatchet. And so amnesty is applied to rebellions which by their magnitude are brought within the rules of international law. It means only "oblivion," and never is a grant. Knot v. U. S., 10 Ct.Cl. 407.

Amnesty is the abolition and forgetfulness of the offense; pardon is forgiveness. Knot v. U. S., 95 U.S. 149, 152, 24 L.Ed. 442. The first is usually addressed to crimes against the sovereignty of the state, to political offenses; the second condones infractions of the peace of the state. Burdick v. United States, 236 U.S. 79, 35 S.Ct. 267, 271, 59 L.Ed. 476.

Express amnesty is one granted in direct terms.

Implied amnesty is one which results when a treaty of peace is made between contending parties. Vattel, 1, 4, c. 2, § 20.

AMONG. Mingled with or in the same group or class. Dwight Mfg. Co. v. Word, 200 Ala. 221, 75 So. 979, 983, Genung v. Best, 100 N.J.Eq. 250, 135 A. 514, 516. Intermingled with. Eddings v. Southern Dairies, D.C.S.C., 42 F.Supp. 664, 666.

Commerce *among* the states cannot stop at the external boundary line of each state. Gibbons v. Ogden, 9 Wheat. 194, 6 L.Ed. 23; Ft. Smith & W. R. Co. v. Blevins, 35 Okl. 378, 130 P. 525, 529. Where property is directed by will to be distributed *among* several persons, it cannot be all given to one, nor can any of the persons be wholly excluded from the distribution. Hudson v. Hudson, 6 Munf., Va., 352.

"Among" is sometimes held to be equivalent to "between"; Hick's Estate, 134 Pa. 507, 19 A. 705; Records v. Fields, 155 Mo. 314, 55 S.W. 1021. But "among" implies more than two objects as differentiated with "between." St. Louis Union Trust Co. v. Little, 320 Mo. 1058, 10 S.W.2d 47, 53.

AMORTISE. See Amortize.

AMORTISSEMENT. (Fr.) The redemption of a debt by a sinking fund.

AMORTIZATION. An alienation of lands or tenements in mortmain. The reduction of the property of lands or tenements to mortmain.

In its modern sense, amortization is the operation of paying off bonds, stock, a mortgage, or other indebtedness, commonly of a state or corporation, by installments, or by a sinking fund. An "amortization plan" for the payment of an indebtedness is one where there are partial payments of the principal, and accrued interest, at stated periods for a definite time, at the expiration of which the entire indebtedness will be extinguished. Bystra v. Federal Land Bank of Columbia, 82 Fla. 472, 90 So. 478, 480; Applestein v. Royalty Realty Corporation, 181 Md. 171, 28 A.2d 830, 831.

AMORTIZE. To alien lands in mortmain.

To destroy, kill, or deaden. Elliott v. U. S., D.C.Me., 16 F.2d 164, 165. See Amortization.

AMOTIO. In the civil law, a moving or taking away. "The slightest *amotio* is sufficient to constitute theft, if the *animus furandi* be clearly established." 1 Swint. 205. See Amotion.

AMOTION. A putting or turning out; dispossession of lands. Ouster is an *amotion* of possession. 3 Bl.Comm. 199, 208.

A moving or carrying away; the wrongful taking of personal chattels. Archb.Civil PLIntrod. 2, § 3.

In *corporation law*, the act of removing an officer, or official representative, of a corporation from his office or official station, before the end of the term for which he was elected or appointed, but without depriving him of membership in the body corporate. In this last respect the term differs from "disfranchisement," or expulsion. Richards v. Clarksburg, 30 W.Va. 491, 4 S.E. 774; In re Koch, 257 N.Y. 318, 178 N.E. 545, 546.

AMOUNT. The effect, substance, or result; the total or aggregate sum. *Hilburn v. Railroad Co.*, 23 Mont. 229, 58 P. 551.

The sum of principal and interest, *McCabe v. Cary's Ex'rs*, 135 Va. 428, 116 S.E. 485, 491. But see *In re Stone-man, Sur.*, 146 N.Y.S. 172, 175 (interest excluded). See, also, *Candelaria v. Gutierrez*, 28 N.M. 434, 213 P. 1037, holding that the "amount of judgment" within a statute requiring a bond for supersedeas does not include interest or costs.

AMOUNT COVERED. In insurance, the amount that is insured, and for which underwriters are liable for loss under a policy of insurance.

AMOUNT IN CONTROVERSY. The damages claimed or relief demanded; the amount claimed or sued for. *Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co.*, 239 U.S. 121, 36 S.Ct. 30, 60 L.Ed. 174; *Smith v. Giles*, 65 Tex. 341; *Wabash Ry. Co. v. Vanlandingham*, C.C.A.Mo., 53 F.2d 51.

Value of property. *Peterson v. Sucro*, C.C.A.N.C., 93 F.2d 878, 114 A.L.R. 890. Value of the property interest in trade-name. *Beneficial Industrial Loan Corporation v. Kline*, C.C.A.Iowa, 132 F.2d 520, 525. Value of the object sought to be gained by the suit. *Boesenberg v. Chicago Title & Trust Co.*, C.C.A.111., 128 F.2d 245, 246. Aggregate amount of all causes of action properly joined in action at law. *Firestone Tire & Rubber Co. v. Brent*, D.C.N.Y., 2 F.Supp. 425, 426. Contra. Plaintiffs' claims could not be aggregated for jurisdictional purposes. *Independence Shares Corporation v. Deckert*, C.C.A.Pa., 108 F.2d 51, 53.

AMOUNT IN DISPUTE. Value in money of the relief prayed for. *Finley v. Smith*, Mo.App., 170 S.W.2d 166, 170; or sought but denied, *Bushnell v. Mississippi & Fox River Drainage Dist. of Clark County*, 340 Mo. 811, 102 S.W.2d 871, 873, and includes value of thing in contest where a thing, instead of an amount, is in dispute. *Noel Estate V. Louisiana Oil Refining Corporation*, La.App., 170 So. 272, 273.

AMOUNT OF LOSS. In insurance, the diminution, destruction, or defeat of the value of, or of the charge upon, the insured subject to the assured, by the direct consequence of the operation of the risk insured against, according to its value in the policy, or in contribution for loss, so far as its value is covered by the insurance.

AMOUNT TO. To reach in the aggregate, to rise to or reach by accumulation of particular sums or quantities. *Peabody v. Forest Preserve District of Cook County*, 320 Ill. 454, 151 N.E. 271, 274.

AMOVE. To remove from a post or station. 3 C.J.S. p. 1059.

AMOVEAS MANUS. Lat. That you remove your hands.

After office found, the king was entitled to the things forfeited, either lands or personal property; the remedy for a person aggrieved was by "petition," or "*monstrans de droit*," or "*traverses*," to establish his superior right. Thereupon a writ issued, *quod manus domini regis amoveantur*. 3 Bl.Comm. 260.

AMPARO. In Spanish-American law, a document issued to a claimant of land as a protection to him, until a survey can be ordered, and the title of possession issued by an authorized commissioner. *Trimble v. Smither's Adm'r*, 1 Tex. 790.

AMPLIATION. Action of judge in merely deferring the cause for further examination constitutes "ampliation," practice in such instances being for judge to make the usual notation of non liquet. *Sonnier v. Sonnier*, 14 La.App. 588, 130 So. 133, 135.

In *civil law*, a deferring of judgment until a cause be further examined. Calvin.; Cowell. An order for the rehearing of a cause on a day appointed, for the sake of more ample information. *Halifax*, Anal. b. 3, c. 13, n. 32.

In this case, the judges pronounced the word *amplius*, or by writing the letters N. L. for non *liquet* (q. v.), signifying that the cause was not clear. It is very similar to the common-law practice of entering cur. *adv. vult* in similar cases.

In *French law*, a duplicate of an acquittance or other instrument. A notary's copy of acts passed before him, delivered to the parties.

AMPLIUS. In the Roman law, more; further; more time.

A word which the praetor pronounced in cases where there was any obscurity in a cause, and the *judices* were uncertain whether to condemn or acquit; by which the case was deferred to a day named. *Adam*, Rom. Ant. 287.

AMPUTATION OF RIGHT HAND. An ancient punishment for a blow given in a superior court; or for assaulting a judge, sitting in the court.

AMUSEMENT. Pastime; diversion; enjoyment.

A pleasurable occupation of the senses, or that which furnishes it." *Young v. Board of Trustees of Broadwater County High School*, 90 Mont. 576, 4 P.2d 725, 726,

AMY. See Ami; Prochein Ami.

AN. The English indefinite article. Equivalent to "one" or "any"; seldom used to denote plurality. *Kaufman v. Superior Court*, 115 Cal. 152, 46 Pac. 904.

AN ET JOUR. Fr. Year and day; a year and a day.

AN, JOUR, ET WASTE. In feudal law, year, day, and waste. A forfeiture of the lands to the crown incurred by the felony of the tenant, after which time the land escheats to the lord. *Termes de la Ley*, 40. See Year, Day, and Waste.

ANACRISIS. In the civil law, an investigation of truth, interrogation of witnesses, and inquiry made into any fact, especially by torture.

ANAESTHESIA. In medical jurisprudence. (1) Loss of sensation, or insensibility to pain, general or local, induced by the administration or application of certain drugs such as ether, nitrous oxide gas, or cocaine. (2) Defect of sensation, or more or less complete insensibility to pain, existing in various parts of the body as a result of certain diseases of the nervous system.

ANAGRAPH. A register, inventory, or commentary.

ANALOGOUS. Derived from the Greek *ana*, up, and *logos*, ratio. Means bearing some resem-

ANALOGOUS

blance. *Irving v. Kerlow Steel Flooring Co.*, D.C. N.J., 25 F.Supp. 901, 902.

If elements and purposes of one art are so related and similar to those of another as to make an appeal to one skilled in such art, the two arts are "analogous". *Cope-man Laboratories Co. v. General Plastics Corp.*, C.C.A.Ill., 149 F.2d 962, 963.

ANALOGY. In logic. Identity or similarity of proportion.

Where there is no precedent in point, in cases on the same subject, lawyers have recourse to cases on a different subject-matter, but governed by the same general principle. This is reasoning by analogy. Wharton.

The similitude of relations which exist between things compared. See *Smith v. State*, 63 Ala. 58.

"Analogy" does not mean identity, but implies a difference. *Sturm v. Ulrich*, C.C.A.Okl., 10 F.2d 9, 11.

ANALYTICAL JURISPRUDENCE. A theory and system of jurisprudence wrought out neither by inquiring for ethical principles or the dictates of the sentiments of justice nor by the rules which may be actually in force, but by analyzing, classifying and comparing various legal conceptions. See Jurisprudence.

ANAPHRODISIA. In medical jurisprudence, impotentia cœundi; frigidity; incapacity for sexual intercourse existing in either man or woman, and in the latter case sometimes called "dyspareunia."

ANARCHIST. One who professes and advocates the doctrines of anarchy, *q. v.* And see *Cervený v. Chicago Daily News Co.*, 139 Ill. 345, 28 N.E. 692, 13 L.R.A. 864. In the immigration statutes, it includes, not only persons who advocate the overthrow of organized government by force, but also those who believe in the absence of government as a political ideal, and seek the same end through propaganda. *Ex parte Caminita*, D.C.N.Y., 291 F. 913, 915.

ANARCHY. Absence of government; state of society where there is no law or supreme power; lawlessness or political disorder; destructive of and confusion in, government. *People v. Mintz*, 106 Cal.App. 725, 290 P. 93, 98.

At its best it pertains to a society made orderly by good manners rather than law, in which each person produces according to his powers and receives according to his needs, and at its worst, the word pertains to a terroristic resistance of all present government and social order. *State v. Schleifer*, 102 Conn. 708, 130 A. 184, 188.

Criminal anarchy as the doctrine that organized government should be overthrown by force, or by assassination of executive officers, or by any unlawful means. See *People v. Gitlow*, 183 N.Y.S. 846, 847, 111 Misc.Rep. 641, and 15 Rep. Am. Bar Assn. 210.

ANATHEMA. An ecclesiastical punishment by which a person is separated from the body of the church, and forbidden all intercourse with the members of the same.

It differs from excommunication, which simply forbids the person excommunicated from going into the church and taking the communion with the faithful.

ANATHEMATIZE. To pronounce anathema upon; to pronounce accursed by ecclesiastical authority; to excommunicate. See *Anathema*.

ANATOCISM. In the civil law, repeated or doubled interest; compound interest; usury. Cod. 4, 32, 1, 30.

ANCESTOR. One from whom a person lineally descended or may be descended; a progenitor. *Russell v. Roberts*, 54 Ohio App. 441, 7 N.E.2d 811, 814.

A former possessor; the person last seised. *Termes de la Ley*; 2 Bl.Comm. 201. A deceased person from whom another has inherited land. *Bailey v. Bailey*, 25 Mich. 185; *McCarthy v. Marsh*, 5 N.Y. 275.

For example, a child may be the "ancestor" of his parent, and an infant brother, the "ancestor" of an adult brother. Embraces collaterals as well as lineals. *Purcell v. Sewell*, 223 Ala. 73, 134 So. 476, 480. Correlative of "heir." In *re Long's Estate*, 180 Okl. 28, 67 P.2d 41, 43, 110 A.L.R. 1002.

The term differs from "predecessor," in that it is applied to a natural person and his progenitors, while the latter is applied also to a corporation and those who have held offices before those who now fill them. Co. Litt. 78b. "Ancestor" may embrace both lineals and collaterals, *Cornell v. Child*, 170 App.Div. 240, 156 N.Y.S. 449, 452, or both testator and testatrix, *Pfaffenberger v. Pfaffenberger*, 189 Ind. 507, 127 N.E. 766, 767; it may also be limited to mean immediate ancestor, In *re Simpson's Estate*, Sur., 144 N.Y.S. 1099, 1101.

ANCESTRAL. Relating to ancestors, or to what has been done by them; as *homage ancestral* (*q. v.*). Derived from ancestors.

Ancestral estates are such as are transmitted by descent, and not by purchase. 4 Kent, Comm. 404. *Brown v. Whaley*, 58 Ohio St. 654, 49 N.E. 479, 65 Am.St.Rep. 793. Or such as are acquired either by descent or by operation of law. *Gray v. Chapman*, 122 Okl. 130, 243 P. 522, 525. Realty which came to the intestate by descent or devise from a now dead ancestor or by deed of actual gift from a living one, there being no other consideration than that of blood. In *re Long's Estate*, 180 Okl. 28, 67 P.2d 41, 50, 110 A.L.R. 1002. Real estate coming to distributee by descent, gift, or devise from any kinsman. *Ward v. Ives*, 91 Conn. 12, 98 A. 337, 339. Allotments to members of Indian tribes or their heirs have been treated as an ancestral estate. *Sims v. Brown*, 46 Okl. 767, 149 P. 876, 877; *McDougal v. McKay*, 237 U.S. 372, 35 S.Ct. 605, 607, 59 L.Ed. 1001.

ANCHOR. A measure containing ten gallons.

The instrument used by which a vessel or other body is held. See *Walsh v. Dock Co.*, 77 N.Y. 448; *Reid v. Ins. Co.*, 19 Hun, N.Y., 284.

ANCHOR WATCH. A watch, consisting of a small number of men, (from one to four,) kept constantly on deck while the vessel is riding at single anchor, to see that the stoppers, painters, cables, and buoy-ropes are ready for immediate use. *The Lady Franklin*, 2 Lowell, 220, Fed.Cas. No.7,984. The lookout intrusted to one or two men when a vessel is at anchor. *O'Hara v. Luckenbach S. S. Co.*, 269 U.S. 364, 46 S.Ct. 157, 160, 70 L.Ed. 313.

ANCHORAGE. In English law, a prestation or toll for every anchor cast from a ship in a port; and sometimes, though there be no anchor. *Hale, de Jure Mar.* pt. 2, c. 6. See 1 W.B1. 413 et seq.; 4 Term. 262.

ANCIENT. Old; that which has existed from an indefinitely early period, or which by age alone has acquired certain rights or privileges accorded in view of long continuance.

ANCIENT DEED. A deed 30 years old and shown to come from a proper custody and having nothing suspicious about it. *Davis v. Wood*, 161 Mo. 17, 61 S.W. 695.

ANCIENT DEMESNE. Manors which in the time of William the Conqueror were in the hands of the crown, and are so recorded in the Domesday Book. *Fitzh. Nat. Brev.* 14, 56; *Baker v. Wich*, 1 Salk. 56.

Also a species of copyhold, which differs, however, from common copyholds in certain privileges, but yet must be conveyed by surrender, according to the custom of the manor.

There are three sorts: (1) Where the lands are held freely by the king's grant; (2) customary freeholds, which are held of a manor in ancient demesne, but not at the lord's will, although they are conveyed by surrender, or deed and admittance; (3) lands held by copy of court-roll at the lord's will, denominated copyholds of base tenure.

Tenure in *ancient demesne* may be pleaded in abatement to an action of ejectment. *Rust v. Roe*, 2 Burr. 1046.

ANCIENT DOCUMENTS. See Ancient Writings.

ANCIENT HOUSE. One which has stood long enough to acquire an easement of support against the adjoining land or building. 3 Kent, Comm. • 437; 2 Washb. Real Prop. 74, 76.

In England this term is applied to houses or buildings erected before the time of legal memory, (Cooke, Incl. Acts, 35, 109,) that is, before the reign of Richard I., although practically any house is an ancient messuage if it was erected before the time of living memory, and its origin cannot be proved to be modern.

ANCIENT LIGHTS. Lights or windows in a house, which have been used in their present state, without molestation or interruption, for twenty years, and upwards.

To these the owner of the house has a right by prescription or occupancy, so that they cannot be obstructed or closed by the owner of the adjoining land which they may overlook. *Wright v. Freeman*, 5 Har. & J., Md., 477; *Story v. Odin*, 12 Mass. 160, 7 Am. Dec. 81.

ANCIENT READINGS. Readings or lectures upon the ancient English statutes, formerly regarded as of great authority in law. Litt. § 481; Co. Litt. 280.

ANCIENT RECORDS. See Ancient Writings.

ANCIENT RENT. The rent reserved at the time the lease was made, if the building was not then under lease. *Orby v. Lord Mohun*, 2 Vern. 542.

ANCIENT SERJEANT. In English law, the eldest of the queen's serjeants.

ANCIENT STREET. The doctrine is not based upon fact that streets have existed for a long time, but is invoked when it appears that common grantor owning land comprising street in question as well as property in question and other lots has given deeds to lots bounding them by street, thereby not only dedicating the street to public

use but at same time creating private easements in the street, which cannot be taken without compensation. *Dwornick v. State*, 251 App. Div. 675, 297 N.Y.S. 409, 411.

ANCIENT WALL. A wall built to be used, and in fact used, as a party-wall, for more than twenty years, by the express permission and continuous acquiescence of the owners of the land on which it stands. *Eno v. Del Vecchio*, 4 Duer, N. Y., 53, 63. *Schneider v. 44-84 Realty Corporation*, 169 Misc. 249, 7 N.Y.S.2d 305, 309.

ANCIENT WATER COURSE. A water course is "ancient" if the channel through which it naturally runs has existed from time immemorial independent of the quantity of water which it discharges. *Earl v. De Hart*, 12 N.J.Eq. 280, 72 Am. Dec. 395.

ANCIENT WRITINGS. Documents bearing on their face every evidence of age and authenticity, of age of 30 years, and coming from a natural and reasonable official custody. *Hartzell v. U. S.*, C. C.A.Iowa, 72 F.2d 569, 579.

These are presumed to be genuine without express proof, when coming from the proper custody. *Jones v. Scranton Coal Co.*, 274 Pa. 312, 118 A. 219. Bonds more than 50 years old are admissible as ancient documents, where they are on their face free from suspicion as to their authenticity, come from the proper source, and are accompanied by some corroborating evidence. *Smythe v. Inhabitants of New Providence Tp.*, Union County, N. J., C.C.A.N.J., 263 F. 481. Only the original copy of a deed, not the record copy, can be considered as an ancient document. *Laclede Land & Improvement Co. v. Goodno*, Mo. Sup., 181 S.W. 410, 413.

ANCIENTS. In English law, gentlemen of the inns of court and chancery.

In Gray's Inn the society consists of benchers, ancients, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, those who had passed their readings used to be termed "ancients." The Inns of Chancery consist of ancients and students or clerks; from the ancients a principal or treasurer is chosen yearly. Wharton.

The *Council of Ancients* was the upper Chamber of the French legislature under the constitution of 1795, consisting of 250, each required to be at least forty years old.

ANCIENTY. Eldership; seniority. Used in the statute of Ireland, 14 Hen. VIII. Cowell.

ANCILLA. Lat. A handmaid, an auxiliary, a subordinate. *Manley v. Standard Oil Co. of Tex.*, D.C.Tex., 8 F.R.D. 354, 356.

ANCILLARY. Aiding; attendant upon; describing a proceeding attendant upon or which aids another proceeding considered as principal. In re *Stoddard*, 238 N.Y. 147, 144 N.E. 484, 486. Auxiliary or subordinate. *Johnson v. Thomas*, D.C. Tex., 16 F.Supp. 1019.

ANCILLARY ADMINISTRATION. Administration in state where decedent has property and which is other than where decedent was domiciled. *First Nat. Bank v. Blessing*, 231 Mo.App. 288, 98 S.W.2d 149, 151.

ANCILLARY ATTACHMENT. One sued out in aid of an action already brought, its only office

ANCILLARY

being to hold the property attached under it for the satisfaction of the plaintiff's demand. *Templeton v. Mason*, 107 Tenn. 625, 65 S.W. 25.

ANCILLARY BILL OR SUIT. One growing out of and auxiliary to another action or suit, either at law or in equity, such as a bill for discovery, or a proceeding for the enforcement of a judgment, or to set aside fraudulent transfers of property. *Coltrane v. Templeton*, Va., 45 C.C.A. 328, 106 F. 370. One growing out of a prior suit in the same court, dependent upon and instituted for the purpose either of impeaching or enforcing the judgment or decree in a prior suit. *Hume v. New York*, C.C.A.N.Y., 255 F. 488, 491; *Caspers v. Watson*, C.C.A.111., 132 F.2d 614, 615.

ANCILLARY JURISDICTION. "Ancillary jurisdiction" of federal court generally involves either proceedings which are concerned with pleadings, processes, records or judgments of court in principal case or proceedings which affect property already in court's custody. *Cooperative Transit Co. v. West Penn Electric Co.*, C.C.A.W.Va., 132 F.2d 720, 723. The ancillary process must be to aid, enjoin, or regulate original suit and prevent relitigation in other courts of issues heard and adjudged in such suit. *O'Brien v. Richtarsic*, D.C.N.Y., 2 F.R.D. 42, 44.

ANCILLARY PROCEEDING. One subordinate to or in aid of another primary action. *Schram v. Roney*, D.C.Mich., 30 F.Supp. 458, 46L

ANCILLARY RECEIVER. One appointed in aid of, and in subordination to, a foreign receiver for purpose of collecting and taking charge of assets, as of insolvent corporation, in the jurisdiction where he is appointed. *In re Stoddard*, 242 N.Y. 148, 151 N.E. 159, 164, 45 A.L.R. 622.

ANCIPITIS USUS. Lat. In international law, of doubtful use; the use of which is doubtful; that may be used for a civil or peaceful, as well as military or warlike, purpose. *Gro. de Jure B. lib. 3, c. 1, § 5, subd. 3; 1 Kent, Comm. 140.*

AND. A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. *Grand Trunk Western Ry. Co. v. Thrift Co.*, 68 Ind.App. 198, 116 N.E. 756, 759. Added to, together with, joined with, *Business Men's Building & Loan Ass'n v. Tumulty*, 13 N.J.Misc. 638, 180 A. 772. As well as. *Porter v. Moores*, 4 Heisk., Tenn., 16. Including. *Finch v. Hunter*, 148 Ark. 482, 230 S. W. 553, 554. "And also," *Carter v. Keesling*, 130 Va. 655, 108 S.E. 708, 713. Sometimes construed as "or." *Land & Lake Ass'n v. Conklin*, 182 App. Div. 546, 170 N.Y.S. 427, 428.

It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same

subject matter. While it is said that there is no exact synonym of the word in English, it has been defined to mean "along with", "also", "and also", "as well as", "besides", "together with". *Oliver v. Oliver*, 286 Ky. 6, 149 S.W.2d 540, 542.

When expression "and/or" is used, that word may be taken as will best effect the purpose of the parties as gathered from the contract taken as a whole, or, in other words, as will best accord with the equity of the situation. *Bobrow v. U. S. Casualty Co.*, 231 App.Div. 91, 246 N.Y.S. 363, 367.

The symbol "&c" indicates things of like character, with the things enumerated just before it. *Fleck v. Harmstad*, 304 Pa. 302, 155 A. 875, 878, 77 A.L.R. 874. It has been recognized as "sanctioned by age and good use." *Brown v. State*, 16 Tex.App. 245. And was constantly used by Lord Coke without a suggestion from any quarter that it is not English; *Berry v. Osborn*, 28 N.H. 279.

ANDROCHIA. In old English law, a dairy-woman. *Fleta*, lib. 2, c. 87.

ANDROGYNUS. A hermaphrodite.

ANDROLEPSY. The taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former. *Wolffius*, § 1164; *Moll. de Jure Mar.* 26.

ANDROMANIA. Nymphomania. 44 C.J.S. *Insane Persons* § 2, p. 19.

ANDROPHONOMANIA. Homicidal insanity.

ANECIUS. L. Lat. Spelled also *cesnecius*, *enitius*, *ceneas*, *eneyus*, Fr. *aisne*. The eldest-born; the first-born; senior, as contrasted with the *puis-nó* (younger). *Spelman*.

ANEURISM, or ANEURYSM. A sac formed by the dilatation of the weakened walls of an artery, usually resulting in a soft pulsating tumor. 3 *Words and Phrases*, Perm. Ed.

ANEW. To try a case or issue "anew" or "de novo" implies that the case or issue has been heard before. *Gaiser v. Steele*, 25 Idaho, 412, 137 P. 889, 890.

ANGARIA. A term used in the Roman law to denote a forced or compulsory service exacted by the government for public purposes; as a forced rendition of labor or goods for the public service; in particular, the right of a public officer to require the service of vehicles or ships. See *Dig.* 50, 4, 18, 4.

In *feudal law*, any troublesome or vexatious personal service paid by the tenant or villein to his lord. *Spelman*.

In *maritime law*, a forced service (*onus*) imposed on a vessel for public purposes; an impressment of a vessel. *Locc. de Jure Mar. lib. 1, c. 5, §§ 1-6.* See *Angary*, *Right Of*.

ANGARY, RIGHT OF. In international law, formerly the right (*jus angarice*) claimed by a belligerent to seize merchant vessels in the harbors of the belligerent and to compel them, on payment of freight, to transport troops and supplies to a designated port. 2 *Opp.* 446.

At the present day, the right of a belligerent to appropriate, either for use, or for destruction in

case of necessity, neutral property temporarily located in his own territory or in that of the other belligerent. The property may be of any description whatever, provided the appropriation of it be for military or naval purposes.

ANGEL. An ancient English coin, of the value of ten shillings sterling. Jacob.

ANGER. A strong passion of the mind excited by real or supposed injuries; not synonymous with "heat of passion," "malice," or "rage or resentment," because these are all terms of wider import and may include anger as an element or as an incipient stage. *Hoffman v. State*, 97 Wis. 571, 73 N.W. 51.

ANGILD. In Saxon law, the single value of a man or other thing; a single weregild (*q. v.*); the compensation of a thing according to its single value or estimation. Spelman. The double gild or compensation was called "*twigild*," the triple, "*trigild*," etc. Id. See Angylde.

When a crime was committed, before the Conquest, the angild was the money compensation that the person who had been wronged was entitled to receive. Maitl. *Domesday Book & Beyond* 274.

ANGINA PECTORIS. Violent paroxysm of pain arising frequently from some disease of the coronary arteries, and is manifestation of disease rather than recognized disease in itself. *Foster v. Borough of State College*, 124 Pa.Super. 492, 189 A. 786, 789.

ANGLESCHERIA. In old English law, Englishery; the fact of being an Englishman.

ANGLIZE JURA IN OMNI CASU LIBERTATIS DANT FAVOREM. The laws of England in every case of liberty are favorable, (favor liberty in all cases.) Fortes. c. 42.

ANGLICE. In English, a term formerly used in pleading when a thing is described both in Latin and English, inserted immediately after the Latin and as an introduction of the English translation.

ANGLING. Derived from noun "angle," meaning a fishhook; tackle for catching fish, consisting of a line, hook, and bait, with or without a rod. Catching fish by rod, line and hook, or by line and hook. *State v. Mears*, 213 Ind. 257, 12 N.E.2d 343, 344.

ANGLO—INDIAN. An Englishman domiciled in the Indian territory of the British crown.

ANGORA GOAT. A more or less degenerate goat, known as the "Cape Angora," produced by breeding the original Angora with the Cape Colony goat, whose hair is shown to be dealt in, used, and known as mohair, is an "Angora goat" within the meaning of that expression in Schedule K, par. 305, Tariff Act of 1913. *U. S. v. Beadenkopf Co.*, 8 Ct.Cust.App. 283, 284.

ANGUISH. Extreme pain of body or mind; excruciating distress. *Carson v. Thompson*, Mo.

App., 161 S.W.2d 995, 1000. Agony, but, as used in law, particularly mental suffering or distress of great intensity. *Cook v. Railway Co.*, 19 Mo.App. 334. It is not synonymous with inconvenience, annoyance, or harassment. *Western Union Telegraph Co. v. Stewart*, Ala.App. 502, 79 So. 200, 201.

ANGYLDE. In Saxon law, the rate fixed by law at which certain injuries to person or property were to be paid for; in injuries to the person, it seems to be equivalent to the "were," *i. e.*, the price at which every man was valued. It seems also to have been the fixed price at which cattle and other goods were received as currency, and to have been much higher than the market price, or *ceapgild*. Wharton. See Angild.

AN'HLOTE. In old English law, a single tribute or tax, paid according to the custom of the country as scot and lot.

ANIENS, or ANIENT. Null, void, of no force or effect. Fitzh. *Nat.Brev.* 214. See Anniented.

ANIMAL. Any animate being which is endowed with the power of voluntary motion. An animate being, not human. *Bernardine v. City of New York*, 182 Misc. 609, 44 N.Y.S.2d 881, 883.

Domestic animals are tame as distinguished from wild; living in or near the habitations of man or by habit or special training in association with man. *Thurston v. Carter*, 112 Me. 361, 92 A. 295, L.R.A.1915C, 359.

Domitce are those which have been tamed by man; domestic.

Fera3 naturce are those which still retain their wild nature.

Mansuetce naturce are those gentle or tame by nature, such as sheep and cows.

ANIMALS OF A BASE NATURE. Animals in which a right of property may be acquired by reclaiming them from wildness, but which, at common law, by reason of their base nature, are not regarded as possible subjects of a larceny. 3 Inst. 109; 1 Hale, P.C. 511, 512.

Some animals which are now usually tamed come within this class, as dogs and cats; and others which, though wild by nature and often reclaimed by art and industry, clearly fall within the same rule, as bears, foxes, apes, monkeys, ferrets, and the like; 1 Hawk.Pl.Cr. 33, § 36; 4 Bla.Com. 236; 2 East, Pl.Cr. 614. See 1 Wms.Saund. 84, note 2.

ANIMALIA FERA, SI FACTA SINT MANSUETA ET EX CONSUECUDINE EUNT ET REDEUNT, VOLANT ET REVOLANT, UT CERVI, CYGNI, ETC., EO USQUE NOSTRA SUNT, ET ITA INTELLIGUNTUR QUAMDIU HABUERUNT ANIMUM REVERTENDI. Wild animals, if they be made tame, and are accustomed to go out and return, fly away and fly back, as stags, swans, etc., are considered to belong to us so long as they have the intention of returning to us. 7 Coke, 16.

ANIMO. Lat. With intention, disposition, design, will. *Quo animo*, with what intention. *Animo cancellandi*, with intention to cancel. 1 Pow.Dev. 603. *Furandi*, with intention to steal. 4 Bl.Comm. 230; 1 Kent, Comm. 183. *Lucrandi*, with intention to gain or profit. 3 Kent, Comm. 357. *Manendi*,

ANIMO

with intention to remain. 1 Kent, Comm. 76. *Morandi*, with intention to stay, or delay. *Republi-candi*, with intention to republish. 1 Pow.Dev. 609. *Revertendi*, with intention to return. 2 Bl. Comm. 392. *Revocandi*, with intention to revoke. 1 Pow.Dev. 595. *Testandi*, with intention to make a will. See Animus and the titles which follow it.

ANIMO ET CORPORE. By the mind, and by the body; by the intention and by the physical act. Dig. 50, 17, 153; Id. 41, 2, 3, 1; Fleta, lib. 5, c. 5, §§ 9, 10

ANIMO FELONICO. With felonious intent. Hob. 134.

ANIMUS. Lat. Mind; intention; disposition; design; will. *Animo (q. v.)*, with the intention or design. These terms are derived from the civil law.

ANIMUS AD SE OMNE JUS DUCIT. It is to the intention that all law applies. Law always re-gards the intention.

ANIMUS CANCELLANDI. The intention of de-destroying or canceling, (applied to wills).

ANIMUS CAPIENDI. The intention to take or capture. 4 C.Rob.Adm. 126, 155.

ANIMUS DEDICANDI. The intention of donating or dedicating.

ANIMUS DEFAMANDI. The intention of defam-ing. The phrase expresses the malicious intent which is essential in every case of verbal injury to render it the subject of an action for libel or slander.

ANIMUS DERELINQUENDI. The intention of abandoning. 4 C.Rob.Adm. 216. Rhodes v. White-head, 27 Tex. 304, 84 Am.Dec. 631.

ANIMUS DIFFERENDI. The intention of obtain-ing delay.

ANIMUS DONANDI. The intention of giving. Ex-pressive of the intent to give which is necessary to constitute a gift.

ANIMUS ET FACTUM. To constitute a change of domicile, there must be an "animus et factum"; the "factum" being a transfer of the bodily pres-ence, and the "animus" the intention of residing permanently or for indefinite period. Hayward v. Hayward, 65 Ind.App. 440, 115 N.E. 966, 970. See Animus Manendi.

ANIMUS ET FACTUS. Intention and act; will and deed. Used to denote those acts which be-come effective only when accompanied by a par-ticular intention.

ANIMUS FURANDI. Intent to steal, or to felon-i-ously deprive the owner permanently of his prop-erty. Jones v. Commonwealth, 172 Va. 615, 1 S.E. 2d 300, 301.

ANIMUS HOMINIS EST ANIMA SCRIPT!. The intention of the party is the soul of the instrument.

9 Bulst. 67; Pitm. Prin. & Sur. 26. In order to give life or effect to an instrument, it is essential to look to the intention of the individual who exe-cuted it.

ANIMUS LUCRANII. The intention to make a gain or profit.

ANIMUS MANENDI. The intention of remaining; intention to establish a permanent residence. 1 Kent, Comm. 76. This is the point to be settled in determining the domicile or residence of a party. Id. 77. See Animus et Factum.

ANIMUS MORANDI. The intention to remain, or to delay.

ANIMUS POSSIDENDI. The intention of pos-sessing.

ANIMUS QUO. The intent with which.

ANIMUS RECIPIENDI. The intention of receiv-ing.

ANIMUS RECUPERANDI. The intention of re-coversing. Locc. de Jure Mar. lib. 2, c. 4, § 10.

ANIMUS REPUBLICANDI. The intention to re-publish.

ANIMUS RESTITUENDI. The intention of re-storing. Fleta, lib. 3, c. 2, § 3.

ANIMUS REVERTENDI. The intention of re-turning.

A man retains his domicile if he leaves it animo *revertendi*. In re Miller's Estate, 3 Rawle (Pa.) 312. 24 Am.Dec. 345; 4 Bl. Comm. 225; 2 Russ. Crimes, 18; Poph. 42, 52; 4 Coke, 40. Also, a term employed in the civil law, in expressing the rule of ownership in tamed animals.

ANIMUS REVOCANDI. The intention to revoke.

ANIMUS SIGNANDI. Intention to sign instru-ment as and for a will. Hamlet v. Hamlet, 183 Va. 453, 32 S.E.2d 729, 732.

ANIMUS TESTANDI. Intention or serious pur-pose to make will. In re Kemp's Will, Del., 7 W. W.Harr. 514, 186 A. 890, 894.

ANKER. A measure containing ten gallons.

ANN. In Scotch law, half a year's stipend, over and above what is owing for the incumbency, due to a minister's relict, or child, or next of kin, after his decease. Whishaw.

ANNA. In East Indian coinage, a piece of money, the sixteenth part of a rupee.

ANNALES. Lat. Annuals; a title formerly given to the Year Books.

In old records. Yearlings; cattle of the first year. Cowell.

ANNALS. Masses said in the Romish church for the space of a year or for any other time, either for the soul of a person deceased, or for the bene-fit of a person living, or for both. Aylif. Parerg.

ANNALY. In Scotch law, to alienate; to convey.

ANNATES. In ecclesiastical law, first-fruits paid out of spiritual benefices to the Pope, so called because the value of one year's profit was taken as their rate.

ANNEX. Derived from the Latin "annectere," meaning to tie or bind to. To attach, and often, specifically, to subjoin. In re Annexation to City of Easton of Tract of Land in Williams Tp., Northampton County, 139 Pa.Super. 146, 11 A.2d 662, 664. To add to; to unite. The word expresses the idea of joining a smaller or subordinate thing with another, larger, or of higher importance. Waterbury Lumber & Coal Co. v. Asterchinsky, 87 Conn. 316, 87 A. 739, 740, Ann.Cas. 1916B, 613. To consolidate, as school districts. Evans v. Hurlburt, 117 Or. 274, 243 P. 553, 554. To make an integral part of something larger.

It implies physical connection or physically joined to, yet physical connection may be dispensed with, and things may be annexed without being in actual contact, when reasonably practicable. Elliott Common School Dist. No. 48 v. County Board of School Trustees, Tex.Civ.App., 76 S.W.2d 786, 789.

In the law relating to *fixtures*, the expression "annexed to the freehold" means fastened to or connected with it; mere juxtaposition, or the laying of an object, however heavy, on the freehold, does not amount to annexation. Merritt v. Judd, 14 Cal. 64.

ANNEXATION. The act of attaching, adding, joining, or uniting one thing to another; generally spoken of the connection of a smaller or subordinate thing with a larger or principal thing.

The attaching an illustrative or auxiliary document to a deposition, pleading, deed, etc., is called "annexing" it. So the incorporation of newly-acquired territory into the national domain, as an integral part thereof, is called "annexation," as in the case of the addition of Texas to the United States.

In the law relating to *fixtures*: *Actual annexation* includes every movement by which a chattel can be joined or united to the freehold. *Constructive annexation* is the union of such things as have been holden parcel of the realty, but which are not actually annexed, fixed, or fastened to the freehold. Shep.Touch. 469; Amos & F. Fixt. 2.

Scotch Law

The union of lands to the crown, and declaring them inalienable. Also the appropriation of the church-lands by the crown, and the union of lands lying at a distance from the parish church to which they belong, to the church of another parish to which they are contiguous.

ANNI ET TEMPORA. Lat. Years and terms. An old title of the Year Books.

ANNI NUBILES. A woman's marriageable years. The age at which a girl becomes by law fit for marriage; the age of twelve.

ANNICULUS. A child a year old. Calvinus, Lex.

ANNICULUS TRECENTESIMO SEXAGESIMO-QUINTO DIE DICITUR, INCIPIENTE PLANE NON EXACTO DIE, QUIA ANNUM CIVILITER NON AD MOMENTA TEMPORUM SED AD DIES NUMERAMUR. We call a child a year old on the three hundred and sixty-fifth day, when the day is fairly begun but not ended, because we calculate the civil year not by moments; but by days. Dig. 50, 16, 134; Id. 132; Calvin.

ANNIENTED. Made null, abrogated, frustrated, or brought to nothing. Litt. c. 3, § 74L Cf. Aniens.

ANNIVERSARY. An annual day, in old ecclesiastical law, set apart in memory of a deceased person. Also called "year day" or "mind day." Spelman.

As applied to an insurance policy, "anniversary" means yearly recurring date of the policy, Mid-Continent Life Ins. Co. v. Skye, 113 Okl. 184, 240 P. 630, 632, or perhaps the date of the delivery thereof, Jefferson Standard Life Ins. Co. v. Baker, Tex.Civ.App., 260 S.W. 223, 225.

ANNO DOMINI. In the year of the Lord. Commonly abbreviated A. D. The computation of time, according to the Christian era, dates from the birth of Christ.

ANNONA. Barley; corn; grain; food; a yearly contribution of food, of various kinds, for support.

Annona porcum, acorns; *annonna frumentum hordeo admixtum*, corn and barley mixed; *annonna panis*, bread without reference to the amount. Du Cange; Spelman, Gloss. ; Cowell.

The term is used in the old English law, and also in the civil law quite generally, to denote anything contributed by one person towards the support of another.

ANNONIE CIVILES. A species of yearly rents issuing out of certain lands, and payable to certain monasteries.

ANNOTATIO. In the civil law, the sign-manual of the emperor; a rescript of the emperor, signed with his own hand. It is distinguished both from a rescript and pragmatic sanction, in Cod. 4, 59, 1.

ANNOTATION. A remark, note, or commentary on some passage of a book, intended to illustrate its meaning. Webster.

In the *civil law*, an imperial rescript (see Rescript) signed by the emperor. The answers of the prince to questions put to him by private persons respecting some doubtful point of law. Also summoning an absentee. Dig. 1, 5. And the designation of a place of deportation. Dig. 32, 1, 3.

ANNOUNCED. A decision is "announced," preventing nonsuit, when court's conclusion on issue tried is made known from bench or by any publication, oral or written, even if judgment has not been rendered. Ex parte Alabama Marble Co., 216 Ala. 272, 113 So. 240, 242.

ANNOYANCE. Discomfort; vexation. Not synonymous with anguish, inconvenience, or harassment. Western Union Telegraph Co. v. Stewart, 16 Ala.App. 502, 79 So. 200, 201. "Annoyance and inconvenience" relate as much to physical as to mental conditions. Chicago, I. & L. Ry. Co. v. Ader, 184 Ind. 235, 110 N.E. 67, 69. It includes feeling of imposition and oppression Alabama Water Service Co. v. Wakefield, 231 Ala. 112, 163 So. 626.

ANNUA. NEC DEBITUM JUDEX NON SEPARAT IPSUM. A judge (or court) does not divide annuities nor debt. 8 Coke, 52; 1 Salk. 36, 65. Debt and annuity cannot be divided or apportioned by a court.

ANNUA PENSIONE. An ancient writ to provide the king's chaplain, if he had no preferment, with a pension. Reg.Orig. 165, 307.

ANNUAL. Of or pertaining to year; returning every year; coming or happening yearly. *Payne v. Gypsy Oil Co.*, 129 Okl. 18, 263 P. 138, 140. Occurring or recurring once in each year; continuing for the period of a year; accruing within the space of a year; relating to or covering the events or affairs of a year. *State v. McCullough*, 3 Nev. 224. Once a year, without signifying what time in year. *Rolerson v. Standard Life Ins. Co.*, Tex.Civ.App., 244 S.W. 845, 846.

ANNUAL AMOUNT. The annual amount of contribution at the rate at which deceased was contributing to support of partial dependents, at the time of his injury, regardless of whether that rate had existed for a year or more or for less than a year. *Spreckles Sugar Co. v. Industrial Acc. Commission*, 186 Cal. 256, 199 P. 8.

ANNUAL ASSAY. An annual trial of the gold and silver coins of the United States, to ascertain whether the standard fineness and weight of the coinage is maintained. See Rev.St.U.S. § 3547 (31 U.S.C.A. § 363).

ANNUAL AVERAGE EARNINGS. Include both the earnings from a seasonal occupation and also the actual earnings for the remainder of the year from whatever occupation they may have been received, provided the nonseasonal income is limited to employments of the same class and is measured by the wages of the injured employee, or those similarly employed, as the facts may require, whenever the feature of nonseasonal employment is involved *Dicaro v. Fitzgibbon*, 249 App.Div. 38, 291 N.Y.S. 764, 767.

ANNUAL DEPRECIATION. The annual loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. The annual loss in service value not restored by current maintenance and incurred in connection with the consumption or prospective retirement of property in the course of service from causes known to be in current operation, and whose effect can be forecast with a reasonable approach to accuracy. *State v. Hampton Water Works Co.*, 91 N.H. 278, 18 A.2d 765, 770.

ANNUAL PENSION. In Scotch law, a yearly profit or rent.

ANNUAL RENT. In Scotch law, yearly interest on a loan of money.

ANNUAL SALARY. Does not refer to salary by calendar years, but by the years of incumbent's

term, according to time of year when term commences, and salary must be calculated for year as a whole. *State ex rel. Harvey v. Linville*, 318 Mo. 698, 300 S.W. 1066, 1067.

ANNUAL VALUE. The net yearly income derivable from a given piece of property; its fair rental value for one year, deducting costs and expenses; the value of its use for a year.

ANNUALLY. In annual order or succession; yearly, every year, year by year. *Upham v. Shattuck*, 151 Kan. 966, 101 P.2d 901, 903. At end of each and every year during a period of time. *Patterson v. McNeeley*, 16 Ohio St. 348. Imposed once a year, computed by the year. *People ex rel. Mutual Trust Co. v. Westchester County v. Miller*, 177 N.Y. 51, 69 N.E. 124, 125.

ANNUITANT. The recipient of an annuity; one who is entitled to an annuity.

ANNUITIES OF TIENDS. In Scotch law, annuities of tithes; 10s. out of the boll of tiend wheat, 8s. out of the boll of beer, less out of the boll of rye, oats, and peas, allowed to the crown yearly of the tiends not paid to the bishops, or set apart for other pious uses.

ANNUITY. A yearly payment of money for life or years. *State ex rel. Chamberlain v. Johnstone*, 65 N.D. 727, 262 N.W. 193. Or in fee, and chargeable only on the person of the grantor. *Co.Litt. 144b.* A fixed sum, granted or bequeathed, payable periodically but not necessarily annually. *Wilkin v. Board of Com'rs of Oklahoma County*, 77 Okl. 88, 186 P. 474, 475; *Fate v. Fate*, 295 Ill. App. 271, 14 N.E.2d 890, 892. A legacy payable by installments. *In re Beach's Estate*, 203 N.Y.S. 492, 494, 122 Misc.Rep. 261. Also, the right to receive such periodical amount. *Daniel v. Life Ins. Co. of Virginia*, Tex.Civ.App., 102 S.W.2d 256, 259.

It is distinguished from an "income," in that the latter is interest or profits to be earned. *Grand Rapids Trust Co. v. Herbst*, 220 Mich. 321, 190 N.W. 250, 252. Too, it is chargeable on the person merely, and so far personality; while a rent-charge is something reserved out of realty, or fixed as a burden upon an estate in land. 2 B1.Comm. 40; *Rolle*, Abr. 226; *Horton v. Cook*, 10 Watts (Pa.) 127, 36 Am. Dec. 151.

The contract of *annuity* is that by which one party delivers to another a sum of money, and agrees not to reclaim it so long as the receiver pays the rent agreed upon. This annuity may be either perpetual or for life. See *Succession of Vidalat*, 155 La. 1005, 99 So. 801, 802.

The name of an action, now disused, (L. Lat. *breve de annuo redditu*), which lay for the recovery of an annuity. Reg.Orig. 158b; Bract. fol. 203b; 1 Tidd, Pr. 3.

ANNUITY POLICY. An insurance policy providing for monthly payments to insured to begin at fixed date and continue through insured's life. *Hamilton v. Penn Mut. Life Ins. Co.*, 196 Miss. 345, 17 So.2d 278, 280.

ANNUITY-TAX. An impost levied annually in Scotland for the maintenance of the ministers of religion.

ANNUL. To reduce to nothing; annihilate; obliterate; to make void or of no effect; to nullify; to abolish; to do away with. *Ex parte Mitchell*, 123 W.Va. 283, 14 S.E.2d 771, 774. To cancel; destroy; abrogate. To annul a judgment or judicial proceeding is to deprive it of all force and operation, either *ab initio* or prospectively as to future transactions. *In re Morrow's Estate*, 204 Pa. 484, 54 A. 342.

It is not a technical word and there is nothing which prevents the idea from being expressed in equivalent words; *Woodson v. Skinner*, 22 Mo. 24.

ANNULMENT. Act of annulling; act of making void retrospectively as well as prospectively. *Deihl v. Jones*, 170 Tenn. 217, 94 S.W.2d 47, 48.

Action for divorce is distinguished from one for annulment, in that "divorce action" is predicated on valid marriage and decree terminates relationship from date thereof, while "annulment" destroys existence of void or voidable marriage and everything appertaining thereto from the beginning. *Wigder v. Wigder*, 14 N.J.Misc. 880, 188 A. 235, 236.

ANNULUS. Lat. In old English law, a ring; the ring of a door. *Per haspam vel annulum hostii exterioris*; by the hasp or ring of the outer door. *Fleta*, lib. 3, c. 15, § 5.

ANNULUS ET BACULUS. (Lat. ring and staff.) The investiture of a bishop was *per annulum et baculum*, by the prince's delivering to the prelate a ring and pastoral staff, or crozier. 1 Bl.Comm. 378; *Spelman*.

ANNUM, DIEM, ET VASTUM. See Year, Day, and Waste.

ANNUS. Lat. In civil and old English law, a year; the period of three hundred and sixty-five days. Dig. 40, 7, 4, 5; *Calvin.*; *Bract. fol.* 359b.

ANNUS DELIBERANDI. In Scotch law, a year of deliberating; a year to deliberate. The year allowed by law to the heir to deliberate whether he will enter and represent his ancestor. It commences on the death of the ancestor, unless in the case of a posthumous heir, when the year runs from his birth. *Bell*.

ANNUS, DIES, ET VASTUM. In old English law, year, day, and waste. See Year, Day, and Waste.

ANNUS EST MORA MOTUS QUO SUUM PLANETA PERVOLVAT CIRCULUM. A year is the duration of the motion by which a planet revolves through its orbit. Dig. 40, 7, 4, 5; *Calvin.*; *Bract.* 359b.

ANNUS ET DIES. A year and a day.

ANNUS INCEPTUS PRO COMPLETO HABETUR. A year begun is held as completed. *Tray. Lat.Max.* 45.

ANNUS LUCTUS. The year of mourning. It was a rule among the Romans, and also the Danes and Saxons, that widows should not marry *infra annum luctus*, (within the year of mourning.) *Cod.* 5, 9, 2; 1 Bl.Comm. 457,

ANNUS UTILIS. A year made up of available or serviceable days. *Brissonius*; *Calvin*. In the plural, *anni utiles* signifies the years during which a right can be exercised or a prescription grow. In prescription, the period of incapacity of a minor, etc., was not counted; it was no part of the *anni utiles*.

ANNUUS REDITUS. A yearly rent; annuity. 2 Bl.Comm. 41; *Reg.Orig.* 158b.

ANOMALOUS. Deviating from common rule; irregular; exceptional; abnormal. *Palmer v. Palmer*, *Woolf & Gray*, 183 La. 458, 164 So. 245, 247. Unusual; not conforming to rule, method, or type.

ANOMALOUS INDORSER. A stranger to a note, who indorses it after its execution and delivery but before maturity, and before it has been indorsed by the payee. *Buck v. Hutchins*, 45 Minn. 270, 47 N.W. 808.

ANOMALOUS PLEA. One which is partly affirmative and partly negative. *Baldwin v. Elizabeth*, 42 N.J.Eq. 11, 6 A. 275; *Potts v. Potts*, N.J.Ch., 42 A. 1055.

ANON., AN., A. Abbreviations for anonymous.

ANONYMOUS. Nameless; wanting a name or names. A publication, withholding the name of the author, is said to be anonymous. An anonymous letter is one that has no name signed. *Belk v. State*, 102 Tex.Cr.R. 561, 278 S.W. 842.

Cases are sometimes reported anonymously, i. e., without giving the names of the parties. Abbreviated to "*Anon.*"

An anonymous society in the Mexican code is one which has no firm name and is designated by the particular designation of the object of the undertaking.

ANOTHER. Additional. *Harelson v. South San Joaquin Irr. Dist.*, 20 Cal.App. 324, 128 P. 1010, 1011. Distinct or different. *Hammell v. State*, 198 Ind. 45, 152 N.E. 161, 163; *Ex parte Lyman*, D.C.Wash., 202 F. 303, 304.

ANOTHER ACTION PENDING. See *Auter Action Pendant*.

ANOYSANCE. Annoyance; nuisance. *Cowell*; *Kelham*.

ANSEL, ANSUL, or AUNCCEL. In old English law, an ancient mode of weighing by hanging scales or hooks at either end of a beam or staff, which, being lifted with one's finger or hand by the middle, showed the equality or difference between the weight at one end and the thing weighed at the other. *Termes de la Ley*, 66.

ANSWER. As a verb, the word denotes an assumption of liability, as to "answer" for the debt or default of another.

Pleading

Strictly speaking, it is a pleading by which defendant in suit at law endeavors to resist the plaintiff's demand by an allegation of facts, either denying allegations of plaintiff's complaint or

ANSWER

confessing them and alleging new matter in avoidance, which defendant alleges should prevent recovery on facts alleged by plaintiff. In re Herle's Will, 173 Misc. 879, 19 N.Y.S.2d 263, 265.

In chancery pleading, the term denotes a defense in writing, made by a defendant to the allegations contained in a bill or information filed by the plaintiff against him.

In pleading, under the Codes of Civil Procedure, the answer is the formal written statement made by a defendant setting forth the grounds of his defense; corresponding to what, in actions under the common-law practice is called the "plea." But as used in a statute providing that defendant must appear and answer the petition, "answer" refers to any sort of pleading filed by defendant. State ex rel. Oliver Hast Auction Co. v. Grimm, 197 Mo.App. 566, 196 S.W. 1019, 1021. Cross-complaint. Celina Mut. Casualty Co. v. Baldridge, 213 Ind. 193, 12 N.E.2d 258, 260. Counterclaim. Long v. Mutual Trust Life Ins. Co., 191 Minn. 163, 253 N.W. 762. Motion to quash service of summons. Phillips v. Manufacturers Trust Co., C.C. A.Idaho, 101 F.2d 723, 727. Objections by contestants to petition for probate of will. In re Swim's Will, 258 N.Y.S. 458, 144 Misc. 206. Objections to executor's final report. Meier v. Union Trust Co. of Indianapolis, 93 Ind.App. 457, 176 N.E. 42, 51. Demurrer. Evans v. Superior Court in and for Los Angeles County, 14 Cal.App.2d 743, 59 P.2d 159, 160, contra. Mariner v. Milisich, 45 Nev. 193, 200 P. 478.

In Massachusetts, the term denotes the statement of the matter intended to be relied upon by the defendant in avoidance of the plaintiff's action, taking the place of special pleas in bar, and the general issue, except in real and mixed actions. Pub.St.Mass.1882, p. 1287.

In matrimonial suits in the (English) probate, divorce, and admiralty division, an answer is the pleading by which the respondent puts forward his defense to the petition. Browne, Div. 223.

Under the old admiralty practice in England, the defendant's first pleading was called his "answer." Williams & B. Adm. Jur. 246.

Frivolous answer. See Sham Answer, *infra*.

An *irrelevant answer* is one that has no substantial relation to the controversy;—distinguishable from a sham answer. Rosatti v. Common School Dist. No. 96 of Cass County, 53 N.D. 268, 205 N.W. 678, 679.

A *sham answer* is one sufficient on its face but so clearly false that it presents no real issue to be tried. Bank of Richards, Mo., v. Sheasgreen, 153 Minn. 363, 190 N.W. 484. One good in form, but false in fact and not pleaded in good faith. Burkhalter v. Townsend, 139 S.C. 324, 138 S.E. 34, 36. A frivolous answer, on the other hand, is one which on its face sets up no defense, although it may be true in fact.

A *voluntary answer*, in chancery, was an answer put in by a defendant, when plaintiff had filed no interrogatories which required to be answered. Hunt, Eq.

Practice

A reply to interrogatories; an affidavit in answer to interrogatories. The declaration of a fact by a witness after a question has been put, asking for it.

ANTAPOCHA. In the Roman law, a transcript or counterpart of the instrument called "*apocha*" (*q. v.*), signed by the debtor and delivered to the creditor. Calvin.

ANTE. Lat. Before. Usually employed in old pleadings as expressive of time, as *prce* (before) was of place, and *coram* (before) of person. Townsh.Pl. 22.

Occurring in a report or a text-book, it is used to refer the reader to a previous part of the book.

ANTE EXHIBITIONEM BILLJE. Before the exhibition of the bill. Before suit begun.

ANTE-FACTIUM, or ANTE-GESTUM. Done before. A Roman law term for a previous act, or thing done before.

ANTE JURAMENTUM. See Antejuramentum.

ANTE LITEM MOTAM. At time when declarant had no motive to distort truth, In re Hayden's Estate, 176 Misc. 1078, 29 N.Y.S.2d 852, 856. Before suit brought, before controversy instituted. Also, before the controversy arose. Corbett v. Hawes, 187 N.C. 653, 122 S.E. 478, 479.

ANTE MORTEM INTEREST. Interests existing only prior to, and not after, transferor's death. Cairins v. Martin, 130 N.J.Eq. 313, 22 A.2d 415, 419.

ANTE NATUS. Born before. A person born before another person or before a particular event.

The term is particularly applied to one born in a country before a revolution, change of government or dynasty, or other political event, such that the question of his rights, *status*, or allegiance will depend upon the date of his birth with reference to such event. In England, the term *Commonly* denotes one born before the act of union with Scotland; in America, one born before the declaration of independence. Its opposite is *post natus*, one born after the event.

ANTEA. Lat. Formerly; heretofore.

ANTECEDENT. Prior in point of time. Turner v. State, 84 Tex.Cr.R. 267, 206 S.W. 689.

ANTECEDENT CREDITORS. Those whose debts are created before the debtor makes a transfer not lodged for record. Stone v. Keith, 218 Ky. 11, 290 S.W. 1042, 1043.

ANTECESSOR. An ancestor (*q. v.*).

ANTEDATE. To affix an earlier date; to date an instrument as of a time before the time it was written.

ANTEJURAMENTUM. In Saxon law, a preliminary or preparatory oath (called also "*prcejuramentum*," and "*juramentum calumnie*," (*q. v.*), which both the accuser and accused were required to make before any trial or purgation; the accuser swearing that he would prosecute the criminal, and the accused making oath on the very day that he was to undergo the ordeal that he was innocent of the crime with which he was charged. Whishaw.

ANTENATI. See Ante Natus.

ANTENNA. In wireless telegraphy, the wire in the air on the tall mast is called the "antenna." National Electric Signaling Co. v. Telefunken Wireless Telegraph Co. of United States, C.C.A. N.Y., 221. F. 629, 631. A wire, or a combination of wires, supported in the air for directly transmitting electric waves into space, or receiving them therefrom. Webster, Diet.

ANTENUPTIAL. Made or done before a marriage.

ANTENUPTIAL CONTRACT. A contract made before marriage. Agreement in contemplation of marriage, *Hewett v. Gott*, 294 P. 897, 901, 132 Kan. 168, called a marriage contract.

ANTENUPTIAL SETTLEMENTS. Contracts or agreements between a man and woman before marriage, but in contemplation and generally in consideration of marriage, whereby the property rights and interests of either the prospective husband or wife, or both of them, are determined, or where property is secured to either or both of them, or to their children. In *re Carnevale's Will*, 248 App.Div. 62, 289 N.Y.S. 185, 188.

ANTHRACITE COAL. "Anthracite coal" differs from bituminous coal in the amount of fixed carbon, the amount of volatile matter, color, luster, and structural character. The percentage of fixed carbon in anthracite coal is much higher and the percentage of volatile matter is much lower than in bituminous coal. Anthracite coal is hard, compact and is comparatively clean and free from dust and is commonly termed "hard coal," and burns with practically no smoke. *Commonwealth v. Hudson Coal Co.*, 287 Pa. 64, 134 A. 413, 414.

ANTHRACNOSE. A disease of watermelons caused by parasitic fungus capable of puncturing and invading tissues of rind and sometimes of pulp within fruit. *S. L. Shepard & Co. v. Agwelines, Inc.*, C.C.A.S.C., 130 F.2d 67, 69.

ANTHRACOSIS. A type of pneumoconiosis due to inhalation of coal dust. *Allen v. Shell Petroleum Corporation*, 146 Kan. 67, 68 P.2d 651, 657.

ANTHRAX. Also called splenic fever, carbuncular fever, malignant pustule, charbon, and wool-sorters' disease. An acute, infectious disease of animals, especially cattle, swine, and sheep, and transmissible to human beings. *Century Dict.*; *Bacon v. United States Mut. Acc. Ass'n*, 123 N.Y. 304, 25 N.E. 399, 400, 9 L.R.A. 617.

ANTHROPOMETRY. In criminal law and medical jurisprudence. The measurement of the human body; a system of measuring the dimensions of the human body, both absolutely and in their proportion to each other, the facial, cranial, and other angles, the shape and size of the skull, etc., for purposes of comparison with corresponding measurements of other individuals, and serving for the identification of the subject in cases of doubtful or disputed identity. It was largely adopted after its introduction in France in 1883, but fell into disfavor as being costly and as liable to error. It has given place to the "finger print" system devised by Francis Galton. See *Bertillon System*.

ANTI MANIFESTO. A term used in international law to denote a proclamation or manifesto published by one of two belligerent powers, alleging reasons why the war is defensive on its part.

ANTI-TRUST ACTS. Federal and state statutes to protect trade and commerce from unlawful re-

straints and monopolies. *U. S. v. Knight Co.*, 15 S.Ct. 249, 156 U.S. 1, 39 L.Ed. 325; *U. S. v. New York Great Atlantic & Pacific Tea Co.*, C.C.A.Tex., 137 F.2d 459. See, also, *Restraint of Trade*.

Clayton Act, Oct. 15, 1914 as amended, 15 U.S.C.A. §§ 12-27, 44; 18 U. S. C. A. § 412; 28 U. S. C. A. §§ 381-383, 386-390; 29 U.S.C.A. § 52.

Sherman Anti-Trust Act, July 2, 1890, as amended, 15 U. S.C.A. §§ 1-7, 15 note.

ANTICHRESIS. In the civil law. A species of mortgage, or pledge of immovables. An agreement by which the debtor gives to the creditor the income from the property which he has pledged, in lieu of the interest on his debt. *Guyot, Repert*; *Marquise De Portes v. Hurlbut*, 44 N.J.Eq. 517, 14 A. 891. It is analogous to the Welsh mortgage of the common law. In the French law, if the income was more than the interest, the debtor was entitled to demand an account of the income, and might claim any excess.

A debtor may give as security for his debt any immovable which belongs to him, the creditor having the right to enjoy the use of it on account of the interest due, or of the capital if there is no interest due; this is called "antichresis." *Civ. Code Mex. art. 1927*.

By the law of Louisiana, there are two kinds of pledges,—the pawn and the antichresis. A pawn relates to movables, and the antichresis to immovables. The antichresis must be reduced to writing; and the creditor thereby acquires the right to the fruits, etc., of the immovables, deducting yearly their proceeds from the interest, in the first place, and afterwards from the principal of his debt. He is bound to pay taxes on the property, and keep it in repair, unless the contrary is agreed. The creditor does not become the proprietor of the property by failure to pay at the agreed time, and any clause to that effect is void. He can only sue the debtor, and obtain sentence for sale of the property. The possession of the property is, however, by the contract, transferred to the creditor. *La.Civil Code, Arts. 3176-3181*; *Livingston v. Story*, 11 Pet. 351, 9 L.Ed. 746.

The "antichresis" is an antiquated contract, and has been resorted to in Louisiana in but a few instances. *Harang v. Ragan*, 134 La. 201, 63 So. 875, 877. Essential element of contract, *Conklin v. Caffall*, 179 So. 434, 437, 438, 439, 189 La. 301.

ANTICIPATION. Act of doing or taking a thing before its proper time, *Wilmington Trust Co. v. Wilmington Trust Co.*, 25 Del.Ch. 193, 15 A.2d 665, 668, 669. To do, take up, or deal with, before another; to preclude or prevent by prior action; to be before in doing, *State ex rel. Todd v. Thomas*, 127 Neb. 891, 257 N.W. 265, 96 A.L.R. 1470.

In conveyancing, the act of assigning, charging, or otherwise dealing with income before it becomes due.

In patent law, a person is said to have been anticipated when he patents a contrivance already known within the limits of the country granting the patent. *Topliff v. Topliff*, 12 S.Ct. 825, 145 U. S. 156, 36 L.Ed. 658.

ANTICIPATION

An unsuccessful attempt to achieve a particular purpose is not "anticipation". *Swan Carburetor Co. v. Nash Motors Co.*, D.C.Md., 25 F.Supp. 24, 34. The test being whether patentee has added anything of value to the sum of human knowledge, whether he has made the world's work easier, cheaper, and safer, so that return to prior art would be a retrogression. *Butler v. Burch Plow Co.*, C.C.A.Cal., 23 F.2d 15, 24. But invention is not "anticipated" by accidental, incidental or unintentional use of some of its features, unless the benefits or ensuing results from such use are appreciated or recognized. *Balaban v. Polyfoto Corporation*, D.C.Del., 47 F.Supp. 472, 477, 478.

In law of negligence, "anticipation" is not confined to expectation. *Kenney v. Wong Len*, 81 N.H. 427, 128 A. 343, 344. But compare *Hardy v. Missouri Pac. R. Co.*, C.C.A.Ark., 266 F. 860, 863, 36 A.L.R. 1. It means probability not possibility as applied to duty to anticipate consequences of conduct attacked as negligent. *Empire Dist. Electric Co. v. Harris*, C.C.A.Mo., 82 F.2d 48, 52.

ANTICIPATORY BREACH OF CONTRACT. See Breach of Contract.

ANTIGRAPHUS. In Roman law. An officer whose duty it was to take care of tax money. A comptroller.

ANTIGRAPHY. A copy or counterpart of a deed.

ANTINOMIA. In Roman law. A real or apparent contradiction or inconsistency in the laws. Merl. Répert. Conflicting laws or provisions of law; inconsistent or conflicting decisions or cases.

ANTINOMY. A term used in logic and law to denote a real or apparent inconsistency or conflict between two authorities or propositions; same as *antinomia* (*q. v.*).

ANTIQUA CUSTUMA. In English law. Ancient custom. An export duty on wool, woelfells, and leather, imposed during the reign of Edw. I. It was so called by way of distinction from an increased duty on the same articles, payable by foreign merchants, which was imposed at a later period of the same reign and was called "*custuma nova*." 1 Bl.Comm. 314.

ANTIQUA STATUTA. Also called "*Vetera Statuta*." English statutes from the time of Richard I. to Edward III. 1 Reeve, Eng.Law, 227. See *Nova Statuta*.

ANTIQUARE. In Roman law. To restore a former law or practice; to reject or vote against a *new* law; to prefer the old law. Those who voted against a proposed law wrote on their ballots the letter "A," the initial of *antiquo*, I am for the old law. Calvin.

ANTIQUUM DOMINICUM. In old English law. Ancient demesne.

ANTITHETARIUS. In old English law. A man who endeavors to discharge himself of the crime of which he is accused, by retorting the charge on the accuser. He differs from an approver in this: that the latter does not charge the accuser, but others. Jacob.

ANTRUSTIO. In early feudal law. A confidential vassal. A term applied to the followers or de-

pendents of the ancient German chiefs, and of the kings and counts of the Franks. Burrill.

ANUELS LIVRES. L. Fr. The Year Books. Kelham.

ANY. Some; one out of many; an indefinite number. *State v. Pierson*, 204 Iowa 837, 216 N. W. 43, 44. One indiscriminately of whatever kind or quantity. *Federal Deposit Ins. Corporation v. Winton*, C.C.A.Tenn., 131 F.2d 780, 782. One or some (indefinitely). *Slegel v. Siegel*, 135 N.J.Eq. 5, 37 A.2d 57, 58. "Any" does not necessarily mean only one person, but may have reference to more than one or to many. *Doherty v. King*, Tex.Civ. App., 183 S.W.2d 1004, 1007. As a synonym for "some". *Kayser v. Occidental Life Ins. Co. of California*, 234 Iowa 310, 12 N.W.2d 582, 587.

It is often synonymous with "either", *State v. Antonio*, 3 Brev. (S.C.) 562; *Carr-Lowry Lumber Co. v. Martin*, 144 Miss. 106, 109 So. 849, 850. And is given the full force of "every" or "all", *Glen Alden Coal Co. v. City of Scranton*, 282 Pa. 45, 127 A. 307, 308; *Southern Ry. Co. v. Gaston County*, 200 N.C. 780, 158 S.E. 481. Its generality may be restricted by the context, *Drainage Dist. No. 1 of Bates County v. Bates County*, Mo.Sup., 216 S.W. 949, 953. Thus, the giving of a right to do some act "at any time" is commonly construed as meaning within a reasonable time. *Paulson v. Weeks*, 80 Or. 468, 157 P. 590, 592, Ann.Cas. 1918D, 741. And the words "any other" following the enumeration of particular classes are to be read as "other such like," and include only others of like kind or character. *Southern Ry. Co. v. Columbia Compress Co.*, C.C.A.S.C., 280 F. 344, 348.

ANYTHING. Sometimes used colloquially in the sense of whatever. *Pittsburgh Plate Glass Co. v. H. Neuer Glass Co.*, C.C.A.Ohio, 253 F. 161, 164.

AORTA. The large artery of the body, about one and a half inches in diameter, through which blood is carried away from heart to be ultimately distributed to various parts of body. It is composed of three layers, an inner coat called the "intima," a middle coat called the "media," and an outer coat called the "adventia." *Woelfle Connecticut Mut. Life Ins. Co. of Hartford, Conn.*, 234 Mo.App. 135, 112 S.W.2d 865, 870.

APANAGE. In old French law. A provision of lands or feudal superiorities assigned by the kings of France for the maintenance of their younger sons. An allowance assigned to a prince of the reigning house for his proper maintenance out of the public treasury. 1 Hallam, Mid. Ages, pp. ii, 88; Wharton.

APARTMENT. A part of a house occupied by a person, while the rest is occupied by another, or others. As to the meaning of this term, see *People v. St. Clair*, 38 Cal. 137.

APARTMENT HOTEL. Generally understood to apply to those houses which contain nonhouse-keeping apartments without a kitchen or cooking

facilities, wherein the proprietor furnishes a restaurant for feeding the occupants of the different apartments. *Waite Const. Co. v. Chase*, 188 N.Y. S. 589, 591, 197 App.Div. 327. A covenant prohibiting erection of an "apartment house" does not prohibit an apartment hotel containing one, two, and three room suites without kitchens or kitchenettes. *Griswold Realty & Holding Corporation v. West End Avenue & Seventy-Fifth St. Corporation*, 209 N.Y.S. 764, 766, 125 Misc. 30.

APARTMENT HOUSE. A building arranged in several suites of connecting rooms, each suite designed for independent housekeeping, but with certain mechanical conveniences, such as heat, light, or elevator services, in common to all families occupying the building. *Konick v. Champneys*, 108 Wash. 35, 183 P. 75, 77, 6 A.L.R. 459. Sometimes called a flat or flat house. *Lignot v. Jaekle*, 72 N.J.Eq. 233, 65 A. 221. It comes within the prohibition of a restrictive building covenant forbidding buildings designed for any purpose other than a private dwelling house. *Taylor v. Lambert*, 279 Pa. 514, 124 A. 169, 170. But it is not a "hotel." *Satterthwait v. Gibbs*, 288 Pa. 428, 135 A. 862, 864. A house for two families has been held to be an "apartment house" within a restrictive covenant. *Austin v. Richardson*, Tex.Com. App., 288 S.W. 180, 181.

An "apartment house" is not a hotel, but is a building used as a dwelling for several families, each living separate and apart. *Peirce v. Kelner*, 304 Pa. 509, 156 A. 61, 62. It is not a number of private dwellings, built one on another, but a collection of dwellings. A place for housing a number of people grouped in families assigned to different sections in the same structure. *Fox v. Sumerson*, 338 Pa. 545, 13 A.2d 1, 2.

APARTMENT HOUSE HI—JACKER. One who takes possession of an insolvent or abandoned apartment house business, collects as much rent as possible in advance and pays no bills of any kind, thus seriously affecting, if not destroying, the good will of the business *Thompson v. Du-bois*, 215 Cal. 577, 11 P.2d 862, 863.

APATISATIO. An agreement or compact. *Du Cange*.

APERTA BREVIA. Open, unsealed writs.

APERTUM FACTUM. An overt act.

APERTURA' TESTAMENTI. In the civil law. A form of proving a will, by the witnesses acknowledging before a magistrate their having sealed it.

APEX. The summit or highest point of anything; the top; *e. g.*, in mining law, "apex of a vein." See *Larkin v. Upton*, 12 S.Ct. 614, 144 U.S. 19, 36 L.Ed. 330. An "apex" is all that portion of a terminal edge of a mineral vein from which the vein has extension downward in the direction of the dip. *Stewart Mining Co. v. Ontario Mining Co.*, 35 S.Ct. 610, 614, 237 U.S. 350, 59 L.Ed. 989. Or it is the juncture of two dipping limbs of a fissure vein. *Jim Butler Tonopah Mining Co. v. West End Consol. Mining Co.*, 38 S.Ct. 574, 576, 247 U.S. 450, 62 L.Ed. 1207.

The apex of ore vein or lode is ascent along line of its dip or outcropping, beyond which it extends no further to surface of land. *Brugger v. Lee Yim*, 12 Cal.App.2d 38, 55 P.2d 564, 571.

APEX JURIS. The summit of the law; a legal subtlety; a nice or cunning point of law; close technicality; a rule of law carried to an extreme point, either of severity or refinement. A term used to denote a stricter application of the rules of law than is indicated by the phrase *summum jus* (*q. v.*).

APEX RULE. In mining law. The mineral laws of the United States give to the locator of a mining claim on the public domain the whole of every vein the apex of which lies within his surface exterior boundaries, or within perpendicular planes drawn downward indefinitely on the planes of those boundaries; and he may follow a vein which thus apexes within his boundaries, on its dip, although it may so far depart from the perpendicular in its course downward as to extend outside the vertical side-lines of his location, but he may not go beyond his end-lines or vertical planes drawn downward therefrom. This is called the apex rule. *Rev.St.U.S. § 2322* (30 U.S.C.A. § 26); *Stewart Mining Co v. Ontario Mining Co.*, 23 Idaho, 724, 132 P. 787, 792.

APHASIA. In medical jurisprudence. Loss of the faculty or power of articulate speech; a condition in which the patient, while retaining intelligence and understanding and with the organs of speech unimpaired, is unable (in "motor aphasia") to utter articulate words, or unable to vocalize the particular word which is in his mind and which he wishes to use, or utters words different from those he believes himself to be speaking, or (in "sensory aphasia" or apraxia) is unable to understand spoken or written language. *Sensory aphasia* includes *word blindness* and *word deafness*, visual and auditory aphasia. *Motor aphasia* often includes *agraphia*, or the inability to write words of the desired meaning. The seat of the disease is in the brain, but it is not a form of insanity.

APHONIA. In medical jurisprudence. Loss of the power of articulate speech in consequence of morbid conditions of some of the vocal organs. It may be incomplete, in which case the patient can whisper. It is to be distinguished from congenital dumbness, and from temporary loss of voice through extreme hoarseness or minor affections of the vocal cords, as also from aphasia, the latter being a disease of the brain without impairment of the organs of speech.

APICES JURIS NON SUNT JURA [JUS]. Extremities, or mere subtleties of law are not rules of law [are not law]. *Co.Litt. 304b*; 10 Coke, 126; *Wing.Max. 19*, max. 14; *Broom, Max. 188*. Legal principles must not be carried to their extreme consequences, regardless of equity and good sense. *Salmond, Jurispr. 639*. See *Apex Juris*.

APICES LITIGANDI. Extremely fine points, or subtleties of litigation. Nearly equivalent to the

modern phrase "sharp practice." "It is unconscionable in a defendant to take advantage of the *apices litigandi*, to turn a plaintiff around and make him pay costs when his demand is just." Per Lord Mansfield, in 3 Burr. 1243.

APNEA. In medical jurisprudence. Want of breath; difficulty in breathing; partial or temporary suspension of respiration; specifically, such difficulty of respiration resulting from over-oxygenation of the blood, and in this distinguished from "asphyxia" (q. v.), which is a condition resulting from a deficiency of oxygen in the blood due to suffocation or any serious interference with normal respiration. The two terms were formerly (but improperly) used synonymously.

APOCHA (also *Apoca*). Lat. In the civil law. A writing acknowledging payments; acquittance. It differs from acceptance in this: that acceptance imports a complete discharge of the former obligation whether payment be made or not; *apocha*, discharge only upon payment being made. Calvin. See Antapocha.

APOCHIE ONERATORLE. In old commercial law. Bills of lading.

APOCRISARIUS. In civil law. A messenger; an ambassador.

In ecclesiastical law. One who answers for another. An officer whose duty was to carry to the emperor messages relating to ecclesiastical matters, and to take back his answer to the petitioners. An officer who gave advice on questions of ecclesiastical law. An ambassador or legate of a pope or bishop. Spelman.

A messenger sent to transact ecclesiastical business and report to his superior; an officer who had charge of the treasury of a monastic edifice; an officer who took charge of opening and closing the doors. Du Cange; Spelman; Calvinus, Lex.

APOCRISARIUS CANCELLARIUS. In the civil law. An officer who took charge of the royal seal and signed royal dispatches.

Called, also, *secretarius*, *consiliarius* (from his giving advice); *referendarius*; *a consiliis* (from his acting as counsellor); *a responsis*, or *responsalis*.

APOGEAN TIDES. When moon is farthest from earth, its tide-producing power is diminished and tides at such time exhibit a decreased rise and fall, and such tides are called "apogean tides." Miller v. Bay-To-Gulf, 141 Fla. 452, 193 So. 425, 428.

APOGRAPHIA. In civil law. An examination and enumeration of things possessed; an inventory. Calvinus, Lex.

APOPLEXY. In medical jurisprudence. The failure of consciousness and suspension of voluntary motion from suspension of the functions of the cerebrum.

The group of symptoms arising from rupture of a minute artery and consequent hemorrhage into the substance of the brain or from the lodg-

ment of a minute clot in one of the cerebral arteries.

The symptoms consist usually of sudden loss of consciousness, muscular relaxation, lividity of the face and slow stertorous respiration, lasting from a few hours to several days. Death frequently ensues. If consciousness returns, there is found paralysis of some of the voluntary muscles, very frequently of the muscles of the face, arm, and leg upon one side, giving the symptom of hemiplegia. There is usually more or less mental impairment, which presents no uniform character, but varies indefinitely.

By apoplexy is meant a break or rupture of a blood vessel in the brain, not produced by any external cause. Robinson v. /Etna Life Ins. Co., Tex.Com.App., 276 S.W. 900, 902.

APOSTACY (also spelled *Apostasy*). In English law. The total renunciation of Christianity, by embracing either a false religion or no religion at all. This offense can take place only in such as have once professed the Christian religion. 4 Bl.Comm. 43; 4 Steph.Comm. 231.

APOSTATA. In civil and old English law. An apostate; a deserter from the faith; one who has renounced the Christian faith. Cod. 1, 7; Reg.Orig. 71b.

APOSTATA CAPIENDO. An obsolete English writ which issued against an apostate, or one who had violated the rules of his religious order. It was addressed to the sheriff, and commanded him to deliver the defendant into the custody of the abbot or prior. Reg.Orig. 71, 267; Jacob; Wharton.

APOSTILLE, Appostille. L. Fr. An addition; a marginal note or observation. Kelham.

APOSTLES. In English admiralty practice. A term borrowed from the civil law, denoting brief dismissory letters granted to a party who appeals from an inferior to a superior court, embodying a statement of the case and a declaration that the record will be transmitted.

This term is still sometimes applied in the admiralty courts of the United States to the papers sent up or transmitted on appeals.

APOSTOLI. In civil law. Certificates of the inferior judge from whom a cause is removed, directed to the superior. Dig. 49, 6. See Apostles.

Those sent as messengers. Spelman, Gloss.

APOSTOLUS. A messenger; an ambassador, legate, or nuncio. Spelman.

APOTHECA. In the civil law. A repository; a place of deposit, as of wine, oil, books, etc. Calvin.

APOTHECARY. Any person who keeps a shop or building where medicines are compounded or prepared according to prescriptions of physicians, or where medicines are sold. Com. v. Fuller, 2 Walk. (Pa.) 550.

In England and Ireland an apothecary is a member of an inferior branch of the medical profession and is licensed by the Apothecaries Company to practice medicine as well as to sell drugs.

The term "druggist" properly means one whose occupation is to buy and sell drugs without compounding or preparing them. The term therefore has a much more limited and restricted meaning than the word "apothecary," and there is little difficulty in concluding that the term "druggist" may be applied in a technical sense to persons who buy and sell drugs. *State v. Donaldson*, 41 Minn. 74, 42 N.W. 781.

APP. CT. Appellate Court.

APPARATOR. A furnisher or provider. Formerly the sheriff, in England, had charge of certain county affairs and disbursements, in which capacity he was called "*apparator comitatus*" (apparator for the county), and received therefor a considerable emolument. Cowell.

APPARATUS. An outfit of tools, utensils, or instruments adapted to accomplishment of any branch of work or for performance of experiment or operation. *McClintock & Irvine Co. v. Etna Explosives Co.*, 260 Pa. 191, 103 A. 622, 623, Ann. Cas. 1918E, 1078. A group or set of organs concerned in performance of single function. *First State Bank of Perkins v. Pulliam*, 112 Okl. 22, 239 P. 595, 596. A generic word of the most comprehensive significance which may mean implements and an equipment of things provided, and adapted as a means to some end. *Bruce v. Sibeck*, 25 Cal.App.2d 691, 78 P.2d 741, 743.

As used in statutes granting exemption from execution, etc., "apparatus" means a complex device or machine designed for the accomplishment of a special purpose; a complex instrument or appliance, mechanical or chemical, for a specific action or operation; machinery; mechanism; as a newspaper printing press, *Harris v. Townley*, Tex. Civ.App., 161 S.W. 5; or four pool tables, *Harris v. Todd*, Tex. Civ.App., 158 S.W. 1189; but not a threshing outfit, *Corner v. Powell*, Tex. Civ.App., 189 S.W. 88, 91; nor a well-drilling rig, consisting of boiler, engine, and other parts of complicated machinery, *Thresher v. McEvoy*, Tex. Civ. App., 193 S.W. 159, 160. In *re Willis*, D.C. Tex., 292 F. 872, 873, it was said that the term "apparatus" is practically synonymous with "tools."

APPAREL. The term is said to derive from two sources, "apparel" from the Latin "ad," meaning to, and "par," meaning equal, to point out the means by which outwardly one keeps even or in line with his group or class. In *re Steimes' Estate*, 270 N.Y.S. 339, 150 Misc. 279 (a will case).

APPARENT. That which is obvious, evident, or manifest; what appears, or has been made manifest; appearing to the eye or mind. *Walker v. John Smith*, T., 199 Ala. 514, 74 So. 451, 453; In respect to facts involved in an appeal or writ of error, that which is stated in the record. An error discovered by close scrutiny of the entire evidence is not "apparent." *Stewart v. McAllister*, Tex. Civ.App., 209 S.W. 704, 706.

"Apparent" means "open to view," "capable of being easily understood," "evident," "seeming," rather than "true" or "real," "synonymous with," "likely," "probable," or "obvious" and as meaning primarily, "capable of being seen or easily seen,"

"open to view," "visible to the eye," "within sight or view," and, secondarily, "clear or manifest to the understanding," "plain," "evident," "obvious," "known," "palpable," "indubitable," while "indubitable" has been defined as meaning "certain" or "unquestionable," which is synonymous with "sure." *Stevenson v. State*, Del., 1 Terry 268, 8 A.2d 914, 915 (in statute requiring driver to stop after automobile accident).

The word "apparent" within rule that use of realty must be apparent to create easement by implication on severance of unity of ownership of dominant and servient tenements does not necessarily mean "visible", but means that easement's indicia, careful inspection of which by person ordinarily conversant with subject would disclose such use, must be plainly visible. *Romanchuk v. Plotkin*, 215 Minn. 156, 9 N.W.2d 421, 425.

APPARENT AGENCY, See Agency.

APPARENT AUTHORITY. In the law of agency, such authority as the principal knowingly permits the agent to assume, or which he holds the agent out as possessing; such authority as he appears to have by reason of the actual authority which he has; such authority as a reasonably prudent man, using diligence and discretion, in view of the principal's conduct, would naturally suppose the agent to possess. *Iowa Loan & Trust Co. v. Seaman*, 203 Iowa 310, 210 N.W. 937, 940; *Kissell v. Pittsburgh, Ft. W. & C. Ry. Co.*, 194 Mo.App. 346, 188 S.W. 1118, 1121; *Brager v. Levy*, 122 Md. 554, 90 A. 102, 104; *Atto v. Saunders*, 77 N.H. 527, 93 A. 1037, 1039; *Campbell Paint & Varnish Co. v. Ladd Furniture & Carpet Co.*, Tex. Civ.App., 83 S.W.2d 1095, 1097; *Humble Oil & Refining Co. v. Wood*, Tex. Civ.App., 94 S.W.2d 573, 574.

It includes the power to do whatever is usually done and necessary to be done in order to carry into effect the principal power conferred. *Oliver v. United States Fidelity & Guaranty Co.*, 176 N.C. 598, 97 S.E. 490, 491. Such authority as a principal intentionally or by want of ordinary care causes or allows third person to believe that agent possesses. *Fireman's Fund Indemnity Co. v. Longshore Beach and Country Club, Inc.*, 127 Conn. 493, 18 A.2d 347, 349.

It is not actual authority and may often be authority not actually possessed by agent, but is such as principal holds agent out as possessing. *Northwestern Mut. Life Ins. Co. v. Steckel*, 216 Iowa 1189, 250 N.W. 476; *Herbert v. Langhoff*, La.App., 164 So. 262, 266.

"Apparent authority" of an agent must be determined by what the principal does, rather than by acts of the agent. *Grismore v. Consolidated Products Co.*, 232 Iowa 328, 5 N.W.2d 646, 651.

It must be traceable to the principal and cannot be established solely by acts and conduct of agent, and principal is only liable for the appearance of authority caused by him. *Storms v. United Grain & Millworkers' Union*, 64 Ohio App. 19, 27 N.E.2d 781, 783.

APPARENT DANGER. As used with reference to the doctrine of self-defense in homicide, means such overt actual demonstration, by conduct and acts, of a design to take life or do some great personal injury, as would make the killing apparently necessary to self-preservation. *Modesett v. Emmons*, Tex. Com.App., 292 S.W. 855, 856.

Under a statute providing that it shall not be a defense to an action for injuries to an employee that the dangers

APPARENT

inherent or apparent in the employment contributed to the injury, an "apparent danger" is one the existence of which the employee has knowledge, actual or constructive. *Standard Steel Car Co. v. Martinecz*, 66 Ind.App. 672, 113 N.E. 244, 248.

APPARENT DEFECTS. In a thing sold, are those which can be discovered by simple inspection. Code La. art. 2497 (Civil Code, § 2521). See, also, *Woolley v. Ablah*, 119 Kan. 380, 240 P. 266, 269.

APPARENT EASEMENT. See Easement.

APPARENT HEIR. In English law. One whose right of inheritance is indefeasible, provided he outlive the ancestor. 2 Bl.Comm. 208. See, also, Heir Apparent. In Scotch law. He is the person to whom the succession has actually opened. He is so called until his regular entry on the lands by service or infetment on a precept of *Clare constat*.

APPARENT NECESSITY. In actions under the Alabama Homicide Act, "apparent necessity" which will justify killing in self-defense must be such as to impress a reasonable man of its presence and imminence, and must so impress defendant at the time of the fatal shot. *Drummond v. Drummond*, 212 Ala. 242, 102 So. 112, 114.

APPARITIO. In old practice. Appearance; an appearance. *Apparitio in iudicio*, an appearance in court. Bract. fol. 344. *Post apparitionem*, after appearance. Fleta, lib. 6, c. 10, § 25.

APPARITOR. An officer or messenger employed to serve the process of the spiritual courts in England and summon offenders. Cowell.

In the civil law. An officer who waited upon a magistrate or -superior officer, and executed his commands. Calvin.; Cod. 12, 53-57.

APPARLEMENT. In old English law. Resemblance; likelihood; as apparlement of war. St. 2 Rich. II. st. 1, c. 6; Cowell.

APPARURA. In old English law the apparura were furniture, implements, tackle, or apparel. *Carucarum apparura*, plow-tackle. Cowell.

APPEAL. In civil practice. The complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse.

The removal of a cause from a court of inferior to one of superior jurisdiction, for the purpose of obtaining a review and retrial. *Hall v. Kincaid*, 64 Ind.App. 103, 115 N.E. 361, 365. *Lea County State Bank v. McCaskey Register Co.*, 39 N.M. 454, 49 P.2d 577, 579.

In general terms a resort to an upper court or tribunal. *State ex rel. School Dist. No. 8 v. Lensman*, 108 Mont. 118, 88 P.2d 63, 65. A rehearing by a superior court on both law and fact, a process of civil law origin, and the usual and appropriate mode of review for cases originating in a court of equity. *Sohland v. Baker*, 15 Del.Ch. 431, 141 A. 277, 283, 58 A.L.R. 693.

The word "appeal" has no absolutely fixed and definite meaning but may be used to denote the review by a court of the action of some board or administrative officer. In re *Determination of Relative Rights to Use of Waters of Deschutes River*, 108 P.2d 276, 281, 282, 165 Or. 435. An "appeal" is a creature of statute, not a constitutional or inherent right. *Carilli v. Hersey*, 303 Mass. 82, 20 N.E.2d 492, 495. It is merely a continuation of original lawsuit. *Bowersock v. Missouri Valley Drainage Dist. of Holt County*, 237 Mo.App. 346, 168 S.W.2d 479, 481. *Patterson v. Old Dominion Trust Co.*, 149 Va. 597, 140 S.E. 810, 813. It has become a term of general application in law, with meaning depending on statutory provisions respecting appellate procedure. *Cino v. Driscoll*, 130 N.J.L. 535, 34 A.2d 6, 8.

Appeal is sometimes used to denote the nature of appellate jurisdiction, as distinguished from original jurisdiction, without any particular regard to the mode by which a cause is transmitted to a superior jurisdiction. *Dorris Motor Car Co. v. Colburn*, 307 Mo. 137, 270 S.W. 339, 346. "Appeal" has no conclusive meaning, and it is necessary in each instance to look to the particular act giving an appeal, to determine powers to be exercised by the appellate court. *McCauley v. Imperial Woolen Co.*, 261 Pa. 312, 104 A. 617, 620.

The fundamental difference between an "appeal" and an action to "review" is that in the case of appeal the tribunal by which the first determination was made is not a party to the proceeding to review, while, in an action to review, the tribunal which made the determination is a party to the proceeding to review. *Milwaukee County v. Industrial Commission*, 228 Wis. 94, 279 N.W. 655, 657, 658.

An "appeal" in equity is a trial de novo. *Simmons v. Stern*, C.C.A.N.M., 9 F.2d 256, 259.

"Appeal" may also be used to denote the act of invoking another judicial forum for the trial. *Newell v. Kalamazoo Circuit Judge*, 215 Mich. 153, 183 N.W. 907, 908. See *Appealed*. As used in statutes authorizing taxpayers or parties to condemnation proceedings to appeal, the term often has its nontechnical sense meaning to "apply for" or "ask." *Purcell Bank & Trust Co. of Purcell v. Byars*, 66 Okl. 70, 167 P. 216, 218.

An "appeal" is a step in a judicial proceeding, and in legal contemplation there can be no appeal where there has been no decision by a judicial tribunal. Two things are essential to an appeal in its proper sense: First, the decision of a judicial tribunal, and, second, a superior court invested with authority to review the decision of the inferior tribunal. *People ex rel. Nelson Bros. Storage & Furniture Co. v. Fisher*, 273 Ill. 228, 25 N.E.2d 785, 787.

"Appeal" differs from trial in that it is a review on original record after that has been made in accordance with well-recognized principles of judicial procedure. *Koucky v. Weber*, 277 N.Y.S. 39, 154 Misc. 659.

In criminal practice. A formal accusation made by one private person against another of having committed some heinous crime. 4 Bl. Comm. 312.

Appeal was also the name given to the proceeding in English law where a person, indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed*, or accused others, his accomplices in the same crime, in order to obtain his pardon. In this case he was called an "approver" or "prover," and the party appealed or accused, the "appellee." 4 Bl. Comm. 330. Appeals have been abolished by statute.

Cross Appeal

Where both parties to a judgment appeal therefrom, the appeal of each is called a "cross-appeal" as regards that of the other. 3 Steph. Comm. 581.

Legislation

The act by which a member of a legislative body who questions the correctness of a decision

of the presiding officer, or "chair," procures a vote of the body upon the decision.

Old French Law

A mode of proceeding in the lords' courts, where a party was dissatisfied with the judgment of the peers, which was by accusing them of having given a false or malicious judgment, and offering to make good the charge by the duel or combat. This was called the "appeal of false judgment." Montesq. *Esprit des Lois*, liv. 28, c. 27.

Writ of Error Distinguished

The distinction between an appeal and a writ of error is that an appeal is a process of civil law origin, and removes a cause entirely, subjecting the facts, as well as the law, to a review and re-visit; but a writ of error is of common law origin, and it removes nothing for re-examination but the law. *Cunningham v. Neagle*, 10 S.Ct. 658, 135 U.S. 1, 34 L.Ed. 55; *Buessel v. U. S.*, C.C.A. Conn., 258 F. 811, 814. The present tendency is to ignore the distinction between "writ of error" and "appeal," and, when found in modern statutes, the meaning given "appeal" must be gathered from the language of the statute itself. *Wiggins v. Norfolk & W. Ry. Co.*, 142 Va. 419, 128 S.E. 516, 518.

APPEAL BOND. The bond given on taking an appeal, by which the appellant and his sureties are bound to pay damages and costs if he fails to prosecute the appeal with effect. *Omaha Hotel Co. v. Kountze*, 2 S.Ct. 911, 107 U.S. 378, 27 L.Ed. 609. A general purpose of appeal bonds is to discourage vexatious and frivolous appeals. *State v. Coletti*, 102 Kan. 523, 170 P. 995, 997. To protect those interested in the judgment. *Richmond v. Williamson*, 16 Wash.2d 194, 132 P.2d 1031, 1033.

The sole and only purpose of "appeal bond" is to stay issuance of execution until cause can be passed upon and disposed of by appellate court. *State ex rel. Gnekow v. U. S. Fidelity & Guaranty Co.*, Mo.App., 150 S.W.2d 581, 584.

APPEAL IN FORMA PAUPERIS. A privilege given indigent person to prosecute an appeal, otherwise and independently allowable, without payment of fees and costs incident to such prosecution. *Millsagle v. Olson*, C.C.A.Neb., 130 F.2d 212, 213. See, also, *In Forma Pauperis*.

APPEALED. In a sense not strictly technical, this word may be used to signify the exercise by a party of the right to remove a litigation from one forum to another; as where he removes a suit involving the title to real estate from a justice's court to the common pleas. *Lawrence v. Souther*, 8 Metc. (Mass.) 166.

APPEAR. In practice. To be properly before a court; as a fact or matter of which it can take notice. To be in evidence; to be proved. "Making it appear and proving are the same thing." *Freem.* 53. Coming into court by a party to a suit, whether plaintiff or defendant. *Madison v. State*, 31 Ala.App. 602, 20 So.2d 541, 542; *Bennett v. Rodgers*, 205 Mo.App. 458, 225 S.W. 101. See *Appearance*.

Frequently used in judicial proceedings as meaning "clear to the comprehension" when applied to matters of opinion or reasoning, and "satisfactorily or legally known or made known", when used in reference to facts of evidence. *Blackshear v. Liberty Mut. Ins. Co.*, 26 S.E.2d 793, 804, 69 Ga.App. 790. Facts "appear" when the evidence from which facts may be found is introduced, and presumptions disappear when facts appear. *Christiansen v. Hilber*, 282 Mich. 403, 276 N.W. 495, 497.

APPEAR OF RECORD. A substitution of trustee under deed of trust "appears of record" in the office of the chancery clerk, by being actually spread at large on the record. *King v. Jones*, 121 Miss. 319, 83 So. 531.

APPEARANCE. In practice. A coming into court as party to a suit, whether as plaintiff or defendant. *Stephens v. Ringling*, 102 S.C. 333, 86 S.E. 683, 685. The formal proceeding by which a defendant submits himself to the jurisdiction of the court. *Flint v. Comly*, 95 Me. 251, 49 A. 1044. The voluntary submission to a court's jurisdiction. *Pacilio v. Scarpati*, 300 N.Y.S. 473, 478, 165 Misc. 586; *Braman v. Braman*, 258 N.Y.S. 181, 186, 236 App.Div. 164.

"Appearance" is the act of appearing, coming, or being in sight, becoming visible or clear to apprehension of the mind, of being known as subject of observation or comprehension, or as a thing proved, of being obvious or manifest. *Hallack & Howard Lumber Co. v. Bagly*, 100 Colo. 402, 68 P.2d 442, 443.

Appearance anciently meant an actual coming into court, either in person or by attorney. Appearance may be made by the party in person or by his agent. *Everett Ry., Light & Power Co. v. U. S.*, D.C.Wash., 236 F. 806, 808. But in criminal cases the personal appearance of the accused in court is often necessary.

An appearance may be either *general* or *special*; the former is a simple and unqualified or unrestricted submission to the jurisdiction of the court, the latter a submission to the jurisdiction for some specific purpose only, not for all the purposes of the suit. *Louisville & N. R. Co. v. Industrial Board of Illinois*, 282 Ill. 136, 118 N.E. 483, 485. A special appearance is for the purpose of testing the sufficiency of service or the jurisdiction of the court; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction. *State v. Huller*, 23 N.M. 306, 168 P. 528, 534, 1 A.L.R. 170.

An appearance may also be either *compulsory* or *voluntary*, the former where it is compelled by process served on the party, the latter where it is entered by his own will or consent, without the service of process, though process may be outstanding. 1 Barb.Ch.Pr. 77. It is said to be *optional* when entered by a person who intervenes in the action to protect his own interests, though not joined as a party; it occurs in chancery practice, especially in England; *conditional*, when coupled with conditions as to its becoming or being taken as a general appearance; *gratis*, when made by a party to the action, but before the service of any process or legal notice to appear; *de bene esse*, when made provisionally or to remain good only upon a future contingency; or when designed to permit a party to a proceeding to refuse to submit his person to the jurisdiction of the court unless it is finally determined that he has forever waived that right. *Farmers Trust Co. v. Alexander*, 334 Pa. 434, 6 A.2d 262, 265; *subsequent*, when made by a defendant after an appearance has already been entered for him by the plaintiff; *corporal*, when the person is physically present in court.

An answer constitutes an "appearance." *Wieser v. Richter*, 247 Mich. 52, 225 N.W. 542, 543. A party who an-

APPEARANCE

swers, consents to a continuance, goes to trial, takes an appeal, or does any other substantial act in a cause, although he has not been served with summons, is deemed to have entered his "appearance" unless he objects and preserves his protests to the jurisdiction of his person. *Robinson v. Bossinger*, 195 Ark. 445, 112 S.W.2d 637, 640. Acts of an attorney in prosecuting an action on behalf of his client constitute an "appearance." *Pacilio v. Scarpati*, 300 N.Y.S. 473, 165 Misc. 586.

Appearance by Attorney

This term and "appearance by counsel" are distinctly different, the former being the substitution of a legal agent for the personal attendance of the suitor, the latter the attendance of an advocate without whose aid neither the party attending nor his attorney in his stead could safely proceed; and an appearance by attorney does not supersede the appearance by counsel. *Mercer v. Watson*, 1 Watts (Pa.) 351. See *In re Ford's Estate*, 163 N.Y.S. 960, 98 Misc. 100.

Appearance Day

The day for appearing; that on which the parties are bound to come into court. *Cruger v. McCracken* (Tex.Civ.App.) 26 S.W. 282. Compare *City of Decatur v. Barteau*, 260 Ill. 612, 103 N.E. 601, 602.

Appearance Docket

A docket kept by the clerk of the court, in which appearances are entered, containing also a brief abstract of all the proceedings in the cause. See *McAdams v. Windham*, 191 Ala. 287, 68 So. 51, 52.

Notice of Appearance

A notice given by defendant to a plaintiff that he appears in the action in person or by attorney.

APPEARAND HEIR. In Scotch law. An apparent heir. See *Heir Apparent*.

APPELLANT. The party who takes an appeal from one court or jurisdiction to another. Used broadly or nontechnically, the term includes one who sues out a writ of error. *Widgins v. Norfolk & W. Ry. Co.*, 142 Va. 419, 128 S.E. 516, 518.

APPELLATE. Pertaining to or having cognizance of appeals and other proceedings for the judicial review of adjudications.

Word "appellate" has a general meaning, and it has a specific meaning indicating the distinction between original jurisdiction and appellate jurisdiction. *Woodruff v. Bell*, 143 Kan. 110, 53 P.2d 498, 499.

APPELLATE COURT. A court having jurisdiction of appeal and review; a court to which causes are removable by appeal, *certiorari*, or error; a reviewing court, and, except in special cases where original jurisdiction is conferred, not a "trial court" or court of first instance. *Sanborn v. Pacific Mut. Life Ins. Co.*, 42 Cal.App.2d 99, 108 P.2d 458, 461; *Jackson v. Chesapeake & O. Ry. Co.*, 179 Va. 642, 20 S.E.2d 489, 493.

APPELLATE JURISDICTION. The power and authority to take cognizance of a cause and proceed to its determination, not in its initial stages,

but only after it has been finally decided by an inferior court, *i. e.*, the power of review and determination on appeal, writ of error, *certiorari*, or other similar process. Jurisdiction on appeal; jurisdiction to revise or correct the proceedings in a cause already instituted and acted upon by an inferior court, or by a tribunal having the attributes of a court. *Illinois Cent. R. Co. v. Dodd*, 105 Miss. 23, 61 So. 743, 49 L.R.A., N.S., 565. The term includes proceedings in error. *Miami County v. City of Dayton*, 92 Ohio St. 179, 110 N.E. 726, 727.

If court's jurisdiction is appellate, it has no authority to determine a question in an action originally instituted in it. *Rogers v. Leahy*, 296 Ky. 44, 176 S.W.2d 93, 95, 149 A. L.R. 1267.

Exercise of "appellate jurisdiction" involves power not only to correct errors in judgment under review, but to make such disposition of causes as justice may require in order that a correct principle of decision, arising since judgment appealed from, and having a bearing upon the right disposition of the cause, may be passed on by trial court, whose judgment will be vacated and cause remanded for further proceeding to that end in proper cases. *Yates v. St. Johns Beach Development Co.*, 122 Fla. 141, 165 So. 384, 385.

APPELLATIO. Lat. An appeal.

APPELLATOR. An old law term having the same meaning as "appellant" (*q. v.*).

In the civil law, the term was applied to the judge *ad quem*, or to whom an appeal was taken. *Calvin*.

APPELLEE. The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment. *Slayton v. Horsey*, 97 Tex. 341, 78 S.W. 919. Sometimes also called the "respondent."

In a nontechnical sense, "appellee" may include a defendant in writ of error. *Widgins v. Norfolk & W. Ry. Co.*, 142 Va. 419, 128 S.E. 516, 518.

In old English law. Where a person charged with treason or felony pleaded guilty and turned approver or "king's evidence," and accused another as his accomplice in the same crime, in order to obtain his own pardon, the one so accused was called the "appellee." 4 Bl.Comm. 330.

APPELLO. Lat. In the civil law. I appeal. The form of making an appeal *apud acta*. Dig. 49, 1, 2.

APPELLOR. In old English law. A criminal who accuses his accomplices, or who challenges a jury. See *Approver*.

APPEND. To add or attach. *American Cannel Coal Co. v. Indiana Cotton Mills*, 78 Ind.App. 115, 134 N.E. 891, 893.

APPENDAGE. Something added as an accessory to or the subordinate part of another thing. *American Cannel Coal Co. v. Indiana Cotton Mills*, 78 Ind.App. 115, 134 N.E. 891, 893.

An "appendage" for a schoolhouse includes a well on the school premises. *Schofield v. School Dist. No. 113*, *Labette County*, 105 Kan. 343, 184 P. 480, 481, 7 A.L.R. 788. But "appendages" of a railroad do not include Liberty bonds pledged to indemnify a surety on its appeal bond, or cash which was not indispensable to enjoyment of the property nor to its operation. *Jackman v. St. Louis & H. R. Co.*, 304 Mo. 319, 263 S.W. 230, 231.

APPENDANT; A thing annexed to or belonging to another thing and passing with it; a thing of inheritance belonging to another inheritance Which is more worthy; as an advowson, common, etc., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, etc. It differs from appurtenance, in that appendant must ever be by prescription, *i. e.*, a personal usage for a considerable time, while an appurtenance may be created at this day; for if a grant be made to a man and his heirs, of common in such a moor for his beasts levant or couchant upon his manor, the commons are appurtenant to the manor, and the grant will pass them. *Meek v. Breckenridge*, 29 Ohio St. 648. See Appurtenance.

APPENDITIA. The appendages or appurtenances of an estate or house, dwelling, etc.; thus, *pent-houses* are the *appenditia domes*. Cowell.

APPENDIX. A printed volume, used on an appeal to the English house of lords or privy council, containing the documents and other evidence presented in the inferior court and referred to in the cases made by the parties for the appeal. Answering in some respects to the "paper-book" or "case" in American practice.

APPENSURA. Payment of money by weight instead of by count. Cowell.

APPERTAIN. To belong to; to have relation to; to be appurtenant to. Chattel mortgages, *Ferguson v. Steen*, Tex.Civ.App., 293 S.W. 318, 320; landlord and tenant, *State v. Bodden*, 166 Wis. 219, 164 N.W. 1009, 1011. To be used in connection with (sales contract), *McVeety v. Hayes*, 111 Wash. 457, 191 P. 401, 402. See, also, Appurtenance; Appurtenant.

APPERTAINING. Connected with in use or occupancy. It does not necessarily import contiguity, as does "adjoining," and is therefore not synonymous with it: *Miller v. Mann*, 55 Vt. 475, 479. Peculiar to (sale of goods), *Herndon v. Moore*, 18 S.C. 339.

APPLE CIDER VINEGAR. Vinegar made from evaporated apples by treating them with a certain percentage of water squeezed out again as apple juice. *People v. Douglas Packing Co.*, 236 N.Y. 1, 139 N.E. 759, 760.

APPLIANCE. Refers to machinery and all instruments used in operating it, and is to be distinguished from word "materials," which includes everything of which anything is made. Things applied to or used as a means to an end. *Roberts v. City of Los Angeles*, 61 P.2d 323, 330, 7 Cal.2d 477. An "appliance" is a mechanical thing, a device or apparatus. *One Black Mule v. State*, 204 Ala. 440, 85 So. 749.

The term has been applied to a railroad track, *Hines v. Kelley*, Tex.Civ.App., 226 S.W. 493, 496; motor tracks in a coal mine, *Jaggie v. Davis Colliery Co.*, 75 W.Va. 370, 84 S.E. 941; an automobile, *Ross v. Tabor*, 53 Cal.App. 605, 200 P. 971, 973; a telephone lineman's safety belt, *Boone v. Lohr*, 172 Iowa 440, 154 N.W. 591, 592; and a plank on which a painting foreman was working, *Peterson v. Beck*,

27 Cal.App. 571, 150 P. 788, 789; but not, however, to a station water tank, rope, or scaffold used thereon, by a painter, *McFarland v. Chesapeake & O. Ry. Co.*, 177 Ky. 551, 197 S.W. 944, 947; nor to a moving picture machine, *Balcom v. Ellintuch & Yarfitz*, 179 App.Div. 548, 166 N.Y.S. 841, 842; nor the steps of a caboose, *Cincinnati, N. O. & T. P. Ry. Co. v. Goldston*, 163 Ky. 42, 173 S.W. 161, 162.

APPLICABLE. Fit, suitable, pertinent, or appropriate. *Thomas v. City of Huntington*, 80 Ind. App. 476, 141 N.E. 358, 359. Brought into actual contact with. *People v. Buffalo Cold Storage Co.*, 185 N.Y.S. 790, 794, 113 Misc. 479.

When a constitution or court declares that the common law is in force in a particular state so far as it is *applicable*, it is meant that it must be applicable to the habits and conditions of the community, as well as in harmony with the genius, the spirit, and the objects of their institutions. *Wagner v. Bissell*, 3 Iowa 402.

When a constitution prohibits the enactment of local or special laws in all cases where a general law would be applicable, a general law should always be construed to be applicable, in this sense, where the entire people of the state have an interest in the subject. But where only a portion of the people are affected, as in locating a county-seat, it will depend upon the facts and circumstances of each particular case whether such a law would be applicable. *Evans v. Job*, 8 Nev. 322.

APPLICABLE LOCAL LAW. Term used to determine the persons who come within the term heirs and is the law which would be used to ascertain the heirs of the designated ancestor if he had owned the property and had died intestate. Restatement, Property, § 305e.

APPLICANT. An applicant, as for letters of administration, is one who is entitled thereto, and who files a petition asking that letters be granted. *Jerauld v. Chambers*, 44 Cal.App. 771, 187 P. 33.

APPLICARE. Lat. In old English law. To fasten to; to moor (a vessel). Anciently rendered, "to apply." Hale, de Jure Mar.

APPLICATIO EST VITA REGULIE. Application is the life of a rule. 2 Bulst. 79.

APPLICATION. A putting to, placing before, preferring a request or petition to or before a person. The act of making a request for something. In re Meyer, 166 N.Y.S. 505, 100 Misc. 587. A written request to have a certain quantity of land at or near a certain specified place. *Biddle v. Dougal*, 5 Bin. (Pa.) 151. A petition. *Scott v. Strobach*, 49 Ala. 477, 489. *Gardner v. Goodner Wholesale Grocery Co.*, 113 Tex. 423, 256 S.W. 911, 913. The use or disposition made of a thing. A bringing together, in order to ascertain some relation or establish some connection; as the *application* of a rule or principle to a case or fact.

Insurance

The preliminary request, declaration, or statement made by a party applying for an insurance policy, such as one on his life, or against fire. *Whipple v. Prudential Ins. Co. of America*, 222 N.Y. 30, 118 N.E. 211, 212.

An "application" is no more than proposition to insurance company and must be accepted before there can be meeting of minds required to form binding contract.

APPLICATION

Brouster v. John Hancock Mut. Life Ins. Co., Mo.App., 171 S.W.2d 775, 777; Kronjaeger v. Travelers Ins. Co., 124 W.Va. 730, 22 S.E.2d 689, 692.

Payments

Appropriation of a payment to some particular debt; or the determination to which of several demands a general payment made by a debtor to his creditor shall be applied.

Mere uncommunicated intention or belief on part of debtor as to application of payment to creditor is not such an appropriation as constitutes "application" by him. Delaware Dredging Co. v. Tucker Stevedoring Co., C.C.A.Pa., 25 F.2d 44, 46.

Purchase Money

The disposition made of the funds received by a trustee on a sale of real estate held under the trust.

APPLY. To make a formal request or petition, usually in writing, to a court, officer, board, or company, for the granting of some favor, or of some rule or order, which is within his or their power or discretion. For example, to apply for an injunction, for a pardon, for a policy of insurance, or for a receiver. In re Bucyrus Road Machinery Co., C.C.A.Ohio, 10 F.2d 333, 334.

To use or employ for a particular purpose; to appropriate and devote to a particular use, object, demand, or subject-matter. Thus, to apply payments to the reduction of interest. *Foley v. Hastings*, 107 Conn. 9, 139 A. 305, 306. See *Appropriate*.

To put, use, or refer, as suitable or relative; to co-ordinate language with a particular subject-matter; as to apply the words of a statute to a particular state of facts.

The word "apply" is used in connection with statutes in two senses. When construing a statute, in describing the class of persons, things, or functions which are within its scope; as that the statute does not "apply" to transactions in interstate commerce. When discussing the use made of a statute, in referring to the process by which the statute is made operative; as where the jury is told to "apply" the statute of limitation if they find that the cause of action arose before a given date. *Brandeis, J.*, dissenting in *Dahnke-Walker Milling Co. v. Bondurant*, 42 S.Ct. 106, 110, n., 257 U.S. 282, 66 L. Ed. 239.

APPOINT. To designate, ordain, prescribe, nominate. *People v. Fitzsimmons*, 68 N.Y. 519; *Rhodes v. City of Tacoma*, 97 Wash. 341, 166 P. 647. To allot, set apart. *Heisler v. Robbins*, 17 Ariz. 429, 153 P. 771, 772. To fix, constitute, or ordain, prescribe, settle, also to assign authority to a particular use, task or office, allot, designated. *Lambach v. Anderson*, 228 Iowa 1173, 293 N.W. 505, 510.

"Appoint" is used where exclusive power and authority is given to one person, officer, or body to name persons to hold certain offices. *State v. Doss*, 102 W.Va. 162, 134 S.E. 749. It is usually distinguished from "elect," meaning to choose by a vote of the qualified voters of the city. *State ex rel. Smith v. Bowman*, 184 Mo.App. 549, 170 S.W. 700, 701. But the distinction is not invariably observed. *Schaffner v. Shaw*, 191 Iowa 1047, 180 N.W. 853, 854.

APPOINTEE. A person who is appointed or selected for a particular purpose; as the appointee under a power is the person who is to receive the benefit of the power.

"Appointed" and "elected" are used interchangeably. *Van Cleve v. Wallace*, 216 Minn. 500, 13 N.W.2d 467, 469.

APPOINTMENT. The designation of a person, by the person or persons having authority therefor, to discharge the duties of some office or trust. In *re Nicholson's Estate*, 104 Colo. 561, 93 P.2d 880, 884. See, also, *Power of Appointment*.

The exercise of a right to designate the person or persons who are to take the use of real estate. 2 Washb. Real Prop. 302; *Merchants' Loan & Trust Co. v. Patterson*, 308 Ill. 519, 139 N.E. 912, 919. The act of a person in directing the disposition of property, by limiting a use, or by substituting a new use for a former one, in pursuance of a power granted to him for that purpose by a preceding deed, called a "power of appointment;" also the deed or other instrument by which he so conveys. Where the power embraces several permitted objects, and the appointment is made to one or more of them, excluding others, it is called "exclusive."

Appointment may signify an appropriation of money to a specific purpose. *Harris v. Clark*, 3 N.Y. 93, 119, 51 Am. Dec. 352. See *Illusory Appointment*. It may also mean the arranging of a meeting. *Spears v. State*, 89 Tex. Cr. R. 459, 232 S.W. 326, 328.

Office or Public Function

The selection or designation of a person, by the person or persons having authority therefor, to fill an office or public function and discharge the duties of the same. *State v. Braman*, 173 Wis. 596, 181 N.W. 729, 730.

The term "appointment" is to be distinguished from "election." The former is an executive act. Election means that the person is chosen by a principle of selection in the nature of a vote, participated in by the public generally or by the entire class of persons qualified to express their choice in this manner. *Mono County v. Industrial Ace. Commission*, 175 Cal. 752, 167 P. 377, 378.

"Election" to office usually refers to vote of people, whereas "appointment" relates to designation by some individual or group. *Board of Education of Boyle County v. McChesney*, 235 Ky. 692, 32 S.W.2d 26, 27.

APPOINTOR. The person who appoints, or executes a power of appointment; as *appointee* is the person to whom or in whose favor an appointment is made. 1 Steph. Comm. 506, 507; 4 Kent, Comm. 316.

One authorized by the donor, under the statute of uses, to execute a power. 2 Bouv. Inst. n. 1923.

The appointor is the instrument of the donor of the power, and the appointee takes under the original will or instrument which creates the trust, and not from the donee of the power. *Barret v. Berea College*, 48 R.I. 258, 137 A. 145, 147.

APPORT. L. Fr. In old English law. Tax; tallage; tribute; imposition; payment; charge; expenses. *Kelham*.

APPORTION. To divide and distribute proportionally. *School Dist. No. 3, Platte County, v. School Dist. No. 2, Platte County*, 29 Wyo. 80, 210 P. 562.

APPORTIONMENT. The division, partition, or distribution of a subject-matter in proportionate parts. *Hunt v. Callaghan*, 32 Ariz. 235, 257 P. 648, 649. The division of rights or liabilities among several persons entitled or liable to them in accordance with their respective interests. *Valley Nat. Bank of Phoenix v. Apache County*, 57 Ariz. 459, 114 P.2d 883, 886.

Contracts

The allowance, in case of a severable contract, partially performed, of a part of the entire consideration proportioned to the degree in which the contract was carried out.

Corporate Shares

The *pro tanto* division among the subscribers of the shares allowed to be issued by the charter, where more than the limited number have been subscribed for. *Haight v. Day*, 1 Johns.Ch., N.Y., 18.

Incumbrances

Where several persons are interested in an estate, apportionment, as between them, is the determination of the respective amounts which they shall contribute towards the removal of the incumbrance.

Rent

The allotment of their shares in a rent to each of several parties owning it. The determination of the amount of rent to be paid when the tenancy is terminated at some period other than one of the regular intervals for the payment of rent. *Gluck v. Baltimore*, 81 Md. 315, 32 A. 515, 48 Am. St.Rep. 515.

Representatives

The determination upon each decennial census of the number of representatives in congress which each state shall elect, the calculation being based upon the population. See Const.U.S. art. 1, § 2; Amend. 14, § 2.

Right of Common

A division of the right of common between several persons, among whom the land to which, as an entirety, it first belonged has been divided.

Taxes

The apportionment of a tax consists in a selection of the subjects to be taxed, and in laying down the rule by which to measure the contribution which each of these subjects shall make to the tax. *Barfield v. Gleason*, 111 Ky. 491, 63 S.W. 964.

APPORTS EN NATURE. In French law. That which a partner brings into the partnership other than cash; for instance, securities, realty or personalty, cattle, stock, or even his personal ability and knowledge. *Argl.Fr.Merc.Law*, 545.

APPORTUM. In old English law. The revenue, profit, or emolument which a thing brings to the owner. Commonly applied to a corody or pension. *Blount*.

APPOSAL OF SHERIFFS. The charging them with money received upon their account in the exchequer. *St. 22 & 23 Car. II*; *Cowell*.

APPOSER. An officer in the exchequer, clothed with the duty of examining the sheriffs in respect of their accounts. Usually called the "foreign apposer." *Termes de la Ley*. The office is now abolished.

APPOSTILLE, or APOSTILLE. In French law, an addition or annotation made in the margin of a writing. *Merl. Report*.

APPRAISAL. A valuation or an estimation of value of property by two disinterested persons of suitable qualifications. *Jacobs v. Schmidt*, 231 Mich. 200, 203 N.W. 845, 846.

APPRAISE. In practice. To fix or set a price or value upon; to fix and state the true value of a thing, and, usually, in writing. *Vincent v. German Ins. Co.*, 120 Iowa, 272, 94 N.W. 458. To value property at what it is worth. *Tax Commission of Ohio v. Clark*, 20 Ohio App. 166, 151 N.E. 780, 781.

To "appraise" money means to count. In *re Hollinger's Estate*, 259 Pa. 72, 102 A. 409.

APPRAISEMENT. A just and true valuation of property. A valuation set upon property under judicial or legislative authority. *Cochecho Mfg. Co. v. Strafford*, 51 N.H. 482. A valuation or estimation of the value of property. *Littlehead v. Sheppard*, 123 Okl. 29, 251 P. 60, 62.

An "arbitration" presupposes a controversy or difference to be decided, and the arbitrators proceed in a judicial way. On the other hand, an appraisal or valuation is generally a mere auxiliary feature of a contract of sale, the purpose of which is not to adjudicate a controversy but to avoid one. *Thompson v. Newman*, 36 Cal.App. 248, 171 P. 982, 983.

APPRAISER. A person appointed by competent authority to make an appraisement, to ascertain and state the true value of goods or real estate.

The title of "appraiser" carries with it a significance that he is to be the judge of the evidence he desires submitted to him on the question of valuation, in cases fairly treated by him. In *re Gibert's Estate*, 160 N.Y.S. 213, 214, 96 Misc. 401.

General Appraisers

Appraisers appointed under an act of congress to afford aid and assistance to the collectors of customs in the appraisement of imported merchandise. *Gibb v. Washington*, 10 Fed.Cas. 288.

Merchant Appraisers

Where the appraisement of an invoice of imported goods made by the revenue officers at the custom house is not satisfactory to the importer, persons may be selected (under this name) to make a definitive valuation; they must be mer-

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chants engaged in trade. *Oelberman v. Merritt*, C.C.N.Y., 19 Fed. 408; s. c., 8 Sup.Ct. 151, 123 U.S. 356, 31 L.Ed. 164.

APPRECIABLE. Capable of being estimated, weighed, judged of, or recognized by the mind; capable of being perceived or recognized by the senses; perceptible but not a synonym of substantial. *Fisher v. Los Angeles Pacific Co.*, 21 Cal. App. 677, 132 P. 767, 769; *Stodder v. Rosen Talking Mach. Co.*, 247 Mass. 60, 141 N.E. 569, 571.

As used in a decree enjoining operation of a cotton oil mill in such manner as to throw out lint in "appreciable" quantities, "appreciable" may be practically synonymous with unreasonable. *Buckeye Cotton Oil Co. v. Ragland*, C. C.A.Miss., 11 F.2d 231, 234.

APPRECIATE. To estimate justly; to set a price or value on. *Holmes v. Connell's Estate*, 207 Mich. 663, 175 N.W. 148, 149; *Brace v. Black*, 125 Ill. 33, 17 N.E. 66. When used with reference to the nature and effect of an act, "appreciate" may be synonymous with "know" or "understand." *Western Indemnity Co. v. MacKechnie*, Tex.Civ.App., 214 S.W. 456, 460.

APPRECIATION IN VALUE. Appreciation in the value of property has reference to the so-called unearned increment, and does not include that added value of the property made by extensions and permanent improvements. *People ex rel. Adirondack Power & Light Corporation v. Public Service Commission*, 193 N.Y.S. 186, 189, 200 App.Div. 268.

APPREHEND. To take hold of, whether with the mind, and so to conceive, believe, fear, dread, *Trogdon v. State*, 133 Ind. 1, 32 N.E. 725; or actually and bodily, and so to take a person on a criminal process; to seize; to arrest, *Hogan v. Stophlet*, 179 Ill. 150, 53 N.E. 604, 44 L.R.A. 809. To understand. *Golden v. State*, 25 Ga. 527, 531. To be conscious or sensible of. *Collins v. Liddle*, 67 Utah, 242, 247 P. 476, 479.

APPREHENSIO. Lat. In the civil and old English law. A taking hold of a person or thing; apprehension; the seizure or capture of a person. *Calvin*.

One of the varieties or subordinate forms of *occupatio*, or the mode of acquiring title to things not belonging to any one.

APPREHENSION.

In Practice

The seizure, taking, or arrest of a person on a criminal charge. The term "apprehension" is applied exclusively to criminal cases, and "arrest" to both criminal and civil cases. *People v. Martin*, 188 Cal. 281, 205 P. 121, 123, 21 A.L.R. 1399.

Civil Law

- ✓ A physical or corporal act, (*corpus*), on the part of one who intends to acquire possession of a thing, by which he brings himself into such a relation to the thing that he may subject it to his exclusive control; or by which he obtains the

physical ability to exercise his power over the thing whenever he pleases. One of the requisites to the acquisition of judicial possession, and by which, when accompanied by intention, (*animus*), possession is acquired. *Mackeld.Rom.Law*, §§ 248, 249, 250.

APPRENDRE. A fee or profit taken or received. *Cowell*.

APPRENTICE. A person, usually a minor, bound in due form of law to a master, to learn from him his art, trade, or business, and to serve him during the time of his apprenticeship. 1 Bl.Comm. 426. *City of St. Louis v. Bender*, 248 Mo. 113, 154 S.W. 88, 89, 44 L.R.A., N.S., 1072.

APPRENTICE EN LA LEY. An ancient name for students at law, and afterwards applied to counsellors, *apprentici ad barras*, from which comes the more modern word "barrister." In some of the ancient law-writers the terms apprentice and barrister are synonymous. Co. 2d Inst. 214; *Eunomus*, Dial. 2, § 53, p. 155.

APPRENTICESHIP. A contract by which one person, usually a minor, called the "apprentice," is bound to another person, called the "master," to serve him during a prescribed term of years in his art, trade, or business, in consideration of being instructed by the master in such art or trade, and (commonly) of receiving his support and maintenance from the master during such term.

The term during which an apprentice is to serve.

The *status* of an apprentice; the relation subsisting between an apprentice and his master.

APPRENTICIUS AD LEGEM. An apprentice to the law; a law student; a counsellor below the degree of serjeant; a barrister. See *Apprentice en la Ley*.

APPRIZING. In Scotch law. A form of process by which a creditor formerly took possession of the estates of the debtor in payment of the debt due. It is now superseded by adjudications.

APPROACH. To come nearer in space. *Lawrence v. Goodwill*, 44 Cal.App. 440; *Weber v. Greenebaum*, 270 Pa. 382, 113 A. 413, 414.

Thus, an "approaching" street car is one coming near to, in point of time and place. *Ruffin Coal & Transfer Co. v. Rich*, 214 Ala. 622, 108 So. 600, 602.

APPROACH, RIGHT OF. In international law. The right of a ship of war, upon the high sea, to draw near to another vessel for the purpose of ascertaining the nationality of the latter. *The Marianna Flora*, 11 Wheat., U.S., 43, 44, 6 L.Ed. 405. Kent understood it to be equivalent to the right of visit. 1 Kent, Comm. 153. And at present the right of approach has no existence apart from the right of visit.

APPROACHES. A way, passage, or avenue by which a place or building can be approached; an access. *State ex rel. Washington Toll Bridge Au-*

thority v. Yelle, 197 Wash. 110, 84 P.2d 688, 691; State v. Zangerle, 43 Ohio App. 30, 182 N.E. 644, 646.

Comprising the necessary traffic arteries and adjustment of a bridge to develop its maximum traffic capacity. State ex rel. Washington Toll Bridge Authority v. Yelle, 197 Wash. 110, 84 P.2d 688, 691, 692, 694; including embankments, grades, or structures of any sort serving as a passage or way. Starrett v. Inhabitants of Town of Thomas-ton, 126 Me. 205, 137 A. 67, 70. That part of the roadway which is essential to make the bridge accessible and convenient for public use. With respect to bridge or viaduct; In re Rosedale Ave. in City of New York, 162 N.Y.S. 877, 885, 175 App.Div. 864.

APPROBATE AND REPROBATE. In Scotch law. To approve and reject; to attempt to take advantage of one part, and reject the rest. Bell.

Equity suffers no person to *approve* and *reprobate* the same deed. 1 Kames, Eq. 317; 1 Bell, Comm. 146. The doctrine of approve and *reprobate* is the English doctrine of election.

APPROPRIATE. To make a thing one's own; to make a thing the subject of property; to exercise dominion over an object to the extent, and for the purpose, of making it subserve one's own proper use or pleasure. People v. Ashworth, 222 N.Y.S. 24, 27, 220 App.Div. 498. To prescribe a particular use for particular moneys; to designate or destine a fund or property for a distinct use, or for the payment of a particular demand. McKenzie Const. Co. v. City of San Antonio, Tex., 50 S.W.2d 349, 352; Jennings v. Kinsey, 308 Mo. 265, 271 S.W. 786, 787. Also used in the sense of distribute.

In this sense it may denote the act of an executor or administrator who distributes the estate of his decedent among the legatees, heirs, or others entitled, in pursuance of his duties and according to their respective rights; to take away from one to whom a chattel belongs, and to devote it to the exclusive use and benefit of him who appropriates it. Davis v. Perkins, 178 Ga. 195, 172 S.E. 562, 565; or properly used in this sense to denote the acquisition of property and a right of exclusive enjoyment in those things which before were without an owner or were *publicis juris*. People v. Lammerts, 164 N.Y. 137, 58 N.E. 22.

APPROPRIATE PROCESS. A subpoena, subpoena duces tecum, or order to appear and produce books and records and testify within Internal Revenue Code providing that the Commissioner of Internal Revenue may ask the District Court by appropriate process to compel attendance, testimony or production of books, papers or other data. In re Wolrich, D.C.N.Y., 84 F.Supp. 481, 482.

APPROPRIATION. The act of appropriating or setting apart; prescribing the destination of a thing; designating the use or application of a fund. State v. Erickson, 93 Mont. 466, 19 P.2d 227, 229; McKenzie Const. Co. v. City of San Antonio, Tex.Civ.App., 50 S.W.2d 349, 352.

Public Law

The act by which the legislative department of government designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, or to some individual purchase or expense.

Blaine County Inv. Co. v. Gallet, 35 Idaho, 102, 204 P. 1066, 1067. Authority given by Legislature to proper officers to apply distinctly specified sum from designated fund out of treasury in given year for specified object or demand against state. State ex rel. Murray v. Carter, 167 Okl. 473, 30 P.2d 700, 702.

An element of the definition of "appropriation" is that the money appropriated be out of the general revenues of the state. Black and White Taxicab Co. v. Standard Oil Co., 25 Ariz. 381, 218 P. 139, 144. An "expenditure" is the expending, a laying out of money, disbursement, and is not the same as an "appropriation," the setting apart or assignment to a particular person or use. Grout v. Gates, 97 Vt. 434, 124 A. 76, 80; Suppiger v. Eniking, 60 Idaho 292, 91 P.2d 362, 364, 365.

A specific appropriation is an act of the legislature by which a named sum of money has been set apart in the treasury, and devoted to the payment of a particular demand. Stratton v. Green, 45 Cal. 149.

Appropriation of land. The act of selecting, devoting, or setting apart land for a particular use or purpose, as where land is appropriated for public buildings, military reservations, or other public uses. McSorley v. Hill, 2 Wash.St. 638, 27 Pac. 552; Jackson v. Wilcox, 2 Ill. 360. Taking of private property for public use in the exercise of the power of eminent domain. N. Ward Co. v. Board of Street Com'rs of City of Boston, 217 Mass. 381, 104 N.E. 965, 966. In this sense it may refer merely to physical occupation and contemplate payment prior thereto, in contra-distinction to "taking," referring to a legal taking and presupposing payment after damages are due. Keller v. City of Bridgeport, 101 Conn. 669, 127 A. 508, 511.

Appropriation of payments. The application of a payment to the discharge of a particular debt.

Thus, if a creditor has two distinct debts due to him from his debtor, and the latter makes a general payment on account, without specifying at the time to which debt he intends the payment to apply, it is optional for the creditor to *appropriate* (apply) the payment to either of the two debts he pleases. Gwin v. McLean, 62 Miss. 121; Martin v. Draher, 5 Watts (Pa.) 544.

Appropriation of water. An appropriation of water flowing on the public domain consists in the capture, impounding, or diversion of it from its natural course or channel and its actual application to some beneficial use private or personal to the appropriator, to the entire exclusion (or exclusion to the extent of the water appropriated) of all other persons. To constitute a valid appropriation, there must be an intent to apply the water to some beneficial use existing at the time or contemplated in the future, a diversion from the natural channel by means of a ditch or canal, or some other open physical act of taking possession of the water, and an actual application of it within a reasonable time to some useful or beneficial purpose. In re Water Rights in Silvies River, 115 Or. 27, 237 P. 322, 336; In re Manse Spring and Its Tributaries, Nye County, 60 Nev. 280, 108 P.2d 311, 314; State of Neb. v. State of Wyo., U.S.Neb. & Wyo., 65 S.Ct. 1332, 1349, 325 U.S. 589, 89 L.Ed. 1815.

It follows water to its original source whether through surface or subterranean streams or through percolation,

APPROPRIATION

Justesen v. Olsen, 40 P.2d 802, 809, 86 Utah 158; and entitles appropriator to continuing right to use water to extent of appropriation, but not beyond that reasonably required and actually used. *State of Arizona v. State of California*, Ariz. & Cal., 56 S.Ct. 848, 852, 298 U.S. 558, 80 L.Ed. 1331.

English Ecclesiastical Law

The perpetual annexing of a benefice to some spiritual corporation either sole or aggregate, being the patron of the living. 1 Bl.Comm. 384; 3 Steph.Comm. 70-75; 1 Crabb, Real Prop. p. 144, § 129.

Where the annexation is to the use of a lay person, It is usually called an "impropriation" (q. v.). 1 Crabb, Real Prop. p. 145, § 130. There have been no appropriations since the dissolution of monasteries.

APPROPRIATION BILL. A measure before a legislative body authorizing the expenditure of public moneys and stipulating the amount, manner, and purpose of the various items of expenditure. *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622, 624.

APPROPRIATOR. One who makes an appropriation; as, an appropriator of water. *Lux v. Hagen*, 69 Cal. 255, 10 Pac. 736.

English Ecclesiastical Law

A spiritual corporation entitled to the profits of a benefice.

APPROVAL. The act of confirming, ratifying, sanctioning, or consenting to some act or thing done by another. *Rooney v. South Sioux City*, 111 Neb. 1, 195 N.W. 474, 475. "Approval" implies knowledge and exercise of discretion after knowledge. *State v. Duckett*, 133 S.C. 85, 130 S.E. 340, 342; *McCarten v. Sanderson*, 111 Mont. 407, 109 P.2d 1108, 1112, 132 A.L.R. 1229.

The act of a judge or magistrate in sanctioning and accepting as satisfactory a bond, security, or other instrument which is required by law to pass his inspection and receive his approbation before it becomes operative.

APPROVE. To be satisfied with; to confirm, ratify, sanction, or consent to some act or thing done by another; to sanction officially; to ratify; to confirm; to pronounce good; think or judge well of; admit the propriety or excellence of; be pleased with. *Western Hospital Ass'n v. Industrial Accident Board*, 51 Idaho 334, 6 P.2d 845, 848; *MacNeill v. Maddox*, 194 Ga. 802, 22 S.E.2d 653, 654; *Board of Education of City of Hutchinson v. Reno Community High School*, 124 Kan. 175; 257 P. 957, 959; *Tibbens v. Clayton*, D.C. Okl., 288 F. 393, 394. Distinguishable from "authorize," meaning to permit a thing to be done in future. *Gray v. Gill*, 210 N.Y.S. 658, 660, 125 Misc. 70.

To take to one's proper and separate use. To improve; to enhance the value or profits of anything. To inclose and cultivate common or waste land.

To *approve common* or waste land is to inclose and convert it to the purposes of husbandry, which the owner might always do, provided he left common sufficient for such as were entitled to it. 3 Kent, Comm. 406.

Old Criminal Law

To accuse or prove; to accuse an accomplice by giving evidence against him.

APPROVED INDORSED NOTES. Notes indorsed by another person than the maker, for additional security, the indorser being satisfactory to the payee. *Mills v. Hunt*, 20 Wend., N.Y., 431.

APPROVEMENT. At ancient common law a practice of criminal prosecutions by which a person accused of treason or felony was permitted to exonerate himself by accusing others and escaping prosecution himself. *Lee v. State*, 115 Fla. 30, 155 So. 123; *Guthrie v. Commonwealth*, 171 Va. 461, 198 S.E. 481, 482, 119 A.L.R. 683.

The custom existed only in capital cases, and consisted in the accused, called "approver", being arraigned and permitted to confess before plea and appeal or accuse another as his accomplice of the same crime in order to obtain his pardon.

APPROVER. L. Fr. To approve or prove; to vouch. Kelham.

APPROVER. An accomplice in crime who accuses others of the same offense, and is admitted as a witness at the discretion of the court to give evidence against his companions in guilt. He is vulgarly called "King's Evidence."

One who confesses himself guilty of felony and accuses others of the same crime to save himself from punishment. *Myers v. People*, 26 Ill. 175. By the old law, if he failed to convict those he accused he was at once hung. *Lee v. State*, 115 Fla. 30, 155 So. 123. See, also, *Antithetarius*.

In old English law. Certain men sent into the several counties to increase the farms (rents) of hundreds and wapentakes, which formerly were let at a certain value to the sheriff. Cowell.

Bailiffs of lords in their franchises. Sheriffs were called the king's "approvers" in 1 Edw. III, st. 1, c. 1. *Termes de la Ley*, 49.

Approvers in the Marches were those who had license to sell and purchase beasts there.

APPROXIMATE. Used in the sense of an estimate merely, meaning more or less, but about and near the amount, quantity, or distance specified. *Stockburger v. Brooker*, 33 Ga.App. 676, 127 S.E. 663. Near to; about; a little more or less; close. *Texas Employers' Ins. Ass'n v. Fitzgerald*, Tex. Civ.App., 292 S.W. 925, 927. *Fiesel v. Bennett*, 225 Iowa 98, 280 N.W. 482, 484. "Approximately" is very nearly synonymous with "proximately," *P. B. Arnold Co. v. Buchanan*, 60 Ind.App. 626, 111 N.E. 204, 207; meaning very nearly, but not absolutely. *Sandberg v. Margold Realty Corporation*, 247 N.Y.S. 139, 141, 231 App.Div. 241.

APPROXIMATION. Equitable doctrine by which precise terms of charitable trust can be varied under certain circumstances. *Heustess v. Huntingdon College*, 242 Ala. 272, 5 So.2d 777, 779, 780; applicable solely to charitable trusts and employed only where on failure of trust the court finds a general charitable intent. *Waterbury Trust Co. v. Porter*, 131 Conn. 206, 38 A.2d 598, 603.

APPRUARE. To take to one's use or profit. Cowell.

APPULSUS. In the civil law. A driving to, as of cattle to water. Dig. 8, 3, 1, 1.

APPURTENANCE. That which belongs to something else; an adjunct; an appendage; something annexed to another thing more worthy as principal, and which passes as incident to it, as a right of way or other easement to land; an out-house, barn, garden, or orchard, to a house or messuage. *Cohen v. Whitcomb*, 142 Minn. 20, 170 N.W. 851, 852; *Alwes v. Richheimer*, 185 Ark. 535, 47 S.W.2d 1084, 1085; *Joplin Waterworks Co. v. Jasper County*, 327 Mo. 964, 38 S.W.2d 1068, 1076. An article adapted to the use of the property to which it is connected, and which was intended to be a permanent accession to the freehold. *Szilagy v. Taylor*, 63 Ohio App. 105, 25 N.E.2d 360, 361.

An article may become an "appurtenance to realty" without physical attachment. *Metropolitan Life Ins. Co. v. Jensen*, 69 S.D. 225, 9 N.W.2d 140, 141.

APPURTENANT. Belonging to; accessory or incident to; adjunct, appended, or annexed to; answering to *accessorium* in the civil law. 2 Steph. Comm. 30 note. *McClintic-Marshall Co. v. Ford Motor Co.*, 254 Mich. 305, 236 N.W. 792, 795; Being employed in leases for the purpose of including any easements or servitudes used or enjoyed with the demised premises. *Riddle v. Littlefield*, 53 N.H. 508, 16 Am.Rep. 388.

A thing is "appurtenant" to something else only when it stands in relation of an incident to a principal, and is necessarily connected with the use and enjoyment of the latter. *Catterall v. Pulis*, 137 Okl. 86, 278 P. 292, 294.

A thing is deemed to be incidental or *appurtenant* to land when it is by right used with the land for its benefit, as in the case of a way, or water-course, or of a passage for light, air, or heat from or across the land of another. *Mattix v. Swebston*, 127 Tenn. 693, 155 S.W. 928, 930.

Land cannot be appurtenant to land. *Hurley v. Liberty Lake Co.*, 112 Wash. 207, 192 P. 4, 5; except in case of land under water. In re *Eastern Boulevard in Borough of the Bronx*, City of New York, 243 N.Y.S. 57, 61, 230 App. Div. 52.

APRAXIA. See Aphasia.

APROVECHAMEENTO. In Spanish law. Improvement, or improvement and enjoyment of public lands. As applied to pueblo lands, it has particular reference to the commons, and includes not only the actual enjoyment of them but a right to such enjoyment. *Hart v. Burnett*, 15 Cal. 530, 566.

APT. Fit; suitable; appropriate.

APT TDIE. Apt time sometimes depends upon *lapse* of time; as, where a thing is required to be done at the first term, or within a given time, it cannot be done afterwards. But the phrase more usually refers to the *order* of proceedings, as fit or suitable. *Holmes Electric Co. v. Carolina Power & Light Co.*, 150 S.E. 621, 623, 197 N.C. 766.

APT WORDS. Words proper to produce the legal effect for which they are intended; sound technical phrases.

APTA VIRO. Fit for a husband; marriageable; a woman who has reached marriageable years.

APUD ACTA. Among the acts; among the recorded proceedings. In the civil law, this phrase is applied to appeals taken orally, in the presence of the judge, at the time of judgment or sentence. *Credit Co., Ltd., v. Arkansas Cent. Ry. Co.*, 9 S. Ct. 107, 108, 128 U.S. 258, 32 L.Ed. 448.

AQUA. In the civil and old English law. Water; sometimes a stream or water-course.

AQUA z'ESTIVA. In Roman law. Summer water; water that was used in summer only. Dig. 43, 20, 1, 3, 4.

AQUA CEDIT SOLO. Water follows the land. A sale of land will pass the water which covers it. 2 Bl.Comm. 18; Co.Litt. 4.

AQUA CURENS. Running water.

AQUA CURRIT ET DEBET CURRERE, UT CURRERE SOLEBAT. Water runs, and ought to run, as it has used to run. A running stream should be left to flow in its natural channel, without alteration or diversion, *Goble v. Louisville & N. R. Co.*, 187 Ga. 243, 200 S.E. 259, 261; that water is the common and equal property of every one through whose domain it flows. *Elmore v. Ingalls*, 17 So.2d 674, 245 Ala. 481.

AQUA DULCIS, or FRISCA. Fresh water. Reg. Orig. 97; Bract. fols. 117, 135.

AQUA FONTANEA. Spring water. Fleta, lib. 4, c. 27, § 8.

AQUA PROFLUENS. Flowing or running water. Dig. 1, 8, 2.

AQUA QUOTIDIANA. In Roman law. Daily water; water that might be drawn at all times of the year, (*qua quis quotidie possit uti, si vellet*). Dig. 43, 20, 1-4.

AQUA SALSA. Salt water.

AQUAZE DUCTUS. In the civil law. A servitude which consists in the right to carry water by means of pipes or conduits over or through the estate of another. Dig. 8, 3, 1; Inst. 2, 3.

AQULE HAUSTUS. In the civil law. A servitude which consists in the right to draw water from the fountain, pool, or spring of another. Inst. 2, 3, 2; Dig. 8, 3, 1, 1.

AQU)E IMMITTEND1E. A civil law easement or servitude, consisting in the right of one whose house is surrounded with other buildings to cast waste water upon the adjacent roofs or yards. Similar to the common law easement of drip. *Bel lows v. Sackett*, 15 Barb. (N.Y.) 96.

AQUAGIUM. A canal, ditch, or water course running through marshy grounds. A mark or gauge placed in or on the banks of a running stream, to indicate the height of the water, was called "*aqua-g au g ium*." Spelman.

AQUATIC RIGHTS. Rights which individuals have to the use of the sea and rivers, for the purpose of fishing and navigation, and also to the soil in the sea and rivers.

AQUILIAN LAW. See *Lex Aquilia*,

ARABANT. They plowed. A term of feudal law, applied to those who held by the tenure of plowing and tilling the lord's lands within the manor. Cowell.

ARABLE LAND. That which is fit for plowing or tillage, and thus is distinguishable from swamp land, which is land that is too wet for cultivation. 6 C.J.S. p. 143; *McCarter v. Sooy Oyster Co.*, 75 A. 211, 215, 78 N.J.Law, 394.

ARAHO. In feudal law. To make oath in the church or some other holy place. All oaths were made in the church upon the relics of saints, according to the Ripuarian laws. Cowell; Spelman.

ARALIA. Plowlands. Land fit for the plow. Denoting the character of land, rather than its condition. Spelman.

ARATOR. A plowman; a farmer of arable land.

ARATRUM TERRJE. In old English law. A plow of land; a plowland; as much land as could be tilled with one plow (or by a single "arator" or plowman). Whishaw.

ARATURA TERRLE. The plowing of land by the tenant, or vassal, in the service of his lord. Whishaw.

ARATURIA. Land suitable for the plow; arable land. Spelman.

ARBITER. A person chosen to decide a controversy; an arbitrator, referee. A person bound to decide according to the rules of law and equity, as distinguished from an arbitrator, who may proceed wholly at his own discretion, so that it be according to the judgment of a sound man. Cowell.

In the Roman law. A judge invested with a discretionary power. A person appointed by the praetor to examine and decide that class of causes or actions termed "*bona fidei*," and who had the power of judging according to the principles of equity, (*ex cequo et bono*;) distinguished from the *judex*, (*q. v.*) who was bound to decide according to strict law. Inst. 4, 6, 30, 31.

According to Mr. Abbott, the distinction is as follows: "Arbitrator" is a technical name of a person selected with reference to an established system for friendly determination of controversies, which, though not judicial, is yet regulated by law; so that the powers and duties of the arbitrator, when once he is chosen, are prescribed by law, and his doings may be judicially revised if he has exceeded his authority. "Arbiter" is an untechnical designation of a person to whom a controversy is referred, irrespective of any law to govern the decision; and is the proper word to signify a referee of a question outside of or above municipal law. But it is elsewhere said that the distinction between arbiters and arbitrators is not observed in modern law. Russ.Arb. 112.

ARBITRAGE. Transactions of bankers and mercantile houses by which stocks or bills are bought

in one market and sold in another for the sake of the profit arising from a difference in price in the two markets.

ARBITRAMENT. The award or decision of arbitrators upon a matter of dispute, which has been submitted to them. Termes de la Ley.

ARBITRAMENT AND AWARD. A plea to an action brought for the same cause which had been submitted to arbitration and on which an award had been made. Wats.Arb. 256.

ARBITRAMENTUM IEQUUM TRIBUIT CUIQUE SUUM. A just arbitration renders to every one his own. Noy, Max. 248.

ARBITRARILY. See *Arbitrary*.

A finding that certain orders were "arbitrarily" given by an engineer in charge of a public improvement did not amount to a finding that they were given in bad faith, fraudulently, or through ignorance or incompetency. *First Savings & Trust Co. v. Milwaukee County*, 158 Wis. 207, 148 N.W. 22, 33.

ARBITRARINESS. Conduct or acts based alone upon one's will, and not upon any course of reasoning and exercise of judgment. *Garman v. Myers*, 183 Okl. 141, 80 P.2d 624, 626.

ARBITRARY. Means in an "arbitrary" manner, as fixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic; *Cornell v. Swisher County*, Tex.Civ.App., 78 S.W.2d 1072, 1074. Without fair, solid, and substantial cause; that is, without cause based upon the law. *U. S. v. Lotempio*, D.C.N.Y., 58 F.2d 358, 359; not governed by any fixed rules or standard. *People ex rel. Hultman v. Gilchrist*, 188 N.Y.S. 61, 65, 114 Misc. 651.

ARBITRARY GOVERNMENT. The difference between a free and an arbitrary government is that in the former limits are assigned to those to whom the administration is committed, but the latter depends on the will of the departments or some of them. *Kamper v. Hawkins*, 1 Va.Cas. 20, 23.

ARBITRARY POWER. Power to act according to one's own will; especially applicable to power conferred on an administrative officer, who is not furnished any adequate determining principle. *Fox Film Corporation v. Trumbull*, D.C.Conn., 7 F.2d 715, 727.

ARBITRARY PUNISHMENT. That punishment which is left to the decision of the judge, in distinction from those defined by statute.

ARBITRATION. The submission for determination of disputed matter to private unofficial persons selected in manner provided by law or agreement. *Stockwell v. Equitable Fire & Marine Ins. Co.*, 25 P.2d 873, 134 Cal.App. 534. The substitution of their award or decision for judgment of a court. In re *Curtis-Castle Arbitration*, 64 Conn. 501, 30 A. 769, 42 Am.St.Rep. 200; *Atlantic Fruit*

Co. v. Red Cross Line, D.C.N.Y., 276 F. 319; Red Cross Line v. Atlantic Fruit Co., 44 S.Ct. 274, 264 U.S. 109, 68 L.Ed. 582.

Compulsory arbitration is that which occurs when the consent of one of the parties is enforced by statutory provisions. Wood v. City of Seattle, 23 Wash. 1, 62 Pac. 135, 52 L.R.A. 369.

Voluntary arbitration Is by mutual and free consent of the parties.

The *submission* is an agreement by which parties agree to submit their differences to the decision of a referee or arbitrators. It is sometimes termed a reference. 3 M. & W. 816; McManus v. McCulloch, 6 Watts (Pa.) 357; Stewart v. Cass, 16 Vt. 663, 42 Am. Dec. 534; Howard v. Sexton, 4 N.Y. 157. As to "final submission," see In re Gitt, 125 N.Y.S. 369, 140 App.Div. 382. In a wide sense, "arbitration" may embrace the whole method of thus settling controversies, and include all the various steps. But in a more strict use, the term denotes only the submission and hearing, the decision being separately spoken of, and called an "award." An award is the judgment or decision of arbitrators or referees on a matter submitted to them. It is also the writing containing such judgment. Cowell; *Termes de la Ley*; Jenk. 137. See Award.

As distinguished from appraisal, an arbitration presupposes a controversy or a difference to be tried and decided. On the other hand, an appraisal or valuation is generally a mere auxiliary feature, as of a contract of sale, the purpose of which is not to adjudicate a controversy but to avoid one. Toledo S. S. Co. v. Zenith Transp. Co., 184 F. 391, 106 C.C.A. 501.

ARBITRATION CLAUSE. A clause inserted in a contract providing for compulsory arbitration in case of dispute as to rights or liabilities under it; ineffectual if it purports to oust the courts of jurisdiction entirely. See Perry v. Cobb, 88 Me. 435, 34 A. 278, 49 L.R.A. 389.

ARBITRATION OF EXCHANGE. This takes place where a merchant pays his debts in one country by a bill of exchange upon another.

The business of buying and selling exchange (bills of exchange) between two or more countries or markets, and particularly where the profits of such business are to be derived from a calculation of the relative value of exchange in the two countries or markets, and by taking advantage of the fact that the rate of exchange may be higher in the one place than in the other at the same time.

ARBITRATOR. A private, disinterested person, chosen by the parties to a disputed question, for the purpose of hearing their contention, and giving judgment between them; to whose decision (award) the litigants submit themselves either voluntarily, or, in some cases, compulsorily, by order of a court. Fudickar v. Insurance Co., 62 N.Y. 399.

"Referee" is of frequent modern use as a synonym of arbitrator, but is in its origin of broader signification and less accurate than arbitrator.

ARBITRIOS. In Spanish and Mexican law. Taxes imposed by municipalities on certain articles of merchandise, to defray the general expenses of government, in default of revenues from "propios" (q. v.), e., lands owned by the municipality, or the income of which was legally set apart for its support. Sometimes used in a wider sense, as meaning the resources of a town, including its privileges in the royal lands as well as the taxes. Escriche Dict.; Sheldon v. Milmo, 90 Tex. 1, 36 S.W. 413.

ARBITRIUM. The decision of an arbiter, or arbitrator; an award; a judgment.

ARBITRIUM EST JUDICIUM. An award is a judgment. Jenk.Cent. 137.

ARBITRIUM EST JUDICIUM BONI VIRI, SECUNDUM JEQUUM ET BONUM. An award is the judgment of a good man, according to justice. 3 Bulst. 64.

ARBOR. Lat. A tree; a plant; something larger than an herb; a general term including vines, osiers, and even reeds. The mast of a ship. Brissonius. Timber. Ainsworth; Calvinus, Lex.

In a technological sense, "arbor" denotes the core consisting of an iron pipe over which is spread a thin coating of damp sand and which is inserted in the mold used in casting iron pipe. Casey-Hedges Co. v. Gates, 139 Tenn. 63, 201 S.W. 760, 761, L.R.A.1918B, 184.

ARBOR CIVILIS. A genealogical tree. Coke, Inst.

ARBOR CONSANGUINITATIS. A table, formed in the shape of a tree, showing the genealogy of a family. See the arbor *civilis* of the civilians and canonists. Hale, Com.Law, 335.

ARBOR DUM CRESCIT, LIGNUM DUM CRESCERE NESCIT. [That which is] a tree while it grows, [is] wood when it ceases to grow. Cro. Jac. 166; Hob. 77b, in marg.

ARBOR FINALIS. In old English law. A boundary tree; a tree used for making a boundary line. Bract. fols. 167, 207b.

ARCA. Lat. In the civil law. A chest or coffer; a place for keeping money. Dig. 30, 30, 6; Id. 32, 64. Brissonius.

ARCANA IMPERII. State secrets. 1 B1.Comm. 337.

ARCARIUS. In civil and old English law. A treasurer; a keeper of public money% Cod. 10, 70, 15; Spelman.

ARCHAIONOMIA. A collection of Saxon laws, published during the reign of Queen Elizabeth, in the Saxon language, with a Latin version by Lambard.

ARCHBISHOP. In English ecclesiastical law. The chief of the clergy in his province, having supreme power under the king or queen in all ecclesiastical causes. He has also his own diocese, in which he exercises episcopal jurisdiction, as in his province he exercises archiepiscopal authority. In England he is addressed as *Most Reverend*.

ARCHDEACON. A dignitary of the Anglican church who has ecclesiastical jurisdiction immediately subordinate to that of the bishop, either throughout the whole of his diocese or in some particular part of it. He is a ministerial officer; 1 Bla.Com. 383. He is addressed as *Venerable*.

ARCHDEACON'S COURT. In English ecclesiastical law. A court held before a judge appointed by the archdeacon, and called his official. Its

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jurisdiction comprises the granting of probates and administrations, and ecclesiastical causes in general, arising within the archdeaconry. It is the most inferior court in the whole ecclesiastical polity of England. 3 Bl.Comm. 64; 3 Steph.Comm. 430.

ARCHDEACONRY. A division of a diocese, and the circuit of an archdeacon's jurisdiction.

ARCHERY. In feudal law. A service of keeping a bow for the lord's use in the defense of his castle. Co.Litt. 157.

ARCHES COURT. In English ecclesiastical law. A court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the "Dean of the Arches," because his court was anciently held in the church of Saint Mary-le-Bow, (*Sancta Maria de Arcubus*), so named from the steeple, which is raised upon pillars built arch-wise. 3 Bl.Comm. 64.

The court was formerly held in the hall belonging to the College of Civilians, commonly called "Doctors' Commons." It is now held in Westminster Hall. Its proper jurisdiction is only over the thirteen peculiar parishes belonging to the archbishop in London, but, the office of Dean of the Arches having been for a long time united with that of the archbishop's principal official, the Judge of the Arches, in right of such added office, it receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province.

ARCHETYPE. The original from which a copy is made.

ARCHICAPPELLANUS. L. Lat. In old European law. A chief or high chancellor, (*summus cancellarius*). Spelman.

ARCHITECT. One who makes plans and specifications for a building and superintends its construction. *Payne v. De Vaughn*, 77 Cal.App. 399, 246 P. 1069, 1071; *Stephens County v. J. N. McCammon, Inc.*, 122 Tex. 148, 52 S.W.2d 53; *Sugarman Contracting Co. v. Phoenix Finance System*, Iowa, 243 N.W. 369, 370. Also one who plans and constructs landscape work. *State v. McIlhenny*, 201 La. 78, 9 So.2d 467, 470.

ARCHIVES. The Rolls; any place where ancient records, charters, and evidences are kept. In libraries, the private depository. Cowell; Spelman.

The derivative meaning of the word (now the more common) denotes the writings themselves thus preserved; thus we say the archives of a college, of a monastery, a public office, etc. *Texas M. Ry. Co. v. Jarvis*, 69 Tex. 537, 7 S.W. 210.

ARCHIVIST. The custodian of archives.

ARCIFINIOUS. (Lat., *arcifinius* or *arcifinalis*; Fr., *arcifinie*.) Pertaining to landed estates having natural boundaries, such as woods, mountains, or rivers. The owners of such estates, unlike the owners of "agri limitati" (*q. v.*), have the right of alluvion. *Smith v. St. Louis Public Schools*, 30 Mo. 290, 303.

Also, having a frontier forming a natural defense. Twiss, *Law of Nations*, II. 215.

ARCTA ET SALVA CUSTODIA. Lat. In strict (or close) and safe custody or keeping. When a defendant is arrested on a *capias ad satisfaciendum*, (*ca. sa.*) he is to be kept *arcta et salva custodi*. 3 Bl.Comm. 415.

ARDENT SPIRITS. Spirituous or distilled liquors. *State v. Centennial Brewing Co.*, 55 Mont. 500, 179 P. 296, 297; *Christian v. Commonwealth*, 132 Va. 616, 111 S.E. 130.

Synonymous with "spirituous liquors" (*q. v.*) and, sometimes, with intoxicating liquors generally, though the term is properly applied only to liquors obtained by distillation, such as rum, whisky, brandy, and gin. 48 C.J.S. p. 139; *Sarlls v. U. S.*, 14 S.Ct. 720, 721, 152 U.S. 570, 572, 38 L.Ed. 556.

ARDOUR. In old English law. An incendiary; a house burner.

ARE, *n.* A surface measure in the French law, in the form of a square, equal to 1076.441 square feet.

AREA. A surface, a territory, a region. *Fleming v. Farmers Peanut Co.*, C.C.A.Ga., 128 F.2d 404, 406. Any plane surface, also the inclosed space on which a building stands, the sunken space or court giving ingress and affording light to the basement of a building, a particular extent of surface. *State v. Armstrong*, 97 Neb. 343, 149 N.W. 786, 788, Ann.Cas.1917A, 554. An inclosed yard or opening in a house; an open place adjoining a house. 1 Chit.Pr. 176. The site of a house; a site for building; the space where a house has stood. The ground on which a house is built, and which remains after the house is removed. *Brissonius*; Calvin.

In the civil law. A vacant space in a city; a place. not built upon. Dig. 50, 16, 211.

"Area" in geometry means the superficial contents of any figure. *State v. City of Polytechnic*, Tex.Civ.App., 194 S.W. 1136, 1140.

AREAL GEOLOGY. That branch of geology which pertains to the distribution, position, and form of the areas of the earth's surface, occupied by different sorts of rock or different geologic formations, and to the making of geologic maps. *Lewis v. Carr*, 49 Nev. 366, 246 P. 695, 696.

AREAWAY. As used in an ordinance regulating the construction of areaways under any sidewalk, "areaway" was equivalent to cellar or room under the sidewalk. *State v. Armstrong*, 97 Neb. 343, 149 N.W. 786, 788, Ann.Cas.1917A, 554.

ARENALES. In Spanish law. Sandy beaches; or grounds on the banks of rivers. White, *Recop.* b. 2, tit. 1, c. 6.

ARENDATOR. A farmer or renter; in some provinces of Russia, formerly one who farmed the public rents or revenues; a "crown arendator" is one who rents an estate belonging to the crown.

ARENIFODINA. In the civil law. A sandpit. Dig. 7, 1, 13, 5.

ARENTARE. Lat. To rent; to let out at a certain rent. Cowell. *Arentatio*. A renting.

AREOPAGITE. In ancient Greek law. A lawyer or chief judge of the Areopagus in capital matters in Athens; a tribunal so called after a hill or slight eminence, in a street of that city dedicated to Mars, where the court was held in which those judges were wont to sit. Wharton.

ARERE. L. Fr. Behind; in arrear; back; again. Adams Gloss.

ARETRO. In arrear; behind. Also written *a retro*.

ARG. An abbreviation of *arguendo*.

ARGENT. In heraldry. Silver.

ARGENTARIUS (pl., *Argentarii*). In the Roman law, a money lender or broker; a dealer in money; a banker. *Argentarium*, the instrument of the loan, similar to the modern word "bond" or "note."

ARGENTARIUS MILES. A money porter in the English exchequer, who carries the money from the lower to the upper exchequer to be examined and tested. Spelman.

ARGENTEUS. An old French coin, answering nearly to the English shilling. Spelman.

ARGENTUM. Silver; money.

ARGENTUM ALBUM. Bullion; uncoined silver; common silver coin; silver coin worn smooth. Cowell; Spelman.

ARGENTUM DEL God's money; God's penny; money given as earnest in making a bargain. Cowell.

ARGUENDO. In arguing; in the course of the argument. A statement or observation made by a judge as a matter of argument or illustration, but not directly bearing upon the case at bar, or only incidentally involved in it, is said (in the reports) to be made *arguendo*, or in the abbreviated form, *arg*.

ARGUMENT. An effort to establish belief by a course of reasoning.

In rhetoric and logic, an inference drawn from premises, the truth of which is indisputable, or at least highly probable.

The argument of a demurrer, special case, appeal, or other proceeding involving a question of law, consists of the speeches of the opposed counsel; namely, the "opening" of the counsel having the right to begin, (*q. v.*) the speech of his opponent, and the "reply" of the first counsel. It answers to the trial of a question of fact. Sweet. But the submission of printed briefs may technically constitute an argument. *State v. California Min. Co.*, 13 Nev. 209. Also, the opening statement to a jury is part of the argument. *State v. McCaskill*, 173 Iowa 563, 155 N.W. 976, 977.

ARGUMENTATIVE. By way of reasoning. In pleading. Indirect; inferential. Steph.P1. 179.

A pleading is so called in which the statement on which the pleader relies is implied instead of being expressed, or where it contains, in addition to proper statements of facts, reasoning or arguments upon those facts and their relation to the matter in dispute, such as should be reserved for presentation at the trial.

ARGUMENTATIVE INSTRUCTION. An instruction which singles out or unduly emphasizes a particular issue, theory, or defense, or one which tends to invade the province of the jury with regard to the weight, probative effect, or sufficiency of the evidence or the inferences to be drawn therefrom. See 64 C.J. §§ 594, 601.

ARGUMENTUM A COMMUNITER ACCIDENTIBUS IN JURE FREQUENS EST. An argument drawn from things commonly happening is frequent in law. Broom Max. 44.

ARGUMENTUM A DIVISIONE EST FORTISSIMUM IN JURE. An argument from division [of the subject] is of the greatest force in law. Co. Litt. 213b; 6 Coke 60.

ARGUMENTUM A MAJORI AD MINUS NEGATIVE NON VALET; VALET E CONVERSO. An argument from the greater to the less is of no force negatively; affirmatively (or conversely) it is. Jenk.Cent. 281.

ARGUMENTUM A SIMILI VALET IN LEGE. An argument from a like case (from analogy) is good in law. Co.Litt. 191.

ARGUMENTUM AB AUCTORITATE EST FORTISSIMUM IN LEGE. An argument from authority is the strongest in the law. "The book cases are the best proof of what the law is." Co. Litt. 254a.

ARGUMENTUM AB IMPOSSIBILI VALET IN LEGE. An argument drawn from an impossibility is forcible in law. Co.Litt. 92a.

ARGUMENTUM AB INCONVENIENTI. An argument arising from the inconvenience which the proposed construction of the law would create.

Where the constitutionality of a statute is concerned, it is only when the question is close and doubtful that this doctrine will be applied and consideration taken of the consequences of declaring the statute unconstitutional. *Calhoun County v. Early County*, 205 Ga. 169, 52 S.E.2d 854; *Smith v. City Council of Augusta*, 203 Ga. 511, 47 S.E.2d 582, 587.

ARGUMENTUM AB INCONVENIENTI EST VALIDUM IN LEGE; QUIA LEX NON PERMITTIT ALIQUOD INCONVENIENS. An argument drawn from what is inconvenient is good in law, because the law will not permit any inconvenience. Co.Litt. 66a, 258.

ARGUMENTUM AB INCONVENIENTI PLURIMUM VALET [EST VALIDUM] IN LEGE. An argument drawn from inconvenience is of the greatest weight [is forcible] in law. Co.Litt. 66a,

ARIBANNUM

97a, 152b, 258b; Broom, Max. 184. If there be in any deed or instrument equivocal expressions, and great inconvenience must necessarily follow from one construction, it is strong to show that such construction is not according to the true intention of the grantor; but where there is no equivocal expression in the instrument, and the words used admit only of one meaning, arguments of inconvenience prove only want of foresight in the grantor. 3 Madd. 540; 7 Taunt. 496.

ARIBANNUM. In feudal law. A fine for not setting out to join the army in obedience to the summons of the king.

ARIERBAN, or ARRIERE-BAN. An edict of the ancient kings of France and Germany, commanding all their vassals, the noblesse, and the vassals' vassals, to enter the army, or forfeit their estates on refusal. Spelman. See, also, Arrier Ban.

ARIMANNI. A medieval term for a class of agricultural owners of small allodial farms, which they cultivated in connection with larger farms belonging to their lords, paying rent and service for the latter, and being under the protection of their superiors. Military tenants holding lands from the emperor. Spelman.

ARISE. To spring up, originate, to come into being or notice, to become operative, sensible, visible, or audible; to present itself. Bergin v. Temple, 111 Mont. 539, 111 P.2d 286, 289, 290, 133 A.L.R. 1115; Lane v. Travelers Ins. Co. of Hartford, Conn., 230 Iowa 973, 299 N.W. 553, 555.

"Accrue" not synonymous; the latter term means to result, to add, to acquire, to receive, to benefit, Rogues v. Continental Casualty Co., 17 La.App. 465, 135 So. 51, 52.

A case "arises" under the Constitution or a law of the United States, so as to be within the jurisdiction of a federal court, whenever its correct decision depends on the construction of either. Cleveland, C., C. & St. L. Ry. Co. v. Hirsch, C.C.A.Ohio, 204 F. 849, 851; Blease v. Safety Transit Co., C.C.A.S.C., 50 F.2d 852, 854.

A cause of action or suit "arises", so as to start running of limitation, when party has a right to apply to proper tribunal for relief. Washington Security Co. v. State, 9 Wash.2d 197, 114 P.2d 965, 967, 135 A.L.R. 1330; and it arises at time when and place where act is unlawfully omitted or committed. State ex rel. Birnamwood Oil Co. v. Shaughnessy, 243 Wis. 306, 10 N.W.2d 292, 295.

ARISING OUT OF AND IN THE COURSE OF OWN EMPLOYMENT. Workmen's Compensation Acts provide for compensating an employee whose injury is one "arising out of and in the course of the employment." These words describe an injury directly and naturally resulting in a risk reasonably incident to the employment. Thomas v. Proctor & Gamble Mfg. Co., 104 Kan. 432, 179 P. 372, 374, 6 A.L.R. 445; Trudenich v. Marshall, D.C.Wash., 34 F.Supp. 486, 488. They mean that there must be some causal connection between the conditions under which the employee worked and the injury which he received. Amicucci v. Ford Motor Co., 308 Mich. 151, 13 N.W.2d 241.

The words "arising out of employment" refer to the origin of the cause of the injury, while "course of employment" refer to the time, place, and circumstances under which the injury occurred. Walker v. Hyde, 43 Idaho,

625, 253 P. 1104, 1105. See, further, Course; Watson v. Pitcairn, Mo.App., 139 S.W.2d 552, 554; Ervin v. Industrial Commission, 364 Ill. 56, 4 N.E.2d 22, 25.

ARISTOCRACY. A government in which a class of men rules supreme; a form of government which is lodged in a council composed of select members or nobles, without a monarch, and exclusive of the people.

A privileged class of the people; nobles and dignitaries; people of wealth and station.

ARISTO-DEMOCRACY. A form of government where the power is divided between the nobles (or the more powerful) and the people.

ARLES. Earnest. Used in Yorkshire in the phrase "Arles-penny." Cowell. In Scotland it has the same signification. Bell.

ARM OF THE SEA. A portion of the sea projecting inland, in which the tide ebbs and flows. 5 Coke, 107. It is considered as extending as far into the interior of a country as the water of fresh rivers is propelled backwards by the ingress of the tide. Adams v. Pease, 2 Conn. 484; U. S. v. Grush, 5 Mason, 290, Fed.Cas.No.15,268; Ex parte Byers, D.C.Mich., 32 Fed. 404. See Fauces Terre.

ARMA. Lat. Arms; weapons, offensive and defensive; armor; arms or cognizances of families.

ARMA DARE. To dub or make a knight.

ARMA IN ARMATOS SUMERE JURA SINUNT. The laws permit the taking up of arms against armed persons. 2 Inst. 574.

ARMA MOLUTA. Sharp weapons that cut, in contradistinction to such as are blunt, which only break or bruise. Fleta, lib. 1, c. 33, par. 6.

ARMA REVERSATA. Reversed arms, a punishment for a traitor or felon. Cowell.

ARMATA VIS. In the civil law. Armed force. Dig. 43, 16, 3; Fleta, lib. 4, c. 4.

ARMED. Furnished or equipped with weapons of offense or defense. People ex rel. Griffin v. Hunt, 270 N.Y.S. 248, 254, 150 Misc. 163.

A vessel is "armed" when she is fitted with a full armament for fighting purposes. Murray v. The Charming Betsy, 2 Cranch, 121, 2 L. Ed. 208.

ARMED FORCE. As used in statutes authorizing peace officers to summon an "armed force" to aid them, this term may refer to a military organization, but this is not necessarily so, and, depending on the context, it may mean only a posse comitatus (*q. v.*). Chapin v. Ferry, 28 P. 754, 756, 3 Wash. 386, 15 L.R.A. 116.

ARMED NEUTRALITY. An attitude of neutrality between belligerents which the neutral state is prepared to maintain by armed force if necessary.

ARMED PEACE. A situation in which two or more nations, while actually at peace with each other, are armed for possible or probable hostilities.

ARMIGER. An armor-bearer; an esquire. A title of dignity belonging to gentlemen authorized to bear arms. Cowell. In its earlier meaning, a servant who carried the arms of a knight. A tenant by scutage; a servant or valet; applied, also, to the higher servants in convents. Spelman.

ARMING ONE'S SELF. Equipping one's self with a weapon or weapons. *Simmons v. State*, 87 Tex. Cr.R. 270, 220 S.W. 554.

ARMISCARA. An ancient mode of punishment, which was to carry a saddle at the back as a token of subjection. Spelman.

ARMISTICE. A suspending or cessation of hostilities between belligerent nations or forces for a considerable time. *Dooley v. Johnson*, 133 Cal. App. 459, 24 P.2d 540.

The term cannot properly be applied to agreements between a government on one side and rioters, brigands, and banditti on the other. *O'Neill v. Central Leather Co.*, 87 N.J.L. 552, 94 A. 789, 790, L.R.A.1917A, 276.

An armistice differs from a mere "suspension of arms" (*q. v.*) in that the latter is concluded for very brief periods and for local military purposes only, whereas an armistice not only covers a longer period, but is agreed upon for political purposes. It is said to be *general* if it relates to the whole area of the war, and *partial* if it relates to only a portion of that area. Partial armistices are sometimes called truces (*q. v.*) but there is no hard and fast distinction.

ARMORIAL BEARINGS. In English law. A device depicted on the (now imaginary) shield of one of the nobility, of which gentry is the lowest degree. The criterion of nobility is the bearing of arms, or armorial bearings, received from ancestry.

ARMORUM APPELLATIONE, NON SOLUM SCUTA ET GLADII ET GALEZE, SED ET FUSTES ET LAPIDES CONTINENTUR. Under the name of arms are included, not only shields and swords and helmets, but also clubs and stones. Co.Litt. 162.

ARMORY. A building where arms, ammunition, and instruments of war are stored. *Comp.Laws* 1929, §§ 692, 3395. *Grosse Ile v. Saunders*, 262 Mich. 451, 247 N.W. 912, 913.

ARMS. Anything that a man wears for his defense, or takes in his hands, or uses in his anger, to cast at or strike at another. Co.Litt. 161b, 162a; *State v. Buzzard*, 4 Ark. 18.

Arms, or coat of arms, signifies *insignia*, *i. e.* ensigns of honor, such as were formerly assumed by soldiers of fortune, and painted on their shields to distinguish them; or nearly the same as armorial bearings (*q. v.*).

ARMS, LAW OF. That law which gives precepts and rules concerning war; how to make and observe leagues and truce, to punish offenders in the camp, and such like. Cowell; Blount. Now more commonly called the "law of war." See, also, War.

ARMY. The armed forces of a nation intended for military service on land.

An "army" is a body of men whose business is war, while the "militia" is a body of men composed of citizens

occupied temporarily in the pursuit of civil life, but organized by discipline and drill, and called into the field for temporary military service when the exigencies of the country require it. And see *Brown v. Soldiers' Bonus Board*, 44 R.I. 483, 116 A. 280, 281.

—Regular army. The permanent military establishment, which is maintained both in peace and war according to law. 10 U.S.C.A. § 3; *State v. Moorhead*, 102 Neb. 276, 167 N.W. 70, 71.

AROMATARIUS. A word formerly used for a grocer. 1 Vent. 142.

AROUND. In the vicinity of. *Hawkins v. First National Bank*, Tex.Civ.App., 175 S.W. 163, 164.

Thus, sheep branded "O" on the hip or side may be within a mortgage covering sheep described as branded "O" around the hip bone.

ARPEN, Arpent, Arpennus. A measure of land of uncertain quantity mentioned in Domesday and other old books; by some called an "acre," by others "half an acre," and by others a "furlong." Spelman; Cowell; Blount. Quoted in *McMillan v. Aiken*, 205 Ala. 35, 88 So. 135, 143.

A French measure of land, containing one hundred square perches, of eighteen feet each, or about an acre. But the quantity varied in different provinces. Spelman. An "arpent" is a land measure varying in dimension from .84 of an acre to 1404 acres and to 1.28 acres, accordingly as the arpent meant is an arpent de Paris, an arpent commun, or an arpent d'ordonnance. *Troll v. City of St. Louis*, 257 Mo. 626, 168 S.W. 167, 171. In Louisiana, the terms "arpent" and "acre" are sometimes used interchangeably; but there is a considerable difference, the arpent being the square of 192 feet and the acre of 209 and a fraction. *Randolph v. Sentilles*, 110 La. 419, 34 So. 587.

ARPENTATOR. A measurer or surveyor of land. Cowell; Spelman.

ARRA. In the civil law. Earnest; earnest-money; evidence of a completed bargain. Used of a contract of marriage, as well as any other. Spelled, also, *Arrha*, *Arrhce*, *Arrce*, Calvin. Cf. Arles.

ARRAIGN. In criminal practice. To bring a prisoner to the bar of the court to answer the matter charged upon him in the indictment. *Ex parte Jeffcoat*, 109 Fla. 207, 146 So. 827, 828. The arraignment (*q. v.*) of a prisoner consists of calling upon him by name, and reading to him the indictment, (in the English tongue,) and demanding of him whether he be guilty or not guilty, and entering his plea. *State v. Voelpel*, 213 Iowa 702, 239 N.W. 677, 679.

In old English law. To order, or set in order; to conduct in an orderly manner; to prepare for trial. *To arraign an assise* was to cause the tenant to be called to make the plaint, and to set the cause in such order as the tenant might be enforced to answer thereunto. Litt. § 442; Co. Litt. 262b.

ARRAIGNMENT. See Arraign.

ARRAIGNS, CLERK OF. In English law. An assistant to the clerk of assise.

ARRAMEUR

ARRAMEUR. In old French law. An officer employed to superintend the loading of vessels, and the safe stowage of the cargo. 1 Pet.Adm.Append. XV.

ARRANGEMENT. A setting in order. 1 El. & Bl. 540. Plan for corporate reorganization proposing to effect a composition or extension of time with reference to corporation's unsecured debts. John Hancock Mut. Life Ins. Co. v. Casey, C.C.A. Mass., 141 F.2d 104, 107.

ARRANGEMENT, DEED OF. A term used in England to express an assignment for the benefit of creditors.

ARRAS. In Spanish law. The donation which the husband makes to his wife, by reason or on account of marriage, and in consideration of the *dote*, or portion, which he receives from her. Miller v. Dunn, 62 Mo. 219. The property contributed by the husband *ad sustinenda onera matrimonii* (for bearing the expenses).

ARRAY. The whole body of jurors summoned to attend a court, as they are *arrayed* or arranged on the panel. Dane, Abr. Index; 1 Chit.Crim.Law, 536; Com.Dig. "Challenge," B. Durrah v. State, 44 Miss. 789. A ranking, or setting forth in order; the order in which jurors' names are ranked in the panel containing them. Co.Litt. 156a; 3 Bl.Comm. 359.

ARRAYER. An English military officer in the early part of the fifteenth century. His duties were similar to those of the modern Lord Lieutenant of a county.

ARREARS, or ARREARAGES. Money unpaid at the due time, as rent behind; the remainder due after payment of a part of an account; money in the hands of an accounting party. Board of Education of Glen Ellyn Tp. High School Dist. No. 87 v. Boger, 291 Ill. 191, 125 N.E. 768, 770. Indebtedness. State ex rel. City of South Euclid v. Zangerle, 145 Ohio St. 433, 62 N.E.2d 160, 162.

In arrear (arrears). Overdue and unpaid. Hollingsworth v. Willis, 64 Miss. 157, 8 So. 170. Behind in the payment of that which is due. Grand Court of Texas Independent Order of Calanthe v. Johns, Tex.Civ.App., 181 S.W. 869, 870.

ARRECT. To accuse or charge with an offense. *Arrectati*, accused or suspected persons.

ARRENDAMIENTO. In Spanish law. The contract of letting and hiring an estate or land, (*heredad*.) White, Recop. b. 2, tit. 14, c. 1.

ARRENT. In old English law. To let or demise at a fixed rent. Particularly used with reference to the public domain or crown lands; as where a license was granted to inclose land in a forest with a low hedge and a ditch, under a yearly rent, or where an encroachment, originally a purpresture, was allowed to remain on the fixing and payment of a suitable compensation to the public for its maintenance.

ARREST. To deprive a person of his liberty by legal authority. Taking, under real or assumed

authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand. Ex parte Sherwood, 29 Tex.App. 334, 15 S.W. 812. Physical seizure of person by arresting officer or submission to officer's authority and control is necessary to constitute an "arrest." Thompson v. Boston Pub. Co., 285 Mass. 344, 189 N.E. 210, 213. It is a restraints however slight, on another's liberty to come and go. Turney v. Rhodes, 42 Ga.App. 104, 155 S.E. 112. It is the taking, seizing or detaining the person of another, touching or putting hands upon him in the execution of process, or any act indicating an intention to arrest. U. S. v. Benner, Bald. 234, 239, Fed.Cas.No.14,568; State v. District Court of Eighth Judicial Dist. in and for Cascade County, 70 Mont. 378, 225 P. 1000, 1001; Hoppes v. State, 105 P.2d 433, 439, 70 Okl.Cr. 179.

As used in Bankruptcy Act, § 9 (11 USCA § 27), arrest includes "imprisonment." Ex parte Harrison, D.C.Mass., 272 F. 543, 544.

One of the means which the law gives the creditor to secure the person of his debtor while the suit is pending, or to compel him to give security for his appearance after judgment. La.Code Pr c. art. 210.

As ordinarily used, the terms arrest and attachment coincide in meaning to some extent; though in strictness, as a distinction, an arrest may be said to be the act resulting from the service of an attachment. And in the more extended sense which is sometimes given to attachment, including the act of taking, it would seem to differ from arrest in that it is more peculiarly applicable to a taking of property, while *arrest* is more commonly used in speaking of persons.

Arrest is also applied in some instances to a seizure and detention of personal chattels, especially of ships and vessels; thus, in admiralty actions a ship or cargo is *arrested* when the marshal has served the writ in an action in *rem*. Pelham v. Rose, 9 Wall. 103, 19 L. Ed. 602.

Civil Practice

The apprehension of a person by virtue of a lawful authority to answer the demand against him in a civil action. Gentry v. Griffith, 27 Tex. 462.

Criminal Cases

The apprehending or detaining of the person in order to be forthcoming to answer an alleged or suspected crime. Ex parte Sherwood, 29 Tex.App. 334, 15 S.W. 812.

The word *arrest* is said to be more properly used in civil cases, and *apprehension* in criminal. Thus, a man is arrested under a *capias ad respondendum*, and apprehended under a warrant charging him with larceny.

Malicious Arrest

An arrest made willfully and without probable cause, but in the course of a regular proceeding.

Parol Arrest

One ordered by a judge or magistrate from the bench, without written complaint or other proceedings, of a person who is present before him, and which is executed on the spot; as in case of breach of the peace in open court.

Rearrest

Right of an officer to take without warrant one forcibly freeing himself after arrest. Gross v.

State, 186 Ind. 581, 117 N.E. 562, 1 A.L.R. 1151, or escaping in any manner, *Hefler v. Hunt*, 120 Me. 10, 112 A. 675, or violating parole, *Massey v. Cunningham*, 169 Ark. 410, 275 S.W. 737, or failing to respond to bond for appearance, *Porter v. Garmon*, 148 Ga. 261, 96 S.E. 426.

Second Arrest

The "second arrest" forbidden after discharge on habeas corpus means an imprisonment based on the same information and not under a new information followed by a lawful warrant. *State v. Riley*, 109 Minn. 437, 124 N.W. 13. See, also, *Stair v. Heska Amone Congregation*, 128 Tenn. 190, 159 S.W. 840, 841.

Warrant of Arrest

A written order issued and signed by a magistrate, directed to a peace officer or some other person specially named, and commanding him to arrest the body of a person named in it, who is accused of an offense. *Brown v. State*, 109 Ala. 70, 20 So. 103.

ARREST OF INQUEST. Pleading in arrest of taking the inquest upon a former issue, and showing cause why an inquest should not be taken.

ARREST OF JUDGMENT. The act of staying a judgment, or refusing to render judgment in an action at law and in criminal cases, after verdict, for some matter intrinsic appearing on the face of the record, which would render the judgment, if given, erroneous or reversible. 3 Bl. Comm. 393; 3 Steph. Comm. 628; 2 Tidd, Pr. 918; *Speer v. Pierce*, 18 Tenn. App. 351, 77 S.W.2d 77, 78; *State v. Ferguson*, 165 Tenn. 61, 52 S.W.2d 140.

It is the fact that a motion in arrest of judgment is based on some defect on the face of the record or pleadings which aids in distinguishing it from a motion for a new trial. *Maddox Coffee Co. v. McHan*, 22 Ga. App. 198, 95 S. E. 736. It differs also from a motion to set aside a judgment, in that a motion in arrest of judgment must be made during the term when the judgment was rendered. *Love v. National Liberty Ins. Co.*, 157 Ga. 259, 121 S.E. 648, 650. A motion in arrest of judgment is practically a demurrer, *People v. Cordosco*, 77 Cal. App. 780, 246 P. 461, 462, and has been abolished in some jurisdictions. *State v. Sharp*, Mo. Sup., 300 S.W. 501.

ARRESTANDIS BONIS NE DISSIPENTUR. In old English law. A writ which lay for a person whose cattle or goods were taken by another, who during a contest was likely to make away with them, and who had not the ability to render satisfaction. Reg. Orig. 126.

ARRESTANDO IPSUM QUI PECUNIAM RECEPIT. In old English law. A writ which issued for apprehending a person who had taken the king's prest money to serve in the wars, and then hid himself in order to avoid going.

ARRESTATIO. In old English law. An arrest (q. v.).

ARRESTEE. In Scotch law. The person in whose hands, the movables of another, or a debt due to another, are arrested by the creditor of

the latter by the process of *arrestment*. 2 Kames, Eq. 173, 175.

If, in contempt of the arrestment, he make payment of the sum or deliver the goods arrested to the common debtor, he is not only liable criminally for breach of the arrestment, but he must pay the debt again to the arrester; *Erskine*, Inst. 3, 6, 6.

ARRESTER. In Scotch law. One who sues out and obtains an arrestment of his debtor's goods or movable obligations. *Erskine*, Inst. 3. 6. 1.

ARRESTMENT. In Scotch law. Securing a criminal's person till trial, or that of a debtor till he give security *judicio sisti*. The order of a judge, by which he who is debtor in a movable obligation to the arrester's debtor is prohibited to make payment or delivery till the debt due to the arrester be paid or secured. *Erskine*, Inst. 3. 6. 1; 1. 2. 12.

ARRESTMENT JURISDICTIONIS FUNDANDI CAUSA. In Scotch law. A process to bring a foreigner within the jurisdiction of the courts of Scotland. The warrant attaches a foreigner's goods within the jurisdiction, and these will not be released unless caution or security be given.

ARRESTO FACTO SUPER BONIS MERCATORUM ALIENIGENORUM. In old English law. A writ against the goods of aliens found within this kingdom, in recompense of goods taken from a denizen in a foreign country, after denial of restitution. Reg. Orig. 129. The ancient civilians called it "*clarigatio*," but by the moderns it is termed "*reprisalia*."

ARRET. Fr. A judgment, sentence, or decree of a court of competent jurisdiction.

The term is derived from the French law, and is used in Canada and Louisiana.

Saisie ardt is an attachment of property in the hands of a third person. Code Pr. La. art. 209; 2 Low. Can. 77; 5 Low. Can. 198, 218. See "*Saisie*."

ARRETTE. Convened before a judge and charged with a crime.

Ad rectum malefactorum is, according to Bracton, to have a malefactor forthcoming to be put on his trial.

Imputed or laid to one's charge; as, no folly may be *arretted* to one under age. Bracton, 1. 3, tr. 2, c. 10; *Cunningham*, Diet.; *Cowell*.

ARRHABO. In the civil law. Earnest; money given to bind a bargain. *Calvin*.

ARRILE. In the civil law. Money or other valuable things given by the buyer to the seller, for the purpose of evidencing the contract; earnest. See *Arra*; *Pot-de-vin*.

Arrhce sponsolite were the earnest or present given by one betrothed to the other at the betrothal.

ARRIAGE AND CARRIAGE. In English and Scotch law. Indefinite services formerly demandable from tenants, but prohibited by statute, (20 Geo. II, c. 50, §§ 21, 22.) *Holthouse*; *Ersk. Inst.* 2, 6, 42.

ARRIER

ARRIER BAN. In feudal law. A second summons to join the lord, addressed to those who had neglected the first. A summons of the inferiors or vassals of the lord. Spelman, Gloss. See, also, Arierban.

ARRIERE FIEF, or FEE. In feudal law. A fief or fee dependent on a superior one; an inferior fief granted by a vassal of the king, out of the fief held by him. Montesq. *Esprit des Loix*, liv. 31, cc. 26, 32.

ARRIERE VASSAL. In feudal law. The vassal of a vassal.

ARRIVAL. In marine insurance, arrival of a vessel means an arrival for purposes of business, requiring an entry and clearance and stay at the port so long as to require some of the acts connected with business, and not merely touching at a port for advices, or to ascertain the state of the market, or being driven in by an adverse wind and sailing again as soon as it changes. *F. S. Royster Guano Co. v. U. S.*, C.C.A.Va., 18 F.2d 469, 470.

"A vessel arrives at a port of discharge when she comes, or is brought, to a place where it is intended to discharge her, and where is the usual and customary place of discharge. When a vessel is insured to one or two ports, and sails for one, the risk terminates on her arrival there. If a vessel is insured to a particular port of discharge, and is destined to discharge cargo successively at two different wharves, docks, or places, within that port, each being a distinct place for the delivery of cargo, the risk ends when she has been moored twenty-four hours in safety at the first place. But if she is destined to one or more places for the delivery of cargo, and delivery or discharge of a portion of her cargo is necessary, not by reason of her having reached any destined place of delivery, but as a necessary and usual nautical measure, to enable her to reach such usual and destined place of delivery, she cannot properly be considered as having arrived at the usual and customary place of discharge, when she is at anchor for the purpose only of using such means as will better enable her to reach it. If she cannot get to the destined and usual place of discharge in the port because she is too deep, and must be lightered to get there, and, to aid in prosecuting the voyage, cargo is thrown overboard or put into lighters, such discharge does not make that the place of arrival; it is only a stopping-place in the voyage. When the vessel is insured to a particular port of discharge, arrival within the limits of the harbor does not terminate the risk, if the place is not one where vessels are discharged and voyages completed. The policy covers the vessel through the port navigation, as well as on the open sea, until she reaches the destined place." *Simpson v. Insurance Co.*, Holmes, 137, Fed.Cas.No.12,886.

"Arrival of ship," within meaning of bills of lading requiring claims to be filed, must be construed, where MIS-delivery is charged, as meaning date when cargo is discharged or offered for delivery. *The Cardiganshire*, D.C. Cal., 9 F.2d 416, 420. "Arrival" within the immigration laws means compliance with the requirements entitling an alien to entry. See 8 USCA §§ 106, 380. In re Kempson, D. C.Wash., 14 F.2d 668, 669.

ARRIVE. To come to a particular place; to reach a particular or certain place. *Thompson v. U. S.*, 1 Brock. 411, Fed.Cas.No.13,985; 8 B. & C. 119.

The words "arrive" and "enter" are not always synonymous; there certainly may be an arrival without an actual entry or attempt to enter. *United States v. Open Boat*, 5 Mason, 120, 132, Fed.Cas.No.15,967. And where a vessel from a foreign port, laden with liquors, anchored within four leagues of the coast, and the master without a permit therefor allowed part of the cargo to be taken away, with the intention of so disposing of the entire cargo, the vessel

had "arrived" within the meaning of Tariff Act 1922, § 586 (19 USCA § 488). *The Cherie*, C.C.A.Me., 13 F.2d 992, 993.

ARROGATION. In the civil law. The adoption of a person who was of full age or *sui juris*. 1 Browne, Civil & Adm.Law, 119; Dig. 1, 7, 5; Inst. 1, 11, 3. *Reinders v. Koppelman*, 68 Mo. 497, 30 Am.Rep. 802.

ARRONDISSEMENT. In France, one of the subdivisions of a department.

ARSZE ET PENSAT1E. Burnt and weighed. A term formerly applied to money tested or assayed by fire and by weighing.

ARSENALS. Store-houses for arms; dock-yards, magazines, and other military stores.

ARSER IN LE MAIN. Fr. Burning in the hand. The punishment by burning or branding the left thumb of lay offenders who claimed and were allowed the benefit of clergy, so as to distinguish them in case they made a second claim of clergy. 5 Coke, 51; 4 Bl.Comm. 367; *Termes de la Ley*.

ARSON. At common law, the malicious burning of the house or outhouse of another. 4 Bla.Com. 220; *Thacker v. Commonwealth*, 219 Ky. 789, 294 S.W. 491, 492; *State v. Berry*, 188 La. 612, 177 So. 684, 686; *Commonwealth v. Cooper*, 264 Mass. 378, 162 N.E. 733, 734.

At common law burning buildings other than dwelling houses is not arson. *Sawyer v. State*, 100 Fla. 1603, 132 So. 188, 193. Part of building ignited sufficient to establish corpus delicti. *State v. Caliendo*, 4 A.2d 837, 840, 136 Me. 514.

At common law it must be the house of another. 1 Bish. Cr.Law, § 389; *State v. Beckwith*, Me., 198 A. 739, 742. But it is now an offense to burn one's own house under the statutes of New Hampshire, Arkansas, California, and other states. *State v. Blumenthal*, 136 Ark. 532, 203 S.W. 36, 37, L.R.A.1918E, 482.

Whether "house" or "dwelling house" be used in statute defining the crime may be of importance in determining whether occupancy is or is not an element. 1 Hale, P.C. 566, 567; *Commonwealth v. Barney*, 64 Mass. (10 Cush.) 478. Some states have expressly eliminated occupancy as an element. *State v. Snover*, 101 N.J.Law, 543, 126 A. 850; P.L. 1919, p. 257; while others have made it a distinction between degrees of the crime. *People v. Abrams*, 174 Cal. 172, 162 P. 395, 396.

In several states, this crime is divided into arson in the first, second, and third degrees, the first degree including the burning of an inhabited dwelling-house in the nighttime; the second degree, the burning (at night) of a building other than a dwelling-house, but so situated with reference to a dwelling-house as to endanger it; the third degree, the burning of any building or structure not the subject of arson in the first or second degree, or the burning of property, his own or another's with intent to defraud or prejudice an insurer thereof. *State v. Jessup*, 42 Kan. 422, 22 P. 627.

ARSURA. The trial of money by heating it after it was coined. The loss of weight occasioned by this process. A pound was said to burn so many pence (*tot ardere denarios*) as it lost by the fire. Spelman. The term is now obsolete.

ART. Systematic application of knowledge or skill in effecting a desired result; also an employment, occupation or business requiring such knowledge or skill; a craft; as industrial arts..

Jones Bros. Co. v. Underkoffler, D.C.Pa., 16 F.Supp. 729, 730; Miller v. State, 9 Okl.Cr. 255, 131 P. 717, 718, L.R.A.1915A, 1088. A principle put in practice and applied to some art, machine, manufacture, or composition of matter. Earle v. Sawyer, 4 Mason, 1, Fed.Cas.No.4,247.

In the law of patents, this term means a useful art or manufacture which is beneficial and which is described with exactness in its mode of operation. Such an art can be protected only in the mode and to the extent thus described. Jacobs v. Baker, 7 Wall. 297, 19 L.Ed. 200. It is synonymous with process or method when used to produce a useful result, and may be either a force applied, a mode of application, or the specific treatment of a specific object, and must produce physical effects. Emmett v. Metals Processing Corporation, C.C.A.Ariz., 118 F.2d 796, 798.

—Prior Art. In patent law, something that a man skilled in the art may by diligence discover. Davis-Bournonville Co. v. Alexander Milburn Co., C.C.A. N.Y., 1 F.2d 227, 231.

In seduction cases, "art" means the skillful and systematic arrangement of means for the attainment of a desired end. Hayes v. State, 19 Ala. App. 241, 96 So. 647.

ART, WORDS OF. Words used in a technical sense; words scientifically fit to carry the sense assigned them.

ART AND PART. In Scotch law. The offense committed by one who aids and assists the commission of a crime, but who is not the principal or chief actor in its actual commission. An accessory. A principal in the second degree. Paters. Comp.

ART MUSEUM. A building containing works of art. In re Everson's Will, 52 N.Y.S.2d 395, 399, 268 App.Div. 425.

ARTESIAN BASIN. A body of water more or less compact, moving through soils with more or less resistance. Justesen v. Olsen, 40 P.2d 802, 810, 86 Utah, 158.

ARTESIAN WELL. A well bored through impermeable strata into a subterranean body of water which, being under pressure, rises naturally to the surface. Loosely, any deep bored well. 6 C.J.S. p. 773.

ARTHEL, ARDHHEL, or ARDDDELIO. To avouch; as if a man were taken with stolen goods in his possession he was allowed a lawful *arthel*, *e.*, vouchee, to clear him of the felony; but provision was made against it by 28 Hen. VIII, c. 6. Blount,

ARTICLE. A separate and distinct part of an instrument or writing comprising two or more particulars; one of several things presented as connected or forming a whole. Carter v. Railroad Co., 126 N.C. 437, 36 S.E. 14. A particular object or substance, a material thing or a class of things. People v. Epstein, 170 N.Y.S. 68, 73, 102 Misc. 476. Material or tangible object. Gayer v. Whelan, 59

Cal.App.2d 255, 138 P.2d 763, 768. "Thing" of value. Gayer v. Whelan, 59 Cal.App.2d 255, 138 P.2d 763, 768.

In English ecclesiastical law. A complaint exhibited in the ecclesiastical court by way of libel. The different parts of a libel, responsive allegation, or counter allegation in the ecclesiastical courts. 3 Bl.Comm. 109.

In Scotch practice. A subject or matter; competent matter. "Article of dittay." 1 Broun, 62. A "point of dittay." 1 Swint. 128, 129.

ARTICLED CLERK. In English law. A clerk bound to serve in the office of a solicitor in consideration of being instructed in the profession. This is the general acceptance of the term; but it is said to be equally applicable to other trades and professions. Reg. v. Reeve, 4 Q.B. 212.

ARTICLES. 1. A connected series of propositions; a system of rules. The subdivisions of a document, code, book, etc. A specification of distinct matters agreed upon or established by authority or requiring judicial action.

2. A statute; as having its provisions articulately expressed under distinct heads. Several of the ancient English statutes were called "articles," (*articuli*.)

3. A system of rules established by legal authority; as *articles* of war, *articles* of the navy, *articles* of faith. (See *infra*.)

4. A contractual document executed between parties, containing stipulations or terms of agreement; as *articles* of agreement, *articles* of partnership,

5. A naval term meaning employment contract. South Chicago Coal & Dock Co. v. Bassett, C.C.A. Ill., 104 F.2d 522, 526.

6. In chancery practice. A formal written statement of objections filed by a party, after depositions have been taken, showing ground for discrediting the witnesses.

7. In ecclesiastical law. A complaint in the form of a libel exhibited to an ecclesiastical court. See Article.

ARTICLES APPROBATORY, In Scotch law. That part of the proceedings which corresponds to the answer to the charge in an English bill in chancery. Paters. Comp.

ARTICLES IMPROBATORY. In Scotch law. Articulate averments setting forth the facts relied upon. Bell. That part of the proceedings which corresponds to the charge in an English bill in chancery to set aside a deed. Paters. Comp. The answer is called "articles approbatory."

ARTICLES, LORDS OF. A committee of the Scottish parliament, which, in the mode of its election, and by the nature of its powers, was calculated to increase the influence of the crown, and to confer upon it a power equivalent to that of a negative before debate. This system appeared inconsistent with the freedom of parliament, and at

ARTICLES

the revolution the convention of estates declared it a grievance, and accordingly it was suppressed by Act 1690, c. 3. Wharton.

ARTICLES OF AGREEMENT. A written memorandum of the terms of an agreement.

It is a common practice for persons to enter into articles of agreement, preparatory to the execution of a formal deed, whereby it is stipulated that one of the parties shall convey to the other certain lands, or release his right to them, or execute some other disposition of them.

When persons form voluntary associations for religious, literary, social, or other purposes, and adopt rules by which to regulate their conduct and measure their rights, by the provisions of which members may be admitted and expelled, such rules are articles of agreement, to which all who have become members are parties, and by which they must be governed in their relations to the associations. *Brown v. Harris 'County Medical Soc., Tex.Civ.App., 19-1 S. W. 1179, 1180.*

ARTICLES OF ASSOCIATION, OR OF INCORPORATION. Articles subscribed by the members of a joint-stock company or corporation organized under a general law, and which create the corporate union between them. Such articles are in the nature of a partnership agreement, and commonly specify the form of organization, amount of capital, kind of business to be pursued, location of the company, etc. Articles of association are to be distinguished from a charter, in that the latter is a grant of power from the sovereign or the legislature.

ARTICLES OF CONFEDERATION. The name of the instrument embodying the compact made between the thirteen original states of the Union, before the adoption of the present constitution.

ARTICLES OF FAITH. In English law. The system of faith of the Church of England, more commonly known as the "Thirty-Nine Articles."

ARTICLES OF IMPEACHMENT. A formal written allegation of the causes for impeachment; answering the same office as an indictment in an ordinary criminal proceeding.

ARTICLES OF INCORPORATION. The instrument by which a private corporation is formed and organized under general corporation laws. *People v. Golden Gate Lodge, 128 Cal. 257, 60 P. 865.* See Articles of Association.

ARTICLES OF PARTNERSHIP. A written agreement by which the parties enter into a copartnership upon the terms and conditions therein stipulated.

ARTICLES OF RELIGION. In English ecclesiastical law. Commonly called the "Thirty-Nine Articles"; a body of divinity drawn up by the convocation in 1562, and confirmed by James I.

ARTICLES OF ROUP. In Scotch law. The terms and conditions under which property is sold at auction.

ARTICLES OF SET. In Scotch law. An agreement for a lease. *Paters. Comp.*

ARTICLES OF THE CLERGY. The title of a statute passed in the ninth year of Edward II. for

the purpose of adjusting and settling the great questions of cognizance then existing between the ecclesiastical and temporal courts. 2 *Reeve, Hist. Eng.Law, 291-296.*

ARTICLES OF THE NAVY. A system of rules prescribed by act of parliament for the government of the English navy; also, in the United States, there are articles for the government of the navy.

ARTICLES OF THE PEACE. A complaint made or exhibited to a court by a person who makes oath that he is in fear of death or bodily harm from some one who has threatened or attempted to do him injury. The court may thereupon order the person complained of to find sureties for the peace, and, in default, may commit him to prison. 4 *Bl.Comm. 255.*

ARTICLES OF UNION, In English law. Articles agreed to, A. D. 1707, by the parliaments of England and Scotland, for the union of the two kingdoms. They were twenty-five in number. 1 *Bl.Comm. 96.*

ARTICLES OF WAR. Codes framed for the government of a nation's army or navy.

ARTICULATE ADJUDICATION, In Scotch law. Where the creditor holds several distinct debts, a separate adjudication for each claim is thus called.

ARTICULATED PLEADING. The stating in separate paragraphs, separately numbered, of each material fact of the petition. *Newspaper Feature Service v. Southern Pub. Co., 140 La. 702, 73 So. 777.*

ARTICULATELY. Article by article; by distinct clauses or articles; by separate propositions.

ARTICULI. Lat. Articles; items or heads. A term applied to some old English statutes, and occasionally to treatises.

ARTICULI CLERI. "Articles of the clergy" (*q. v.*). See *Circumspecte Agatis*,

ARTICULI DE MONETA. Articles concerning money, or the currency. The title of a statute passed in the twentieth year of Edward I. 2 *Reeve, Hist.Eng.Law, 228; Crabb, Eng.Law (Amer. Ed.) 167.*

ARTICULI MAGNÆ CHARTÆ. The preliminary articles, forty-nine in number, upon which the *Magna Charta* was founded.

ARTICULI SUPER CHARTAS. Articles upon the charters. The title of a statute passed in the twenty-eighth year of Edward I. st. 3, confirming or enlarging many particulars in *Magna Charta*, and the *Charta de Foresta*, and appointing a method for enforcing the observance of them, and for the punishment of offenders. 2 *Reeve, Hist. Eng.Law, 103, 233.*

ARTICULO MORTIS. (Or more commonly *in articulo mortis.*) At the point of death; in the

article of death, which means at the moment of death; in the last struggle or agony. Succession of Villa, 132 La. 714, 61 So. 765, 770.

ARTIFICE. An ingenious contrivance or device of some kind, and, when used in a bad sense, it corresponds with trick or fraud. *United States v. Corlin*, D.C.Cal., 44 F.Supp. 940, 943. It implies craftiness and deceit, and imports some element of moral obliquity. *Davis v. Boston Elevated Ry. Co.*, 235 Mass. 482, 126 N.E. 841, 845; *Finch v. Gibson*, 140 Tenn. 134, 203 S.W. 759, 761.

A representation contrary to a well-known fact, such as a representation that pregnancy will not result from natural sexual intercourse, will not constitute artifice, deception, or promises.

ARTIFICER. One who buys goods in order to reduce them, by his own art or industry, into other forms, and then to sell them. *Lansdale v. Brashers*, 3 T.B.Mon. (Ky.) 335.

One who is actually and personally engaged or employed to do work of a mechanical or physical character, not including one who takes contracts for labor to be performed by others. *Ingram v. Barnes*, 7 El. & Bl. 135; *Chawner v. Cummings*, 8 Q.B. 321.

One who is master of his art, and whose employment consists chiefly in manual labor. *Wharton*; *Cunningham*.

ARTIFICIAL. Is in opposition to the word "natural". *California Casualty Indemnity Exchange v. Industrial Accident Commission of California*, 13 Cal.2d 529, 90 P.2d 289; Created by art, or by law; existing only by force of or in contemplation of law.

ARTIFICIAL FORCE. In patent law. A natural force so transformed in character or energies by human power as to possess new capabilities of action; this transformation of a natural force into a force practically new involves a true inventive act. *Wall v. Leck*, 60 Fed. 555, 13 C.C.A. 630.

ARTIFICIAL MEMBER OF BODY. A substitute for, and not a mere aid to, a natural part, organ, limb, or other separable part of body. *California Casualty Indemnity Exchange v. Industrial Accident Commission*, Cal.App., 82 P.2d 1115, 1116.

ARTIFICIAL PERSONS. Persons created and devised by human laws for the purposes of society and government, as distinguished from natural persons. Corporations are examples of artificial persons. 1 Bl.Comm. 123. *Chapman v. Brewer*, 43 Neb. 890, 62 N.W. 320, 47 Am.St.Rep. 779.

ARTIFICIAL PRESUMPTIONS. Also called "legal presumptions;" those which derive their force and effect from the law, rather than their natural tendency to produce belief. 3 Starkie, Ev. 1235. *Gulick v. Loder*, 13 N.J.Law, 72, 23 Am.Dec. 711.

ARTIFICIAL SUCCESSION. The succession between predecessors and successors in a corporation aggregate or sole. *Thomas v. Dakin*, 22 Wend. (N.Y.) 100.

ARTIFICIAL WATER COURSE. See *Water Course*.

ARTIFICIALLY. Technically; scientifically; using terms of art. A will or contract is described as "artificially" drawn if it is couched in apt and technical phrases and exhibits a scientific arrangement.

ARTIFICIALLY DEVELOPED WATER. "Artificially developed water," to which one may acquire right superior to adjudicated rights of earlier appropriators of natural waters of stream into which he turns it, is water produced and contributed by him, which would not have reached stream if left to flow in accordance with natural laws. C.L. § 1766. In re *Nix*, 45 P.2d 176, 178, 96 Colo. 540.

ARTISAN. One skilled in some kind of mechanical craft or art; a skilled mechanic. *O'Clair v. Hale*, 25 Misc.Rep. 31; *Warner Memorial University v. Ritenour*, Tex.Civ.App., 56 S.W.2d 236, 237.

As used in lien statutes, the term includes the architect, *Kansas City Southern Ry. Co. v. Wallace*, 38 Oki. 233, 132 P. 908, 911, 46 L.R.A., N.S., 112, but not a subcontractor, *Huffman v. McDonald*, Tex.Civ.App., 261 S.W. 146, 147. An optometrist is not an "artisan." *Swanz v. Clark*, 71 Mont. 385, 229 P. 1108.

ARUBA. An old English law term, signifying a day's work in plowing.

ARVIL-SUPPER. A feast or entertainment made at a funeral in the north of England; *arvil bread* is bread delivered to the poor at funeral solemnities, and *arvil*, *arval*, or *arfal*, the burial or funeral rites. *Cowell*.

AS or A/S or A/s. Account sales; also after sight, at sight.

AS. Lat. In the Roman and civil law. A pound weight; and a coin originally weighing a pound, (called also "*libra*") divided into twelve parts, called "*uncice*,"

The parts were reckoned (as may be seen in the law, *Servum de hereditibus*, Inst. lib. xiii. *Pandect*) as follows: *uncia*, 1 ounce; *sextans*, 2 ounces; *triens*, 3 ounces; *quadrans*, 4 ounces; *quincunx*, 5 ounces; *semis*, 6 ounces; *sextunx*, 7 ounces; *bes*, 8 ounces; *dodrans*, 9 ounces; *dextans*, 10 ounces; *deunx*, 11 ounces.

Any integral sum, subject to division in certain proportions.

Frequently applied in the civil law to inheritances; the whole inheritance being termed "as," and its several proportionate parts "sextans," "quadrans," etc. *Burrill*.

The term "as," and the multiples of its *uncice*, were also used to denote the rates of interest. 2 Bl.Comm. 462, note m.

AS. Used as an adverb, etc., means like, similar to, of the same kind, in the same manner, in the manner in which. *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693, 697, L.R.A.1918E 639; *Price v. Skylstead*, 69 Mont. 453, 222 P. 1059, 1060. It may also have the meaning of because, since, or it being the case that; *State v. Rudman*, 126 Me. 177, 136 A. 817, 819; in the character or under the name of; *State v. Blue*, 134 La. 561, 64 So. 411, 414; when; *Shane Bros. & Wilson Co. v. Barrett*,

71 Ind.App. 313, 124 N.E. 780, 781; With significance of in degree, to that extent, so far. Snyder and Blankford Co., v. Farmers Bank of Tifton, 178 Md. 601, 16 A.2d 837, 841.

AS AGAINST; AS BETWEEN. These words contrast the relative position of two persons, with a tacit reference to a different relationship between one of them and a third person. For instance, the temporary bailee of a chattel is entitled to it as *between* himself and a stranger, or *as against* a stranger; reference being made by this form of words to the rights of the bailor. Wharton.

AS FAR AS HUMAN CARE AND FORESIGHT WILL GO. Means for utmost care and diligence of very cautious persons, and makes one responsible for even slightest neglect. Kline v. Santa Barbara Consol. Ry. Co., 90 P. 125, 127, 150 Cal. 741.

AS IS. A sale of goods by sample "as is" requires that the goods be of the kind and quality represented, even though they be in a damaged condition. Schwartz v. Kohn, Sup., 155 N.Y.S. 547, 548. Use of expression in sales agreement that goods are sold "as is" implies that buyer is taking delivery of goods in some way defective and upon express condition that he must trust to his own examination. Roby Motors Co. v. Cade, La.App., 158 So. 840, 841.

AS LONG AS. The phrase "as long as life doth last," in a will, is tantamount to "forever." In re Brown, 119 Kan. 402, 239 P. 747.

AS OF COURSE. Under a statute providing that an attachment will be dissolved, "as of course," upon defendant's entering his appearance and filing his answer, the quoted words mean when asked by defendant. Pitman v. West, 198 Mo.App. 92, 199 S.W. 756, 757.

AS PER. "As per" is a sort of law and business term which is hardly susceptible of literal translation, but which is commonly understood to mean, "in accordance with," or "in accordance with the terms of," or "as by the contract authorized." Continental Bank & Trust Co. v. Times Pub. Co., 142 La. 209, 76 So. 612, 617, L.R.A.1918B, 632.

AS SOON AS. This term has a relative meaning according to the thing which is to be done. Eichelbaum & Smith v. Bishop, 75 Pa.Super.Ct. 528, 529. It often denotes merely a reasonable time; Childers v. Brown, 81 Or. 1, 158 P. 166, 168, Ann. Cas.1918D, 170; and it may be the equivalent of "whenever"; People v. Merhige, 180 N.W. 418, 422, 212 Mich. 601. Sometimes it means immediately. Columbia Digger Co. v. Rector, D.C.S.D., 215 F. 618, 630.

AS SOON AS MAY BE. Promptly and with due diligence; as soon as was reasonably possible; within a reasonable time; as soon as possible; forthwith; as soon as they conveniently can. George A. Fuller Co. v. Jersey City, 21 N.J.Misc. 38, 29 A.2d 720, 722.

AS SOON AS POSSIBLE. When used with reference to the time of performing some act, such

as the shipment of goods, these words mean merely within a reasonable time. Birmingham Paper Co. v. Holder, 24 Ga.App. 630, 101 S.E. 692; National Cash Register Co. v. McCann, 140 N.Y.S. 916, 920, 80 Misc. 165 ("as soon as possible" requires a much more speedy fulfillment than within a reasonable time).

AS SOON AS PRACTICABLE. Means reasonable time. Callaway v. Central Surety & Insurance Corporation, C.C.A.Tex., 107 F.2d 761, 762; London Guarantee & Accident Co. v. Shafer, D.C.Ohio, 35 F.Supp. 647, 649; London Guarantee & Accident Co. v. Shafer, D.C.Ohio, 32 F.Supp. 905, 908; Unverzagt v. Prestera, 13 A.2d 46, 48, 339 Pa. 141.

These words are not synonymous with "as soon as possible"; they mean ordinarily as soon as reasonably can be expected. Texas Employers' Ins. Ass'n v. Mummy, Tex. Civ.App., 200 S.W. 251, 253; or "in due time", Texas Employers' Ins. Ass'n v. Mummy, Tex.Civ.App., 200 S.W. 251, 252. But the words have also been construed as practically synonymous with speedily. Roberson v. Weaver, 145 Ga. 620, 89 S.E. 769, 772.

AS SPEEDILY AS POSSIBLE. Means within reasonable time or without unreasonable delay, having regard to all the circumstances of the case and the things to be done. Tatum v. Levi, 117 Cal. App. 83, 3 P.2d 963, 967.

AS SUCH. When used to give some example of a rule, is never exclusive of other cases which that rule is made to embrace. Dinnat v. Succession of Lewis, 8 La.App. 820, 821.

ASCEND. To go up; to pass up or upwards; to go or pass in the ascending line. 4 Kent, Comm. 393, 397.

ASCENDANTS. Persons With whom one is related in the ascending line; one's parents, grandparents, great-grandparents, etc.

ASCENDIENTES. In Spanish law. Ascendants; ascending heirs; heirs in the ascending line. Schm.Civil Law, 259.

ASCENT. Passage upwards; the transmission of an estate from the ancestor to the heir in the ascending line. See 4 Kent, Comm. 393, 397.

ASCERTAIN. To fix; to render certain or definite; to estimate and determine; to clear of doubt or obscurity. Pughe v. Coleman, Tex.Civ.App., 44 S.W. 578. To insure as a certainty. United States v. Foster, C.C.A.Iowa, 131 F.2d 3, 7. To find out by investigation, U. S. v. Carver, 43 S.Ct. 181, 182, 260 U.S. 482, 67 L.Ed. 361. Sometimes it means to "assess", Commonwealth v. Deford Co., 137 Va. 542, 120 S.E. 281, 285; or to "hear, try, and determine," In re Higgins' Estate, 143 N.Y.S. 552, 556, 81 Misc. 579.

ASCERTAINED AS AFORESAID. Manner therefore prescribed. State ex rel. Walker v. Harrington, Del., 30 A.2d 688, 693, 3 Terry 246.

ASCRIPTITIUS (or ASCRIPITITIUS). In Roman law. A foreigner who had been registered and naturalized in the colony in which he resided. Cod. 11, 47.

A man bound to the soil but not a slave. 2 Holdsw.Hist.E.L. 217. See Adscriptitii.

ASCUN, or ASCUNS. L. Fr. Any; any one; some. Adams Gloss.

ASESINATO. In Spanish law, murder. The term is said to be derived from the "assassins" of Syria. Escriche Diccionario. The offense corresponds closely to the common-law crime of murder in the first degree. U. S. v. Alias, 18 Philippine 453, 455; U. S. v. Pico, 18 Philippine 386, 388.

ASEXUALIZATION. See Vasectomy.

ASIDE. On one side; apart. *To set aside*. To annul; to make void. State v. Primm, 61 Mo. 171.

ASK. In an affidavit wherein affiant asks that a cause be reinstated and set down for trial, "asks" is practically synonymous with "moves." Harris v. Chicago House-Wrecking Co., 314 Ill. 500, 145 N.E. 666, 669.

ASPECT. View; object; possibility. Implies the existence of alternatives. Used in the phrases "bill with a double aspect" and "contingency with a double aspect."

ASPERSIONS. "Aspersions" may mean the making of calumnious report or may mean nothing more than criticism or censure. Fitts v. Davis, 269 F. 1018, 1019, 50 App.D.C. 234.

ASPHALT. A brown to black, solid bituminous substance occurring native at the Dead Sea, in Trinidad, and elsewhere, and also obtained as a residue from petroleum, coal tar, lignite tar, etc., and consists chiefly of a mixture of hydrocarbons and varies from hard and brittle to plastic forms. Asphalt Revetment Co. v. United States, 48 F. Supp. 520, 523, 98 Ct.Cl. 289.

ASPHYXIA. Apparent death, suspended animation, in living organism due to deficiency of oxygen and excess of carbon dioxide in the blood. Levinson v. Reliance Life Ins. Co. of Pittsburgh, Pa., 184 Md. 453, 41 A.2d 485, 487. Safe Deposit & Trust Co. of Baltimore v. New York Life Ins. Co., D.C.Md., 14 F.Supp. 721, 723.

ASPHYXIA CARBONICA. A suffocation from inhalation of coal gas, water gas, or carbon monoxide. Levinson v. Reliance Life Ins. Co. of Pittsburgh, Pa., Md., 184 Md. 453, 41 A.2d 485, 487.

ASPHYXIATION. A state of asphyxia. Stone v. Physicians Casualty Ass'n of America, 130 Neb. 769, 266 N.W. 605, 607.

ASPIRIN. A coal tar product commonly kept in drug stores and sold for medicinal purposes. It is not a proprietary or patent medicine, but is a drug or medicine, within a statute prohibiting retailing by one not a registered pharmacist. State v. Zotalis, 172 Minn. 132, 214 N.W. 766, 767. People v. Garcia, 1 Cal.App.2d 761, 32 P.2d 445, 447. State v. Jewett Market Co., 209 Iowa, 567, 228 N.W. 288, 289.

ASPORTATION. The removal of things from one place to another. The carrying away of goods; one of the circumstances requisite to constitute the offense of larceny. 4 Bl.Comm. 231. Rex v. Walsh, 1 Moody, Cr.Cas. 14, 15. Any appreciable changing of the location of the property involved with felonious intent. People v. Ashworth, 222 N.Y.S. 24, 27, 220 App.Div. 498; Banks v. State, 133 Ark. 169, 202 S.W. 43.

To constitute "asportation," the thing taken must have been in entire or absolute possession of taker. Adams v. Commonwealth, 153 Ky. 88, 154 S.W. 381, 44 L.R.A., N.S., 637. But goods need not be removed from owner's premises, but act of thief in putting property into sack which he carries is sufficient. 21 Okl.St. Ann. § 1701. Brinkley v. State, 60 Okl.Cr. 106, 61 P.2d 1023, 1025. The slightest removal of goods from the place where the owner placed them or wanted them to be is sufficient. Driggers v. State, 118 So. 20, 21, 96 Fla. 232.

ASPORTAVIT. He carried away. Sometimes used as a noun to denote a carrying away. An "asportavit of personal chattels." 2 H.B.1. 4.

ASSACH. In old Welsh law. An oath made by compurgators. Brown.

ASSART. In English law. The offense committed in the forest, by pulling up the trees by the roots that are thickets and coverts for deer, and making the ground plain as arable land. It differs from waste, in that waste is the cutting down of coverts which may grow again, whereas assart is the plucking them up by the roots and utterly destroying them, so that they can never afterward grow. This is not an offense if done with license to convert forest into tillage ground. Consult *Manwood's Forest Laws*, pt. I, p. 171. Wharton. See Essarter.

ASSART RENTS. Rents paid to the Crown for assarted lands.

ASSASSINATION. Murder committed for hire, without provocation or cause of resentment given to the murderer by the person upon whom the crime is committed. Ersk.Inst. 4, 4, 45. A murder committed treacherously or by stealth or surprise, or by lying in wait. Sorrell v. State, 135 Tex.Cr.R. 535, 120 S.W.2d 1058, 1059.

ASSATH. An ancient custom in Wells, by which a person accused of crime could clear himself by the oaths of three hundred men. It was abolished by St. 1 Hen. V. c. 6. Cowell; Spelman.

AssAxaz. An intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward person of another, under such circumstances as create well-founded fear of imminent peril, coupled with apparent present ability to execute attempt, if not prevented. State v. Staw, 97 N.J.L. 349, 116 A. 425; Naler v. State, 148 So. 880, 25 Ala.App. 486.

Intention to harm is of the essence, Raefeldt v. Koenig, 152 Wis. 459, 140 N.W. 56, 57, L.R.A.1918E, 1052; but general malevolence or recklessness is sufficient, State v. Fine, 324 Mo. 19, 219 S.W.2d 1023, 1025. Intentionally, or by driving machine in reckless disregard of human life and safety is sufficient. Webb v. State, 68 Ga.App. 466, 23 S.E.2d 578, 580. It is sufficient to show intent to harm. Wit. People v. Dong Pok Yip, 164 Cal. 143, 127 P. 1031,

ASSAULT

1032; hence operation without consent is assau. Dizenzo v. Berg, **a. 16 A.2d 15**, 6 ssau t must have been unwarranted, but it need not have been committed in anger. McGovern v. Weis, 39 N.Y.S.2d 115, 118, 265 App. Div. 367; hence self-defense is not "assault". City of Gaffney v. Putnam, 197 S.C. 237, 15 S.E.2d 130, 131. Mere words, although provoking or insulting, are insufficient; Western Union Telegraph Co. v. Hill, C.C.A. Ala., 67 F.2d 487; Dahlin v. Fraser, 206 Minn. 476, 288 N.W. 851, 852.

In some jurisdictions degrees of the offense are established, as first degree, State v. Laughlin, Mont., 73 P.2d 718, 721; second degree, State v. Reynolds, 94 Wash. 270, 162 P. 358, 359; and third degree, State v. Steele, 83 Wash. 470, 145 P. 581; State v. Laughlin., 105 Mont. 490, 73 P.2d 718, 721.

Aggravated Assault

One committed with the intention of committing some additional crime; or one attended with circumstances of peculiar outrage or atrocity. This class includes assault with a dangerous or deadly weapon; Brinkley v. State, 82 Tex.Cr.R. 150, 198 S.W. 940; assault upon infants or females, if it create a sense of shame; Wren v. State, 27 Ariz. 491, 232 P. 398; and assault of lust, meaning an assault, less than felonious, with intent to have improper sexual connection; State v. Eslick, Mo.App., 216 S.W. 974, 975.

ASSAULT WITH INTENT TO COMMIT MANSLAUGHTER. An unlawful assault committed in such manner and with such means as would have resulted in commission of crime of manslaughter if person assaulted had then and there died from effects of assault. Lassiter v. State, 98 Fla. 370, 123 So. 735; State v. Crutcher, 1 N.W.2d 195, 199, 231 Iowa 418.

ASSAULT WITH INTENT TO COMMIT MURDER. To constitute this assault and specific intent to kill, actuated by malice aforethought, must concur. Perez v. State, 114 Tex.Cr.R. 473, 22 S.W.2d 309, 310; Griffin v. State, 177 S.E. 511, 50 Ga.App. 213.

ASSAULT WITH INTENT TO COMMIT RAPE. Is constituted by the existence of the facts which bring the offense within the definition of an assault, coupled with an intention to commit the crime of rape. Steptoe v. State, 133 Tex.Cr.R. 194, 115 S.W.2d 916, 917; State v. Jackson, 200 La. 432, 8 So.2d 285, 286.

ASSAULT WITH INTENT TO COMMIT ROBBERY. Involves an assault as well as an intent to commit robbery. Foss v. State, 36 Ohio App. 417, 173 N.E. 296, 297.

Secret Assault

Under a North Carolina statute, to warrant conviction for malicious, "secret assault," state must prove all essential elements of crime, namely, malice, use of deadly weapon in secret manner, with intent to kill. State v. Kline, 190 N.C. 177, 129 S.E. 417, 418.

It is not essential, however, that the person assaulted be unconscious of the presence of his adversary, though the purpose of such adversary must not be known. State v. Oxendine, 187 N.C. 658, 122 S.E. 568, 571.

Simple Assault

One committed with no intention to do any other injury. An offer or attempt to do bodily harm which falls short of an actual battery; an offer or attempt to beat another, but without touching him; for example, a blow delivered within striking distance, but which does not reach its mark. Norton v. State, 14 Tex. 393. Also, sometimes, the use of physical violence upon another, without circumstances of aggravation. Ratchliff v. State, 106 Tex.Cr.R. 37, 289 S.W. 1072, 1074. "Simple assault and battery" is an unlawful act of violent injury to another, unaccompanied by any circumstances of aggravation. State v. Jones, 133 S.C. 167, 130 S.E. 747, 751. And see State v. Staw, 97 N.J.L. 349, 116 A. 425.

ASSAY. The proof or trial, by chemical experiments, of the purity or fineness of metals,—particularly of the precious metals, gold and silver. West v. State, 140 Tex.Cr.R. 493, 145 S.W.2d 580, 584.

A trial of weights and measures by a standard; as by the constituted authorities, clerks of markets, etc. Reg.Orig. 280.

A trial or examination of certain commodities, as bread, cloths, etc. Cowell; Blount. See Annual Assay.

ASSAY OFFICE. The staff of persons by whom (or the building or department in which) the process of assaying gold and silver, required by government, incidental to maintaining the coinage, is conducted.

ASSAYER. One whose business it is to make assays of the precious metals. West v. State, 140 Tex.Cr.R. 493, 145 S.W.2d 580, 584.

ASSAYER OF THE KING. An officer of the royal mint, appointed by St. 2 Hen. VI. c. 12, who received and tested the bullion taken in for coining; also called "*assayator. regis.*" Cowell; Termes de la Ley.

ASSECURARE. To assure, or make secure by pledges, or any solemn interposition of faith. Cowell; Spelman.

ASSECURATION. In European law. Assurance; insurance of a vessel, freight, or cargo. Ferrière.

ASSECURATOR. In maritime law. An insurer, (*aversor periculi.*) Locc. de Jure Mar. lib. 2, c. 5, § 10.

ASSEDATION. In Scotch law. An old term, used indiscriminately to signify a lease or feu-right. Bell; Ersk.Inst. 2, 6, 20.

ASSEMBLAGE. A collection of persons. Also the act of coming together. State v. Breen, 110 Kan. 817, 205 P. 632, 633. Public address upon public grounds. In re Whitney, 57 Cal.App.2d 167, 134 P.2d 516, 521.

ASSEMBLE. When applied to a machine, "assemble" means to collect or gather together the parts and place them in their proper relation to

each other to constitute the machine. *Citizens' Vat. Bank v. Bucheit*, 14 Ala.App. 511, 71 So. 82, 38.

ASSEMBLY. The concourse or meeting together of a considerable number of persons at the same place. Also the persons so gathered.

Popular assemblies are those where the people meet to deliberate upon their rights; these are guaranteed by the constitution. *Const.U.S.Amend.* art. 1.

Political assemblies are those required by the constitution and laws: for example, the general assembly.

The lower or more numerous branch of the legislature in many of the states is also called the "Assembly" or "House of Assembly," but the term seems to be an appropriate one to designate any political meeting required to be held by law.

ASSEMBLY GENERAL. The highest ecclesiastical court in Scotland, composed of a representation of the ministers and elders of the church, regulated by Act 5th Assem. 1694.

ASSEMBLY, UNLAWFUL. In criminal law. The assembling of three or more persons together to do an unlawful act, who separate without actually doing it, or making any motion towards it. 3 Inst. 176; 4 Bl.Comm. 146. It differs from a riot or rout, because in each of the latter cases there is some act done besides the simple meeting. 1 Bish.Crim.Law, § 535; 2 Bish.Crim.Law, §§ 1256, 1259.

ASSENT. Compliance; approval of something done; a declaration of willingness to do something in compliance with a request. *Norton v. Davis*, 83 Tex. 32, 18 S.W. 430; *Appeal of Pittsburgh*, 115 Pa. 4, 7 A. 778; To approve, ratify and confirm. *People v. Consolidated Indemnity and Ins. Co.*, 233 App.Div. 74, 251 N.Y.S. 566, 569. It implies a conscious approval of facts actually known, as distinguished from mere neglect to ascertain facts. *White-Wilson-Drew Co. v. Lyon-Ratcliff Co.*, C.C.A.111., 268 F. 525, 526. Sometimes it is equivalent to "authorize." *Hagerla v. Mississippi River Power Co.*, D.C.Iowa, 202 F. 776, 783. In the sense of the law is a matter of overt acts, not of inward unanimity in motives, design or the interpretation of words. *Triboro Coach Corporation v. New York State Labor Relations Board*, 261 App.Div. 636, 27 N.Y.S.2d 83, 85.

"Assent" is an act of understanding, while "consent" is an act of the will or feelings. *Klundby v. Hogden*, 202 Wis. 438, 232 N.W. 858, 860, 73 A.L.R. 648. It means passivity or submission which does not include consent. *Perelman v. State*, 63 Ga.App. 819, 12 S.E.2d 388, 390.

Express Assent

That which is openly declared.

Implied Assent

That which is presumed by law.

Mutual Assent

The meeting of the minds of both or all the parties to a contract; the fact that each agrees to all the terms and conditions, in the same sense and with the same meaning as the others. *Insurance Co. v. Young*, 23 Wall. 107, 23 L.Ed. 152.

ASSERT. To state as true; declare; maintain. To assert against another has probably a *prima facie* meaning of a contradiction of him, but the context or circumstances may show that it connotes a criminatory charge; 7 L.J.Ex. 268.

ASSERTORY COVENANT. One which affirms that a particular state of facts exists; an affirming promise under seal.

ASSERTORY OATH. See Oath.

ASSESS. To ascertain; fix the value of. *State ex rel. Ambrose v. Trimble*, 304 Mo. 533, 263 S.W. 840, 842. *In re Calhoun Beach Holding Co.*, 205 Minn. 582, 287 N.W. 317, 322. To fix the amount of the damages or the value of the thing to be ascertained. *New Orleans Terminal Co. v. Dixie Rendering*, La.App., 179 So. 98, 100. To impose a pecuniary payment upon persons or property; *People v. Priest*, 169 N.Y. 435, 62 N.E. 568. To ascertain, adjust, and settle the respective shares to be contributed by several persons toward an object beneficial to them all, in proportion to the benefit received.

In connection with taxation of property, means to make a valuation and appraisal of property, usually in connection with listing of property liable to taxation, and implies the exercise of discretion on the part of officials charged with duty of assessing, including the listing or inventory of property involved, determination of extent of physical property, and placing of a value thereon. *Montana-Dakota Power Co. v. Weeks*, D.C.N.D., 8 F.Supp. 935, 936. To tax. *Johnson City v. Clinchfield R. Co.*, 163 Tenn. 332, 43 S.W.2d 386, 387.

To adjust or fix the proportion of a tax which each person, of several liable to it, has to pay; to apportion a tax among several; to distribute taxation in a proportion founded on the proportion of burden and benefit. *Seymour v. Peters*, 67 Mich. 415, 35 N.W. 62. To calculate the rate and amount of taxes. *Flanigan v. Police Jury of Jackson Parish*, 145 La. 613, 82 So. 722, 726.

"Assess" is sometimes used as synonymous with "levy"; *Lehigh Valley R. Co. v. State Board of Taxes and Assessment*, 101 N.J.Law, 298, 128 A. 432, 433; and is sometimes distinguished therefrom; *City of Portland v. Portland Ry. Light & Power Co.*, 80 Or. 271, 156 P. 1058, 1064.

ASSESSED. Is equivalent to imposed. *Town of Brandon v. Harvey*, 105 Vt. 435, 168 A. 708, 710. To value or appraise. *Abrams v. City and County of San Francisco*, 48 Cal.App.2d 1, 119 P.2d 197, 199.

ASSESSED VALUATION. Value on each unit of which a prescribed amount must be paid as property taxes. *In re Calhoun Beach Holding Co.*, 205 Minn. 582, 287 N.W. 317, 322.

ASSESSMENT. In a general sense, the process of ascertaining and adjusting the shares respec-

ASSESSMENT

tively to be contributed by several persons towards a common beneficial object according to the benefit received.

Taxation

The listing and valuation of property for the purpose of apportioning a tax upon it, either according to value alone or in proportion to benefit received. Also determining the share of a tax to be paid by each of many persons; or apportioning the entire tax to be levied among the different taxable persons, establishing the proportion due from each. *Town of Albertville v. Hooper*, 196 Ala. 642, 72 So. 258. *Northwestern Imp. Co. v. Henneford*, 184 Wash. 502, 51 P.2d 1083, 1085. *Iowa Nat. Bank. v. Stewart*, 214 Iowa 1229, 232 N.W. 445, 451. It fixes the liability of the taxpayer and ascertains the facts and furnishes the data for the proper preparation of the tax rolls. *Dallas Joint Stock Land Bank of Dallas v. State*, Tex.Civ.App., 118 S.W.2d 941, 942.

"Assessment" and "levy" are frequently used interchangeably. *Huyler v. Huyler's*, 44 N.Y.S.2d 255, 257. Though properly speaking it does not include the levy of taxes. *Commissioner of Internal Revenue v. Patrick Cudahy Family Co.*, C.C.A.7, 102 F.2d 930, 932. Assessment is also popularly used as synonym for taxation in general, the authoritative imposition of a rate or duty to be paid, but in its technical signification it is only taxation for a special purpose or local improvement, local taxation, as distinguished from general taxation; taxation on principle of apportionment according to the relation between burden and benefit; whole taxes are impositions for purpose of general revenue. *Collister v. Kovanda*, 51 Ohio App. 43, 199 N.E. 477, 478; *Home Owners' Loan Corporation v. Tyson*, 133 Ohio St. 184, 12 N.E.2d 478, 480; *Atlantic Coast Line R. Co. v. Town of Ahoskie*, 192 N.C. 258, 134 S.E. 653, 654.

An assessment is doubtless a tax, but the term implies something more; it implies a tax of a particular kind, predicated upon the principle of equivalents, or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed or appraised, according to the measure or proportion of such equivalents; whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any special advantage which may be supposed to accrue to the persons taxed. Taxes must be levied, without discrimination, equally upon all the subjects of property; whilst assessments are only levied upon lands, or some other specific property, the subjects of the supposed benefits; to repay which the assessment is levied. *In re Walker River Irr. Dist.*, 44 Nev. 321, 195 P. 327, 330.

Corporations

Installments of the money subscribed for shares of stock, called for from the subscribers by the directors, from time to time as the company requires money, are called "assessments," or, in England, "calls." *Water Co. v. Superior Court*, 92 Cal. 47, 28 Pac. 54, 27 Am.St.Rep. 91; *Spangler v. Railroad Co.*, 21 Ill. 278; *Stewart Publishing Co.*, 1 Wash.St. 521, 20 Pac. 605. While the terms "call" and "assessment" are generally used synonymously, the latter term applies with peculiar aptness to contributions above the par value of stock or the subscription liability of the stockholders; *Porter v. Northern Fire & Marine Ins. Co.*, 36 N.D. 199, 161 N.W. 1012, 1014; whereas "call" or "installments" means action of the board of directors demanding payment of all or portion of unpaid

subscriptions; *Seyberth v. American Commander Min. & Mill. Co.*, 42 Idaho, 254, 245 P. 392, 395.

It has been said, however, that the superadded liability of stockholders to creditors, is not in a true sense an "assessment," but is a "statutory liability." *Leach v. Arthur Sa^y. Bank*, 203 Iowa, 1052, 213 N.W. 772, 773.

Damages

Fixing the amount of damages to which the successful party in a suit is entitled after an interlocutory judgment has been taken; also the name given to the determination of the sum which a corporation proposing to take lands for a public use must pay 4satisfaction of the demand proved or the value taken.

Insurance

An apportionment made in general average upon the various articles and interests at risk, according to their value at the time and place of being in safety, for contribution for damage and sacrifices purposely made, and expenses incurred for escape from impending common peril. 2 Phil. Ins. c. xv.

A sum specially levied in mutual benefit insurance upon a fixed and definite plan within the limit of the company's or society's fundamental law of organization to pay losses, or losses and expenses incurred, being to a certain degree substantially the equivalent of premiums. *Beaver State Merchants' Mut. Fire Ins. Ass'n v. Smith*, 97 Or. 579, 192 P. 798, 800. The periodical demands made by a mutual insurance company, under its charter and by-laws, upon the makers of premium notes, are also denominated "assessments." *Hill v. Insurance Co.*, 129 Mich. 141, 88 N.W. 392. Meaning "premiums," *Ancient Order of United Workmen of Kansas v. Hobbs*, 136 Kan. 708, 18 P.2d 561, 562; and being the consideration for the insurance contracts. *Downing v. School Dist. of City of Erie*, 297 Pa. 474, 147 A. 239, 240.

Mining

"Assessment" as applied to labor on mining claims is universally understood to mean the annual labor required by Rev.St.U.S. § 2324 (30 U.S.C.A. § 28), in order to hold the right to the possession of the claim after a discovery and complete location has been made. *Smith v. Union Oil Co.*, 166 Cal. 217, 135 P. 966, 969. See *Assessment Work*.

ASSESSMENT ASSOCIATION. This term, as defined by the Nebraska insurance laws, does not include an insurance company which requires the payment of a fixed premium in advance and provides benefits not in any degree dependent upon the collection of assessments from other members, and which does not provide for the levying of extra assessments, if necessary. *Western Life & Accident Co. of Colorado v. State Ins. Board of Nebraska*, 101 Neb. 152, 162 N.W. 530.

ASSESSMENT COMPANY. In life insurance. A company in which a death loss is met by levy-

ing an assessment on the surviving members of the association. *National Ben. Ass'n v. Clay*, 162 Ky. 409, 172 S.W. 922, 923.

ASSESSMENT CONTRACT. One wherein the payment of the benefit is in any manner or degree dependent on the collection of an assessment levied on persons holding similar contracts. *Folkens v. Insurance Co.*, 98 Mo.App. 480, 72 S.W. 720.

ASSESSMENT DISTRICT. In taxation. Any subdivision of territory, whether the whole or part of any municipality, in which by law a separate assessment of taxable property is made by the officers elected or appointed therefor. *Rev. Stat. Wis. 1898*, § 1031 (*St. 1931*, § 70.04).

ASSESSMENT FOR BENEFITS. A burden levied under the power of taxation. *Jackson v. City of Lake Worth*, 156 Fla. 452, 23 So.2d 526, 528.

See *Tax. Cooper Union for Advancement of Science and Art v. City of New York*, 272 App. Div. 438, 71 N.Y.S.2d 204, 207.

ASSESSMENT FUND. The assessment fund of a mutual benefit association is the balance of the assessments, less expenses, out of which beneficiaries are paid. *Kerr v. Ben. Ass'n*, 39 Minn. 174, 39 N.W. 312, 12 Am.St.Rep. 631.

ASSESSMENT INSURANCE. Exists when benefit to be paid is dependent upon collection of such assessments as may be necessary for paying the amounts to insured. *Keen v. Bankers Mut. Life Co.*, 230 Mo.App. 1072, 93 S.W.2d 85, 90.

ASSESSMENT LABOR. These words in Act Feb. 12, 1903 (30 U.S.C.A. § 102), providing that such labor on oil claims may be done on one of a group of contiguous claims refers to the annual labor required of the locator of a mineral claim after discovery by *Rev. St. § 2324* (30 U.S.C.A. § 28), and not to work before discovery. *Union Oil Co. of California v. Smith*, 39 S.Ct. 308, 311, 249 U.S. 337, 63 L.Ed. 635. See *Assessment*, under the heading "In Mining."

ASSESSMENT LIST. The list furnished by the assessor to the board of equalization. *Adsit v. Park*, 144 La. 934, 81 So. 430, 434.

ASSESSMENT PERIOD. Means taxable period. *Johnson City v. Clinchfield R. Co.*, 163 Tenn. 332, 43 S.W.2d 386, 387.

ASSESSMENT ROLL. In taxation. The list or roll of taxable persons and property, completed, verified, and deposited by the assessors, not as it appears after review and equalization. *Brady v. Weissenstein*, 260 Mich. 678, 245 N.W. 798, 799.

ASSESSMENT WORK. Under the mining laws of the United States, the holder of an unpatented mining claim on the public domain is required, in order to hold his claim, to do labor or make improvements upon it to the extent of at least one hundred dollars in each year. *Rev. St. U.S. § 2324* (30 U.S.C.A. § 28). This is commonly called by miners "doing assessment work."

ASSESSOR. An officer chosen or appointed to appraise, value, or assess property.

The assessing power, and not merely the county assessor. *Board of Com'rs of San Miguel County v. Floaten*, 66 Colo. 540, 181 P. 122.

A person learned in some particular science of industry, who sits with the judge on the trial of a cause requiring such special knowledge and gives his advice.

In England it is the practice in admiralty business to call in assessors, in cases involving questions of navigation or seamanship. They are called "nautical assessors" (*q. v.*), and are always Brethren of the Trinity House.

Civil and Scotch Law

Persons skilled in law, selected to advise the judges of the inferior courts. *Bell*; *Dig. 1, 22*; *Cod. 1, 51*.

ASSETS. The word, though more generally used to denote everything which comes to the representatives of a deceased person, yet is by no means confined to that use, but has come to signify everything which can be made available for the payment of debts, whether belonging to the estate of a deceased person or not. Hence we speak of the assets of a bank or other monied corporation, the assets of an insolvent debtor, and the assets of an individual or private copartnership; and we always use this word when we speak of the means which a party has, as compared with his liabilities or debts. *Pelican v. Rock Falls*, 81 Wis. 428, 51 N.W. 871.

Bankruptcy

The property or effects of a bankrupt or insolvent, applicable to the payment of his debts.

The term "assets" includes all property of every kind and nature, chargeable with the debts of the bankrupt, that comes into the hands of and under the control of the signee; and the value thereof is not to be considered a less sum than that actually realized out of said property, and received by the assignee for it. *In re Taggart*, 16 N. B. R. 351, *Fed. Cas. No. 13, 725*; *Progressive Building & Loan Co. v. Hall*, C.C.A.Va., 220 F. 45, 46.

Commercial Law

The aggregate of available property, stock in trade, cash, etc., belonging to a merchant or mercantile company.

The term "assets," as applied to a bank, is broad enough to cover anything which is or may be available to pay creditors; but, as usually understood, it refers to the tangible property of the corporation, and not to the liability of stockholders contingent upon insolvency. *Hill v. Smathers*, 173 N.C. 642, 92 S.E. 607, 609; *Deariso v. Mobley*, 38 Ga.App. 313, 143 S.E. 915, 920. But when the individual liability of stockholders has been enforced by the superintendent of banks, funds collected by him thereunder are "assets." *Bennett v. Wilkes County*, 164 Ga. 790, 139 S.E. 566, 568.

But on other hand stockholders' voluntary assessment to relieve bank or for betterment of stock. *Thomson v. Holt*, 345 Mo. 296, 132 S.W.2d 974, 977; *bank stockholders' liability*, *Farmers & Merchants Bank of Morgantown v. Bank of Masontown*, 123 W.Va. 451, 15 S.E.2d 569, 572; and *bank directors' contribution to special bond account to make good shrinkage in regular bond were held to be assets*. *Asher v. West End Bank*, 345 Mo. 89, 131 S.W.2d 549, 551.

ASSETS

Probate Law

Property of a decedent available for the payment of debts and legacies; the estate coming to the heir or personal representative which is chargeable, in law or equity, with the obligations which such heir or representative is required, in his representative capacity, to discharge.

In an accurate and legal sense, all the personal property of the deceased which is of a salable nature, and may be converted into ready money, is deemed *assets*. But the word is not confined to such property; for all other property of the deceased, real or personal, tangible or intangible, legal or equitable, which can be made available for or can be appropriated to payment of debts, is, in a large sense, assets. *Trust Co. v. Earle*, 110 U.S. 710, 4 Sup.Ct. 231, 28 L.Ed. 30; *Condo v. Barbour*, 101 Ind.App. 483, 200 N.E. 76; *Tapp v. Stuart*, D.C.Okla., 6 F.Supp. 577, 578.

General

—Assets *entre mains*. L. Fr. Assets in hand; assets in the hands of executors or administrators, applicable for the payment of debts. *Termes de la Ley*; 2 Bl.Comm. 510; 1 Crabb, *Real Prop. Ti*; *Favorite v. Booher*, 17 Ohio St. 557.

—Assets *per descent*. That portion of the ancestor's estate which descends to the heir, and which is sufficient to charge him, as far as it goes, with the specialty debts of his ancestors. 2 Williams, *Ex'rs*, 1011.

—Equitable assets. Equitable assets are all assets which are chargeable with the payment of debts or legacies in equity, and which do not fall under the description of legal assets. 1 Story, *Eq.Jur.* § 552. Those portions of the property which by the ordinary rules of law are exempt from debts, but which the testator has voluntarily charged as assets, or which, being non-existent at law, have been created in equity. *Adams, Eq.* 254, et seq.

They are so called because they can be reached only by the aid and instrumentality of a court of equity, and because their distribution is governed by a different rule from that which governs the distribution of legal assets. 2 Fonbl. *Eq. b.* 4, pt. 2, c. 2, § 1, and notes; Story, *Eq. Jur.* § 552.

—Legal assets. See Legal Assets.

—Personal assets. Chattels, money, and other personal property belonging to a bankrupt, insolvent, or decedent estate, which go to the assignee or executor.

—Quick assets. This term was used in a corporation credit statement merely to distinguish liquid assets from those permanently invested in the business, like *real* estate and machinery, and included amounts charged against officers for return of part of salaries paid them in a previous year, in accordance with the agreement of employment. In *re American Knit Goods Mfg. Co.*, C.C.A.N.Y., 173 F. 480, 97 C.C.A. 486.

—Real assets. Lands or real estate in the hands of an heir, chargeable with the payment of the debts of the ancestor. 2 Bl.Comm. 244, 302.

ASSEVERATION. An affirmation; a positive assertion; a solemn declaration. This word is sel-

dom, if ever, used for a declaration made under oath, but denotes a declaration accompanied with solemnity or an appeal to conscience, whereas by an oath one appeals to God as a witness of the truth of what one says.

ASSEWIARE. To draw or drain water from marsh grounds. Cowell.

ASSIGN, v. To make over or set over to another. *North Tex. Nat. Bank v. Thompson*, Tex.Civ.App., 23 S.W.2d 494, 499. To appoint, allot, select, or designate for a particular purpose, or duty.

Thus, in England, justices are said to be "*assigned* to take the assises," "*assigned* to hold pleas," "*assigned* to make gaol delivery," "*assigned* to keep the peace," etc. *St. Westm.* 2, c. 30; *Reg. Orig.* 68, 69; 3 Bl.Comm. 58, 59, 353; 1 Bl. Comm. 351.

To transfer persons, as a sheriff is said to assign prisoners in his custody.

Conveyancing

To transfer; as to assign property, or some interest therein. Cowell; 2 Bl.Comm. 326; *North Texas Nat. Bank v. Thompson*, Tex.Civ.App., 23 S.W.2d 494, 499; To transfer the title or ownership, as of choses in action. *Burkett v. Doty*, 176 Cal. 89, 167 P. 518, 520.

Practice

To point at, or point out; to set forth, or specify; to mark out or designate; to particularize; as to *assign errors* on a writ of error; to *assign breaches* of a covenant. 2 Tidd, Pr. 1168; 1 Tidd, 686; *Commercial Standard Ins. Co. v. Noack*, Tex. Civ.App., 45 S.W.2d 798, 801.

ASSIGNABILITY. "Survivability" convertible term. *People ex rel. Rude v. La Salle County*, 310 Ill.App. 541, 34 N.E.2d 865, 867. *City of Milwaukee v. Boynton Cab Co.*, 201 Wis. 581, 231 N.W. 597, 598.

ASSIGNABLE. That may be assigned or transferred; transferable; negotiable, as a bill of exchange. Comb. 176; Story, *Bills*, § 17.

ASSIGNATION. In French law. A writ of summons.

In Scotch law. A term equivalent to assignment.

ASSIGNATION HOUSE. A bawdyhouse. *State v. Bragg*, Mo.App., 220 S.W. 25, 26. See, also, *People v. Arcega*, 49 Cal.App. 239, 193 P. 264, 266. A house resorted to for prostitution. *State v. Hesselmeier*, 343 Mo. 797, 123 S.W.2d 90, 99.

ASSIGNATUS UTITUR JURE AUCTORIS. An assignee uses the right of his principal; an assignee is clothed with the rights of his principal. *Wing.Max.* 56; 1 Exch. 32; 18 Q.B. 878.

ASSIGNAY. In Scotch law. An assignee.

ASSIGNEE. A person to whom an assignment is made; grantee. *Nolan v. City of New York*, 39 N.Y.S.2d 360, 363, 179 Misc. 1011. *Ely v. Com'rs*, 49 Mich. 17, 12 N.W. 893, 13 N.W. 784. The term

is commonly used in reference to personal property; but it is not incorrect, in some cases, to apply it to realty, *e. g.*, "assignee of the reversion."

Assignee in fact is one to whom an assignment has been made in fact by the party having the right. *Tucker v. West*, 31 Ark. 643. One to whom an assignment has been made. *Michigan Trust Co. v. Chaffee*, D.C.N.D., 44 F.Supp. 848, 850.

Assignee in law is one in whom the law vests the right; as an executor or administrator.

Old Law

A person deputed or appointed by another to do any act, or perform any business. *Blount. An assignee*, however, was distinguished from a *deputy*, being said to occupy a thing in his own right, while a deputy acted in right of another. *Cowell*.

ASSIGNEE FOR THE BENEFIT OF CREDITORS. One to whom, under an insolvent or bankrupt law, the whole estate of a debtor is transferred to be administered for the benefit of creditors; he is a trustee for the creditors who stands in the shoes of an assignor, and can assert no claim to property which assignor could not. *Slater v. Oriental Mills*, 18 R.I. 352, 27 A. 443, 444; *Textor v. Orr*, 86 Md. 392, 38 A. 939, 940.

ASSIGNMENT. A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. *Bostrom v. Bostrom*, 60 N.D. 792, 236 N.W. 732, 734. It includes transfers of all kinds of property, *Higgins v. Monckton*, 28 Cal.App.2d 723, 83 P.2d 516, 519. But is ordinarily limited to transfers of choses in action and to rights in or connected with property, as distinguished from the particular item of property. In *re Beffa's Estate*, 54 Cal.App. 186, 201 P. 616, 617. It is generally appropriate to the transfer of equitable interests. *Kavanaugh v. Cohoes Power & Light Corporation*, 187 N.Y.S. 216, 228, 114 Misc. 590.

To constitute valid "assignment," there must be perfected transaction between parties intended to vest in assignee present right in thing assigned. In *re Lynch's Estate*, 272 N.Y.S. 79, 85, 151 Misc. 549. It is contract, and is subject to same requisites as to validity as other contracts, such as proper parties, mutual assent, consideration, and legal subject-matter. *Hutsell v. Citizens' Nat. Bank*, 166 Tenn. 598, 64 S.W.2d 188.

The transfer of the interest one has in *lands* and *tenements*; more particularly applied to the unexpired residue of a term or estate for life or years; *Cruise*, Dig. tit. xxxii. (Deed) c. vii, § 15; 1 Steph.Com. 507.

The distinction between an "assignment" and a "sublease" is that an assignment transfers the entire unexpired term. *Sandford v. Ambassador Restaurant Co.*, 247 N.Y.S. 655, 657, 139 Misc. 3.

The deed by which the transfer is made. *Humphrey v. Coquillard Wagon Works*, 37 Okl. 714, 132 P. 899, 902, 49 L.R.A., N.S., 600.

A transfer of the title to a bill, note, or check.

An assignment at common law differs from an indorsement in that by an assignment the assignor passed title to

the assignee but did not subject himself to any contractual liability, whereas an indorser, in addition to passing title, impliedly contracts to pay note at maturity on demand and notice on maker's failure to so do. *Johnson v. Beickey*, 64 Utah, 43, 228 P. 189, 191.

In patent law, the transfer of the entire interest in a patented invention or of an undivided portion of such entire interest as to every section of the United States. *Rob.Pat. § 762*. It differs from grant in relation to the territorial area to which they relate. A grant is the transfer of the exclusive right in a specific part of the United States. It is an exclusive sectional right. A license is a transfer of a less or different interest than either the interest in a whole patent or an undivided part of such whole interest or an exclusive sectional interest. *Littlefield v. Perry*, 21 Wall. 205, 22 L.Ed. 577.

A license is distinguished from an assignment and a grant in that the latter transfers the monopoly as well as the invention, while a license transfers only the invention and does not affect the monopoly otherwise than by estopping the licensor from exercising his prohibitory powers in derogation of the privileges conferred by him upon the licensee. *Rob. Pat. § 806*. See *Pope Mfg. Co. v. Mfg. Co.*, 144 U.S. 248, 12 S.Ct. 641, 36 L.Ed. 423.

—Assignment for benefit of creditors. An assignment in trust made by insolvent and other debtors for the payment of their debts. These are usually regulated by state statutes. *Woodard v. Morrissey*, 115 Kan. 511, 223 P. 306, 307.

The distinctive test between an "assignment" and a sale, where another creditor is to be paid off, is that in the former case such other creditor is to receive some of the property or its proceeds, and in the latter the creditor to whom title is passed takes for himself the whole property, stipulating to pay the other creditor out of his own means and not out of the property or its proceeds. *Silver & Goldstein v. Chapman*, 163 Ga. 604, 136 S.E. 914, 919.

—Assignment of account. Transfer to assignee giving him a right to have moneys when collected applied to payment of his debt. *Nanny v. H. E. Pogue Distillery Co.*, 56 Cal.App.2d 817, 133 P.2d 686, 688.

—Assignment of dower. The act by which the share of a widow in her deceased husband's real estate is ascertained and set apart to her. *Bettis v. McNider*, 137 Ala. 588, 34 So. 813, 97 Am.St.Rep. 59.

—Assignment of error. See Error.

—Assignment pro tanto. Where an order is drawn upon a third party and made payable out of a particular fund then due or to become due to the drawer, the delivery of the order to the payee operates as an assignment pro tanto of the fund. *Doyle v. East New York Sa^y. Bank*, 44 N.Y.S.2d 318, 323.

Under Mechanics' Lien Law a workman or materialman who serves on owner a stop notice becomes an assignee pro tanto of debt due from owner to contractor. *Commonwealth Roofing Co. v. Riccio*, 81 N.J.Eq. 486, 87 A. 114, 115.

Check drawn on a bank operates as an assignment pro tanto of depositor's funds in favor of holder. *Nat. Bank of America v. Indiana Banking Co.*, 114 Ill. 483, 2 N.E. 401.

—Assignment with preferences. An assignment for the benefit of creditors, with directions to the

ASSIGNMENT

assignee to prefer a specified creditor or class of creditors, by paying their claims in full before the others receive any dividend, or in some other manner. More usually termed a "preferential assignment."

—Foreign assignment. An assignment made in a foreign country, or in another state. 2 Kent, Comm. 405, *et seq.*

—General assignment. An assignment made for the benefit of *all* the assignor's creditors, instead of a few only; or one which transfers the *whole* of his estate to the assignee, instead of a part only. *Royer Wheel Co. v. Fielding*, 101 N.Y. 504, 5 N.E. 431.

—Voluntary assignment. An assignment for the benefit of his creditors made by a debtor voluntarily; as distinguished from a compulsory assignment which takes place by operation of law in proceedings in bankruptcy or insolvency. Presumably it means an assignment of a debtor's property in trust to pay his debts generally, in distinction from a transfer of property to a particular creditor in payment of his demand, or to a conveyance by way of collateral security or mortgage. *Dias v. Bouchaud*, 10 Paige (N.Y.) 445.

ASSIGNOR. A person who assigns a right, whether or not he is the original owner thereof. Restatement, Contracts, § 149(2).

ASSIGNS. Assignees; those to whom property shall have been transferred. Now seldom used except in the phrase, in deeds, "heirs, administrators, and assigns." *Stannard v. Marboe*, 159 Minn. 119, 198 N.W. 127. It generally comprehends all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law. *Ferrell v. Deverick*, 100 S.E. 850, 853, 85 W.Va. 1.

ASSISA. In old English and Scotch law. An assise; a kind of jury or inquest; a writ; a sitting of a court; an ordinance or statute; a fixed or specific time, number, quantity, quality, price, or weight; a tribute, fine, or tax; a real action; the name of a writ. See *Assise*.

ASSISA ARMORUM. Assise of arms. A statute or ordinance requiring the keeping of arms for the common defense. Hale, Com.Law, c. 11.

ASSISA CADERE. To fail in the assise; *e.*, to be nonsuited. Cowell; 3 Bl.Comm. 402.

ASSISA CADIT IN JURATUM. The assise falls (turns) into a jury; hence to submit a controversy to trial by jury.

ASSISA CONTINUANDA. An ancient writ addressed to the justices of assise for the continuation of a cause, when certain facts put in issue could not have been proved in time by the party alleging them. Reg.Orig. 217.

ASSISA DE CLARENDON. The assise of Clarendon. A statute or ordinance passed in the tenth year of Henry II., by which those that were ac-

cused of any heinous crime, and not able to purge themselves, but must abjure the realm, had liberty of forty days to stay and try what succor they could get of their friends towards their sustenance in exile. Bract. fol. 136; Co.Litt. 159a; Cowell.

ASSISA DE FORESTA. Assise of the forest; a statute concerning orders to be observed in the royal forests.

ASSISA DE MENSURIS. Assise of measures. A common rule for weights and measures, established throughout England by Richard I., in the eighth year of his reign. Hale, Com.Law, c. 7.

ASSISA DE NOCUMENTO. An assise of nuisance; a writ to abate or redress a nuisance.

ASSISA DE UTRUM. An obsolete writ, which lay for the parson of a church whose predecessor had alienated the land and rents of it.

ASSISA FRISCZE FORTIJE. Assise of fresh force, which see.

ASSISA MORTIS D'ANCESTORIS. Assise of mort d'ancestor, which see.

ASSISA NOVAE DISSEYSINAE. Assise of novel disseisin, which see.

ASSISA PANIS ET CEREVISLE. Assise of bread and ale, or beer. The name of a statute passed in the fifty-first year of Henry III., containing regulations for the sale of bread and ale; sometimes called the "statute of bread and ale." Co.Litt. 159b; 2 Reeve, Hist.Eng.Law, 56; Cowell; Bract. fol. 155.

ASSISA PROROGANDA. An obsolete writ, which was directed to the judges assigned to take assises, to stay proceedings, by reason of a party to them being employed in the king's business. Reg.Orig. 208.

ASSISA ULTDLE PRISENTATIONIS. Assise of darrein presentment, (q. v.).

ASSISA VENALIUM. The assise of salable commodities, or of things exposed for sale.

ASSISE, or ASSIZE. An ancient species of court, consisting of a certain number of men, usually twelve, who were summoned together to try a disputed cause, performing the functions of a jury, except that they gave a verdict from their own investigation and knowledge and not upon evidence adduced. From the fact that they sat together, (*assideo*,) they were called the "assise." See Bract. 4, 1, 6; Co.Litt. 153b, 159b. A court composed of an assembly of knights and other substantial men, with the baron or justice, in a certain place, at an appointed time. Grand Cou. cc. 24, 25.

The verdict or judgment of the jurors or recognitors of assise. 3 Bl.Comm. 57, 59.

In modern English law, the name "assises" or "assizes" is given to the court, time, or place where the judges of assise and *nisi prius*, who are sent by special commission from the crown on circuits through the kingdom, proceed to take indictments, and to try such disputed causes issu-

ing out of the courts at Westminster as are then ready for trial, with the assistance of a jury from the particular county; the regular sessions of the judges at *nisi Arius*.

Anything reduced to a certainty in respect to time, number, quantity, quality, weight, measure, etc. Spelman.

An ordinance, statute, or regulation. Spelman gives this meaning of the word the first place among his definitions, observing that *statutes* were in England called "assises" down to the reign of Henry III.

A species of writ, or real action, said to have been invented by Glanville, chief justice to Henry II., and having for its object to determine the right of possession of lands, and to recover the possession. 3 Bl.Comm. 184, 185.

The whole proceedings in court upon a writ of assise. Co.Litt. 159b. The verdict or finding of the jury upon such a writ. 3 Bl.Comm. 57.

—Assise of Clarendon. See Assisa.

—Assise of darrein presentment. A writ of assise which formerly lay when a man or his ancestors under whom he claimed presented a clerk to a benefice, who was instituted, and afterwards, upon the next avoidance, a stranger presented a clerk and thereby disturbed the real patron. 3 Bl.Comm. 245; St. 13 Edw. I. (Westm. 2) c. 5. It has given way to the remedy by *quare impedit*.

—Assise of fresh force. In old English practice. A writ which lay by the usage and custom of a city or borough, where a man was disseised of his lands and tenements in such city or borough. It was called "fresh force," because it was to be sued within forty days after the party's title accrued to him. Fitzh.Nat.Brev. 7 C.

—Assise of mort d'ancestor. A real action which lay to recover land of which a person had been deprived on the death of his ancestor by the abatement or intrusion of a stranger. 3 Bl.Comm. 185; Co.Litt. 159a. It was abolished by St. 3 & 4 Wm. IV, c. 27.

—Assise of Northampton. A re-enactment and enlargement (1176) of the Assise of Clarendon. 1 Holdsw.Hist.E.L. 21.

—Assise of novel disseisin. A writ of assise which lay for the recovery of lands or tenements, where the claimant had been lately disseised.

—Assise of nuisance. A writ of assise which lay where a nuisance had been committed to the complainant's freehold; either for abatement of the nuisance or for damages.

—Assise of the forest. A statute touching orders to be observed in the king's forests. Manwood, 35.

—Assise of utrum. A writ of assise which lay for a parson to recover lands which his predecessor had improperly allowed the church to be deprived of. 3 Bla.Com. 257.

An assise for the trial of the question of whether land is a lay fee, or held in frankalmoigne. 1 Holdsw.Hist.E.L. 21.

—Assise rents. The certain established rents of the freeholders and ancient copyholders of a manor; so called because they are *assised*, or made precise and certain.

—Grand assize. A peculiar species of trial by jury, introduced in the time of Henry II., giving the tenant or defendant in a writ of right the alternative of a trial by battle, or by his peers. Abolished by 3 & 4 Wm. IV, c. 42, § 13. See 3 Bl. Comm. 341. See Battle.

ASSISER. An assessor; juror; an officer who has the care and oversight of weights and measures.

ASSISORS. In Scotch law. Jurors; the persons who formed that kind of court which in Scotland was called an "assise," for the purpose of inquiring into and judging divers civil causes, such as perambulations, cognitions, molestations, purpresures, and other matters; like jurors in England. Holthouse.

ASSIST. To help; aid; succor; lend countenance or encouragement to; participate in as an auxiliary. *People v. Hayne*, 83 Cal. 111, 23 Pac. 1, 7 L.R.A. 348, 17 Am.St.Rep. 211. To contribute effort in the complete accomplishment of an ultimate purpose intended to be effected by those engaged. *People v. Thurman*, 62 Cal.App. 147, 216 P. 394, 395.

ASSISTANCE. Imports voluntary participation in wrongful acts of promoters. *Peterson v. Hopson*, 29 N.E.2d 140, 148, 306 Mass. 597.

ASSISTANCE, or (ASSISTANTS) COURT OF. See Court of Assistants.

ASSISTANCE OF COUNSEL. Sixth Amendment to Federal Constitution, guaranteeing accused in criminal prosecution "assistance of counsel" for his defense, means effective assistance. U.S.C.A. Const. Amend. 6. *Thomas v. District of Columbia*, 90 F.2d 424, 428, 67 App.D.C. 179. As distinguished from bad faith, sham, mere pretense or want of opportunity for conferences and preparation. *Beckett v. Hudspeth*, C.C.A.Kan., 131 F.2d 195, 196.

ASSISTANCE, WRIT OF. See Writ of Assistance.

ASSISTANT. A deputy, agent, or employee; as, an assistant assessor. *Pryor Brown Transfer Co. v. Gibson*, 154 Tenn. 260, 290 S.W. 33, 35, 51 A.L.R. 193. One who stands by and aids or helps another, and is not an agent. *Wells-Dickey Co. v. Embody*, 82 Mont. 150, 266 P. 869, 874. Ordinarily refers to employee whose duties are to help his superior, to whom he must look for authority to act. *State ex rel. Dunn v. Ayers*, 112 Mont. 120, 113 P. 2d 785, 788.

ASSISTANT JUDGE. A judge of the English court of general or quarter sessions in Middlesex. He differs from the other justices in being a bar-

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risters of ten years' standing, and in being salaried. St. 7 & 8 Vict. c. 71; 22 & 23 Vict. c. 4; Pritch. Quar.Sess. 31.

ASSISTANT TEACHER. An "assistant teacher," meaning a classroom teacher of a subject, is not a "laboratory assistant," meaning a helper of a teacher who does no teaching. People ex rel. Becker v. Board of Education of City of New York, Sup., 162 N.Y.S. 643, 648.

ASSISUS. Rented or farmed out for a specified assise; that is, a payment of a certain assessed rent in money or provisions.

ASSITHMENT. Weregild (*q. v.*) or compensation by a pecuniary mulct. Cowell.

ASSIZE. In the practice of the criminal courts of Scotland, the fifteen men who decide on the conviction or acquittal of an accused person are called the "assize," though in popular language, and even in statutes, they are called the "jury." Wharton. See Assise.

ASSIZES. Sessions of the justices or commissioners of assize. These assizes are held twice in each year in each of the various shires of England, with some exceptions, for the trial of matters of fact in issue in both civil and criminal cases. They still retain the ancient name in popular language, though the commission of assize is no longer issued. See Assise.

ASSIZES DE JERUSALEM. A code of feudal jurisprudence prepared by an assembly of barons and lords A. D. 1099, after the conquest of Jerusalem. It was compiled principally from the laws and customs of France.

ASSOCIATE. Signifies confederacy or union for a particular purpose, good or ill. Weir v. United States, C.C.A.Ind., 92 F.2d 634, 638, 114 A.L.R. 481; Means "also". Smith v. Maine, 260 N.Y.S. 409, 145 Misc. 521.

An officer in each of the English courts of common law, appointed by the chief judge of the court, and holding his office during good behavior, whose duties were to superintend the entry of causes, to attend the sittings of *nisi prius*, and there receive and enter verdicts, and to draw up the postea and any orders of *nisi prius*. The associates are now officers of the Supreme Court of Judicature, and are styled "Masters of the Supreme Court." Wharton.

A person associated with the judges and clerk of assise in the commission of general jail delivery. Mozley & Whitley.

The term is frequently used of the judges of appellate courts, other than the presiding judge or chief justice.

ASSOCIATES IN OFFICE. "Associates in office" are those who are united in action; who have a common purpose; who share the responsibility or authority and among whom is reasonable equality; those who are authorized by law to perform the duties jointly or as a body. Barton v. Alexander, 27 Idaho 286, 148 P. 471, 474, Ann.Cas. 1917D, 729,

ASSOCIATION. The act of a number of persons in uniting together for some special purpose or business. The persons so joining. It is a word of vague meaning used to indicate a collection of persons who have joined together for a certain object. U. S. v. Martindale, D.C.Kan., 146 F. 280, 284; In re Sautter's Estate, 142 Neb. 42, 5 N.W.2d 263, 268; W. R. Roach & Co. v. Harding, 348 Ill. 454, 181 N.E. 331, 336. An unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise. Clark v. Grand Lodge of Brotherhood of Railroad Trainmen, 328 Mo. 1084, 43 S.W.2d 404, 408. It is not a legal entity separate from the persons who compose it. Meinhardt v. Contresta, Sup., 194 N.Y.S. 593, 594.

A confederacy or union for particular purposes, good or ill. Johnson's Dict.

In that sense "association" is a generic term and indifferently comprehend a voluntary confederacy, which is a partnership dissoluble by the persons who formed it or a corporate confederacy, deriving its existence from confederacy, and dissoluble only by the law." Campbell v. Floyd, 153 Pa. 84, 25 A. 1033, 1036.

A body of persons invested with some, yet not full, corporate rights and powers, but will not include the state State v. Taylor, 7 S.D. 533, 64 N.W. 548.

"Association" and "society" are convertible terms Kribs v. United Order of Foresters, 191 Mo.App. 524, 17 S.W. 766, 769. Also often used as synonymous with "company". Law v. Crist, 41 Cal.App.2d 862, 107 P.2d 953, 955.

It is fundamentally a large partnership, from which it differs, in that it is not bound by the acts of the individual partners, but only by those of its manager or trustee and that shares in it are transferable, and that it is no dissolved by the retirement, death, or bankruptcy of it, individual members. In re Lloyds of Texas, D.C.Tex., 4: F.2d 383, 385.

A "business trust" is an "association" when it has continuing entity throughout trust period, centralize management, continuity of trust uninterrupted by death among beneficial owners, means for transfer of beneficial interests, and limitation of personal liabilities of participants to property embarked in undertaking. Fletcher v. Clark, D.C.Wyo., 57 F.Supp. 479, 480.

"Association" has been held to include a common-law business or Massachusetts trust. Tracy v. Banker, 17 Mass. 266, 49 N.E. 308, 39 L.R.A. 508.

Articles of association. See Articles.

English Law

A writ directing certain persons (usually the clerk and his subordinate officers) to associate themselves with the justices and sergeants for the purpose of taking the assizes. 3 Bla.Comm. 59.

National Banking Associations

The statutory title of corporations organized for the purpose of carrying on the business of banking under the laws of the United States. Rev.St.U.S. § 5133 (12 USCA § 21).

ASSOCIE EN NOM. In French law. In a *societ en commanditd an associd en nom* is one who is liable for the engagements of the undertaking to the whole extent of his property. This expression arises from the fact that the names of the *associd*

so liable figure in the firm-name or form part of the *société en i.nom collectif*. Arg.Fr.Merc.Law, 546.

ASSOIL. (Spelled also *assoile*, *absoile*, *assoilyie*.) To absolve; acquit; to set free; to deliver from excommunication. St. 1 Hen. IV, c. 7; Cowell.

ASSOILZIE. In Scotch law. To acquit the defendant in an action; to find a criminal not guilty.

ASSUME. To pretend. To undertake; engage; promise. 1 Ld.Raym. 122; 4 Coke, 92; Hopkins v. Erskine, 118 Me. 276, 107 A. 829, 830. To take to or upon one's self. Springer v. De Wolf, 194 Ill. 218, 62 N.E. 542, 56 L.R.A. 465, 88 Am.St.Rep. 155; Anicker v. Doyle, 84 Okl. 62, 202 P. 281, 284; Bell Telephone Co. of Pennsylvania v. Public Service Commission of Pennsylvania, 119 Pa.Super. 292, 181 A. 73, 74. Also taking up, receiving, adopting, taking to oneself, or to put on deceitfully, take appearance of, affect, or outwardly seem. Nickell v. State, 205 Wis. 614, 238 N.W. 508, 510. To take on, become bound as another is bound, or put oneself in place of another as to an obligation or liability. Texas Employers' Ins. Ass'n v. Texas & P. Ry. Co., Tex.Civ.App., 129 S.W.2d 746, 749.

ASSUMED RISK. See Assumption of Risk.

ASSUMPSIT. Lat. He undertook; he promised.

A promise or engagement by which one person assumes or undertakes to do some act or pay something to another. It may be either oral or in writing, but is not under seal. It is *express* if the promisor puts his engagement in distinct and definite language; it is *implied* where the law infers a promise (though no formal one has passed) from the conduct of the party or the circumstances of the case. Dukes v. Rogers, 67 Ga. App. 661, 21 S.E.2d 295, 297.

Practice

A form of action which lies for the recovery of damages for the non-performance of a parol or simple contract; or a contract that is neither of record nor under seal. 7 Term. 351; Ballard v. Walker, 3 Johns. Cas. (N.Y.) 60. A liberal and equitable action, applicable to almost every case where money has been received which in equity and good conscience ought to be refunded; express promise is not necessary to sustain action, but it may be maintained whenever anything is received or done from the circumstances of which the law implies a promise of compensation. Armour & Co. v. Whitney & Kemmerer, Inc., 164 Va. 12, 178 S.E. 889, 98 A.L.R. 596.

Express assumpsit. See Express Assumpsit

Special assumpsit is an action of assumpsit brought upon an express contract or promise.

General (common or indebitatus) assumpsit is an action of assumpsit brought upon the promise or contract implied by law in certain cases. It is founded upon what the law terms an implied promise on the part of defendant to pay what, in

good conscience, he is bound to pay to plaintiff. Tr. and Ha. Pr. 1490; Ruse v. Williams, 14 Ariz 445, 130 P. 887, 888, 45 L.R.A., N.S., 923.

The action of *assumpsit* differs from *trespass* and *trover*, which are founded on a tort, not upon a contract; from *covenant* and *debt*, which are appropriate where the ground of recovery is a sealed instrument, or special obligation to pay a fixed sum; and from *replevin* which seeks the recovery of specific property, if attainable, rather than of damages.

ASSUMPSIT FOR MONEY HAD AND RECEIVED. Is of equitable character and lies, in general, whenever defendant has received money which in equity and good conscience he ought to pay to plaintiff. Henderson v. Koenig, 192 Mo. 690, 91 S.W. 88, 91.

ASSUMPSIT ON QUANTUM MERUIT. When a person employs another to do work for him, without any agreement as to his compensation, the law implies a promise from the employer to the workman that he will pay him for his services as much as he may deserve or merit. In such case, the plaintiff may suggest in his declaration that the defendant promised to pay him as much as he reasonably deserved, and then aver that his trouble was worth such a sum of money, which the defendant has omitted to pay. This is called an "assumpsit on quantum meruit". Travis v. Kennedy, Tex.Civ.App., 66 S.W.2d 444, 446.

ASSUMPTION. The act of conceding or taking for granted. Gordon v. Schellhorn, 95 N.J.Eq. 563, 123 A. 549, 552.

The term is substantially synonymous with "inference," "probability," and "presumption." Ohio Bldg. Safety Vault Co. v. Industrial Board of Illinois, 277 Ill. 96, 115 N.E. 149, 154.

The act or agreement of assuming or taking upon one's self; the undertaking or adoption of a debt or obligation primarily resting upon another, as where the purchaser of real estate "assumes" a mortgage resting upon it, in which case he adopts the mortgage debt as his own and becomes personally liable for its payment. Lenz v. Railroad Co., 111 Wis. 198, 86 N.W. 607; Bell Telephone Co. of Pennsylvania v. Public Service Commission of Pennsylvania, 119 Pa.Super. 292, 181 A. 73, 75.

The difference between the purchaser of land assuming a mortgage on it and simply buying subject to the mortgage, is that in the former case he makes himself personally liable for the payment of the mortgage debt, while in the latter case he does not. Hancock v. Fleming, 103 Ind. 533, 3 N.E. 254. When he takes the conveyance subject to the mortgage, he is bound only to the extent of the property. Brichetto v. Raney, 76 Cal.App. 232, 245 P. 235, 241. Where one "assumes" a lease, he takes to himself the obligations, contracts, agreements, and benefits to which the other contracting party was entitled under the terms of the lease. Cincinnati, etc., R. Co. v. Indiana, etc., R. Co., 44 Ohio St. 287, 314, 7 N.E. 152.

ASSUMPTION OF INDEBTEDNESS. Means for one person to bind himself to pay debt incurred by another. Pawnee County Excise Board v. Kurn, 187 Okl. 110, 101 P.2d 614, 618.

ASSUMPTION OF RISK. Exists where none of fault for injury rests with plaintiff, but where plaintiff assumes consequences of injury occurring through fault of defendant, third person, or fault

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of no one. *Rodgers v. Stoller*, 284 Ky. 108, 143 S.W.2d 1047, 1048. It is based upon the maxim "*volenti non fit injuria*," which means that to which a person assents is not regarded in law as an injury. *Poole v. Lutz & Schmidt*, 273 Ky. 586, 117 S.W.2d 575, 576. And predicated upon knowledge and consent. *Kansas City Southern Ry. Co. v. Diggs*, 205 Ark. 150, 167 S.W.2d 879, 883. While more generally used as between master and servant, courts do not confine it to such relationship. *Adams' Adm'r v. Callis & Hughes*, 253 Ky. 382, 69 S.W.2d 711, 712.

Doctrine held applicable in action by automobile guest passenger. *Gill v. Arthur*, 69 Ohio App. 386, 43 N.E.2d 894, 899. But held not applicable in automobile collision cases generally. *Schubring v. Weggen*, 234 Wis. 517, 291 N.W. 788, 789, 790, 791.

In some jurisdictions, doctrine confined to master and servant relation. *Dowse v. Maine Cent. R. R.*, 91 N.H. 419, 20 A.2d 629, 631; *Parker v. Grand Trunk Western R. Co.*, 261 Mich. 293, 246 N.W. 125, 126; *West Texas Utilities Co. v. Reuner*, Tex., 32 S.W.2d 264, 270. A term or condition in a contract of employment, either express or implied from the circumstances of the employment, by which the employee agrees that dangers of injury ordinarily or obviously incident to the discharge of his duty in the particular employment shall be at his own risk. *Parker v. City of Wichita*, 150 Kan. 249, 92 P.2d 86, 89; *Wisconsin & Arkansas Lumber Co. v. Otts*, 178 Ark. 283, 10 S.W.2d 364, 365; *Southern Pac. Co. v. McCready*, C.C.A.Cal., 47 F.2d 673, 675. It has reference to dangers that are normally and necessarily incident to the occupation, which are deemed to be assumed by workmen of mature years, whether they are actually aware of them or not. *Chesapeake & O. Ry. Co. v. Cochran*, C.C.A.W.Va., 22 F.2d 22, 25.

It is founded upon the knowledge of the servant either actual or constructive, as to the hazards to be encountered and his consent to take the chance of danger. *Schuppenies v. Oregon Short Line R. Co.*, 38 Idaho, 672, 225 P. 501, 505. But it does not include the risks from the negligence of the master, or the gross negligence of his superior servant. *Burton Const. Co. v. Metcalfe*, 162 Ky. 366, 172 S.W. 698, 702; "Contributory negligence" is not synonymous with assumption of risk. *Dolse Bros. Co. v. Kahl*, C.C.A.Iowa, 203 F. 627, 630. "Assumed risk" is founded upon the knowledge of the employee, either actual or constructive, of the risks to be encountered, and his consent to take the chance of injury therefrom. Contributory negligence implies misconduct, the doing of an imprudent act by the injured party, or his dereliction in failing to take proper precaution for his personal safety. The doctrine of assumed risk is founded upon contract, while contributory negligence is solely matter of conduct. *Wheeler v. Tyler*, 129 Minn. 206, 152 N.W. 137.

ASSUMPTION OF SKILL. The doctrine known as the "assumption of skill" on the part of the master sometimes makes the knowledge implied against the master relative to the safety of the place of work, and the nature, constituents, and general characteristics of the things used in the business, superior to that implied against the servant, especially where the servant is inexperienced. *Hines v. Little*, 26 Ga.App. 136, 105 S.E. 618.

ASSURANCE. A pledge, guaranty, or surety. *National Watch Co. v. Weiss*, 163 N.Y.S. 46, 47, 98

Misc. 453. A declaration tending to inspire full confidence. *Texas & N. O. Ry. Co. v. New, Tex. Civ.App.*, 95 S.W.2d 170, 175. A making secure; insurance.

The term was formerly of very frequent use in the modern sense of insurance, particularly in English maritime law, and still appears in the policies of some companies, but is otherwise seldom seen of late years. There seems to be a tendency, however, to use *assurance* for the contracts of life insurance companies, and *insurance* for risks upon property.

In conveyancing. A deed or instrument of conveyance. The legal evidences of the transfer of property are in England called the "common assurances" of the kingdom, whereby every man's estate is *assured* to him, and all controversies, doubts, and difficulties are either prevented or removed. 2 Bl.Comm. 294. *State v. Farrand*, 8 N.J.Law, 335.

ASSURANCE, FURTHER, COVENANT FOR. See Covenant for Further Assurance.

ASSURE. To make certain and put beyond doubt. *Armour & Co. v. New York, N. H. & H. R. Co.*, 41 R.I. 361, 103 A. 1031, 1033. To declare solemnly; to assure to any one with design of inspiring belief or confidence; to declare, aver, avouch, assert, or asseverate. *Chanin v. Chevrolet Motor Co.*, C.C.A.Ill., 89 F.2d 889, 891. Used interchangeably. With insure in insurance law; in real property documents it means a warranty; and in business documents, generally, it means a pledge or security. *Utilities Engineering Institute v. Kafad*, 58 N.Y.S.2d 743, 745, 185 Misc. 1035.

ASSURED. A person who has been insured by some insurance company, or underwriter, against losses or perils mentioned in the policy of insurance. *Brockway v. Insurance Co.*, C.C.Pa., 29 Fed. 766.

Thus where a wife insures her husband's life for her own benefit and he has no interest in the policy, she is the "assured" and he the "insured."

The person for whose benefit the policy is issued and to whom the loss is payable, not necessarily the person on whose life or property the policy is written. *Insurance Co. v. Luchs*, 2 S.Ct. 949, 108 U.S. 498, 27 L.Ed. 800. Ordinarily synonymous with insured. *Thompson v. Northwestern Mut. Life Ins. Co.*, 161 Iowa, 446, 143 N.W. 518.

ASSURED CLEAR DISTANCE AHEAD. Requires driver keep automobile under such control that he can stop in distance that he can clearly see, the distance varying with circumstances. *Lauerman v. Strickler*, 141 Pa.Super. 240, 14 A.2d 608, 610; *Smiley v. Arrow Spring Bed Co.*, 138 Ohio St. 81, 33 N.E.2d 3, 5, 6, 7, 9, 133 A.L.R. 960.

ASSURER. An insurer against certain perils and dangers; an underwriter; and indemnifier.

ASSYTHEMENT. In Scotch law. Damages awarded to the relative of a murdered person from the guilty party, who has not been convicted and punished. *Paters. Comp.*

ASTIPULATION. A mutual agreement, assent, and consent between parties; also a witness or record.

ASTITRARIUS Hi'ERES. An heir apparent who has been placed, by conveyance, in possession of his ancestor's estate during such ancestor's lifetime. Co.Litt. 8.

ASTITUTION. An arraignment (*q. v.*).

ASTRARIUS. In old English law. A householder; belonging to the house; a person in actual possession of a house.

ASTRARIUS H/ERES. Where the ancestor by conveyance hath set his heir apparent and his family in a house in his lifetime. Cunningham, L. Dict.

ASTRER. In old English law. A householder, or occupant of a house or hearth.

ASTRICT. In Scotch law. To assign to a particular mill.

ASTRICTION TO A MILL. A servitude by which grain growing on certain lands or brought within them must be carried to a certain mill to be ground, a certain multure or price being paid for the same. Jacob.

ASTRIHILTET. In Saxon law. A penalty for a wrong done by one in the king's peace. The offender was to replace the damage twofold. Spelman.

ASTRUM. A house, or place of habitation. Bract. fol. 267b; Cowell.

ASYLUM. A sanctuary, or place of refuge and protection, where criminals and debtors found shelter, and from which they could not be taken without sacrilege. Cromie v. Institution of Mercy, 3 Bush (Ky.) 391.

Shelter; refuge; protection from the hand of justice. The word includes not only place, but also shelter, security, protection.

A fugitive from justice, who has committed a crime in a foreign country, "seeks an asylum" at all times when he claims the use of the territories of the United States. In re De Giacomo, 12 Blatchf. 395, Fed.Cas.No.3,747. Every sovereign state has the right to offer an asylum to fugitives from other countries, but there is no corresponding right on the part of the alien to claim asylum. In recent years this right of asylum has been voluntarily limited by most states by treaties providing for the extradition (*q. v.*) of fugitive criminals.

In time of war, a place of refuge in neutral territory for belligerent war-ships.

An institution for the protection and relief of unfortunates, as asylums for the poor, for the deaf and dumb, or for the insane. Lawrence v. Leidigh, 58 Kan. 594, 50 P. 600, 62 Am.St.Rep. 631. The term may also include a hospital constructed and maintained by the United States government for the treatment of soldiers and ex-soldiers. Kemp v. Heebner, 77 Colo. 177, 234 P. 1068, 1069.

AT. A term of considerable elasticity of meaning, and somewhat indefinite. As used to fix a time, it does not necessarily mean *eo instante* or the identical time named, or even a fixed definite moment. Barnett v. Strain, 151 Ga. 553, 107 S.E. 530, 532; In re Clark's Estate, 61 P.2d 1221, 1222, 17 Cal.App.2d 323; And may mean on the same day, Perry v. Gross, 172 Cal. 468, 156 P. 1031, 1032. But "at" may often express simply nearness and proximity, and consequently may denote a reasonable time. Smeltzer v. Atlanta Coach Co., 44 Ga.App. 53, 160 S.E. 665, 666. Primarily, "at" means "near" or "near to," and involves the idea of proximity. Chesapeake & O. Ry. Co. v. Hill, 215 Ky. 222, 284 S.W. 1047, 1048, 48 A.L.R. 327; "At" a village or city may mean "near." Howell v. State, 164 Ga. 204, 138 S.E. 206, 209; Board of Trustees of Albany College v. Monteith, 64 Or. 356, 130 P. 633, 636. Depending on the context, "at" may be equivalent to "in"; Millikan v. Security Trust Co., 187 Ind. 307, 118 N.E. 568; Fayette County Board of Education v. Tompkins, 212 Ky. 751, 280 S.W. 114, 116; "toward"; State v. Cunningham, 107 Miss. 140, 65 So. 115, 117, 51 L.R.A. (N.S.) 1179; "after"; Davis v. Godart, 131 Minn. 221, 154 N.W. 1091, 1092; "not later than"; Smith v. Jacksonville Oil Mill Co., 21 Ga.App. 679, 94 S.E. 900, 901; or be equivalent to the words on, by, about, under, over, through, from, to, etc.

AT ARM'S LENGTH. Beyond the reach of personal influence or control.

Parties are said to deal "at arm's length" when each stands upon the strict letter of his rights, and conducts the business in a formal manner, without trusting to the other's fairness or integrity, and without being subject to the other's control or overmastering influence.

AT BAR. Before the court. "The case at bar," etc. Dyer, 31.

AT ISSUE. Whenever the parties come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be at an issue. Willard v. Zehr, 215 Ill. 154, 74 N.E. 107, 108.

AT LARGE. Not limited to any particular place, district, person, matter, or question; open to discussion or controversy; not precluded. Free; unrestrained; not under corporal control; as a ferocious animal so free from restraint as to be liable to do mischief. Fully; in detail; in an extended form.

A congressman at large is one who is elected by the electors of an entire state.

AT LAW. According to law; by, for, or in law; particularly in distinction from that which is done in or according to equity; or in titles such as sergeant at law, barrister at law, attorney or counsellor at law. Hooker v. Nichols, 116 N.C. 157, 21 S.E. 208.

AT LEAST. In deed of trust covenant specifying amount of fire insurance, means at lowest estimate, at smallest concession or claim, in smallest or lowest degree, at smallest number. Browne v. Franklin Fire Ins. Co., 225 Mo.App. 665, 37 S.W.2d 977, 979.

AT ONCE. In contracts of various kinds the phrase is construed as synonymous with "immediately" and "forthwith," where the subject-matter is the giving of notice. The use of such term does not ordinarily call for instantaneous action, but rather that notice shall be given within such time as is reasonable in view of the circumstances. *George v. Aetna Casualty and Surety Co.*, 121 Neb. 647, 238 N.W. 36, 39. Likewise, contracts or statutes requiring the performance of a particular act "at once" are usually held to mean simply within a reasonable time. *Arizona Power Co. v. State*, 19 Ariz. 114, 166 P. 275, 277. An order to "ship at once" is synonymous with "as soon as possible". *Myers v. Hardin*, 208 Ark. 505, 186 S.W.2d 925, 928.

AT SEA. Out of the limits of any port or harbor on the sea-coast. *U. S. v. Symonds*, 7 S.Ct. 411, 120 U.S. 46, 30 L.Ed. 557.

AT WAR. Death of seaman from Pearl Harbor Attack as occurring while nation was "at war". *Rosenau v. Idaho Mut. Ben. Ass'n*, 65 Idaho 408, 145 P.2d 227, 232.

AT ANY TIME. Grant of time without limit. *Haworth v. Hubbard*, 220 Ind. 611, 44 N.E.2d 967, 970, 144 A.L.R. 887. Period of time limited by circumstances. *Imes v. Globe Oil & Refining Co.*, 84 P.2d 1106, 1107, 1108, 184 Okl. 79. Within a reasonable time. *Haworth v. Hubbard*, 220 Ind. 611, 44 N.E.2d 967, 970, 144 A.L.R. 887.

AT ANY TIME PRIOR TO. Synonymous with "not later than". *Hughes v. United States*, C.C.A. Tenn., 114 F.2d 285, 287.

AT THE COURTHOUSE DOOR. In proximity of courthouse door. At place provided for posting of legal notices in courthouse. *Matson v. Federal Farm Mortg. Corporation*, Tex.Civ.App., 151 S.W.2d 636, 640, 641.

AT THE END OF THE WILL.. The words "at the end of the will" within statute providing that every will shall be subscribed by testator at the end of the will mean the end of the language and not paper on which it is written. In re *Golden's Will*, 300 N.Y.S. 737, 738, 165 Misc. 205; In re *Hildreth's Will*, 36 N.Y.S.2d 938, 939, 940.

AT TIME CAUSE OF ACTION ACCRUES. Is sometimes applied to present enforceable demand, but more often simply means to arise or come into existence. *Stone v. Phillips*, 142 Tex. 216, 176 S.W.2d 932, 933.

ATAMITA. In the civil law. A great-great-great-grandfather's sister.

ATAVIA. In the civil law. A great-grandmother's grandmother.

ATAVUNCULUS. The brother of a great-grandfather's grandmother, or a great-great-great-grandfather's brother.

ATAVUS. The male ascendant in the fifth degree. The great-grandfather's or great-grandmother's grandfather; a fourth grandfather.

The ascending line of lineal ancestry runs thus: *Pater, Avus, Proavus, Abavus, Atavus, Tritavus*. The seventh generation in the ascending scale will be *Tritavi-pater*, and the next above it *Proavi-atavus*.

ATHA. (Spelled also *Atta, Athe, Atte.*) In Saxon law. An oath; the power or privilege of exacting and administering an oath. *Spelman*.

ATHEIST. One who does not believe in the existence of a God. *Gibson v. Insurance Co.*, 37 N.Y. 584.

ATIA. Hatred or See *De Odio et Atia*.

ATILIAN LAW. See *Lex Atilia*.

ATILUM. The tackle or rigging of a ship; the harness or tackle of a plow. *Spelman*.

ATINIAN LAW. See *Lex Atinia*.

ATMATERTERA. A great-grandfather's grandmother's sister, (*atavice soror*;) called by Bracton "*atmaterwera magna*." Bract. fol. 68b.

ATOMIZE. To reduce to atoms or atom-like particles; pulverize; spray. In re *Preble, Cust. & Pat.App.*, 45 F.2d 1007, 1009; *Stearns-Roger Mfg. Co. v. Greenawalt*, C.C.A.Colo., 62 F.2d 1033, 1039.

ATPATRUUS. The brother of a great-grandfather's grandfather.

ATRAVESADOS. In maritime law. A Spanish term signifying athwart, at right angles, or abeam; sometimes used as descriptive of the position of a vessel which is "lying to." *The Hugo*, D.C.N.Y., 57 F. 403, 410.

ATROCIOUS ASSAULT AND BATTERY. An assault by maiming and wounding. *State v. Staw*, 97 N.J.Law, 349, 116 A. 425.

ATROCITY. A word implying conduct that is outrageously or wantonly wicked, criminal, vile, cruel; extremely horrible and shocking. *State v. Wyman*, 56 Mont. 600, 186 P. 1, 3.

ATROPINE. A drug employed for purposes of dilating the eye so as to put the small muscles inside the eye at rest and to prevent adhesions of the iris and lens. *De Zon v. American President Lines*, C.C.A.Cal., 129 F.2d 404, 406.

ATS. At suit of.

ATTACH. To bind, fasten, tie, or connect, to make fast or join, and its antonyms are separate, detach, remove. *State v. Modern Box Makers*, 217 Minn. 41, 13 N.W.2d 731, 733. To take or apprehend by commandment of a writ or precept. *Buckeye Pipe-Line Co. v. Fee*, 62 Ohio St. 543, 57 N.E. 446, 78 Am.St.Rep. 743.

It differs from *arrest*, because it takes not only the body, but sometimes the goods, whereas an arrest is only against the person; besides, he who attaches keeps the party attached in order to produce him in court on the day named, but he who arrests lodges the person arrested in the custody of a higher power, to be forthwith disposed of. *Fleta*, lib. 5, c. 24. See *Attachment*.

In a broad sense, "attach" indicates any seizure of property for the purpose of bringing it within the custody of the court, and is not limited to a seizure on mesne process. In re *Clark*, D.C.Mich., 11 F.2d 540, 541.

ATTACHE. A person attached to an embassy, to the suite of an ambassador, or to a foreign legation. One connected with an office, *e. g.*, a public office. *Noel v. Lewis*, 35 Cal.App. 658, 170 P. 857, 859.

ATTACHED. A term describing the physical union of two otherwise independent structures or objects, or the relation between two parts of a single structure, each having its own function. *National Brake & Electric Co. v. Christensen*, C. C.A.Wis., 229 F. 564, 570. As applied to buildings, the term is often synonymous with "annexed." *Williams Mfg. Co. v. Insurance Co. of North America*, 93 Vt. 161, 106 A. 657, 659.

The word "attached," in an affidavit of service of a notice, used to designate a notice appearing on the reverse side of the affidavit, is improper. *Wood v. Yearous*, 159 Iowa, 211, 140 N.W. 362, 364.

ATTACHIAMENTA. L. Lat. Attachment.

ATTACHIAMENTA BONORUM. A distress formerly taken upon goods and chattels, by the legal *attachiators* or bailiffs, as security to answer an action for personal estate or debt.

ATTACHIAMENTA DE PLACITUS CORONAE. Attachment of pleas of the crown. *Jewison v. Dyson*, 9 Mees. & W. 544.

ATTACHIAMENTA DE SPINIS ET BOSCHIS. A privilege granted to the officers of a forest to take to their own use thorns, brush, and windfalls, within their precincts. *Kenn.Par.Antiq.* 209.

ATTACHIAMENTUM. L. Lat. An attachment.

ATTACHING CREDITOR. See Creditor.

ATTACHMENT. The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over. Also the writ or other process for the accomplishment of the purposes above enumerated, this being the more common use of the word. A remedy ancillary to an action by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain. *First Nat. Bank & Trust Co. of Vermillion v. Kirby*, 62 S.D. 489, 253 N.W. 616; *Lipscomb v. Rankin*, Tex.Civ.App., 139 S.W.2d 367, 369. Though sometimes called an ancillary or auxiliary proceeding, it is in all essential respects, a suit. *Farmers State Bank of Lexington v. Lemmer*, 130 Neb. 211, 264 N.W. 415, 416.

The purpose is to take defendant's property into legal custody, so that it may be applied on defendant's debt to plaintiff when established. *John Deere Plow Co. of St. Louis v. L. D. Jennings, Inc.*, 203 S.C. 426, 27 S.E.2d 571, 572; *Union Bank & Trust Co. v. Edwards*, 281 Ky. 693, 137 W.2d 344, 348.

At common law, "attachment" was procedure whereby sheriff was, commanded to attach a defendant who, after

being personally served, disobeyed original writ of summons, by keeping certain of his goods which he would forfeit if he did not appear, or by making him find securities who would be amerced if he continued his nonappearance, and, if after such attachment he still neglected to appear, he would not only forfeit this security, but was compellable by a writ of distringas infinite. *Grimmett v. Barnwell*, 184 Ga. 461, 192 S.E. 191, 194, 116 A.L.R. 257.

Execution and attachment distinguished. See Execution.

Persons

A writ issued by a court of record, commanding the sheriff to bring before it a person who has been guilty of contempt of court, either in neglect or abuse of its process or of subordinate powers. 3 Bl.Comm. 280; 4 Bl.Comm. 283; *Commonwealth v. Shecter*, 250 Pa. 282, 95 A. 468, 470.

Property

A species of mesne process, by which a writ is issued at the institution or during the progress of an action, commanding the sheriff to seize the property, rights, credits, or effects of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover. It is principally used against absconding, concealed, or fraudulent debtors. *U. S. Capsule Co. v. Isaacs*, 23 Ind.App. 533, 55 N.E. 832.

To Give Jurisdiction

Where the defendant is a non-resident, or beyond the territorial jurisdiction of the court, his goods or land within the territory may be seized upon process of attachment; whereby he will be compelled to enter an appearance, or the court acquires jurisdiction so far as to dispose of the property attached. This is sometimes called "foreign attachment." *Megee v. Beirne*, 39 Pa. 50; *Bray v. McClury*, 55 Mo. 128. In such a case, the proceeding becomes in substance one in rem against the attached property. *St. John v. Parsons*, 54 Ohio App. 420, 7 N.E.2d 1013, 1014.

Domestic and Foreign

In some jurisdictions it is common to give the name "domestic attachment" to one issuing against a resident debtor, (upon the special ground of fraud, intention to abscond, etc.) and to designate an attachment against a non-resident, or his property, as "foreign." *Longwell v. Hartwell*, 30 A. 495, 164 Pa. 533; *David E. Kennedy, Inc. v. Schleindl*, 290 Pa. 38, 137 A. 815, 816, 53 A.L.R. 1020.

But the term "foreign attachment" more properly belongs to the process otherwise familiarly known as "garnishment." It was a peculiar and ancient remedy open to creditors within the jurisdiction of the city of London, by which they were enabled to satisfy their own debts by attaching or seizing the money or goods of the debtor in the hands of a third person within the jurisdiction of the city. *Welsh v. Blackwell*, 14 N.J.Law. 346. This power and process survive in modern law, in all common-law jurisdictions, and are variously denominated. "garnishment," "trustee process," or "factorizing." *Rai-guel v. McConnell*, 25 Pa. 362, 363. A "foreign attachment" is a mesne process issued to compel a foreign debtor to appear to the suit of his creditor, while "attachment execution" is a final process issued for the purpose of enforcing a judgment already obtained. *Williams v. Ricca*, 324 Pa. 33, 187 A. 722, 723.